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## *ESSAY*

### SHAPING OUR FREEDOM DREAMS: RECLAIMING INTERSECTIONALITY THROUGH BLACK FEMINIST LEGAL THEORY

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*Black feminist legal theory has offered the tool of intersectionality to modern feminist movements to help combat interlocking systems of oppression. Despite this tremendous offering, intersectionality has become wholly divorced from its Black feminist origins. This is significant because without a deep engagement with Black feminist legal theory, intersectionality is devoid of its revolutionary potential. In an attempt to reclaim the term, I offer a brief history of Black feminist legal theory and outline the theory's impact through the widespread modern use of intersectionality. Lastly, I highlight how modern feminist movements can honor Black women's contributions to the movement and achieve greater progress by relying on the original meaning of intersectionality as defined by Kimberlé Crenshaw.*

“In the silence that followed, Baby Suggs, holy, offered up to them her great big heart. She did not tell them to clean up their lives or to go and sin no more. She did not tell them they were the blessed of the earth, its inheriting meek or its glorybound pure. She told them that the only grace they could have was the

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grace they could imagine. That if they could not see it, they would not have it. 'Here,' she said, 'in this here place, we flesh; flesh that weeps, laughs; flesh that dances on bare feet in grass. Love it. Love it hard.'

Toni Morrison, *Beloved*<sup>1</sup>

#### INTRODUCTION

The American classic, *Beloved*, shares the story of a Black mother, Sethe, who is haunted by the ugliness of slavery long after she is emancipated. Sethe finds brief reprieve from her haunting memories when she recalls the stirring sermons that Baby Suggs, her mother-in-law, would offer to the other emancipated Black folk in town. Standing on a large rock amidst a clearing in the woods, Baby Suggs would shout invocations so enchanting that all who heard her responded with unabashed laughter, dancing, and tears. Once the energized townsfolk were gratifyingly exhausted, letting silence fill the clearing once more, Baby Suggs would share the fullness of her heart through a powerful sermon. She invited her community to foster an imagination capable of propelling them beyond their dehumanizing past and towards a deeper self-love. The novel culminates when the Black women of the town do just this, as they ultimately save Sethe from the specter that is haunting her by banding together to cast it out.

The collective struggle of the Black women in *Beloved* mirrors the essential function of Black feminist legal theory. Heeding Baby Suggs's call, Black feminist legal theorists imagine beyond the confines of the legal academy's margins, skillfully developing their own legal theory in order to write themselves into larger conversations. The push to imagine beyond erasure, as is emphasized tenderly by Baby Suggs's invocation, is a will to love hard the core, human elements of Black women's belonging. Not a holy mission, but a human one meant to unearth the depths of selfhood that are constantly denied until a new and liberating understanding is discovered.

It is critical to contextualize the function of Black feminist legal theory because, since it exists as a distinctly humanizing practice, it demands respect. Humanizing, here, distinguishes Black feminist practice from the normative approach of the legal academy.<sup>2</sup> Legal scholarship offers well-

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<sup>1</sup> Toni Morrison, *Beloved* 103 (Vintage Int'l 2004).

<sup>2</sup> Nikol G. Alexander-Floyd, Critical Race Black Feminism: A "Jurisprudence of Resistance" and the Transformation of the Academy, 35 *J. Women Culture & Soc'y* 810, 810

meaning, oftentimes essential, theoretical tools to the legal field, but there is no prescriptive requirement that scholarship operate in the service of any particular community. And while there is some merit to wrestling with intangible, looming social issues for its own sake, Black feminist legal theorists must contend with the specific, material realities present within their community with the goal of eradicating oppression.<sup>3</sup> Black feminist legal theory has produced frameworks with deliberate and urgent liberatory purpose; any misuse of these frameworks is, at best, irresponsible and, at worst, a continuation of the legal field's devaluation of Black female scholarship.<sup>4</sup>

Any attempt to honor a body of work raises the question of what constitutes proper respect. Modern widespread usage of "intersectionality," a framework developed by Black feminist legal theorist Kimberlé Crenshaw, most clearly embodies this issue with regard to the appropriate engagement of Black feminist legal theory. Intersectionality appears often in the vernacular of modern social movements, ranging from the Women's March on Washington to social media campaigns such as #MeToo and #BlackLivesMatter.<sup>5</sup> While it might seem respectful for a Black feminist legal framework to be widely recognized, if intersectionality is divorced from its radical and action-oriented roots, then it could be argued that the framework is not being respected at all.<sup>6</sup> Crenshaw herself has pointed out the constant

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(2010) ("[T]he law, more than any other area of the academy, has vaunted pretensions to hyper-rationality, objectivity, and power. . . . [Additionally,] legal reasoning presents itself as the ultimate standard in intellectual achievement, a white masculinist posture that holds special challenges for black female lawyers and law professors who are taken as the law's embodied antithesis.").

<sup>3</sup> See, e.g., The Combahee River Collective: A Black Feminist Statement, *in* *Capitalist Patriarchy and the Case for Socialist Feminism* 362, 362 (Zillah R. Eisenstein ed., 1979) ("As black women we see black feminism as the logical political movement to combat the manifold and simultaneous oppressions that all women of color face." Specifically, Black feminists are "actively committed to struggling against racial, sexual, heterosexual, and class oppression.").

<sup>4</sup> See Taunya Lovell Banks, *Two Life Stories: Reflections of One Black Woman Law Professor*, 6 *Berkeley Women's L.J.* 46, 48 (1990) ("As it is, Black women academics/intellectuals already occupy a precarious position in legal education. We are misfits, not fully accepted by the Black or White community, and as women, we still are not full members of the feminist community.").

<sup>5</sup> See, e.g., Kory Stamper, *A Brief, Convoluted History of the Word 'Intersectionality,'* *Cut* (Mar. 9, 2018), <https://www.thecut.com/2018/03/a-brief-convoluted-history-of-the-word-intersectionality.html> [<https://perma.cc/7KAW-YMF8>].

<sup>6</sup> See Claudia Garcia-Rojas, *Intersectionality Is a Hot Topic—and So Is the Term's Misuse*, *Truthout* (Oct. 17, 2019), <https://truthout.org/articles/intersectionality-is-a-hot-topic-and-so-is-the-terms-misuse/> [<https://perma.cc/B8NA-XGUQ>].

misapplication of intersectionality.<sup>7</sup> In fact, it is widely argued that intersectionality has become irredeemably misappropriated, and some Black feminist scholars even suggest that Black feminists should intentionally divest from the term altogether.<sup>8</sup> Even still, just like the Black women gathered around Sethe at the end of *Beloved* to rid her of her specter, so shall Black women reach out and reclaim Black feminist legal theory to place it back at the helm of its origins. Not purely for theory, but as a way to honor the work as an extension of the “flesh that weeps, laughs,” and “dances on bare feet in grass.”<sup>9</sup>

This Essay is an attempt to reclaim the term “intersectionality” by reconnecting it to its Black feminist roots. In particular, I will contextualize intersectionality as a tool developed by Black feminist legal theory in order to determine the term’s proper purpose and utility. By recentering the term, I hope to signal a recentering of Black feminist legal theory’s past and present influence on modern feminist movements. In Part I, I will offer a brief overview of the origins of Black feminist legal theory alongside a careful analysis of intersectionality. In Part II, I will detail the impact of Black feminist legal theory on mainstream feminist movements, specifically through the utility of intersectionality as a critical lens in the #MeToo Movement and the #SayHerName Campaign. In Part III, I will develop a Black feminist critique of modern antidiscrimination law, namely through the U.S. Supreme Court’s 2020 ruling in *Bostock v. Clayton County* that extended Title VII protections to gender identity and sexual orientation, in order to guide future equity efforts. In conclusion, I offer concrete steps for modern feminist movements to truly progress from this point of stagnation.

## I. THE ORIGINS OF BLACK FEMINIST LEGAL THEORY AND INTERSECTIONALITY

### A. *Overview of Black Feminist Legal Theory*

In her paper *Critical Race Black Feminism: A “Jurisprudence of Resistance” and the Transformation of the Academy*, Black feminist legal

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<sup>7</sup> See Kimberlé Crenshaw on Intersectionality, More Than Two Decades Later, Colum. L. Sch. (June 08, 2017), <https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later> [<https://perma.cc/AA8T-E44C>].

<sup>8</sup> See Jennifer C. Nash, *Black Feminism Reimagined: After Intersectionality* 21–22 (Duke Univ. Press 2019).

<sup>9</sup> Morrison, *supra* note 1, at 103.

scholar Nikol G. Alexander-Floyd outlines the development of Black feminist legal theory, as well as its subsequent impact on the legal academy. Black feminist legal theory initially emerged out of critical race theory (“CRT”) as Black feminist legal scholars expounded upon “critical race theory’s basic frameworks to address questions of class, gender, and sexuality.”<sup>10</sup> Black feminist legal theory similarly distinguished itself from existing legal theory, namely feminist legal theory and critical legal studies (“CLS”), by highlighting the shortcomings of contemporary discourse within the legal academy. Therefore, an accurate overview of Black feminist legal theory’s origins requires addressing the specific ways it aligns with and has diverged from CLS, feminist legal theory, and CRT.

Black feminists fundamentally agreed with CLS’s view that the creation and application of law propagates an intrinsic “political dimension” that “serves to structure mass consciousness and contributes to the reproduction of the social and political structures of liberal society.”<sup>11</sup> Nevertheless, CLS’s overall subpar racial analysis led many Black feminists to deem CLS “inconsistent and theoretically unsatisfying.”<sup>12</sup> Certain CLS scholars believed the use of a racial lens when critiquing the law was “instrumentalist.”<sup>13</sup> Other CLS scholars maintained a postmodern social constructionist view of race that would “downplay, neglect, or trivialize the interrelationship of law and race altogether.”<sup>14</sup>

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<sup>10</sup> Alexander-Floyd, *supra* note 2, at 812.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*; see also *Critical Race Theory: The Key Writings That Formed the Movement* xxiv (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., The New Press 1995) (“During the eighties, [CLS scholars] had been debating the issue of ‘instrumentalist’ . . . accounts of law . . . [which they believed] embodied a constricted view of the range and sites of the production of social power, and hence of politics. . . . [Instrumentalism] ignored the ways that law and other merely ‘superstructural’ arenas helped to constitute the very interests that law was supposed merely to reflect.”).

<sup>14</sup> Alexander-Floyd, *supra* note 2, at 812. The postmodern social constructionist view in question, referred to as “racialism,” is defined as “theoretical accounts of racial power that explain legal and political decisions which are adverse to people of color as mere reflections of underlying white interest.” *Critical Race Theory: The Key Writings That Formed the Movement*, *supra* note 13, at xxiv.

Similar to its criticisms of CLS, a significant Black feminist critique of feminist legal theory was its lack of a developed racial analysis.<sup>15</sup> Feminist legal theory's reliance on essentialist views of womanhood demonstrates this shortcoming.<sup>16</sup> In *Race and Essentialism in Feminist Legal Theory*, Angela P. Harris critiques the gender essentialism within the writings of prominent feminist legal theorists Catharine MacKinnon and Robin West. Harris agrees with the utility of categorization within feminist legal theory, but she exposes the implicit essentialism of even a purposefully race-neutral approach to the category of "women." Harris notes that "feminist legal theory, . . . despite its claim to universality, seems to" define the category of "women" as "white, straight, and socioeconomically privileged."<sup>17</sup> Harris highlights the differing approach of Black feminist legal theory, which intentionally constructs categories as "explicitly tentative, relational, and unstable."<sup>18</sup> In addition to embracing multiple consciousness,<sup>19</sup> Harris outlines that Black feminist legal theory offers "at least three major contributions" to feminist legal theory, which include "the recognition of a self that is multiplicitous, not unitary; the recognition that differences are always relational rather than inherent; and the recognition that wholeness and commonality are acts of will and creativity, rather than passive discovery."<sup>20</sup>

Despite these differences, however, there are many similarities between Black feminist legal theory and CRT. This is largely because many of CRT's foundational scholars, such as Kimberlé Crenshaw, also provide the backbone of Black feminist legal theory.<sup>21</sup> In Angela P.

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<sup>15</sup> See Patricia Hill Collins, *Distinguishing Features of Black Feminist Thought*, in *Black Feminist Thought* 24, 24 (Routledge 2009) (outlining the contours of Black feminist thought as contradictory to contemporary white feminism).

<sup>16</sup> Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan. L. Rev.* 581, 585 (1990) ("[G]ender essentialism [is] the notion that a unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience.").

<sup>17</sup> *Id.* at 588.

<sup>18</sup> *Id.* at 586.

<sup>19</sup> *Id.* at 584 ("[Multiple consciousness] is a premise . . . that we are not born with a 'self,' but rather are composed of a welter of partial, sometimes contradictory, or even antithetical 'selves.' . . . As I use the phrase, 'multiple consciousness' as reflected in legal or literary discourse is not a golden mean or static equilibrium between two extremes, but rather a process in which propositions are constantly put forth, challenged, and subverted.").

<sup>20</sup> *Id.* at 608.

<sup>21</sup> Other Black feminist legal theorists who are also CRT scholars include, but are not limited to, the following: Angela P. Harris, Patricia Williams, Regina Austin, Cheryl I. Harris, and Paulette M. Caldwell.

Harris's paper, *Foreword: The Jurisprudence of Reconstruction*, she asserts the Black feminist acceptance of CRT as a "critical social science" that emphasizes that "[t]he crisis in our social system is our collective failure to adequately perceive or to address racism."<sup>22</sup> Specifically, Black feminist legal theory agrees that this crisis is "caused by a false understanding of 'racism' as an intentional, isolated, individual phenomenon, equivalent to prejudice" instead of "as a structural flaw in our society."<sup>23</sup> Harris notes that CRT's commitment to postmodernist skepticism of law's neutrality, when juxtaposed with its modernist aspirations to achieve racial liberation, creates a tension within the theory.<sup>24</sup> Black feminist legal theory responds to this tension by offering a "jurisprudence of resistance."<sup>25</sup> Cheryl I. Harris's paper *Law Professors of Color and the Academy: Of Poets and Kings* asserts that a jurisprudence of resistance requires legal scholars of color "to tell a different story that is neither known or familiar and indeed may be disturbing, annoying, and frightening."<sup>26</sup> Harris does not fret whether she is taking a postmodernist or modernist approach; instead, she focuses on her responsibility as a Black woman within the legal academy to uplift "a jurisprudence that resists subordination and empowers."<sup>27</sup> She achieves this in her paper by relying on the CRT-inspired narrative format,<sup>28</sup> sharing her experience as a Black female law professor at a time when she was one of few. Harris ultimately acknowledges that while "[t]here is much room for debate as to how we achieve" social transformation, the task should be "to take risks, raise contradictions, raise consciousness, and develop an oppositional role—not for its own sake, but for the sake

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<sup>22</sup> Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 *Calif. L. Rev.* 741, 752 (1994).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 743 ("In CRT's 'postmodern narratives,' racism is an inescapable feature of western culture, and race is always already inscribed in the most innocent and neutral-seeming concepts. Even ideas like 'truth' and 'justice' themselves are open to interrogations that reveal their complicity with power. . . . In its 'modernist narratives,' CRT seems confident that crafting the correct theory of race and racism can help lead to enlightenment, empowerment, and finally to emancipation: that, indeed, the truth shall set you free.").

<sup>25</sup> Cheryl I. Harris, *Law Professors of Color and the Academy: Of Poets and Kings*, 68 *Chi.-Kent L. Rev.* 331, 350 n.52 (1992).

<sup>26</sup> *Id.* at 333.

<sup>27</sup> *Id.*

<sup>28</sup> Alexander-Floyd, *supra* note 2, at 812 ("Many critical race theorists, for instance, employ irony, storytelling, and the relaying of personal experiences in an effort to affront and expose the law's false presentation of itself as linear, objective, unyielding, and timeless.").

of those of us who remain under the burden of inequities and injustice in the social order.”<sup>29</sup>

Evident through its departures from CLS, feminist legal theory, and CRT, Black feminist legal theory presents a distinct lens through which Black feminist legal scholars have shaped a liberatory practice. This practice ultimately pairs critical legal analyses with social awareness drawn from Black feminism. A close examination of intersectionality can further flesh out the defining tenets of Black feminist legal theory.

### *B. Overview of Intersectionality*

The term “intersectionality” is widely used both within and outside of legal scholarship. Many who use the term may be vaguely aware that it was coined by Kimberlé Crenshaw. Likely fewer have read the legal paper, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, in which Crenshaw developed the term to criticize the courts’ inability to recognize the distinct ways discrimination impacts Black women.<sup>30</sup> What is often overlooked, however, is that the term was presented as a framework to challenge the “single-axis”<sup>31</sup> approach to identity that invariably rendered Black women invisible in both feminist and antiracist policy discourse. While intersectionality does encompass Black women’s distinct experiences with discrimination, its main concerns were the broader inability of antidiscrimination law to offer any remedy to those who are “multiply-burdened.”<sup>32</sup> This broader purpose does not belittle the importance of Crenshaw’s predominant focus on Black women’s experiences,<sup>33</sup> but it offers context that will help to counter contemporary misappropriations of the term.

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<sup>29</sup> Harris, *supra* note 25, at 351.

<sup>30</sup> 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, 140.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Much of Crenshaw’s legal scholarship focuses on the conditions of Black women. See, e.g., Kimberlé W. Crenshaw, *We Still Have Not Learned from Anita Hill’s Testimony*, 26 UCLA Women’s L.J. 17 (2019); Kimberlé W. Crenshaw, *Close Encounters of Three Kinds: On Teaching Dominance Feminism and Intersectionality*, 46 Tulsa L. Rev. 151 (2010); Kimberlé Crenshaw, *Race, Gender, and Sexual Harassment*, 65 S. Cal. L. Rev. 1467 (1992).



Due to the overemphasis many put on the identity component of intersectionality,<sup>34</sup> the term has become misrepresented as additive instead of reconstitutive.<sup>35</sup> Intersectionality does not simply add identity categories together to create an analysis of another group's experience, e.g., the normative "Black experience" + the normative "trans experience" together constitute the Black trans experience.<sup>36</sup> Similarly, intersectional is not shorthand for "association and/or allyship with various differing identity groups."<sup>37</sup> Another modern misappropriation of intersectionality is its use as a personal identifier, i.e., "intersectional feminist."<sup>38</sup> This reflects a misunderstanding of how intersectionality operates predominantly as a framework to identify the production of harm towards the multiply burdened, not an ideology.<sup>39</sup> Lastly, many people misconstrue which specific identities qualify as intersectional, i.e., Blackness, womanhood, queerness, etc., and which identities, while they might be held concurrently, would never fall within the purview of intersectionality, i.e., whiteness, maleness, heterosexuality, etc.<sup>40</sup> These misappropriations imply a shallow engagement with intersectionality that ultimately abandons the term's Black feminist underpinnings to "trade[] on the currency and intellectual sexiness of the term while displacing

<sup>34</sup> See, e.g., Joe Kort, Understanding Intersectional Identities, *Psych. Today* (June 25, 2019), <https://www.psychologytoday.com/us/blog/understanding-the-erotic-code/201906/understanding-intersectional-identities> [<https://perma.cc/9K5K-WBHF>] (focusing on identities without underscoring the systemic nature of inequality).

<sup>35</sup> The fact that intersectionality is not additive is reasserted often by Crenshaw herself, particularly on her social media page. In 2020, more than thirty years after she coined intersectionality, Crenshaw tweeted, "Intersectionality is not additive. It's fundamentally reconstitutive. Pass it on." Kimberlé Crenshaw (@sandylocks), Twitter (June 26, 2020, 1:41 PM), <https://twitter.com/sandylocks/status/1276571389911154688?lang=en>.

<sup>36</sup> Kort, *supra* note 34 (outlining lived experience as being the composite of multiple identities).

<sup>37</sup> See, e.g., Crenshaw, *supra* note 7 ("Some people look to intersectionality as a grand theory of everything [or] a blanket term to mean, 'Well, it's complicated[,]'. . . [b]ut that's not my intention.").

<sup>38</sup> See Alia E. Dastagir, What Is Intersectional Feminism? A Look at the Term You May Be Hearing a Lot, *USA Today* (Jan. 25, 2017, 8:02 AM), <https://www.usatoday.com/story/news/2017/01/19/feminism-intersectionality-racism-sexism-class/96633750/> [<https://perma.cc/FBZ2-3EXD>].

<sup>39</sup> See, e.g., Crenshaw, *supra* note 7.

<sup>40</sup> For example, conservative pundit Ben Shapiro incorrectly defines intersectionality as "a form of identity politics in which the value of your opinion depends on how many victim groups you belong to." Jane Coaston, The Intersectionality Wars, *Vox* (May 28, 2019, 9:09 AM), <https://www.vox.com/the-highlight/2019/5/20/18542843/intersectionality-conservatism-law-race-gender-discrimination>. This implies intersectionality applies to any person who maintains at least one "victim group" identity, which is a mischaracterization. See *id.*

black female subjectivity.”<sup>41</sup> In an attempt to correct these many common misappropriations and recenter Black feminist legal theory, I will offer an overview of how intersectionality was originally defined by Crenshaw.

An accurate overview of intersectionality requires a close reading of *Demarginalizing the Intersection of Race and Sex*. Crenshaw spends most of the paper defining “the problem of intersectionality,”<sup>42</sup> stating clearly that “any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.”<sup>43</sup> The insufficient analysis Crenshaw principally critiques throughout her paper was the dominant view of antidiscrimination law at the time, which predicated recognition of legal discrimination on “the experiences of those who are privileged *but for* their racial or sexual characteristics.”<sup>44</sup> The “but for” approach relied on the premise that antidiscrimination law corrected aberrations within an inherently impartial society. When unlawful discrimination occurred, it was perceived as “the identification of a specific class or category; either a discriminator intentionally identifies this category, or a process is adopted which somehow disadvantages all members of this category.”<sup>45</sup> Crenshaw goes on to point out that the implied linearity of discrimination assumed by the “but for” approach results in the belief that “a discriminator treats all people within a race or sex category similarly.”<sup>46</sup>

This underlying belief makes itself most apparent in how courts test the strength of discrimination suits. For example, if a woman pursues a gender discrimination suit against her previous employer, the court would evaluate said employer’s treatment of its other female employees for any signs of gender-based discriminatory practice. The court’s goal is to find congruous mistreatment of female employees as a cohesive group as compared to male employees.<sup>47</sup> The problem with this approach, Crenshaw notes, is that the court’s category of “women” is defined using

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<sup>41</sup> Alexander-Floyd, *supra* note 2, at 817.

<sup>42</sup> Crenshaw, *supra* note 30, at 141.

<sup>43</sup> *Id.* at 140.

<sup>44</sup> *Id.* at 151.

<sup>45</sup> *Id.* at 150.

<sup>46</sup> *Id.*

<sup>47</sup> See, e.g., *id.* at 142 (citing *DeGraffenreid v. Gen. Motors Assembly Div.*, 413 F. Supp. 142, 143–45 (E.D. Mo. 1976), to stand for the proposition that since “General Motors did hire women—albeit *white women*—during the period that no Black women were hired, there was, in the court’s view, no sex discrimination”).

the experience of the most privileged members of the group.<sup>48</sup> Therefore, if the aforementioned woman filing a gender discrimination suit were Black, her experiences may look nothing like the more familiar gender-based discrimination directed towards white women. In fact, the discrimination experienced by a Black female employee could be so racially informed that similar mistreatment has never been experienced by a white female co-worker despite their shared gender.

Unfortunately, the same erasure could be said to exist along racial lines, as Black women often experience anti-Black racism much differently than Black men.<sup>49</sup> Crenshaw notes that “the equation of racism with what happens to . . . Black men” will invariably “marginalize those whose experiences cannot be described within [those] tightly-drawn parameters.”<sup>50</sup> Compounding this legal erasure, the uniqueness of Black women’s experiences with discrimination has led some courts to deem Black female plaintiffs incapable of properly representing gender-based or race-based class action suits.<sup>51</sup> This ultimately leaves Black women without any reliable legal remedy when pursuing racial or gender discrimination suits. Crenshaw rejects this relegation of Black women to the unprotected margins and offers intersectionality as a “Black feminist criticism” of the dominant, single-axis framework in antidiscrimination law. She concludes her critique by rejecting both the idea that Black women experience unique discrimination and the claim that they experience discrimination that is the same as white women or Black men. Crenshaw underscores that this seeming contradiction occurs because the rigidity of the single-axis approach leads to logical inconsistencies. “The point is that Black women can experience discrimination in any number of ways and that the contradiction arises from our assumptions that their claims of exclusion must be unidirectional.”<sup>52</sup> Intersectionality serves to broaden the way courts manage marginalized identities by highlighting

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<sup>48</sup> See, e.g., *id.* at 143 (“Under th[e] view [held by the *DeGraffenreid* court], Black women are protected only to the extent that their experiences coincide with those of either of the two groups[—white women or Black men].”).

<sup>49</sup> See Jocelyn Frye, *Racism and Sexism Combine To Shortchange Working Black Women*, *Ctr. for Am. Progress* (Aug. 22, 2019, 12:01 AM), <https://www.americanprogress.org/issues/women/news/2019/08/22/473775/racism-sexism-combine-shortchange-working-black-women/> [<https://perma.cc/3WYL-H3V5>].

<sup>50</sup> Crenshaw, *supra* note 30, at 152.

<sup>51</sup> *Id.* at 146–48.

<sup>52</sup> *Id.* at 149.

the compound nature of structural inequity.<sup>53</sup> Crenshaw's push for the law to embrace complexity speaks to intersectionality's Black feminist foundation, which diverges sharply from the shallow contemporary usage of the term.<sup>54</sup>

It is obvious, then, that intersectionality is not additive. The reconstitutive nature of the term lies within its potential to constantly complicate known narratives and expose completely new ways of being.<sup>55</sup> Intersectionality embraces the importance of Black women as a cohesive marginalized group, but it also intentionally rejects prescribing the reality of a few Black women as applicable to all Black women.<sup>56</sup> Additionally, the term could not be a standalone identifier of a person's politics or act as shorthand for an "association with various identity groups" because the term's purpose is to identify the negative, discriminatory systems acting on marginalized people.<sup>57</sup> The focus on marginalized people also outlines the boundaries of intersectionality—the term does not apply to all identities.<sup>58</sup> Ultimately, intersectionality's purpose is to act as a tool, identifying sources of discrimination in the service of those who are marginalized. To further extend the analogy, intersectionality operates as a magnifying glass. While it can be helpful to better identify in detail harmful structures, it is a useless term when it is divorced from its Black feminist roots. Those who wield the magnifying glass as their only tool will find themselves unable to dismantle the structures they have identified. That is why it is important for intersectionality to be recentered as a Black feminist legal framework, so that it can be supplemented with other tools better suited to pull apart oppressive systems. Modern feminist movements have benefitted greatly from general applications of intersectionality, but they would achieve greater progress if their usage of intersectionality was properly couched in Black feminist practice.

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<sup>53</sup> See *At the Crossroads of Gender and Racial Discrimination*, World Conf. Against Racism, <https://www.un.org/WCAR/e-kit/gender.htm> [<https://perma.cc/2HSC-TPF8>] (last visited Sept. 30, 2020).

<sup>54</sup> Coaston, *supra* note 40.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Crenshaw, *supra* note 30, at 140.

<sup>58</sup> See, e.g., Nikol G. Alexander-Floyd, *Disappearing Acts: Reclaiming Intersectionality in the Social Sciences in a Post-Black Feminist Era*, 24 *Feminist Formations* 1, 19 (2012) (“[I]ntersectionality research must focus on illuminating women of color as political subjects and the gender, racial, class, and sexual politics that impact their lives.”).

## II. INTERSECTIONALITY AND MODERN FEMINIST MOVEMENTS

A. *The #MeToo Movement*

The influence of Black feminist legal theory on modern feminist movements, specifically through the usage of intersectionality, is substantial. Two recent national feminist movements that both embody the “problem of intersectionality” and utilize an intersectional lens to contend with this problem are the #MeToo Movement and the #SayHerName Campaign. The phrase “Me Too” was first developed in 2006 by Black activist Tarana Burke.<sup>59</sup> Burke hoped the inclusive framing of the phrase would encourage isolated survivors of sexual violence, specifically Black women and girls, to know that they did not have to manage their trauma alone.<sup>60</sup> The phrase developed into what is now known as the #MeToo Movement in 2017, when white actress Alyssa Milano used the phrase on Twitter in response to multiple accusations of sexual violence against film producer Harvey Weinstein.<sup>61</sup> In her paper *Maximizing #MeToo: Intersectionality and the Movement*, Jamillah Williams outlines the subsequent lack of Black women’s engagement in the social media campaign, despite its considerable potential for inclusivity.<sup>62</sup> Williams highlights that “[a] joint study by the Massive Data Institute and Gender + Justice Initiative at Georgetown University estimates that less than 1% of tweets with the hashtag #MeToo were identifiable to a Black participant.”<sup>63</sup> Williams addresses this incongruity by using an intersectional lens to identify why the #MeToo Movement did not attract Black women.

The intersectional lens Williams uses is predominantly informed by the paper *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, in which Kimberlé Crenshaw fleshes out how structural, political, and representational intersectionality

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<sup>59</sup> Jamillah Bowman Williams, Lisa Singh & Naomi Mezey, *#MeToo as Catalyst: A Glimpse into 21st Century Activism*, 2019 U. Chi. Legal F. 371, 374.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Jamillah Bowman Williams, *Maximizing #MeToo: Intersectionality and the Movement*, B.C. L. Rev. (forthcoming 2020) (on file with the Georgetown Law Library), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3299&context=facpub> [<https://perma.cc/C5AP-KESJ>].

<sup>63</sup> *Id.* at 36.

informs violence against Black women, particularly sexual violence.<sup>64</sup> Williams relies on Crenshaw’s structural, political, and representational intersectionality frameworks to highlight why Black women are not sufficiently represented in a movement that relies on a phrase developed by a Black woman for survivors within her community.<sup>65</sup> Crenshaw defines structural intersectionality as “the consequence of gender and class oppression . . . [that] are then compounded by the racially discriminatory employment and housing practices women of color often face.”<sup>66</sup> Williams points out that Black women face unique material dangers when outing an abuser, which might be less prominent for a white woman with access to more financial independence. Some of these financial obstacles include “poverty, childcare responsibilities, and [a] lack [of] social capital and job skills—which is only exacerbated by racial disadvantage.”<sup>67</sup> These fears, paired with “fears of retaliation . . . and different perspectives of the justice system[,]” may dissuade many Black women from publicly participating in the #MeToo Movement.<sup>68</sup>

As for political intersectionality, Crenshaw describes it as contending with “the fact that women of color are situated within at least two subordinated groups that frequently pursue conflicting political agendas.”<sup>69</sup> While Black women aspire to show gender solidarity with other female survivors of sexual violence, they may also wrestle with possibly betraying racial solidarity by outing a Black male abuser.<sup>70</sup> Williams offers examples of this phenomenon by pointing to the racial tensions that ensued when Anita Hill accused Justice Clarence Thomas of sexual harassment, and multiple Black women and girls accused musician R. Kelly of sexual violence.<sup>71</sup> In Thomas’s case, once he referred to his accusations as a “high-tech lynching for uppity Blacks,” a source found

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<sup>64</sup> Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *Stan. L. Rev.* 1241 (1991).

<sup>65</sup> Williams, *supra* note 62, at 36–37.

<sup>66</sup> Crenshaw, *supra* note 64, at 1246.

<sup>67</sup> Williams, *supra* note 62, at 36.

<sup>68</sup> *Id.* at 37.

<sup>69</sup> Crenshaw, *supra* note 64, at 1251–52.

<sup>70</sup> See Nat’l Org. for Women, *Black Women & Sexual Violence*, <https://now.org/wp-content/uploads/2018/02/Black-Women-and-Sexual-Violence-6.pdf> [<https://perma.cc/MG8-R-5NB3>] (“A national study found that ninety-one percent of Black women are sexually assaulted by Black men . . . In these instances, Black women are faced with an impossible task, asked to ‘betray’ a member of their own community to report their assault.”).

<sup>71</sup> Williams, *supra* note 62, at 39.

that “Black support of Thomas doubled.”<sup>72</sup> By framing sexual harassment allegations as a racial attack, despite the accusations coming from a Black woman, Thomas was able to manipulate racial solidarity to defend his sexual abuse of a woman within his own community. Similarly, R. Kelly’s popularity within the Black community allowed many Black people to excuse his vile sexual acts. Despite some of his victims being Black girls who were as young as fourteen years old,<sup>73</sup> racial solidarity compelled both Black men and women to support R. Kelly due to their desire to protect a Black man from alleged racial persecution.<sup>74</sup>

The Black community’s abandonment of Black women and girls in pursuit of racial solidarity is facilitated by representational intersectionality, which Crenshaw defines as a linkage between “the devaluation of women of color . . . [and their representation] in cultural imagery.”<sup>75</sup> Negative stereotypes of Black women and girls as hypersexual cultivated a lack of societal empathy for the Black female victims of R. Kelly’s sexual violence and for Anita Hill.<sup>76</sup> The media plays a large role in dehumanizing Black women through misrepresentations that “crystallize the tropes and stereotypes that contribute to” white women victims receiving more empathy than Black women victims.<sup>77</sup> In this same vein, media portrayals of “#MeToo victims as famous and predominately white celebrities . . . reinforced marginalization of women of color’s experiences within the movement.”<sup>78</sup> Through an awareness of how intersectional harms influence Black women’s lack of engagement with the #MeToo Movement, Williams ultimately points to alternative intersectional approaches to sexual violence that better aid Black women. For example, she proposes a broader approach to workplace harassment legislation, an

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<sup>72</sup> *Id.*

<sup>73</sup> See Lisa Respers France, R. Kelly Scandal: A Timeline, CNN (Jan. 11, 2019, 7:13 AM), <https://www.cnn.com/2019/01/10/entertainment/r-kelly-timeline/index.html> [<https://perma.cc/XJ9G-LVF9>].

<sup>74</sup> See Jemele Hill, R. Kelly and the Cost of Black Protectionism, Atlantic (Jan. 11, 2019), <https://www.theatlantic.com/entertainment/archive/2019/01/r-kelly-and-cost-black-protectionism/580150/> [<https://perma.cc/S7NT-JVTP>].

<sup>75</sup> Crenshaw, *supra* note 64, at 1282.

<sup>76</sup> See *Girlhood Interrupted: On R. Kelly and How Black Girls Are Viewed in Our Society*, Blackburn Ctr. (Feb. 5, 2019), <https://www.blackburncenter.org/post/2019/02/05/girlhood-interrupted-on-r-kelly-and-how-black-girls-are-viewed-in-our-society> [<https://perma.cc/YC-H2-HA6W>].

<sup>77</sup> Williams, *supra* note 62, at 40.

<sup>78</sup> *Id.* at 41.

increase in collective action and unionization, and greater focus on pay equity and living wages to increase financial independence among women of color.<sup>79</sup> Each of these approaches is directly linked to an intersectional lens being applied to the problem of sexual violence and crafting solutions that deal with the unique harms faced specifically by women of color.<sup>80</sup>

### *B. The #SayHerName Campaign*

In addition to sexual violence, the “problem of intersectionality” plagues Black women in another social arena: police brutality. Though Black women are similarly impacted by police and state violence,<sup>81</sup> the Black male dominated narrative of the larger #BlackLivesMatter movement erases this fact. Black men are centered as though they are solely raced and not gendered, making them the perfect representatives of police violence for the Black community.<sup>82</sup> Black women, on the other hand, are perpetually othered due to their gender and therefore deemed too dissimilar to properly represent the entire Black community.<sup>83</sup> This erasure has led Black women to create the #SayHerName Campaign as an intersectional response to the #BlackLivesMatter movement.<sup>84</sup> Kimberlé Crenshaw herself has been a major proponent of the #SayHerName Campaign, highlighting just how strongly her work has influenced this initiative.<sup>85</sup> The campaign was initiated by the African American Policy Forum (“AAPF”) and Center for Intersectionality and

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<sup>79</sup> See *id.* at 50–63.

<sup>80</sup> See *Sexual Violence & Women of Color: A Fact Sheet*, Ohio All. To End Sexual Violence, <https://www.oaesv.org/site/assets/files/1324/oaesv-sexual-violence-women-of-color.pdf> [<https://perma.cc/3FAE-ZW95>] (last visited Sept. 30, 2020).

<sup>81</sup> Kimberlé W. Crenshaw, Andrea J. Ritchie, Rachel Anspach, Rachel Gilmer & Luke Harris, *Afr. Am. Pol’y F.*, *Say Her Name: Resisting Police Brutality Against Black Women* 1–2 (2015).

<sup>82</sup> See Brittney Cooper, *Why Are Black Women and Girls Still an Afterthought in Our Outrage over Police Violence?*, *Time* (June 4, 2020, 6:39 AM), <https://time.com/5847970/police-brutality-black-women-girls/> [<https://perma.cc/93PS-KZ4D>].

<sup>83</sup> See, e.g., Crenshaw, *supra* note 30, at 162–63 (“Black women’s particular interests are . . . relegated to the periphery in public policy discussions about the presumed needs of the Black community [because] . . . [t]he struggle against racism seemed to compel the subordination of certain aspects of the Black female experience in order to ensure the security of the larger Black community.”).

<sup>84</sup> Crenshaw et al., *supra* note 81, at 2–4.

<sup>85</sup> #SayHerName Campaign, *Afr. Am. Pol’y F.*, <https://aapf.org/sayhername> [<https://perma.cc/689X-Z8PJ>] (last visited Sept. 15, 2020).



Social Policy Studies (“CISPS”) in December 2014.<sup>86</sup> Their purpose was to both uplift Black women and girls who were victims of police violence and offer “an intersectional framework for understanding black women’s susceptibility to police brutality and state-sanctioned violence” in order “to effectively mobilize various communities and empower them to advocate for racial justice.”<sup>87</sup> The campaign not only addresses how Black liberation movements often perpetuate the exclusion of Black women, but it also underscores how Black female victims of police violence are treated differently than Black male victims.<sup>88</sup>

The differential treatment of Black male and female victims of police violence is best exemplified by juxtaposing the treatment of Breonna Taylor’s murder with George Floyd’s.<sup>89</sup> While there have been expected media insensitivities surrounding Floyd’s murder, such as the mass distribution of his graphic murder across media platforms and a coroner’s report that blamed Floyd’s death on his health and possible drug use,<sup>90</sup> Taylor’s death has been treated in ways that can only be defined as disrespectful. Specifically, her case and requests for the arrest of the officers who murdered her have been used as easter eggs in memes, TikToks, and Instagram posts that have nothing to do with her death.<sup>91</sup> Most recently, activist organization Until Freedom hosted a four-day-long event called “BreonnaCon” that meshed protest with festivities like a “Bre-B-Q.”<sup>92</sup> The irreverent placement of a Black woman’s death in quasi-humorous settings by Black and white people alike shows the collective devaluation of harm directed toward Black women.<sup>93</sup> “[T]he

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Crenshaw et al., *supra* note 81, at 2–4.

<sup>89</sup> See Richard A. Opiel Jr., Derrick Bryson Taylor & Nicholas Bogel-Burroughs, What To Know About Breonna Taylor’s Death, *N.Y. Times* (Oct. 23, 2020), <https://www.nytimes.com/article/breonna-taylor-police.html> [<https://perma.cc/NY52-EJFW>] (outlining the details of Taylor’s murder).

<sup>90</sup> Ann Crawford-Roberts et al., George Floyd’s Autopsy and the Structural Gaslighting of America, *Sci. Am.* (June 6, 2020), <https://blogs.scientificamerican.com/voices/george-floyds-autopsy-and-the-structural-gaslighting-of-america/> [<https://perma.cc/6X99-U7CP>].

<sup>91</sup> See Morgan Sung, Breonna Taylor’s Death Shouldn’t Be an Insensitive Twitter Meme, *Mashable* (June 25, 2020), <https://mashable.com/article/breonna-taylor-death-memes/>.

<sup>92</sup> See Joe Jurado, Social Justice Organization Until Freedom To Hold Four Day ‘BreonnaCon’ in Honor of Breonna Taylor, *Root* (Aug. 19, 2020, 7:00 PM), <https://www.theroot.com/social-justice-organization-until-freedom-to-hold-four-1844778721> [<https://perma.cc/4GGE-WZ3G>].

<sup>93</sup> See Hannah Drake, Who Protects Black Women?, *LEO Weekly* (Mar. 20, 2019), <https://www.leoweekly.com/2019/03/protects-black-women/> [<https://perma.cc/XJ7S-JU9A>].

idea that racial progress depends on black female subordination”<sup>94</sup> unconsciously compels society to devalue Black women in the course of espousing “pro-Black” politics.<sup>95</sup>

The devaluation of Black womanhood for the supposed betterment of the entire Black community further extends to other aspects of Black women’s lives. In her paper, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, Paulette Caldwell contextualizes Black women’s intersectional discrimination in employment with the compounded harm Black women receive from those who hope to support the Black community.<sup>96</sup> Caldwell observes this phenomenon in cases where unmarried Black female employees were fired due to their pregnancies. Several courts have justified the firing of these Black women because they worked with children, which was especially relevant if these children were Black.<sup>97</sup> Black women were not only subject to distorted images about Black female sexuality,<sup>98</sup> but they were also expected to counter these stereotypes by performing perfection. While Black men are sometimes offered even minimal interiority,<sup>99</sup> Black women are dehumanized through society’s view of their lives as purely symbolic.<sup>100</sup> This dehumanizing expectation forces Black women to embody perpetual “subordinat[ion] on the basis of gender to all men, regardless of color, and on the basis of race to all other women.”<sup>101</sup> This non-consensual rendering of Black women into symbols, especially within the Black community, culminates contemporarily in the ease with which all races of people can

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<sup>94</sup> Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 *Duke L.J.* 365, 375.

<sup>95</sup> See Nichole Richards, *Black Women Are Not To Blame for Our Community’s Problems*, *Westside Gazette* (Aug. 24, 2017), <https://thewestsidegazette.com/black-women-not-blame-communitys-problems/> [<https://perma.cc/922W-JYFV>] (claiming that “the ‘single Black mother as community destroyer’ argument [is] racist and based on some serious misogynistic tenor”).

<sup>96</sup> See Caldwell, *supra* note 94, at 373–74.

<sup>97</sup> *Id.* at 375.

<sup>98</sup> See, e.g., Patricia Hill Collins, *Mammies, Matriarchs, and Other Controlling Images*, in *Black Feminist Thought* 69, 69–71 (Routledge 2009).

<sup>99</sup> See Melissa Pandika, *Elijah McClain and the Pitfalls of the “Perfect Victim” Narrative*, *Mic* (July 16, 2020), <https://www.mic.com/p/elijah-mcclain-the-pitfalls-of-the-perfect-victim-narrative-29135795> [<https://perma.cc/8SCF-BG64>].

<sup>100</sup> Collins, *supra* note 98, at 69 (“As part of a generalized ideology of domination, stereotypical images of Black womanhood take on special meaning.”). Black women are dehumanized through these images and therefore operate as symbolic extensions of discriminatory projections.

<sup>101</sup> Caldwell, *supra* note 94, at 376.

turn Taylor's tragic murder into a meme.<sup>102</sup> Nevertheless, the #SayHerName Campaign's use of an intersectional analysis confronts, challenges, and deconstructs Black female erasure and dehumanization.<sup>103</sup>

### III. MODERN ANTIDISCRIMINATION LAW, INTERSECTIONALITY, AND *BOSTOCK V. CLAYTON COUNTY*

As exemplified through #MeToo and #SayHerName, Black feminist legal theory has played a large role in directing many modern feminist movements.<sup>104</sup> However, there are still many criticisms of the feminist movement's direction, especially in regard to how the courts are defining rights.<sup>105</sup> Specifically, the Supreme Court's decision in *Bostock v. Clayton County*,<sup>106</sup> which extended Title VII protections to discrimination claims based on gender identity and sexual orientation, espouses flawed analyses. In the landmark opinion written by Justice Neil Gorsuch, the Court found that "[a]n employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."<sup>107</sup> While the decision is being lauded as a victory for the LGBTQ+ community, its argument depends on the single-axis approach to antidiscrimination law that Crenshaw was critiquing with intersectionality. Justice Gorsuch asserts that "[t]here is simply no

<sup>102</sup> See Aja Romano, "Arrest the Cops Who Killed Breonna Taylor": The Power and the Peril of a Catchphrase, *Vox* (Aug. 10, 2020, 9:30 AM), <https://www.vox.com/21327268/breonna-taylor-say-her-name-meme-hashtag>.

<sup>103</sup> See Mary Louise Kelly & Heidi Glenn, *Say Her Name: How the Fight for Racial Justice Can Be More Inclusive of Black Women*, NPR (July 7, 2020, 6:59 PM), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/07/07/888498009/say-her-name-how-the-fight-for-racial-justice-can-be-more-inclusive-of-black-wom> [<https://perma.cc/7RQE-WP3B>].

<sup>104</sup> See Carmina Hachenburg, *Black Feminist Women Created Most Modern Movements*, Author Feminista Jones Tells Penn, *Daily Pennsylvanian* (Feb. 14, 2019, 11:39 PM), <https://www.thedp.com/article/2019/02/feminista-jones-black-feminism-penn-philadelphia-author-book> [<https://perma.cc/58UR-W927>].

<sup>105</sup> See Sharita Gruberg, *Beyond Bostock: The Future of LGBTQ Civil Rights*, *Ctr. Am. Progress* (Aug. 26, 2020, 9:01 AM), <https://www.americanprogress.org/issues/lgbtq-rights/reports/2020/08/26/489772/beyond-bostock-future-lgbtq-civil-rights/> [<https://perma.cc/DT3C-SJAG>].

<sup>106</sup> 140 S. Ct. 1731 (2020).

<sup>107</sup> *Id.* at 1737.

escaping the role intent plays [in discrimination suits],”<sup>108</sup> highlighting how courts continue to interpret discrimination as a “discriminator intentionally” marginalizing LGBTQ+ people, “or a process . . . which somehow disadvantages all members of this category.”<sup>109</sup> Crenshaw was clear that the “but for” approach erases the contours of how discrimination impacts those who are multiply burdened.<sup>110</sup> Disregarding Crenshaw’s insight, the Court proclaims that “[j]ust as sex is necessarily a but-for cause when an employer discriminates against homosexual or transgender employees, an employer who discriminates on these grounds inescapably intends to rely on sex in its decisionmaking.”<sup>111</sup> The ramifications of this single-axis approach will impact the most marginalized within the LGBTQ+ community. Meanwhile, the most privileged within the LGBTQ+ community will be the most likely to benefit from the extension, and once precedent is built based on the engagement of predominantly privileged LGBTQ+ lawsuits with the courts, there will be less and less emphasis on the experience of the most marginalized. For example, those who work in non-conventional jobs and those without work will be left to fend for themselves as the legal system continues to operate as though discrimination is always intentional and linear. This flies in the face of not only intersectionality but also the Black feminist theory from which it was born.

A truly intersectional approach would have pushed the Court to recognize that the protections LGBTQ+ individuals need are not only job safety but also the things that those who are employed can hopefully afford: health care, housing, food security, and other necessities. The inequities that plague the most marginalized are the larger societal deficiencies that are always deemed isolated issues instead of clear extensions of race issues, gender issues, and LGBTQ+ issues. If the modern feminist movement truly wants to see progress, it must pledge to engage with the complexities and depth of Black feminist theory, as well as abandon the troubling limitations of the single-axis approach. If this is done, progress might just be made.

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<sup>108</sup> *Id.* at 1742.

<sup>109</sup> Crenshaw, *supra* note 30, at 150.

<sup>110</sup> See *id.* at 151.

<sup>111</sup> *Bostock*, 140 S. Ct. at 1742 (emphasis omitted).

## IV. PROGRESSING PAST PRESENT STAGNATION

The only way for modern feminist movements to move past non-inclusivity and achieve long-standing progress is to invest in an honest engagement with Black feminist legal theory. Intersectionality has been watered down to purposely render the term ineffective, thereby allowing minor shifts in oppressive structures to benefit a few at the expense of many. The single-axis view, or “but for” approach, promises only incremental movement for those who are already closely aligned with the powerful. The task before Black feminists is not to shift power but to eradicate arbitrary hierarchies of power in favor of liberation. That is why modern feminist movements must commit to centering unadulterated Black feminist legal theory, because that would subsequently mean embracing the liberatory potential of collective struggle and imagination. Dismantling long-standing oppressive structures is a looming task, especially when Black women often do this work while simultaneously battling misrepresentation, erasure, and the material consequences and financial insecurity of centuries-long oppression. Nevertheless, akin to the Black women in *Beloved* who overcame the lingering specter of slavery, only the collective vision of Black feminist practice can offer the wisdom and resilience needed to attain true liberation. Only fierce commitment to Black feminist practice can transform modern feminist movements into vehicles for achieving our freedom dreams.