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## Foreword: Centering Intersectionality in Human Rights Discourse

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# Foreword: Centering Intersectionality in Human Rights Discourse

Johanna Bond\*

In the last decade, intersectionality theory has gained traction as a lens through which to analyze international human rights issues. Intersectionality theory is the notion that multiple systems of oppression intersect in peoples' lives and are mutually constitutive, meaning that when, for example, race and gender intersect, the experience of discrimination goes beyond the formulaic addition of race discrimination and gender discrimination to produce a unique, intersectional experience of discrimination.<sup>1</sup> The understanding that intersecting systems of oppression affect different groups differently is central to intersectionality theory. As such, the theory invites us to think about inter-group differences (i.e., differences between women and men) *and* intra-group differences (i.e., differences in the experiences of discrimination and rights violations between white women and women of color).<sup>2</sup>

Kimberlé Crenshaw coined the term intersectionality in the late 1980s and has been the major intellectual driver of intersectionality theory in the years since. Crenshaw explains intersectionality theory as an outgrowth of the experiences of Black women in the United States: “[b]ecause of their intersectional identity as both women *and* of color within discourses that are shaped to respond to one *or* the other,

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1. See generally Kimberlé 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).

2. JOHANNA BOND, *GLOBAL INTERSECTIONALITY AND CONTEMPORARY HUMAN RIGHTS* 6 (2021).

women of color are marginalized within both.”<sup>3</sup> Crenshaw, and other critical race feminists, noted that feminist theories based on “formal equality,” “cultural or relational” feminism, and “dominance” feminism largely reflected the experiences of white women and excluded women of color from the analysis.<sup>4</sup> Crenshaw highlighted this issue in her article, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*.<sup>5</sup> There, Crenshaw demonstrated that women’s experiences with violence are deeply interwoven with race and class. Importantly, Crenshaw argued that the intersection of race and gender in one’s life leads to experiences that are qualitatively different than the aggregation of race and gender subordination. Her work also integrated, and built upon, the transformative scholarship of feminists from the Global South, such as Chandra Talpade Mohanty<sup>6</sup> and Gayatri Chakravorty Spivak.<sup>7</sup> Although outside the scope of this brief Introduction, I recognize the rich connections between intersectionality theory and critiques stemming from the Third World Approaches to International Law (TWAIL) school.<sup>8</sup>

In the context of international human rights, intersectionality offers an invaluable lens through which to explore complex human rights violations. In that vein, the *Washington and Lee Law Review* held the annual Lara D. Gass Symposium on March 10–11, 2022 to delve into the application of intersectionality in the field of international human rights law. The Symposium brought together scholars and activists from around the world to discuss the relevance and importance of intersectionality in human rights activism and scholarship.

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3. Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 (1993) (emphasis in original) [hereinafter Crenshaw, *Mapping the Margins*].

4. See, e.g., Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 586-87 (1990).

5. See generally Crenshaw, *Mapping the Margins*, supra note 3.

6. See Chandra Talpade Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, 2 BOUNDARY 333, 338 (1994).

7. See Gayatri Chravorty Spivak, *Subaltern Studies: Deconstructing Historiography*, in SELECTED SUBALTERN STUDIES 3, 13 (Ranajit Guha & Gayatri Spivak eds., 1988).

8. See Makua Matua, *What is TWAIL?*, 94 PROCEEDINGS OF THE ASIL ANN. MEETING 31, 37 (2000).

The group of experts included two members of the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (the “CEDAW Committee”) as well as a range of academics who share a commitment to the global application of intersectionality theory. As evidenced by these experts’ varied chapters in this Volume, the theory’s applicability to human rights law is wide-ranging, and the future of intersectional research in the context of human rights is still developing. The field of human rights law, and questions about the evolution of intersectionality theory as applied to human rights, will require ongoing inquiry and scholarly development by human rights scholars. My hope is that the scholarship introduced below sets the stage for that continued development.

In 2000, a woman identified as “A.S.” from the Romani ethnic minority group in Hungary was the victim of coerced sterilization.<sup>9</sup> A.S. faced discrimination in Hungary based on the intersection of gender and ethnicity, and, in 2004, she sought remedies from the CEDAW Committee. After reviewing her complaint, CEDAW recognized the gender-based discrimination A.S. faced, but was silent on the question of racial or ethnic bias. None of the remedies recommended by CEDAW addressed the intersectional complexity of the discrimination she experienced. CEDAW’s recommendations did not address deficiencies in medical care specifically available in Romani communities. The recommendations also failed to acknowledge a racially motivated effort to decrease the birth rate within Romani communities. As a result, the CEDAW Committee’s remedies failed to capture and remediate the full scope of human rights violations that A.S. experienced. Because this case dates back to the early 2000s, it is unsurprising that the CEDAW Committee did not engage in extensive intersectional analysis. Times are changing and the CEDAW Committee, like the other United Nations human rights treaty bodies, is beginning to embrace intersectionality theory in its analysis.

Sexual violence in armed conflict presents another example of an intersectional human rights violation when

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9. A.S. v. Hungary, Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), Communication No. 4/2004, CEDAW/C/36/D/4/2004.

victims are targeted based on, for example, gender and ethnicity or religion. Since 2017, Burmese security forces have reportedly raped hundreds of Rohingya Muslim women as part of a large-scale campaign of ethnic cleansing. Gender, ethnicity, and religion intersect in the targeting of Rohingya women for sexual violence. When human rights actors intervene on behalf of victims of sexual violence in armed conflict, they must understand the intersectional complexity of the human rights violations if they hope to offer meaningful redress to victims.

In the last fifty years, women's human rights activists have fought for, and achieved, greater recognition of the range and type of human rights violations commonly perpetrated against women across the globe. In the fight for greater recognition of women's human rights, activists and scholars have emphasized the shared experiences of women in order to build strategic coalitions among women. The emphasis on women *qua* women amplified support for the global movement to promote women's human rights. However, eliding the differences among women came at a great cost. As Whelan and Goodwin note in this Volume, white feminism has been criticized "for essentializing and universalizing *white* women's experience as if it represents *all* women's experience" and has "ignored race, class, sexual identity, and other experiences to the neglect and detriment of all women."<sup>10</sup> This narrow focus on gender has limited discussions of other identity categories such as race, ethnicity, class, religion, sexual orientation, gender identity, age, and disability which exist within the women's human rights movement. Nonetheless, in the last twenty years, activists and scholars have started to explore the ways in which these varied identities intersect in the lived experiences of human rights victims, and many human rights organizations around the world have now embraced intersectionality as an analytical framework that informs their advocacy work.

The United Nations (U.N.) has similarly begun to integrate intersectional analyses. In the early to mid-2000s, the U.N. was slow to embrace intersectionality in its work to

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10. Allison M. Whelan & Michele Goodwin, *Abortion Rights and Disability Equality: A New Constitutional Battleground*, 79 WASH. & LEE L. REV. 956, 1002 (2022).

protect and promote human rights. The U.N., working primarily through its human rights treaty-monitoring bodies, increasingly touches on intersectional concepts to analyze human rights violations. In my previous scholarship, I have argued that international actors, including representatives of the United Nations, must more aggressively incorporate intersectionality theory into human rights work in order to maintain relevance in twenty-first century human rights discourse. Intersectionality theory continues to gain ground within UN human rights discourses, which will ultimately benefit victims seeking redress through UN mechanisms.

In 2000, the Committee on the Elimination of Racial Discrimination (CERD)—one of the U.N.’s expert committees that ensure compliance with core human rights treaties<sup>11</sup>—issued a general recommendation entitled *Gender-Related Aspects of Racial Discrimination*, also known as General Recommendation 25. This guidance was one of the first significant efforts by any U.N. treaty body to explore and promote the concept of intersectionality. Since 2000, the treaty bodies have continued to sporadically make efforts to promote intersectionality within the work of the U.N. Although encouraging, much work remains before intersectionality is fully integrated into the work of the U.N. treaty bodies.

The CEDAW Committee exemplifies both the steps the U.N. has taken toward integrating intersectional analysis, as well as the shortcomings that still remain. Since A.S.’s case, the Committee has begun to incorporate intersectional analysis into its consideration of human rights violations. In recent years, the Committee’s reports and other documents have included references to “multiple” discrimination, discrimination affecting “particularly vulnerable” women, and, in some cases, to “intersectional” forms of discrimination.<sup>12</sup>

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11. Those treaties include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Social, Economic, and Cultural Rights (ICESCR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention Against Torture (CAT), Convention on the Rights of the Child (CRC), Convention on the Rights of Migrant Workers (CMW), and Convention on the Rights of Persons with Disabilities (CRPD).

12. For example, in 2010, the CEDAW Committee adopted General Recommendation No. 28 on “the core obligations of States parties under

After a somewhat slow start, the Committee now regularly adopts an explicitly intersectional approach, which will lead to better outcomes for victims and stronger human rights protection.

In addition to its jurisprudence, the CEDAW Committee monitors ongoing implementation through a process of state reporting, in which countries that have ratified the treaty submit periodic reports detailing their progress in implementing the treaty. Upon receipt of a state report, the Committee engages in a dialogue with representatives from the state, culminating in the Committee's concluding observations. Concluding observations allow the Committee to highlight areas of progress in implementing the treaty as well as challenges that remain. In the context of its concluding observations, the Committee has many opportunities to undertake intersectional analysis of human rights abuses. In recent years, the Committee has occasionally used these opportunities to adopt an intersectional lens in its dialogue with a reporting state or in its concluding observations. The Committee may make a passing reference to intersectional violations but seldom probes deeply to gain a more nuanced understanding of the human rights at stake. As I have argued elsewhere, there is room for the CEDAW Committee and the other treaty bodies to improve the consistency and rigor of their intersectional human rights analysis. On a broader scale, the U.N. should consider reforms to its institutional structure that would eliminate the barriers that have historically discouraged intersectional analysis of human rights violations. Those structural reforms might take many forms, ranging from the creation of liaisons between treaty bodies, the production of more joint general recommendations and greater formal collaboration between treaty bodies, perhaps even the creation of consolidated committees that can more easily address intersectional rights claims. Although the precise nature of

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Article 2" of the CEDAW Convention. Although it did not elaborate on the meaning of intersectionality, General Recommendation No. 28 observed that "intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in Article 2." Comm. On the Elimination of Discrimination Against Women, General Recommendation No. 28 on the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women, UN Doc. CEDAW/C/GC/28 (Dec. 16, 2010).

these reforms is outside the scope of this short introduction, I hope that scholars and activists will continue to consider how we might encourage intersectional analysis through structural reform—a consideration undertaken by each of the Symposium’s scholars.

These scholars situate intersectionality squarely in the human rights frame by exploring a range of intersectional human rights violations around the world. Jill Engle’s piece, *Sexual Violence, Intangible Harm, and the Promise of Transformative Remedies*, argues that an intersectional lens and a transformative justice approach are necessary to fully comprehend and remedy the harms of sexual violence. As Engle notes, “[t]ransformative justice is well suited to address the intangible harms in sexual violence cases where victims experience the multiplicity of marginalization by race, gender, and impoverishment.”<sup>13</sup> Engle’s argument stems from the notion that the mainstream criminal justice system in the United States has supported structural violence against communities of color. She advocates for the adoption of transformative justice approaches that will offer intersectional remedies to sexual violence victims.

Martha Davis’s contribution focuses on intersectionality within sub-national human rights bodies. Davis notes that ideas like intersectionality influence human rights dialogues not only at international and regional levels but also at the level of local government. As Davis explains, “Now that intersectionality has moved from its U.S. origins and achieved acceptance on the international level, as well as a measurable degree of international integration, these same concepts of intersectional discrimination are traveling back to domestic contexts—not just in the United States, but worldwide . . . .”<sup>14</sup>

In *Abortion Rights and Disability Equality: A New Constitutional Battleground*, Allison Whelan and Michele Goodwin use an intersectional framework to explore the harmful impact of abortion restrictions on historically marginalized and vulnerable identities. They specifically focus on the rights of disabled pregnant people and demonstrate that

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13. Jill C. Engle, *Sexual Violence, Intangible Harm, and the Promise of Transformative Remedies*, 79 WASH. & LEE L. REV. 1045, 1049–50 (2022).

14. Martha F. Davis, *(G)local Intersectionality*, 79 WASH. & LEE L. REV. 1021, 1026 (2022).



“[p]ersons with disabilities, particularly those living at the intersections of other identities, such as persons of color with disabilities or transgender persons with disabilities, undeniably experience the harms of abortion restrictions in uniquely burdensome ways.”<sup>15</sup> Whelan and Goodwin also view intersectionality as a tool for coalition-building among different constituencies that have shared interests in combatting abortion restrictions. They critique the ways in which abortion opponents have exploited historical tensions between proponents of abortion rights and proponents of disability rights, leading to the marginalization of pregnant persons with disabilities in the process.

In her Comment, Shreya Atrey explores xenophobia “as a sui generis case of intersectional discrimination because it has to do with racial grounds but also perhaps other grounds (such as nationality, religion, language, culture, and class), which makes it difficult to disentangle the basis of xenophobic discrimination as based strictly on racial grounds alone.”<sup>16</sup> Atrey describes xenophobic discrimination as discrimination “against [its] victims because they are not considered as ‘belonging to’ a nation or a society”<sup>17</sup> and highlights the substantial overlap with racial discrimination, as traditionally defined by the CERD Committee. Atrey’s analysis reveals the ways in which the CERD Committee’s approach would benefit from an intersectional understanding of xenophobic discrimination, resulting in more consistent remedies for victims of xenophobic discrimination.

Lisa Crooms-Robinson focuses readers on the life of Pauli Murray as an example of the lived reality of intersectionality. Crooms-Robinson demonstrates how Murray recognized the importance of intersectional approaches to anti-subordination efforts well before the concept of ‘intersectionality’ gained currency in the national and international consciousness.<sup>18</sup>

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15. Whelan & Goodwin, *supra* note **Error! Bookmark not defined.**, at 1000.

16. Shreya Atrey, Comment, *Understanding Xenophobia as Intersectional Discrimination*, 79 WASH. & LEE L. REV. 1007, 1007 (2022).

17. *Id.* at 1019.

18. See Lisa A. Crooms-Robinson, *Murdering Crows: Pauli Murray, Intersectionality, and Black Freedom*, 79 WASH. & LEE L. REV. 1093, 1095–97 (2022) (“Murray’s work at the intersection of race and sex was personified by

Murray's Jane Crow was foundational in her lifelong effort to combat intersectional discrimination based on race and gender, or the "quadruple burdens of being Black, female, poor, and sexually non-conformist."<sup>19</sup> As borne out by Crooms-Robinson's scholarship, Murray's work reflects a deep commitment to intersectionality, one that has much to teach us as we seek to apply intersectional analysis in the context of international human rights law.

Amanda Lyons explores rurality through an intersectional lens in *Rurality as an Intersecting Axis of Inequality in the Work of the UN Treaty Bodies*. Lyons credits global agrarian movements with shifting the understanding of rurality from one in which rural spaces are simply viewed as a backdrop for human rights violations, to one in which rurality is viewed as "a unique and relevant vector in articulating people's identities, ways of life, culture, social innovations, and human rights claims."<sup>20</sup> Lyons examines the work of the U.N. treaty bodies, particularly the Human Rights Committee and the U.N. Committee on Economic, Social and Cultural Rights, and traces when the committees explicitly analyzes rurality as relevant to human rights violations. Lyons applauds these developments, but suggests that there is much work to be done within the treaty bodies to fully capture the structural and systemic dimensions of rurality that contribute to rights violations.

Together, these scholars and the other participants of the Symposium capture intersectionality's potential to transform human rights discourse. Human rights actors, from activists in the field, to scholars, to members of U.N. treaty bodies, increasingly use an intersectional framework for human rights analysis. The use of this framework will lead to more comprehensive remedies for victims of human rights violations and a better understanding of the rights at stake. By recognizing that rights violations often do not fit neatly into

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Jane Crow almost forty years before she would be understood as 'intersectional.'").

19. *Id.* at 1095 (quoting Florence Wagman Roisman, *Lessons for Advocacy from the Life and Legacy of the Reverend Doctor Pauli Murray*, 20 U. MD. L.J. RACE, RELIGION, GENDER, & CLASS 1, 2 (2020)).

20. Amanda Lyons, *Rurality as an Intersecting Axis of Inequality in the Work on the U.N. Treaty Bodies*, 79 WASH. & LEE L. REV. 1125, 1128 (2022).

compartmentalized claims based solely on race, gender, disability, age, socio-economic status, rurality, xenophobia, religion, or sexual orientation and gender identity, we come closer to reflecting and remedying the rights violations that stem from intersections among these complex aspects of our lives. Hopefully, this Symposium serves to further those conversations.