

# **Intersectionality and Beyond**

Law, power and the politics of  
location

*Edited by*

**Emily Grabham, Davina Cooper,  
Jane Krishnadas and  
Didi Herman**

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## Preface

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The impetus for this collection emerged out of the conference *Theorising Intersectionality* held on the 21–22 May, 2005, at Keele University in Staffordshire, UK. The conference was the first major international event organised by the AHRC Research Centre for Law, Gender and Sexuality (CentreLGS) which opened on 1 June 2004, with five years funding from the UK's Arts and Humanities Research Council. CentreLGS is a partnership of three institutions: the Universities of Keele, Kent, and Westminster. CentreLGS aims to create an interdisciplinary, critical, theoretically oriented research environment to help advance the field of law, gender and sexuality, broadly conceived, through scholarship, academic networking events, graduate development, and policy engagement. Several Centre members, alongside other *Theorising Intersectionality* participants, have chapters in this book. Iris Marion Young was invited to give a plenary paper at the conference. Shortly before the conference, Iris wrote to us explaining that for reasons of ill-health she was unfortunately unable to attend. She did, generously, send us a copy of her talk, which we posted on our website. This paper is included, with minor revisions, in this collection. Iris Marion Young died on 1 August 2006. In common with many scholars in the field, this book and our work more generally owes an immense debt to Iris Young. The questions she posed about justice and inequality, her own crafted responses, and her tenacious pursuit of ever more complex ways of thinking about social difference and oppression, have, in multiple ways, indelibly shaped our work and how we approach these issues.

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# Introduction

*Emily Grabham with Didi Herman,  
Davina Cooper and Jane Krishnadas*

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Studies on intersectionality have proliferated in recent years. For some, this development, which began in the late 1980s, can be understood as one effect of the 'postmodern turn' in the academy: an attempt to trace and account for a supposed fragmentation of identities within political movements of the late twentieth century. For others, the focus on intersectionality provides tools for complicating our understanding of the systems and processes that define the social: intersectionality is thus a method for interrogating the institutional reproduction of inequality, whether at the level of the state, the family, or of legal structures more generally.

With some of its earliest applications in critical race studies, specifically critical race approaches in sociology (Anthias and Yuval-Davis, 1983) and law (see Crenshaw, 1989; Duclos, 1993), research engaging intersectionality can now be found in a wide range of contexts. A survey of recent journal articles indicates the currency of intersectionality in political geography (Valentine, 2007), political science (Hawkesworth, 2003), feminist approaches to economics (Brewer *et al.*, 2002), critical psychotherapy (Burman, 2004; Fernandes, 2004), sociology (Yuval-Davis, 2006), postcolonial studies (Arondeker, 2005), and socio-legal studies (Vakulenko, 2007; Deckha, 2004; Conaghan, 2007; Hannett, 2003; Grabham, 2006), to name only a few. This raises the question of why the concept of intersectionality, specifically, is being used, in such a ubiquitous way, to investigate social, political, and economic life. Certainly, the metaphor of the intersection appears to move beyond more static conceptions of inequality that focus on 'multiple' or 'compound' disadvantage. Apparently more fluid and responsive, intersectional approaches look to forms of inequality that are routed through one another, and which cannot be untangled to reveal a single cause. In this sense, intersectionality describes very well the coming together of forms of inequality through institutional and representational dynamics. It puts complexity centre-stage, and many scholars appear to find this approach refreshing and productive. At the same time, however, imagining social life through intersections inevitably directs the gaze away from the co-constitution of identities and inequalities to what, apparently, is not already intersected (Cooper, 2004: 48). Intersectionality requires

vectors and identities that exist apart from each other. Acting like a fastener, or zip, intersectionality presumes the gaps that it attempts to close. This raises the question of whether there are, in fact, any areas of the social that exist apart from the meeting point, or overlap, that intersectionality describes.

Nevertheless, in drawing critical attention away from static conceptions of social life and experience, intersectionality continues to perform important conceptual work, and this work takes place on a number of registers. Intersectionality can be used to analyse law, in particular anti-discrimination law, to unpack the material and discursive effects of legal identity categories on socially constituted subjects. A cluster of arguments emerges here around the inadequate recognition of the complexly situated subject by various lawmaking or law-enforcing bodies or policy initiatives. The type of analysis then takes the following form: a subject might encounter the law, or the state, only to find that her experiences of inequality do not fit the dominant model. These analyses not only point to the repressive or coercive functions of top-down power, they also signal the exacerbation of hierarchical power relations through law's failure to recognise the subject's full identity, position, or the complexity or messiness of her experiences. From a liberal perspective, the law, or the state, therefore fails, and intersectionality can be presented as a way of showing this failure and asking for a better job to be done. From a radical perspective, the state has been successful in achieving its goals. As Joanne Conaghan points out in her contribution to this collection, (liberal) socio-legal narratives display a certain degree of confidence in legal or state apparatuses: the work of intersectionality is the work of improvement; it is optimistic about reform and representation. But they also take seriously concepts of state and nation as reified 'things': coherent, autonomous actors with institutional memory and the capacity for future planning. Explaining to the law its mistaken assumptions will lead the law/state to a consciousness of its omissions and to rational change.

At the same time, intersectionality has been deployed to indicate the inherent limits of law. Within these narratives, legal and policy interventions to tackle inequality are inevitably flawed. By their very nature, they can only ever work through fetishising categorical constructions of identity and experience that never respond to the material circumstances of subjects' lives. True subjectivity and experience are located 'outside' law and government: they will never be containable. Far from being a way of improving the functioning of legal or state apparatuses, intersectionality offers another argument against law reform. Intersectionality reveals how experience is incommensurable with the categorised representations of identity mobilised in human rights law and discourse, anti-discrimination law, and in government equality initiatives.

On another register, intersectionality can be used to investigate how inequalities are *produced* on the institutional scale, through structures,

processes and techniques of governance. Within these frames, inequality is imagined at the level of the home, the workplace, the state, or the international 'community': complex inequalities are constituted through the operation of global capital, through international relations, monetary policies, domestic social policies, the employment relationship or the family. Deployments of intersectionality help to trace the complex material effects of these processes, and, in some respects, parallel earlier models such as dual systems theory, which focused on the relationship between patriarchy and class oppression. Intersectional approaches can also assist in investigating how social identities are formed as the congealed effects of power's workings rather than autonomous groups or identities (Cooper, 2004; Brown, 1995). Here, the analysis becomes less a question of finding the points at which inequalities meet and instead involves tracing the allocation and deployment of power in the organisation of social life.

With these perspectives in mind, our aim in this collection has been to take stock of intersectionality's significance after almost twenty years of discussion and analysis. Taken as a whole, the collection offers a critical picture of intersectionality's relevance within a range of disciplines – socio-legal studies, political and social theory, and history. We present situated work from a range of contexts, tracing productive tensions and resonances in the way that different scholars conceive intersectional analysis. Aiming for a cross-national debate, we have included papers that consider developments in Canada, Rwanda, the United States, India, the United Kingdom, Korea, Ireland and Australia. With some pieces drawn directly from empirical or other grounded research (including experiences of activism), the collection contains a range of analytical perspectives (postcolonial, feminist, critical race, disability studies) and troubles contemporary narratives and institutional dynamics ranging from international law constructions of wartime rape to community relations rhetoric in the 'transitional' setting of Northern Ireland. Many contributions engage gender and sexuality as organising principles of social life, but contributors also interrogate racialising and abilist dynamics, as well as the effects of class and colonialism.

We outline themes and disjunctures in more detail below, but if there is one theme to be found across this intentionally diverse collection, it is an endeavour to forge critical approaches to intersectionality that disembed or reframe received ways of thinking about complex inequalities. Our aim is to explore, and reflect critically on, how the concept of intersectionality has been used, and to address intersectionality's future. The book thus includes contributions from scholars who are committed to working with intersectionality as a concept, as well as others who suggest that alternative frameworks are better able to elucidate the relationship between different forms of inequality and identification. *Intersectionality and Beyond* addresses four key questions:

- 1 What are the implications of intersectionality analysis for how we understand relations of inequality, such as gender, race and sexuality?
- 2 How do state agencies, including the courts, constitute, understand and deploy the intersecting character of relations of inequality?
- 3 Can intersectional analysis illuminate the gendered, racialised and sexualised character of social structures?
- 4 How useful is intersectionality analysis for understanding the capacity of relations of inequality or difference to evolve and change? Do other frameworks offer better guides for understanding this?

The first part of the collection, *Mapping Intersectionalities*, provides an entry into these questions with two examples of how concepts of the social have been complicated by intersectional approaches. The consideration, or re-consideration, of intersectionality that Joanne Conaghan and Leslie McCall undertake is shaped by almost two decades of feminist work in the academy on intersectionality, and a much longer engagement with anti-essentialism more broadly. Conaghan and McCall both reject approaches to inequality based on identity politics and liberal conceptions of the individual, focusing instead on material structures and processes. Yet they differ in their assessment of intersectionality's continued use as a feminist tool of analysis. Conaghan argues that whilst intersectionality has been vitally important to feminist theory over the past twenty years, there is little more that it can now contribute. There are, as she argues, many reasons for this: intersectionality's roots in law; its 'mapping' function; the tendency to frame intersectionality as a problem of representation; its focus on the individual and identity. Conaghan recalls socialist and materialist feminist work which, embedded in historical analysis of social and political life, theorised the connections between sex and class based oppression and produced 'dual systems' theory. She traces significant critiques of this work by black feminist theorists, who pointed out the importance of bringing an account of race to an approach that was intended to provide a 'complete' picture of social relations. Comparing more recent work on intersectionality with earlier accounts of complex inequalities rooted in historical materialism, Conaghan highlights intersectionality's limits and the need for an analysis that connects experiences of inequality with structures, institutions and processes.

McCall is more positive about intersectionality's continued usefulness. This may be because she identifies different forms of intersectional research (anticategorical, intercategorical, and intracategorical analysis), thereby contributing a variegated picture of how the concept has been taken up. But it may also be because her account of intersectionality is deeply embedded in an understanding of social relations; that is to say, her working model of intersectionality already approximates Conaghan's 'social processes' model and she therefore may feel less restricted by intersectionality's legal roots. McCall's main concern is the methodology of intersectionality and the



dearth of work on how to carry out intersectional enquiry. Her contribution, reprinted from *Signs*, is an attempt to pose methodology as a question in this area. What is impeding feminist research on intersectionality is not the 'narrowly disciplinary' subject matter under consideration in any particular instance but a reluctance to use a varied range of methodologies in response to substantive questions. Her own work on wage inequality in different regions of the US provides an example of an interdisciplinary methodological approach to intersectionality and the context-specific responses to inequality such enquiry suggests. The need for diverse methodologies is reflected in the contributions throughout this collection, many of which draw on interdisciplinary socio-legal analysis as a starting point and explore further methodologies in line with the demands of the subject matter.

Having set out some core questions around intersectionality in Part I, we explore in Part II – *Confronting law* – the ways in which law, and legal institutions, have engaged with intersectionality's challenge to essentialised concepts of identity and disadvantage. Legal practice may not always be best interrogated through the lens of intersectionality (Hunter and de Simone), and legal decision makers may ignore intersectionality in some circumstances (Buss) or implement intersectional perspectives with negative consequences for women in others (Williams). By criminalising Canadian Aboriginal women through 'risk' (Williams), or narrowly defining wartime rape in international law (Buss), law's appropriation of intersectionality frustrates its radical potential, whilst operationalising anti-essentialism may run into practical difficulties at the level of activism (Goldberg) or may require a focus on structural dynamics instead of apparently intersectional identity markers (Hunter and de Simone).

Toni Williams investigates how decision-makers receive feminist knowledges, including intersectionality. She focuses on a seemingly progressive legal provision: section 718.2(e) of the Canadian Criminal Code, which instructs criminal courts to take into account the specific circumstances of Aboriginal offenders, and she attempts to work out why, despite this provision, there has been an increase in the incarceration of Aboriginal women in Canada. Far from considering the impact of colonialism on Aboriginal peoples since European contact, decision-makers have assessed Aboriginal women as being at higher risk of re-offending due to their experiences of racialisation, community 'dysfunction', and economic vulnerability. In this way, as a form of feminist 'knowledge', the contextual assessment of Aboriginal women's 'intersectional' circumstances works in favour of their over-incarceration.

Doris Buss is similarly concerned with how intersectionality is constructed within legal decision-making regimes. Buss focuses on the prosecution of mass wartime rape as crimes against humanity by the Rwanda and Yugoslav Tribunals. She is particularly interested in how the Tribunals interpret large-scale gender-based violence and its role in the construction of ethnic identities. She analyses one decision of the Rwanda Tribunal in depth: the prosecution