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Lorena Sosa, *Intersectionality in the Human Rights Legal Framework on Violence against Women: At the Centre or the Margins?* (CUP 2017)

This book is about international human rights norms with respect to violence against women. It is specifically concerned with finding norms relating to intersectionality to understand how vast or sparse is the protection against gender-based violence suffered not merely because of gender, but also because of race, colour, ethnicity, religion, region, class, disability, sexual orientation etc. The book engages with this aim via three courses—first, setting out the theoretical and practical implications of intersectionality for violence against women; secondly, gauging how far these are incorporated in international human rights law; and finally, analysing case studies of intersectional gender violence.

Sosa opens the book with a fitting thought: that violence against women in international law has primarily been understood in terms of gender. She shows, rightly so, that the category of 'gender' has become increasingly problematic in that it embodies very specific understandings, including rigid boundaries between biological categories of male-female and a heteronormative character of patriarchy. Intersectionality, on the other hand, throws the diversity of experiences of gender-based violence in sharp relief. It fundamentally questions the idea that gender-based violence can be understood regardless of differences based on race, religion, caste, class, sexual orientation, disability etc. Sosa points to the increasing recognition of this idea in international human rights law in the last few decades. When such is the case, it becomes important to understand what the idea or intersectionality is or what it does. Sosa offers this account in chapter 2 which aims to serve as the theoretical guide for the legal analysis in the rest of the book. Essentially, she points to the overarching idea that while discrimination may not be fully captured by a single ground, intersectionality may help appreciate interlocking systems of disadvantage. She supplements this idea with three propositions: that intersectionality highlights the socio-structural nature of inequality; that it is structural rather than individual; and that it creates new and different forms of discrimination. These are further supplemented by a number of principles: that identity-categories in intersectionality are diverse from within; that these are constantly changing or dynamic; and that there is no necessary hierarchy between them. While each of these overarching notions, propositions and principles are attractive, Sosa does not offer them as either necessary or sufficient for a theoretical account of intersectionality. This though is a common complaint about intersectionality, especially its restatements, that it lacks a certain analytical depth for being characterised as a theory at all, something which Sosa argues it certainly is. While I too would readily agree that intersectionality meets the standard of a coherent theory, more is required to be able to actually claim so. Similarly, the justification for the typology of intersectionality theories, as divided into group-centered or dynamic-centered, needs to be spelled out. It may be that both group-based or systems-based approaches to intersectionality are equally plausible, but the natural question that arises is whether all approaches to intersectionality can be imagined as one or the other, or if there are approaches which do not

necessarily fit either. The grounds-based approach of discrimination law, for example, may seem to refer to either or both at the same time—referring to certain disadvantaged groups or dynamics of disadvantage or both of them at the same time. In fact, Kimberlé Crenshaw's own work seems to do just this, referring to dynamics of oppression while focusing on Black women as a group. Sosa's classification of Crenshaw's work as mainly categorical and lacking a systematic appreciation of the dynamics of disadvantage is thus suspect. A point often missed is located in an important footnote in Crenshaw's 1991 piece which is worth quoting in full:

I consider intersectionality a provisional concept linking contemporary politics with postmodern theory. In mapping the intersections of race and gender, the concept does engage dominant assumptions that race and gender are essentially separate categories. By tracing the categories to their intersections, I hope to suggest a methodology that will ultimately disrupt the tendencies to see race and gender as exclusive or separable. While the primary intersections that I explore here are between race and gender, the concept can and should be expanded by factoring in issues such as class, sexual orientation, age, and color.¹

It is clear that Crenshaw did not intend to limit intersectionality to race and gender or Black women for that matter. As a concept and as a methodology, she hoped for it to be much more. Choosing Black women as the subject of her analysis *for applying* the concept and the methodology does not quite limit its normative roots. The move in chapter 2 to air the critiques of intersectionality theory seems to proceed from a premise which is partial in appreciating the provisional nature of the theory it is intending to critique. Here, a disciplinary distinction may also be noted. It is not possible to look at works engaging with intersectionality or its critiques as necessarily relating to the same cannon or field at all. Crenshaw's own work, especially her 1988 piece, was squarely a critique of discrimination law, through critical race feminism, critical legal theory and postmodern theory. Similarly, Ange-Marie Hancock's contributions makes a fine job of historical materials and Patricia Hill Collins and Nira Yuval-Davis of sociology. Perhaps these positions explain some of the differences in how they conceive of intersectionality. One may consider these differences, not as differences in *what* intersectionality is studying—categories or systems—but simply as *how* it is studying forms of disadvantage suffered by people. In that sense, the divisions between intersectionalists seem contrived, if only at the level of how 'the burgeoning field of intersectionality studies' is organised.² The discussion in the book plays on these avowed differences without questioning their own grounding as differences per se.

At the end of chapter 2, what is more convincing is Sosa's selection of intersectionality-related principles which she applies to violence against women. These suggest that, first, violence against women is a result of multiple inequalities; secondly, it is structural; thirdly, it takes place in multiple domains, including family, workplace, educational institutions; and finally, women

¹ Kimberlé W Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) 43 Stanford Law Review 1241.

² Sumi Cho, Kimberlé W Crenshaw, and Leslie McCall, 'Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis' (2013) 38 Signs 785.

who are located at the intersection of two or more social categories are more vulnerable to violence. These principles seem reasonable enough. I am not sure how they flow from the specific principles identified earlier in the chapter. But perhaps works on intersectionality do not need to cross this bar. They do not all need to identify an irreducible core to intersectionality in order to apply some of its principles. Sosa's work may fall in this category. I would thus read the general discussion on intersectionality not as a restatement of the theory *as theory*, but of how the field is organised, including its many different versions, critiques and defences. That itself is rather helpful for a project of this kind, which applies intersectionality theory to a particular issue at hand, i.e., violence against women in international law.

In chapter 3, Sosa gives a comprehensive overview of the human rights norms attending to the issue of violence against women. Here, Sosa gives a roundup of both hard and soft law, including a justification for using the latter in responding to gender violence. The discussion then moves on to the classification of substantive obligations in respect of gender violence, including the distinction between negative and positive obligations, obligations to 'respect', 'protect' and 'fulfil' rights, and obligations of results or means. There is also an extended engagement with state responsibility for acts of private individuals and due diligence obligations which arise therein. Sosa makes an important point here: that the call for extending due diligence obligations from individual cases to systemic issues does not accord with the idea of positive obligations, which is now firmly rooted in human rights law. Nonetheless, due diligence as a broad standard applied by courts and other bodies may be 'instrumental in the adoption and assessment of an intersectional approach to [violence against women] in a flexible and dynamic manner.' (p 57) Ultimately, the takeaway from this chapter is the appreciation of the sheer breadth of legal norms which exist in international law on violence against women. Chapter 4 builds upon another layer of UN norms and chapter 5 further adds the legal norms of two more systems, the Council of Europe and the Organisation of American States. These chapters show just how dense the legal landscape is. It is also herein and especially with respect to CEDAW that references to intersectionality start to shine through. Sosa devotes significant space to recounting CEDAW jurisprudence on violence against women, especially the General Recommendations of the CEDAW Committee, in outlining the trajectory of development of thought on violence against women from no mention of it to full-on recognition. The detailing is comprehensive, in respect of different grounds, disadvantaged groups, particular rights and nature of obligations in respect of each. One question that arises at this point is what the uptake of such proliferation of intersectionality-friendly norms all been? In one way, the direct result of it is visible in the way the CEDAW Committee has handled individual communications under the Optional Protocol. Sosa considers the intersectional awakening in the CEDAW Committee decisions but does not quite address the point squarely as to the analytical difference in reasoning which is embedded in intersectionality and otherwise. Recent decisions like *Kell v Canada*³ show that realisation of intersectionality lies in

³ Communication No 19/2008, CEDAW/C/51/D/19/2008 (February 2012).

the recounting of the specific patterns of disadvantage suffered by intersectional claimants, which are unique in terms of their 'combined'⁴ effect explained in terms of both patterns of group disadvantage shared by women generally but also different in terms of their specific intersectional position. Thus, pointing out the patterns of group disadvantage alone without showing this dynamic of sameness and difference does little more than underscore that every discrimination case is unique. Without an explanation of such kind, even the best of intersectionality-friendly decisions will actually make little difference analytically.⁵ Sure enough, there may still be a tangible difference in terms of what remedies intersectional claimants end up accessing, but ultimately, we hope for the reasoning to be robust enough to be significant guidance in how we deploy intersectionality as a method and as a theory, and not simply a tool for activating a certain result in a case.

It is not until chapter 6 that we get a substantial consideration of violence against women in terms of what it actually *is*. This then is also the most illuminating part of the book. The aim is to elaborate what an intersectional approach adds to the examination of position of Romani women in Europe, theoretically and methodologically (p. 174). Sosa presents her observations from a range of interactions with survivors, service providers and representatives of associations working with Romani women. She spells out the differences in perceptions of gender, ethnicity, religion and socio-economic class in Romani women's experiences of intimate partner violence. In spite of these differences, Romani women hardly seek out the specialised services either within or beyond their communities to help deal with intimate partner violence. It seems that the main difference the difference makes is that Romani women are basically left without much support despite the services available to them in principle. However, not all services are attuned to these differences or to intersectionality. Sosa argues that an appreciation of differences is in fact seen as antithetic to the principle of equality in the Spanish Constitution (p. 199). Formal equality thus comes in the way of actually addressing Romani women's experiences of violence. Sosa repeats this empirical study from the perspective of indigenous and migrant women in Argentina. She comes to a similar conclusion, that although differences of indigenous and migrant status make a difference to a survivor's experience of intimate partner violence, these are generally disregarded as causally relevant to it and are in fact used to 'naturalise' or justify it (p. 237). This of course, is regardless of the commitment to equality and a strong conviction that domestic violence is universal and cuts across class, race and ethnicity (ibid).

I would have hoped for an early word on what forms of violence against women really look like. A pithy example of intersectional gender violence would have bridged the gap between law and reality and would have elevated the legal cause of this book. After all, so much detail about

⁴ *ibid.*

⁵ Equally, unlike Sosa, I am skeptical that group-based focus of intersectional analysis is a problem. I think intersectionality is fundamentally about positions, relationships of social groups, not individuals. Evident or not, these are what we have to explicate as the subject of analysis (pp 95-101).

the law on gender-based violence matters only when it speaks to/in not just the legalese, including the language in which gender-based violence is spoken of on an international plane, but to the lived realities of it. Law must respond to *that*, not its own version of what we as lawyers call violence against women or gender-based violence. The constant reckoning of reality above law is what defined Black women's contribution to intersectionality. If we take cue from the roots of intersectionality theory which lie in critical race feminism, we will see that intersectionality cannot be so neatly separated in terms of its theory and praxis, and we would be left to *do it* as one. So, I wish that Sosa's important empirical work had spilled over some of the more clinical examination of law on gender violence and intersectionality.

Ultimately, the book leaves us with a sense that the legal landscape is rife with intersectionality-related norms which may or may not be employed in an intersectionality-friendly way. What the book shows us is then the landscape of norms, resisting the conclusion that intersectionality has already been or can easily be translated into law, and in this case, of gender-based violence, following a one-size-fits-all model (p. 264). That, I think, is a significant contribution this book makes to the field of intersectionality and human rights law, which by no means is a small accomplishment.

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