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INTRODUCTION: THEORIZING THE CONNECTIONS AMONG SYSTEMS OF SUBORDINATION

© Nancy Levit*

Identity theory is a relative newcomer to jurisprudence.¹ In part as a theoretical legacy of the civil rights movement—and in part as a reaction to its retrenchment²—early critical legal theorists focused on facets of personal identity, such as race, gender, sexual orientation, and class. The first anti-subordination writings simply tried to obtain recognition for identity categories as important subjects of inquiry.³

A “second wave” of identity writings raised issues of essentialism. The concern was that in writing about “women” or “blacks” or “lesbians,” theorists tended to reduce identity group members to monolithic essences.⁴ For instance, Angela Harris explained the notion of “gender essentialism” as the assumption “that a unitary, ‘essential’ women’s experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience.”⁵ Anti-essentialists feared that descriptions of identity often falsely homogenized the experiences of different group members.

One frailty of assuming similar experiences, qualities, or political priorities is the problem of false coherence—ignoring the differences within identity categories that constitute the true variety of human experiences.⁶ Another danger of conceiving of identity groups in universal terms is the marginalization of subgroups. Not only are diverse perspectives within a group ignored, but the concerns of dominant sectors of minority groups are advantaged to the exclusion of more subordinated subgroups: “some voices are silenced in order to privilege others.”⁷ A deeper, epistemological problem of essentialism is its tendency to

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¹ See ROBERT L. HAYMAN, JR., NANCY LEVIT & RICHARD DELGADO, *JURISPRUDENCE—CLASSICAL AND CONTEMPORARY: FROM NATURAL LAW TO POSTMODERNISM* (West 2002).

² Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

³ See Derrick A. Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 518-19 (1980); Richard Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 HARV. C.R.-C.L. L. REV. 133 (1982); Rhonda R. Rivera, *Our Straight-Laced Judges: The Legal Position of Homosexual Persons in the United States*, 30 HASTINGS L.J. 799 (1979).

⁴ See generally ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE: BLACK WOMEN’S STUDIES (Gloria T. Hull et al. eds., 1982).

⁵ Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990).

⁶ See, e.g., Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242 (1991).

⁷ Harris, *supra* note 5, at 585 (observing that “the voices that are silenced turn out to be the same voices silenced by the mainstream legal voice . . . among them, the voices of black women.”).

assume natural essences and to move away from explanations that comprehend the social construction of identity categories.⁸

I. INTERSECTIONALITY

In the late 1980s, critical theorists began to build on the ideas of anti-essentialism to develop concepts of intersectionality.⁹ They recognized that not only did minority group members' interests splinter on various issues, but also that subordinated individuals might not fit neatly in a single identity group. On an experiential level, one person might belong to several identity groups (such as gender, race, ethnicity, socio-economic status, and sexual orientation); moreover, individuals' experiences comprise several identity facets intersecting at once. Discrimination on the basis of one identity characteristic could be compounded by discrimination based on another aspect of identity. A black woman, for instance, experiences not just racism and sexism, but the greater-than-double burden of intertwined racism and sexism, which is its own unique (and perhaps particularly virulent) form of discrimination.¹⁰ On a class level, discrimination manifests against groups along multiple, intersecting axes.¹¹ For example, minority race males, especially those who are economically deprived, may be particularly vulnerable to selective criminal prosecution, incarceration, higher sentences, and imposition of the death penalty.¹²

Issues of intersectionality began to appear in doctrinal law. Courts originally rejected claims of discrimination based on intersectional experiences—an individual's location at the intersection of several minority identity characteristics. The first court to address the issue was the United States District Court for the Eastern District of Missouri in 1976, and it held flatly that black women do not constitute a protected class under Title VII.¹³ Four years later, in *Jefferies v. Harris County Community Action Ass'n*,¹⁴ the Fifth Circuit Court of Appeals disagreed, acknowledging that "discrimination against black females can exist even in the absence of discrimination against black men or white women."¹⁵ One federal district court attempted to sharply limit the reach of intersectional

⁸ See generally ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (Beacon Press 1988).

⁹ See, e.g., Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989); Crenshaw, *supra* note 6; Harris, *supra* note 5.

¹⁰ See, e.g., Crenshaw, *supra* note 9, at 140 ("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.").

¹¹ SUZANNE PHARR, *HOMOPHOBIA: A WEAPON OF SEXISM* (1988); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989).

¹² See Floyd D. Weatherspoon, *The Devastating Impact of the Justice System on the Status of African-American Males: An Overview Perspective*, 23 CAP. U. L. REV. 23 (1994).

¹³ *Degraffenreid v. Gen. Motors Assembly Div.*, St. Louis, 413 F. Supp. 142, 143 (E.D. Mo. 1976), *aff'd in part, rev'd in part*, 558 F.2d 480, 484 (8th Cir. 1977).

¹⁴ 615 F.2d 1025 (5th Cir. 1980).

¹⁵ *Id.* at 1032.

analysis. Although recognizing that black women could constitute a protected group under Title VII, the United States District Court for the District of Columbia in *Judge v. Marsh*¹⁶ articulated its fear of multiple subgroups turning “employment discrimination into a many-headed Hydra, impossible to contain within Title VII’s prohibition. Following the . . . rationale to its extreme, protected subgroups would exist for every possible combination of race, color, sex, national origin and religion.”¹⁷ The *Judge* court developed a “just pick two” rule, allowing claims for intersectional discrimination based only “on one protected, immutable trait or fundamental right, which are directed against individuals sharing a second protected, immutable characteristic.”¹⁸ Since then, the majority of courts have come to accept the basic proposition of *Jeffries* that discrimination against an intersectional group can exist even if no discrimination is targeted toward other individuals in either of the component groups—as the *Jeffries* court explained, “discrimination against black females can exist even in the absence of discrimination against black men or white women.”¹⁹ Although plaintiffs have filed discrimination suits claiming membership in more than two protected categories, no decisions have acknowledged the intersection of more than two bases for discrimination.²⁰

The attempts to comprehend and address doctrinally the social, political, and even metaphysical implications of intersectionality were mirrored in theoretical works. Intersectionality encouraged recognition that identity categories are more fluid and less fixed than previous generations have thought. This understanding of identity itself has a number of dimensions: Identity categories may be arbitrary boxes that do not comprehend the lived experiences of multiracial, multiethnic, or multiply-situated individuals. The facts of identity are “not additive,” but instead “indivisible,” operating simultaneously in people’s daily experiences.²¹ Discrimination may be based not on a fixed identity status, but on

¹⁶ 649 F. Supp. 770 (D.D.C. 1986).

¹⁷ *Id.* at 779.

¹⁸ *Id.*

¹⁹ 615 F.2d at 1032. See *Olmstead v. L. C. ex rel. Zimring*, 527 U.S. 581, 598 n.10 (1999); *Lam v. Univ. of Haw.*, 40 F.3d 1551, 1561 (9th Cir. 1994); *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1416 (10th Cir. 1987); *Payne v. Travenol Labs., Inc.*, 673 F.2d 798, 822-23 (5th Cir. 1982); *Harper v. Thiokol Chem. Corp.*, 619 F.2d 489, 492 (5th Cir. 1980); *Nieto v. Kapoor*, 182 F. Supp. 2d 1114, 1140 (D.N.M. 2000); *Luce v. Dalton*, 166 F.R.D. 457, 459-60 (S.D. Cal. 1996); *Daniel v. Church’s Chicken*, 942 F. Supp. 533, 538 (S.D. Ala. 1996); *Arnett v. Aspin*, 846 F. Supp. 1234, 1239 (E.D. Pa. 1994); *Sims v. Montgomery County Comm’n*, 766 F. Supp. 1052, 1099 (M.D. Ala. 1990); *Prince v. Comm’r, U.S. I.N.S.*, 713 F. Supp. 984, 992 (E.D. Mich. 1989); *Chambers v. Omaha Girls Club*, 629 F. Supp. 925, 942 (D. Neb. 1986); *Graham v. Bendix Corp.*, 585 F. Supp. 1036, 1047 (N.D. Ind. 1984); *Vuyanich v. Republic Nat’l Bank*, 505 F. Supp. 224, 233 (N.D. Tex. 1980).

²⁰ See, e.g., *Martin v. Healthcare Bus. Res.*, 2002 WL 467749, *5 (E.D. Pa. Mar. 26, 2002); *Flint v. City of Philadelphia*, 2000 WL 288114, *5 (E.D. Pa. Mar. 17, 2000); *Ingram v. West*, 70 F. Supp. 2d 1033, 1036 (W.D. Mo. 1999); *Woods v. Friction Materials, Inc.*, 836 F. Supp. 899, 904 (D. Mass. 1993).

²¹ Adrienne Katherine Wing, *Reno v. American-Aide Anti-Discrimination Committee: A Critical Race Perspective*, 31 COLUM. HUM. RTS. L. REV. 561, 573 (2000).

“identity performance”; therefore, people may be vulnerable to differential treatment based on how they present aspects of their identities, such as appearance (attire, accent, or hair style), gender (masculinity or femininity), or social mannerisms.²² The concerns raised regarding antiessentialism and the privileging of subgroups²³ resurfaced with slightly more complexity in intersectional analysis:

[T]he political agendas of identity groups tend to focus on the interests of the privileged within the group. Put differently, even within these groups of disadvantage (e.g., blacks) the intersection of certain identities are privileged (e.g., black and male and heterosexual and middle class) vis-a-vis the intersection of others (e.g., black and female and homosexual and working class).²⁴

II. POST-INTERSECTIONALITY

Intersectionality opened the door to explorations into the ways various forms and mechanisms of domination interpenetrate. Beginning in the mid-1990s, scholars began to develop what Professor Peter Kwan has termed “**post-intersectional**” theories.²⁵ Post-intersectional analysis says that systems of oppression—such as sexism, racism, and homophobia—tend to reinforce each other.²⁶ One idea postulated was that “the systems of discrimination—e.g.,

If you multiply my identities together, you have one indivisible being. You cannot subtract out any part of my identity, and ask me to pretend I am only a woman or only a Black person. My premise is that everyone has multiple identities, not just women of color in the United States.

Id. Wing explains that this “**multiplicity**” of experience “cannot be reduced to an addition problem: ‘racism + sexism = straight black woman’s experience.’” *Id.* See also Adrien Katherine Wing, *Brief Reflections Toward a Multiplicative Theory and Praxis of Being*, 6 BERKELEY WOMEN’S L.J. 181, 191 (1990-91). Mari Matsuda uses the similar term “**multiple consciousness**” to represent, as an experiential matter, the abilities to see race and sex discrimination operating simultaneously and concurrently, and, as a political matter, the “deliberate choice to see the world from the standpoint of the oppressed.” Matsuda, *supra* note 11, at 9.

²² Devon W. Carbado, *Straight Out of the Closet*, 15 BERKELEY WOMEN’S L.J. 76, 97-105 (2000); Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. LEGAL ISSUES 701 (2001) [hereinafter Carbado & Gulati, *The Fifth Black Woman*]; Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259 (2000); Mary Anne C. Case, *Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence*, 105 YALE L.J. 1 (1995).

²³ See *supra* text at note 7.

²⁴ Carbado & Gulati, *The Fifth Black Woman*, *supra* note 22, at 709.

²⁵ Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257, 1264 (1997). This is not to discount early recognitions of the workings of oppressive systems. See, e.g., Ann Scales, *Feminist Legal Method: Not So Scary*, 2 UCLA WOMEN’S L.J. 1, 31 (1992) (practicing solidarity and inclusiveness “requires noticing that racism and sexism are interlocking parts of systems of oppression”).

²⁶ Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master’s House*, 10 BERKELEY WOMEN’S L.J. 16, 27 (1995).

racism, sexism, homophobia, and classism—are themselves intersectional.”²⁷ Forms of subordination, said Darren Lenard Hutchinson, are “interrelated, rather than conflicting, phenomena.”²⁸ In one sense, post-intersectionality moved intersectional concepts to the systemic level.

Yet post-intersectionalists recognized some of the limitations of the intersectional model. The framework was not fully three dimensional, contenting itself to look at the isolated interplay of autonomous categories:

Intersectionality does not give us the epistemological explanation we seek. Moreover, intersectionality risks theoretical collapse as categories multiply. Each person is composed of a complex and unique matrix of identities that shift over time, is never fixed, is constantly unstable and forever distinguishable from that of everyone else in the universe. Even if, hypothetically, one can precisely reduce, define and fully describe this complex matrix of identities, and repeat this process on everyone else, we are left with a comprehensive intersectional model of all individuals, but with no way of comparing each individual's experiences, whether of privilege or oppression. Nor would such a thorough-going intersectionality exercise allow us to forge ideological coalitions, political allegiances, or communities of support. Ultimately, intersectionality forces one to decide *a priori* which identities matter, and this is theoretically no different than a pre-intersectionality approach.²⁹

Thus, Kwan urged analysis based on the “cosynthesis of categories,” which offered “a dynamic model whose ultimate message is that the multiple categories through which we understand ourselves are sometimes implicated in complex ways with the formation of categories through which others are constituted.”³⁰ A cosynthetic approach attends to the “legal and cultural forces that shape and maintain systems of oppression, including the illegitimate use of categories.”³¹ It recognizes the interdependence of identity categories and thus avoids priority battles among them. Perhaps most importantly, cosynthesis recommends “dealing with all modes of oppression simultaneously.”³²

Professor Frank Valdes began to develop the political project to spur post-intersectionality theory. He looked at the convergences of forms of

[O]ppressions cannot be dismantled separately because they mutually reinforce each other. Racism uses sexism as its enforcer. Homophobia enforces sexism by making people pay a heavy price for departing from socialized gender roles. And those of us who are middle-class, or members of otherwise privileged elites can be used as unwitting perpetrators of the subordination of others.

Id.

²⁷ Carbado & Gulati, *The Fifth Black Woman*, *supra* note 22, at 708.

²⁸ Darren Lenard Hutchinson, *Identity Crisis: “Intersectionality,” “Multidimensionality,” and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285, 290 (2001).

²⁹ Kwan, *supra* note 25, at 1277.

³⁰ *Id.* at 1280. See also Peter Kwan, *Complicity and Complexity: Cosynthesis and Praxis*, 49 DEPAUL L. REV. 673 (2000).

³¹ Kwan, *supra* note 25, at 1281.

³² *Id.*

discrimination based on gender and those based on sexual orientation, and called for “**inter-connectivity** as a strategy of resistance against hetero-patriarchal conventions.”³³ In his 1995 article, Valdes recounted some internal divisiveness in the communities of sexual, racial, and gendered others and worried that even within minority groups, forms of exclusionary essentialism recur. He also observed that social constructs of sex, race, and sexual orientation may pit subordinated groups against one another, and he told a personal story to illustrate the point:

Neither sex, race nor sexual orientation can “come first” in the configuration of human identities, politics and communities. . . . When I am asked, and I am, which “comes first” for me, color or sexuality, I respond, as a good law professor should, “it depends.” It depends on the facts and the politics of the situation. Thus, when I am in a people-of-color situation, I find myself operating, and being received as, primarily a gay man. And when I am in a sexual minority situation, I find myself operating, and being received as, primarily a person of color. In these varying settings, my mission remains constant: to interject the “other,” and to remind those who are present of those who are not.³⁴

Valdes thus urged rejection of “fixed identity primacies.”³⁵ He also called for political alliances among subordinated others: examination of the “situational commonalities” of outsiders, recognition that “hetero-patriarchy is a common enemy,” explorations of shared forms of both cultural and legal oppression, and network building.³⁶ In addition to political strategies, inter-connectivity encouraged a phenomenological dimension of activity, “a personal awakening to the tight interweaving of systems and structures of subordination. . . . It is a personal and every day commitment to transcend identity fractures, including those of sex and race, in the struggle for empowerment and equality.”³⁷

Working along similar lines, Professor Nancy Ehrenreich was also concerned about political coalition-building. She, too, recognized the difficulties of forging coalitions among groups whose interests are seemingly opposed,³⁸ and she subsequently began the work of probing into some of the social institutions that construct and reinforce perceived oppositions between identity groups. Looking through the lens of the O.J. Simpson case, Ehrenreich demonstrated that media often portray facets of identity, such as race and gender, in artificial contention with each other.

³³ Francisco Valdes, *Sex and Race in Queer Legal Culture: Ruminations on Identities & Interconnectivities*, 5 S. CAL. REV. L. & WOMEN'S STUD. 25, 27 (1995) (emphasis added).

³⁴ *Id.* at 40-41.

³⁵ *Id.* at 40.

³⁶ *Id.* at 26, 31, 49. Valdes was careful to note that “[t]his situational commonality, of course, does not represent an identity of interests, but it does represent a platform from which coalitional projects and scholarship can be launched.” *Id.* at 27.

³⁷ Valdes, *supra* note 33, at 49-50.

³⁸ Nancy S. Ehrenreich, *O.J. Simpson and the Myth of Gender/Race Conflict*, 67 U. COLO. L. REV. 931 (1996).

Whether their names are O.J. Simpson or Mike Tyson, Nicole Brown Simpson or Anita Hill, the characters in these morality plays have the same roles, and the Greek chorus says the same lines:

Was this another "high-tech lynching," or was it instead a gender-violence travesty? Which is the bigger societal problem—white supremacy or patriarchy? police brutality or domestic violence? . . . How can people of color and women unite to fight for affirmative action and other common goals when their concerns so often conflict?³⁹

The result of these manufactured antinomies is that in the popular mind, the interests of women and racial minorities are in conflict.

Ehrenreich offered instead a carefully nuanced understanding of the ways racial stereotypes reinforce the subordination of white women, and the ways gender stereotypes support the subordination of people of color. For example, she traced the ways that identity groups themselves have bought into the idea of conflicts among the interests of different minority groups.⁴⁰ The structures of patriarchy and white supremacy, she concluded, are mutually reinforcing.⁴¹

To move beyond these intertwined structures of discrimination, Ehrenreich interrogated the process of dichotomization:

I have a different set of questions. I want to know: Why was it considered racist to oppose Clarence Thomas but not to disbelieve Anita Hill? Why is it seen as antifeminist to support the Simpson acquittal on the grounds that racial bias infected the proceedings (and evidence) against him? And who benefits from the endless performance of this play—with its message that the interests of people of color and women are irretrievably, unavoidably in conflict?⁴²

Ehrenreich's work powerfully argued that perceiving identity categories as exclusive and warring interest groups is a reductionist way of thinking about identity, and one that undermines the possibility of creating progressive coalitions. Perhaps, as Ehrenreich pointed out in the context of the Simpson case, observers could believe at once that Simpson abused his wife and that racism infected his prosecution.⁴³

Ehrenreich also made the political observation that the process of putting subordinated groups into oppositional stances with each other is a conscious stratagem used by conservatives, but not well understood by progressives.⁴⁴ She

³⁹ *Id.* at 931.

⁴⁰ *Id.* at 945-46.

⁴¹ *Id.*

⁴² *Id.* at 931.

⁴³ Ehrenreich, *supra* note 38, at 947.

⁴⁴ *Id.*

The fact of the matter is that white supremacy and patriarchy support each other. Conservatives showed their knowledge of this fact very cleverly in the Thomas/Hill episode, pitting white women and people of color against each other to obtain the confirmation of a very disappointing replacement for Thurgood Marshall on the Supreme Court.

urged movement away from “unidimensional analyses” of cases as being *really* about race or *really* about sex, and concluded that “as long as race and gender issues are treated as separate and unrelated phenomena, and feminism and antiracism are seen as opposing liberatory movements, the perceived splits between them will enable the very forces that both are fighting against.”⁴⁵

Professor Darren Lenard Hutchinson also urged a more “multidimensional” analysis of identity issues that explores interrelations among forms of subordination. “**Multidimensionality**” is “a methodology by which to analyze the impact of racial and class oppression (or other sources of social inequality) upon sexual subordination and gay and lesbian experience and identity and to cease treating these forces as separable, mutually exclusive, or even conflicting phenomena.”⁴⁶ Hutchinson observed that intersectional theorists began by examining the experiences of women of color, and perhaps still heavily emphasize the intersection of oppressions.⁴⁷ As one step in moving beyond intersectionality theory, Hutchinson explicitly advocated importing racial and class analysis into gay and lesbian legal theory. Multidimensionality requires that scholars

make explicit the racial and class (and other) assumptions that undergird our theories, realize these assumptions might (and likely do) limit the application of our theories, strive to discover the vast differences among individuals in oppressed social groups, and learn how these differences should (and do) affect theory and politics.⁴⁸

More broadly, he argued that “multilayered experiences are ‘universal,’” and offered the constructs of whiteness and maleness as examples.⁴⁹

Hutchinson looked not only internally at the interplay of facets of identity, but also externally to question the multiple dimensions of systems of oppression.

Id.

⁴⁵ *Id.* at 932, 947-48.

⁴⁶ Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561, 641 (1997).

“[G]ay” may describe a poor, Latino male, a black, lesbian feminist, or a white, middle-class male—depending on the context of its usage. I also believe that these various dimensions are inextricably and forever intertwined. Multidimensionality accurately captures this reality. “Intersectionality,” by contrast, subtly implies a convergence, particularly in the lives of people of color, of otherwise separate and independent categories. The term “intersectionality” thus suggests a separability of the host of identities and forces that define social groups and social power. I therefore prefer multidimensionality because it more effectively captures the inherent complexity and irreversibly multilayered nature of everyone’s identities and of oppression.

Id. at 641.

⁴⁷ Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory, and Anti-Racist Politics*, 47 BUFF. L. REV. 1, 12 (1999).

⁴⁸ Hutchinson, *supra* note 46, at 640.

⁴⁹ Hutchinson, *supra* note 47, at 16.

One systemic method of oppression he identified is violence—the ways that brutality against disfavored groups (and the ineffectual social and legal responses to it) itself has many layers.⁵⁰ He turned the lens outward to interrogate the way the forces of social power and structures of subordination work on minority groups. Just as facets of identity have multiple layers, so do forces of oppression “possess multiple dimensions and contextual layers.”⁵¹

III. THE STRUCTURES OF SUBORDINATION

The call of post-intersectional theory has been to direct inquiry to the ways systems of subordination—such as patriarchy, heterosexism, classism, and white supremacy—interact. This Symposium is an effort to extend post-intersectionality theory by focusing not on identity categories, but on the structures of subordination. The contributors to this Symposium explicitly examine connections among subordinating structures. They also explore how various groups are oppressed in different ways by the same subordinating structure—where they may have similar and different strategic interests in responding to those structures. Many of the scholars who began the work in this area are featured in this Symposium.⁵²

The articles in this Symposium offer concrete examples of the ways structures of oppression reinforce each other. In varied ways, most of the articles herein explore the dynamics of subordination that make different forms of subordination connected to each other—the mechanisms by which subordinating systems buttress each other. Where one sees sexism, one frequently can find racism; where classism exists, sexism often surfaces; and where there is patriarchy, there is often heterosexism. Post-intersectionality theory also addresses the overlapping nature of systems of subordination: where

⁵⁰ *Id.* at 17-20.

⁵¹ Hutchinson, *supra* note 46, at 640-41.

⁵² Elvia Arriola, *Gendered Inequality: Lesbians, Gays, and Feminist Legal Theory*, 9 BERKELEY WOMEN'S L.J. 103 (1994); Robert S. Chang & Jerome McCristal Culp Jr., *Nothing and Everything: Race, Romer and (Gay/Lesbian/Bisexual) Rights*, 6 WM. & MARY BILL RTS. J. 229 (1997); Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, 1 J. GENDER RACE & JUST. 177 (1997); Sumi Cho & Robert Westley, *Critical Race Coalitions: Key Movements that Performed the Theory*, 33 U.C. DAVIS L. REV. 1377 (2000); Martha Chamallas, *Deepening the Legal Understanding of Bias: On Devaluation and Biased Prototypes*, 74 S. CAL. L. REV. 747 (2001); Jerome M. Culp, Frank Cooper & Lovita Tandy, *Foreword, A New Journal of Color in a "Color-Blind" World*, 1 AFRICAN AM. L. & POL'Y REV. 1 (1995); Ehrenreich, *supra* note 38; Mary Louise Fellows & Sherene Razack, *The Race to Innocence: Confronting Hierarchical Relations Among Women*, 1 J. GENDER RACE & JUST. 335 (1998); Hutchinson, *supra* notes 28, 46, 47; Peter Kwan, *Invention, Inversion and Intervention: The Oriental Woman in, The World of Suzie Wong, M. Butterfly and The Adventures of Priscilla, Queen of the Desert*, 5 ASIAN L.J. 99 (1998); Kwan, *supra* notes 25, 30; Samuel A. Marcossou, *The "Special Rights" Canard in the Debate Over Lesbian and Gay Civil Rights*, 9 NOTRE DAME J.L. ETHICS & PUB. POL'Y 137 (1995); Robert Westley, *First Time Encounters: "Passing" Revisited and Demystification as a Critical Practice*, 18 YALE L. & POL'Y REV. 297 (2000); Joan Williams, *Implementing Antiessentialism: How Gender Wars Turn into Race and Class Conflict*, 15 HARV. BLACKLETTER L.J. 41 (1999).

intersectionality theory, at times, seemed to compel the fragmentation of identity groups into ever smaller units, post-intersectionality theory searches for aspects of commonality among the constituents of larger and smaller identity groups.⁵³ This focus on hybrid groups does more than highlight connections among identity groups, it also more clearly illuminates the ways structures of privilege and subordination operate as ideological systems that affect many different identity groups and the intersections, as well as the transactions, among them. The articles in this issue thus also concern the political project of critical theory: attacking the subordinating structures that work against cooperation among oppressed peoples and developing the prospects for collaboration among oppressed groups.

A. Ehrenreich's Theory of Symbiosis

The centerpiece of this Symposium is Professor Nancy Ehrenreich's *Subordination and Symbiosis: Mechanisms of Mutual Support Between Subordinating Systems*.⁵⁴ The heart of her analysis is the proposition that various systems of subordination "are connected and mutually reinforcing."⁵⁵ The political implication of this understanding is, as Ehrenreich says, "that it is difficult, perhaps impossible, to eliminate one form of subordination without attacking the entire edifice of interlocking oppressions."⁵⁶ The theoretical demand, then, is to comprehend more deeply the way systems of subordination "support and hide each other."⁵⁷

Ehrenreich exposes some of the rhetorical tactics used by the political right to pit identity groups against each other, undermine cohesion within groups, and impede progressive coalitions. One such dialogic technique Ehrenreich identifies as "divide and conquer." In a theoretical move reminiscent of "Let's you and him fight," members of the political right imply that different groups inevitably compete at every turn—over everything from scarce resources (affirmative action battles over jobs), airspace (misogynist rap music), to most-deserving-victim status.

She also explores problems of group-based analysis: groups dividing infinitely into smaller subgroups that impede coalitions, seeming resource or priority battles between subgroups, and the relativist difficulty of all groups (even dominant groups) suffering oppression, with the result that no group's oppression is therefore very meaningful. As Ehrenreich says, "the notion that oppression is universal is an equalizing myth that threatens to obscure important structural inequalities in our society."⁵⁸

⁵³ I am indebted to Nancy Ehrenreich for making this point.

⁵⁴ Nancy Ehrenreich, *Subordination and Symbiosis: Mechanisms of Mutual Support Between Subordinating Systems*, 71 UMKC L. REV. 251 (2002).

⁵⁵ *Id.* at 254.

⁵⁶ *Id.* at 255.

⁵⁷ *Id.* at 256.

⁵⁸ *Id.* at 271.

To understand the ways systems of subordination reinforce each other, Ehrenreich advances an alternative theoretical framework that she calls “**sybiosis**.” Individuals and their identity groups “exist in a complex web of relationships in which they are sometimes dominant and other times subordinate.”⁵⁹ Ehrenreich identifies several mechanisms by which subordinating systems buttress each other: systems of oppression work together to cause identity groups to “exclude or ignore the interests of some of their members.” They heighten the “vulnerability” of individuals to oppression generally and they tend to “obscur[e] . . . oppressive conditions.”⁶⁰

Ehrenreich carefully explains the phenomenon of “compensatory subordination”: how at times, in efforts to assimilate or even just to address a particular need, dominant subgroups will exclude a subordinate subgroup (e.g., the exclusion of lesbian feminists to garner acceptance of heterosexual feminists).⁶¹ This dynamic reinforces the oppressions along particular axes and discourages resistance to systems of oppression. She also develops the concept of “**hybrid intersectionality**.” This concept begins with the premise that many individuals belong to both dominant and subordinate groups (they may be “singly” rather than “doubly” burdened). According to the “hybrid intersectionality” concept these individuals may use whatever power they find in their dominant identity category at the expense of their own or others’ subordinate categories. For example, affluent white women may use their dominant race or class privilege in ways that compensate for their subordinate sex. Ehrenreich extends this idea by pointing out that an individual’s privilege not only benefits her, but can harm her as well. She also explores the psychological investment that singly burdened individuals may have in the system that privileges one facet of their identities.

Ehrenreich uses her systemic analysis of oppression to suggest means to avoid purported, but false, conflicts among identity groups. She believes in coalitional politics, in “making connections among social movements.”⁶² Yet, she is attentive to concerns of relativism and the risks that group analysis will neglect problems of individuals. Ehrenreich concludes that the political implication of this understanding of subordination would seem to say that it is difficult, “perhaps impossible, to eliminate one form of subordination without attacking the entire edifice of interlocking oppressions.”⁶³

Nancy Ehrenreich has developed a new metaphor and a new avenue of inquiry for those investigating the workings of oppression. The other contributors have written articles responsive in varying ways to Ehrenreich’s “systems of subordination” thesis. They are uniformly laudatory of her efforts to interrogate subordinating structures and to reveal the dynamics of the mechanisms of subordination. Their emotional reactions, though, range along a

⁵⁹ Ehrenreich, *supra* note 54, at 279.

⁶⁰ *Id.* at 280.

⁶¹ *Id.* at 290.

⁶² *Id.* at 255.

⁶³ *Id.*

continuum of hope to despair at the prospect for political coalitions among subordinated groups.

B. The Responsive Commentaries

1. Symbiosis, Meaning, and the Call to Context

As this introduction has chronologized, various theoreticians have made extraordinary efforts to conceptualize post-intersectionality theory. Professor Peter Kwan remarks on this “proliferation of metaphors” with several cautions.⁶⁴

One excellent point he makes is to urge academic watchfulness in avoiding hypostatization (thing-ification, if you will) of “symbiosis” or “cosynthesis,” “interconnectivity,” or whichever metaphor is used to describe post-intersectional interactions among identity characteristics and systems of subordination. These metaphors provide epistemological understandings—varying perspectival glimmers into the ways subordination operates. The hazard, says Kwan, is the risk that readers may develop a mental picture of identity categories that follows the metaphor. “Race, gender, and sexual orientation are not *things* like plants and fungi with separate and independent existences.”⁶⁵ He also worries that in the search for an apt metaphor, the descriptive struggle may operate unwittingly to constrain the theory. The framework may influence “the way we even comprehend these identity categories.”⁶⁶ Yet, he recognizes, from the lessons of feminism and critical race theory, that “the first task” of theorizing “must always be the raising of awareness and the creation of language.”⁶⁷

The theory of symbiosis commands the investigation of particular contexts. Ehrenreich calls for context at various junctures—in the exploration of situations in which individuals will be both oppressor and oppressed,⁶⁸ the examination of different social contexts in which practices of oppression occur,⁶⁹ and the identification of mechanisms of oppressive practices.⁷⁰ Professors Sherene Razack’s and Frank Cooper’s scholarship may be examples of what Ehrenreich means when she urges other scholars to engage in “detailed, historicized, and context-specific inquiries into the relationships among systems of oppression.”⁷¹

⁶⁴ Peter Kwan, *The Metaphysics of Metaphors: Symbiosis and the Quest for Meaning*, 71 UMKC L. REV. 325, 328 (2002).

⁶⁵ *Id.* at 328-29.

⁶⁶ *Id.* at 329.

⁶⁷ *Id.* at 326-27.

⁶⁸ Ehrenreich, *supra* note 54, at 267.

⁶⁹ *Id.* at 280 (“The broader applicability of each dynamic will no doubt vary with the particular context to which it is applied.”).

⁷⁰ *Id.* at 258 (“In fact, it would seem likely that, as the relationships among systems and practices of oppression are explored in different contexts, additional mechanisms will be identified”).

⁷¹ *Id.* at 280; *see also id.* at 256 (“development of the analysis in concrete contexts is very important, both to clearly convey its parameters and to illustrate its importance and utility”).

Razack focuses on Ehrenreich's theory of "compensatory subordination."⁷² She suggests that while compensatory dynamics may occur when racial minority men subordinate lower status groups in particular contexts, an alternate explanation centers on colonizing behavior taught as part of a white nation's hegemonic masculine ideal. Razack draws on examples ranging from reserve battalion activities in Nazi Germany, the cruelty of racial minority police officers, and the massacre of civilians at My Lai to the navigation of masculinity by Chinese American men and the commonality of domestic violence. However, she concentrates mainly on brutality by members of the Canadian Armed Forces during peacekeeping missions in Somalia.

Razack's proposed anti-colonial explanation for the violence against Somalis argues that racial violence against subordinate group members is neither pathological nor exceptional. Rather, it is part of the "[t]erms and conditions of membership in a white nation," and, in this particular context, part of the "daily activities of an Armed Forces that focused its energies on disciplining the local population."⁷³ Razack's alternate framework suggests that, although situations may at times present them with greater opportunities, men of color have no greater proclivity toward hegemonic practices. She does not deny racialized components of dominating practices, but her explanation looks at whether hegemonic practices are ordinary, normal, and perhaps even universal: "If an ideal man is one who engages in practices of domination, then all men have incentive to do so, just as all men have incentive to engage in violence against women."⁷⁴ The anti-colonial approach suggests a model that examines how masculinity must be performed to attain a sense of national belonging, that interrogates systemic practices of teaching deference to authority, and that questions whether a bureaucratic state can ever encourage the assumption of personal responsibility.⁷⁵

Using cultural studies, Frank Cooper builds on Nancy Ehrenreich's theory of symbiosis to explain why subordinating practices occur in some contexts but not others.⁷⁶ Cooper applies symbiosis theory to the practice of "depolicing"—police avoidance of patrolling, investigation and arrests in minority neighborhoods. He traces the practice of racial profiling and shows how it can lead to political controversies, and ultimately can result in police refusals to engage in crime control in minority neighborhoods.⁷⁷

Police officers, Cooper suggests, may be engaging in what Ehrenreich terms "compensatory subordination." Officers possess a hybrid identity: a somewhat privileged "blue identity" (as officers who are superior to citizens) and yet membership in the working class (rather than as professionals). Fearing a loss of

⁷² Sherene Razack, *Ordinary Men? Men of Colour and Peacekeeping Violence*, 71 UMKC L. REV. 331 (2002).

⁷³ *Id.* at 334.

⁷⁴ *Id.*

⁷⁵ *Id.* at 335.

⁷⁶ Frank Rudy Cooper, *Understanding "Depolicing": Symbiosis Theory and Critical Cultural Theory*, 71 UMKC L. REV. 355 (2002).

⁷⁷ *Id.* at 361-62.

privilege on one axis of identity, officers engage in the powerful act of racial profiling over subordinate groups. They respond to controversies about profiling with the powerful threat of depolicing, as compensatory acts for their working class identities.⁷⁸ Cooper demonstrates in a concrete context the value of symbiosis theory as one mechanism for understanding some of the most substantial racial issues of our times.

Cooper offers a coda to symbiosis. He wants to incorporate cultural studies into identity theory, shifting the focus in part from individual facets of identity such as race, gender, and orientation to culture and cultural practices as active agents. As he has succinctly stated elsewhere, a critical cultural methodology would:

- (1) compare the legal doctrine with actual practices; (2) analyze popular discourse to see how each relevant social group's identity was constructed before and after the event; and (3) propose alterations in doctrine that address both the subordination of identity groups and the ways popular discourse has reinforced that subordination.⁷⁹

Cultural studies, Cooper explains, are important to identity theory “because they help us understand *how* [cultural] scripts are constructed and translated into practices.”⁸⁰

2. Symbiosis, Capitalism, and Materialism

Professor Frank Valdes applauds Ehrenreich’s elaboration of the architecture of subordinating structures and sees in it an extraordinarily revolutionary implication.⁸¹ Valdes views this set of structures as “Euro-American heteropatriarchy,” which encompasses a working set of chauvinisms that operate in market model. Specifically, he says that Ehrenreich’s configuration is actually a set of transactions that occurs within a capitalist framework. It is no accident, Valdes points out, that “Ehrenreich’s examples show us varied situations in which individuals oppress others strategically to ‘*compensate*’ in one way or another for their own oppression.”⁸² Identity categories and interactions occur in a “marketplace,” where “the white, Anglo, able-bodied, financially-secure,

⁷⁸ *Id.* at 368.

⁷⁹ Frank Rudy Cooper, *The Un-Balanced Fourth Amendment: A Cultural Study of the Drug War, Racial Profiling, and Arvizu*, 47 VILL. L. REV. 851, 860-61 n.63 (2002).

⁸⁰ Cooper, *supra* note 76, at 370 (emphasis in original).

⁸¹ Francisco Valdes, *Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy*, 71 UMKC L. REV. 377, 381-82 (2002). He emphasizes a point made in other contexts that the very identity categories against which subordinating practices are directed are social constructs that come with legacies of social beliefs and practices. *Id.* at 387. See also Robert L. Hayman, Jr. & Nancy Levit, *Un-Natural Things: Constructions of Race, Gender, and Disability*, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 159 (Francisco Valdes et al. eds. 2002); Samuel A. Marcossou, *Constructive Immutability*, 3 U. PA. J. CONST. L. 646 (2001).

⁸² Valdes, *supra* note 81, 389 (emphasis in original).

straight, gender-conforming male provides the touchstone of ideological value and exaltation”⁸³

Valdes ties this economic understanding of Ehrenreich’s symbiosis theory to a dimension of identity he believes is routinely—pardon the extension of the metaphor—undervalued: class. “[C]lass analysis,” Valdes notes, “has not fared well in the published record of outsider jurisprudence to date.”⁸⁴ Perhaps, he conjectures, class identity is underattended because class formations are malleable, or perhaps it is the political impoverishment that often accompanies economic impoverishment that has resulted in the poverty of attention to socio-economic status as an identity characteristic.⁸⁵ In any event, critical theorists have not adequately theorized class consciousness. This theorizing, Valdes suggests, would be the beginning of a much larger project that would undertake both the dismantling of the subordinating mechanisms and structures that Ehrenreich identifies and “the actual transformation of material social conditions”⁸⁶

Professor Sumi Cho expresses a concern that Ehrenreich’s theory of symbiosis is premised on an overestimation of shared interests among subordinated groups and an underestimation of likely conflicts among them.⁸⁷ Subordinated groups, says Cho, do not have an identity of interests; and assumptions of inter-group unity on particular issues, in the face of real differences, can have dramatic political consequences.⁸⁸

Cho traces the paths of several ballot initiatives to end affirmative action in California, Texas, and Washington. She examines the voting record of white women regarding Washington’s proposition I-200. Although specifically targeted as beneficiaries of affirmative action in Washington, a majority of white women voted against affirmative action. Exit polls, post-election interviews and other anecdotal evidence helped to explain the statistical result: many white women “feared that affirmative action benefiting people of color would injure the material interests of their family.”⁸⁹ This confluence of economic and racial self-interest—“material whiteness”—trumped the possible benefits of gender and racial unity regarding affirmative action.

Cho offers a supplement to Ehrenreich’s theory of compensatory subordination that is in keeping with Valdes’ focus on the capitalist system and class analysis. Greater attention is needed, she says, to “significant material determinants” of political alignments.⁹⁰ She urges an understanding of the

⁸³ *Id.*

⁸⁴ *Id.* at 392.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ This view is also given voice by Professors Bob Chang, Jerome Culp, and Sam Marcossion. See *infra* text at notes 109-20.

⁸⁸ Sumi Cho, *Understanding White Women’s Ambivalence Toward Affirmative Action: “Psychological Wages,” Material Whiteness, and Political Accountability*, 71 UMKC L. REV. 399 (2002).

⁸⁹ *Id.* at 409.

⁹⁰ *Id.* at 404.

mechanism of compensatory subordination that goes beyond the purely psychological explanation that individuals subordinated with respect to one dimension of their identity may compensate for that powerlessness by aligning with dominant interests along a different axis of their identity. A focus solely on psychology results in an “under-materialized analysis [that] gives singly-burdened (‘hybrid’ intersectional) individuals a ‘pass’ when it comes to exacting political accountability, and renders those who demand accountability (typically less privileged, ‘multiply-burdened’ individuals) as appearing theoretically unsophisticated, or worse, as politically regressive coalition-busters.”⁹¹

Ehrenreich is not inattentive to the “complex material and symbolic universes in which [systems of subordination] operate.”⁹² Indeed, she investigates class privilege and the hierarchical social structures produced by capitalism.⁹³ Cho and Valdes advocate a more intricate understanding of symbiosis as a set of phenomena that operate not only in the psychological realm, but with stronger economic or “material determinants.”

3. Symbiosis and Cooptation

Professor Robert Westley applies Ehrenreich’s model of symbiosis to the slavery reparations movement.⁹⁴ He explains the ways those who support reparations also suffer from the zero sum, battle of oppressions, infinite regress and relativism problems that Ehrenreich identifies. Yet he is cautionary of embracing symbiosis theory on both theoretical and practical levels. His concern regarding Ehrenreich’s concept of hybrid intersectionality is that “a purely relational approach to identity . . . de-normativizes dominance.”⁹⁵ In other words, viewing disadvantages and advantages in relative framework “negates understanding of the way in which categories of difference permit dominant groups to escape categorization by establishing themselves as a norm.”⁹⁶

Based on the concept of hybrid intersectionality, if all individuals have mixed experiences—experiences of both domination and subordination—Westley worries that whites might claim to be racial victims, particularly in areas such as affirmative action or slavery reparations. His concern, then, is that symbiosis theory “embraces a dangerous liaison with relativism.”⁹⁷ Westley concludes that while the insights of symbiosis concerning the structural linkage among systems of subordination may be analytically useful, they offer no theory of remedy. Particularly as the racial issues of contemporary times move toward a remedial phase, as with slavery reparations, a theory of discrimination whose

⁹¹ *Id.*

⁹² Ehrenreich, *supra* note 54, at 280.

⁹³ *See id.* at 279, 285, 287-88.

⁹⁴ Robert Westley, *Reparations and Symbiosis: Reclaiming the Remedial Focus*, 71 UMKC L. REV. 419 (2002).

⁹⁵ *Id.* at 427.

⁹⁶ *Id.*

⁹⁷ *Id.* at 430.

analytic mechanism seemingly opens the door to compensation for everyone is one that risks cooptation.

4. Doctrinal Change

While offering an intellectual history of intersectionality and complexity or multidimensionality theories, and exploring the compatibility of symbiosis theory with them, Professor Darren Lenard Hutchinson picks up the theme of doctrinal reforms.⁹⁸ He first examines both substantive and conceptual points of departure among these theories and highlights Ehrenreich's point that complexity of identity is universal: individuals subordinated on one axis of their identity may be privileged on another and this multiplicity of identity is not just a feature of groups thought of as traditionally subordinated.⁹⁹

A rich understanding of these advances in theory has a specific programmatic end for Hutchinson. His main concern is to find doctrinal mechanisms to dismantle the fluid cooperation among systems of subordination—the ways dominating structures reinforce each other so effortlessly and naturally. He offers an intriguing example of a way to translate the theoretical innovations into doctrinal advances. In its development of equal protection doctrine, the Supreme Court, he says, has effectively inverted privileged and subordinated classes through a “narrow reading of disempowerment.”¹⁰⁰ This constricted understanding of disadvantage—essentially a check-off list from footnote 4 of *United States v. Carolene Products*¹⁰¹—could be made infinitely more robust and realistic through use of multidimensional analysis, which “instructs us that oppression is fluid and contextual and that it operates on many different axes.”¹⁰² In equal protection analysis, Hutchinson suggests that “courts should consider whether the type (or types) of domination affecting classes seeking heightened scrutiny is sufficiently related to the kinds of subordination that precedent already prohibits”¹⁰³ Hutchinson believes in animating the realm of legal theory and using it to bring about revolutions in doctrine through this sort of specific application of understandings from the different incarnations of post-intersectionality theories.

5. The Prospects for Political Coalitions Among Subordinated Groups

Professor Elvia Arriola urges the development of “coalitional critical theory”—an examination of the relationship between critical theorizing and political activism and the creation of political or strategic practices that

⁹⁸ Darren Lenard Hutchinson, *New Complexity Theories: From Theoretical Innovation to Doctrinal Reform*, 71 *UMKC L. REV.* 431 (2002).

⁹⁹ *Id.* at 436-37.

¹⁰⁰ *Id.* at 442.

¹⁰¹ 304 U.S. 144, 153 n.4 (1938); Hutchinson, *supra* note 98, at n.69.

¹⁰² Hutchinson, *supra* note 98, at 442.

¹⁰³ *Id.* at 443.

implement the high theory concepts.¹⁰⁴ Discussing intergroup identity conflicts among her activist colleagues, Arriola challenges the political wisdom of a gay-rights group's refusal to include the interests of the transgendered because it has consciously adopted a strategy of urging incremental changes that will avoid offending resistant conservatives.¹⁰⁵ She draws incisively on the history of the initial Stonewall rebellion that sparked the lesbian/gay/bisexual/transgendered (LGBT) rights revolution, and evaluates the tactics that commanded political attention.¹⁰⁶

Arriola also recounts the story of a municipal funding battle of one non-profit community organization, the Esperanza Center for Peace and Justice (EPJC), a group challenged not only by the religious right but also by a group of white gay powerbrokers who pushed a much less inclusive image of sexual and human identity than did the EPJC.¹⁰⁷ While her story describes certain tensions and disunity in the lesbian and gay community, she is more interested in concentrating on "the similarities of our struggles and hopes for coalition"¹⁰⁸ To that end, she focuses on the ways the EPJC lawsuit became a vehicle for community organizing—an intriguing reversal of the usual instance of community organizations feeding lawsuits. Arriola outlines the communication techniques that transformed the lawsuit into an opportunity for public education. But perhaps she really offers a blueprint of hope for coalitional critical thinking.

Professor Sam Marcossou and Professors Robert Chang and Jerome McCristal Culp, Jr., are much less optimistic than either Professor Arriola or Professor Ehrenreich about the prospects for political coalitions among subordinated groups.¹⁰⁹ What if, Marcossou wonders, the fundamental conflicts within and among such groups are so deep that they outweigh the commonalities of subordinated status. Looking through the lens of the same-sex marriage debate, Marcossou posits that "these inherent conflicts of interest may represent the most intractable subordinating mechanism of all"¹¹⁰

The issue of same-sex marriage has divided the LGBT community. Some argue that the institution of marriage subordinates many of its participants and that same-sex marriages, if legally recognized, would replicate the patterns of traditional gender roles. Others claim that legal recognition of same-sex relationships would provide tangible economic benefits as well as social validation of the relationships for those in the LGBT community who choose to avail themselves of the opportunity to marry. Marcossou concludes, these

¹⁰⁴ Elvia R. Arriola, *Staying Empowered by Recognizing Our Common Ground: A Reply to Subordination and Symbiosis: Mechanisms of Mutual Support Among Subordinating Systems*, by Nancy Ehrenreich, 71 UMKC L. REV. 447 (2002).

¹⁰⁵ *Id.* at 451.

¹⁰⁶ *Id.* at 452.

¹⁰⁷ *Id.* at 454-55.

¹⁰⁸ *Id.* at 453.

¹⁰⁹ Robert S. Chang & Jerome McCristal Culp, Jr., *After Intersectionality*, 71 UMKC L. REV. 485 (2002); Samuel A. Marcossou, *Multiplicities of Subordination: The Challenge of Real Inter-Group Conflicts of Interest*, 71 UMKC L. REV. 459 (2002).

¹¹⁰ Marcossou, *supra* note 109, at 460.

benefits are worth it, and the same-sex marriage battle is more likely to be victorious than the utopian project of “decoupling from marriage the economic and social benefits currently linked to it”¹¹¹ However, Marcossou recognizes that the extension of marriage to same-sex couples may well lead to political divisions between “marital gays” and those who chose not to “conform to the marital norm”¹¹²

This in fact is the touchstone example of Marcossou’s compelling insight: that political and ideological conflicts are inevitable among different subordinated groups, within subordinated groups, and internally within individual members of subordinated groups. These inherent conflicts, says Marcossou, are “naturally occurring . . . [,] genuine, substantial and constitute an important mechanism of subordination.”¹¹³ Worse, when these progressive conflicts operate as devices of subordination, they work without any investment by dominant groups: “Identity group conflict does a lot of the heavy lifting for [dominant groups] when it comes to maintaining the status quo.”¹¹⁴

These conflicts, Marcossou notes, are promoted by the American political structure which, in the name of “checks and balances” and a “marketplace of ideas,” encourages competition between groups.¹¹⁵ Groups have limited “interest overlap” on particular political platforms or reforms, and their larger shared interests in progressive antidiscrimination views are too amorphous to provide a solid foundation for coalitional politics.¹¹⁶

Professors Chang and Culp share Marcossou’s concern that the fact of conflicts among identity groups may be inescapable. But they see this as a broader metaphysical problem of relativism. Identity group members cannot “step outside the bounds of our identity to identify a common ‘enemy,’” because it is simply “not possible to find a point outside the discourse to be neutral from which to choose solutions that avoid conflicts among multiple oppressions.”¹¹⁷

Even if the relativist problem of finding neutral ground outside one’s own identity could be surmounted, Chang and Culp then reveal the methodological problem: no common “metric” exists to permit a comparative assessment of different experiences of oppression.¹¹⁸ Although Iris Marion Young, on whom Ehrenreich draws, has proposed a lexicon to discuss situations of oppression—using the terminology of “exploitation,” “marginalization,” “powerlessness,” “cultural imperialism,” and “violence”—those terms are qualitative, subjective, and, most of all, contextual descriptors, not algorithms. As Chang and Culp succinctly conclude, “[d]ifferences, such as race or gender or sexuality, by themselves cannot be assigned fixed values.”¹¹⁹

¹¹¹ *Id.* at 471.

¹¹² *Id.* at 469.

¹¹³ *Id.* at 475.

¹¹⁴ *Id.* at 481.

¹¹⁵ Marcossou, *supra* note 109, at 481.

¹¹⁶ *See id.* at 477-78.

¹¹⁷ Chang & Culp, *supra* note 109, at 487.

¹¹⁸ *Id.* at 488-89.

¹¹⁹ *Id.* at 489.

Taken together, Chang and Culp's and Marcossion's assessments of the prospects for solidarity among subordinated groups seem bleak. But their contributions are heartening for the clarity of vision they provide and invigorating for the inquiry they demand. They command us to consider—along with the inherent limitations on the prospects for unity and the ways disunity works subtly, ineluctably in favor of dominant groups—the difficulties, dangers, and possibilities of political coalitions by subordinated groups. If Chang and Culp and Marcossion are right and conflicts are inevitable, their cautions call upon theoreticians and practitioners who advise subordinated groups about political activism to consider in much greater depth under what circumstances coalitional politics tend to work and when they tend to fail.¹²⁰

An important predicate question to the prospects for political coalition among subordinated groups is what are the contours of those groups—the issue of group membership. Janine M. deManda's Comment, *Our Transgressions: The Legal System's Struggle with Providing Equal Protection to Transgender and Transsexual People*, questions whether the egalitarian promises of the American legal system apply to transgendered and transsexual people.¹²¹ Her article is a stunning reminder that before academics and practitioners can begin to contemplate the interplay of systems of subordination, they must be aware of the populations affected by the oppressive structures. deManda introduces her readers not only to a useful lexicon—carefully explaining the meaning of terms such as “Drag queens, drag kings, nelly fags, and butch dykes along with butch leathermen and queer femmes”¹²²—but also to the lived realities of transsexuals and the transgendered.

Surveying several recent decisions, deManda demonstrates that most transfolk exist without any legal protection of their gender identities. She offers an alternative legal framework that is based on a more complex understanding of the respect accorded to gender expression over time and across cultures. The hope of deManda's article is that perhaps legal indifference or hostility to the claims of translitigants is due to ignorance. If so, her piece—which is an

¹²⁰ Richard Delgado warns against strategic alliances by disempowered groups:

Gains are ephemeral if one wins them by forming coalitions with individuals who really do not have your interest at heart. It's not just that the larger, more diverse group will forget you and your special needs. It's worse than that. You'll forget who you are. And if you don't, you may still end up demonized, blamed for sabotaging the revolution when it inevitably and ineluctably fails.

RICHARD DELGADO, *THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA AND RACE* 118-19 (1995). Other authors, including several of the Symposium authors, are more hopeful about the prospects for political coalitions. See, e.g., NANCY LEVIT, *THE GENDER LINE: MEN, WOMEN, AND THE LAW* 220 (1998).

¹²¹ Janine M. deManda, Comment, *Our Transgressions: The Legal System's Struggle with Providing Equal Protection to Transgender and Transsexual People*, 71 UMKC L. REV. 507 (2002).

¹²² *Id.* at 513. She also gently offers some guidance on etiquette: “Just a bit of friendly advice: Do not ask. It is not imperative that you know a person's birth sex or gender identity in order to interact with them, and it is generally perceived as screamingly rude to ask.” *Id.* at 519, n. 52.

introduction to the vernacular, the lived experiences, and the historical and cross-cultural case for respecting self-determination—may be, in part, a solution.

6. Critical Inquiry into the Fields of Social Power

Joan Williams moves the discussion to the level of meta-theory. The insight she draws from Ehrenreich's work¹²³ is that the focus of critical theorists should not be on identity, "but the interaction of different fields of social power."¹²⁴ Her suggestion is that critical theorists have become mired in the individualism of identity theory. The focus should not be inward—"toward the identity of particular individuals"—but outward, "to theorize," as Williams says, "the social forces that divide subordinated groups."¹²⁵

An internal focus on the perspectives and particulars of individual minority group members, says Williams, is the wrong way to do social theory. Classifications of people based on categorical identity boxes provide unreliable descriptions of both identity and individual interests. This sorting of people according to the perceived interests that should attach to their "social location," Williams points out, is "inaccurate as a picture of . . . identity," which is both fluid and "also shaped by (among other things) one's personality, psychology, and life experience . . ."¹²⁶ Politically, it leads to the problem of "infinite regression": a fragmentation of interests based on the categories of identity and a cacophony of voices based on attempts to include all viewpoints.¹²⁷ Just as capitalism has no theory of enough, individualism has no stopping point in the particulars.

Movement beyond identity theory requires inquiry into the ways "the major fields of social power shape . . . human interactions."¹²⁸ Thinking about gender, for example, as a matter of social power leads away from both individualistic, idiosyncratic interests and from simple, naturalistic theories of causation (e.g., socialization leads to segregated occupational and domestic roles). In Williams' revised model of what were previously thought of as discrete identity categories as force fields of social power, gender (or race or class) structures the economy, politics, even geography. The effort of a new critical social theory that moves beyond identity categories must be to create awareness of the ways that these

¹²³ Her own prior works on the subject also touch on this theme of social power. See Adrienne D. Davis & Joan Williams, *Foreword—Symposium: Gender, Work & Family Project Inaugural Feminist Legal Theory Lecture*, 8 AM. U.J. GENDER SOC. POL'Y & L. 1, 3 (1999) (describing the challenge for critical race theory and feminism in "talking about the complex interactions of different fields of social power, such as race and sexual orientation; and talking about what we all owe to each other in an era when delusions of independence abound"); Joan Williams, *Implementing Antiessentialism: How Gender Wars Turn into Race and Class Conflicts*, 15 HARV. BLACKLETTER L.J. 41, 78 ("If gender is a force field, the configuration of the force depends on the interactions between gender and other fields of social power.").

¹²⁴ Joan C. Williams, *Fretting in the Force Fields: Why the Distribution of Social Power Has Proved So Hard to Change*, 71 UMKC L. REV. 493 (2002).

¹²⁵ *Id.* at 493-94.

¹²⁶ *Id.* at 494.

¹²⁷ *Id.* at 499.

¹²⁸ *Id.* at 494.

forces pull individuals into traditional patterns. Traditional ways of thinking about gender and class, for instance, shape a politics that classifies work and family issues as “marginalized ‘women’s issues’ instead of center-stage economic issues”¹²⁹

Moving from the theoretical level to that of political approaches, Williams is less hopeful than Ehrenreich about the prospects for political coalitions or even solidarity among subordinated groups. In lieu of optimism, Williams offers a very practical “code of ethics” for progressive groups. Recognizing that strained efforts toward larger all-inclusive coalitions may compromise the effectiveness or interests of a group, Williams urges as much inclusivity as possible, but tempered with respect for differences in priorities, room for disagreement, and a Hippocratic “no harm” principle to avoid compensatory subordination as a rhetorical or political tool.¹³⁰

Williams’ work is revolutionary in several senses. As cosmology, it moves away from geocentric identity theory and toward a heliocentric understanding of the forces of social power. As a fledgling political manifesto, it is a beginning template for where and how progressive groups should fight their battles.

IV. CONCLUSION

The contributors to this Symposium have begun explorations into the psychodynamics of oppressive structures, the prospects for coalitional politics, and the hopes for legal theory to revolutionize the doctrinal law of equal protection. As Joan Williams demonstrates, any one structure of social power¹³¹ establishes a way of thinking about oppressive behaviors that makes oppression itself acceptable. This mindset allows assumptions that hierarchies are permissible, maybe natural, and perhaps inevitable to slide easily across identity categories.¹³² The works in this issue, along with other explorations, are beginning to examine the historical, social, and economic predicates for oppression. Understandings of the psychological dimensions of group oppression—such as the historical pattern that periods of atrocity against minority groups are preceded by periods of vilification¹³³—may help in combating persecution.

The contributors have opened candid discussions about the viability and wisdom of political coalitions that will, hopefully, provoke future conversations. Is coalition-building possible? If you were advising a subordinated group about political activism, can you express in a general way when the group should build coalitions and when it should steer away from them?

¹²⁹ Williams, *supra* note 124, at 497.

¹³⁰ *Id.* at 501.

¹³¹ Such as her good example of the press relegating work/family issues to the Style section. *Id.* at 495.

¹³² See generally Hayman & Levit, *supra* note 81, at 159.

¹³³ ALEXANDER TESIS, *DESTRUCTIVE MESSAGES: HOW HATE SPEECH PAVES THE WAY FOR HARMFUL SOCIAL MOVEMENTS* (2002).

The Symposium participants have also made important points about the future of critical discourse and the possibilities for doctrinal change. Indeed, Peter Kwan capsulizes this unease about the gulf between theory and practice in his comment about the fear that the work of legal academics, especially those of a post-modernist bent, “can be both difficult to penetrate and alienated from material life.”¹³⁴ His point should not be underestimated: people discussing the theoretical connections among subordinating systems are having privileged conversations. Is there a concern that real world issues—such as abortion rights, economic or political inequality, sex segregated schools, divisions of domestic responsibilities, custody decisions, and so on—will become harder for the public to care about and understand if the discussion in legal academia moves to the theoretical level of discussing systems of subordination? Or might the theoretical analysis assist people in seeing the systematic nature of discrimination?

Perceiving the patterned workings of discrimination seems to demand systemic analysis—a movement from single issues or individual examples to understandings about oppression more generally. Yet the American public often thinks in individualistic terms, responds to personal experiences, and is apt to dismiss theoretical arguments as academic, arcane, or irrelevant to their lives. Contemporary media influences on political understanding—compression of issues into sound bites or shock journalism—do not encourage deeper theoretical understandings. If sweeping institutional reforms are needed, but the case for them is being made at a high level of theory, what are the real prospects for change? Ideally, this Symposium will spark additional reflections—on the value of coalitional politics, the prospects for obtaining ideological distance from dominant norms, and the ways to merge theoretical advances with grass roots activism.

¹³⁴ Kwan, *supra* note 64, at 326.