New Complexity Theories: From Theoretical Innovation to Doctrinal Reform

Darren Lenard Hutchinson
University of Florida Levin College of Law, hutchinson@law.ufl.edu

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NEW COMPLEXITY THEORIES: FROM THEORETICAL INNOVATION TO DOCTRINAL REFORM

Darren Lenard Hutchinson*

I. INTRODUCTION

During the latter part of the twentieth century, progressive scholars in various fields of study have developed a large body of works analyzing identity politics. Within legal scholarship, critical race, feminist, anti-heterosexist, and other progressive theorists have demonstrated how legal doctrines and policies perpetuate social hierarchy and reinforce the domination of oppressed classes. The efforts of progressive scholars (and activists) to launch a unified critique of injustice, however, has proved difficult — due in part to the variety of theoretical and doctrinal options available to counter subordination and also to the intractable nature of institutionalized oppression. Yet, progressive scholars have also encountered mounting and sustained “internal criticism” around questions of their own exclusion, dominance, and privilege. Specifically, many progressive scholars have offered leftist critiques of progressive social movements, arguing that these movements themselves reinforce social hierarchy and privilege. Initially, these internal critics seemed to follow a strict “antiessentialism” model: they criticized progressive movements for failing to recognize the complexity of

* Visiting Professor, Washington College of Law, American University. Associate Professor, Southern Methodist University School of Law. B.A., University of Pennsylvania; J.D., Yale Law School. I thank Dean Grossman of the Washington College of Law for providing a summer research grant to aid in the completion of this project. I also thank Nancy Levit and the editors of the UMKC Law Review for inviting me to participate in this Symposium and for their patience and encouragement. Finally, I thank Nancy Ehrenreich for completing the important work that forms the basis for this Symposium.


group experience. "Women of color" experiences, for example, were seen as differing in kind from the experiences of white women and men of color; because antiracist and feminist legal theorists neglected to analyze questions of "intersectional" oppression, they obscured the distinct positionalities across the population of persons of color and women. 4 Critical race feminists, especially Angela Harris,5 Kimberle Williams Crenshaw,6 and Mari Matsuda7 (and bell hooks in the humanities8) demonstrated in painstaking detail the sins of "essentialism." The pioneering works of critical race feminists have made the "intersectionality" model an established jurisprudential method among antidiscrimination and identity theorists.9 Equality scholars have illuminated the inadequacies of essentialism in a host of doctrinal and political contexts by employing intersectionality.10 But the intersectionality critique extends beyond antiessentialism. Intersectionality theorists have also demonstrated the complexity and multiplicity of identity and oppression and the need for a more comprehensive analysis of subordination that resists the traditional temptation to

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analyze systems of subordination as unrelated and nonconverging phenomena.\textsuperscript{11}

After a decade or more of intersectional theorizing, a recent wave of literature has sought to push this literature into different conceptual and substantive locations.\textsuperscript{12} Several progressive scholars have isolated perceived limitations of the intersectionality model – while adhering to and praising its strengths.\textsuperscript{13} Law reviews are beginning to sponsor symposia on so-called “post-intersectionality” theories\textsuperscript{14} – what this Article refers to as “new complexity theories” or “multidimensionality” theories.\textsuperscript{15} Nancy Ehrenreich’s contribution to this Symposium has added tremendously to this scholarship.\textsuperscript{16} The attention paid to these developing models speaks to the many important insights that intersectionality has brought to progressive legal theory.

This Article examines the work of the new complexity or multidimensionality scholars. Most of these scholars are “race-sexuality-gender-class” critics – or scholars whose research introduces sexuality and “queer” theories to the race, gender, and class project initiated by intersectional scholars.\textsuperscript{17} This Article seeks to identify concrete points of intervention for multidimensional theorizing. Part II offers an “intellectual history” of the new complexity theories. This section explores the distinctions and similarities among intersectionality literature and the recent contributions of authors in the multidimensionality school. Parts III considers some of the doctrinal implications of new complexity theory and concludes that this work is of great importance for refining and augmenting equality doctrines and for developing

\textsuperscript{11} Hutchinson, supra note 9, at 308 (arguing that “intersectionality theory provides a formidable challenge to the notion that scholars can adequately examine or provide solutions to one form of subordination without analyzing how it is affected and shaped by other systems of domination”).

\textsuperscript{12} See id. at 309-13 (discussing theoretical extensions of intersectionality); Valdes, supra note 9, at 1338-40 (advocating analyses that transcend the limitations of intersectionality).


\textsuperscript{14} This Symposium specifically examines “post-intersectionality” theories. Also, the Journal of Contemporary Legal Studies recently sponsored a symposium on the “future” of intersectionality; most of these authors, however, are associated with intersectionality, rather than the new complexity critiques. See Symposium: “The Future of Intersectionality and Critical Race Feminism,” 11 J. CONTEMP. L. STUD. 677 (2001).

\textsuperscript{15} At the outset, I admit some discomfort with the term “post-intersectionality” theory because it implies the “death” of intersectionality. Not only do scholars continue to cite intersectionality with great frequency, but this scholarship serves as the foundation for many of the works in the emerging new complexity critiques. Furthermore, the term implies that multidimensionality is a new totalizing paradigm that has displaced all aspects of intersectionality. Scholarship, however, progresses less dramatically.


\textsuperscript{17} See Hutchinson, supra note 9, at 309-13 (attributing extension and re-conceptualization of intersectionality to race-sexuality criticism); Valdes, supra note 9, at 1339-40.
more responsive antisubordination theories. The goal of this Article is not to “trash,” marginalize or even necessarily displace intersectionality. Instead, it seeks to demonstrate why the compelling project started by intersectionality—
to expound the complexity of identity and subordination—requires more elaboration and development, and why the limitations of intersectional analysis render it inadequate in certain contexts. In so doing, critiques of multidimensionality’s shortcomings are both invited and welcomed.

II. INTERSECTIONALITY AND EXTENSIONS: AN INTELLECTUAL HISTORY OF NEW COMPLEXITY THEORIES

A. Intersectionality: The Roots of New Complexity Theories

Intersectional analysis has tremendously influenced multidimensionality or new complexity theorists. In fact, many multidimensionality theorists have praised the insights that intersectionality has brought to critical legal theory.18 And these insights are plentiful. Intersectionality has “destabilized traditional attempts to treat oppressed classes as monolithic groups;”19 “provide[d] a formidable challenge to the notion that scholars can adequately examine or provide solutions to one form of subordination without analyzing how it is affected and shaped by other systems of domination;”20 “illustrated that the failure to examine the problem of intersecting subordination produces an equality theory that centers around the lives of relatively privileged individuals,”21 and “responded to the virtual absence of any juridical and theoretical recognition of the particular hardships that women of color endure as victims of subordination.”22

In varying degrees, multidimensionality scholars have borrowed heavily from the intersectionality model. Most new complexity theorists, for example, have engaged in a fair amount of antiessentialist criticism,23 and they also treat systems of oppression as interrelated concepts.24

18 See, e.g., Ehrenreich, supra note 16, at 272 (arguing that intersectionality has had a “positive and profound effect” upon legal theory); Identity Crisis, supra note 10, at 308 (“The intersectionality critique has brought several compelling insights to bear upon legal theory.”); Valdes, supra note 9, at 1333 (“The analytical tools known as multiplicity and intersectionality were pioneered by critical race feminists to bring into sharp relief, and to spotlight, the particularized interplay of white racism and androsexism”).
19 Hutchinson, supra note 10, at 308
20 Id.
21 Id.
22 Id. at 309. See generally Ehrenreich, supra note 16, at 258 (discussing tenets of intersectionality).
23 See, e.g., Hutchinson, supra note 2 at 583-635 (criticizing essentialism in anti-heterosexist theory and activism); Peter Kwan, Jeffrey Dahmer and the Cosynthesis of Categories, 48 HASTINGS L.J. 1257, 1273-74 (1997) (rejecting as inaccurate “single-axis” accounts of acts of subordination).
24 See, e.g., Elvia R. Arriola, Gendered Inequality: Lesbians, Gays, and Feminist Legal Theory, 9 BERKELEY WOMEN’S L.J. 103, 141 (1994) (rejecting “the idea of arbitrarily separating out categories to address discrimination” and instead describing “discrimination as a problem that
B. Points of Departure

Although the works of multidimensionality theorists embrace some aspects of the intersectionality model, several important distinctions exist between these two theoretical movements—and any effort to conflate them would obscure their material differences.\(^{25}\) The following section highlights these points of departure; because the article analyzes these distinctions elsewhere,\(^ {26}\) it does not now discuss them comprehensively.

1. Substantive Points of Departure

Substantively, multidimensionality and other new complexity theories respond to a great shortcoming of intersectionality—the failure of its proponents to interrogate seriously the implications of sexual identity and heterosexism upon their analyses.\(^ {27}\) On one level, this substantive omission does not destabilize intersectionality; its usefulness as a jurisprudential model is not necessarily complicated simply because its proponents have not explored every potential context of its usage. Nevertheless, because sexual identity and heterosexism are highly relevant social phenomena, impacting the very lives of the women of color who are central to intersectional theories, we cannot dismiss the absence of queer criticism within intersectionality as a mere oversight. Instead, this substantive limitation has precluded a richer understanding of the oppression of women of color and of other classes who endure “intersectional” subordination.

2. Conceptual Points of Departure

The conceptual distinctions among intersectionality and multidimensionality theorists offer the most hope to the project of fashioning an adequate theory of subordination. Multidimensionality theorists have contributed several conceptual progressions to the intersectionality paradigm.

Multidimensionality theorists have attempted to move beyond intersectionality’s antiessentialist roots by examining questions of “intersecting” 

\(^{25}\) Thus, I would disagree generally the claim that my work is basically a new “antiessentialist” critique. See, e.g., Robert S. Chang and Jerome McCristal Culp, Jr., *After Intersectionality*, 71 UMKC L. REV. 485, 490 n.30 (2002) (arguing that Hutchinson’s “critique of gay rights as focusing on the interests of whites and of antiracist politics as ignoring gays and lesbians of color resembles more the antiessentialist critiques directed by Kimberlé Crenshaw and Angela Harris toward feminism (for ignoring race) and antiracism (for ignoring gender)”); Berta Esperanza Hernandez-Truyol, Essay, *Borders (En)gendered: Normativities, Latinas, and a Latinx Paradigm*, 72 N.Y.U. L. REV. 882, 883 (1997) (arguing that the “multidimensionality of Latinas/os is in tension with the dominant legal paradigms that take a single-attribute, analytical approach to identity”).


\(^{27}\) See Hutchinson, *Ignoring the Sexualization of Race*, *supra* note 13, at 11-12 (discussing the omission of queer theory from traditional intersectional analysis).
privilege and subordination – rather than simply focusing on the lives of individuals, such as women of color, who are excluded from “single-issue” frameworks.\textsuperscript{28} Nancy Ehrenreich’s work takes up this task by developing the concept of “hybrid intersectionality.”\textsuperscript{29} Hybrid intersectionality describes an individual “who sits at the intersection of one subordinate status (or more) and one dominant status (or more) . . . .”\textsuperscript{30} Under this conceptualization, everyone’s experiences with subordination are rooted in multiplicity.\textsuperscript{31}

Recognition of the “universality” of complex identity and experience permits a more nuanced analysis of the problem of subordination and reveals the discriminatory nature of existing progressive social movements.\textsuperscript{32} While some “dominant” theorists within these movements have approached intersectionality with indifference or even anger, their own theories reflect the complex identities of individuals who, though “subordinate,” enjoy a measure of social privilege (particularly within progressive social movements).\textsuperscript{33} Mainstream “gay” politics, for example, responds to the social position of white, gay, upper-class males; this is undeniably a “multidimensional” location.\textsuperscript{34} Therefore, white gay rejection of multiplicity theories offered by race-sexuality critics renders anti-heterosexism a contradictory movement: while the complex identities of persons of color, the poor, and women are dismissed among queer theorists as presenting “external” concerns, the dominant queer theory accommodates the multidimensional privileged and subordinate experiences of upper-class, white, male individuals.\textsuperscript{35} This conceptual innovation – that all individuals experience multiplicity – was anticipated, but not fully articulated, by intersectionality scholars.\textsuperscript{36}

Embracing the universality of complexity places multidimensionality on a substantially different terrain than intersectionality, for it permits a more contextualized analysis of privilege and subordination. In my work, for example,

\textsuperscript{28} See, e.g., id. at 12 (“Conceptually, my analysis differs from the pre-existing body of intersectional scholarship because it attempts to complicate the implication of this latter work that social identity categories or systems of oppression only ‘intersect’ in the lives of persons burdened by multiple sources of disempowerment, such as women of color.”); Francisco Valdes, Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality, and Responsibility in Social Justice Scholarship or Legal Scholars as Cultural Warriors, 75 DENV. U. L. REV. 1409, 1424-25 (1998) (analyzing intersecting whiteness, maleness, and queer status).

\textsuperscript{29} See Ehrenreich, supra note 16, at 257.

\textsuperscript{30} Id. at 277.

\textsuperscript{31} See Hutchinson, Ignoring the Sexualization of Race, supra note 13, at 16 (“[T]he reality of multidimensional subordination is generalized, not restricted to specific categories of individuals.”).

\textsuperscript{32} Id. at 16-17.

\textsuperscript{33} Id.

\textsuperscript{34} See id. See also Ehrenreich, supra note 16, at 273 (“I would emphasize that white women’s experience is as particular a form of gender experience as are the experiences of women of color.”).

\textsuperscript{35} See Hutchinson, Ignoring the Sexualization of Race, supra note 13, at 16-17.

\textsuperscript{36} See id. See also Ehrenreich, supra note 16, at 273 (“I would emphasize that white women’s experience is as particular a form of gender experience as are the experiences of women of color.”).
I have engaged in antiessentialist criticism by examining the positionality of “gays, lesbians, bisexuals, and transgendered persons of color,” but I have also turned my analytical gaze outward – to re-examine as a multidimensional location the subordination of individuals who are presently centered in progressive theories (such as white gays and heterosexual men of color). Intersectionality theorists typically have failed to make this positional shift, due to their singular focus on “women of color” and their failure to theorize the universality of complex subordination. As I have previously acknowledged, however, the centering of women of color within intersectionality is utterly justifiable, given the inattention paid to their experiences by legal scholars, jurists, and policymakers.

Analyzing the complex experiences of subjects who occupy centrality in progressive discourses complicates the concepts of advantage and disadvantage. My examination of “heterosexual,” “male,” and “person of color” experiences, for instance, has demonstrated that heterosexuality, maleness, and color have converged in the lives of men of color to justify and perpetuate their violent subordination in areas such as lynching and other forms of oppressive violence. Thus, black heterosexual men, like black gay, lesbian, bisexual, and transgender individuals, have endured a history of “sexualized racism.” Therefore, when heteronormative antiracists dismiss sexual domination as outside of the boundaries of the racial hierarchy, they perilously “ignore the sexualization of race.” Furthermore, while heterosexuality and maleness are usually treated as “privileged” and invisible categories – including within some intersectionality scholarship – an understanding of black heterosexual male status as a multidimensional location problematizes a blanket depiction of these categories; the “privileged” or “subordinate” nature of these categories depends solely upon context. As Ehrenreich’s work demonstrates, multidimensionality or

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37 See, e.g., Hutchinson, “Gay Rights” for “Gay Whites,” supra note 13, at 1368-72 (examining white gay experience); Hutchinson, Ignoring the Sexualization of Race, supra note 14, at 16-17.

38 See Ehrenreich, supra note 16, at 274 (discussing failure of intersectionality to consider intersecting privilege and subordination).

39 See Hutchinson, Ignoring the Sexualization of Race, supra note 13, at 14.

40 See id. at 79-97.

41 See id. at 81-84.


symbiosis can help debunk “pure case” arguments, under which hybrid intersectionals falsely portray their experiences with subordination as uncomplicated and singular.44

Multidimensionality also complicates the “intersecting” subordination model that defines intersectionality theories.45 An analysis of heterosexuality for example, demonstrates that gay and bisexual men of color are “outsiders” to antiracist theory – although intersectionality theorists have often argued that “men” are privileged within antiracist theory.46 Furthermore, by interrogating heterosexism, multidimensional analyses illustrate that “heterosexual women of color” (the subjects of intersectional analysis) may possess “privileges” that “lesbians of color” cannot obtain, thus further complicating the assumptions of intersectionality.47

Professor Ehrenreich’s insightful work uncovers one of the most important conceptual dimensions of the new complexity theories: the idea that systems of domination are mutually reinforcing.48 While intersectionality theorists certainly expounded this notion, the work of new complexity theorists have placed this concept at the center of analysis. Explication of this theory can help construct a more comprehensive equality doctrine49 and can engender useful political coalitions50 by demonstrating to jurists and progressive activists the symbiotic

44 See Ehrenreich, supra note 16, at 273-74 (“White women’s situation cannot be understood as the pure form of gender subordination, or as the product of the privilege white men experience combined with the bias elicited by such women’s gender.”); Hutchinson, supra note 3, at 622 (“[B]y portraying coalitional and multidimensional politics as ‘non-gay,’ [white gay male commentators] falsely imply that their own essentialist politics is authentic and pure, i.e., not contaminated by race and class; they also deny the racial, class, and gender privileges upon which their own political theories reside.”).
45 See Ehrenreich, supra note 16, at 275 (“Combining intersectionality insights with a recognition that each individual sits at the intersection of multiple identities leads to the conclusion that each plays the role of oppressed in some contexts and oppressor in others.”).
46 See, e.g., Crenshaw, supra note 4, at 1252 (arguing that the “specific raced and gendered experiences [of white women and men of color], although intersectional, often define as well as confine the interests of the entire group”).
47 See Hutchinson, “Gay Rights” for “Gay Whites,” supra note 13, at 1367 (“A more complex analysis of heterosexism, for example, can reveal the differences in power possessed by heterosexual women of color and lesbians of color.”).
48 See Ehrenreich, supra note 16, at 276-77 (discussing symbiotic nature of subordination).
49 See infra text accompanying notes 45-49. See also Ehrenreich, supra note 16, at 316. Ehrenreich’s work explicates the need for a more comprehensive equality doctrine:

If different systems of subordination actually reinforce each other, then a policy that attacks one will not necessarily shore up the other. If an attack is made with the multiplicity of identity and the dynamics of symbiosis in mind, it might succeed in weakening all the systems that are implicated in the social practice(s) it wishes to change.

Id.
50 See id. at 320 (“[S]eeing identity groups as fluid, overlapping and co-constitutive entities, rather than as fixed and discrete, problematizes the notion of inter-group conflict and facilitates the recognition of commonalities. In this sense, . . . the proliferation of group identities can actually increase, rather than decrease, the potential for progressive change.”) (emphasis in original). I have made a similar claim in my work:
nature of oppressions and the need for a broader social justice movement.

As this Part illustrates, multidimensionality offers several conceptual and substantive extensions to intersectionality. These insights are not intended to marginalize or displace the ultimate project of intersectionality – the creation of more responsive equality doctrines and progressive political theories. On the contrary, as bell hooks has eloquently stated, “any progressive political movement grows and matures only to the degree that it passionately welcomes and encourages, in theory and practice, diversity of opinion, new ideas, critical exchange, and dissent.” Multidimensionality is a natural progression of the powerful analysis first deployed by intersectionality theorists. Having explored some of the theoretical dimensions of multidimensionality, the next section of this Article discusses several doctrinal implications of this budding intellectual movement.

III. TAKING THE THEORISTS TO COURT: DOCTRINAL IMPLICATIONS OF MULTIDIMENSIONALITY

A. Doctrinal and Policy Contributions of New Complexity Theories

In their Symposium contribution, Robert Chang and Jerome Culp argue that multidimensionality theorists must begin to direct their analyses to “legal doctrines and legal actors” and that intersectionality was more helpful as a theory because it provided “very specific points of intervention with regard to legal doctrine . . . .” I passionately agree with the claim that doctrinal analysis can enrich multidimensionality, and I have previously argued that critical

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[O]pponents of internal criticism should consider whether the critiques actually cause disunity or whether this disunity stems from the exclusionary effects of essentialist and narrow approaches to equality and identity within progressive social movements and oppressed communities. The internal critiques most likely expose (rather than create) the suppressed, silenced, or ignored fragmentation that results from essentialism and from the embrace of hierarchy within oppressed communities and progressive social movements.

Hutchinson, note 2, at 197. See also Valdes, supra note 9, at 1332 (arguing that omission of sexual orientation issues in critical race theory “factionalizes rather than coalesces progressive intra-group relations”).


52 Kimberlé Crenshaw seemingly anticipates the transformation of thought advocated by multidimensionality theorists. Crenshaw views intersectionality as a “provisional” or “transitional concept that . . . can be replaced as our understanding of each category becomes more multidimensional.” Kimberlé Williams Crenshaw, Beyond Racism and Misogyny: Black Feminism and 2 Live Crew, in MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 111, 114 (Robert W. Gordon & Margaret Jane Radin eds.,1993).

53 Chang & Culp, supra note 25, at 490. Chang and Culp explain that such a shift is necessary to ground the theory. Id.

54 See id.
Theorists must concretize their arguments. Nevertheless, the theoretical intervention made by new complexity theorists was a necessary predicate to any reform of doctrine or policy. Furthermore, within intersectionality, Kimberle Crenshaw made her pioneering doctrinal observations after the race-gender framework underwent years of sustained development in the humanities and social sciences. In addition, doctrinal analysis in the context of intersectionality was made relatively less complicated because both race and gender are recognized categories of discrimination in civil jurisprudence, whereas sexual identity remains largely unprotected; this factual distinction has made doctrinal arguments more difficult to make in the context of sexuality and race and has limited the number of reported cases involving race and sexual identity claims. However, to suggest that the new complexity theories are “doctrine-free” would misrepresent the content of this literature. New complexity theorists have enriched their arguments by making doctrinal and policy claims.

In my own scholarship, I have moved beyond the antiessentialist nature of intersectionality to examine in great detail the invisible whiteness and economic privilege in gay politics and theory. Through my analysis, a departure from intersectionality, I have considered how courts and political actors deploy a “gay as white and privileged” stereotype to deny equal protection of the laws to all gay, lesbian, bisexual, and transgender persons and have offered multidimensionality as a tool for dissecting and reforming the courts’ inaccurate analyses. New complexity theorists have also utilized multidimensionality to

55 See Hutchinson, supra note 2, at 198. Specifically, I have argued that:

While generalized and abstracted arguments against essentialism draw needed attention (on some level) to the exclusionary nature of progressive theory, the employment of empirical studies and portrayals of specific examples of “multidimensional” oppression, as well as the direct engagement of the work of essentialist scholars, will strengthen internal criticism analytically and provide greater illumination of the pitfalls of essentialism.

Id. at 198-99; See also Hutchinson, “Gay Rights” for “Gay Whites,” supra note 13, at 1383-90 (exploring doctrinal implications of multidimensionality); Hutchinson, supra note 9, at 313-16.

56 See Crenshaw, Demarginalizing the Intersection of Race and Sex, supra note 6 (Crenshaw’s landmark piece appeared in 1989.). Some of the pioneering humanities literature on the subject appeared much earlier. See, e.g., Hooks, Ain’t I A Woman?, supra note 8; All the Women Are White, All the Blacks Are Men, But Some of Us Are Brave (Gloria Hull & Patricia B. Scott eds. 1982); Angela Davis, Women, Race & Class (1981); Paula Giddings, When and Where I Enter: The Impact of Black Women on Race and Sex in America (1984); Michele Wallace, Black Macho and the Myth of the Superwoman (1979).

57 See Valdes, supra note 9, at 1338 (“Though intersectionality can help to illuminate the interplay of white and heterosexist supremacy in social analysis, the implication of sexual orientation in antidiscrimination claims under the present configuration of federal law suggests a likely failure of doctrinal intersectionality in federal litigation.”).

58 See supra text accompanying notes 28-30.

59 See, e.g., Hutchinson, “Gay Rights” for “Gay Whites,” supra note 13, at 1378-90 (employing multidimensionality to criticize courts’ white normative construction of gay, lesbian, bisexual, and transgender individuals and to offer an alternative equal protection framework); Hutchinson, supra note 9, at 298-301.
illuminate the shortcomings of employment discrimination law, criminal justice policy, constitutional law, and health care law and politics. While further doctrinal and policy works would enrich legal theory, the multidimensionality movement, which remains embryonic, has begun the task of concretizing its theoretical claims.

B. Re-Working Equality Doctrine

Multidimensional scholars can pursue many avenues of doctrinal analysis, but a natural direction for their work is the re-shaping of equality doctrine. The new complexity theorists should continue the project of intersectionality scholars by uncovering the limited and oppressive nature of equality doctrine. Francisco Valdes has engaged in such an effort through his multidimensional examination of employment discrimination doctrine. Valdes has argued that the unprotected nature of sexual identity in equality discourse can encourage discriminating defendants to escape liability by conceding heterosexist discrimination and denying charges of racial (or gender) discrimination. Furthermore, because racism is often sexualized, defendants might not encounter any difficulty persuading juries that their discrimination was related to sexuality, rather than to race or both. Consequently, the marginalized nature of sexual identity claims in equality doc-

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60 See Arriola, supra note 24, at 140-41; Mary Eaton, Homosexual Unmodified: Speculation on Law’s Discourse, Race, and the Construction of Sexual Identity, in LEGAL INVERSIONS, supra note 2, at 46-69; Valdes, supra note 10, at 1333-40.
61 See Hutchinson, Ignoring the Sexualization of Race, supra note 13, at 108-113 (discussing “hate crimes” regulation); Kwan, supra note 23 (utilizing cosynthesis approach to criticize police brutality and discrimination).
62 See Eaton, supra note 60, at 46-69 (critiquing equal protection jurisprudence); Hutchinson, “Gay Rights” for “Gay Whites,” supra note 13, at 1378-83; Hutchinson, supra note 9, at 298-307 (same); Darren Lenard Hutchinson, “Unexplainable on Grounds Other Than Race”: The Inversion of Privilege and Subordination in Equal Protection Jurisprudence, 2003 ILL. L. REV. (forthcoming 2003) (manuscript on file with the UMKC L. REV.) [hereinafter Hutchinson, “Unexplainable and Grounds Other Than Race”].
64 See Francisco Valdes, Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex,” “Gender,” and “Sexual Orientation” in Euro-American Law and Society, 83 CAL. L. REV. 1, 147 (1995) (arguing that “because sexual orientation discrimination is generally permissible, an employer need only say that it based its sex/gender discrimination on a ‘suspicion’ about sexual orientation to elude legal repercussion”); Valdes, supra note 9, at 1336 (“As the intersectional cases on sex, gender, and sexual orientation illustrate, the omission of the latter category from antidiscrimination statutes or doctrines can facilitate discrimination based on the protected categories of sex and gender.”); see also Hutchinson, Ignoring the Sexualization of Race, supra note 13, at 110 (arguing that “the failure of civil rights law to provide for sexual equality may actually provide an incentive for defendants in discrimination cases to concede ‘heterosexist,’ rather than ‘racial,’ bias when the surrounding circumstances of their cases strongly suggest the operation of ‘some’ discriminatory motivation”); Hutchinson, supra note 9, at 303-307 (criticizing caselaw where defendant escaped all liability by conceding heterosexist discrimination and denying racism).
65 See sources cited supra note 3.
trine may allow sexualized racism to go unremedied. In order to counter racism, civil rights laws must also prohibit sexuality based discrimination.

In my scholarship, I have offered several suggestions for further multidimensional theories in the context of equality doctrine. Multidimensionality is particularly well suited to illuminate the need for an antisubordination equality theory. In a forthcoming article, for example, I argue that the Supreme Court’s equal protection jurisprudence treats vulnerable classes as privileged and historically privileged classes as disadvantaged, the Court has effectively inverted the concepts of privilege and subordination alluded to in *United States v. Carolene Products* and elaborated in subsequent “suspect class” precedent. New complexity theories provide an alternative to this troubling jurisprudence in two ways. First, the Court currently applies a very cramped definition of “political power” – considering, for purposes of judicial solicitude, only whether groups constitute a “discrete and insular minority,” whether the group has the ability to “attract the attention of the lawmakers,” and whether the class is underrepresented in the “nations decisionmaking councils.” This narrow reading of disempowerment has led to the denial of equal protection to many oppressed classes. By engaging in a comprehensive analysis of the various structures of subordination, multidimensionality instructs us that oppression is fluid and contextual and that it operates on many different axes. The new complexity theories can help isolate the various structures of subordination and facilitate the development of a more responsive equal protection doctrine. Nancy Ehrenreich’s work advocates such a complex analysis of oppression: “Symbiotic analysis, by focusing attention on the

66 See Hutchinson, *Ignoring the Sexualization of Race*, supra note 13, at 112 (arguing that “a civil rights statute that fails to recognize ‘homophobic’ discrimination may not provide an adequate remedy for racism in its homophobic forms”).

67 For discussions of antisubordination theory, see Ruth Colker, *Anti-Subordination Above All: Sex, Race, and Equal Protection*, 61 N.Y.U. L. Rev. 1003, 1007 (1986) (advocating antisubordination theory of equality which deems it “inappropriate for certain groups in society to have subordinated status because of their lack of power in society as a whole” and which “seeks to eliminate the power disparities between men and women, and between whites and non-whites, through the development of laws and policies that directly redress those disparities”); Roberts, supra note 10, at 1453 (advocating an antisubordination theory of equality which “considers the concrete effects of government policy on the substantive condition of the disadvantaged.”); Robin West, *Equality Theory, Marital Rape, and the Promise of the Fourteenth Amendment*, 42 F.L.A. L. Rev. 45, 71 (1990) (advocating an “antisubordination model, which targets legislation that substantively contributes to the subordination of one group by another”).

68 See Hutchinson, “Unexplainable on Grounds Other Than Race,” supra note 62.

69 304 U.S. 144, 153 n.4 (1938).

70 Id.


72 Frontiero v. Richardson, 411 U.S. 677, 686 n.17 (1973) (plurality opinion).


74 See supra text accompanying notes 50.

75 See Hutchinson, *Ignoring the Sexualization of Race*, supra note 13, at 127 (listing multiple factors to consider in a definition of disempowerment).
multiplicity of oppressions and the complex mechanisms by which subordinated statuses interact, makes the need for such a substantive understanding [of subordination] that much more apparent.  Multidimensionality provides the tools for articulating such a substantive understanding of subordination – even if that understanding should remain highly contextualized and even tentative.

Second, multidimensionality demonstrates that systems of subordination are "interconnected." Accordingly, in an equal protection analysis, courts should consider whether the type (or types) of domination affecting classes seeking heightened scrutiny is sufficiently related to the kinds of subordination that precedent already prohibits so as to warrant judicial solicitude for the "new" class. For example, because racism, sexism, and economic domination are intertwined, equality doctrine should pay much more attention to the situation of poor individuals, if courts and lawmakers are serious about rooting out racial and gender hierarchy. The Court’s "single-issue" approach to inequality, however, precludes such a multidimensional analysis of subordination. The symbiotic model that Ehrenreich advocates resembles the comprehensive and multidimensional stance that other multidimensionality theorists have deployed. Ehrenreich responds to the Court’s fragmented equality doctrine with an analysis that offers hope not only to traditional intersectionals, but to all members of subordinate classes. She argues that:

If different systems of subordination actually reinforce each other, then a policy that attacks one will not necessarily shore up the other. If an attack is made with the multiplicity of identity and the dynamics of symbiosis in mind, it will weaken all the systems which are implicated in the social practice(s) it wishes to change.  

By further articulating the concept of intertwined subordination,

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76 See Ehrenreich, supra note 16, at 322; see also Hutchinson, Ignoring the Sexualization of Race, supra note 13, at 127 (describing contours of a multidimensional approach to subordination).
77 See generally Francisco Valdes, Sex and Race in Queer Legal Culture: Ruminations on Identities & Inter-Connectivities, 5 S. CAL. REV. L. & WOMEN’S STUD. 25 (1995) (analyzing the "inter-connectivity" of subordination).
78 See Ehrenreich, supra note 16, at 323 (discussing need for a comprehensive equality doctrine); Hutchinson, Ignoring the Sexualization of Race, supra note 13, at 128-29 (same); Valdes, supra note 9, at 1335-38.
80 See Ehrenrich, supra note 16, at 316.
multidimensionality theorists can help advocate a re-fashioned and broadened equality doctrine.

IV. CONCLUSION: PULLING IT ALL TOGETHER

The multidimensionality movement offers many concrete opportunities to reform progressive theory and activism and equality doctrine. The insights of this movement, along with pre-existing progressive intellectual interventions, can lead to more frequent deployment of coaltional politics and theorizing, which would strengthen antisubordination politics. While some scholars have rejected multiplicity as divisive, multidimensionality theorists, by examining the complexity of everyone's experiences, have unveiled the discriminatory and fallacious nature of this stance. As multidimensionality scholars seek to open up the concept of equality for all oppressed people, some traditional scholars within progressive movements continue to foment divisiveness by clinging to their own societal privileges and rejecting broader political action. Yet, multidimensionality and intersectionality offer the seeds for a fortified social justice movement.

Coalition politics cannot take place under the rubric of imposed similarities – which is what the traditional model seeks to accomplish. Instead, political coalitions can only occur if subordinate classes struggle to discover what they might have in common; paradoxically, this process first requires a lengthy – and perhaps rancorous – discussion of difference. As political scientist Shane Phelan has observed in the context of lesbian politics:

[The problem for coalition politics is not "What do we share?" but rather "What might we share as we develop our identities through the process of coalition?" Coalition cannot be simply the strategic alignment of diverse groups over a single issue, nor can coalition mean finding the real unity behind our apparently diverse struggles. Our politics must be informed by affinity rather than identity, not simply because we are not all alike, but because we each embody multiple, often conflicting, identities and locations.]

Multidimensionality and symbiosis are moving intersectionality beyond simply discussing differences and toward the discovery of those few, precious – yet contextual and shifting – similarities and affinities. In particular, the articulation of universal multiplicity and symbiotic and reinforcing oppressions by new complexity theorists provides a potential source for collective progressive engagement of institutionalized oppression. By unveiling the connections between systems of domination and the complexity of identity, multidimensionality theories can serve as a bridge for achieving more

81 SHANE PHELAN, GETTING SPECIFIC: POSTMODERN LESBIAN POLITICS 140 (1994) (italics in original).
82 See id. at 158 (“Getting specific can help us to find the points of connection that enable us to talk to one another at all, as well as the points that keep us apart.”).
comprehensive concepts of equality and for discarding partial justice. See id. at 145. Phelan argues that:

If we challenge the grand narratives of race, class, gender, and sexuality in favor of more local and specific analyses, we find that our allies are everywhere. Local politics, and the theories that sustain them, privilege no one axis of oppression. Instead, the space is opened simultaneously for a multiplicity of claims and struggles. Without a theory to tell us what and who belongs where, we have to begin to talk and listen, to endure conflict and welcome shared achievements.

Id.