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# Book Review: Feminism, Law, Inclusion. Intersectionality in Action, by Gayle Macdonald, Rachel L. Osborne and Charles C. Smith (eds)

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*FEMINISM, LAW, INCLUSION: INTERSECTIONALITY IN ACTION* EDITED BY GAYLE MACDONALD, RACHEL L. OSBORNE & CHARLES C. SMITH (TORONTO: SUMACH PRESS, 2005) 256 pages.<sup>1</sup>

BY EMILY GRABHAM<sup>2</sup>

The aim of this collection is to explore the impact of intersectionality on feminist theory, activism, and legal practice. As readers may be aware, the term “intersectionality” refers to the interaction of different forms of disadvantage such as race, sexuality, and gender. There are many different articulations and criticisms of intersectionality as a concept. Kimberlé Crenshaw’s influential 1989 article, “Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” provided one of the earliest attempts at highlighting the categorizing and hierarchizing effects that law can have in the face of complex identities and inequalities.<sup>3</sup> Crenshaw’s article critiqued the marginalizing effects on black women of U.S. federal anti-discrimination law, which privileged the experiences of white women in sex discrimination cases and the experiences of black men in race discrimination cases.

Since the publication of Crenshaw’s article, intersectionality has become a prevalent, and, to many, an indispensable concept within a range of disciplines such as law, socio-legal studies, political theory, and cultural studies. *Feminism, Law, Inclusion* contributes to this ongoing work by illustrating “how intersectionality has been integrated into legal scholarship and activism.”<sup>4</sup> For those of us working in the United Kingdom, this collection on intersectionality comes at an important moment. Canadian readers may be aware that the United Kingdom will

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<sup>1</sup> [*Feminism, Law, Inclusion*].

<sup>2</sup> AHRC Research Centre for Law, Gender and Sexuality, University of Kent, U.K.

<sup>3</sup> (1989) 89 U. Chicago Legal F. 139.

<sup>4</sup> Rachel L. Osborne & Charles C. Smith, “Surveying the Landscape: An Introduction to *Feminism, Law, Inclusion*” in MacDonald, Osborne & Smith, *supra* note 1, 9 at 16 [Osborne & Smith, “Introduction”].

soon merge existing equalities bodies (the Commission for Racial Equality, the Equal Opportunities Commission, and the Disability Rights Commission) into a new Commission for Equality and Human Rights (CEHR). This new body will oversee the application and development of human rights law, as well as other equalities instruments covering race, ethnicity, religion, sex, gender, sexual orientation, gender reassignment, disability, and age.<sup>5</sup> A further development is the ongoing Equalities Review,<sup>6</sup> which is conducting wide-ranging consultations in preparation for a wholesale restructuring of equalities legislation in the United Kingdom and the establishment of a *Single Equality Act*. Many activists and scholars endorse this act, with its aim of combining, standardizing, and improving the notoriously complex U.K. equalities legislation. The current legislation varies in scope and definitions from ground to ground, and much of it has been implanted into the already messy U.K. legislative framework as a result of successive European directives. If this review is successful, it may be possible to achieve an equalities structure and mainstream legal discourse that is far more responsive to intersectional inequalities than those which currently exist.

I mention the situation in the United Kingdom to highlight from the outset this collection's international appeal. At least for those of us in the United Kingdom, the book provides an important contribution to the field of writing on legal activism. It enables us to draw useful comparisons with the ways that intersectionality is (and is not) negotiated in Canada through campaigning, court cases, and scholarship. However, because of its focus on "intersectionality in action," and because of the varied approaches of contributors (ranging from case studies to doctrinal and critical analysis to personal narrative), the collection also constitutes an essential resource for Canadian scholars and activists.

The book is split into three sections: "Theory in Action," "Organizations in Action," and "Law in Action." Each section highlights different aspects of intersectionality as it is negotiated in scholarship and

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<sup>5</sup> The *Equality Act 2006* (U.K.), 2006, c. 3 (assented to 16 February 2006) contains the measures governing the establishment and operation of the CEHR: online: Office of Public Sector Information <<http://www.opsi.gov.uk/acts/acts2006/20060003.htm>>. The U.K.-based AHRC Centre for Law, Gender and Sexuality (CentreLGS) produced a response to the government's consultation on the CEHR, which can be downloaded from the Centre's website: <<http://www.kent.ac.uk/clgs/index.html>>.

<sup>6</sup> See online: <<http://www.theequalitiesreview.org.UK/>>. The review panel's interim report was published on 20 March 2006.

practice. As the context changes through these sections, we see different aspects of intersectionality emerging. For example, the first section, "Theory in Action," might be expected to maintain an abstract focus. As it turns out, the editors juxtapose a nuanced assessment of the construction of women's sexuality in law<sup>7</sup> with a critical narrative account of providing pro bono legal counsel to racialized clients.<sup>8</sup> They achieve a similar effect in "Law in Action," which combines a critical analysis of the use of a bias application in the case of *R.D.S.*<sup>9</sup> with a reflection on other issues, including the litigation in *M. v. H.*<sup>10</sup> In this way, each section provides an opportunity to view intersectionality through a different lens.

But each section is also not what it seems. Indeed, the collection as a whole is not what it seems. What might appear to be a straightforward account of making an educational video on feminist legal activism<sup>11</sup> brings up further questions around whose story of activism to tell, whose "victories" to recount, and how "victories" are defined in the first place. A narrative about campaigning to support employment equity legislation in Ontario in the face of its imminent dismantling<sup>12</sup> interrogates the effects of alliances and intersections between NGOs and other organizations on core social activism issues. A historical account of the position of First Nations women in relation to the *Charter* and Bill C-31<sup>13</sup> also provokes consideration of their ability (and inability) to exercise agency in relation to these oppressive legal measures, and the dilemmas that ensue from adopting an identity under the law in order to obtain a remedy.

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<sup>7</sup> Gayle MacDonald, "In Absentia: Women and the Sexual as a Social Construct in Law" in MacDonald, Osborne & Smith, *supra* note 1, 50.

<sup>8</sup> Erica Lawson & Amanda Hotrum, "Equity for Communities: Integrating Legal Counsel and Critical Race Theory" in MacDonald, Osborne & Smith, *supra* note 1, 41.

<sup>9</sup> Sherene Razack, "*R.D.S. v. Her Majesty The Queen*: A Case About Home" in MacDonald, Osborne & Smith, *supra* note 1, 200.

<sup>10</sup> Martha McCarthy & Joanna Radbord, "*M. v. H.*: The Case for Gay and Lesbian Equality in Marriage and Family Law" in MacDonald, Osborne & Smith, *supra* note 1, 220.

<sup>11</sup> Jan Kainer, "Locating Landmarks: Producing an Educational Video on Women and the Law" in MacDonald, Osborne & Smith, *supra* note 1, 117.

<sup>12</sup> Daina Green, "An Attempt to Save Employment Equity: Community Advocacy versus the Ontario Government" in MacDonald, Osborne & Smith, *supra* note 1, 162.

<sup>13</sup> Beverley Jacobs, "Gender Discrimination under the *Indian Act*: Bill C-31 and First Nations Women" in MacDonald, Osborne & Smith, *supra* note 1, 175.

The collection therefore works very well on a number of levels—from the perspectives of theorists, activists, and practitioners, as well as the many of us who traverse these roles. It enables a dialogue between a broad range of contributors<sup>14</sup> and over a broad range of topics, which shows the debate over law and intersectionality in its full texture and depth. And it does so in such a way as to highlight the important critical, and often self-aware, role of those engaged at any point in thinking about or putting into practice methodologies based on intersectional theory. It does not assume a binary distinction between the academy, on the one hand, and legal advocacy and campaigning on the other. In this sense, the contributions, and the manner in which they are presented in the collection, also defy categorization.

The collection embodies the concept of reflexive practice. All of the contributors are engaged in feminist, critical race, and/or queer advocacy or research on a daily basis. Activists are thinking about how to frame and pursue major goals; scholars are constantly in the process of reflecting on their own intellectual frameworks. Although the editors do not try to indicate through their choice of articles that we are all doing as much as we can to develop the way we think about identity, intersectionality, and structural inequalities, they do show the important processes that are currently underway. As a result, the contributions constantly challenge the reader to consider the intellectual and methodological assumptions she holds about the significance of intersectionality to feminism and law.

However, the book also raises a number of important questions that left me wanting more from some of the contributions. This, in itself, indicates its power to raise new and engaging fields of inquiry. One example is Erica Lawson and Amanda Hotrum's contribution entitled "Equity for Communities: Integrating Legal Counsel and Critical Race Theory." This chapter focuses on the Connecting Clients with Counsel (CCWC) project, which connected racialized clients with pro bono legal counsel. The aim of this contribution was to consider how a critical race perspective could be brought to bear on the delivery of legal services.<sup>15</sup> The authors map out the embedded history of racism in the Canadian project of nation-building, and, consequently, in the Canadian justice

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<sup>14</sup> Professionally, the contributors line up as activists, a judge, academics, and legal advocates.

<sup>15</sup> *Supra* note 8.

system. They then provide a short introduction to critical race theory and apply the critical race perspective to the position of racialized people in relation to Canadian law. They highlight the devaluation of indigenous knowledges and the circulation of discourses of “civilization” through the law, both of which contribute to the disempowerment of racialized people in the Canadian legal system.<sup>16</sup>

Lawson and Hotrum provide an extremely interesting analysis by taking an important case study and using it as a prism through which to refract issues of activism, racism, legal subjectivity, and transformative practices. But it felt far too short. The chapter ended just as the analysis began to raise some fascinating questions. What did CCWC clients think about the service? How did their expectations and experiences of the legal system change when supported by counsel from the CCWC? How did interactions between clients and counsel support, or undermine, existing institutional legal processes in ways that led to clients being further racialized through law? What dilemmas did the CCWC face in the provision of its service and how can a critical race analysis shed more light on these dilemmas? Perhaps this was an example of a project that could not easily be reduced to a chapter-length piece, but I would have welcomed more details and analysis from this contribution in particular.

A further aspect of the collection that could have benefited from more explanation is what the contributors and editors, on the whole, thought about the concept of intersectionality. This discussion is taken up in places. For example, Rebecca Johnson’s chapter, “Gender, Race, Class and Sexual Orientation: Theorizing the Intersections,” traces intersectionality’s genealogy within feminist theory.<sup>17</sup> She recalls the rise of anti-essentialism as a response to false unity amongst women, drawing attention to Sherene Razack’s insight that the political value of anti-essentialism lies in anti-subordination.<sup>18</sup> Johnson highlights the many different theories that have contributed to the emergence of “intersectionality” as a key term for feminists, including Patricia Hill Collins’s work on violence as a mechanism for drawing together forms of oppression<sup>19</sup> and Patricia Mann’s work on “conflicted actors” as

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<sup>16</sup> *Ibid.* at 46.

<sup>17</sup> *Supra* note 1, 21.

<sup>18</sup> *Ibid.* at 29.

<sup>19</sup> *Ibid.* at 30.

opposed to “fragmented selves.”<sup>20</sup> Johnson sees intersectionality, in the light of this analysis, as “part of feminism’s ongoing dialogue with the past that gave it birth.”<sup>21</sup>

In their introduction, the editors address the emergence, and some of the contemporary applications, of intersectionality. In particular, they discuss its implications for feminist legal activism through the Women’s Legal Education and Action Fund (LEAF), for organizational structures through the adoption of more inclusive policies by bodies such as the Law Society of Upper Canada, and for feminist legal theory.<sup>22</sup> Nevertheless, I would have been interested to find out whether the editors saw any problems with the ways that feminists have theorized and applied intersectionality in these contexts.<sup>23</sup> How does intersectionality, as a descriptive and productive concept, have concrete effects within the very tangible and specific case studies that refreshingly occupy the collection? How did the editors themselves perceive intersectionality as challenging activist, legal, and research methodologies?<sup>24</sup> How challenging is intersectionality, given its reliance on the liberal turn to identity-based rights?<sup>25</sup> Given that their project, as previously stated, is to illustrate the integration of intersectionality into legal activism and legal theory,<sup>26</sup> can this process of integration always be assumed to produce beneficial institutional and decision-making effects?

These are minor criticisms. It is encouraging to see a collection such as this emerge, which so stubbornly and effectively situates itself at the intersection of legal theory, activism, and practice. No doubt the contributions will continue the ongoing dialogue in many jurisdictions on how to think about intersectionality and how to address intersecting inequalities.

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<sup>20</sup> *Ibid.* at 32.

<sup>21</sup> *Ibid.* at 33.

<sup>22</sup> Osborne & Smith, “Introduction” in MacDonald, Osborne & Smith, *supra* note 1, 9 at 11-13.

<sup>23</sup> Similar questions arose at a conference entitled “Theorising Intersectionality” that CentreLGS held at Keele University, U.K., from 21-22 May 2005. Please see the CentreLGS’s website, *supra* note 5, for further details and copies of abstracts.

<sup>24</sup> For an assessment of intersectionality in relation to research methodologies, see L. McCall, “The Complexity of Intersectionality” (2005) 30 *Signs: J. Women in Culture & Soc’y* 1771.

<sup>25</sup> See e.g. W. Brown, *States of Injury. Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1991).

<sup>26</sup> Osborne & Smith, “Introduction” in MacDonald, Osborne & Smith, *supra* note 1, 9 at 16.