A Look at the Socio-legal Aspects of Intersectionality: an interview with Barbara Giovanna Bello, by Ludivine Royer

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Ludivine Royer. The concept of intersectionality has become an essential part of research into inequalities, power relations, and identity over the past two decades. It has also provided a framework with which to advocate for the rights of people at risk of discrimination based on the intersection of more than one ground. Can you describe the origins and most salient aspects of intersectionality in a nutshell?

Barbara Giovanna Bello. In the past few years, scholarly literature and debates have spread to nearly all continents across the globe concerning the core of intersectionality and specific aspects of its empirical applications. The foundation of intersectionality was not built by élites, scholars, or lawyers. First and foremost, it was embedded in the biographies and experiences of marginalized women whose bodies were enslaved and abused by those in power in nineteenth-century society. Although Black women did not conduct their struggles under the banner of intersectionality at that time (the term was forged in 1989 by Kimberlé W. Crenshaw), the idea that their specific stances had been unrepresented for decades permeated the human rights and abolitionist requests of Afro-American women like Sojourner Truth. In the twentieth century, this very idea served human rights activists and movements aiming to unveil inequalities and power relations within and between groups. In this framework, it is worth remembering the work of Audre Lorde, Johnnie Tillmon, Angela Davis, and Bell Hooks (pseudonym of Gloria Jean Watkins). The Combahee River Collective, a Black, feminist, and lesbian activist group founded in Boston in 1974, issued a statement in 1977 that raised awareness on the marginalization of Black women and advocated for an analysis of the interlocking systems of oppression (The Combahee River Collective's Statement). The titles of Gloria C. Hull's and Bell Hooks's books (respectively, *All the Women Are White, All the Blacks Are Men, But Some of Us are Brave: Black Women's Studies* and *Ain't I a Woman?*) epitomize the message of Black women activists. Since

then, their heritage has been taken up by indigenous people in South America, Canada, and Australia; LGBT movements; Roma women in Europe; and many others to make human rights violations of specific groups more visible. All groups believe that a single-issue approach, blind to other identity grounds, fails to recognize that specific experiences of violence and discrimination suffered by people from marginalized groups are different from those of dominant groups (Crenshaw, 1991, 1245; Bello, 2015, 144).

Intersectionality helps to problematize national and transnational relations, such as the history of slavery and abolitionism in the United States, and of colonialism in Europe. As Laura Menin contends, "[a] glimpse into the colonial headscarf debate reveals unexpected continuity which explains the historical legacy of certain cultural practices, as well as the relevance of women in public discourses on modernity […]. Not only did veiled Muslim women become the focus of imperialistic rhetoric that aimed to legitimize the British colonial empire as the 'civilization mission', but women writ large became a critical site of the nationalistic project of modernization and reform of Islamic society" (Menin, 2012, 506).

It is debated whether intersectionality should be a methodology, paradigm, method, or theory, (Hancock, A.M., 2007) and some scholars argue that "there is not one theory of intersectionality, but different conceptualizations and theoretizations of it, including different terms" (Baer, Keim and Nowottnick, 2009, 33). Personally, I think that among the major contributions of intersectionality is the support it gives to women who live in the margins of our societies. As researchers, this may imply embracing a position that is neither neutral nor apolitical.

LR. Despite its success, intersectionality continues to face criticism. What are the main arguments against intersectionality?

BGB. Some scholars criticize intersectionality as a rigid concept that conceives categories as static and generated by separate systems of domination. Critics claim that intersectionality falls short in explaining how intersections between different grounds occur and that it doesn't explain how categories are mutually constitutive. Some of these scholars have elaborated to include other concepts, such as "interdependency" (German: *Interdependenz*) (Walgenbach, *et al.*, eds.), to express their intent to analyse the relationship between various categories. In some cases, the

notion of "category" is replaced by that of "categorization", meaning that the focus is on the interdependencies of gender with other factors in a way that views them as inherent and mutually constitutive.

Although scholars generally agree that categories are socially constructed, they conceptualize them in remarkably different ways, as shown by the tri-partition (anti-categorical, intra-categorical, and inter-categorical) explained by Leslie McCall (2005). Intersectionality scholars rely on a vast array of sociological tenets, spanning from theories by Marx, Gramsci, and Weber to Luhmann, Derrida, Foucault, and Bourdieu (McCall, *ibid.*; Walby 2007); and each theory implies a different application of intersectionality.

As far as the application of intersectionality in law and policy is concerned, European institutions (and most national legislatures) have not yet created adequate instruments to tackle intersectional violence and discrimination. With few exceptions, courts have failed to integrate intersectionality within their reasoning. In this context, one criticism towards intersectionality is that it undermines, rather than enforces, women's rights, by moving gender from the top of the European agenda to the same level as other grounds. Although one can understand, in principle, the fear that women's rights may lose ground to other grounds, intersectionality actually helps broaden, rather than restrain, women's rights. It does so by unveiling and tackling the violation of women's rights, whose marginalisation derives from the interplay between different structural and individual factors. For example, let's take the case (simplified here) of a Roma woman who wants to flee domestic and gender-based violence but perceives that she is discriminated against by non-Roma people in her given country. The fact that members of the judiciary, police, lawyers, and operators in the social services are mainly non-Roma can prevent her from seeking help. This case shows that violence and discrimination on the basis of gender within her family adds, or intersects, with perceived, or real, ethnic-based discrimination in the society at large.

LR. In your experience, what are the main obstacles to the inclusion of an intersectional perspective into legislation that tackles violence and discrimination against women?

BGB. Gender-based violence has many nuances. Female bodies are disciplined by dominant social and legal norms that are not only

sexualized, but racialized too. Although violence and discrimination have often been treated as different legal concepts, they coincide and reinforce each other in the life of many women and cannot be considered to belong to different social dynamics. In some legal frameworks this link between violence and discrimination has been acknowledged and gender-based violence is considered as a form of discrimination against women. This is the case of the United Nations CEDAW Committee (Committee on the Elimination of Discrimination Against Women), which in 1992[1] clarified that art. 1 of the *Convention on the Elimination of All Forms of Discrimination against Women* defines discrimination against women as including "gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence." This principle was upheld by the ECtHR judgement Opuz v. Turkey in 2009,[2] according to which Turkey's failure to tackle domestic violence against women infringed upon the right that women have for equal protection under the law.

In the same vein, in 2011 the *Convention of the Council of Europe* (*CoE*) *on preventing and combating violence against women and domestic violence* (*Istanbul Convention*) considered "violence against women as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (art.). "Intersectionally" speaking, it is important to mention art. 4.3 of the *Istanbul Convention* which provides that "[t]he implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of

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1 Point 6, General recommendation No. 19: Violence against women, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/GEC/3731&Lang=en

2 European Court of Human Rights, 2009. *Opuz v. Turkey* (Application no. 33401/02).

health, disability, marital status, migrant or refugee status, or other status." In doing so, this provision takes into consideration the implications that any such factor might have on the application of this Treaty in the national/local context, even though it does not integrate an intersectional perspective per se. This connection is relevant because intersectionality is not just about understanding the way in which the experience of discrimination on the basis of certain grounds (e.g. racial and ethnic origin, religion, etc.) makes the experience of violence against women different; it also helps unveil the structural barriers that reproduce social inequalities and prevent many women from being treated equally both in their private and public life (Crenshaw, 1991).

However, the problem with law is that in its attempt to reduce social complexity it fails to fully grasp and acknowledge the fluidity and convolution of people's identity and tackle the social inequalities that affect them. This is especially true for those who are "at neglected points of intersection" (e.g. Black women) (McCall, L., *op. cit.*, 1775). Taking the example of Roma women once again, a group particularly at risk in Europe, the law and jurisprudence often fail to address the fact that gender-based violence and ethnic-based discrimination concur to shape their specific experience. In fact, most laws and case laws tend to adopt a mono-categorical approach, which considers violence and discrimination as phenomena concerning one ground of human identity at a time. Despite the wealth of literature in a wide variety of disciplinary fields that seek to explain why "intersectionality matters" in legal reasoning, grounds are still seen as parallel lines to be considered separately (Bello, 2016).

In the "internal legal culture" (Friedman, 1975), which refers to the attitudes of legal actors' like judges and lawyers towards law, it is not common to apply what Mari Matsuda calls "asking the other question" (1991, 1189). In other words, it is rare to look at patriarchy in terms of racial relations, to recognize heterosexism in sexist behaviours, etc. Black feminist literature reminds us how easily the experiences of discrimination based on gender and race have gone unaddressed in the past for Black women.

This is still happening today, even in legal frameworks such as the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which in theory allows lawyers

and judges to work more "intersectionally" than in other legal settings[3] due to its non-exhaustive (rather than *numerus clausus*) list of discrimination grounds of art.14 and its Protocol 12.

LR. In the United States, intersectionality has mostly been used to refer to the situation of Black women. What is intersectionality used to refer to in Europe?

BGB. In the legal field, intersectionality has mainly been discussed in relation to antidiscrimination law and gender-based violence both in the United States and in Europe. While in the U.S. the "paradigm group" (Solanke, 2016, 109) is made up of Black women, in Europe the case for intersectional violence and discrimination has, first and foremost, concerned Muslim and Roma women. Although I will elaborate more on these two specific groups, it would be a mistake to underestimate the relevance of many initiatives in the United States and Europe that advocate for intersectional protection for other groups as well, both under the banner of intersectionality or not. The protection gap that could be filled by an intersectional approach concerns, for example, LGBTQI+ migrants, refugees, and victims of trafficking for sexual exploitation, care workers, disabled women, disabled migrants, trafficked women, unaccompanied minors, and many others.

In two previous articles (Bello, 2015 and 2016) I discussed the challenges legal practitioners face when litigating cases of intersectional discrimination within the framework of the EU antidiscrimination law and its implementation at the national level of the EU member states. Hereafter, I would like to focus on the different shades of violence committed against Muslim and Roma women and discuss how the integration of intersectionality within the legal reasoning would contribute to the protection of their human rights. The experience gained by scholars and practitioners in these two fields in Europe can also help tackle violence and discrimination against people belonging to other vulnerable groups.

Although the peculiar situations of Muslim and Roma women differ considerably in present-day Europe, common patterns between

[3] Art. 14 ECHR prohibits discrimination based on "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status" in relation to the rights foreseen by the ECHR, while only its Protocol 12 –ratified by just 20 CoE Member States– introduces a general ban on discrimination referred "to any right set forth by law" (art. 1, Protocol 12 of the ECHR).

the two can be identified. Both groups belong to visible minorities, which are orientalised (Said, 1978) and are either discriminated against or at risk of discrimination; they are represented by the dominant society as a threat to local communities; in both cases women belonging to these communities are often considered by outsiders (and even by some feminists, see *ex multis*, Moller Okin, 1999) as oppressed and victims of their own culture, who need to be emancipated by "Western women"; for both the female body has become a sort of battleground between "us" and those constructed as "others" in "our" societies, and is seen as needing to be policed, controlled and sanctioned. Both Muslim and Roma women face forms of violence and discrimination that neither non-Muslim and non-Roma women, nor Muslim and Roma men, are confronted with. To grasp the entirety of the violation of these women's rights, one should compare their situation (i.e. of a Roma or Muslim woman) simultaneously to that of a Roma or Muslim man (comparison based on gender) and of a non-Roma, non-Muslim woman (comparison based on ethnic or racial origin), or –as suggested by the British solicitor Gay Moon– to that of a "white man" (Moon, 2009).

In both cases, McCall's intra-categorical approach in exploration of one dimension within each intersecting category ('women' within the category 'gender'; 'Roma' within the category 'ethnic origin'; and 'Muslim' within the category 'religion') is helpful to zoom in on women within particular social groups.

In the European scenario, cases of forced sterilisation of Roma women help to understand how intersectional violence and discrimination have occurred in many Roma women's lives. This kind of violence has been long ignored by the public opinion. Scholars, NGOs and even European and national institutions in Europe show that in the past such practices were adopted by several countries as a means of population control that targeted specific groups and Roma people in particular. Governments like Austria, Germany, and Sweden have put forth special compensation policies for the victims of these practices. Some cases of forced sterilisation of Roma women in the Czech Republic, Slovakia, and Hungary reached the European Court of Human Rights (ECtHR) and most of them either ended with a friendly settlement between the parties or were declared inadmissible by the ECtHR (European Roma Rights Center, 2016, Curran, 2016). However, the ECtHR recognised that Romani women's rights had been indeed

violated in cases against Slovakia[4]. It is important to note that applicants in all cases complained that they had been sterilized without their full and informed consent. Although they were not explicitly mentioning intersectional discrimination or violence, the applicants did point out that in the context of the sterilisation they had either been discriminated against or been subjected to violence on the basis of their race/ethnic origin *and* sex. Just to mention one example, in the case I.G. and others v. Slovakia, the applicants underlined that they had "suffered a double burden of discrimination, as their sex and race had played a decisive role in the violation of their human rights in issue." Such discrimination infringes upon the rights that these individuals are granted through Article 3 (Prohibition of torture), Article 8 (Right to respect for private and family life), and Article 12 (Right to marry) of the Convention". In all cases, the ECtHR held that forced sterilization violated Article 3 and Article 8 of the ECHR, but did not find that these practices amounted to discrimination –even indirectly– against Roma women under art. 14 ECHR: in this way, an opportunity to acknowledge intersectional discrimination against Roma women was missed. As highlighted by the dissenting opinion of Judge Mijovic in the V.C. v. Slovakia judgement, the sterilisation of Roma women should not be considered an isolated case to be dealt with at the individual level. Rather, it should be analysed in context and viewed against the background of "the general State policy of sterilisation of Roma women under the communist regime (governed by the 1972 Sterilisation Regulation), the effects of which continued to be felt up to the time of the facts giving rise to the present case" (V.C. v. Slovakia, 45); of the negative attitude of the Slovak public opinion against the Roma communities; and of the number of pending cases before the ECtHR (see Curran, 2016). NGOs and legal practitioners continue to try to have an ECtHR judgement declare that forced sterilisation is a form of intersectional discrimination against women (under art. 14 ECHR), since ethnicity and gender mutually reinforce each other in Roma women's life, and provide specific remedies for women who fall victim to these practices. In order to achieve this, in 2015 the European Roma Rights Centre (ERRC) in Budapest, one of the leading NGOs strategically litigating Roma rights, submitted a third-party intervention in a case against the Czech Republic pending before this Court

4 V.C. v. Slovakia (*Application no. 18968/07*); N.B. v. Slovakia *(Application no. 29518/10),* 12.06.2012; I.G. and others v. Slovakia *(application no. 15966/04)*

(Curran, *ibid.*)[5]. The ERRC tries to show that specific remedies are needed to compensate the intersectional discrimination suffered by Roma women.

It is worth mentioning that third party interventions proved to be a useful instrument in other cases before the ECtHR. With regard to intersectional violence and discrimination, in the B.S. v. Spain judgement of 2012 –concerning a young woman of Nigerian origin, who was lawfully residing in Spain when the facts occurred– the ECtHR acknowledged that the French national court failed to consider the "vulnerability inherent in her position as an African woman working as a prostitute." The applicant claimed "she had been discriminated against on account of her skin colour and her gender, whereas other women with a "European phenotype" carrying out the same activity in the same area had not been approached by police." In that case, the third-party interveners (the European Social Research Unit, or ESRH, the Research Group on Exclusion and Social Control, or GRECS, at the University of Barcelona and the AIRE Centre) provided information on the following: intersectional discrimination studies; initiatives taken to have intersectionality acknowledged at the European level; and a comparative overview of relevant developments.

LR. Apart from physical violence, what other kinds of violence can intersectionality help to reveal?

BGB. Although we are more prone to discussing the most blatant forms of physical violence against women (e.g., sexual harassment, rape, beating, and female genital mutilation), violence against women is also reproduced through words (verbal aggressions), psychological threats, and looks of disapproval because of a woman's appearance and "otherness", be it skin colour, visible religious symbols, lifestyle, etc. Forms of "epistemic violence", i.e. "the remotely orchestrated, widespread and heterogeneous project to constitute the colonial subject, as Other" (Spivak, 1999, 266), not only pervade hegemonic public discourse surrounding minority women, but are also embedded in, and can be reproduced by, law, case-law, and policy documents. Epistemic violence endangers minority women's lives simply because they are "minority women", and marginalises the knowledge produced by these and other

[5] See at: http://www.errc.org/cms/upload/file/third-party-intervention-anna-maderova-v-czech-republic-8-december-2015.pdf.

women, whose life is located at the crossroads of multiple power structures. On the one hand, this kind of violence denies these women agency in everyday life choices by considering them victims of their own culture. In other words, Muslim women are deemed unable to freely decide whether to wear the *burqa* or *hijab* because they may be led by their religion or culture to do so. On the other hand, however, women have to conform to dominant beauty standards to be accepted in a given society. Once again with regard to Muslim women, in Europe religious symbols (e.g., full-face veil and headscarf) and dress code (e.g., burkini) are at the centre of several cases both at national and supranational level. These cases have mainly been discussed in terms of discrimination on the basis of either religion or gender, rather than on "the intersection between religion and gender." At the European level, in 2014 the European Court of Human Rights (ECtHR) based in Strasbourg recalled the doctrine of the margin of appreciation to consider the ban imposed by the French Law of 11 October 2010 on full-face veil as "proportionate to the aim pursued, namely the preservation of the conditions of 'living together' as an element of the 'protection of the rights and freedoms of others'" (S.A.S v. France: 58).[6] The assumption that women wearing full-face veils are a threat to "living together" may lead to their confinement to the domestic walls and prevents them from participating equally in society. The wearing of the *burqa* and *niqab* is not the only thing that has been discussed before the courts - the *hijab*, headscarf that covers women's head and shoulders, has also been treated as a threat to European social norms and values in some decisions. An example taken from the Italian jurisprudence shows the need to decolonize the concepts of beauty and charm, which are both sexualized and racialized, and are reproduced even by courts' decisions.

The case, which occurred in Italy in 2013, concerns Sara Mahmoud[7], who was 19 years old at the time of the facts. Sara, an Italian national of Egyptian origin, applied for a job as a leaflet distributor at a footwear fair by sending her curriculum vitae and photograph to the agency in charge of hiring personnel for the event. She then received an e-mail affirming that the agency would like to hire her because she is "very pretty", but asked whether she would "take the *chador* off." Sara declined the offer, explaining that she wears her veil for religious

6 European Court of Human Rights, 2014. S.A.S v. France (*Application Number: 43835/11).*

7 I have discussed this case in Bello 2015, 153-154.

reasons, but offered to wear one that would match the uniform of the event instead. The agency replied that prospective customers "would never be that flexible" and did not enter into a contract with her. Sara lodged a claim at the Tribunal of Lodi, in the Milano area, affirming that she was "discriminated against on the basis of religion and gender." The monocratic judge recognized that the *hijab* has religious nature but resolved that the agency's conduct could not be considered indirect discrimination on either religion or gender because their selection criteria of "long and voluminous hair", minimum height, size, and availability to wear mini-skirt uniforms are justified by target market preferences that focus on image rather than professionalism. The judge considered the allegations of religion-based and gender-based discrimination separately and dismissed both of them. The first allegation was dismissed because the fashion market justifies the agency's request for a "pleasant and attractive woman", from which "a certain 'kind' of person with certain physical characteristics" is inferred. According to the judge, Sara was denied the job because having her hair covered would deprive her of "an element of charm and seduction", rather than because of her being Muslim *per se*. Put differently, the obstacle being not "the veil" but the fact that hair (an assumed element of seduction) was covered. The judge explained that the same would have happened to a woman wearing a headscarf "for cultural, ethnic, style or health reasons (like in the case of baldness or hair loss caused by chemotherapy)." At the same time, no gender-based indirect discrimination had occurred because in the fashion market "a head of hair can represent elements of male seduction and could be legitimately required from men as well".

I see two problematic issues here. The first, as previously stated, is that the judge missed the opportunity to consider gender and religion jointly in the experience of Muslim women's access to the Italian labour market. The "apparently neutral" criterion of "long and voluminous hair" puts Muslim women at a particular disadvantage in today's Italian society.

Secondly, although the judge affirmed that a judicial decision "is not the right place to evaluate the cultural and social value of the model of female figures that is required and proposed in such working environments", she does legitimise a specific standard of charm and seduction set by "white Italian men". Furthermore, her actions demonstrate support for those who set the standard for seduction in our societies.

Sure enough, on May 4, 2016 the Court of Appeal of Milan reversed the judgement of the Tribunal of first instance and affirmed that the conduct of the agency was indeed a direct discrimination on the basis of religion (gender was not contemplated) since the criterion of "long and voluminous hair" could not be considered to be an essential requirement for the job[8]. Although this judgement constitutes a step further in protecting Sara's rights, her identity thus far has only been considered from the point of view of her religion –what about the "woman"? What about the right Muslim women like Sara have to have their needs as "Muslim women" respected?

LR. In your view, what can be done to foster intersectionality in research and in practice?

BGB. Research, legal practice, and activism can further enhance intersectionality in practice by addressing specific inequalities and forms of violence concerning people who face intersecting forces of oppression that would otherwise be unaddressed. This requires researching and thinking outside the box of single-identity categories and power structures, as well as looking beyond appearances of what seems like the root of inequality and violence at first glance. Such work means inquiring about how each category and structure interplays with one other in people's lives and how power is reproduced in the society. Participatory research can boost reflexivity and the relevance of "situated knowledge" of "minorities within minorities" or people who are otherwise invisible in mainstream discourse. Some NGOs have been doing this when drafting reports on the conditions of women across the world, evaluating the impact of gender-based violence, or advocating across the boundaries of mono-categorical groups, which helps widen the spectrum of substantive equality and social justice. In more recent years, the case of African women who are victims of human trafficking for sexual exploitation is another example of intersectional violence that some NGOs have been trying to tackle. In addition, there are some NGOs that are trying to make intersectionality enter the internal legal culture, which seems particularly resistant to this concept. Apart from third-party interveners in the cases I mentioned earlier, there are many others who try to enact strategies to litigate minority women's rights "intersectionally". One example is the workshop for lawyers and litigators, organised in 2016 by

8 Corte d'Appello di Milano, n. 579 of 4 May 2016 n. 579.

ENAR in Brussels within the project "Forgotten Women". This workshop created a space for participants to discuss various approaches for litigation and mobilisation to tackle multiple discriminations against Muslim women[9]. I believe that such initiatives should be encouraged and bring together different NGOs wanting to cooperate across the borders of their own agendas, in order to fil in the gap of protection still existing today.

Barbara Giovanna BELLO

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[9] See: http://www.enar-eu.org/Forgotten-Women-the-impact-of-Islamophobia-on-Muslim-women (accessed 3 December 2016).

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