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In 1989, Kimberlé Williams Crenshaw published "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (Crenshaw 1989). Drawing explicitly on Black feminist criticism, Crenshaw introduced what would become an enormously influential theory—intersectionality.[1] Since the publication of "Demarginalizing the Intersection," intersectionality has traveled to and built bridges across a significant number of disciplines. Moreover, scholars across the globe regularly invoke and draw upon intersectionality, as do human rights activists, community organizers, political figures, and lawyers.

Any theory that traverses such transdemographic terrains is bound to generate controversy and contestation. Edward Said said as much in his

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[1] The 1980s were a particularly generative time for Black feminism and women-of-color feminism more generally. There are far too many books and articles for me to cite. I focus on intersectionality here not because other expressions of Black feminism are less important but because, as a legal academic, I am particularly interested in both the development of Black feminism in legal academia and in how that feminism has traveled.

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now-classic essay on traveling theory (Said 1983). Said was particularly worried about the extent to which theories lose their originality and insurgency as they travel from one domain to another. More than a decade later, Said revisited the topic, not so much to repudiate his prior position but to more fully articulate another possibility: that theories can become more insurrectionary and capacious as they travel (Said 2000). In other words, rather than domesticating or enervating theories, movement might radicalize and reinvigorate them.

Broadly framed, this essay is an effort to radicalize and reinvigorate intersectionality by first moving the theory back to its initial articulation and then moving it forward to new sites and concerns. Setting intersectionality on this journey is crucial against the backdrop of the following standard criticisms of the theory:

1. Intersectionality is only or largely about Black women, or only about race and gender.
2. Intersectionality is an identitarian framework.
3. Intersectionality is a static theory that does not capture the dynamic and contingent processes of identity formation.
4. Intersectionality is overly invested in subjects.
5. Intersectionality has traveled as far as it can go, or there is nothing more the theory can teach us.
6. Intersectionality should be replaced by or at least applied in conjunction with [fill in the blank].

While it is beyond the scope of this essay to respond fully to these criticisms, a limited response to each is necessary to clear the ground for the central claims I will advance.

As to the first criticism concerning the scope of intersectionality, the simple response is that intersectionality does not necessarily and inherently privilege any social category. Race and gender, and Black women specifically, figure prominently in "Demarginalizing the Intersection" because of the particular juridical and political sites in which Crenshaw sought to intervene. These sites directly targeted Black women for condemnation, erasure, and marginalization. Crenshaw's articulation of these dynamics should not lead one to conclude that there is an already-mapped terrain over which intersectionality must and only can travel. Ironically, the claim that intersectionality is just about Black women reproduces a version of the representational problem Crenshaw interrogated. Crenshaw's aim in "Demarginalizing the Intersection" was not simply to mark the unwillingness of courts to recognize Black women's discrimination claims based

on race and sex: here, courts were essentially saying that Black women's experiences were the same as white women's (with respect to sex) and Black men's (with respect to race) and that there was therefore no juridical need to recognize Black women as a distinct social group. Crenshaw also sought to highlight courts' refusal to permit Black women to represent a class of plaintiffs that included white women or Black men: here, courts were essentially saying that Black women were too different to represent either white women or Black men as a group. The problem, then, was not simply that courts were prohibiting Black women from representing themselves; the problem was also that courts were prohibiting Black women from representing gender or race per se. Too similar to be different and too different to be the same, Black women were "impossible subjects" (Ngai 2004) of antidiscrimination law. They had very limited representational currency. The critique that intersectionality is necessarily and only about Black women reflects a similar representational problem: Black women cannot specifically name themselves in a theory (they are too similar to be different), nor can they function as the backdrop for the genesis and articulation of a generalizable framework about power and marginalization (they are too different to be the same).

While I do not presume to know precisely why some scholars view intersectionality as a theory concerned only with Black women or race and gender, one plausible explanation is that these scholars conflate intersectionality with a particular line of argument in the "double jeopardy" theory (Beale 1979). Roughly, this argument forwards the idea that the greater the number of marginal categories to which one belongs, the greater the number of disadvantages one will experience (Purdie-Vaughns and Eibach 2008, 377–78). Women of color and Black women in particular figure prominently in this scholarly domain based on the view that, at the very least, they experience the double jeopardy of racism and sexism.

Notwithstanding that intersectionality grows out of and builds upon the double-jeopardy literature, intersectionality is not a positive theory about double jeopardy. The theory does not posit, for example, that Black lesbians (because they occupy three marginal categories—they are Black, female, and lesbian) will in every context be more disadvantaged than, for example, Black heterosexual men (because they occupy one marginal category—they are Black).[2] Mapping fixed hierarchies onto particular identities obscures that both power and social categories are contextually con-

[2] I should note that the claim that Black men experience discrimination based only on one marginal category obscures that Black men experience discrimination (e.g., in the criminal justice system) precisely because they are Black and men—not because they are Black in some ungendered sense or because they are marginalized as Black but not as men.

stituted. In this respect, and as Valerie Purdie-Vaughns and Richard Eibach argue, we need to "move beyond the question of 'whose group is worse off' to specify the distinctive forms of oppression experienced by those with intersecting subordinate identities. . . . Because people with multiple subordinate identities (e.g., African American women) do not usually fit the prototypes of their respective subordinate groups (e.g., African Americans, women), they will experience . . . '*intersectional invisibility*'" (Purdie-Vaughns and Eibach 2008, 378). As a result of this invisibility, Black women can experience "a distinctive mixture of advantages and disadvantages" (380) and therefore will not always be vulnerable to double jeopardy.

Whether one agrees with Purdie-Vaughns and Eibach's theory of intersectional invisibility, they are right to insist that Black women do not experience double jeopardy in every context. By implication, there are contexts in which Black men do. This observation may or may not be inconsistent with the double-jeopardy theory, but it is not inconsistent with intersectionality. Intersectionality does not lock the double-jeopardy claim onto particular social categories. Nor is the theory concerned only with identifying and dismantling double jeopardy, though that is certainly an important part of what intersectionality endeavors to do. Intersectionality applies even where there is no double jeopardy. Indeed, the theory applies where there is no jeopardy at all. Thus, it is a mistake to conceptualize intersectionality as a "race to the bottom" (Carbado 2002b). The theory seeks to map the top of social hierarchies as well. If one understands intersectionality in this way, one is less likely to conflate intersectionality with double jeopardy, less likely to apply the theory only to race and gender, and less likely to reify the idea that Black women are the essential subjects of intersectionality.

None of this is to deny that many of the articles on intersectionality focus squarely on Black women or on race and gender. Surely, however, that is not, in itself, a problem. It is becoming increasing unspeakable (dubbed theoretically backward, monopolistic, identitarian, categorically hegemonic, etc.) to frame theoretical and political interventions around Black women. That is an unfortunate development in which far too many progressive scholars have acquiesced or actively participated. It is part of a larger ideological scene in which Blackness is permitted to play no racial role in anchoring claims for social justice. But even assuming that one thinks that it is problematic for intersectional analyses to focus on Black women or on race and gender, the claim that the theory is inapplicable to other social categories is theoretically unnecessary, descriptively inaccurate, and easily falsifiable. Scholars have mobilized intersectionality to engage

multiple axes of difference—class, sexual orientation, nation, citizenship, immigration status, disability, and religion (not just race and gender). And they have employed the theory to analyze a range of complex social processes—classism, homophobia, xenophobia, nativism, ageism, ableism, and Islamophobia (not just anti-Black racism and sexism). Seemingly, the genesis of intersectionality in Black feminist theory limits the ability of some scholars both to imagine the potential domains to which intersectionality might travel and to see the theory in places in which it is already doing work.[3]

The next three criticisms of intersectionality (that the theory is identitarian, static, and invested in subjects) are curious given the theory's genesis in law and critical race theory. Intersectionality reflects a commitment neither to subjects nor to identities per se but, rather, to marking and mapping the production and contingency of both. Nor is the theory an effort to identify, in the abstract, an exhaustive list of intersectional social categories and to add them up to determine—once and for all—the different intersectional configurations those categories can form. Part of what Crenshaw sought to do in "Demarginalizing the Intersection" was to illustrate the constitutive and ideologically contingent role law plays in creating legible and illegible juridical subjects and identities. Her effort in this respect is part of a broader intellectual tradition in critical race theory to demonstrate how the law constructs (and describes preexisting) social categories.

With respect to the fifth criticism of intersectionality—that the theory has traveled as far as it can go—the claim is more of a normatively contingent roadblock to the theory rather than an on-the-theoretical-ground limitation. That is to say, there is not already a permanent roadblock in front of intersectionality limiting where intersectionality might go or marking a boundary across which intersectionality cannot travel. The notion that intersectionality has gone as far as it can go is contingent upon how one conceptualizes or mobilizes the theory.

This brings me to the final criticism, which is not a criticism at all but rather a suggestion (against the backdrop of the preceding criticisms) that scholars should replace intersectionality with, or at least apply the theory alongside, some alternative framework. Among the candidates that advocates of this view have marshaled to perform this work are "cosynthesis" (Kwan 1997); "inter-connectivity" (Valdes 1995, 26); "multidimension-

[3] Given the scope of Black feminist thinking, this is all the more troubling. For just a sampling of some Black feminist ideas, see Giddings (1984), Lorde (1984), and Guy-Sheftall (1995).

ality" (Valdes 1998; Hutchinson 1999, 9; Mutua 2006b, 370); and, most recently, "assemblages" (Puar 2007).[4] Proponents of these theories implicitly and sometimes explicitly suggest that each has the inherent ability to do something—discursively and substantively—that intersectionality inherently cannot do or does considerably less well.

There is a false necessity to this claim. With respect to the discursive, all these theories seem to imagine the synthesis or interaction of things that are otherwise apart. In other words, at the level of appellation, they are no more dynamic than intersectionality. This deficiency reflects a more general problem—to wit, that there are discursive limitations to our ability to capture the complex and reiterative processes of social categorization. The very articulation of the idea that race and gender are co-constitutive, for example, discursively fragments those categories—into race and gender—to make that point. The strictures of language require us to invoke race, gender, sexual orientation, and other categories one discursive moment at a time.

On the substantive level, with respect to legal intervention, political mobilization, or knowledge production, there is no "analytic reason" to read intersectionality as more limiting than cosynthesis, interconnectivity, multidimensionality, or assemblages (Cho forthcoming). In advancing this argument, I do not mean to set forth an imperative that we must all employ intersectionality—and now!—because, at the end of the day, intersectionality is the only theory that will do. Nor is it my claim that cosynthesis, interconnectivity, multidimensionality, and assemblages have no theoretical purchase or that these theories are otherwise intellectually bankrupt. I simply mean to note that, wittingly or not, proponents of the foregoing frameworks artificially circumscribe the theoretical reach of intersectionality as a predicate to staging their own intervention. That is, they constitute and define the parameters of the very thing they purport only to describe—intersectionality. This is the sense in which Barbara Tomlinson speaks of feminist discourses as "technologies of power" and invites feminist scholars to interrogate their reading practices (2013, 994). This interrogation would enable them to see that they are mapping the margins of intersectionality, constructing its fields of relevance, even as they claim merely to be describing a theory whose borders are always already just "here," somewhere other than "there," the place where intersectionality really should be but has neither the commitment nor the capacity to go.

[4] I want to be clear that I am not suggesting that these works are unimportant. They bring to the fore important social justice questions that progressive scholars often marginalize. As I explain more fully below, my critique is a very specific one.

To challenge the foregoing narrow readings of intersectionality, this essay examines how law and civil rights advocacy produce racialized modes of gender normativity. More specifically, I employ intersectionality to engage men, masculinity, whiteness, and sexual orientation, social categories that are ostensibly beyond intersectionality's theoretical reach and normative concern.[5] My aim is to show the ways in which formal equality frameworks in law and civil rights advocacy produce and entrench normative gender identities. I introduce two concepts—colorblind intersectionality and gender-blind intersectionality—to illustrate how. Colorblind intersectionality refers to instances in which whiteness helps to produce and is part of a cognizable social category but is invisible or unarticulated as an intersectional subject position.[6] For example, white heterosexual men constitute a cognizable social category whose whiteness is rarely seen or expressed in intersectional terms. Gender-blind intersectionality describes a similar intersectional elision with respect to gender.[7] By linking these two concepts to a critique of formal equality, colorblindness, and gender normativity, this essay relocates intersectionality as both a product and an articulation of critical race theory.[8]

The argument unfolds in three parts. As a point of departure, I discuss a case in which a casino fired one of its white female bartenders, Darlene Jespersen, because she refused to comply with the casino's grooming and makeup policy. I show how the court's decision against the plaintiff relied upon gender normativity, formal equality, and colorblind intersectionality. Next, I move from legal doctrine to civil rights advocacy, focusing first on gay rights advocacy against the US military's Don't Ask, Don't Tell policy. Rather than repudiating the kind of racialized gender conformity the *Jespersen* court legitimized, some gay rights advocates adopted a main-

[5] Indeed, two important and ambitious anthologies on masculinities are explicitly framed in terms of multidimensionality (over and against intersectionality). See Mutua (2006a), and Cooper and McGinley (2012). For an approach that frames the issue expressly in intersectional terms, see Carbado (1999), and MacDowell (2013).

[6] Scholars have not expressly linked critical race theory's critique of colorblindness to intersectional critiques of social formations. As a result, the critical race theory literature on colorblindness and the intersectionality literatures generally are not in conversation with each other. The concept of colorblind intersectionality is my effort to expressly bridge these bodies of work and, in so doing, broaden the theoretical terms through which we understand both colorblindness and intersectionality.

[7] There are other "blind" forms of intersectionality that we should similarly interrogate. Class-blind intersectionality, heterosexual-blind intersectionality, and religion-blind intersectionality come readily to mind.

[8] For an articulation of the core ideas in critical race theory, see Cho and Westley (2000), and Crenshaw (2011). See also Carbado (2011).

streaming strategy whose arguments reflected both formal equality and colorblind intersectionality. While Don't Ask, Don't Tell is now a dead letter, the colorblind intersectionality that shaped the campaign against the policy persists in gay rights advocacy for marriage equality.

The final part of the essay shifts the discussion from gay rights advocacy to racial justice interventions. Here, too, my aim is to illustrate how civil rights advocacy relies on racialized modes of gender normativity. To demonstrate how, I elaborate on what I mean by gender-blind intersectionality, the quintessential example of which is white male heterosexuality. We might think of white male heterosexuality as a triply blind intersectionality of which gender-blind intersectionality is but a part. That is to say, white male heterosexuality provides three axes—whiteness, maleness, and heterosexuality—against at least one of which the rest of us are intersectionally differentiated. These axes of differentiation construct not only a code of conduct; they construct a high-status intersectionality whose conduct is already normative. By this, I mean that the conduct of a white heterosexual man is normative not just because of *what* he is doing (i.e., his conduct) but because it is *he* who is doing it (i.e., his status).

I articulate this conduct/status dichotomy fully mindful of the constitutive work that the doing always already performs. Indeed, one could say that there is no doer outside the acts through which she is constituted. I am sympathetic to this argument as far as it goes. But there is too much evidence indicating that what we do and are perceived to be doing is mediated by who—in terms of our intersectional identities—we are perceived to be. From the perspective of a police officer, a Black man and white man standing outside a department store peering in the window in the middle of the night are not doing the same thing.

This does not mean that gender-blind intersectionality is inapplicable to Black heterosexual men. They, too, benefit from this phenomenon, though not in the same way. Rarely do we frame Black heterosexual men in intersectional terms. This gender-blind intersectionality is an effect of, and contributes to, the representational potential heterosexual Black men have to stand in for "the race" in antiracist organizing and theorizing. Whether and how they can do so turns on the normativity of their masculinity, as the last part of the essay explains.

Female like a heterosexual white woman

In August 2000, Darlene Jespersen, a successful and well-liked bartender who had worked at Harrah's Casino in Reno, Nevada, for over two decades, found herself out of a job. Harrah's fired Jespersen because she

refused to comply with the company's grooming policy. Instituted in February 2000, as a part of Harrah's Beverage Department Image Transformation Program, the policy mandated that Harrah's female employees wear makeup. Jespersen refused to do so. Harrah's then terminated her employment, and Jespersen responded with a sex-discrimination lawsuit (Carbado, Gulati, and Ramachandran 2006; George, Gulati, and McGinley 2011).

Jespersen rested part of her legal argument on a case that was decided some twenty years earlier, *Price Waterhouse v. Hopkins*.[9] In that case, the accounting firm Price Waterhouse denied Ann Hopkins, a white woman, partnership. The record revealed that one partner explicitly informed Hopkins that she was too "masculine" and that another partner advised her that, to improve her chances the following year, she should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry."[10] The court found in Hopkins's favor, based on an antistereotyping and gender nonconformity theory: employers cannot require females to be feminine and males to be masculine.

Jespersen argued that *Price Waterhouse* applied to her case. Her claim, in effect, was that through its grooming policy Harrah's Casino was asking her to dress more femininely, wear makeup, and have her hair styled. Harrah's was forcing her to align her sex (female) with a normative gender expression (femininity). The court rejected this argument, and Jespersen lost her case. The US Court of Appeals for the Ninth Circuit, the highest court to hear the case, adopted a formal equality approach that reflected both gender normativity and colorblind intersectionality.

To appreciate the court's formal equality approach, one has to understand the legal doctrine the court employed to adjudicate the case: the equal burdens framework. Under this framework, a company's grooming policy constitutes sex discrimination if it burdens one sex more than the other. The court's application of this standard was overly formalistic. In concluding that Harrah's grooming policy equally burdened men and women, the court reasoned that the policy regulated men's and women's hairstyles, men's and women's clothing, men's and women's shoes, men's and women's fingernails, and men's and women's faces.[11] This formal equality approach obscured the fact that the grooming policy was quite literally producing normative masculinity and femininity and instantiating impermissible sex stereotyping. The policy ensured that men looked and

[9] Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

[10] Ibid., at 235.

[11] Jespersen v. Harrah's Operating Co., Inc., 392 F. 3d 1076 (9th Cir. 2004).

acted like men (masculine) and women looked and acted like women (feminine). Women were to wear makeup ("face powder, as well as blush and mascara" and "lip color . . . at all times").[12] Men were prohibited from doing so. Women could wear colored nail polish. "No colored polish is permitted" for men.[13] Women's hair had to be "teased, curled, or styled."[14] Men's hair was to "not extend below top of shirt collar," and men were not permitted to have ponytails.[15]

That Harrah's might have been concerned about female masculinities—specifically with respect to Jespersen—is a reasonable conclusion in light of how Jespersen embodied her gender (see fig. 1). Harrah's might have concluded that its grooming policy was not going to sexualize Jespersen or render her vulnerable to sexual harassment.[16] It was simply going to render her "make up" (her overall embodiment) more like that of a woman. Nothing in the policy required her to wear body-revealing clothing. Indeed, her uniform itself, particularly in the context of Reno, where cocktail waitresses are typically scantily dressed, is somewhat gender-bending. At the very least, Harrah's managers might have thought, Jespersen had to be intelligible as a woman. Its makeup and grooming requirements could help to accomplish exactly that. This suggests that, had Jespersen been more conventionally feminine, her refusal to wear makeup might not have triggered litigation.

As suggested earlier, the court could have applied the equal burdens test less formalistically to find in Jespersen's favor. More particularly, the court could have drawn on the gendered history of makeup to conclude that the makeup requirements were rooted in a sex-gender system that disadvantages women (Carbado, Gulati, and Ramachandran 2006). By the mid-twentieth century, makeup became a necessary part of being a woman, a social technology for gender conformity. At the same time, this technology helped to legitimize women's (especially white women's) entry into the workplace, particularly during World War II. As white women increasingly participated in formerly male spheres—politics, economic activities, and the labor market—makeup served to appease an anxiety concerning this intrusion and integration (Carbado, Gulati, and Ramachandran 2006). Makeup signified that the gender integration of white women would not mean the disruption of gender hierarchy. While some employers were troubled by the use of makeup on the job (for both safety and cultural reasons), others welcomed it (Black 2004, 34).

[12] Ibid., at 1078.
[13] Ibid., at 1077.
[14] Ibid.
[15] Ibid.
[16] Ibid., at 1076.

Figure 1 Darlene Jesperson in her Harrah's uniform. Image courtesy of Andrew Barbano. Color version available online.

The grooming policy in *Jespersen* is best understood in light of the history of makeup. The unequal burden of makeup is less about the monetary or preparation costs (though neither is trivial) and more about the hierarchical gender roles makeup has historically effectuated and maintained. Whether women who "freely" choose to wear makeup reinscribe that hierarchy is open to debate. But when a company mandates that women wear makeup and prohibits men from doing so, it is enforcing normative gender roles whose symbolic and distributional consequences have been decidedly unequal. To put all this slightly differently, while Harrah's grooming policy imposed impermissible sex-stereotyping burdens on both

women and men—quite literally making up the former as feminine and the latter as masculine—the history of makeup as a kind of gender palliative suggests that the policy unequally burdens women by reinforcing gender hierarchy. In legitimizing this hierarchy as an equal burden, the Ninth Circuit left Harrah's free to make Jespersen female like a heterosexual white woman.[17]

While the Ninth Circuit never expressly invokes race, its analysis is decidedly racially inflected. One way to illustrate this is to explore how the case would have been litigated had Darlene Jespersen been Black. Although one cannot answer this question with absolute certainty, engaging it helps to highlight how race is implicated in the formal equality analysis the *Jespersen* court employs, how whiteness operates in the case as an unarticulated racial default, and how Blackness can function as a social axis through which both female identity and sexism are refused.

Consider first the point about race and formal equality. Recall again the equal burden test. This test becomes even more problematic when Black women are imagined as litigants. Black women spend more than 7.5 billion dollars on cosmetics annually (Smith 2009), more than three times the amount that white women spend. Precisely because Black women have historically been masculinized, they have had to expend more energy and resources quite literally making themselves up as women. Whether we should conceptualize this effort as a form of mimicry (in the sense of acquiescence or resistance or both) is open to debate (Bhabha 2004). The point is that, historically, an "Ain't I a woman?" imperative has structured Black women's political interventions (e.g., "Include us in feminist agendas, because we are women") and their self-representational practices (e.g., "Include us in your conception of womanhood, because we have lived that life and performed the role").

As I indicate above, at no point does the *Jespersen* court explicitly engage race. Implicit in the court's analysis is a formalistic understanding of women as women, racially unmodified. Facilitating this gender essentialism (Harris 1990), at least in part, is the fact that Darlene Jespersen is white. In this respect, as a legal figure, Jespersen does not have an explicit racial marker. Her whiteness is not a particularity of gender but gender itself. Jespersen never has to worry about being "only" a white woman over and against some more generalizable female subjectivity. She can, and indeed in the context of the litigation does, stand in for gender per se. Her whiteness facilitates this representational authority in that it is both juridically unmarked and juridically incorporated. Because whiteness oper-

[17] For a more extended analysis of this case, see Carbado and Gulati (2013).

ates invisibly as the default around which the court adjudicates Jespersen's sex-discrimination claim, the racial dimensions of Jespersen's gender identity are both erased (in that whiteness is not formally expressed in the court's opinion) and incorporated (in that whiteness anchors the court's gender analysis). In this sense, one might say that the *Jespersen* litigation reflects colorblind intersectionality: whiteness is doing racially constitutive work in the case but is unarticulated and racially invisible as an intersectional subject position.[18]

As a white woman, Jesperson can simultaneously be just a woman and stand in for all women, just as white men can be just men and stand in for all men, and white gays and lesbians can be just gays and lesbians and stand in for all gays and lesbians. The fact that whiteness is intersectionally unmarked across each of the preceding social positions, as well as others, shores up whiteness as the default and normative racial category through which gender, sexuality, class, and so on are expressed. At the same time, colorblind intersectionality instantiates nonwhiteness as the racial modifier of gender, sexuality, class, and so on. There is thus a relationship between the notion of women of color as different and the unarticulated racial intersectionality of Jespersen's white identity.

Naming the elision of Jespersen's race as an intersectional activity is crucial not only to articulating how colorblindness can function as a racial preference for whites (here, white women) but also to highlighting how gender can function as a repository for the expression of that preference. This suggests that we should avoid framing the intersection of race and gender as an intersection of nonwhiteness and gender. That dominant way of theorizing intersectionality erases the racial intersectionality of white people and makes it easier for whiteness to operate as the natural and unmarked racial backdrop for other social positions, rather than as a particular and "different" representation of them. Moreover, framing whiteness outside intersectionality legitimizes a broader epistemic universe in which the racial presence, racial difference, and racial particularity of white people travel invisibly and undisturbed as race-neutral phe-

[18] Note that this is precisely what Crenshaw is problematizing in "Demarginalizing the Intersection." Although she does not frame her analysis in terms of colorblindness, she is clear that "a white female claiming discrimination against females may be in no better position to represent all women than a Black woman who claims discrimination as a Black female and wants to represent all females. The court's preferred articulation 'against females' is not necessarily more inclusive—it just appears to be so because *the racial contours of the claim are not specified*. The court's *preference for 'against females' rather than 'against Black females' reveals the implicit grounding of white female experiences in the doctrinal conceptualization of sex discrimination*" (Crenshaw 1989, 144; emphasis added).

nomena over and against the racial presence, racial difference, and racial particularity of people of color.[19] The *Jespersen* case is a part of this universe. Throughout the litigation, whiteness anchors the intelligibility of Jespersen as a woman and the intelligibility of her claim as an alleged instance of sex discrimination. Thus, gender is intersectionally but invisibly constituted as white.

The erasure and incorporation of whiteness in the litigation ensured that, at least to some extent, Jespersen's intersectional subjectivity as a white woman was not judicially fragmented. Jespersen did not have to choose between being white and being a woman. Unlike the doctrinal position in which Black women sometimes find themselves, in which their discrimination claims based on race and sex are refused recognition by courts (Crenshaw 1989), Jerspersen did not have to quarantine her race to represent her gender. Colorblind intersectionality kept her sex-discrimination claim juridically pure and thus racially uncorrupted, allowing her to occupy the category "woman" without racial specificity. In the context of sex-discrimination cases, that is virtually impossible for a Black woman to do so. A Black woman's race is always already particularizing her gender, thus diminishing her gender's representational capacity. Against the backdrop of whiteness as a racial default, Blackness renders a Black woman's gender and her sex-discrimination claim at least implicitly racially impure and thus juridically suspect.[20]

While Jespersen did not have to worry about the representative role her whiteness would perform in the litigation, she did have to worry about her sexual orientation. Jespersen did not identify herself as a lesbian in the case. That disclosure would have undermined her claim. In part, this is because federal antidiscrimination law does not prohibit employers from discriminating on the basis of sexual orientation. Thus, had Jespersen highlighted her sexual orientation, Harrah's might have articulated a sexual orientation defense—namely, that the company terminated Jespersen because she was a lesbian. (The company would likely not have argued that

[19] Part of the problem with colorblindness is that we do not conceptualize it as a racial ideology. For a conceptual model of how we might do so, see Carbado and Harris (2008).

[20] The foregoing analysis is not intended to suggest that Jespersen's lawyers should have expressly invoked her whiteness in the litigation. Nor is my claim that the case would have come out differently had they done so. The point, instead, is that Jespersen's lawyers didn't have to engage Jespersen's race at all, and the court didn't have to invoke it, because, as a general matter, in antidiscrimination law, whiteness is the default racial identity through which gender is expressed and sex discrimination claims are adjudicated. Jespersen's whiteness could thus comfortably represent the category of gender and did not call into question the legitimacy of her sex-discrimination claim.

its grooming policy was necessary to prevent Jespersen from looking like lesbian, though one gets the sense that, in part, that is precisely what was at stake.) Because federal sex-discrimination law almost always presupposes heterosexuality, Jespersen had to juridically closet her lesbian identity and doctrinally pass as a heterosexual. Had Jespersen been Black, the incentive for her to elide her identity in this way likely would have been even stronger. This is because the historical masculinization of Black women would have made the lesbian subtext in the case more salient. Even today, Black women are far more likely than white women to be misidentified as men (Goff, Thomas, and Jackson 2008), and even when they are not gender misidentified, tropes of masculinity are implicitly or explicitly attributed to them (Collins 2005).

There is another way in which we might we broaden our understanding of *Jespersen* by switching Jespersen's identity from white to Black. Consider, again, Harrah's grooming policy: "Face powder, as well as blush and mascara [and] lip color must be worn at all times." Moreover, women's hair needed to be "teased, curled, or styled."[21] Would dreadlocked or braided hair constitute hair that is "teased, curled, or styled"? Assume that Harrah's answered that question in the negative and prohibited Jespersen, whom we are now imagining is Black, from wearing her hair in braids. Would that constitute sex discrimination? The question is not academic. This is precisely the issue *Rogers v. American Airlines* engages, a case in which American Airlines prohibited its employees from wearing all-braided hairstyles.[22] Renee Rogers, a Black female employee, challenged the policy, asserting that it discriminated against her based on race and gender.

The court disagreed. It reasoned that the grooming policy did not reflect sex discrimination because it applied to both women and men. The court further noted that because the policy restricted braided hair irrespective of racial identity, the policy was race neutral. In reaching this conclusion, the court invoked the braided hairstyle that Bo Derek wears in the movie *10*. The court credited American Airlines' argument that Renee Rogers "first appeared at work in the all-braided hairstyle on or about September 25, 1980, soon after the style had been popularized by a white actress in the film '10.'"[23] The court rejected Rogers's claim that braided hair "has been, historically, a fashion and style adopted by Black American women, reflective of cultural, historical essence of Black women in American society."[24] For the court, from an antidiscrimination per-

[21] Jespersen v. Harrah's Operating Co., Inc., 392 F. 3d 1076 (9th Cir. 2004).

[22] Rogers v. American Airlines, Inc., 527 F. Supp. 229 (S.D.N.Y. 1981).

[23] Ibid., at 232.

[24] Ibid., at 231–32.

spective, braided hair had no significance (Caldwell 1991, 2008). Failing to consider the ways in which hair is racially constitutive (Onwuachi-Willig 2010), the court concluded that American Airlines' prohibition on braided hairstyles had "at most a negligible effect on employment opportunity."[25]

Reading the *Rogers* case in conjunction with *Jespersen* produces at least three additional intersectional insights. The first insight is that Harrah's grooming policy is not only gendered, it is raced. Black women and white women are likely to be differently situated with respect to whether they can "tease" their hair (assuming an objective standard as to what that means), whether they would have to chemically treat their hair to satisfy Harrah's policy, whether Harrah's would perceive their hairstyles to be "teased, curled, or styled" (a grooming standard that is intended to produce a professionalized feminine look, one for which Black women would not be the assumed natural exemplars), and whether the express prohibition of certain hairstyles (such as braids) would have a disparate impact on Black women.

A second intersectional insight that reading *Rogers* and *Jespersen* together produces pertains to litigation. Assume that in our hypothetical case Harrah's concluded that dreaded or braided hair does not constitute hair that is "teased, curled, or styled" and terminated Jespersen. Would she have a cause of action? In light of *Rogers*, the answer is no. The fact that the prohibition of braids formally would apply to women irrespective of race would defeat a claim that the prohibition constitutes sex discrimination.

Third, and more generally, once we unpack and articulate how whiteness colors and is embedded in the *Jespersen* case, it raises a question about one aspect of the intersectionality problem Crenshaw identified in "Demarginalzing the Intersection": whether expressly invoking Blackness in a sex-discrimination case, against an unarticulated baseline of whiteness, renders such claims less viable in the sense that they appear less authentically about gender per se. Pursuing this inquiry, in turn, highlights colorblind intersectionality. This undertheorized dimension of intersectionality privileges the experiences of white women and facilitates their raceless representational status in some areas of antidiscrimination law. Reopening the *Jespersen* case along these intersectional lines brings into sharp relief the fact that both sex-discrimination jurisprudence and Harrah's grooming policy naturalized whiteness. This racial naturalization intersected with gender normativity to produce an unarticulated intersectional imperative: for Jespersen to be female like a heterosexual white woman.

[25] Ibid., at 231.

Gay like a white heterosexual man

While Harrah's grooming policy required Darlene Jespersen to be female like a heterosexual white woman, gay rights advocates have required their gay civil rights icons to be gay like a white heterosexual man—or, more colloquially, "straight-acting." This white heteronormative investment created a white homonormative strategy that shaped gay rights opposition to the Don't Ask, Don't Tell policy. A significant part of this strategy entailed comparing sexual orientation to race (Carbado 2000).[26]

To challenge Don't Ask, Don't Tell, some gay rights proponents analogized the rhetoric the military deployed to exclude (out) gays and lesbians from the military service to the rhetoric the military deployed to exclude African Americans in the past. They reasoned that because we repudiated the latter, we should also repudiate the former. This analogiz-ing of rhetoric was the predicate for a formal equality analogy about discrimination—namely, the exclusion of African Americans from the military is like the exclusion of (out) gays and lesbians. The analogy sets up an equivalency between race-based and sexual-orientation-based military exclusion. Buttressed by colorblind intersectionality, the analogy obscured important civil rights history, elided the existence of Black gays and Black lesbians, normalized whiteness as the natural but unarticulated racial default for the expression of gay identity, and produced a civil rights discourse that traded on white normative masculinity.[27]

According to David Smith, the spokesperson for the gay and lesbian coalition group Campaign for Military Service, the language the military employed to exclude Blacks from military service is like the language the military employed to exclude gays and lesbians. Smith's argument has additional force if we examine two texts: a Department of Defense directive justifying the military's discrimination against gays and lesbians, and a 1942 statement from the secretary of the navy supporting racial segregation in the armed forces. The directive reads, in part:

> The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such mem-

[26] This problem of analogizing is a more general problem within gay rights discourse. See Hutchinson (1999).

[27] This white normative masculinity excluded not only Black men but also Black women. Because I am interested in interrogating maleness and masculinity as intersectional subjectivities, my focus is on the former.

> bers adversely affects the ability of the Military Services to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the Military Services; to maintain the public acceptability of military service. (US Department of Defense 1982, 10178)

Now consider the navy's statement, which in relevant part reads: "Men on board ships live in particularly close association; in their messes, one man sits beside another; their hammocks or bunks are close together; in their tasks such as those of gun crew, they form a closely knit, highly coordinated team. How many white men would choose, of their own accord, that their closest associates in sleeping quarters, at mess, and in gun crews should be of another race?" (quoted in Butler 1993, 16–17).

These texts suggest that at different historical moments in America, the armed forces have employed military-necessity arguments to justify both racial segregation and the exclusion of (out) gays and lesbians from the military: Blackness and homosexuality threaten military discipline, organization, morale, and readiness. Fair enough? Maybe. But this discursive analogy then became the basis for a comparison about discrimination: gay exclusion from the military is like Black exclusion from the military. Part of the problem here is that this claim of formal inequality obscures the history of Jim Crow and the ways in which that history was sexualized. Rather than employing the politics of Jim Crow to discuss how racial regimes regulate sexuality (and how sexuality is often a technology for policing racial boundaries), gay rights proponents imposed a gay gaze—or sexual orientation qua sexual orientation frame—onto the racial exclusion of Blacks from the military. As George Chauncey puts it in a related context, "claiming the two experiences have been the same does no justice to history and no service to the gay cause" (Chauncey 2004, 161).

To appreciate the importance of historical contextualization here, consider again the following language from the navy's statement: "Men on board ships live in particularly close association; in their messes, one man sits beside another; their hammocks or bunks are close together" (quoted in Butler 1993, 16). On its face, and read outside its historical context, this language seems to be more about (homo)sexual anxiety, racially unmodified, than an intersectional racial anxiety that was, to borrow from Kendall Thomas, "sexuated" (1996, 66). The language invites us to think about "cruising" or the "gay gaze." The notion would be that heterosexual mil-

itary men are worried about being the object of gay desire, for such objectification threatens their notion of manhood. Read outside its political and historical context, then, the language from the navy statement can be interpreted to be solely (and, presumably, unracially) about the relationship between homosexual orientation, manhood, and military social norms—the extent to which homosexual presence threatens heterosexual manhood and heterosexist military culture (Karst 1991; Shilts 1993; Rolison and Nakayama 1994).

But the statement also explicitly speaks of "white men" and men "of another race," querying, rhetorically, whether the former "would choose, of their own accord" to share sleeping quarters with the latter. We know the answer. This explicit invocation of race in the navy document invites an engagement of the specific historical context in which the navy produced the statement. Gay rights proponents did not perform that engagement. Their strategy was to replace the racial signifiers in 1940s military documents with sexual orientation signifiers. Under this approach, the text in the navy's 1942 statement that reads "How many *white* men would choose, of their own accord, that their closest associates in sleeping quarters, at mess, and in gun crews should be of another *race*?" becomes "How many *heterosexual* men would choose, of their own accord, that their closest associates in sleeping quarters, at mess, and in gun crews should be of another *sexual orientation*?" (Reza 1993).

This strategy of replacing race with sexual orientation displaced Black civil rights history and the opportunity to explore how that history was sexualized, even as gay rights proponents were drawing on Black civil rights for moral authority. Replacing race with sexual orientation, in other words, obscures that the navy's statement was written in the context of Jim Crow. The prosegregation military officials who promulgated this document might have been worried about Black (presumptively heterosexual) men cruising white (presumptively heterosexual) men. But heterosexuality was so thoroughly embedded in military culture, so naturalized a default, that the concern likely was not consciously about the gay gaze as such or gay bodies as such, though bodies and sexuality as they intersected with race certainly mattered, a point to which I will return presently.

Instead, the navy's statement reflects the then-pervasive notion of the Black body as contaminated and contaminating and the perception of Black men as inferior and failed men in two contradictory senses. On the one hand, the notion was that Black men were infantile, happy-go-lucky, and effeminate; they were men for whom "boy" was a more appropriate designation. On the other, Black men were perceived to be hypermasculine and sexually aggressive, men for whom "buck" was a more appropriate

designation. In this respect, rather than reading the navy's statement abstractly, we should read it against the backdrop of this boy/buck racial dialectic. Constituted by an "imputed combination of masculine lack and masculine excess" (Looby 1997, 71), this racial dialectic places Black men both between and beyond the borders of male and man, effectively rendering them impossible subjects of masculinity.

This is not to say that sexual orientation and sexuality more generally are irrelevant to this analysis. Under the logic of the boy/buck racial dialectic, Black men threatened to "turn," or demasculinize, white military men in at least two ways : effeminization (via sexual violence or engendering in white men an infantilized manboyhood) or sexual corruption (via same-sex intimacy or other acts of perceived sexual immorality). Thus, for example, when Congressman Stephen Pace of Georgia argued, in a contemporaneous letter to the secretary of the navy, against the racial integration of the armed forces on the ground that "white boys [would be] forced to sleep with . . . negroes" (quoted in Bianco 1996, 61), it is not enough—indeed, it is misleading—to say simply that Pace's statement reflects a homophobic panic (as distinct from a racial panic).

Nor is it enough to assert that the military's concern about racial inclusion is just like the military's concern about sexual orientation inclusion. Framing the analogy along either of the preceding lines disaggregates race from sexuality and dehistoricizes the context in which Congressman Pace articulated his anti-Black racial phobia in the 1940s. More fundamentally, such analogizing obscures that laws barring Blacks from military service were crucial sites not merely for regulating racial access but for constituting race and racial power. That is, the exclusion of Blacks from the military further constituted Blacks and whites as oppositional social categories within a regime of racial hierarchy.

The navy's statement and Pace's concerns about "white boys [and] negroes" should be understood contextually with reference to the racial dynamics I set out above. Those dynamics were unequivocally invested with sexuality. The navy statement and Pace's comments were deeply bound up with and reflected profound anxieties about a quintessential and racially sexualized Jim Crow boundary—the amalgamation of the races. Concerns about this boundary were not exhausted by the perceived effects that Black male presence in, or racial penetration of, the military would have on white men in terms of either sexual intimacy or infantilization. The exclusion of Black men shored up the racially masculinist Jim Crow order. Vesting any power in Black men—including the power to (tres)pass across a white masculine color line (the military)—undermined the anti–racial amalgamation imperative that underwrote the entire Jim Crow edifice.

Motivating this imperative was the sense that racial amalgamation always already portended one of the most transgressive acts of racial integration: heterosexual intimacy between Black men and white women. A Black man could become "strange fruit"—the victim of a lynch mob—upon the mere allegation that he crossed that gendered color line. In the context of Jim Crow, white women constituted a rigorously policed racial and gendered territory. Excluding Black men from military service helped to preserve the integrity of these gendered borders and at the same time kept both Black men and white women in their respective racial and gendered places. Understood in this way, racial segregation in the armed forces helped to manage a racially inflected heterosexualized panic that was an important part of the broader disciplinary apparatus of Jim Crow. It is precisely this panic that explains the overpolicing of consensual Black male heterosexuality across the color line (and the historical punishment of these associations as rape) and the underpolicing of nonconsensual white male heterosexuality (and the historical failure to punish this sexual violence as rape). Simply comparing language in military documents and substituting identity categories in order to advance a formal inequality argument erases this history.[28]

And yet it would be inaccurate to say that gay rights proponents completely ignored Black civil rights history. In fact, they traded on the moral authority of the civil rights movement. But they did so without actually engaging the racial conditions under which African Americans were fighting for reform. The gay rights advocacy against Don't Ask, Don't Tell selectively incorporated African American history—and African Americans—to compare sexual orientation per se (read: presumptively white gays and lesbians of today) with race per se (read: presumptively Black heterosexuals of the Jim Crow era). Underwriting the advocacy was the notion that, in a historical sense, gays are like African Americans and that, in a contemporary sense, gays are just like everybody else (white normative heterosexuals).

This strategy should disturb us. It exploits and displaces Black civil rights history, trades on white privilege, and renders whiteness an invisible particularity of gay identity. Like the *Jespersen* litigation, gay rights advocacy against Don't Ask, Don't Tell reflected colorblind intersectionality. Throughout the gay rights campaign against Don't Ask, Don't Tell, gay identity is (almost entirely) intersectionally constituted as white. Identifying this as an intersectional activity is crucial not only to articulating colorblindness as a racial preference for whites but also to highlighting gay identity as a

[28] For arguments that gay rights analogizing often elides important historical nuances, see Chauncey (2004), Kennedy (2005, 788), and Reddy (2008).

repository for the expression of that preference. In the context of the gay rights challenges to Don't Ask, Don't Tell, whiteness anchors the intelligibility of gay identity, and Blackness is heterosexualized as a social category whose disadvantages and civil rights aspirations reside in the domain of history.

The colorblind intersectionality of gay rights advocacy helps to explain why Black gay men were largely invisible as victims of Don't Ask, Don't Tell and why normatively masculine white men were visible. The "just like everybody else" refrain created a discursive field from which the "but for" gay male victim could grow. This figure is just like other white normatively masculine men, but for the fact of his sexual orientation. A mimic of a copy (Butler 1990), this gay male icon is gay like a white heterosexual man.

Black men could not perform this "gay like a white heterosexual man" role. They lack the homonormative conventionality that this imperative demanded. This might not be obvious. One could surmise that the perceived masculinity surplus of Black male identity would cure the perceived masculinity deficit of gay identity. However, the excesses of Black masculinity complicate that possibility. Black men are perceived to be too masculine to be authentically gay in the first place.

As Russell Robinson has argued, discourses about Black men reify this inauthenticity (2009). While Black men are presumed to be on the down low, which implies a desire to live a straight life while secretly and pathologically having sex with men, white men are presumed to be in the closet, which implies being forced to claim straightness against the desire for open and normal relationships with other men. The down low engenders condemnation; the closet, sympathy. Whereas down-low men are perceived to be villains, closeted men are constructed as victims. The down-low phenomenon is pathologized and thus described as an unnatural part of the gay experience. The closet, in contrast, is normalized and thus described as a comparatively natural part of being gay. Down-low men are described as possessing a hyperphysical masculinity (essentially bucks). Closeted men are described as straight-acting (essentially normative). All this situates Black men outside white gay normativity and thus outside the "gay like a white heterosexual man" frame.

There is another racial explanation for the absence of Black men in the "gay like a man" role—the image of the "wishy-washy" effeminate Black gay man, an image that trades on the boy (effeminacy) side of the boy/buck racial dialectic. Marlon Riggs wrote compellingly about this iconography: "Snap-swish-and-dish divas have truly arrived," wrote Riggs, "giving Beauty Shop drama at center stage, performing the read-and-snap two-step as they sashay across the movie screen, entertaining us in the castles of our homes"

(1999, 306). Riggs's point is that images of Black effeminate gay men have been commodified and voyeuristically included in our culture but always as a sign of nonnormativity. To put the point the way Riggs does, "Negro faggotry is the rage! Black gay men are not" (307).

The intersection of race, masculinity, and sexuality helps to explain why gay rights advocates focused on the white casualties of Don't Ask, Don't Tell despite the fact that African Americans have been disproportionately affected by the policy (Rosenthal and Contreras 2010). Too masculine to be gay and too feminine to be men, Black gay men cannot be gay like a white heterosexual man. Thus, while Perry Watkins, a Black army sergeant, established an important milestone when he became the first openly gay serviceman to successfully challenge Don't Ask, Don't Tell, gay rights advocates largely marginalized him in their campaign.[29] As Tom Stoddard, the important gay activist lawyer who directed the Campaign for Military Service, said, "There was a public relations problem with Perry [Watkins]" (quoted in Boykin 1996, 218). Watkins often performed in drag at recreational centers, social clubs, and other official and unofficial military gatherings. Notwithstanding that the military sometimes specifically requested these performances, they were at odds with the boy-next-door representative gay man around whom gay rights advocates sought to structure their advocacy.

Watkins was very aware that this representative gay man was racialized. According to Watkins, gay rights proponents preferred "poster children," many of whom had "lied" about their sexual orientation, over "a Black man who had to live the struggle nearly every day of his life" (quoted in Boykin 1996, 219–20). From Watkins's perspectives, much of the public gay rights advocacy against Don't Ask, Don't Tell rendered him invisibly out.

Enter Keith Meinhold. A white navy petty officer who revealed that he was gay on *ABC World News Tonight*, Meinhold became the poster child for the gay rights campaign. He appeared on the cover of the February 1, 1993, issue of *Newsweek* magazine, in full navy uniform, performing the role of the all-American boy. The headline accompanying his image asks, "How Far Will Clinton Go?" On the one hand, one could say that this cover invites the reader to conclude that Clinton would have to go very far. On the other hand, one could argue that after reading Meinhold's story, the American public would come to see him as an ordinary man, but for his sexual orientation, and conclude that Clinton would not be going too far if he admitted men like Meinhold—men who were gay like white heterosexual men—into the military.

[29] Watkins v. U.S. Army, 875 F. 2d 699 (9th Cir. 1989).

Joseph Steffan, a former midshipman who was expelled from the US Naval Academy a few weeks before graduation, made a similar public appearance. Consider Mary Fainsod Katzenstein's account:

> The host is interviewing Joseph Steffan. . . . Raised in the Midwest, Catholic, a choir boy in his local church, Steffan was the kid next door. Clean-cut, an excellent student, exceptional in track, he took as his date for the senior prom the high school's homecoming queen. From his small town in Minnesota, Joe Steffan entered Annapolis. At the Academy he was ranked in the top ten in his class, became battalion commander his senior year, and received the unique honor of twice singing, solo, the national anthem at the Army-Navy game.
>
> The TV monitor shifts to a film of Joe Steffan, standing on a platform as the Army-Navy game is about to begin, bearing erect, singing the anthem against the red, white, and blue backdrop of the American flag waving in the stadium breeze. The television studio camera again trains its lens on Joe Steffan's face, his sincere gaze, his serious eyes. . . . Joseph Steffan . . . is now "out" to the USA. (Katzenstein 1996, 233–34)

Significantly, it is not just Steffan who is "out" here. For, in this context, Steffan, like Meinhold, functions as a representative gay man. He is respectable. He is accomplished. He is an athlete. He is American. He is white. He is normatively masculine. And he is also gay. I employ "and" and not "but" here because the theater invites us to conceptualize Steffan's gay identity as incidental to, or beside the point with respect to, his military manhood. Steffan's normative masculinity, which his whiteness helped to intersectionally constitute, rendered him gay like a white heterosexual man.

To the extent that Don't Ask, Don't Tell is now a dead letter, one can query whether it makes sense to interrogate how gay rights contestations of this policy managed questions of race. Why should we care about that now? Surely gay rights advocacy today is more intersectionally nuanced? With respect to gay rights advocacy for marriage equality, the answer is no (Robinson 2013).[30] An emerging slogan in the marriage equality discourse

[30] For a critique of how gay rights proponents have employed Loving v. Virginia, the case that rendered antimiscegenation laws unconstitutional, in their advocacy, see Reddy (2008). Significantly, and as I have argued elsewhere, I am not arguing that race/sexual orientation analogies should never be employed; see Carbado (2000). Robin Lenhardt's work, for example, provides a sense of how one might engage in this kind of comparative project (Lenhardt 2007, 2008).

is "Gay is the new Black."[31] This slogan relegates racial inequality to the domain of history, stages a gay civil rights agenda that treats race as largely irrelevant, obscures the existence of Black LGBT communities, and conceptualizes racial equality in formalistic terms. Because Blacks no longer experience de jure racial discrimination as a matter of law, the slogan renders Black subordination and disadvantage a thing of the past and marks African Americans as a group whose civil rights aspirations have already been fulfilled. Under the "Gay is the new Black" slogan, there is no African American social subject around whom to structure a civil rights intervention. The subordination of African Americans is not only being rearticulated; it is being disappeared to history. The implication of the slogan is that African Americans, with the full panoply of formal rights, including the right to marry, are effectively the new whites. African Americans are Black only in terms of the color of their skin. In terms of structural subordination, "Gay is the new Black."

The "Gay is the new Black" refrain is the most recent manifestation of the heteronormative aspirations of mainstream gay rights organizing. This investment raises a question about whether, instead of conceptualizing gay as the new Black, we might profitably think of gay—or, more specifically, middle-class white gay men—as the new straight. Doing so would not deny the real vulnerability—to both discrimination and violence—white gay men face. The argument here would simply mirror claims about race and whiteness (Harris 1993; Lipsitz 2011). Just as scholars of race have explored, for example, how the Irish (Ignatiev 1995) and the Jews (Brodkin 1998) became white, one might begin a conversation about whether certain expressions of gay identity are becoming the new straight. In exploring this question, one need not treat heterosexuality and straight identity as precisely the same thing. One might, instead, understand "straight" to denote the manifestation of normatively appropriate ways of being, including but not limited to expressions of masculinity.

Alternatively, but along similar lines, one might conceptualize white middle-class gay identity as a kind of ethnic whiteness; the more white middle-class gay men assimilate their identities to white hetero norms, the more they move from the periphery of white privilege to its core. Under this view, white gay men in particular are becoming the "new white." This conceptualization of gay identity trades on an understanding of whiteness as a zone within which people are differentially positioned as a result of

[31] This slogan appeared on the December 2008 cover of the *Advocate* magazine and has circulated more broadly in gay rights discourses about marriage equality. For an indication of the extent to which this is so, see Robinson (2012).

both their willingness and their perceived capacity to assimilate. Masculinity, then, is one axis along which middle-class gay men can shore up, express, and naturalize their whiteness. To put the point slightly differently, the homonormativity of the gay rights marriage-equality campaign instantiates a naturalization process through which white gay men are incorporated into a white mainstream identity. This incorporation moves them from a kind of first-class white citizens-in-waiting status to first-class white citizens proper.[32] Understood in this way, the colorblind intersectionality of the "Gay is the new Black" frame is effectively structured around a white racial and normatively masculine prerequisite. People who do not satisfy these intersectional standards are not naturalized as gay within mainstream gay rights advocacy, a naturalized status that is itself a prerequisite for incorporation into the mainstream body of the American nation.

Significantly, I am not making a strong claim that we should conceptualize gay identity as either the new straight or the new white. I simply mean to mark how (paradoxically?) the "Gay is the new Black" slogan reflects a white racial and heteronormative orientation. This frame, and the colorblind intersectionality that underwrites it, helps to produce gay male subjects who, like Meinhold and Steffan, are gay like white heterosexual men.

Black like a man

If being gay like a white heterosexual man is palatable to the mainstream American public, being a Black presumptively heterosexual man generally is not. Black presumptively heterosexual men are at least potentially dangerous and threatening. They have an identity that is effectively criminalized—thus, for example, the de facto crime of "driving while Black." This is not to say, however, that Black presumptively heterosexual men have no representational currency. They do, particularly in the context of antiracist organizing. In that domain, Black presumptively heterosexual men can represent the race in a way that neither Black women, irrespective of sexual orientation, nor Black gay men can. This is why Black women rarely figure in discourses about "driving while Black" and are more generally marginalized in policy and political discussions about race and incarceration. Black women's gender diminishes their racial representational currency.

[32] Here I am riffing on Hiroshi Motomura's account of the extent to which some immigrants have effectively been Americans-in-waiting; see, generally, Motomura (2007).

A similar dynamic affects the racial standing of Black gay men. Generally, they cannot speak for or otherwise represent the race (McBride 2005). This explains Riggs's observation that he could not "be a black gay man because, by the tenets of black macho, black gay man is a triple negation" (Riggs 1999, 307). The "tenets of black macho" undermine Riggs's status not simply as a man but as an African American man. His gay male identity erases precisely what a hetero male identity racially solidifies—Black male subjectivity that is representative of African Americans writ large. Indeed, even when public discourses or policy initiatives are squarely and explicitly articulated with reference to Black heterosexual men, these interventions are understood to be about the Black community tout court. Black male heterosexuality—unmarked in intersectional terms—often stands in for the race. It is the evidentiary body of racial injustice.

But not all forms of Black male heterosexuality can perform this work, particularly vis-à-vis the larger American public. This is why the campaign of the American Civil Liberties Union (ACLU) against racial profiling relied on images of Black men with gender-normative masculinities. Consider, for example, the image that appeared in an ACLU pamphlet on the issue (fig. 2).

Both men are coded as respectable. The visual economy of each image disconfirms stereotypes about race and masculinity. They are not thugs. They are not gangsters. They are not drug dealers. They are not physically hypermasculine. Their suits and ties, polished shoes, and manicured faces exude law-abidingness and middle-class male respectability. They are just like gender-normative white men. Therefore, the police should treat them just like gender-normative white men. The fact that they were treated differently (racially profiled) against the backdrop of their normative masculinity gave them representational currency as sympathetic victims. The political pragmatism behind the ACLU's strategy is clear: to the extent that (white) people understand that racial profiling affects innocent, normatively masculine men, they are more likely to condemn racial profiling and the police officers who practice it.

Harvard professor Henry Louis Gates Jr. was likely counting on this dynamic after his encounter with police sergeant James Crowley, a white, male, eleven-year veteran of the force who teaches an anti–racial profiling class at the Cambridge Police Department. Crowley catapulted into the public arena after he arrested Gates in his own home. Professor Gates and Sergeant Crowley have since disagreed on the actual happenings of the incident. For his part, Gates, in an interview with CNN reporter Soledad O'Brien, was emphatic that "this is not about me, this is about the Black man in America. If it can happen to me, it can happen to anyone in the

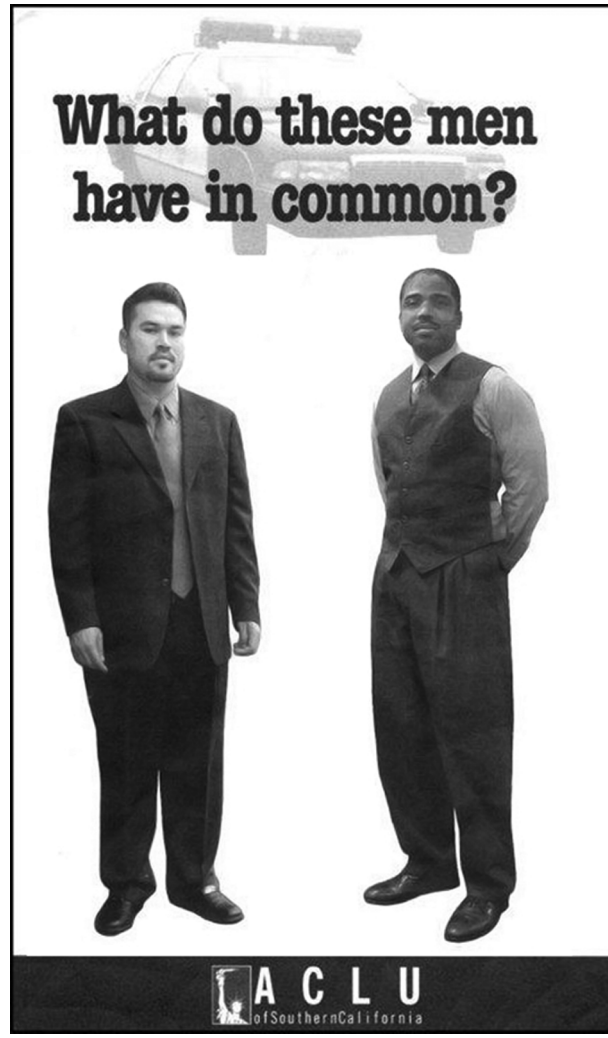

Figure 2 ACLU racial profiling pamphlet. Image courtesy of the American Civil Liberties Union. Color version available online.

United States."[33] Implicit in Gates's claim is the idea that the encounter he experienced wasn't supposed to happen to him. He is not, after all, the stereotypical physically hypermasculine Black man. He is middle-aged and

[33] The interview took place during a CNN special on July 22, 2009. A video of the interview portion is available at www.cnn.com/video/#/video/living/2009/07/23/bia.henry.gates.cnn; a transcript of the entire special appears at http://transcripts.cnn.com/TRANSCRIPTS/0907/22/se.01.html.

slight in build, he walks with a cane and wears glasses, and he is a Harvard professor. Black men like Gates with normative (nonthreatening) masculinities are not supposed to get arrested.

But that is precisely what happened to Gates. The reason relates to surplus compliance. According to Crowley, he arrested Gates for disorderly conduct because Gates was engaging in "loud and tumultuous behavior in a public space" (Chew 2009). Note how easily Gate's home (albeit his porch) becomes a public space. And note as well Crowley's insistence that he "really didn't want to" arrest Gates but was eventually "forced" to because after he warned Gates, and showed Gates his set of handcuffs, Gates remained "combative" and refused to de-escalate the situation (Thompson and Thompson 2009). Crowley's comments suggest that surplus compliance was at least implicitly on his mind. Particularly noteworthy is the fact that Crowley's threat and eventual arrest of Gates occurred after Gates had established that he was not engaged in a robbery but had entered his own home. Even under these circumstances, Crowley expected racial obedience.

Perhaps Gates should have anticipated this. Part of one's Americanization, or what I have elsewhere called "racial naturalization," as a Black man is learning the importance of signaling cooperation in the context of police interactions (Carbado 2002a, 947). Our presumed surplus masculinity creates a racial economy in which police officers demand that compliance. The refusal to produce it can create a "market failure"—an undisciplined and volatile social interaction—that police officers must intervene to correct. Understanding these dynamics, Robert L. Johnson and Steven Simring offer very specific advice for how people of color should negotiate racialized police interactions:

- Don't display anger—even if justified. Most police officers resent challenges to their authority, and may overreact to any real or perceived affront.
- Don't argue the Fourth Amendment. . . . At the point you are stopped, it is important to maintain control of your emotions and your behavior.
- Don't be sarcastic or condescending to the officer. Always be cooperative and polite.
- Don't lose sight of your goal. The objective in most racial profiling scenarios is to end the encounter as quickly as possible with a minimum risk of potential trauma. (Johnson and Simring 2000, 121–22)

These don'ts are part of a broader racial management effort to disconfirm stereotypes about dangerousness and criminality. Both as a coping

mechanism and a survival strategy, parents, family members, and community leaders teach Black children how to carry out this racial governmentality—when, if at all, to speak; when and how to say "Sir" (Troutt 2001, 60), "Officer," or "Trooper" (Johnson and Simring 2000, 121); how to refrain from making sudden movements (Johnson and Simring 2000, 125); and when, if at all, to assert one's rights.

From Crowley's perspective, Gates was not properly managing his identity. His masculinity was not under control. He did not supply "racial comfort" (Carbado and Gulati 2013). By simply questioning authority and asserting his rights, Gates was drawing on his surplus masculinity. This created a racially unsafe environment; Gates's decision to stand his ground likely threatened Crowley's own masculinity. To borrow from Frank Rudy Cooper, Crowley could have experienced Gates's noncompliance as a "masculinity challenge" (Cooper 2009, 698; see also Cooper 2010) that he (Crowley) had to win. Winning required Crowley to both discipline and contain Gates. This secured both Crowley's sense of control and his sense of masculinity. Gates had racial standing to challenge Crowley's conduct because he is generally perceived to be (racially) respectable.

Of course, Gates's celebrity played an important role in generating media attention. But his status as a racial victim did not require that celebrity. It required racial respectability, of which normative masculinity is a part. This racial respectability even applies to Black boys—even under circumstances of life and death. Consider the case of Trayvon Martin, a seventeen-year-old Black male whom George Zimmerman shot and killed, allegedly in self-defense. Trayvon was wearing a hooded sweatshirt, or "hoodie," at the time and some attributed his death to that fact. According to talk-show host Geraldo Rivera, for example, the hoodie was "as much responsible for Trayvon's Martin's death as George Zimmerman was" (quoted in Fung 2012). From Rivera's perspective, the hoodie in effect took away Trayvon's innocence and turned him into a "bad" Black. "Trayvon Martin's you know, god bless him, he's an innocent kid, a wonderful kid, a box of Skittles in his hand. He didn't deserve to die," Rivera commented (quoted in Oldenburg 2012). But, he continued, "if he didn't have that hoodie on, that—that nutty neighborhood watch guy wouldn't have responded in that violent and aggressive way" (quoted in Oldenburg 2012). For Rivera, the lesson from all of this is clear: "Parents of black and Latino youngsters particularly [should] not . . . let their children go out wearing hoodies." He added, "People look at you [in a hoodie], and what's the instant identification? What's the instant association? . . . Someone stickin' up a 7-Eleven [or someone captured in a] mugging on a surveillance camera" (quoted in Oldenburg 2012). Concern about these associations has caused Rivera to instruct his own "partic-

ularly dark-skinned . . . son Cruz," who is twenty-four, not to wear hoodies (quoted in Oldenburg 2012). The broader point is that the Trayvon Martin case is an example of how the representational currency of Black men, even Black boys, turns on their racial respectability and gender normativity.

This brings me back to the introduction. There I suggested that it is erroneous to conceptualize intersectionality as a theory whose exclusive focus is the intersection of race (read: nonwhite) and gender (read: nonmale). Moreover, there are significant costs to doing so. Framing intesectionality as only about women of color gives masculinity, whiteness, and maleness an intersectional pass. That, in turn, leaves colorblind intersectionality and gender-blind intersectionality unnamed and uninterrogated, further naturalizing white male heterosexuality as the normative baseline against which the rest of us are intersectionally differentiated.

Conclusion

The point of departure for this essay was the idea that many scholars frame intersectionality more narrowly than is theoretically necessary. I then proceeded to employ intersectionality to analyze social categories, civil rights problems, and legal doctrines that are ostensibly beyond the theoretical reach and normative concern of intersectionality. My hope is that this engagement will end some of the abstract debates about what intersectionality can and cannot do and encourage more scholars to push the theoretical boundaries of intersectionality rather than disciplining and policing them.

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