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AFTER INTERSECTIONALITY

Robert S. Chang* & Jerome McCristal Culp, Jr.†

Kimberlé Crenshaw introduced the legal world to intersectionality.¹ She criticized the limits of single axis notions of identity as practiced in legal doctrine and feminist and antiracist politics. The notion that aspects of identity such as race and gender do not operate independently but are woven together to produce people's lived experience seems commonsensical today, but putting this insight to work in law and antistatutory practice has proven to be quite difficult.² How does one pay attention to the points of intersection? How many intersections are there? Is the idea of an intersection the right analogy?³

A number of scholars have been working on answering these questions, including a group whose work has been characterized as post-intersectionality analysis.⁴ Nancy Ehrenreich's article, *Subordination and Symbiosis*,⁵ is an

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¹ Kimberlé W. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989). This article was part of a broader groundswell of dissatisfaction with essentialism in feminist theory. See, e.g., ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990). See also Jerome McCristal Culp, Jr., *Colorblind Remedies and the Intersectionality of Oppression: Policy Arguments Masquerading as Moral Claims*, 69 N.Y.U. L. REV. 162 (1994). An earlier expression of this discontent can be seen in the outstanding anthology, *ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE: BLACK WOMEN'S STUDIES* (Gloria T. Hull et al. eds., 1982).

² For example, there is only one published opinion that cites Crenshaw's intersectionality thesis. See *Lam v. Univ. of Haw.*, 40 F.3d 1551, 1562 (9th Cir. 1994). The court does note, though, that "other courts have recognized, [that] where two bases for discrimination exist, they cannot be neatly reduced to distinct components." *Id.* (citing *Jefferies v. Harris County Cmty. Action Assoc.*, 615 F.2d 1025, 1032-34 (5th Cir. 1980)); *Graham v. Bendix Corp.*, 585 F.Supp. 1036, 1047 (N.D. Ind. 1984); *Chambers v. Omaha Girls Club*, 629 F.Supp. 925, 946 n. 34 (D. Neb. 1986), *aff'd*, 834 F.2d 697 (8th Cir. 1987).

³ Crenshaw herself admits that intersectionality is "a provisional concept linking contemporary politics with postmodern theory." Kimberlé W. Crenshaw, *Women of Color at the Center: Selections from the Third National Conference on Women of Color and the Law. Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 n.9 (1991).

⁴ Peter Kwan appears to have coined the term "post-intersectionality." See Peter Kwan, *Intersections of Race, Ethnicity, Class, Gender & Sexual Orientation: Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257, 1264 (1997) [hereinafter Kwan, *Jeffrey Dahmer*]. Kwan identifies at least two other scholars who are trying to develop post-intersectionality theories. Peter Kwan, *Complicity and Complexity: Cosynthesis and Praxis*, 49 DEPAUL L. REV. 673, 687 (2000) (citing Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities & Inter-connectivities*, 5 S. CAL. REV. L. & WOMEN'S STUD. 25, 57-66 (1995) (discussing inter-connectivity); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561, 640 (1997) (multidimensionality)).

important contribution to this growing body of literature. She has provided a powerful theoretical and practical primer for doing the difficult task of antistatutory work. In particular, her article provides valuable insights into understanding and managing group conflict. She chronicles the problems raised by identity theory and then provides a powerful and useful critique and response to the issues she carefully raises.

In terms of goals and politics, we agree with almost every point that Ehrenreich makes. Those who follow her Symbiosis theory will produce a clearer and better political and social system. It is also clear that her theory builds on the work of feminist, critical race, queer, and other critical theories in new and useful ways. However, we would like to raise two of our own concerns with Ehrenreich's theory that trouble many of the multiple oppressions theories, and we will try to demonstrate those concerns by using examples from our small efforts as scholars of color with common and conflicting oppressions.

Professor Ehrenreich argues that we can often deal with the conflict between groups who are oppressed by looking for ways to combat those sometimes conflicting oppressions in a common way.⁶ She describes intersectionality and its implications as presenting four problems:

1) the zero sum problem: the apparent substantive conflict among the interests of different subgroups that seems to make it impossible to simultaneously further the interests of all; 2) the infinite regress problem: the tendency of all identity groups to split into ever-smaller subgroups, until there seems to be no hope of any coherent category other than the individual; 3) the battle of oppressions problem: the apparent necessity, due to problems 1 and 2, of weighing oppressions to determine which subgroup's interests are most important; and 4) the relativism problem: the suggestion that, if all people have both oppressor and oppressed statuses (depending on the context), it might be impossible to assess the legitimacy of claims to oppression or to assess the value of particular reform proposals for a progressive agenda.⁷

Her examples demonstrate how this works effectively. We agree that conflicts are often overblown and it is important to look for solutions that help more than one group. This may be true because most of us belong to more than one source of oppression, and changes in the current situation require building coalitions among the groups. All four of these problems are caused by the twin concerns created by essentialism and individualism, which Jane Schacter has described as identity skepticism.⁸

⁵ Nancy Ehrenreich, *Subordination and Symbiosis: Mechanisms of Mutual Support Between Subordinating Systems*, 71 UMKC L. REV. 251 (2002).

⁶ *Id.*

⁷ *Id.* at 267.

⁸ See Jane S. Schacter, *Skepticism, Culture and the Gay Civil Rights Debate in a Post-Civil Rights Era*, 110 HARV. L. REV. 684 (1997) (book review).

Identity, while being useful as a way of describing the oppressions that exist, can emphasize groups in such a way that it contributes to conflict. Critical theorists and liberal individualists are both skeptical of identity, though for different reasons. Professor Ehrenreich raises the issue that critical theorists have identified with the question of essentialism.⁹ These four problems are part of the critical skepticism that critical theorists raise about identity and its use. Professor Ehrenreich's solution of symbiotic analysis does much of the work to get around issues that create this identity skepticism in critical theory.¹⁰

There are two problems with Professor Ehrenreich's response of these issues. First, despite what we would like to believe as creators of coalitions, it is not always possible to find a solution that gets around the problems created by identity. With regard to the "battle of oppressions" problem, Ehrenreich holds out hope that "a single, complex set of [subordinating] structures and ideologies" can be identified against which subordinated groups can join in coalition such that "comparative assessments of relative suffering/deprivation/subordination become superfluous."¹¹ Identities, like individuals, do conflict despite our efforts to find theoretical and practical commonalities. As Stanley Fish and others have shown, it is not possible to find a point outside the discourse to be neutral from which to choose solutions that avoid conflicts among multiple oppressions.¹²

Even so, Professor Ehrenreich proposes that we step outside the bounds of our identities and identify with the common "enemy."¹³ Indeed, the hope seems to be to step outside the bounds of all identities and create an anti-essentialist solution to problems caused by identity oppression. This is a great hope. Unfortunately, it is not possible, and as we move to create coalitions, it may prove to be ultimately unsuccessful.

Our second concern is with Ehrenreich's use of Iris Marion Young's definition of oppression's "five faces" to finesse the relativism problem:

[E]xploitation (essentially, having one's surplus labor extracted by another), marginalization (being expelled from useful participation in social life, including productive work), powerlessness (lack of autonomy and respectability), cultural imperialism (being subjected to universalized dominant group norms), and violence (existing in a social

⁹ Ehrenreich, *supra* note 5 at 267.

¹⁰ *Id.*

¹¹ *Id.* at 319.

¹² Fish calls this the problem of critical self-consciousness, the notion that the self can exist apart from its connections to the world. See STANLEY FISH, *DOING WHAT COMES NATURALLY: CHANGE, RHETORIC, AND THE PRACTICE OF THEORY IN LITERARY AND LEGAL STUDIES* 436-67 (1989). Joan Williams makes the same point in her symposium contribution. See Joan C. Williams, *Fretting in the Force Fields: Why the Distribution of Social Power has Proved So Hard to Change*, 71 *UMKC L. REV.* 493, 499 (2002) ("[W]e need to return to basic pragmatist insight that every analysis reflects a particular point of view; there is no 'view from Nowhere.'") (citing THOMAS NAGEL, *THE VIEW FROM NOWHERE* (1986)).

¹³ Ehrenreich, *supra* note 5, at 271.

context that makes violence against one's group allowable or acceptable).¹⁴

Young's definition provides a common language to discuss the subordination that groups face by organizing subordinating experiences into five themes; however, we are not sure how useful it will be in making interpersonal or intergroup comparisons of oppression. This is the same problem that economists have struggled with in making interpersonal comparisons of utility. To think of how difficult this issue is it is helpful to think of the comparison of height and weight. How do you compare feet to pounds? You can create a metric of average height and average weight, but it does not do the kind of work that Ehrenreich wants Young's "metric" to accomplish.¹⁵

Consider the example of a gay, white male, surgeon and a straight, black male, blue collar worker. Using Young's themes, we might begin with the assumption that the economically advantaged white male surgeon is less oppressed than the black male blue collar worker. But this may depend on a host of other issues including how each acts in a particular circumstance. The straight black male may not violate explicit and implicit social rules regarding race and sex in the workplace, as long as he stays in his racial "place,"¹⁶ not challenging the economic and racial boundaries and being appropriately sexually policed,¹⁷ he may feel less immediate oppression than the gay white male surgeon who is effeminate and who is regarded as sexually active in the workplace.¹⁸ The

¹⁴ *Id.* at 321 (citing IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 48-63 (1990)).

¹⁵ Ehrenreich is aware of some of the limitations with Young's approach but perhaps relies on it as the best available option for now. *Id.* at 322.

¹⁶ See Jerome McCristal Culp, Jr., *Small Numbers, Big Problems, Black Men, and the Supreme Court: A Reform Program for Title VII After Hicks*, 23 CAP. L. REV. 241, 252-55 (1994).

¹⁷ See ROBERT S. CHANG, *DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE* 21-26 (1999) (discussing the dimension of racial sexual policing that escalated the level of violence that led two white autoworkers in Detroit to brutally kill a Chinese American man following an altercation in a strip club).

¹⁸ See, e.g., *Rene v. MGM Grand Hotel, Inc.*, 243 F.3d 1206 (9th Cir.), *reh'g en banc granted*, 255 F.3d 1069 (9th Cir. 2001). This case involved an openly gay man working at a casino who was subjected to the following harassing behavior: "being grabbed in the crotch and poked in the anus on numerous occasions, being forced to look at pictures of naked men having sex while his co-workers looked on and laughed, being caressed, hugged, whistled and blown kisses at, and being called 'sweetheart' and 'Muneca' ['doll' in Spanish]." *Id.* at 1207.

Another recent example involved a plaintiff employee who:

filed a written complaint concerning an altercation with Curtis [a co-worker] over the timing of lunch breaks. Curtis confronted Spearman, called him a "little bitch," told him that he hated his "gay ass," and threatened to go to Spearman's residence in Indiana and "f--- [his] gay faggot ass up." To defuse the situation, a foreman assigned Spearman and Curtis to different press areas for the balance of the shift. . . .

Curtis and Neeley [another co-worker] testified that they and their co-workers at Ford suspected that Spearman was a homosexual. According to Curtis, he thought that Spearman was homosexual when they first met and Spearman supposedly took "a full look" at Curtis like a man would look at a woman. Curtis also opined that other blanner operators at Ford were

invasion of a sexual outlaw in places that see themselves as homes for straight masculinity can be full of violence, cultural repression, exploitation (by forcing the gay male surgeon into other specialties), and marginalization.

Oppression or subordination cannot be understood outside of the context in which it occurs. The same can be said of privilege. Yet this seems to be happening in the earlier discussion of pure and hybrid intersectionality. When talking about race or gender, it is nonsensical to talk about privilege and subordination as operating uniformly or unidirectionally (as if along a single axis). Whiteness in our society is often a privileged position. The same can be said for maleness. From this, Ehrenreich discusses the doubly burdened individual (e.g., woman of color) as a case of pure intersectionality and a man of color as being a singly burdened (race) and singly privileged (gender) individual as a case of hybrid intersectionality.¹⁹ We wonder, though, whether Emmett Till, a young black boy who was killed by two white men for allegedly whistling at a white woman,²⁰ would say that he was singly burdened as a (presumably) straight black boy. Maleness and heterosexuality do not operate uniformly as positions of privilege. In this circumstance, Emmett Till was multiply burdened as a black man because of the way his blackness and his heteronormative maleness operated synergistically to escalate the violence directed against him.²¹ In that context, a black female in his place would probably not have been subjected to the same kind of violence. This example shows the difficulty of trying to avoid the kind of single axis thinking that characterizes intersectional approaches to identity.²²

Differences, such as race or gender or sexuality, by themselves cannot be assigned fixed values. Instead, it is important to figure out what is made of difference, which must always be a contextual determination.²³ Thus, Young's five faces of oppression,²⁴ while providing a useful vocabulary, doesn't really do

uncomfortable with Spearman because they observed that he "looked [them] over" like a man would "take a full look" at a woman, that he got too close to his male co-workers when he talked to them, and even "rubbed up especially close" to some of them. Curtis also testified that one coworker started "squirring" when others teased him that Spearman had a "crush" on him. And Curtis also claimed that his brother-in-law and a coworker told him that they saw Spearman at gay nightclubs.

Spearman v. Ford Motor Co., 231 F.3d 1080, 1082-83 (7th Cir. 2000).

¹⁹ Ehrenreich, *supra* note 5, at 273-74.

²⁰ STEPHEN J. WHITFIELD, A DEATH IN THE DELTA: THE STORY OF EMMETT TILL 16-19 (1988).

²¹ Both of his killers expressed "amazement [that] Till did not whimper or beg for mercy or show remorse" during his abduction or beating. *Id.* at 20-21. This failure to submit to the punishment may have led to death. *See id.*

²² Sherene Razack's symposium contribution makes this point in a slightly different way. She reminds us to pay attention to the complexity of race and nation and the danger of pathologizing and infantilizing men of color who engage in acts of violence by rationalizing it as compensatory violence. *See* Sherene Razack, "Outwhiting the White Guys": *Men of Colour and Peacekeeping Violence*, 71 UMKC L. REV. 331 (2002).

²³ This is just another way of saying that any socially meaningful differences are socially constructed.

²⁴ *See* YOUNG, *supra* note 14.

the work of allowing for judgments to be made about relative group oppression outside of narrow contexts, unless the judgments made are at such a level of generality as to limit their effectiveness.

We applaud the efforts by post-intersectionality scholars who are advancing our understanding of how subordination works and how to engage in antisubordination praxis. Nancy Ehrenreich's idea of symbiosis is an important contribution to this literature. We have a couple suggestions for those who will follow Ehrenreich's lead.

The first is to remember the "so what" question. It's one thing to say that race, gender, sexuality, class, and nation operate symbiotically,²⁵ cosynthetically,²⁶ multidimensionally,²⁷ or interconnectedly.²⁸ Analyses like this are very important. The next step is to be able to prescribe or imagine points of intervention. One reason that intersectionality caught on is that Crenshaw had very specific points of intervention with regard to legal doctrine (application of Title VII) and for feminist and antiracist politics.²⁹ Ehrenreich (and Valdes) focuses on antisubordination practice directed toward coalition building by focusing on commonalities to break down the perceived barriers between subordinated groups.³⁰ While we regard this to be very important, we think it would be helpful to extend this work more specifically to legal doctrines and legal actors.

The second is to remember that it's not always a "win-win" situation.³¹ We, like most other participants engaging in antisubordination work, experience the multiplicity of our identities in our lives. As an African American and an Asian American, we face some of these issues in our friendship. How do you maximize antisubordination activity when groups conflict? One method that we've

²⁵ Ehrenreich, *supra* note 5, at 272-73.

²⁶ See Kwan, *Jeffery Dahmer*, *supra* note 4.

²⁷ See Hutchinson, *supra* note 4.

²⁸ See Valdes, *supra* note 4.

²⁹ See Crenshaw, *supra* note 3.

³⁰ Ehrenreich, *supra* note 5, at 319-20. Kwan's work differs a little from other post-intersectionality theorists through his effort to understand the operation and mutual reinforcement of categories by using psychoanalytic theory. He thus directs his efforts to try to understand better how institutional actors responded to Jeffrey Dahmer and his killing of Koneak Sinthasomphone, a fourteen year old Laotian boy. See Kwan, *Jeffery Dahmer*, *supra* note 4. His diagnosis allows us to imagine different points and kinds of interventions with regard to the differently situated institutional actors.

Hutchinson's project differs in its focus on reforming coalitions by requiring them to be responsive to subordinated groups within the ostensible coalitions. His critique of gay rights as focusing on the interests of whites and of antiracist politics as ignoring gays and lesbians of color resembles more the antiessentialist critiques directed by Kimberlé Crenshaw and Angela Harris toward feminism (for ignoring race) and antiracism (for ignoring gender). See Darren L. Hutchinson, "Gay Rights" for "Gay Whites"?: *Race, Sexual Identity, and Equal Protection Discourse*, 85 CORNELL L. REV. 1358 (2000); Darren L. Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics*, 47 BUFF L. REV. 1 (1999).

³¹ Joan Williams makes a similar point in her discussion of zero sum moments. Williams, *supra* note 12, at 500-01.

explored requires sacrifice by disclaiming privilege.³² African Americans can often be privileged with respect to questions of citizenship. For many African Americans, the issue of immigration and getting citizenship does not come up unless there is a partner or loved one who is directly impacted. However, for many Asian Americans and Asian American communities, immigration and citizenship are at the heart of their oppression. If there are to be meaningful and longstanding coalitions between African Americans and Asian Americans, sacrifices, at least in the short term, are necessary. The willingness to sacrifice is in turn dependent on trust. And perhaps therein lies the real challenge. How do we establish trust in the absence of formalized accountability? It is a question we are still working on as we try to move past the intersection. It is the question we invite others to explore.

³² See Robert S. Chang, *The End of Innocence Or Politics After the Fall of the Essential Subject*, 45 AM. U. L. REV. 687 (1996); See Jerome McCristal Culp, Jr., *The Seventh Aspect of Self-Hatred: Race, LatCrit, and Fighting the Status Quo*, 55 U. FLA. L. REV. 425 (2003).

