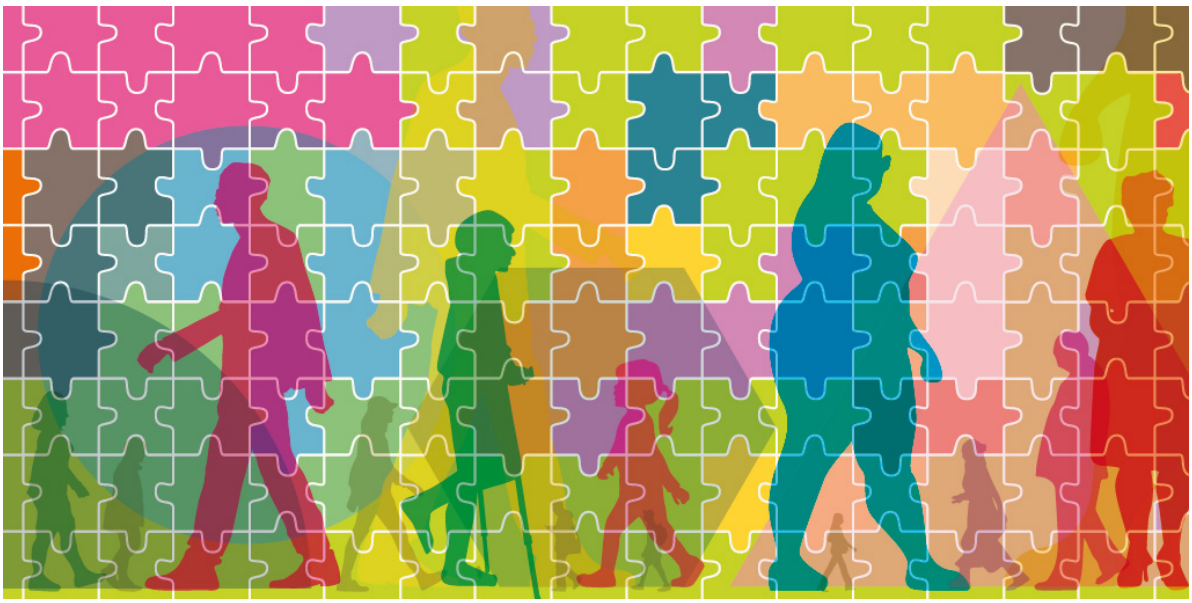
INTERSECTIONALITY

Towards an intersectional feminism in law

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Even though some terminology similar to the concept of intersectionality has already been incorporated into Catalan and Spanish regulations, the concept itself is still not very well known and not often applied in feminism, especially in the field of public policy [1]. In order to trace the emergence of intersectionality as one of the most significant contributions of feminism, it is necessary to understand the historical context that led to the "turn of feminist awareness", in the leap from the second to the third feminist wave [2]. In this context, as we will see below, the conceptual and political bases of intersectionality were elaborated, as long as we understand intersectionality as the "inseparable synergy" between critical research and feminist praxis, becoming since then a fundamental tool for critical theories, including critical theories of law and activist studies.

The roots of intersectionality

From the 1970s onwards, significant critiques of the concepts of "woman" and "oppression" were produced as the basis for the feminisms of the second-wave feminism (liberal, radical, and socialist feminisms). Thus, for example, lesbian feminisms stressed the lack of sexual orientation in these analyses and revealed "compulsory heterosexuality" as a political regime, showing that "woman" and "oppression" were theorised based on heterosexual

frameworks of thought [3]. Likewise, black North American feminists questioned the absence of race and class in feminist thought [4]. Chicana feminists stressed the need to take into account the experiences of migrant women from ancestral communities and, therefore, their multiple identities, based on their experiences and theorisations about the geographical border, which was also linguistic, sexual, and epistemic [5]. “Third World feminism” condemned the treatment of the “average Third World woman” by some left-wing feminist sectors as a woman who was essentially a victim of culture or religion; this treatment ended up legitimising the Salvationism of women from the global South by feminists from the North [6].

This critical development, which has been described as peripheral, other, or southern feminism, constitutes a feminist genealogy that has questioned the idea that there is a shared and essential “oppression” that explains the subordination of “women” [7]. The starting point of the third-wave feminism was rather to make it clear that the “woman” to whom the second wave referred was, as a legal subject, a white, heterosexual, middle-class woman of a certain cultural level, whose experience of oppression was interpreted as universal, replacing that of all other women. From this point of view, we might say that if feminist practices and reflections do not incorporate the variables of sexual orientation, race, class, colonialism, functional diversity or age, among other possible variables depending on the context, they risk of reproducing heterosexist, racist, classist, and other biases, with the significant implications that this has for emancipatory theories and practices.

Studies on intersectionality often tend to situate its origins in North American black feminism, starting with the work of the African-American lawyer Kimberlé W. Crenshaw [8] [9] or in the well-known *Combahee River Collective Statement* (1977) [10]. However, while acknowledging the undeniable contributions that have also shaped the origin of intersectionality, in my opinion, the task of epistemological reconfiguration has been determined by the synergy generated from all the critical proposals already presented. Nevertheless we should bear in mind that, firstly, not all of them are set forth here, and secondly, theories and practices on the multiplicity of discriminations have also been developed from other latitudes and spaces, even if they are not called intersectional.

In this broad sense, we might very well understand intersectionality as the approach to feminist issues and proposals based on variables such as gender, race, class, sexual orientation/identity and functional diversity, among other possibilities, examining the way in which these possible variables are co-constituted in a situated way. In other words, the aim is to understand that the subordination of women is not only related to what men do.

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From this perspective, not all women suffer the same violence and not all violence against women consists of the same elements; this holds fundamental implications in the field of public policies when it comes to preventing and tackling the multiple forms of violence against the existing diversities of women. From this perspective, from the obligation for public authorities to collect specific data in the field of gender-based violence, to the implementation of international standards such as due diligence, up to the drawing up of joint diagnoses with the people affected, an intersectional approach also involves reconfiguring the construction of public policies based on the acknowledgement of the political subjectivity and the agency of the people affected, who, far from being considered solely as victims, possess their own knowledge and wisdom, which is essential for a public policy that aims at social transformation.

The acknowledgement of intersectionality in international and national legislation

Even though it does not directly use the word intersectionality, the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (the Convention of Belém do Pará, 1994) is the first document that alludes to the multiplicity of factors that generate the vulnerability of women to violence [11]. The Beijing Declaration and Platform for Action (1995) recognises for the first time, within the framework of the universal system for the protection of human rights, that a multiplicity of factors can lead to discrimination against women. However, it was not until the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (the Durban Conference, 2001), that the concept of “multiple discrimination” was expressly acknowledged on various different occasions, linked to race and gender factors, and in a new way in international law. However, we should point out that it was the General Comments and Recommendations from the different Conventions that introduced intersectionality into the international sphere from the Committees, even though it is “soft law”. Also noteworthy is the case law of the ECHR and the IACHR, where landmark sentences have been pronounced [12], acknowledging the intersectional discrimination carried out by states

There are recognised authors when it comes to addressing the complex debate, still unresolved, on convergences and divergences between multiple, compound or intersectional discrimination and between the unitary, multiple or intersectional approaches. As a summary, we could state that although multiple discrimination has been present in institutional discourse since the Universal Declaration of Human Rights, which acknowledged the potential for discrimination for a variety of reasons, those who advocate for the use of intersectional and non-multiple discrimination argue that while the former allows us to understand the effects generated by this type of discrimination, thus configuring a new type of discrimination, the latter is limited to understanding the effects in an accumulative manner.

If multiple discrimination, in a generalised way, alludes to different discriminations that coincide in a given situation, intersectional discrimination generates a new and specific

form of discrimination that would systematically affect certain groups of women. As an example of the latter, we could cite the sterilisation of women with functional diversity or the harassment suffered by Roma women in hypermarkets by the security guards employed there. In fact, currently, in the field of anti-discrimination law, intersectionality is understood as “discrimination for more than one reason when the specific contribution of each one is indiscernible (synergic effect), or when the total effects of the discrimination can only be appreciated by taking into account the combination of two or more reasons (a cumulative effect)”.

As for Europe, since 2000 the concept of multiple discrimination has been included in *Directive 2000/43/EC for the implementation of the principle of equal treatment without distinction as to racial origin and in Directive 2000/78/EC on non-discrimination in employment and training*, which established a general framework to combat discrimination on the grounds of religion or belief, disability, age and sexual orientation in the field of employment. However, these regulations address inequalities separately and do not mention intersectionality. Meanwhile, until 2000, gender was addressed in Europe from a unitary approach, while over the last two decades, the multiple approach has been adopted in legislation and in the European political agenda, and only very recently, the possibility of an intersectional approach has emerged, albeit accompanied, of course, by intense debate.

In the case of Spain, we could mention by way of example Law 3/2007 for the effective equality of men and women, which in article 20.c refers to multiple discrimination, and also Law 1/2004, concerning measures of comprehensive protection against gender-based violence, which in article 32.4 refers to the need to pay special attention to the situation of women who may be at greater risk of suffering gender-based violence. With regard to the most noteworthy regional laws, the Basque Country’s Regional Law for the Equality of Women and Men, Law 4/2005, recalls in article 1.c the need to guarantee the fundamental rights “of those women or groups of women who suffer multiple discrimination”, and in article 16.c, concerning the adaptation of statistics and studies, points out the need to design and introduce the necessary indicators and mechanisms that allow for knowledge of the incidence of other variables, which when taken together results in situations of multiple discrimination. Catalan Law 11/2014, dated 10 October, to guarantee the rights of lesbian, gay, bisexual, transgender or intersex people and to eradicate homophobia, biphobia and transphobia, in article 4.e also defines multiple discrimination.

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However, in general, these rulings have not so far been accompanied by effective public policies to ensure their implementation. Hence the enormous challenge faced by the recent Catalonian Law 17/2020, dated 22 December, amending Law 5/2008, concerning the right of women to eradicate gender-based violence, on expressly and directly incorporating

–finally– the concept of intersectionality in article 3.k. There are no significant practical precedents for the implementation of this concept in the field of public policies against gender-based violence in Spain.

In conclusion

Based on an intersectional feminist reflection, beyond the theoretical and institutional debates on the incorporation of the concept into the legal and institutional sphere, we could highlight at least three fundamental aspects of the concept in the field of feminist politics and ethics. Firstly, intersectional analysis shifts the focus to the dimension of power as a constitutive element of social relations, not only over women, but also among feminist political activist groups themselves, their agendas and legislative proposals. Secondly, it highlights the role of law in producing effects that are exclusive of equality policies in focusing on gender in an isolated way. Finally, it calls for intersection among different disciplines and knowledge that allows for the deconstruction and decolonisation of feminist legal discourses, which, even if they are on behalf of all women, only acknowledge certain profiles of women as subjects of real and specific rights.

In this regard, intersectionality challenges us to take on a historical and generational responsibility within different feminisms: to reveal how feminist legislative policies and public equality policies are actually reproducing inequalities among women, and reinforcing stigmatisation, even though these same policies and laws may use the concept of intersectionality. Only based on this revelation, the first necessary step towards the dismantling of the power structures within feminisms, which sustain the aforementioned reproduction, can we build an intersectional feminist public agenda that responds to the multiple needs and demands of women in all their diversities.

REFERENCES AND FOOTNOTES

1 — Platero, Raquel Lucas (2016). «La recepción del debate sobre la interseccionalidad y su impacto en las políticas públicas de igualdad de género del Estado español». A: La Barbera, Maria Caterina; Cruells, Marta (coord.), *Igualdad de género y no discriminación en España : evolución, problemas y perspectivas*. Madrid: Centre d'Estudis Polítics i Constitucionals, p. 501-528.

2 — Although the paradigm of feminist waves is used with an explanatory intention, we should not forget that it is a story that has been constructed by a feminist historiography focused on "hegemonic feminisms".

3 — See:

• Wittig, Monique (1973). *El cuerpo lesbiano*. Valencia: Editorial Pre-Textos.

• Rich, Adrienne (1980). «Heterosexualidad obligatoria y existencia lesbiana», *Sangre, pan y poesía. Prosa elegida 1978-1985*. Barcelona: Icaria, pp. 41-86.

4 — See:
• Davis, Angela (1981). *Women, Race & Class*. Random House.

• Hill Collins, Patricia (2012). «Rasgos distintivos del pensamiento feminista negro». In: Jabardo, Mercedes (ed.), *Feminismos negros. Una antología*. Madrid: Traficantes de sueños, pp. 99-131 (*Mapas* collection).

5 — Anzaldúa, Gloria (1987). *Borderlands/La Frontera: The New Mestiza*. San Francisco: Aunt Lute Books.

6 — Mohanty, Chandra (2008). «Bajo los ojos de Occidente. Feminismo académico y discursos coloniales». In: Suárez, Liliana; Hernández, Rosalva (ed.). *Descolonizando el feminismo. Teorías y prácticas desde los márgenes*. Madrid: Cátedra, pp. 112-162 (*Feminismos* collection).

7 — See:
• Medina, Rocío (2013). «Feminismos periféricos, feminismos-otros. Una genealogía feminista decolonial para reivindicar». *Revista Internacional de Pensamiento Político*, vol. 8, pp. 53-79.

• Medina, Rocío (2014). «Resignificaciones conceptuales y epistemológicas en el pensamiento político feminista eurocéntrico desde los feminismos periféricos». *Cuadernos electrónicos de filosofía del derecho*, no. 29, pp. 72-98.

8 — Crenshaw, Kimberlee (1989). *Demarginalizing the intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*. University of Chicago Legal Forum.

9 — Crenshaw coined the term intersectionality in two of her best-known texts. In *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics* (1989/2020) she questioned how the antidiscrimination doctrine was built on isolated elements of discrimination such as race and gender (coinciding with feminist and anti-racist theories), which implied the theoretical disappearance of black women and showed the analytical limits of feminism and anti-racism. In *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color* (1991/2012), Crenshaw used the term to show, starting from the experiences of gender-based violence suffered by black women, that the multiple systems of power (sexism, racism and classism) are inseparable from their effects on their lives, and that these social inequalities were different from those of black men or white women.

10 — One of the most famous paragraphs of the Statement reads as follows: “The most general statement of our politics at the present time would be that we are actively committed to struggling against racial, sexual, heterosexual and class oppression, and see as our particular task the development of integrated analysis and practice based upon the fact that the major systems of oppression are interlocking. The synthesis of these oppressions creates the conditions of our lives”.

11 — Article 9 states: “With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background, or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant, or who are disabled, or of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom”.

12 — For further information:

• To look into the case of *Gonzales Lluy and others v. Ecuador*, one of the most significant cases at the Inter-American Commission on Human Rights (IACHR), see Vargas (2016).

• For a closer look at the case *Beauty Solomon v. Spain*, see Cruells (2015) and Cruells & La Barbera (2016). Sentence available at the European Court of Human Rights, 2012, Case of *B.S. vs. Spain*. Application No. 47159/08, 24 July 2012 [available online].



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