Jericho Bernal

Professor Lyles & T.A. Sebastian

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A Critique on Crenshaw’s “Demarginalizing the Intersection of Race and Sex”

Kimberé Crenshaw's primary concern in her 1989 paper, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics", is to reexamine and critique the tendency to treat race and gender as mutually exclusive, single-axes that dominate antidiscrimination law. As such, through her intersectional framework, she exposes the central double burden Black women routinely experience under the then ongoing framework that erased them when race discrimination cases assumes privilege in sex and class, or when sex race discrimination cases assumes privilege in race and class. Consequently, her framework not only applies to the courts, but to feminist policies unable to address the experiences of Black women, Black Liberation politics and its own integration with sexism analysis, and the overwhelming need to embrace the intersection to expand feminist theory and antiracist policies.

Past the introduction that critiques the single-axis analysis often used in law, the work is organized in order of the antidiscrimination framework among three sample Title VII cases (Crenshaw pp. 24 - 28), the significance of how intersectionality is treated in doctrine (Crenshaw pp. 29 - 30), as well as brief but nevertheless important sections on Black Women and the issue of integrating with Feminism, Black Liberation Politics, to how both can expand via Intersectionality being embraced (Crenshaw pp. 30 - 31). The main focus comes through the examination of three Title VII cases regarding Black women plaintiffs: DeGraffenreid v. General Motors (1976), Moore v. Hughes Helicopter, Inc. (1983), and Payne v. Travenol (1976). Firstly, in DeGraffenreid v. General Motors (1976), five Black women brought suit against General Motors alleging that the seniority system prevented them from being hired, but as the company did hire *white* women before 1964 but not Black women, the district cour denied that sex discrimination was perpetuated through that system, and by proxy, dismissed the race discrimination complaint and the idea of creating a new classification for Black women (Crenshaw p. 24). Simply put, “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,” (Crenshaw p. 25). Secondly, in Moore v. Hughes Helicopter, Inc. (1983), the plaintiff alleged that the employer practiced *both* race and sex discrimination in job promotions as shown by statistical evidence- however, “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,” white female experiences were central to the very concept of gender discrimination (Crenshaw p. 25). Refusing to allow a multiply disadvantaged class just as with the classic double burden Black women observe limits antidiscrimination doctrine to deem their complaints as groundless. Lastly, in Payne v. Travenol, though brief, Black female plaintiffs were denied the ability to represent Black males even though they did recover for discrimination against themselves as Black women (Crenshaw p. 27). They simply cannot represent the entire class due to the presumed class conflicts as the court decided. And as a result, the doctrinal treatment of intersectionality can be summed up as the court’s inability to grasp the importance of those experiences, as well as the failure of feminist and civil rights thinkers.

In regards to its conceptualization of intersectionality, the work continually returns to the issue of how Black women are deemed neither Black enough nor feminine enough to represent either separate class, or even warrant a court recognition of the double-discrimination they observe. For Title VII claims especially, the methods to deny Black women protections can be summed in three axioms: if one form discrimination is refused to be considered, the other form of discrimination can be dismissed; no one can claim both forms of discrimination as it would create a new class the court refuses to recognize; and finally, that they can never represent another class of which they only share one identity with, in this case, Black men. And while that may seem facially neutral, it ultimately limits all people involved and only allows for a slower advancement for people of one class who win their case on only a single axis. As such, the abandonment of Black women is far too commonplace- and so too does this endanger invisibilized and erased classes who are not given the limelight.

To guard against biases, Crenshaw sticks to just briefing the cases and what it means for how Black women interact with and are defined by the court- and most importantly, she adds a disclaimer regarding her approach. As Crenshaw herself said, “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,” while one will not review Title VII’s explicit text, nor how it came about, the way the cases are described are read as objectively as possible regarding what little protection is expected (Crenshaw p. 25).

Intellectually speaking, the introduction of intersectionality through this paper is a masterclass of case law being reinterpreted to include recognition for Black women- wherein three cases that all involve Black women display different interactions that the courts have used to stonewall against the recognition of this specific class. Afterall, these same tactics were what fueled how I’ve recently commented in class in focusing on both invisible and erased identities. A scholar, and especially more so a lawyer, who was taught only legal realist or even traditionalist views that use only single-axes frameworks has to recognize the undeniable power Crenshaw’s work has- for example, no longer is the Married Women's Property Act seen as unilaterally a benefit for all women as it can be critiqued through Prigg v. Pennsylvania’s extension of property to include Black, female slaves. If anyone from lawyers, feminists, Black Liberation activists, to even more invisible identities such as trans rights or disabled activists wants to have a coalition, this is exactly the reading I would give them- alongside other works from Crenshaw regarding Anti-discrimination law and mapping intersectionality.

In reviewing this work now with the cases under 356 and 358, I’ve come to appreciate fully why Crenshaw’s intersectional framework is so powerful- and how it completely challenges the traditional feminist and civil rights frameworks to account for identities whose obstacles are not as well recognized nor observed by both our institutions and even well-meaning allies. It was about time I met with the paper that has inspired me to to become interdisciplinary in my approach to political science- I’ve taken on DisCrit and Queer Theory among my CRT and CRF repertoire since then, and with my comments and reactions to 356’s cases, I think it is clear how I’ve not only internalized these tenets, but was able to rewrite people back into the narrative that the courts have ignored. Whether from Miller v. Albright (1998) and how Filipino-Americans born to Filipino mothers and putative American fathers are denied birthright citizenship to the United States, to Buck v. Bell (1927) and how Carrie Buck’s intellectual disability was often downplayed and was deemed reasonable to justify the sterilization of disabled inmates in state institutions, I’ve come to the conclusion that I have a completely unorthodox view of due process and equal protection that could surely apply to intersectionality: equal protection and substantive due process are not readily available to invisible classes- identities the court either refuses to hear, or outright erase from their decisions. If that tells me anything, that tells me that we need a new strategy that does account for intersectionality: either making a judicial philosophy whose rights are actually universal to all identities, or by allowing for the creation of new classes that recognizes these intersecting burdens- I just need enough time.

Work Cited

Crenshaw, Kimberlé W. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics - Kimberlé Williams Crenshaw." *Critical Race Feminism: A Reader*, edited by Adrien K. Wing, 2nd ed., NYU P, 2003, pp. 23 - 33.