International Women's Human Rights and the Hope for Feminist Law

Intersectionality as Legal Framework

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L'auteure explore le développement de l'intersectionalité- cette approche féministe aux différents champs d'enquêtes- dans le contexte de la loi sur les droits humains internationaux. Tout d'abord ce texte remet en mémoire le développement et les limites de la CEDEF qui avait comme mandat de protéger les droits humains internationaux des femmes. Ensuite il retrace les multiples usages de l'intersectionalité à l'intérieur de la sphère domestique en mettant l'accent sur les origines de la loi. On connaît peu les débuts de ce nouveau concept surtout de son rôle de protecteur auprès des femmes quand il s'agit de la discrimination raciale. (CEDR). Des recherches récentes apportées par l'auteure ont noté l'intérêt des Nations Unies pour l'intersectionalité lors de la violation massive des droits humains et les violences sexuelles envers les femmes en Bosnie-Herzegovine et au Rwanda. Ce texte envisage la possibilité d'élargir les cadres des droits humains internationaux pour établir une protection domestique et transnationale pour les femmes.

> *The acceptance of an intersectional vocabulary at the international level opens up a space for feminist engagement. It offers the future possibility for feminist dialogue* within *the law—as opposed to one that merely focuses* on *the law. Such an approach keeps with intersectionality's counterhegemonic impetus by offering an epistemological guide to engage law's political, symbolic and structural limits and how structural conditions inform them.*
> —Kathryn Henne (para. 33, emphasis in original)

Intersectionality is familiar to feminist discourse in numerous fields and activist circles; so much so that is has been accused of becoming a "buzzword" (Davis 67). I define intersectionality, provisionally, for the purposes of this introduction, at the individual claimant and jurisprudential levels, as an approach to anti-discrimination and equality law that attempts to move beyond static conceptions (Grabham et al. 1) and fixed "identities" of discriminated subjects, and, based on the metaphor of a traffic intersection, delineates the "flow" of discrimination as multi-directional, and injury as seldom attributable to a single source (Crenshaw "Demarginalizing" 149).

But how much do we know about its formal adoption in international human rights law? What issues did the framework address, and how did it come about? What potential does intersectionality have to clarify preexisting understanding and application of women's human rights?

Single Axis Protections and International Human Rights

Deliberations about the universality of international human rights standards, and the extent to which they are colonial (see Moyn), neo-colonial (see Baxi), part of structural adjustment strategies of the global north (see Dezalay and Garth), or culturally determined (see Nyamu)[1] frequently occur in the context of debates over women's human rights. Often, states will use culture as a defense to encroachment on women's rights,[2] posing a clash between the rights guaranteed by international human rights law under the complex rubric of culture and the protections offered to women *qua women*. According to Michael Freeman, "[w]omen suffer much more than men from justifications of the violations of almost all their human rights by appeals to culture" (3). Existing side by

side with this, are hegemonic notions of women's rights emanating from the global north, in which non-Western women are often represented as if, in the words of Leti Volpp, they exist in a "permanently anterior time, with gender subordination uniquely integral to their culture" ("Feminism" 1201). This is posited as a counterbalance to States' regressive policies toward women, and yet operates as a mirror to States' simplistic evocation of culture to defend violations. At the international level, intersectionality arose out of the legacy of contestation regarding the universality, coverage and meaning of the Treaties' protections for those who experienced multiple grounds of discrimination simultaneously. Its adoption by CEDAW in particular was intended to provide jurisprudential heft to the deliberations and exchanges among and between various UN institutions, NGOs, and women activists from the Global South at public forums and through the academy, by deploying the language of intersectionality (Bond). Likewise, the intersectional analysis of Canadian groups such as the Feminist Alliance for International Action (FAFIA), and the Native Women's Association of Canada, directly led to CEDAW's inquiry into the gross human rights violations that Indigenous women in Canada experience, resulting in the UN recommendation for a national inquiry into missing and murdered Indigenous women. Can intersectionality put some of the preexisting binary and oppositional approaches to rights' protections to rest?

At the crux of gender protection in the international system is the establishment of UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (186 countries currently have ratified it). Like all international human rights treaties, CEDAW was formed both in and of its time.

The identified need for a new mechanism for enforcement of women's rights resulted in a broadening and codifying of earlier UN statements of marriage and family rights because, "discrimination arising from customary law, from traditional institutions and practices, or from other forms of oppression not specifically defined in the covenant tend to be neglected" (Reanda 15). This focus on redress is plainly represented in the treaty's final text for Article 2 (f), which requires of signatories that they undertake:

> To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. (CEDAW art.2)

Thus, present at the conception of CEDAW was the identification of the roles of "custom," "culture," and "traditional practice" as at once responsible for the *invisibility* (appearing as natural or given) of women's human rights violations and as an engine of their reproduction (justification of violations based on cultural defences) (Reanda 17). CEDAW broadened and solidified a framework of setting women apart as a group in the suite of United Nations protections. It followed rather than led the particularization of delineating rights for identity groups; the International Convention for the Elimination of all forms of Racial Discrimination (CERD) led the way in 1966. CEDAW entered this world, however, in a new and contentious way: while some rights were specified in earlier frameworks, CEDAW was to have the force of a treaty, and as such, it was to have powers of obligation to reach into states' "cultures" where discrimination against women was embedded, causing concern among states for their cultural integrity (Rehof 91). CEDAW has remained every bit as contentious as it was at its initiation (Rehof 2).

Currently, sixty plus countries have registered reservations to CEDAW.[3] Most reservations are related to articles 2 and 16, which the committee deems central to the object and purpose of the Convention, and which pertain to discrimination that takes place in the family or as an outcome or purpose of culture, tradition and custom. Many states make reservations so sweeping as to effectively nullify state accountability; others are unilaterally asserted on religious grounds with no canonical (religious or legal) justification offered.[4] States' claims that a particular culture requires a reservation to CEDAW are often disputed by the women active for women's rights within that state's boundaries, either from the dominant culture or from within another, minority culture. The feminist-egalitarian interpretations of Islam, refuting state claims that the religious and cultural integrity of Egypt requires women's inequality, reflected in the shadow reports of Morocco to CEDAW, for example, are but one version of the complexity of cultural claims as to gender norms (IWRAW).

A Note About "Culture"

The uses put to culture in rights' discussion often rely on vague notions that move chaotically across categories of religion, belief, ethnicity, race and multiple other markers of belonging. Belonging is seen by some, such as Nira Yurval-Davis, to be the more crucial category to an intersectional approach, a concept that gets beneath culture to how and why culture operates and has political meaning. Culture is a notoriously "spacious" concept in human rights, as Patrick Thornberry has noted, and "finding a discrete substance for the right" to culture is a "complex undertaking" (4). While, not the primary interest here,

it is worth noting at a minimum, as Thornberry has, that bundled into the notion are a number of specific and discernable rights, which might well be named concretely, rather than tackled as an amorphous right (5). Defining culture is in and of itself no small task. For instance, within the international human rights context, the UN Committee on Economic, Social and Cultural Rights' (CESCR) General Comment 21 admits it to be "multifaceted" and for the purposes of the discussion at this stage, broadly outlined, culture encompasses,

> *inter alia*, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with external forces affecting their lives. Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities. (n.107, para.3)

While facially neutral and descriptive, such a notion of culture leaves aside the operations of power and oppression, disadvantage and exclusion taken as the focus of an intersectional approach. Sally Engle Merry has, from the perspective of critical legal anthropology, recast culture precisely as "contested and as a mode of legitimating claims to power and authority" (Merry 9). The approach advocated by Andree Boiselle, in her work on the Stó:Lõ transition to self-rule, locates law itself in a spacious realm of cultural meaning based on exchange and normativity:

> a community's "Law" consists, at any given time, in a snapshot: the set of articulations, there and then, of the culturally shaped meanings, or underlying normativity, that inform community members' expectations toward each other. (Boiselle 10)

Boiselle's work leads to a sustained elaboration and utilization of what she terms "cultural hybridity," a concept worth further exploration in relation to the potential of intersectionality in the international human rights realm. The appeal of this approach rests on its refusal to fix and reify "culture" in the manner frequently true in traditional law and policy, often within protective paradigms, justifying the law's move to dissolve and destroy cultural positions and practices in the name of improvement. Against this notion, Boiselle advances the following framework:

The intersectional analysis of Canadian groups such as FAFIA and the Native Women's Association of Canada, directly led to CEDAW's inquiry into the gross human rights violations that Indigenous women in Canada experience, resulting in the UN recommendation for a national inquiry into missing and murdered Indigenous women.

> This is what I refer to … as "cultural hybridity": the reinterpretation of cultural understandings that arises specifically from contact with another worldview—although, as that reinterpretation occurs, I acknowledge that it becomes instantly very difficult to neatly delineate the genealogy of a given meaning, that is, to trace it back to a "culture of origin. (10)

While a full exploration of these matters is beyond the scope of this paper, I am indicating that the context of international human rights protection and enforcement, in the face of a posited clash between Western and non-Western, global South against global North, women's rights against cultural rights, would appear to benefit from an elaboration of "culture" that can allow for fluid exchange across cultures, account for power differentials and clarify terms, such as that offered by those elaborated by Merry's discussion of claims to power and authority and Boiselle's discussion of hybridity. In international human rights law, especially in light of the Vienna Declaration of the World Conference on Human Rights regarding the indivisibility of culture from all other rights, the appeal of an intersectional approach to rights protections seems practical.

At its heart, CEDAW's conceptualization of "women" does not conform to trends in newer UN documents on culture nor in wider post-colonial social theory regarding the reworking of singular identity "strands" into nuanced intersectional tapestries of social location and self-defined, potentially multiple and contradictory group affiliations[5]—in short, CEDAW as text does not advance an intersectional approach. CEDAW, *qua* treaty, despite disclaimers in the preamble as well as named layers of

protections,[6] owes its formulation to a "single axis identity" model, which constructs gender as "unmediated by any other social forces, such as race, immigrant status, poverty, sexuality or imperialism" (Volpp "Talking Culture" 1581). An expansion of the treaty's conceptualization of "woman" is however in keeping with its mandate and purpose, and has been initiated through General Comment 28, in 2010, which I will explore below.

Intersectionality

The literature on intersectionality originated in law in the 1980s, and has now become influential in a vast number of fields: Emily Grabham et al.'s brief survey reveals more than six disciplines, including socio-legal studies, to which it has been applied (1). As such, its potential reaches beyond the individual legal subject of liberalism into the realms of law's political, symbolic and structural influences with an appealing epistemological critique that aims to "foreground the erasure" (Rooney 209) of multiply discriminated women from traditional legal categories and practices.

Kimberlé Crenshaw ("Demarginalizing"), whose work has been the centre of its deployment in women's human rights law, is credited with coining it as a term, based on the metaphor of the traffic intersection to delineate the "flow" of discrimination as multi-directional, and the resulting injury as seldom attributable to a single source:

> Consider an analogy to traffic in an intersection, coming and going in all four directions. Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions, and sometimes from all of them. ("Demarginalizing" 149)

Her early analysis of employment law and anti-discrimination cases in the American appellate and constitutional systems was part of a founding insight growing out of "critical race theory" (Crenshaw "Mapping"), and her work was instrumental in analyzing the ways in which U.S. antidiscrimination law took a "but for" approach to the basis of discrimination claims: that is, "but for" being either black, or but for being a woman, the claimant would have received different—equal to the "norm"—treatment. Thus, stripped of her complex social identity and only in negative relief against the putative norm of white males could a claimant have her situation addressed. Crenshaw's work set into stark relief the way in which, "race and sex … became significant only when they operate to explicitly disadvantage the victims; because the privileging of whiteness or maleness is implicit, it is generally not perceived at all" ("Demarginalizing" 151).

This insight into the overarching epistemic framework of law, privileging white male experience, was further enriched by Crenshaw's observation that gender as a basis of claim, was exclusively modelled on white women's experiences. The encoding of gendered and racialized identities as "other" and as "victims" becomes the focus in many adaptations of intersectionality outside law, especially in sociology (see Korteweg; Yuval-Davis, "Intersectionality"; "Dialogical Epistemology" 46).

From its outset, intersectionality had an orientation to policy and law reform. Crenshaw's work was in large part, a project to open a dialogue between anti-racist and feminist activists, in which she identified how "dominant conceptions of discrimination condition us to think about subordination and disadvantage occurring along a single categorical axis" ("Demarginalizing" 140). This, she claims, yields a "distorted analysis of racism and sexism" and "contributes to the marginalization of Black women in feminist theory and anti-racist politics," and that because of these predicated "discrete set of experiences," the intersection of race and gender are not duly accounted for not only in the status quo, but in the reforming challenges and possible remedies. Centrally, theory and policy are "predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender" (Crenshaw "Demarginalizing" 140). Since this early formulation "intersectionality has become the primary analytic tool that feminist and anti-racist scholars deploy for theorizing identity and oppression" (Nash 1). The aim of this formulation of intersectionality is to link the law to the lived experience of complex individuals with claims, and its status as an expository tool to check law's tendency to instrumentalize social identity and categorize remedy in discrete baskets of entitlements that cannot be added together or compounded, remains relevant to the development of equality rights and anti-discrimination work. In the context of the widespread belief in a clash of claims for protection under human rights instruments and in liberal discourse about state duties to "accommodate,"[7] intersectionality reminds us that it is not simply a matter of stacking up the claims of discretely oppressed persons, nor of "balancing" the single claims of a group on the basis of one set of protected grounds versus another. Intersectionality metaphorically recasts "discriminations" not as additive, but as mutually constitutive. Crenshaw, uses an example of violence against women, one particularly germane to the United Nations' goal of tackling the global pandemic of violence against women: "the location of women of colour at the intersection of race and gender makes our actual experience of domestic violence, rape

and remedial reform qualitatively different from that of white women" ("Beyond Racism" 3). In this example, Black women are not only sometimes "like" white women in gender, and "like" Black men in race, but often unlike either in an intersectional experience that constitutes its own form of discrimination, at times at the hands of the two groups they are most supposed to be "like."

While intersectionality has been widely acknowledged to be an influential concept,[8] it has also been accused of falling short of a fully elaborated theory, and of failing to articulate its scope and reach ("are all subjectivities/identities intersectional or only those multiply marginalized subjects?" [Nash 8]) its definition embedded in a "murkiness" that is inherently ambiguous as to its status as methodology, the number and meaning of situational identities it represents and their relation to its putative epistemic claim, and the related practical question of the "coherence between intersectionality and lived experiences of multiple identities" (Nash 4). Some have gone on to ask if the idea of an intersection is the "right analogy" (Chang and Culp 485), and others have accused it of merely restating earlier theories put forward in particular, by British feminist scholars of colour (Yuval-Davis, "Intersectionality" 193).

Taking intersectionality as a starting point, therefore, does not necessarily provide guidance as to the "correct" intersectional approach to concrete situations. Real life—like real identities—has a way of being "messy,"[9] and resistant to axiomatic application.

Intersectionality in International Human Rights

While the international treaty system has suffered from the construction of a "suite" of delineated rights based on various foci of oppression—at once offering a proliferation of protected grounds and a corollary splintering of claimants into discrete identity threads—it is also an area of law where scholarship and practice are very close partners, and where intersectionality has been explicitly referred to in the treaty committees' legal interpretation and jurisprudence, making it a live lab for the development of this crucial theorization of pluralistic protections. As stated earlier, it is the arena where the "clashes" between culture and gender are writ large, but also where, since March 2006, there is also overarching procedural constraint on segregated protections, requiring them to be examined as a whole through the mechanism of the Universal Periodic Review, monitoring the "universality, interdependence, indivisibility and interrelatedness of all human rights" with which States are obliged to comply with across all treaty bodies.

As early as 1995, the year the Beijing Declaration and Platform for Action for women's equality was launched, a proto-intersectional framework was in evidence; however, it did not use the word once. The Declaration was influenced by the structure of the Commission on the Status of Women (CSW), which is the intermediary between women's civil society groups, women's movements globally, and the UN women's rights machinery, which, since 2004, is gathered under the entity, UN Women.

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Article 32 of the Declaration stated that governments must, for instance:

> Intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people. (4)

Eight years later, the Division for the Advancement of Women (DAW), in collaboration with the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Development Fund for Women (UNIFEM), convened an expert group meeting on the theme of "Gender and Racial Discrimination." Hosted by the Government of Croatia in Zagreb, the meeting took place from 21 to 24 November 2000. Johanna Bond and Nira Yuval-Davis ("Intersectionality") are among the few scholars who engage overtly with the "intersectional turn" as such in the international human rights context. The underlying issues of the intersections themselves have long been the purview of TWAIL (Third World Approaches to

International Law) scholars (Okafor; Anghie; Buchanan; Parmar; Fakhri; Galindo), insisting on writing accounts of international law and its effects based in Third World experiences of them—an epistemological and ontological challenge to human rights law (Okafor; Parmar)—displacing "positivist certainties about the autonomy and inherent justice of international law" (Orford, Hoffman and Clark 5). Feminist scholars from the Third World Approaches to International Law movement such as Celestine Nyamu, demand a step away from "vague notions of culture" deployed in international human rights law, and instead call for a nuanced approach to how "formal legal institutions, culture, and customary practices interact" (382). Ratna Kapur counters international law's claims of being the champion of women's equality rights by showing that in Nepal, "UN interventions in conflict situations and noises around gender mainstreaming did not help disrupt deeply entrenched normative assumptions about gender…" (167). Outside the TWAIL discourse, others, such as observers of religious rights in human rights, Nazila Ghanea-Hercock (Ghanea, Stephens and Walden; Bielefeldt, Ghanea and Wiener) and Ayala Shachar ("Religion," Multicultural Jurisdictions) also concern themselves with the intersections of gender, minority status, and freedom of religion and belief, so often conflated with culture or marshalled against gender protections, as we have seen. Regional systems scholars such as Fareda Banda ("Global Standards," *Women*), and minority rights scholars such as Patrick Thornberry and Alexandra Xanthaki, have also attended to the intersections of multiple grounds of discrimination, without the banner of "intersectionality" necessarily branding their work. Nira Yuval-Davis (*The Politics*), traces the official emergence of intersectionality by name to the contemporaneous emergence of the framework in CERD's General Comment 25, and the sequence of the preparatory documents to the Expert Meeting on Gender and Racial Discrimination that took place in Zagreb in November 2000 as part of the preparatory process to the UN World Conference Against Racism. In these meetings, the intersectional approach of American legal scholar Kimberlé Crenshaw "occupied centre stage" (Yuval-Davis, *The Politics*), and she was asked to introduce the notion in a special session on the subject leading up to the Durban conference. Her background paper thus formed one of the key documents advancing the intersectional turn at the international level ("Gender-Related Aspects").

An Aide Memoire of the meeting suggests that ethnic and racialized forms of sexual violence formed the context that gave rise to the need for the Zagreb meeting.[10] Crenshaw's paper for Zagreb appears to underscore this contextual impetus:

> intersectional subordination by its very nature is often obscured both because it tends to happen to those who are marginal even within subordinate groups and because existing paradigms do not consistently anticipate this discrimination. (Crenshaw, "Gender-Related Aspects" 15)

My research currently explores the role that the events of Bosnia Herzegovina and Rwanda, and the deployment of sexual violence[11] as a tool of war and as an act of genocide in other conflict zones, played in the acceptance of "intersectionality" as a framework, specifically to make racialized sexism and sexualized racism visible. After Bosnia Herzegovina, Rwanda is perhaps the watershed that most drew attention to the stark intersection of gender and race/ethnicity as targets of human rights abuses on such a massive and unheeded scale (*Conflict-Related Sexual Violence*).[12] The framework of understanding these events as crimes may have important things to say about the scope and limits of the development of intersectionality at the United Nations and specifically, at CERD and CEDAW. By the year of the Zagreb Conference on gender and racial discrimination, over 100,000 Rwandans were suspects in genocide and awaiting trial within Rwanda (*Conflict-Related Sexual Violence*). The rape of women and the prosecution of the rape of women as a form of genocide and a crime against humanity formed an important aspect of the legal process, both in its attempts to address rape in a pioneering way, and in its failures to do so (Wood). Specific intersectional strategies to prosecute mass rapes have been critiqued for their legal erasure of women as subjects of the violence. The dominant frameworks of criminal prosecution required an overarching adherence to ethnic identity as the targeted category; this meant in some cases, the rape of women not identified as part of the "targeted group," required that the violation to be defined in terms of, for instance their husband's (acknowledged to be targeted) ethnicity; her rape becomes a (property) crime against him (see Buss 105). My research shows that this foundational prosecutorial framework of intersectional violations, disregarding the specific operations of gendered violations as cross cutting traditional categories, infects aspects of the UN's adoption of intersectionality outside of CEDAW.

By 2002, the UN Commission on Human Rights' resolution on the human rights of women had worked recognition of "the importance of examining the intersection of multiple forms of discrimination" into its language (para. 3). It was not until 2010 that the so-called women's treaty, CEDAW, had released a similar directive on how its articles should be read against the requirements of an intersectional approach, with the

above-mentioned General Comment 28.

Taking the intersection of race and gender as a jumping off point for exposing the limitations of single axis analyses of discrimination, the two treaty bodies most directly implicated in protecting women's intersectional international human rights, CERD and CEDAW and their committees, have openly embraced the framework. (The treaty on disability rights the United Nations Convention on the Rights of Persons with Disabilities was crafted with an express intersectional approach as its starting point.) Elsewhere, I called for "days of discussion" between the committees to develop their mutual intersectional approach to treaty interpretation, recognizing their "unique position to advance this discussion with respect to women's human rights *within culture,* and not merely in opposition to it" (Dale 46). Since then, there is evidence of a self-conscious application of intersectionality in the general comments and concluding comments issued by both bodies, which act in law as directives to interpretations of their articles; in effect their jurisprudence. Both conventions were predicated on a single axis identity-based rights protection, which has continued with the subsequent development of particular protections for other identity groups, underscoring the possibility of elaborating intersectionality beyond the named protections of gender and race.[13]

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The Deployment of Intersectionality in CEDAW and CERD

The Treaty statements on intersectionality I consider most closely, CERD General Comment 25 and CEDAW General Comment 28, arose out of the same legacy of activist contestation and interaction with the UN I tracked above. In the transition from activism to jurisprudence, social critique becomes legal test, and much is at stake in this transition. When looking to CEDAW for a way to evaluate intersectional claims involving gender, it is important to return to Article 2, discussed for its view of culture above. CEDAW explicitly ties its interpretation of intersectionality to Article 2 of the treaty, which, to reiterate, is the article requiring:

> States Parties to condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake … (f) to … modify or abolish … customs or practices that discriminate against women.

It points out in paragraph 15 of General Comment 28, that the obligation is to "condemn discrimination against women in all its forms" according to Article 1, which guides the reading of all subsequent articles, discrimination itself is defined as:

> any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. (para. 1)

It then elaborates in Article 18 of GC 28 that,

> Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences….

Here, CEDAW's conceptualization of intersectionality is more additive than nuanced, and appears to foreclose consideration of the role of culture as a source of anything

but further oppression. Certainly, it is not being viewed as a site for liberation.

Historically, when speaking of culture, CEDAW evoked criticisms of "stereotyped roles [that] perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision" (General Comment 19, para. 11); practices that are, to be sure, real and discriminatory, but about which some perspective and context are required to avoid descent into racist stereotypes. Such commentary has "reinforced the notion that metropolitan centres of the West contain no tradition or culture harmful to women, and that the violence which does exist is idiosyncratic and individualized rather than culturally condoned" (Holtmaat and Naber 77). Until recently, European forms of violent discrimination against women have seldom received the same international attention,[14] and the preoccupation with the lurid and with "alien and bizarre" forms of gender persecution (Volpp, "Feminism" 1208) among human rights advocates echoes colonial arrogance (Coomaraswamy [n 2] 486),[15] and CEDAW appeared often to underscore it.

There is some evidence that the sophistication of intersectionality's theoretical forms, or more pointedly its radical potential, is at best ill understood, and, at worst, undermined by the legal domestic orders in which it has been deployed and subsequently evaluated by academics.

However, the rubric of intersectionality now appears to be openly shaping subsequent jurisprudence. In such decisions as *Isatou Jallow vs. Bulgaria*, decided in 2012, CEDAW held a European state and one of its nationals responsible for the violation of the treaty rights of a migrant woman on the basis of her daughter's abuse, and for the State's subsequent lack of remedy.[16] In *Kell vs. Canada*, a decision adopted in 2012 in which the committee found against Canada, an Aboriginal woman was deemed discriminated against on the basis of gender, in a way that may not have been so for a white woman, when her property rights were alienated after leaving an abusive relationship with a non-Aboriginal man:

> The Committee concluded that Kell's property rights had been prejudiced due to a public authority acting with her partner, and that she had been discriminated against as an aboriginal woman. The Committee also found that Canada had failed to provide Kell effective legal protection when she sought to regain her property rights. The Committee established that Canada, as party to the Convention and its Optional Protocol, had failed to fulfil its obligations under articles 1, 2 and 16 and that it should provide monetary compensation and housing matching what Kell was deprived of. The Committee also recommended recruiting and training more aboriginal women to provide legal assistance, as well as review Canada's legal system to ensure that aboriginal women victims of domestic violence have effective access to justice.[17]

Both decisions foreground the specific experiences of discrimination against "multidiscriminated" women, and expand both the kinds of gender discrimination states are required to prevent and the kinds of remediation imposed. Both involve fact scenarios very familiar to women's rights advocates in a number of national settings. In the case of Kell, the victory is a particularly poignant recasting of a famously different decision on similar facts. In the 1981, *Lovelace vs Canada* case, predating both CEDAW's individual complaints mechanism and Canada's Charter of Rights and Freedoms, the complainant contested both the colonial state's definition of (her) culture and the Indigenous male leadership's collusion with it in an access to matrimonial property case. Importantly, the complexity of identity presented by Lovelace while named in the protections under separate articles in the treaty (International Convention for Civil and Political Rights), was not recognized in the holding by the committee adjudicating (Human Rights Commission), who found in her favour but on the basis of her Indigenous status alone. A great distance has been covered since Lovelace on recognizing women's intersectional identities and oppression.

The Committee on the Elimination of Racial Discrimination (CERD), who was ahead of the UN pack in its adoption of an intersectional framework, set out the following basic statement for consideration of an intersectional approach in General Comment 25,

> racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only

> or primarily affects women, or affects women in a different way, or to a different degree than men. Such racial discrimination will often escape detection if there is no explicit recognition or acknowledgement of the different life experiences of women and men, in areas of both public and private life. (para. 1)

The comment is more descriptive than analytical in its treatment of intersectionality, but it has set the stage for consideration of the intersection of race and gender by CERD. This is particularly so in its concluding comments, such as on the condition of Malay women in Thailand in 2013, and the call for gender equality measures in Surinam in 2013, or the gendered racism of Liechtenstein and the Netherlands in their treatment of migrants and immigrants. It has been underscored by the restatement of specific requirements on the gender dimensions of discrimination against people of African Descent in General Comment 34.[21] Recommendation 25, and intersectionality, has reliably found its way into the work of CERD.

Conclusion

> *There are several conundrums in applying human rights in local places. 1. An universal standard using legal rationality, yet this stance impedes adapting those standards to the particulars of local context. 2. Human rights ideas are more readily adopted if they are packaged in familiar terms, but they are more transformative if they challenge existing assumptions about power and relationships 3. To be presented in a local culture, they need to be framed in terms of local images, but to receive funding, they need to be framed as transnational rights principles. 4. The human rights system challenges states authority over their citizens at the same time as it reinforces states power: both agent of reform and culpable if not a direct violator.*—Sally Engle Merry (2)

Intersectionality poses a conundrum for theory and law: it is at once an effort at anti-categorical, anti-essentializing thinking, that is sometimes theory, sometimes social science methodology and sometimes legal technique, and which, nevertheless categorizes and spotlights—if not fixes—social identities for the purposes of exposing inequality and disadvantage. It is a powerful critique of the hegemonic grasp of law on social access that nevertheless engages and works through law. The express use of intersectionality jurisprudentially in the transnational human rights field since 2000, provides a unique opportunity to interrogate and reform the law's capacity to account for and ameliorate women's experiences of exclusion and discrimination. In this sense, the international context as an antidote to insular domestic regimes, building on the insight of feminist legal anthropologist Sally Engle Merry, that "[t]he global human rights system is now deeply transnational, no longer rooted exclusively in the west" (2). The sweeping claims of intersectionality will continue to need to prove their merits: as deployed outside of law, intersectionality has been accused of being a "project of limitless scope and limited promise" (Conaghan 31); within law, it can likewise be accused of doing the work of liberalism's optimistic reform (Grabham *et al.* 2), narrowly and naively "explaining to the law its mistaken assumptions, [and believing this] will lead the law/state to a consciousness of its omissions and to rational change" (Grabham *et al.* 2). There is some evidence that the sophistication of intersectionality's theoretical forms, or more pointedly its radical potential, is at best ill understood, and, at worst, undermined by the legal domestic orders in which it has been deployed and subsequently evaluated by academics (Williams). My current research is exploring whether the international field augment this record with a more fluid and potent antidote to law's need to order, discipline and restrict, ultimately advancing the project of feminism's ambivalent engagement with law. Importantly, I ask if it can allow feminism to remain armed with its own multifaceted critiques of its own project of reform and radicalization. Feminism is unrepentant in its engagement with the *aporia* at the heart of feminist legal theories of various stripes: how to radically transform social relations through engagement in the present restrictive terms of law, without either abandoning the possibility of change or falling prey to law as technique and sentinel to the status quo? There is little doubt that early exuberance about the achievements of women's rights in domestic legal orders (Anderson), despite their great potential, and taking Canada as a case in point, has been tempered; feminist scholars have come to acknowledge that "the courts' failure to engage deeply with the equality argument yields an impoverished and decontextualized analysis which allows the differential and prejudicial treatment to persist" (Faraday 111). Importantly, this diminished law and legal discourse centres on the diminished and stripped-down bearer of legal rights, essentialized to a single axis of identity, often competing against herself for protections that may well apply to her as a complex subject, but which are constructed outside intersectional approaches to be separate and at odds with one another.[22] In this sense, even as an elaboration of the law's test or grounds of protection in women's international human rights law, intersectionality has something to offer.

Ultimately, the project of seeking justice through law becomes, to paraphrase Ruth Buchanen and Peer Zumbansen from a different context, one of scrutinizing law

for its ability to "identify process and eventually address societal violence and inequality" (24). Intersectionality as elaborated at the transnational level has given us a vocabulary to deepen this accountability globally and domestically. There is evidence that it has begun to deliver on its promise. It is up to us to keep it accountable to its radical and social justice oriented aims, which exceed the traditional bounds of law.

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Endnotes

[1]See, e.g., Nyamu: "Gender hierarchy can neither be understood nor explained by attributing women's disadvantages to a vague notion of culture" (382).

[2]See e.g. CEDAW Concluding Comments of the Committee on the Elimination of Discrimination against Women: Saudi Arabia, 8 April 2008, CEDAW/C/SAU/CO/2.

[3]This number is taken from the current listing of reservations available at UN Women, "Declarations, Reservations and Objections to CEDAW." The definition of a reservation is taken from the Vienna Treaty of 1969: "'Reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State" (Vienna Convention on the Law of Treaties (art 2 (f)).

[4]See for example, Morocco, Oman, and Niger in DEDAW, "Declarations, Reservations and Objections to CEDAW"; see also the Committee's statement that: "Articles 2 and 16 are considered by the Committee to be core provisions of the Convention."

[5]By 2003, Special Rapporteur on Violence Against Women Radhika Coomeraswamy addressed the matter of women's multiple affiliations in international human rights protection with the following disclaimer: "Identity is not an essential immutable, permanent status, it has many constituent elements. Future experiences often transform the nature and direction of personal identity. Identity is often composite, made up of multiple selves, often contesting, contradicting, and transforming the other. Identity therefore reconstitutes itself, reacting to and negotiating ideology and lived experience" (490).

[6]See preamble regarding "the new economic order based on equity and justice," "eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism," the role of "disarmament," "self-determination and independence" as critical to "equality between men and women," in CEDAW.

[7]Quebec's Bill 60, the "Charter affirming the values of State secularism and religious neutrality and of equality between women and men, and providing a framework for accommodation requests" is one of Canada's most visceral and infamous of such debates.

[8]"Intersectionality is the most important theoretical contribution that women's studies, in conjunction with related fields, has made so far" (McCall 1771).

[9]I borrow this from Jennifer C. Nash who speaks of the necessity of a reform to intersectionality in order that it continue to "grapple with the messiness of subjectivity" (8).

[10]See "Gender and Racial Discrimination. Report of Expert Group Meeting."

[11]The following definition of "sexual violence" is employed by the UN: "The term 'sexual violence' refers to rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity perpetrated against women, men or children with a direct or indirect (temporal, geographical or causal) link to a conflict. This link to conflict may be evident in the profile and motivations of the perpetrator, the profile of the victim, the climate of impunity or State collapse, any cross-border dimensions or violations of the terms of a ceasefire agreement" (*Sexual Violence in Conflict*).

[12]See *Women Forging a New Security* (Nobel Women's Peace Initiative).

[13]Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion and Belief (1981); United Nations Convention of the Rights of the Child (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990); Declaration on the rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992); Convention on the Rights of Persons with Disabilities (2006); United Nations Declaration on the Rights of Indigenous Peoples (2007) (see Ghandi); and the Yogakarta Principles (2007).

[14]Holtmaat and Naber make the point that article 5 of CEDAW could be evoked to call attention to the widespread practice of cosmetic surgeries on women in "developed" nations, for example.

[15]See, also, Volpp ("Feminism"), who, however, does not specifically refer to CEDAW or the international context.

[16]Communication No. 32/2011, UN Doc. CEDAW/C/52/D/32/2011 (28 August 2012).

[17]See, for the analysis of the case, "Women's Rights Body

Rules"; also see CEDAW Committee member's Patricia Schultz's comments.

[18]CERD/C/THA/CO/1-3/Add.1.

[19]CERD/C/SUR/13-15.

[20]CERD/C/LIE/CO/4-6 (2012), and CERD/C/NLD/CO/17-18 (2010), respectively.

[21]"Include in all reports to the Committee information on the measures taken to implement the Convention that specifically address racial discrimination against women of African descent" (CERD/C/GC/34).

[22]A classic example from the international human rights context is *Sandra Lovelace v. Canada* [1977-1981]. Sandra Lovelace presents herself as neither subsumed by nor divorced from culture, but in critical negotiation with it. Lovelace was shut out of her right to "access to culture in community with others" (ICCPR, article 27) as an Indigenous person, but on the basis of matrimonial property rights which divested women who married outside of the community differently than it did men who did the same. Lovelace argued her case under the International Convention for Civil and Political Rights (ICCPR) on the basis of discrimination as an Indigenous person and as a woman experiencing "sex discrimination" (articles 1 and 2). The state's defense rested on its contention that the patriarchy of her community determined her loss of entitlement, and that, in order to respect their autonomy (group rights), the state could not protect her rights as a woman (individual right). Lovelace countered this by submitting evidence that traditional Indigenous culture was not patriarchal, and that this was a colonial distortion of it. Lovelace thus contested both the colonial state's definition of (her) culture and the Indigenous male leadership's collusion with it. Importantly, this complexity of identity, or revelation of symmetry between the patriarchal state and "cultural" leadership was not recognized in the holding by the HRC, although Lovelace did win the case on the basis of article 27 (not articles 1and 2).

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KAY EGINTON

Hospital

Lying in hospital, as the British say
Cleanliness, order arrives in its antiseptic way.

I decide to roll over, sleep in crisp, clean sheets
Measures of fertility and poems soon arrive
In the fine, great hospital of rhyme.

In a dream, I scan the back lot
Covered in nettles as it sometimes is
Nettles that sting, challenging
"Don't touuch! You'll frighten the fairies away."

A dream only, of course.
I dream, a cool day, crisp sheets
And not too much string.
Wandering the ordered corridors of time.

Wondering.

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CASSANDRA MYERS

Autobiography of Cassandra

I saw the fall of Troy in a vision—
a wooden beast charging through city gates,
men gifted daggers from my father's armory
worming its belly

—for I was the arborist
who surgeoned the timber steed and spit the gasoline of truth
on my people's velvet robes.

They shook their heads twice—like a blind horse.

The first when a man
stripped the bark from my kneeled limbs. The last when the men
impregnated the sequoian stallion.

She's confused, they said,
roused too early from a midday nap.

Swinging a flaming hatchet
at my devilish pet, my mother snatched me by my scalp
to save what was left of our family name.

A mad woman's curse is reverse psychology—doing what's expected
to be clinically unbelievable, sterilized

of violence. I pulled out a hair for every person I told. I bought
a parthenon of flame-retardant wigs:
the perch from which I watched their chorus of red hot apologies.
I died old with a clean scalp and a cleaner conscience.

The 2015 Femme Youth Poet of the World, Cassandra Myers has performed on international stages at the National Poetry Slam, the Women of the World Poetry Slam, Brave New Voices, and the College Unions Poetry Slam Invitational. A member of the Toronto Poetry Project and the President of the Ryerson University poetry slam club, Poetic Exchange, Cassandra is the forward momentum behind the Toronto slam poetry community.