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Demarginalizing the Intersection of Race and Sex

A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics

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One of the famous Black women's studies books is entitled *All the Women Are White, All the Blacks Are Men, But Some of Us Are Brave*.¹ I have chosen this title as a point of departure in my efforts to develop a Black feminist criticism because it sets forth a problematic consequence of the tendency to treat race and gender as mutually exclusive categories of experience and analysis.² In this chapter, I want to examine how this tendency is perpetuated by a single-axis framework that is dominant in antidiscrimination law and that is also reflected in feminist theory and antiracist politics.

I will center Black women in this analysis in order to contrast the multidimensionality of Black women's experience with the single-axis analysis that distorts these experiences. Not only will this juxtaposition reveal how Black women are theoretically erased, it will also illustrate how this framework imports its own theoretical limitations that undermine efforts to broaden feminist and antiracist analyses. With Black women as the starting point, it becomes more apparent how dominant conceptions of discrimination condition us to think about subordination as disadvantage occurring along a single categorical axis. I want to suggest further that this single-axis framework erases Black women in the conceptualization, identification and remediation of race and sex discrimination by limiting inquiry to the experiences of otherwise-privileged members of the group. In other words, in race discrimination cases, discrimination tends to be viewed in terms of sex- or class-privileged Blacks; in sex discrimination cases, the focus is on race- and class-privileged women.

This focus on the most privileged group members marginalizes those who are multiply burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination. I suggest further that this focus on otherwise-privileged group members creates a distorted analysis of racism and sexism because the operative conceptions of race and sex become grounded in experiences that actually represent only a subset of a much more complex phenomenon.

After examining the doctrinal manifestations of this single-axis framework, I will discuss how it contributes to the marginalization of Black women in feminist theory and in antiracist politics. I argue that Black women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender. These problems of exclusion cannot be solved simply by including Black women within an already established analytical structure. Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated. Thus, for feminist theory and antiracist policy discourse to embrace the experiences and concerns of Black women, the entire framework that has been used as a basis for translating “women’s experience” or “the Black experience” into concrete policy demands must be rethought and recast.

I. The Antidiscrimination Framework

A. The Experience of Intersectionality and the Doctrinal Response

One way to approach the problem of intersectionality is to examine how courts frame and interpret the stories of Black women plaintiffs. While I cannot claim to know the circumstances underlying the cases that I will discuss, I nevertheless believe that the way courts interpret claims made by Black women is itself part of Black women’s experience and, consequently, a cursory review of cases involving Black female plaintiffs is quite revealing. To illustrate the difficulties inherent in judicial treatment of intersectionality, I will consider three Title VII³ cases: *DeGraffenreid v General Motors*,⁴ *Moore v Hughes Helicopters*,⁵ and *Payne v Travenol*.⁶

1. *DeGraffenreid v General Motors*

In *DeGraffenreid*, five Black women brought suit against General Motors, alleging that the employer’s seniority system perpetuated the effects of past discrimination against Black women. Evidence adduced at trial revealed that General Motors simply did not hire Black women prior to 1964 and that all of the Black women hired after 1970 lost their jobs in a seniority-based layoff during a subsequent recession. The district court granted summary judgment for the defendant, rejecting the plaintiffs’ attempt to bring a suit not on behalf of Blacks or women, but specifically on behalf of Black women.

Although General Motors did not hire Black women prior to 1964, the court noted that the company had hired female employees before that period. Because General Motors did hire women—albeit *white* women—during the period that no Black women were hired, there was, in the court’s view, no sex discrimination that the seniority system could conceivably have perpetuated.

After refusing to consider the plaintiffs’ sex discrimination claim, the court dismissed the race discrimination complaint and recommended its consolidation with

another case alleging race discrimination against the same employer.⁷ The plaintiffs responded that such consolidation would defeat the purpose of their suit since theirs was not purely a race claim, but an action brought specifically on behalf of Black women alleging race *and* sex discrimination. The court, however, reasoned:

The legislative history surrounding Title VII does not indicate that the goal of the statute was to create a new classification of "black women" who would have greater standing than, for example, a black male. The prospect of the creation of new classes of protected minorities, governed only by the mathematical principles of permutation and combination, clearly raises the prospect of opening the hackneyed Pandora's box.⁸

Thus, the court apparently concluded that Congress either did not contemplate that Black women could be discriminated against as "Black women" or did not intend to protect them when such discrimination occurred.⁹ The court's refusal in *DeGraffenreid* to acknowledge that Black women encounter combined race and sex discrimination implies that the boundaries of sex and race discrimination doctrine are defined respectively by white women's and Black men's experiences. Under this view, Black women are protected only to the extent that their experiences coincide with those of either of the two groups.¹⁰ Where their experiences are distinct, Black women can expect little protection as long as approaches such as that in *DeGraffenreid*, which completely obscure problems of intersectionality, prevail.

2. *Moore v Hughes Helicopter, Inc.*

*Moore v Hughes Helicopters, Inc.*¹¹ presents a different way in which courts fail to understand or recognize Black women's claims. *Moore* is typical of a number of cases in which courts refused to certify Black females as class representatives in race and sex discrimination actions.¹² In *Moore*, the plaintiff alleged that the employer, Hughes Helicopters, practiced race and sex discrimination in promotions to upper-level craft positions and to supervisory jobs. Moore introduced statistical evidence establishing a significant disparity between men and women, and somewhat less of a disparity between Black and white men in supervisory jobs.

Affirming the district court's refusal to certify Moore as the class representative in the sex discrimination complaint on behalf of all women at Hughes, the Ninth Circuit noted approvingly:

Moore had never claimed before the EEOC that she was discriminated against as a female, *but only* as a Black female. . . . [T]his raised serious doubts as to Moore's ability to adequately represent white female employees.¹³

The curious logic in *Moore* reveals not only the narrow scope of antidiscrimination doctrine and its failure to embrace intersectionality, but also the centrality of white female experiences in the conceptualization of gender discrimination. One inference that could be drawn from the court's statement that Moore's complaint did

not entail a claim of discrimination "against females" is that discrimination against Black females is something less than discrimination against females. More than likely, however, the court meant to imply that Moore did not claim that all females were discriminated against but only Black females. But even thus recast, the court's rationale is problematic for Black women. The court rejected Moore's bid to represent all females apparently because her attempt to specify her race was seen as being at odds with the standard allegation that the employer simply discriminated "against females."

The court failed to see that the absence of a racial referent does not necessarily mean that the claim being made is a more inclusive one. A white woman claiming discrimination against females may be in no better position to represent all women than a Black woman who claims discrimination as a Black female and wants to represent all females. The court's preferred articulation of "against females" is not necessarily more inclusive—it just appears to be so because the racial contours of the claim are not specified.

The court's preference for "against females" rather than "against Black females" reveals the implicit grounding of white female experiences in the doctrinal conceptualization of sex discrimination. For white women, claiming sex discrimination is simply a statement that but for gender, they would not have been disadvantaged. For them there is no need to specify discrimination as *white* females because their race does not contribute to the disadvantage for which they seek redress. The view of discrimination that is derived from this grounding takes race privilege as a given.

Discrimination against a white female is thus the standard sex discrimination claim; claims that diverge from this standard appear to present some sort of hybrid claim. More significantly, because Black females' claims are seen as hybrid, they sometimes cannot represent those who may have "pure" claims of sex discrimination. The effect of this approach is that even though a challenged policy or practice may clearly discriminate against all females, the fact that it has particularly harsh consequences for Black females places Black female plaintiffs at odds with white females.

Moore illustrates one of the limitations of antidiscrimination law's remedial scope and normative vision. The refusal to allow a multiply disadvantaged class to represent others who may be singularly disadvantaged defeats efforts to restructure the distribution of opportunity and limits remedial relief to minor adjustments within an established hierarchy. Consequently, "bottom-up" approaches, those which combine all discriminatees in order to challenge an entire employment system, are foreclosed by the limited view of the wrong and the narrow scope of the available remedy. If such "bottom-up" intersectional representation were routinely permitted, employees might accept the possibility that there is more to gain by collectively challenging the hierarchy rather than by each discriminatee individually seeking to protect her source of privilege within the hierarchy. But as long as antidiscrimination doctrine proceeds from the premise that employment systems need only minor adjustments, opportunities for advancement by disadvantaged employees will be limited. Relatively privileged employees probably are better off guarding their advantage while

jockeying against others to gain more. As a result, Black women—the class of employees which, because of its intersectionality, is best able to challenge all forms of discrimination—are essentially isolated and often required to fend for themselves.

In *Moore*, the court's denial of the plaintiff's bid to represent all Blacks and females left Moore with the task of supporting her race and sex discrimination claims with statistical evidence of discrimination against Black females alone. Because she was unable to represent white women or Black men, she could not use overall statistics on sex disparity at Hughes, nor could she use statistics on race. Proving her claim using statistics on Black women alone was no small task, due to the fact that she was bringing the suit under a disparate impact theory of discrimination.¹⁴

The court further limited the relevant statistical pool to include only Black women who it determined were qualified to fill the openings in upper-level labor jobs and in supervisory positions. According to the court, Moore had not demonstrated that there were any qualified Black women within her bargaining unit or the general labor pool for either category of jobs. Finally, the court stated that even if it accepted Moore's contention that the percentage of Black females in supervisory positions should equal the percentage of Black females in the employee pool, it still would not find discriminatory impact.¹⁵

The court's rulings on Moore's sex and race claim left her with such a small statistical sample that even if she had proved that there were qualified Black women, she could not have shown discrimination under a disparate impact theory. *Moore* illustrates yet another way that antidiscrimination doctrine essentially erases Black women's distinct experiences and, as a result, deems their discrimination complaints groundless.

3. *Payne v Travenol*

[*Ed.*—In this section, the author presents a case that illustrates that Black female plaintiffs were not permitted to represent Black males, even though they did recover for discrimination against themselves as Black women.]

In sum, several courts have proved unable to deal with intersectionality, although for contrasting reasons. In *DeGraffenreid*, the court refused to recognize the possibility of compound discrimination against Black women and analyzed their claim using the employment of white women as the historical base. As a consequence, the employment experiences of white women obscured the distinct discrimination that Black women experienced.

Conversely, in *Moore*, the court held that a Black woman could not use statistics reflecting the overall sex disparity in supervisory and upper-level labor jobs because she had not claimed discrimination as a woman, but "only" as a Black woman. The court would not entertain the notion that discrimination experienced by Black women is indeed sex discrimination—provable through disparate impact statistics on women.

Finally, courts, such as the one in *Travenol*, have held that Black women cannot represent an entire class of Blacks due to presumed class conflicts in cases where sex

additionally disadvantaged Black women. As a result, in the few cases where Black women are allowed to use overall statistics indicating racially disparate treatment, Black men may not be able to share in the remedy.

Perhaps it appears to some that I have offered inconsistent criticisms of how Black women are treated in antidiscrimination law: I seem to be saying that in one case, Black women's claims were rejected and their experiences obscured because the court refused to acknowledge that the employment experience of Black women can be distinct from that of white women, while in other cases, the interests of Black women were harmed because Black women's claims were viewed as so distinct from the claims of either white women or Black men that the court denied to Black females representation of the larger class. It seems that I have to say that Black women are the same and harmed by being treated differently, or that they are different and harmed by being treated the same. But I cannot say both.

This apparent contradiction is but another manifestation of the conceptual limitations of the single-issue analyses that intersectionality challenges. The point is that Black women can experience discrimination in any number of ways and that the contradiction arises from our assumptions that their claims of exclusion must be unidirectional. 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. Similarly, if a Black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination.

Judicial decisions which premise intersectional relief on a showing that Black women are specifically recognized as a class are analogous to a doctor's decision at the scene of an accident to treat an accident victim only if the injury is recognized by medical insurance. Similarly, providing legal relief only when Black women show that their claims are based on race or on sex is analogous to calling an ambulance for the victim only after the driver responsible for the injuries is identified. But it is not always easy to reconstruct an accident: Sometimes the skid marks and the injuries simply indicate that they occurred simultaneously, frustrating efforts to determine which driver caused the harm. In these cases the tendency seems to be that no driver is held responsible, no treatment is administered, and the involved parties simply get back in their cars and zoom away.

To bring this back to a non-metaphorical level, I am suggesting that Black women can experience discrimination in ways that are both similar to and different from those experienced by white women and Black men. Black women sometimes experience discrimination in ways similar to white women's experiences; sometimes they share very similar experiences with Black men. Yet often they experience double-discrimination—the combined effects of practices which discriminate on the basis of race, and on the basis of sex. And sometimes, they experience discrimination as Black women—not the sum of race and sex discrimination, but as Black women.

Black women's experiences are much broader than the general categories that discrimination discourse provides. Yet the continued insistence that Black women's de-

mands and needs be filtered through categorical analyses that completely obscure their experiences guarantees that their needs will seldom be addressed.

B. The Significance of Doctrinal Treatment of Intersectionality

DeGraffenreid, *Moore* and *Travenol* are doctrinal manifestations of a common political and theoretical approach to discrimination which operates to marginalize Black women. Unable to grasp the importance of Black women's intersectional experiences, not only courts, but feminist and civil rights thinkers as well, have treated Black women in ways that deny both the unique compoundedness of their situation and the centrality of their experiences to the larger classes of women and Blacks. Black women are regarded either as too much like women or Blacks, and the compounded nature of their experience is absorbed into the collective experiences of either group, or as too different, in which case Black women's Blackness or femaleness sometimes has placed their needs and perspectives at the margin of the feminist and Black liberationist agendas.

While it could be argued that this failure represents an absence of political will to include Black women, I believe that it reflects an uncritical and disturbing acceptance of dominant ways of thinking about discrimination. Consider first the definition of discrimination that seems to be operative in antidiscrimination law: Discrimination which is wrongful proceeds from the identification of a specific class or category; either a discriminator intentionally identifies this category, or a process is adopted which somehow disadvantages all members of this category.¹⁶ According to the dominant view, a discriminator treats all people within a race or sex category similarly. Any significant experiential or statistical variation within this group suggests either that the group is not being discriminated against or that conflicting interests exist which defeat any attempts to bring a common claim. Consequently, one generally cannot combine these categories. Race and sex, moreover, become 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.

Underlying this conception of discrimination is a view that the wrong which antidiscrimination law addresses is the use of race or gender factors to interfere with decisions that would otherwise be fair or neutral. This process-based definition is not grounded in a bottom-up commitment to improve the substantive conditions for those who are victimized by the interplay of numerous factors. Instead, the dominant message of antidiscrimination law is that it will regulate only the limited extent to which race or sex interferes with the process of determining outcomes. This narrow objective is facilitated by the top-down strategy of using a singular "but for" analysis to ascertain the effects of race or sex. Because the scope of antidiscrimination law is so limited, sex and race discrimination have come to be defined in terms of the experiences of those who are privileged *but for* their racial or sexual characteristics. Put differently, the paradigm of sex discrimination tends to be based on the experiences of white women; the model of race discrimination tends to be based on the experiences of the most privileged Blacks. Notions of what constitutes race and sex

discrimination are, as a result, narrowly tailored to embrace only a small set of circumstances, none of which include discrimination against Black women.

Despite the narrow scope of this dominant conception of discrimination and its tendency to marginalize those whose experiences cannot be described within its tightly drawn parameters, this approach has been regarded as the appropriate framework for addressing a range of problems. In much of feminist theory and, to some extent, in antiracist politics, this framework is reflected in the belief that sexism or racism can be meaningfully discussed without paying attention to the lives of those other than the race-, gender-, or class-privileged. As a result, both feminist theory and antiracist politics have been organized, in part, around the equation of racism with what happens to the Black middle class or to Black men, and the equation of sexism with what happens to white women.

Looking at historical and contemporary issues in both the feminist and the civil rights communities, one can find ample evidence of how both communities' acceptance of the dominant framework of discrimination has hindered the development of an adequate theory and praxis to address problems of intersectionality. This adoption of a single-issue framework for discrimination not only marginalizes Black women within the very movements that claim them as part of their constituency but it also makes the elusive goal of ending racism and patriarchy even more difficult to attain.

II. Feminism and Black Women: "Ain't We Women?"

[Ed.—In this section, the author discusses the relative inability of feminist politics and theory to address the experiences of Black women.]

III. When and Where I Enter: Integrating an Analysis of Sexism into Black Liberation Politics

[Ed.—This section analyzes the 1965 Daniel Moynihan Report, Bill Moyers 1986 TV show *The Vanishing Black Family*, and William Julius Wilson's *The Truly Disadvantaged* (1987) to illustrate how the needs of Black women are often forgotten, subsumed, or disparaged in favor of a Black male centered analysis.]

IV. Expanding Feminist Theory and Antiracist Politics by Embracing the Intersection

If any real efforts are to be made to free Black people of the constraints and conditions that characterize racial subordination, then theories and strategies purporting to reflect the Black community's needs must include an analysis of sexism and patri-

archy. Similarly, feminism must include an analysis of race if it hopes to express the aspirations of non-white women. Neither Black liberationist politics nor feminist theory can ignore the intersectional experiences of those whom the movements claim as their respective constituents. In order to include Black women, both movements must distance themselves from earlier approaches in which experiences are relevant only when they are related to certain clearly identifiable causes (for example, the oppression of Blacks is significant when based on race, of women when based on gender). The praxis of both should be centered on the life chances and life situations of people, who should be cared about without regard to the source of their difficulties.

I have stated earlier that the failure to embrace the complexities of compoundedness is not simply a matter of political will, but is also due to the influence of a way of thinking about discrimination which structures politics so that struggles are categorized as singular issues. Moreover, this structure imports a descriptive and normative view of society that reinforces the status quo.

It is somewhat ironic that those concerned with alleviating the ills of racism and sexism should adopt such a top-down approach to discrimination. If their efforts instead began with addressing the needs and problems of those who are most disadvantaged and with restructuring and remaking the world where necessary, then others who are singularly disadvantaged would also benefit. In addition, it seems that placing those who currently are marginalized in the center is the most effective way to resist efforts to compartmentalize experiences and undermine potential collective action.

It is not necessary to believe that a political consensus to focus on the lives of the most disadvantaged will happen tomorrow in order to recenter discrimination discourse at the intersection. It is enough, for now, that such an effort would encourage us to look beneath the prevailing conceptions of discrimination and to challenge the complacency that accompanies belief in the effectiveness of this framework. By so doing, we may develop language which is critical of the dominant view and which provides some basis for unifying activity. The goal of this activity should be to facilitate the inclusion of marginalized groups for whom it can be said: "When they enter, we all enter."¹⁷

NOTES

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1. Gloria T. Hull, et al., eds. (1982).
2. The most common linguistic manifestation of this analytical dilemma is represented in the conventional usage of the term "Blacks and women." Although it may be true that some people mean to include Black women in either "Blacks" or "women," the context in which the term is used actually suggests that often Black women are not considered. It seems that if Black women were explicitly included, the preferred term would be either "Blacks and white women" or "Black men and all women."

15. 708 F.2d at 486.

16. In much of antidiscrimination doctrine, the presence of intent to discriminate distinguishes unlawful from lawful discrimination. See *Washington v Davis*, 426 US 229, 239-45 (1976) (proof of discriminatory purpose required to substantiate Equal Protection violation). Under Title VII, however, the Court has held that statistical data showing a disproportionate impact can suffice to support a finding of discrimination. See *Griggs*, 401 US at 432. Whether the distinction between the two analyses will survive is an open question. See *Wards Cove Packing Co., Inc. v Atonio*, 109 S Ct 2115, 2122-23 (1989) (plaintiffs must show more than mere disparity to support a prima facie case of disparate impact).

17. Anna Julia Cooper, a 19th-century Black feminist, coined a phrase that has been useful in evaluating the need to incorporate an explicit analysis of patriarchy in any effort to address racial domination. Cooper often criticized Black leaders and spokespersons for claiming to speak for the race, but failing to speak for Black women. Referring to one of Martin Delaney's public claims that where he was allowed to enter, the race entered with him, Cooper countered: "Only the Black Woman can say, when and where I enter . . . then and there the whole Negro race enters with me." See Anna Julia Cooper, *A Voice from the South* 31 (1969).

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