

Intersectional Resistance and Law Reform

More than 20 years ago, Kimberlé Crenshaw coined the term “intersectionality” to describe a method of analysis that reveals the dynamics of subjection hidden by what she called single-axis analysis and suggests avenues for intervention and resistance that are eclipsed by single-axis approaches. Crenshaw demonstrated that projects aimed at conceptualizing and remedying racial or gender subordination through a single vector end up implicitly positing the subject of that subordination as universally male, in the case of single-axis antiracist analysis, or as universally white, in the case of single-axis feminist analysis. The experiences of women of color become untellable (Crenshaw 1991). Crenshaw’s articulation of intersectionality brought to legal theory a key set of insights from women-of-color feminism and other critical intellectual traditions about the limits of “equality” and added these understandings to the interrogations of the discrimination principle taken up in critical race theory.

What does intersectional resistance look like on the ground, and what is its relationship to law? In this essay, I examine some of the key concepts and questions that contemporary anticolonial, antiracist, feminist resistance employs and argue that the demands emerging from it bring not only the United States but the nation-state form itself into crisis. Understanding intersectional harm necessitates an analysis of population-level state violence (as opposed to individual discrimination) that resistance movements sometimes articulate through the concept of population control. Social movements frequently splinter between those employing a single-axis analysis to demand civil rights and legal equality and those employing intersectional analysis to dismantle legal and administrative systems that perpetrate racialized-gendered violence. This essay seeks to draw connections between some of the key methodologies of resistance utilized by intersectional scholars and movements. I am interested in how these methodologies bring attention to the violences of legal and administrative systems that articulate themselves as race and gender neutral but are actually sites of the gendered racialization processes that produce the nation-state. Intersectional resistance practices aimed at dismantling population control take as their targets systems of legal and administrative governance such as criminal punishment, immigration enforcement, environmental regulation, child welfare, and public benefits. This resistance seeks out the root causes of despair and violence facing intersec-

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tionally targeted populations and in doing so engages with the law differently than rights-seeking projects do. Critically analyzing the promises of legal recognition and inclusion from systems that they understand as sources of state violence and technologies of population control, intersectional resisters are demanding the abolition of criminal punishment, immigration enforcement, and other functions and institutions that are central to the nation-state form. Such demands are profoundly perplexing to many scholars, even scholars interested in intersectionality. This essay examines how intersectional analysis leads to the production of such demands and discusses how law reform tactics shift, but do not disappear, when such demands emerge.

In the first section of this essay, I briefly review some of the key critiques of legal equality offered by critical scholars, especially critical race theorists. Next, I introduce the concept of population control and highlight the importance of attention to population-level conditions and interventions in intersectional scholarship and activism. The reproductive justice movement illustrates how an intersectional critique of single-axis politics and its demands for legal rights leads to a focus on population-level systems that distribute harm and violence through gendered racialization processes. The reproductive justice movement's critiques of white reproductive rights frameworks—particularly the assertion that reproductive justice for women of color requires interventions into criminalization, child welfare, environmental regulation, immigration, and other arenas of administrative violence—illustrate how intersectional critique and activism move away from individual rights and toward a focus on population control.

Third, I take up the assertion from many critical traditions that legal equality or rights strategies not only fail to address the harms facing intersectionally targeted populations but also often shore up and expand systems of violence and control. They do this in at least three ways: by mobilizing narratives of deservingness and undeservingness, by participating in the logics and structures that undergird relations of domination, and by becoming sites for the expansion of harmful systems and institutions. Activists and scholars have argued that the use of criminalization to combat domestic violence and human trafficking constitutes a co-optation of feminist resistance that expands criminal enforcement systems that target and endanger women and queers of color. This analysis illustrates the danger that legal reforms can expand violent systems by mobilizing the rhetoric of saving women combined with frameworks of deservingness that reify racist, ableist, antipoor, and colonial relations. I further argue that equality and legal rights strategies can be divisive to social movements. I use three examples of movement splits to illustrate this: the divide between reproductive rights and reproductive justice, the divide between disability rights and dis-

ability justice, and the divide between the gay and lesbian rights framework and the racial and economic justice-centered queer and trans resistance formations that have critiqued it and created alternatives. For each of these examples, I trace how rights strategies mobilize single-axis analyses that, their critics argue, both fail to meet the needs of constituents facing intersectional harm and reify harmful dynamics and systems.

Fourth, I observe that these critical traditions strategically reject narratives that declare that the US legal system has broken from the founding violences of slavery, genocide, and heteropatriarchy. Critics refute the notion that such founding violences have been eradicated by legal equality. They instead trace the genealogies of purportedly neutral contemporary legal and administrative systems to these foundations, arguing that the state-making, racializing, and gendering functions of founding violences like enslavement and settler colonialism continue in new forms. This analytical move exposes the fact that declarations of legal equality do not resolve such violence and generates demands like prison abolition and an end to immigration enforcement that throw the US legal system and the nation-state form into crisis.

Finally, I examine how such intersectional resistance engages with law reform demands. I suggest that rejecting legal equality and using a population-control framing leads to a strategy focused on dismantling the violent capacities of racialized-gendered systems that operate under the pretense of neutrality. I take as examples the involvement of gender- and sexuality-focused organizations in recent campaigns to stop gang injunctions in Oakland, California, and to stop local jurisdictions from participating in the Secure Communities immigration enforcement program. These campaigns have law reform targets yet resist many of the traps of legal equality arguments because they center on the material concerns of those who are perpetually cast as undeserving, because their demands aim to produce material change in terms of life chances rather than symbolic declarations of equality, and because they conceptualize gender and sexual justice and freedom through the experiences of those who are intersectionally targeted by purportedly race- and gender-neutral systems. Through these examples and arguments, I aim both to draw connections between key intersectional methods and to illustrate what forms intersectional resistance is taking in contemporary politics, what targets it identifies, and what demands it makes.

The limits of legal equality

Critical race theory brought to legal scholarship a critique of formal legal equality and the discrimination principle, recognizing the failures of civil rights legislation to alleviate the systemic racialized maldistribution of wealth

and life chances. The concept of formal legal equality articulates an important disjuncture between the racial neutrality declared by law and the material realities of white supremacy. This disjuncture stems, at least in part, from the inadequacy of the discrimination principle for conceptualizing the conditions of white supremacy. The discrimination principle understands racist harm in such a limited way as to make it exceptionally difficult to prove that a violation of discrimination law has occurred and to make the conditions produced by racism unreachable through discrimination doctrine. Racism is understood through the paradigm of individual discriminators who take race into account when making decisions about activities like hiring, firing, leasing, selling, or serving (Freeman 1996). In the absence of explicit, intentional exclusion, courts rarely find a violation of discrimination law. Proving that harm was intentional and based on race can be exceptionally difficult, especially when multiple vectors of subjection exist for the affected person or people (Crenshaw 2008). Moreover, the discrimination principle regards intentional exclusions or preferences based on race as equally harmful whether they harm or benefit people of color. Color blindness is the rationale for this approach. It dehistoricizes racial exclusion and suggests that any individual's experience of exclusion or preference based on race is equally harmful. It assumes a level playing field in which race consciousness, not white supremacy, is the problem the law must seek to eliminate.¹

These features of the discrimination principle have produced troubling results. Programs aimed at remedying racial disparity have been declared illegally discriminatory; meanwhile, antidiscrimination laws have proven to be largely ineffective in addressing even the narrowest version of individual race discrimination. Most people of color who have been denied a job or an apartment cannot produce the required evidence of intent, not to mention that the people for whom such losses will produce the worst consequences likely cannot afford an attorney (Legal Services Corporation 2009). These people—poor people, people with disabilities, women, queer and trans people, immigrants—are also unlikely to have the kind of single-axis discrimination case that courts and lawyers most easily understand. They are more likely to be facing multiple vectors of exclusion and to be interacting in less formal conditions, such as low-wage contingent labor, which further decreases the chances that there will be a paper trail proving that their experience was the result of discrimination (Ruckelshaus and Goldstein 2002).

The most severe conditions produced by white supremacy cannot be addressed or even imagined by antidiscrimination law. Those conditions

¹ See Freeman (1996), Gotanda (1996), Harris (1996), Peller (1996), and Crooms (1999).

that do not result from the misdeeds of a perpetrating individual or organization—the broad conditions of maldistribution visible in the United States’s racial wealth divide; extreme racial disparity in access to housing, employment, education, food, and health care; the ongoing occupation and expropriation of native lands; and targeting in criminal punishment, environmental harm, and immigration enforcement—are cast as neutral by the discrimination principle (Gilmore 1998–99; United for a Fair Economy 2006). When racist harm is framed as a problem of aberrant individuals who discriminate and when intention must be proved to find a violation of law, the central conditions of white supremacy are implicitly declared neutral. In the United States, this has been accompanied by a robust discourse that blames people of color for poverty and criminalization, a logical leap required when color blindness has been declared the law of the land and racism has been defined so narrowly as to exclude it from blame in the most widespread adverse conditions facing people of color. Critical race theorists have supplied the concept of “preservation-through-transformation” to describe the neat trick that civil rights law performed in this dynamic (Siegel 1997, 1119; Harris 2006. In the face of significant resistance to conditions of subjection, law reform tends to provide just enough transformation to stabilize and preserve status quo conditions. In the case of widespread rebellion against white supremacy in the United States, civil rights law and color-blind constitutionalism have operated as formal reforms that mask the perpetuation of the white supremacist status quo. Explicit exclusionary policies and practices became officially forbidden, yet the racialized-gendered maldistribution of life chances in the United States remained the same or worsened with the increasing concentration of wealth and the simultaneous dismantling of social welfare systems (Harris 2006, 1554–61; United for a Fair Economy 2006).

Population control

Women-of-color feminism and other critical traditions have drawn attention to these conditions, highlighting the operations of systems that obscure the maintenance of white supremacy and heteropatriarchy by applying the discrimination principle. These critics have drawn attention to welfare policy, criminal punishment, child welfare, and other systems where race- and gender-targeted harm is produced under the guise of neutrality. Use of the term “population control” removes the focus from discrete incidents or individuals and allows for an analysis of multiple systems that operate simultaneously to produce harms directed not at individuals but at entire popula-

tions (Neubeck and Cazenave 2001; Ross 2006). Ruth Wilson Gilmore's widely cited definition of racism as "group-differentiated vulnerability to premature death" demonstrates this approach (2007, 28). Gilmore's definition attends to conditions rather than individuals and intentions, rejecting the framing offered by the discrimination principle that has thoroughly saturated US discourses on race.

The reproductive justice movement has employed the term "population control" to reframe questions about the politics of reproduction in ways that resist the narrow confines of rights discourse. Reproductive justice advocates have argued that the reproductive rights movement has engaged in a single-axis analysis of the politics of reproduction, centering on the experiences of white women and failing to formulate demands that address the needs of women of color. In the United States, white women have primarily experienced the impacts of pronatal policies, including policies preventing access to contraception and abortion (Roberts 1993b; Ross 2006). Meanwhile, conditions of reproduction for US women of color have been shaped by antinatal policies: sterilization, child welfare systems that take children away from mothers of color, and forced assimilation programs like the Bureau of Indian Affairs boarding schools (Roberts 1993b; Smith 2005; Ross 2006). While it is true that it is not just white women who need access to safe contraception and abortion options, these demands are far from exhaustive of the interventions needed for women of color and indigenous women to remedy reproductive injustice.

Conceptualizing the politics of reproduction through population control allows the reproductive justice movement to argue that an array of phenomena must be analyzed together to understand the complex forces affecting who can access what reproductive possibilities and under what conditions. These phenomena include but are not limited to welfare policies aimed at pushing poor women, especially women of color, into marriage and discouraging them from having children; expansion of criminal punishment systems that target women of color for imprisonment and terminate prisoners' parental rights; policies that expose poor pregnant women to drug testing and prosecution; immigration regimes that divide families and deny health care to detained women; and environmental policy that poisons people of color.² The articulation of reproductive justice as concerned with population control turns away from the individual-rights narrative that centers on the question of whether the government is affirmatively and explicitly blocking a given woman from accessing abortion or contraception. Instead, it argues

² See Roberts (1993a, 1996), Barry (2006), Ross (2006), and Arkles (2008).

that all of the conditions that determine reproductive possibilities—subjection to criminalization, displacement, immigration enforcement, or environmental destruction; the unequal distribution of wealth and access to health care; and more—are the terrain of contestation about the politics of reproduction. This shift toward conceptualizing harm at the population level generates an analysis of the relationship between multiple vectors of harm and of how systems of meaning and control like sexism, racism, and ableism might interact in particular ways to affect the various populations managed through their articulation. The particular targeting of women of color for interventions rationalized through purportedly race- and gender-neutral systems that are actually mobilized entirely in order to control the population according to racialized-gendered norms becomes tellable through such a framework.

Legal equality strategies legitimize and expand violent systems

Critical intellectual traditions have also made an important argument that equality and rights advocacy not only fails to address the conditions that affect vulnerable people but often actually shores up, legitimizes, or expands harm. This occurs when advocates mobilize discourses of deservingness that divide constituencies, when advocacy participates in logics and structures that undergird the relations of domination that are being opposed, and when advocacy actually results in expanding relations and structures of domination.

A few examples are useful to illustrate. Significant controversy has emerged in the past few decades in feminist, queer, and trans movements about whether key forms of violence that these movements have brought attention to—bias-motivated, sexual, and intimate partner violence—should be addressed through demands for a law-enforcement response. The most visible, well-funded, and white strains of these movements have supported increased criminal penalties for the perpetrators of these forms of violence and have often partnered with police and prosecutors to expand criminal law enforcement (Mogul, Ritchie, and Whitlock 2011, 121–40). Populations targeted by policing who are also working to end these forms of violence, such as communities of color, immigrants, people with disabilities, poor people, and indigenous people, have argued that enhancing criminal penalties will not reduce violence or increase safety (Incite! 2006; Chen, Dulani, and Piepzna-Samarasinha 2011). In fact, they have argued that increasing criminalization increases violence. These critics assert that punishment-based solutions have no preventative impact and are often inaccessible to victims of violence, who may be afraid to call the police because

they, their family, or their community are more likely to be harmed by the police than helped. Critics contend that the mainstream antiviolence movement's focus on punishment has made feminist and queer exposure of these forms of violence just another site for expanding criminal punishment (Incite! 2006).

In the context of immigration law, these reforms have played out in a particularly visible way to create a narrative of deserving and undeserving immigrants. For example, the U visa has been made available for immigrants who are victims of crimes (US Citizenship and Immigration Services 2011). In order for a survivor to become eligible for a U visa, police and prosecutors must decide that the survivor has sufficiently supported the investigation, prosecution, and, in some cases, deportation of the person who harmed her. The legal framework and cultural narrative surrounding U visas cast crime victims as deserving immigrants and criminals as those who must be punished and permanently exiled. This framing mirrors other important logics that have supported the rapid expansion of criminalization and immigration enforcement over the past four decades. Particular images of men of color and immigrants have been key mobilizing tools for legal changes that have drastically increased criminal penalties, made minor criminal offenses justifications for deportation, and used women-saving rationales to justify military conquest—images of men of color as violent and criminal, of immigrants as bringing criminal activity into the United States, and of men of color and men in poorer countries as more sexist and more violent toward their families than white men.³ Moreover, the actual ability of immigrant survivors of violence to avail themselves of immigration relief through these punishment- and deportation-focused interventions is limited because police and prosecutors often refuse to support their applications and because of the emotional and practical reasons that survivors might not want their family member and/or coparent deported (Munshi 2010).⁴

Another site where critics have raised concerns about the risk of purportedly prowomen interventions is in the recent campaigns to combat human trafficking. Critics argue that the new legislation intensifying criminalization of traffickers is actually often used to further endanger exceptionally vulnerable low-income people, especially women and queer and trans people of color who work in the sex trade. Because the lowest-paid sex workers are also those who are most likely to be exposed to policing and

³ See Naber, Desouky, and Baroudi (2006), Incite! (2006), Puar (2007), and Munshi (2010).

⁴ Angélica Cházaro, interview with the author, June 11, 2011. Notes are on file with the author.

violence—since they work outside and have few ways to screen clients—they are also the most criminalized. Many create networks to support one another’s survival, acting as lookouts, providing access to spaces to work, or connecting one another with opportunities to make money. All of these activities, under new trafficking laws, make these people vulnerable to being prosecuted as traffickers. Critics argue that, once again, increased criminalization utterly fails to increase safety and instead results in greater vulnerability for those facing the most violence (Chacon 2006; Mogul, Ritchie, and Whitlock 2011; Grant 2012).⁵

In responses to domestic violence and human trafficking that are focused on law enforcement, the idea of protecting women (especially protecting women of color from men of color) is used to justify policies that both fail to provide relief from gender violence and create sites of expansion for systems that perpetrate racialized gender violence. Although these logics rely on the idea of individual culpability that justifies criminal and immigration enforcement, the reality of the administration of programs of policing, punishment, and immigration control is that they subject entire sub-populations to surveillance and harm.

Dividing constituencies

Because equality- and rights-seeking arguments often reproduce deservingness frameworks, participate in logics and structures that undergird relations of domination, and become sites for expansion of harmful systems and institutions, they often divide constituencies seeking change (Crenshaw 2004). The purportedly universal subject of rights is actually a very specific and narrow category of persons. The ability to avail oneself of supposedly universal rights in fact often requires whiteness, wealth, citizenship, the status of being a settler rather than indigenous, and/or conformity to body, health, gender, sexuality, and family norms. Demands for equal rights often become divisive for constituencies organizing to oppose certain systems of meaning and control, and those divides can be seen in the movement formations that emerge.⁶ Three examples are instructive: the reproductive rights/

⁵ Andrea Ritchie, interview with the author, June 2, 2011. Notes are on file with the author.

⁶ Ironically, those who point out the limitations of the rights framework and stand up against single-axis politics are often called divisive. Single-axis advocates often argue that broader demands to address intersectional harm are idealistic and that the narrower demands for inclusion in existing institutions and logics are winnable victories that should be prioritized. Sometimes this is argued simply by saying that critics are bringing in things that are irrelevant (e.g., “welfare rights have nothing to do with gay politics” or “we’re talking about

reproductive justice divide already mentioned, the disability rights/disability justice divide, and the fractures between the lesbian and gay rights framework and the critical queer and trans resistance formations that have opposed it.

The articulation of reproductive justice has been a direct response to the narrowness of the reproductive rights framework and its failure to properly theorize the conditions affecting the reproductive possibilities for people of color, people with disabilities, immigrants, indigenous people, poor people, and queer and trans people, as well as the resulting failure to advocate for changes that would actually address the conditions affecting those people (Ross 2006). Reproductive justice has articulated a broader conceptualization of forces of population control that determine who can have and raise children and under what conditions, forces that include the overlapping and interlocking operations of immigration enforcement, criminalization, settler colonialism, white supremacy, ableism, homophobia, capitalism, gender binarism, and environmental destruction. Reproductive justice activists have articulated demands like the end of immigration enforcement, prison abolition, the dismantling of settler colonialism, and free quality health care for all (including marginalized health care like prenatal care, mental health care, abortion, contraception, and gender-confirming health care for trans people) as central to the reproductive justice they seek. Reproductive justice politics rejects the narrow reproductive rights framing both because of who it leaves out and because it participates in reproducing logics and narratives that are harmful to the well-being of those left out.⁷

Disability justice has made similar interventions with respect to the disability rights framework. Advocates of disability justice argue that the rights-based approach has failed to adequately conceptualize or resist the conditions of ableism facing the most vulnerable people with disabilities. They propose an alternative to single-axis understandings of ableism. Disability justice has been articulated as a politics that goes beyond the focus on ac-

sexism here, not disability issues”). At other times, the argument is that it is most pragmatic to take up the narrower campaign now and, once that is won, come back later to the issues of multiply-marginalized constituents. This argument fails to comprehend that equality politics is not just leaving people out, it is also reproducing violent logics and expanding violent systems.

⁷ As Loretta Ross writes, “Women of color reproductive justice activists oppose all political rationales, social theories, and genetic justifications for reproductive oppression against communities of color, whether through blatant policies of sterilization abuse or through the coercive use of dangerous contraceptives. . . . Reproductive justice goes far beyond the demand to eliminate racial disparities in reproductive health services, and beyond the right-to-privacy-based claims to legal abortion made by the pro-choice movement” (2006, 53).

cess to existing institutions and independent living. It questions the rhetoric on individual access and independence, invoking feminist and critical race analyses of individualism and the stigmatization of dependency (Democracy Now 2010; Mingus 2010). Disability justice politics “mov[es] away from an equality-based model of sameness and ‘we are just like you’ to a model of disability that embraces difference, confronts privilege and challenges what is considered ‘normal’ on every front,” not wanting “to simply join the ranks of the privileged [but] to dismantle those ranks and the systems that maintain them” (Mingus 2010, 4). The articulation of interdependency as a value of disability justice poses a challenge to the classic disability rights activism that has often posited a universalized experience that assumes maleness, whiteness, and physical impairment rather than psychiatric or cognitive disability.⁸ Instead, it articulates a political practice centered in difference, building a framework for opposing processes of normalization that marginalize certain bodies and populations and for theorizing the violences of ableism as intersecting and co-constituting sexism, heterosexism, gender binarism, settler colonialism, white supremacy, and ageism (Mingus 2010).

The division between the best-funded, most visible strain of lesbian and gay rights activism, on the one hand, and the less publicized US queer and trans activism that centers racial and economic justice, on the other hand, offers another example of the divisiveness of rights frameworks. Lesbian and gay rights advocacy has focused on narrow legal reforms such as hate crime laws, military service, same-sex marriage, and laws against employment discrimination. Critical queer and trans activists and scholars have argued that these goals line up with the damaging and disturbing logics of neoliberalism, including the expansion of criminalization and military conquest and the attacks on social welfare that use myths of family values and meritocracy to suggest that people should work hard and, through forming nuclear families, meet the needs unaddressed or even exacerbated by capitalism (Duggan 2003; Harris 2006). Critics argue that not only will same-sex marriage provide little to people without property to inherit, legal immigration status to share, or employee health benefits to extend—and not only will it fail to protect those queer and trans people who are part of populations targeted by the racist, ableist, colonial, and anti-immigrant child welfare system from losing their kids—but the quest for same-sex marriage also supports norms of family formation that feminist, decolonial, and antiracist movements have fought to dismantle for centuries (Bailey, Kandaswamy, and

⁸ See Shapiro (1993), Clare (1999), Cripchick (2010), and Democracy Now (2010).

Richardson 2006; Bassichis, Lee, and Spade 2011). These critics suggest that a politics dedicated to stopping homophobia and transphobia must not seek inclusion in violent institutions of maldistribution and norm enforcement, like marriage or the military, but must instead seek to dismantle those institutions.

Terms like “marriage equality,” the most common name used by advocates for the campaign to legalize same-sex marriage, expose the limitations of the framework. Marriage is fundamentally about inequality—about privileging and incentivizing certain family structures and making those who live outside them more vulnerable. Single-axis demands for equality in lesbian and gay rights politics, then, come to look more like demands for the racial and class privilege of a narrow sector of lesbians and gay men to be restored so that they might pass their wealth on as they choose when they die, shield it from taxation, call the police to protect it, and endorse or join invading armies to expand it (Conrad 2010, 2011, 2012). Queer and trans activists focused on racial and economic justice have articulated copious demands and strategies that avoid a single-axis framework and center on redistribution: fighting for increased police accountability, supporting queer and trans prisoners, opposing jail and prison expansion, decriminalizing sex work and drugs, advocating for queer and trans immigrants in immigration prisons, fighting harmful welfare and Medicaid policies, fighting for queer and trans people in homeless services, centering stigmatized people with HIV/AIDS like drug users and sex workers within AIDS activism, and much more (Spade 2011). This politics takes an oppositional approach to key structures of maldistribution rather than seeking recognition by and inclusion in those structures (Farrow 2005; Reddy 2008). It refuses reforms that fail to reach those living at the intersections of homophobia and other violent systems of meaning and control.

These critical perspectives suggest a very different method for analyzing American law, one that departs from the questions that lawyers and legal scholars, who are often engaged in single-axis thinking about systems of subjection, might ask. Those inquiries often identify the realm of “equality law” as centered in antidiscrimination and hate crime laws. They often look for places in law where particular groups are named for exclusion or could be named as protected and assume that achieving justice means focusing on reforming those laws. The critical scholars and movements I have been describing instead often examine not what the law says about itself but how its operations distribute life chances. They are suspicious of formal declarations of equality and of the idea that legal governmental protections are remedies for violence rather than sources of it. They are vigilant about co-optation, asking whether such declarations have had the material impact

promised. Administrative operations occurring in welfare departments, immigration agencies, the Bureau of Indian Affairs, bodies overseeing environmental regulations, departments of corrections, child protective services, and education and taxation systems have been the focus of those who refuse to accept formal legal equality or facial neutrality as the resolution of their claims. Their interventions have asked how these systems are experienced from the perspective of marginalized populations rather than from the perspective of white lawmakers who declare legal systems to be neutral or natural while in reality they center on a white propertied male subject. Narrow interventions that purportedly deliver equality have not passed the test when measured against the experiences of people living on the losing end of the distribution of life chances administered by these systems. These critics reject the focus on declarations of equality that often turn out to be mere window dressing for perpetual violence.

Genealogies of violence

In analyzing purportedly neutral systems to reveal their targeted violence, critics often expose continuities of violence where dominant narratives have declared key historical breaks. National narratives of US history articulate that prior egregious state violences have been resolved, often by civil rights law or other legal reforms. The implication is that any existing differences in living conditions among subpopulations in the United States must be a result of merit or lack thereof. Critics contest this story, arguing that while the operations of systems of meaning and control have changed, and while certain technologies of violence have been altered or replaced, the declared breaks are fictions. For example, reproductive justice activists and others have analyzed the child welfare system's targeting of Black families as an extension of chattel slavery, a system under which family ties between enslaved Black people were violently broken and Black motherhood was constituted as fundamentally different from the valorized white motherhood seen as central to reproducing the nation (Roberts 1993b). Prison abolitionists have argued that the US criminal punishment system is an extension of the racial control of slavery (Hartman 1997; Davis 2003). Their refutation of the purported historical break between slavery and freedom for Black people allows anti-prison scholars to analyze criminal punishment very differently than if they saw the problems of the system as utterly separate from the foundational violences of chattel slavery. This viewpoint has fostered recognition that efforts to reform prisons have consistently resulted in the expansion of imprisonment. Often carried out in the name of making prisons more humane, reform results in more and more people—especially Black people, as well as other

people of color and poor people—spending more time in prisons overall. The demand for prison abolition is seen as an extension of the unfinished project of abolishing slavery, and the racialized-gendered operations of policing and criminalization are analyzed in relation to their predecessors under slavery.

Tracing genealogies of racialized-gendered control and exploitation allows critics to look at purportedly neutral administrative governance in ways that foster very different demands than any single-axis analysis would produce. Such critiques reject the narrative that the US immigration system shed its racism when it abolished Asian-exclusion laws and racial quotas. Instead, immigration enforcement remains racially targeted, is justified through the mobilization of racist images, and perpetuates racialized-gendered nation-making goals: cultivating the life of a white European settler population and maintaining people of color as maximally exploitable and disposable by casting them as threats to that life. Indigenous scholars' and activists' refusal to adopt the narrative of the settler state, which seeks to portray the process of genocide and displacement as over or complete, and their constant resistance to ongoing land theft, occupation, attempts at forced assimilation, and erasure all expose the continuity between the supposed bad old days and today. Rejection of civil rights strategies, which seek recognition from and protection of US law, is a necessary element of this analysis, since indigenous scholars and activists have shown that the US government and its legal system are the most significant sources of violence and harm against indigenous people, not forces of protection (Smith 2005; Sharma and Wright 2008–9).

These critical inquiries and demands, and their rejection of legal-equality strategies, bring up significant questions about the US nation-state and the role of legal reform in remedying the violences of white supremacy, settler colonialism, heteropatriarchy, and ableism. The methodologies used by the critical traditions I have cited lead to a focus on the targeted violences of purportedly neutral administrative systems and an analysis of how those violences are contiguous with the racialized-gendered property relations that are foundational to the United States (Harris 1996). By invoking the term “population control,” these critical traditions allow us to recognize that the conditions they resist stem from a variety of administrative practices and governing logics that are often mistakenly analyzed separately when single-axis thinking dominates. When those logics and practices are viewed through the genealogies of foundational violences, formal legal change that is primarily symbolic, removing only explicit exclusions or targeting individuals acting with bad intentions, appears severely limited, and deeper questions and demands about fundamental structures of governance emerge.

Critical race studies scholarship has described the United States as a racial project (Omi and Winant 1986). The creation of the nation was accomplished through racialization, and racial categories and the United States are mutually constitutive (Harris 1996; Gómez 2007; Willse 2011). The governing capacity of the United States was established through racializing legal mechanisms, including the legal enforcement of a system of chattel slavery; the theft of land and the imposition of legal regimes that established the possibility of ownership for settlers while targeting indigenous people for death and forced assimilation; the establishment of an immigration enforcement system that used racial categories to determine who could become part of the nation; and the establishment of a broad range of social welfare programs that aimed to cultivate white life and distribute education, land, home ownership, and health care in racially targeted ways.⁹ While immigration, property, social welfare, education, and other programs are no longer allowed to include codified, explicit racial exclusions, their operations are still racialized and racializing.¹⁰ Women-of-color feminism, queer-of-color critique, and other critical work on gender and sexuality has helped us understand that the racialization processes that formed the United States and continue to operate under new guises are also always processes that produce, manage, and deploy gender categories and sexuality and family

⁹ See Mink (1990), Harris (1996), Neubeck and Cazanave (2001), Chin (2002), Ngai (2004), Smith (2005), United for a Fair Economy (2006), and Gómez (2007).

¹⁰ Jodi Melamed provides a useful formulation of racialization and useful commentary on how racialization has shifted after what Howard Winant has called the World War II racial break in her remarks at the 2011 Critical Ethnic Studies Conference at the University of California, Riverside:

Racialization is a process that constitutes differential relations of value and valuelessness according to reigning economic-political orders, while appearing to be (and being) a normative system that “merely” sorts human beings according to categories of difference. In other words, racialization converts the effects of differential value-making into categories of difference that make it possible to order, analyze, organize, and evaluate what emerges out of force relations as the permissible content of other domains of modernity (economy, law, governance). Under white supremacist modernity, the color line was an adequate cultural technology for converting processes of differential value-making into world-ordering systems of knowledge and valued and valueless human forms. It precipitated out of and rationalized agrarian, colonial, and industrial capitalist modes of constituting power, addressing those designated as valueless largely through punitive, negating, disqualifying, exclusionary, and violent, physically coercive measures. In a formally anti-racist liberal capitalist modernity, white supremacist forms of violence continue, but we have an intensification of normative and rationalizing modes of violence, which work by *ascribing* norms of legibility/illegibility and *mandating* punishment, abandonment, or disposability for norm violators. Instead of a color line, official anti-racisms allow for greater flexibility in exercising and prescribing racialized terms of value and valuelessness. (2011, 4-5)

norms.¹¹ The nation-state form itself is produced by the project of gendered-racialized population management.

Michel Foucault described this way of thinking about governance by suggesting that what he called “state racism” (2003, 61) is inherent to the project of cultivating the life of the national population. Foucault argued that the most prevalent form of power operating today is power that takes the population as its target, that endeavors, through a variety of means, to cultivate the life of the population and to identify and eliminate threats to and drains on that population. These threats and drains are the subpopulations that must be banished, killed, caged, or abandoned in order to promote the life of the national population (Foucault 2003; Valverde 2007). Perhaps this framework of saving or promoting the life of the national population through the exploitation or death of others is particularly visible in the example of racialized-gendered medical experimentation. Whether we look at the work of the Nazi doctors, the Tuskegee experiment, the intentional spread of infectious diseases to indigenous populations in North America, the widespread practices of medical experimentation on US prisoners, or the long history of forced sterilization of people of color and people with disabilities in the United States, we see the logic that aims to protect and improve the lives of some through exploiting, controlling, or extinguishing the lives of others (Durazo Rojas 2006). This kind of power is operating when state capacities are mobilized to ensure that borders are closed, prisons are locked down, identity documents are checked, and countless other security operations are enforced.

In the United States, recent decades have seen internal enemies cast as racialized-gendered figures—drug dealers, criminals, terrorists, illegals, gang members, and welfare queens. The white, propertied settler population must be protected from whatever racialized others are being targeted at the time, and images related to racial classifications, to ideas of foreignness, and to body, ability, gender, and sexuality norms are mobilized to produce these targets. Considering subjection intersectionally, examining purportedly neutral administrative systems to see their targeted violences, and tracing genealogies of racialized population control forces critical scholars and activists dedicated to transforming violent conditions to think broadly about the US legal system and the nation-state form.

What intersectional politics demands

Social movements using critical intersectional tools are making demands that are often difficult for legal scholars to comprehend because of the

¹¹ See Ferguson (2004), Smith (2005), Spade (2008), and Morgensen (2010).

ways that they throw US law and the nation-state form into crisis. Because they recognize the fact that legal equality contains and neutralizes resistance and perpetuates intersectional violence and because they identify purportedly neutral administrative systems as key vectors of that violence, critical scholars and activists are making demands that include ending immigration enforcement and abolishing policing and prisons. These demands suggest that the technologies of gendered racialization that form the nation cannot be reformed into fair and neutral systems. These systems are technologies of racialized-gendered population control that cannot operate otherwise—they are built to extinguish perceived threats and drains in order to protect and enhance the livelihood of the national population. These kinds of demands and the analysis they represent produce a different relation to law reform strategies than the national narrative about law reform suggests, and different than what is often assumed by legal scholars interested in the field of “equality law.” Because legal equality “victories” are being exposed as primarily symbolic declarations that stabilize the status quo of violence, declarations from courts or legislatures become undesirable goals. Instead, law reform, in this view, might be used as a tactic of transformation focused on interventions that materially reduce violence or maldistribution without inadvertently expanding harmful systems in the name of reform.

One recent example is the campaign against gang injunctions in Oakland, California. A broad coalition—comprising organizations focused on police violence, economic justice, imprisonment, youth development, immigration, gentrification, and violence against queer and trans people—succeeded in recent years in bringing significant attention to the efforts of John Russo, Oakland’s city attorney, to introduce gang injunctions (Critical Resistance 2011). The organizations in this coalition are prioritizing anticriminalization work that might usually be cast as irrelevant or marginal to organizations focused on the single axis of women’s or LGBT equality. The campaign has a law reform target in that it seeks to prevent the enactment of certain law enforcement mechanisms that are harmful to vulnerable communities. However, it is not a legal-equality campaign. Rather than aiming to change a law or policy that explicitly excludes a category of people, it aims to expose the fact that a facially neutral policy is administered in a racially targeted manner (Davis 2011; Stop the Injunctions 2011).

Furthermore, the coalition frames its campaign within a larger set of demands not limited to what can be won within the current structure of American law but focused on population-level conditions of maldistribution. The demands of the coalition include stopping all gang injunctions and police violence; putting resources toward reentry support and services for people returning from prison, including fully funded and immediate

access to identity documents, housing, job training, drug and alcohol treatment, and education; banning employers from asking about prior convictions on job applications; ending curfews for people on parole and probation; repealing California's three-strikes law; reallocating funds from prison construction to education; ending all collaborations between Oakland's government and Immigration and Customs Enforcement (ICE); providing affordable and low-income housing; making Oakland's Planning Commission accountable regarding environmental impacts of development; ending gentrification; and increasing the accountability of Oakland's city government while augmenting decision-making power for Oakland residents (Stop the Injunctions 2011). These demands evince an analysis of conditions facing vulnerable communities in Oakland (and beyond) that cannot be resolved solely through legal reform since they include the significant harm inflicted when administrative bodies like ICE and the Planning Commission implement violent programs under the guise of neutral rationales. These demands also demonstrate an intersectional analysis of harm and refuse logics of deservingness that have pushed many social movements to distance themselves from criminalized populations. Instead, people caught up in criminal and immigration systems are portrayed as those in need of resources and support, and the national fervor for law and order that has gripped the country for decades, emptying public coffers and expanding imprisonment, is criticized.

Another example of intersectional activism utilizing law reform without falling into the traps of legal equality is activism against the immigration enforcement program Secure Communities. Secure Communities is a federal program in which participating jurisdictions submit the fingerprints of arrestees to federal databases for an immigration check. As of October 2010, 686 jurisdictions in thirty-three states were participating.¹² Diverse coalitions of activists and organizations around the United States launched organizing campaigns to push their jurisdictions to refuse to participate. Organizations dealing with domestic violence, trans and queer issues, racial and economic justice, and police accountability, along with many others, have joined this effort and committed resources to stopping the devolution of criminal and immigration enforcement. Their advocacy has rejected deservingness narratives that push the conversation toward reform for "good, noncriminal" immigrants. These advocates have won significant victories, convincing certain jurisdictions to refuse to participate and increasing understanding of the intersecting violences of criminal punishment and immi-

¹² This information is taken from the Immigration Policy Center's 2010 "Secure Communities: A Fact Sheet," which has since been updated.

gration enforcement.¹³ This work also avoids the danger of expanding and legitimizing harmful systems that other legal reform work can present. It is focused on reducing, dismantling, and preventing the expansion of harmful systems.¹⁴

I offer these examples not because they are perfect—certainly a significant range of tactics and strategies are part of each of these campaigns, and, with detailed analysis, we might find instances of co-optation, deservingness divides, and other dangers of legal reform work occurring even as some are avoided and rejected. However, these examples are indicative of resistance to limitations of legal equality or rights strategies. These demands exceed what the law recognizes as viable claims. These campaigns suggest that those who argue that a politics based on intersectional analysis is too broad, idealistic, complex, or impossible—or that it eliminates effective immediate avenues for resistance—are mistaken. Critical political engagements are resisting the pitfalls of rights discourse and seeking to build broad-based resistance formations made up of constituencies that come from a variety of vulnerable subpopulations but find common cause in concerns about criminalization, immigration, poverty, colonialism, militarism, and other urgent conditions. Their targets are administrative systems and law enforcement mechanisms that are nodes of distribution for racialized-gendered harm and violence, and their tactics seek material change in the lives of vulnerable populations

¹³ See the following press releases: Center for Constitutional Rights, “Stop Secure Communities in New York,” 2010, <http://www.ccrjustice.org/nyscomm>; Communities United Against Violence, “CUAV Response to Prop 8 Ruling,” 2010, [¹⁴ In August 2011, after this article was written, the Department of Homeland Security responded to this widespread resistance to Secure Communities by announcing its decision to bypass state governments and implement the program nationally. Prior to this, the department had entered into memoranda of understanding with various states wherein those states agreed to participate in the program \(see Families for Freedom, “Obama Administration again Fails Immigrant Communities by Unilaterally Implementing the Flawed Secure Communities Program with No Input from State Governments,” press release, August 8, 2011, <http://familiesforfreedom.org/news/releases/obama-administration-again-fails-immigrant-communities-unilaterally-implementing>\). Activists around the country are working on new strategies, including trying to push state, city, and county criminal punishment systems to refuse to comply with immigration detainers and to release arrestees who have been processed rather than continuing to hold them for ICE to pick up. Such strategies continue the momentum of the local activism against Secure Communities and seek to reduce the vulnerability of immigrants to deportation \(Angélica Cházaro, interview with the author, August 10, 2011\).](http://www.cuav.org/blogpost/12;AmericanFriendsServiceCommittee,“Stop‘SecureCommunities’inMassachusetts,”2011,http://afsc.org/event/stop-secure-communities-massachusetts;NorthwestImmigrantRightsProject,“MinorChanges to‘SecureCommunities’DoNotAddressInherentProblemswiththeProgram,”June21,2011,http://www.nwirp.org/NewsAndEvents/ViewPressRelease.aspx?PressReleaseID=21. See also Turnbull (2010).</p>
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rather than recognition and formal inclusion. Their organizing methods mobilize directly affected communities and value horizontal structures, leadership development, mutual aid, democratic participation, and community solutions rather than top-down, elite-imposed approaches to political transformation. These analytical and practical methods owe a great deal to women-of-color feminist formations that have innovated and continue to lead inquiry and experimentation into transformative social justice theory and practice.¹⁵

The analytical approach that Crenshaw termed “intersectionality” more than twenty years ago is not about addition. It describes a way of thinking about subjection that rejects both the declaration of a universal experience of a given vector of harm and the notion that people affected by multiple vectors are enduring conditions that are simply experiences of single-axis harm added together. For that reason, resistance conceived through single-axis frameworks can never transform conditions of intersectional violence and harm, and failure to depart from single-axis analysis produces reforms that contribute to and collaborate with those conditions (Smith 2006). Those conditions cannot be changed merely by declaring that single-axis discrimination is illegal. Instead, critical scholars and activists from many movements have shown that governance processes involved in population control deploy norms that sort populations into those whose lives must be cultivated and protected and those cast as threats and drains. The production of administrative classification systems that distribute life chances, whether those classifications are overtly linked to racial and gender categories or facially neutral, is coconstitutive with the ongoing processes of state-building that produce the United States. Racialization processes formed the United States and continue, through evolving methods and mechanisms, to produce a maldistribution of life chances that movements struggle to transform. The past fifty years have seen an important shift in the technologies that produce these conditions. We have moved toward formal legal equality and purported neutrality in law and policy, yet the racial wealth divide has grown, racialized-gendered criminalization has skyrocketed, and immigration enforcement is more significant a state project than ever (United for a Fair Economy 2006; Gilmore 2007).¹⁶ Racism is declared over, but the project of caging and exiling people of color is bigger than ever. Women, people with disabilities, queer and trans people, immigrants, and indige-

¹⁵ See Sandoval (2000), Hong (2006), Incite! (2007), Mananzala and Spade (2009), Sylvia Rivera Law Project (2009), and Melamed (2011).

¹⁶ Angélica Cházaro, interview with the author, June 11, 2011.

nous people are the ones most affected by these conditions. Single-axis frameworks that have attended legal equality demands cannot address the conditions of despair and violence that intersectional resistance seeks to transform. Demands for change that aim at the root causes of these problems place these issues in the context of genealogies of racialization that link the foundational violences of the United States to today's conditions and reject legal framings that obscure intersectional analysis. The current iteration of critical intersectional interventions invites and demands imagining ways of life that US law certainly cannot comprehend: life without prisons or borders, life without gender and health norms, life without work, wealth, or poverty as we currently know them.

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Abstract

Critical race theory generally and intersectionality theory in particular have provided scholars and activists with clear accounts of how civil rights reforms centered in the antidiscrimination principle have failed to sufficiently change conditions for those facing the most violent manifestations of settler colonialism, heteropatriarchy, white supremacy, ableism, and xenophobia. These interventions have exposed how the discrimination principle's reliance on individual harm, intentionality, and universalized categories of identity has made it ineffective at eradicating these forms of harm and violence and has obscured the actual operations of systems of meaning and control that produce maldistribution and targeted violence. This essay pushes this line of thinking an additional step to focus on the racialized-gendered distribution schemes that operate at the population level through programs that declare themselves race and gender neutral but are in fact founded on the production and maintenance of race and gender categories as vectors for distributing life chances. In the context of intensifying criminal and immigration enforcement and wealth disparity, it is essential to turn our attention to what Michel Foucault called "state racism"—the operation of population-level programs that target some for increased security and life chances while marking others for insecurity and premature death. This article looks at how social movements resisting intersectional state violence are formulating demands (like the abolition of prisons, borders, and poverty) that exceed the narrow confines of the discrimination principle and take administrative systems as adversaries in ways that pull the nation-state form itself into crisis.

QUERIES TO THE AUTHOR

q1. AU: The only Bailey, Kandaswamy and Richardson reference has a date of 2004. This reference citation for the three authors has a date of 2006. Please reconcile.

q2. AU: In note 15 there is a reference citation for Mananzala and Spade (2009). The only reference for these two authors has a date of 2008. Please reconcile.

q3. AU: Bailey, Kandaswamy, and Richardson 2004 is not cited in the text. Indicate where to cite or if to remove. See note above regarding the Bailey et al. 2006 reference citation. Please reconcile.

q4. AU: The only Mananzala and Spade reference cite has a date of 2009. This reference has the date of 2008. Please reconcile.