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INTERSECTIONALITY: A THEORETICAL FRAMEWORK FOR THE ANALYSIS OF
IMMIGRATION POLICY

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ABSTRACT

In 1989, Kimberlé Crenshaw coined the term Intersectionality in a paper for the University of Chicago Legal Forum. Since then, this concept has been extensively studied by feminist scholars and theorists. This paper seeks to explore this concept further, while simultaneously seeking to understand how it can be applied within the context of Immigration policy and jurisprudence. The first goal of this thesis is to establish a definition of intersectionality can be utilized as a lens through which to analyze the law and policy. Through a historical analysis of early liberal political philosophy, this thesis will unearth the foundations for the concept of Intersectionality and highlight how and why a necessity for such a theory emerged within feminist philosophy. It will then explore more contemporary literature which address intersectionality and analyze their contributions to the development of the theory. Though the synthesis of several working definitions that exist throughout the scholarship on the topic as well as other relevant theoretical considerations. The second half of this thesis will then seek to apply this definition and the conception of intersectionality which the first half of the paper derived to immigration policy within the United States. This will be done through two case studies. The first will be of the Supreme Court case *United States v. Wong Kim Ark*, that will establish the historical complexities of immigration policy in America. The next case study will focus on *Madrigal v. Quilligan*, which highlights the direct impact inadequate policy can have on the lives of female immigrants. The paper will then proceed to analyze the body of policy which exists surrounding those seeking refugee or asylum status within the United States. The findings of this thesis argue that Intersectionality ought to be utilized as a framework for the analysis of Immigration Policy. Furthermore, doing so provides a means for the creation of more effective,

just, and well-rounded policy that adequately accounts for the complex realities of countless individuals.

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"Thou didst mold us dear old state"

Chapter 1: A Contemporary and Historical Analysis of Intersectionality

Intersectionality, most broadly, is a concept which considers how the various inequalities apparent in society, such as race, gender, class, etc., intersect with one another in a way that shapes the lives of individuals and groups. This term, coined in the 1980's but rooted in early liberal legal philosophy, provides a lens through which it is possible to analyze how individuals living at certain intersections engage with certain social phenomenon.¹ It is a theory that calls for the explicit consideration of the lives and experiences of Women of Color and the realities of race within our conception of gender. Beyond the intersection of race and gender, it is a theoretical framework through which an analysis of the interactions between the facets of an individual's vastly complex identity can and will interact to alter their lived experiences. It is, most generally, "an awareness, an approach, an analysis, a tool, a strategy, a method and a theory".² The nature of intersectionality makes it flexible, difficult to define, and abstract. However, it also has a great capacity as a term to be transformed into a massively impactful tool for the analysis of policy. This thesis seeks to formulate a more concise definition of intersectionality, and how it may be utilized as a tool to analyze contemporary immigration policy and jurisprudence. In order to do so, I will first develop an understanding of the term, its history, and why its existence is necessary. Then I will proceed to develop a more operational definition of the term as a tool for the analysis of Immigration policy within the United States through a critical legal lens.

¹ Dill and Zambrana 2009

² Goswami 2014

Sub-Chapter 1.1: An Early History of Feminist Thought

In earlier iterations of feminist thinking, the concepts of race and gender were not necessarily examined in relation to one another. Furthermore, gender was analyzed as an independent and defining feature of an individual's reality. The works of Mary Wollstonecraft, Harriet Taylor, and John Stuart Mill, for example, neglect the inclusion of a non-Anglo experience within their analyses of the female reality and formulations of liberal feminist ideology. The emergence of intersectionality in the field is a consequence of the existence of these standards and bodies of thought. Understanding these norms is crucial for developing having a greater understanding of intersectionality as a concept, and the critical role it plays in feminism as a whole.

The early part of the 18th century saw liberal feminism emerge as a derivative of liberal political philosophy. Shaped by the writings of theorists such as Mary Wollstonecraft, Harriet Taylor, and John Stuart Mill, this early manifestation of feminist theory would come to be a marker of first wave feminism. Liberalism as a theory rests on a set of principles derived from the concept of liberty. The preservation of people's individual rights without infringing upon the rights of others serves as the cornerstone of any such theories.³ Classical liberalism, introduced by thinkers such as John Locke, was devoid of any mention of gender-based rights or considerations. It focused purely on the concepts such as the right to property, autonomy, and pursuits of liberty.⁴ Operating within this theoretical framework implies an acceptance of the idea that all men have the right to pursue that which they wish, should it not infringe on the rights of others. This is derived from an assertion that autonomy, and all which may be extended

³ The Oxford Handbook of Political Philosophy 2012

⁴ Hudelson 1999

out of it, is a fundamental part of a human being's pursuit of fulfillment.⁵ This autonomy is best illustrated by these theorists through the right to property. A man's ability to own property, and for it to be under his jurisdiction provides him with a sense of purpose within the world. More fundamentally, a man's ability to have autonomy over his own person, provides him with a freedom from others that liberal theorists viewed as absolutely necessary for fulfillment by man (in this context, a white man). Furthermore, to fully have hold of one's personhood, an individual must have access to these liberties.⁶ However, in these initial manifestations of liberal theory, persons or individuals were presumed to be men and more specifically the white male property owners.

The narrow window of humanity to which these theories apply was noted and addressed by feminists of the first wave. These very principles that men insisted were required for personhood were completely absent from the female experience. The exercise of principles of liberty, autonomy, and the capacity for reason were not extended to women. Thus, the justifications for women's individual rights relied upon their ability to fulfill fundamental tenets of personhood, namely property and autonomy. Being able to access goods on their own, without infringing on the rights of others to attain the same goods, allows for individuals to access their right to property. Women of the era, however, were prohibited from owning their own property, entering independent contracts, and from having a legal status which would allow for the acquisition of significant goods under their own names. Liberal feminists of this era would argue that a woman's need and right to actively pursue their needs was vital to their own fulfillment of their personhood.⁷

⁵ The Oxford Handbook of Political Philosophy 2012

⁶ The Oxford Handbook of Political Philosophy 2012

⁷ Taylor-Mill 1851

Theorists such as Mary Wollstonecraft argued for this inclusion by extending the moral reasoning outlined in conventional theories of liberalism to the female experience. She argued that women needed the same opportunities to attain full level personhood and fulfillment that men did. This suggestion alone was considered to be revolutionary at the time when she was composing her works. While the notion may be radical, her work still contains a flaw in her references to slavery as analogous to the conditions that white women at the time existed in.

In *A Vindication of the Rights of Women*, Wollstonecraft “invokes the language of colonial slavery” in her discussion of the rights of women.⁸ This, in conjunction with her generalization of the female experience through her discussions of education and self-determination, create a division within the piece.⁹ This division makes a clear distinction between herself, and the experiences of other women. For example, in explaining the controlling behavior of men over women she says that “slavery will have its constant effect, degrading the master and the abject dependent”.¹⁰ Later on, she states that in men’s physical dominance over women, “the mind is left to rust, so that while physical love enervates man, as being his favourite recreation, he will endeavour to enslave woman: - and, who can tell, how many generations may be necessary to give vigour to the virtue and talents of the freed posterity of abject slaves”.¹¹ In both of these passages, she draws a clear comparison between slavery and the state of white women at the time. This is problematic, as it neglects to account for the experiences of enslaved

⁸ Fergeson 1992

⁹ In Moira Ferguson’s essay, *Mary Wollstonecraft and the Problematic of Slavery*, she explains that Wollstonecraft’s explanation of the way women engage with education and self-determination highlights the creation of “a group identity, a political position from which they can start organizing and agitating” for the white middle class woman throughout the original text.

¹⁰ Wollstonecraft 1792

¹¹ Wollstonecraft 1792

women as distinct from each of these respective issues. The comparison between slavery and the discrimination white women faced implies that these are distinct issues. However, the experiences of enslaved women exist at the intersection of these two. They faced the intense oppression inflicted upon slaves, while also facing discrimination because of their gender. However, this gender-based discrimination, was far different than that which white women faced. Furthermore, their experiences in slavery were distinct from those of an enslaved male. These two facets of the lived realities of enslaved women exist as specific to their experiences, that were specific to their lives and circumstances. Thus, it is important to acknowledge that Wollstonecraft neglects to account for the intersection of these two concepts, and how they uniquely impacted enslaved females.

Thus, her work is centered exclusively on realities of the Anglo female, as it would not have been within her own scope of understanding to include the interests or considerations of women of color. Furthermore, the rise of industrialization also came the popularization of the “Cult of domesticity” and the emphasis on the division between spheres of work and home. This alteration of liberalism to incorporate early feminist critiques was very particular in its parameters. She sought to “consider women in the grand light of human creatures, who, in common with men, are placed on this earth to unfold their faculties”.¹² Wollstonecraft seeks equality and women’s fulfillment in the home through the attainment of educational equity. According to her manifestation of the theory, women should be “educated in such a manner as to be able to think and act for themselves”.¹³ Having this educational equality would allow them to fulfil their capacity in institutionalized roles. However, a distinct facet of Wollstonecraft’s view

¹² Wollstonecraft 1792

¹³ Wollstonecraft 1792

is that this fulfillment was only necessary and appropriate within the domestic sphere.

Essentially, she suggested that women only ought to strive for equality within the home.¹⁴ The argument rests on the idea that a better educated woman could in turn bring proper moral reasoning (which is truly the basis for liberalism) into the home. Wollstonecraft did not necessarily want women to be removed from their domestic sphere, rather she sought an opportunity for fulfillment within it.

At the turn of the 19th century John Stuart Mill and Harriet Taylor Mill also articulated a version of feminism based in liberal ideals of autonomy, equality, and individual rights. The distinctions between their theories rested mainly in the spheres in which these ideals were to be applied. John Stuart Mill, like Wollstonecraft, analyzed the role of women within the home. He argued that

“Like a man when he chooses a profession, so, when a woman marries, it may in general be understood that she makes choice of the management of a household, and the bringing up of a family, as the first call upon her exertions, during as many years of her life as may be required for the purpose; and that she renounces not all other objects and occupations, but all which are not consistent with the requirements of this”.¹⁵

Thus, Mill’s liberal feminism advocated autonomy for women in the home. Conversely, Harriet Taylor Mill argued that women’s battle for autonomy was outside the home, and in the sphere of work.¹⁶ She argued that if it were up to women, they would seek their fulfillment in ways which were not traditionally domestic. There were three principal requests which she made in the *Enfranchisement of Women*; “Education in primary and high schools, universities,

¹⁴ Wollstonecraft 1792

¹⁵ Mill 1869

¹⁶ Taylor-Mill 1851

medical, legal, and theological institutions. Partnership in the labours and gains, risks and remunerations, of productive industry. A coequal share in the formation and administration of laws—municipal, state, and national—through legislative assemblies, courts, and executive offices”.¹⁷ These were the fundamental tenets that she thought were necessary for some form of equality. It is important to acknowledge the relevant differences between these theorists in order to recognize the ways they each contributed to the development of feminism at the time. Harriet Taylor-Mill, unlike her husband or Wollstonecraft did in fact push for women to seek liberation and independence outside of the domestic sphere. Her theories did suggest that women should seek employment and opportunities outside of the home.¹⁸ Her theory does not sufficiently account for the experiences of non-white women, and the role race would play in the ability of any woman to gain employment outside of the home and the domestic sphere.¹⁹ Taylor-Mill’s work, like that of Mill and Wollstonecraft, lacked consideration of the realities of women of color at the time.

While all of these theorists provided important pieces which brought to light feminist philosophy for the first time, their work lacked inclusivity of non-white non-bourgeois females.

In Wollstonecraft’s *Vindication of the Rights of Women*, she writes with only the experience of a white woman from a higher social class. Furthermore, this is the perspective which she seems to identify as the hallmark for the female experience. In her examination of the social, educational, and political structures of the time, she is “censuring how white middle-class women act, Wollstonecraft views them as a homogenized group”.²⁰ She has no perception of

¹⁷ Taylor-Mill 1851

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Fergeson 1992

what a different female experience would be, nor does she attempt to take another perspective into account when shaping her theory. The same can be said of the work of the John Stuart Mill, who make large assumptions about women being able to find a divide between their spheres of work and domesticity.²¹ Taylor-Mill, though she does suggest that women's liberation should take them out of the home, still does not account for the realities of the lives of non-white women. Specifically, the ability to distinguish between the realms of work and domesticity was a distinct privilege of white, upper class women. At the time, women of color were primarily working as domestic servants in the homes of the white, wealthy, upper-class families. They had no option but to leave their own homes and work in order to earn a living wage. The ability to choose work over maintaining a home and the domestic sphere was therefore not a universal female experience. Their writing, however, comes from a perspective that seemingly neglects all realities excluding that of the bourgeoisie. The Mills, like Wollstonecraft, were writing in a context defined by the social, political, and economic consequences of Slavery. It is relevant to note that these thinkers did speak out against slavery to some extent. In *Vindication of the Rights of Men*, Wollstonecraft explains her views against slavery and provides criticisms of the system.²² Additionally, John Stuart Mill expresses that slavery is barrier preventing America from fully accessing its founding principles of liberty and freedom.²³ This shows that the concept of abolition was one Mill and Wollstonecraft were aware of and in fact opposed to. However, their writings on the topic did not sufficiently consider the role of gender, particularly the experiences of enslaved females, within the institution of slavery. The validation of Black women's realities in theory would have necessitated a validation of their experiences in reality,

²¹ Taylor-Mill 1851

²² Wollstonecraft 1790

²³ Compton 2008

as the ones that were as fully human and woman as those of white women. However, this was not the case, and thus limited the scope of the writings of these earlier theorists as well.

The prominent theories of the time were brought to light by the speech given by Sojourner Truth at the Seneca Falls Convention of 1851. This speech addressed, for the first time, the concept of womanhood regarding women of color with respect to their lives in social, work, and domestic spheres. It was an explanation of women's rights beyond the scope of white women and their exclusive experience. Furthermore, she was the first to share a perspective based on lived experience on the rights and needs of women of color.

As feminist philosopher Kathryn T. Gines argues, there are “early explorations and examinations of intersecting identities and oppressions in the nineteenth and early twentieth centuries”, which ought to be included in our conceptions of intersectionality.²⁴ While conventional, modern explanations of the concept tend to begin with the mid-twentieth century in their exploration of the concept, it is possible to argue that it is rooted far deeper in history than that. This phenomenon, coined as “proto-intersectionality” by Gines, brought to light a new form a feminism defined by “activist organizing and campaigning – not only as separate categories impacting identity and oppression, but also as systems of oppression that work together and mutually reinforce one another, presenting unique problems for black women who experience both, simultaneously and differently than white women and/or black men”.²⁵ Thus, it is apparent that the genealogy of intersectionality is a complex and elaborate history.

Proto-intersectional thought is characterized by pieces such as Sojourner Truth's speech, *Ain't I a Woman*. A work characterized by a culmination of several qualities of resistance,

²⁴ Gines 2014

²⁵ Gines 2014

activism, and structures of inequality. During this time in history, Abolition as well as liberal feminist activism were fully ignited. The lines between the liberation movements of various oppressed groups were beginning to blur, and many activists from both the abolition and women's rights movements were working across boundaries. This was one of the first points in history during which the various spheres of equal rights movements were beginning to meld. Truth "interrupted representations of 'woman' as exclusively white and of 'black' as only male"²⁶ *Aint I a Woman*, "underscores the discrepancy in constructions of femininity along the colour line, citing her lived experience as a black woman and former slave to demonstrate the limitations and exclusions operating in constructions of gender and race in the US context".²⁷ Feminists emphasized the rights of white women, and abolitionists emphasized the rights of black men, however there were minimal considerations of the rights and interests of black women. The Seneca Falls Convention served as a backdrop for momentous change in this stage of the women's right movement. The inclusion of Women of Color in the Convention, primarily through speeches like Truth's, addressed for the first time the concept of intersectional womanhood specifically with regard to the various realms in which womanhood was complexly involved. She brought to light the importance and interconnected nature of the fights for gender and racial inequality by identifying that treating them as mutually exclusive entities was ineffectual.²⁸ Truth addressed this by acknowledging that the main point on which most oppression was based, an assumption of inferior intellect and capacity of the non-white male,

²⁶ Gines 2014

²⁷ Gines 2014

²⁸ Truth 1863

was arbitrarily made about people of color and women in different ways.²⁹ As Truth said on intellect

“...They talk about this thing in the head; what’s this they call it? [member of audience whispers, “intellect”] That’s it, honey. What’s that got to do with women’s rights or negroes’ rights? If my cup won’t hold but a pint, and yours holds a quart, wouldn’t you be mean not to let me have my little half measure full?”³⁰

She is stating, for the first time in a public way, that whether an individual is oppressed on the basis of gender or race should not be the primary concern, rather, people should be addressing the concept of oppression as a general issue in society. She notes that this has not been the case, and that conventions of the day suggest that “women can’t have as much rights as men, ‘cause Christ wasn’t a woman! Where did your Christ come from? Where did your Christ come from? From God and a woman! Man had nothing to do with Him”.³¹ Truth highlights the way that the politics of this particular era created an intense need for a more well rounded, intersectional perspective due to the pervasive false dichotomies that existed surrounding the best ways to address inequality. The proto-intersectionality depicted here is a narrow, yet important, depiction of the desire for inclusivity in feminist activism at the time. Here Truth is imploring for an understanding of oppression that, in a simplistic way, takes into account race, gender, and economic standing.³² While this is an elementary formulation of intersectional thought, it still calls to light perhaps the most fundamental feature of the concepts that would develop into

²⁹Truth 1863

³⁰Truth 1863

³¹Truth 1863

³²Truth 1863

modern intersectionality: the concurrent considerations of multiple features of an individual's reality when analyzing the oppression they face.³³

As the concepts of feminism expanded from this early manifestation, so did the theories surrounding what it meant for the field to be inclusive of different lived experiences. The pressing need for a more inclusive definition of feminism became increasingly apparent as theorists reflected on the words of theorists such as Truth in the decades to come. A later, more radical approach to intersectional feminism would be characterized by the boldness of the activists at its helm.

Sub-Chapter 1.2: Modern Intersectionality

As feminism and the very notion of womanhood evolved, so did conventional approaches to inclusive thought. In 1978, the Combahee River Collective released a statement on their experiences as black women and the way pervasive forms of oppression had impacted their lives. On this discrimination they said the “the major systems of oppression are interlocking. The synthesis of these oppressions creates the conditions of our lives. As Black women we see Black feminism as the logical political movement to combat the manifold and simultaneous oppressions that all women of color face”. This synthesis of oppression precisely targeted the issues that the modern conception of intersectionality attempts to address. The concept of synthesis is vital in the development of a more inclusive definition of intersectionality. While there clearly have been variations in the definitions, one thing is certain of the modern conception of intersectionality; it must include in its scope the many types forms which oppression takes. There are “multiple axes of oppression” that need to be taken into account in a way that is not “competitive or additive” rather “complex, fluid and changing”.

³³ Truth 1863

The term intersectionality was coined by the legal theorist Kimberlé Crenshaw in the late 1980's. She introduced the concept of intersectionality specifically to address the oppression of black women. As an idea, intersectionality refers to the ability of individuals to identify with, and be placed in several socially defined and institutionally upheld spheres (i.e. race, gender, socio-economic status) simultaneously. These groups are subject to discrimination unique to their particular conditions and tend to become deeply intertwined. The intersection at which these various webs have connected is the place where most people have their lived experiences. Furthermore, the way that these layers combine to form an individual's stratum of their social reality is unique to their individual experiences. Her analyses of race sought "to contrast the multidimensionality of Black women's experience with the single-axis analysis that distorts these experiences". These experiences are often unique to the individuals who fall under multiple groups which have been historically oppressed. It has been women of color, who fall under this umbrella of overlapping inequalities, that have this lived experience of the world, wrought with discrimination to their complex identities. They had "differing in experience from white women, they spoke as blacks. Differing in experience from black men, they spoke as women. Differing from one another in their experience as black women, they spoke as individuals". Essentially, Crenshaw highlights the indescribably complex nature of oppression. This newly developed concept of intersectionality highlights how "the conceptual structure of categories of discrimination [e.g. race or gender] is such that when they intersect, they render experiences of compound, simultaneous discriminations invisible". Thus, the importance of acknowledging and taking into account that complexity cannot be underestimated, as "any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated". Based on Crenshaw's conceptualization of intersectionality one may discern that utilizing the context which an intersectional perspective can provide will thus only supplement any feminist analysis of a given social condition.

For Crenshaw, the concept of intersectionality largely emerges in response to her critique of "single axis thinking". That is, a failure to take into account the multiple facets that contribute to the

lived experiences of women of color in the United States in social, political, legal, and economic contexts. This is particularly problematic in the legal realm. In order to apply this analytical framework to an analysis of immigration policy, understanding it fundamentally within a general legal context is paramount. The single axis mode of reasoning eliminates the interests and realities of Black women from the “conceptualization, identification, and remediation of race and sex discrimination by limiting inquiry into the experiences of otherwise-privileged members of the group. Therefore, within the legal context, the nature of the matter at hand and the way race and gender are intertwined in it, will implicate race and gender in exclusive ways. Furthermore, they will not be considered in conjunction with one another. As Crenshaw explains, “in race discrimination cases, discrimination tends to be viewed in terms of sex- or class-privileged Blacks; in sex discrimination cases, the focus is on race- and class-privileged women”. The case of *Moore v Hughes Helicopters, Inc* which she includes in her paper *Demarginalizing the Intersection*, exemplifies this problem. This case is “typical of a number of cases in which courts refused to certify Black females as class representatives in race and sex discrimination actions”. The plaintiff argued that Hughes Helicopters practiced discriminatory behavior in their process of assigning promotions within the company. The evidence to support this claim suggested that there was a far smaller disparity between black and white men versus men and women in terms of their roles as supervisors within the company. The district court, in a decision approved by the ninth circuit, did not “certify Moore as the class representative” in the complaint. As Crenshaw goes on to suggest, “The court rejected Moore's bid to represent all females apparently because her attempt to specify her race was seen as being at odds with the standard allegation that the employer simply discriminated against females”. Thus, the case required a division between the plaintiff's race and gender in order for her claims to be considered legitimate by the court.

Another landmark case which highlights the potential harms that arise from the single-axis framework is that of *DeGraffenreid v. General Motors*. In this case, the plaintiff argued that,

similar to in Moore, black women had been disadvantaged when it came to layoffs in the company. In this case, the court found that they “could not combine the claims” of race and gender, as that contradicted legal precedent. Consequently, black women could only file for discrimination on the basis of race or gender, but not both simultaneously or in conjunction with each other. However, this approach once again neglects the realities of the woman of color for whom gender and race inform their experiences simultaneously and in conjunction with each other.

In a later work, she calls to mind an approach to intersectionality specifically within the legal context that frames it as “a dynamic method of analyzing multiple axes of power and inequality in whatever form, time, place they happen to be manifested and her compelling demonstrations of the false dichotomy between the particular and the universal evince insights that capture and advance the essence of previous work on intersectionality”. That is, it must be an approach concerned with the multiple ways in which systems of oppression engage in an individual's experiences. An expansive intersectional perspective that best serves a legal analysis would suggest that it is not enough to even consider different axes of oppression in isolation from each other. Rather, they ought to be analyzed as overlapping pieces of a larger puzzle. Furthermore, the reality of the circumstances at hand, and the truths which the context of the oppression informs, will have a considerable impact on the situation as well. Thus, the three components which together form a more complete image of the intersectional framework will encompass all aspects of an individual's reality through the inclusion of “multi-axis” experiences, time, and place. Though these are rather general conditions, they highlight a consistent thread through all perspectives on an intersectional framework; that when analyzing a legal, political, or social instance of oppression, the most complete image of an individual's reality and context will best inform a truly intersectional understanding of the circumstance.

For Black women in the United States, the legal realm is a complex minefield of discriminatory practices. As previously mentioned, in the 19th century, advocates were fighting for the rights of women or the rights of black men. In the modern legal context, women of color find their own experiences once

again obscured by the false dichotomy of gender and race as being the primary bases on which legal claims are filed. Thus, the American legal system has proved that the need for a framework of intersectional analysis within the law is necessary to ensure the fair and just treatment of women of color. For Black women, they may “sometimes experience discrimination in ways similar to white women's experiences; sometimes they share very similar experiences with Black men. Yet often they experience double-discrimination-the combined effects of practices which discriminate on the basis of race, and on the basis of sex”. Yet, were not apt methods or systems in place to account for this duality. To the extent that it deals with black women’s experiences through the lens of either gender or race, the legal system neglects many unique and salient features of their experiences. The legal system was woefully inept at taking into consideration these realities. In a modern context, these same issues are still relevant. Supreme court reviews of cases such as *University of California v. Bakke* serve as examples of the court systems “lack of awareness” of the realities of black women. This particular case is centered around the debate on affirmative action. It is, however, an analysis of the concurrence by former Supreme Court Justice Powell that highlights how a “single axis” understanding of race and gender can impact the legal treatment of black women. In an article for *The Yale Law Journal*, Devon W. Carbado and Kimberlé W. Crenshaw explain that Justice Powell’s analysis of gender in the case is an example of “colorblind intersectionality” in which “whiteness helps to produce and is part of a cognizable social category but is invisible or unarticulated as an intersectional subject position.” This medium of understanding race and gender makes it impossible to successfully implement an intersectional framework, as it does not allow for the simultaneous consideration of race and gender. Thus, in a legal system that accepts the words of Powell (or other such cases) as legal precedent, an intersectional legal perspective will be impossible to truly develop.

This reality makes it evident that the adoption of effective intersectionality into the analysis of policy and legal action is necessary in ensuring that said analysis is actually effective. The feature of intersectionality that makes it conducive to legal analysis is “its adoption of an intersectional way of

thinking about the problem of sameness and difference and its relation to power. In order for the law or policy to be examined and applied in a way that reflects the realities of women of color in the United States, it must take into account the multiplicity of female experiences. As “a heuristic term to focus attention on the vexed dynamics of difference and the solidarities of sameness in the context of antidiscrimination and social movement politics,” Intersectionality allows for an exposition on “how single-axis thinking undermines legal thinking, disciplinary knowledge production, and struggles for social justice”.

The harsh discrimination and oppression that Black women face in the United States highlights in the most extreme way the necessity for intersectional thinking within feminist theory. Crenshaw’s work highlights the egregious inequalities that exist within the legal system for black women and creates a framework in which intersectionality can be expanded upon. In the context of immigration policy, which this essay seeks to analyze specifically, there are additional realities of women of different racial, socio-economic, and cultural backgrounds which must also be considered. Leslie Bow introduced the concept of “interstitial populations” in her work which expanded upon the experiences of Asian American women in the United States who lived in social context defined by Slavery and Jim Crow. Bow identified Asian Americans as the “third race” that existed within the black-white binary of the United States. They did not have a fully white experience; however, they also did not face the same discrimination as black populations in America either. They had some of the privileges that white people experienced, however they were still defined racially as people of color. In the context of the law, they were still subject to discrimination on the basis of race, but not to the extent that the black population was. Bow argues that the “racially interstitial can represent the physical manifestation of the law’s instability”. In the United States, during the latter half of the 20th century, this was exhibited by legislation that sought to define the limits that could be placed upon people of color that were “interstitial”. However, she also does suggest that Asian-American’s largely slipped into having a white experience and less racial distinction from the white population as generations passed. Her theories highlight one particular

problem with intersectional thinking and theory; the dynamics that any race introduces into an intersectional analysis must be considered. Furthermore, it opens up a space for discussion regarding whether or not intersectional analysis of legislation and policy is necessarily applicable to all racial experiences. That is, can a theory that was derived from the complex and harrowing dynamics of racism and discrimination in the United States against the Black women be applied to different communities of color? In the context of immigration for example, could theories surrounding race and gender that are based in the experiences of Black women in the United States be expanded upon to explain the experiences of other women of color?

Sub-Chapter 1.3: A Definition of Intersectionality

The definition of intersectionality as a framework for analysis established by Sumi Cho, Kimberlé Williams Crenshaw, and Leslie McCall is potentially expansive enough to be inclusive of multiple racial experiences. They argue that;

“If intersectionality is an analytic disposition, a way of thinking about and conducting analyses, then what makes an analysis intersectional is not its use of the term “intersectionality,” nor its being situated in a familiar genealogy, nor its drawing on lists of standard citations. Rather, what makes an analysis intersectional—whatever terms it deploys, whatever its iteration, whatever its field or discipline—is its adoption of an intersectional way of thinking about the problem of sameness and difference and its relation to power. This framing—conceiving of categories not as distinct but as always permeated by other categories, fluid and changing, always in the process of creating and being created

by dynamics of power—emphasizes what intersectionality does rather than what intersectionality is”.³⁴

Taking this into account, we must then also include in a conception of an analytical framework for intersectional analysis a feature that identifies the role of difference within the existence of oppressive structures of power. Furthermore, it must do so in a way that is mindful of the diverse experiences and realities that may be framed in opposition to the norms of society. It must be an analysis of systems of “power and inequality in whatever form time, place they happen to be manifested” that also takes into account “the problems of sameness and difference and its relation to power”. This is a vital understanding as power structures deeply impact the lived realities of all individuals with facets of their identities that are not in a part of the accepted minority. Furthermore, the “categories” that feed the conceptions of difference must not be considered “distinct but as always permeated by other categories, fluid and changing, always in the process of creating and being created by the dynamics of power”.³⁵ This highlights the multifaceted nature of individual identity, as well as the way one’s identity can be affected by their environment. Thus, this definition provides an inclusive yet decisive explanation of what an intersectional framework ought to be.

For the purposes of the analysis of immigration policy in the remainder of this chapter, intersectionality can be understood as the following: a framework for analysis which allows for a perspective on a piece of policy or social phenomenon that takes into consideration the many potential facets of an individuals lived reality, and how that impacts an individual’s relationship to the power structures at play in that policy or social phenomenon. Furthermore, it acknowledges

³⁴ Cho, Crenshaw, McCall 2013

³⁵ Cho, Crenshaw, McCall 2013

these experiential “categories” as dynamic and indivisible from each other in the context of the identified individual or community.³⁶

Chapter 2 : Intersectionality in the Realm of Immigration Policy

Sub-Chapter 2.1: American Discourse Surrounding Immigration

As the first section of this paper established, intersectionality is a complex framework for analysis, that when applied correctly, can be used as a tool to enrich conceptions of various social, economic, and political phenomenon. The legislation and policy surrounding issues of immigration in the United States has a long, complicated, and controversial history. In today’s climate, it continues to be a source of contention and debate. For female identifying individuals, the process of immigration, particularly in cases of them seeking refugee or asylum status, is particularly precarious. The remainder of this thesis will explore the history of immigration jurisprudence in the United States, as well as the contemporary issues that play a role in framing the current body of legislation and policy. I will analyze several notable court proceedings which highlight the complexities of the immigration system in the United States surrounding race, xenophobia, and gender. My aim is to establish the value of an intersectional framework for analyzing immigration policy and legislation, while highlighting how such a framework can lead to the development more comprehensive and complete immigration legislation and policy.

³⁶ Cho, Crenshaw, McCall 2013

Sub-Chapter 2.2: American Discourse Surrounding Immigration

In a 2008 speech, Representative Virgil Goode of Virginia made statement to the Arizona Republic regarding children who are born of immigrant parents in the United States. The former congressman said, “the 'anchor baby' thing needs to be fixed ... Anchor babies are an unconstitutional declaration of citizenship to those born of non-Americans. It's wrong, and it's immoral”.³⁷ The use of this particular phrase, and others such as “illegal alien” have become commonplace in the discriminatory and offensive vernacular surrounding immigration.³⁸ As the National Association of Hispanic Journalists have emphasized, such phrases are “dehumanizing” and undermine “any semblance of fairness when covering the [immigration] debate”.³⁹ Terms like “anchor baby” have been used in the discussion surrounding for immigration for some time and have always been controversial. With origins in the wave of immigration after the Vietnam war, the history of the word is rooted in discriminatory attitudes and post-war connotations of what it meant to be an immigrant.⁴⁰ Children who are deemed to be “anchor babies”, or those who are first- or second-generation Americans, often face social barriers due to the status of their family.

Racial barriers have formed, evolved, and strengthened over time in conjunction with of ethnicity and citizenship status. This has deepened the already existing divide between those perceived as “foreign” and those who are not within the country. This language has contributed significantly to the discourse surrounding immigration in the United States, and still impacts the nation’s perception of those who come to the U.S. seeking opportunity for themselves and their

³⁷ O’Neal 2010

³⁸ O’Neal 2010 citing a release by the National Association of Hispanic Journalists

³⁹ O’Neal 2010 citing a release by the National Association of Hispanic Journalists

⁴⁰ O’Neal 2010

children.⁴¹ The cases in which discrimination against immigrants is most apparent is often in those where there are people of color seeking asylum or immigrant status in the United States.⁴² Using phrases that exacerbate perceptions of existing differences between people makes it only more difficult to create an environment that is conducive to safe and effective immigration practices for all people. In the media, and throughout our country's body of notable judicial cases which are responsible for setting legal precedent, those who are migrating from non-western countries that face discrimination and resistance. Barriers of language and ethnic and cultural understanding create situations in which it immigrants are more easily disadvantaged.

Cases such as *Madrigal v. Quilligan*, which will be elaborated on later within this thesis, show clearly just how much these barriers can impact dozens of women in life-altering ways. Prominent legislation from our nation's history, such as the Chinese Exclusion Act or the Immigration Act of 1924, highlight the ways that immigration policies are dictated by race?⁴³ When these difficulties are paired with the obstacles that are unique to the experiences of women, the result is an unreasonably complex system that makes it intensely difficult for people of color to immigrate to the United States.⁴⁴ The negative effects of these patterns in discourse influence policy in a subtle yet substantial way, that allows xenophobic beliefs to fester and take hold. It also brings to light the importance of adopting an intersectional framework that allows for the analysis of such circumstances and formulating fair and effective immigration policy.

⁴¹ Blagg 2013

⁴² Aranda, Vaquera 2015

⁴³ Lee 2002

⁴⁴ Luo 2018

Sub-Chapter 2.3: Case Study 1 *United States v. Wong Kim Ark*

To understand the need for an intersectional feminist approach to immigration within the United States, it may be helpful to create an image of how immigration more generally has been treated throughout the country's history. Cases such as *United States v. Wong Kim Ark* have served as benchmarks throughout the years which explain the dynamic which has been created within the realm of immigration policy within America. This has been shaped by a long history of American social, political, and economic trends which are vastly complex, and thus will not be covered in this paper. However, it is possible to examine cases such as *United States v. Wong Kim Ark* in a way that provide some insight on the systems of prejudice and xenophobic tendencies that have shaped the way immigration policy is framed.⁴⁵

In the late 1890's, Wong Kim Ark, the son of Chinese immigrants, was denied entry into the United States after a trip to China. This denial was based on the legal stipulations of the Chinese Exclusion Act, which not only denied citizenship to Chinese immigrants, but also prohibited birthright citizenship to be given to children of Chinese immigrants in the United States.⁴⁶ His case climbed to the Supreme Court, where the facts of the case were deliberated in the context of the 14th Amendment. The question which the court faced was

whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at

⁴⁵ Ibid.

⁴⁶ *United States v. Wong Kim Ark* 169 U.S. 649 (1898)

the time of his birth a citizen of the United States by virtue of the” citizenship clause of the 14th Amendment of the Constitution? ⁴⁷

The court was deliberating whether the Chinese exclusion act was violating the 14th Amendment in an irreconcilable way.⁴⁸ They ultimately decided that due to the fact that he was born in the U.S. and because his parent’s immigration was not due to any affiliation with the Chinese government, the fourteenth Amendment and the powers it holds maintain his citizenship status.⁴⁹ This case would serve as a precedent in immigration law for decades, and its impact has spanned centuries. It provided an answer to the “question of the citizenship of children born within the United States” and made birthright citizenship a reality. ⁵⁰ These consequences would, however, have varied effects. The codification of birthright citizenship presented both challenges and advantages to the immigrant population within the United States. ⁵¹ Having birthright citizenship ensures that individuals born in the U.S. are afforded the rights, liberties, and privileges which they deserve.⁵² It provided the opportunities that their parents likely came to America to secure for them. However, it also created a stigma around these children which has been historically used to discriminate against them. The fact that they were born here by immigrant parents is manipulated to seem opportunistic and negatively intentioned. ⁵³ Thus, this case lays the groundwork for understanding how complex the relationship between race and immigration truly is. ⁵⁴ Furthermore, it highlights the ways which immigrants in this country, no

⁴⁷ United States v. Wong Kim Ark 169 US 649 (1898)

⁴⁸ United States v. Wong Kim Ark 169 US 649 (1898)

⁴⁹ Ibid.

⁵⁰ Woodworth 1898

⁵¹ Greenblatt 2010

⁵² Meyler 2001

⁵³ Berger 2016

⁵⁴ Berger 2016

matter their circumstance, can have their stories repossessed and manipulated to present an image of immigration which is largely falsified and stigmatized.

Though the issue of gender is not salient in this case in terms of the main party being a male identifying individual, it still is one of the most historically relevant cases in establishing a sense of what immigration policy in America is rooted in. It provides a context within which it is possible to understand how much an individual's race, in conjunction with other factors such as ethnicity and citizenship status, can impact their ability to exist in the United States without facing discriminatory practices and oppression. Lastly, it emphasizes how legislation such as the Chinese Exclusion act, and other such exclusionary pieces of the law have contributed to a political and social climate which makes it exceedingly difficult to be an immigrant of color within the United States.⁵⁵ Legislation such as the Chinese Exclusion act is deeply rooted in racist and anti-immigrant sentiments.⁵⁶ Though today these acts may strike us as antiquated and obviously discriminatory, the basis of their intention is still apparent in policy today. The discourse surrounding immigration policy remains racially charged, and many of the campaigns for limiting immigration into the United States remain rooted in reasoning that at is fundamentally racist. The controversy surrounding the Deferred Action for Childhood Arrivals, more commonly referred to as DACA, makes this dynamic plain. Much of the conversation surrounding DACA and the recent administrations attempt to disband it was based in xenophobic views on the immigrant populations most commonly utilizing it.⁵⁷ The term “dreamer” was splashed across the media headlines accompanied by other key phrases in the debate surrounding

⁵⁵ Gyrory 1998

⁵⁶ Gyrory 1991

⁵⁷ American Immigration Council 2019

immigration such as “alien” and “illegal.”⁵⁸ This encouraged the use of racist vernacular surrounding the issue, connecting many negative messages with the act itself.

The notion of the “alien” both within the conversations surrounding immigration as well as in policy itself further contribute to the racialized immigration system in the U.S. As scholar X. Johnson notes, the ““alien” represents a body of rules passed by Congress and reinforced by popular culture. It...defines who is an “alien”, and institutionalized “other”, and who is not”.⁵⁹ It has led to a system that “has helped justify the limitation on noncitizen rights imposed by our legal system”.⁶⁰ The “anchor-baby” and “illegal alien” phenomena contribute to institutionalized forms of racism that manifest themselves through our immigration system. As Mary Romero explains, concepts such as these are based in race, but also in ethnicity, gender, and class.⁶¹ There is not just one factor that contributes to an individual’s lived reality or their personhood in the eyes of the law.⁶² Rather, all of these features come together to feed into a system which effectively excludes immigrants from having access to the rights and liberties of white Americans.⁶³ Examples of this can be seen throughout history in the treatment of enslaved peoples, to the enforcement of racialized exclusion acts, to modern policies that disproportionately affect female immigrants.⁶⁴

⁵⁸ O’Neal 2010 citing a release by the National Association of Hispanic Journalists

⁵⁹ Johnson 2004

⁶⁰ Johnson 2004

⁶¹ Romero 2008

⁶² Ibid.

⁶³ Ibid

⁶⁴ Romero 2008

Sub-Chapter 2.4: Case Study 2 *Madrigal v. Quilligan*

For example, consider the case of *Madrigal v. Quilligan*. It was 1979 in Sacramento, California when the state legislature refused to provide remedy or compensation for atrocities committed against several women under their previously upheld sterilization laws.⁶⁵ In the early 1970s, the state of California received reports of medical abuse by practitioners against women of color who had received treatment at the Los Angeles County USC Medical Center.⁶⁶ The women who came to be known as the “Madrigal Ten” were a group of Mexican-American women who had been effectively forced into sterilization at the medical center when receiving treatment for other issues. When this story came to light, it “dramatically altered public consciousness and public policy on coerced sterilization” and “served as the catalyst for California’s strengthened regulations for ensuring voluntary consent to sterilization.”⁶⁷ When analyzed within the historical context of sterilization in America, this case can be understood as a landmark example of how immigrant women of color in the United States have been violated and oppressed on the basis of their gender, race, and immigrant status.⁶⁸ As several studies have unveiled,

Women of color were particularly at risk for sterilization abuse, with each region having its own disfavored group. The 1970 National Fertility Study found that twenty percent of all married black women had been sterilized; about the same percent of Chicana women had been sterilized; and over thirty-five percent of women of

⁶⁵Valdes 2016

⁶⁶ Stern 2005

⁶⁷ Yale Law School 2019

⁶⁸ Manian 2018

childbearing age in Puerto Rico had been sterilized. In California, Mexican-American women were the group most prominently targeted for sterilization.⁶⁹

Women of color in the United States face high levels of discrimination, particularly as it pertains to their reproductive rights.⁷⁰ For female immigrants, this threat to their bodily autonomy is exacerbated by factors such as language fluency and access to quality healthcare.

Rooted in the eugenics movement, sterilization was a relatively commonplace practice in California at the time. The state, as well as federal programs, allotted funding that supported sterilization programs. That, in conjunction with the xenophobic attitudes towards the influx of Mexican immigrants into the American west, led to the initiation of a long tradition of racist and manipulative reproductive practices (Rojas). In this particular case, the women who were victims of these predatory practices were coerced into having procedures that they were informed were either reversible or they were misled about the true consequences. Furthermore, the women in the case were not fluent in English (Rojas). In the case, the women charged the head of obstetrics at the medical center for violating their reproductive rights on the basis of their constitutional right to have children and a reasonable expectation to bodily autonomy. Ultimately, the judge ruled, in an unpublished opinion, in favor of the USC Medical Center. This decision provides a backdrop against which the importance of intersectionality in the realm of legal analysis can be understood.

In order to understand the ways that an intersectional analysis of this case would prove more fruitful than one based on precedent alone, it is necessary to examine the decision made by Judge Jesse Curtis. He stated that though the women “suffered severe emotional and physical stress” because of the consequences of the procedures, it was his opinion it was an error in

⁶⁹ Manian 2018

⁷⁰ Ibid.

communication rather than “concerted or conspiratorial action”.⁷¹ This was on the basis of two suppositions by the Judge. The first was that the defendants in question would not have proceeded to “perform the operation unless they were certain in their own mind that the patient understood the nature of the operation and was requesting the procedure”.⁷² This disregards the clearly present language barrier between the patients and the doctors, as there were no formal measures taken to ensure a proper and accurate explanation of the procedures to the women.⁷³ Thus, there would have been no way for them to truly have “understood the nature” of the sterilizations they were being subjected to. ⁷⁴ Curtis also stated that “it was not objectionable for an obstetrician to think that a tubal ligation could improve a perceived overpopulation problem, as long as the physician did not try to “overpower the will of his patients.”⁷⁵ In this instance, it is clear that the Judge was thinking of the plaintiffs in this case as women only. It does not consider fully the complexities of this case that their nationality and language present. For the purposes of his argument, they were female patients who were subject to the views of their doctor. Interestingly, and in a contradictory manner, the next part of his argument focuses on their cultural identity but neglects to account for other aspects of their reality. Judge Curtis argued that the suit was the result of a “clash of cultures”, rather than one of medical neglect and malpractice.⁷⁶ In what one scholar calls his “simplistic interpretation of Mexican culture,” Curtis suggests that if the women “had not been naturally inclined toward such large families, their postpartum sterilizations would have never congealed into a legal case”.⁷⁷ This statement is not only racist, xenophobic, and classist, it is also indicative

⁷¹ Los Angeles Times 1978

⁷² Ibid.

⁷³ Stern 2005

⁷⁴ Ibid.

⁷⁵ Los Angeles Times 1978

⁷⁶ Ibid.

⁷⁷ Stern 2005

of an incomplete understanding of the reality of these women, inasmuch as it fails to take into account the countless factors which could contribute to a family dynamics and growth.⁷⁸ Thus, it is apparent that in his deliberation on this case, the Judge was not attuned to the complexities of these women's experiences.

The victims in this case were, as one commentator explains, "migrant women sterilized in a county hospital where obstetric residents were pressured to meet a quota of tubal ligations and where the physicians at the top of the chain of command were partisan to racially slanted ideas about population control".⁷⁹ However, none of these factors were taken into consideration in the court's decision. The relative political strength of the doctors and the systems which supported them compared to the women, their socio-economic status as immigrants, and the language barrier which prevented proper communication were not mentioned in his consideration of how the treatment of the women could be considered unjust.⁸⁰ When these factors are not accounted for it leads to decisions that are in the best interest of the political actors who have power in the circumstances, as opposed to benefiting the women whose lives are compromised.⁸¹ As it was defined in part one of this thesis, intersectionality is a perspective on a policy or social phenomenon that takes into consideration the many potential facets of an individual's lived reality, and how that impacts an individual's relationship to the power structures at play in that policy or social phenomenon. If in this case, the policy is immigration policy specifically, it is apparent that it was not employed as a lens for analysis, as the judge's final decision clearly ignores different facets of these women's realities. This in turn compromises female immigrants

⁷⁸ Landale, Oropesa Bradatan 2006

⁷⁹ Stern 2005

⁸⁰ Ibid.

⁸¹ Ibid.

place within immigration policy and their treatment as immigrants within the greater socio-economic and political structure of American society. It allows their experiences, and the discrimination perpetuated against them to be ignored, and makes its impacts negligible.

Despite its results, the case had a massive impact on the advocacy network of immigrant women who were seeking equality both within and outside of the realm of reproductive rights. It served as a catalyst for emboldening Chicana feminism and created a distinction between white and women of color feminism in the 1970s.⁸² This case unveiled the complexities of the realities of life for immigrant women who are existing in opposition.⁸³ These women, as a result of their racial identity, ethnicity, and status as non-citizens? had their fundamental liberties violated.⁸⁴ It is not just on the basis of one of these identities that they are being discriminated against. Rather it is the culmination of historical forms of oppression relevant to the multiple facets of their identity that make this particular form of discrimination possible.

Sub-Chapter 2.5: The Added Complexities of Refugee and Asylum Status

In order to understand how an applying an intersectional framework to the analysis of immigration policy may be helpful in expanding its scope, this chapter will explore four different phenomenon which may lead to immigration on the basis of seeking asylum or refugee status. Through this analysis, it will continue to become clear how an individual's gender is inextricably linked to the other facets of their identity which may impact their immigration experience.

⁸² Manian 2018

⁸³ Ibid.

⁸⁴ Ibid.

Sub-Chapter 2.5.1: Domestic Violence

In 2018, several states filed an Amicus brief challenging a policy put in place by the Trump administration that excludes any individual going through the immigration process to file for asylum as a means to escape domestic violence.⁸⁵ Many of the individuals who are seeking refugee status and asylum for this cause are doing so because of “legitimate fears of violence in their home countries” says District of Columbia Attorney General Karl Racine.⁸⁶ This new policy, and others like it, disproportionately effect women and children, especially in areas where a large number of asylum seekers live.⁸⁷ One such area is the “Northern Triangle” of Central America is composed of El Salvador, Honduras, and Guatemala. Nearly 30 percent of all asylum grantees in 2016 came from the Northern Triangle.⁸⁸ El Salvador and Honduras hold the “first- and second-highest rates of femicide in the world, respectively”.⁸⁹ The brief includes testimony which details how aggressive and traumatic the violence against women is in many of their home countries. As one woman reporting to the United Nations High Commissioner for Refugees said, “the gangs treat women much worse than men... Women are raped by them, tortured by them, abused by them”.⁹⁰

These policies are in direct defiance of legislation such as the Violence Against Women Act of 1994, which gives all women, including immigrant women in the United States, “the right to be free from crimes of violence motivated by gender”.⁹¹ This body of policy is informally

⁸⁵ Powell, Moncino 2018

⁸⁶ Powell, Moncino 2018 quoting District of Colombia Attorney General Karl Racine

⁸⁷ Grace et al. V. Sessions *Matter of A-B-*

⁸⁸ Mossaad 2016

⁸⁹ Humanitarian Innovation Fund, Gender Based Violence Interventions: Opportunities for Innovation 2016

⁹⁰ United Nations High Commissioner for Refugees

⁹¹ Violence Against Women Act of 1993

compiled of two main parts, the first being the Matter of A-B- by Attorney General Sessions, and the second a policy memorandum assembled by United States Citizenship and Immigration Services. Together, they create a body of legislation which “repudiated well-recognized asylum protections for individuals fleeing from domestic and gang-related violence”.⁹² Though individuals of all genders can experience “gender-based harm”, women and children are those who “predominantly suffer”.⁹³ The Matter of A-B- disregards this fact, and “has stripped away an essential lifeline for victims of gender-based harm”.⁹⁴

Sub-Chapter 2.5.2: Economic Conditions

These new changes in legislation are not necessarily the norm; many states have taken measures to insure the protection of women in immigration processes. However, the creation of policies like those that impact women fleeing violence highlights the relevance of including an intersectional perspective in considerations of immigration policy. These decisions are made from a perspective which is seeking to restrict overall immigration into the United States and limit the United States government’s responsibility over refugees and other vulnerable individuals seeking asylum.⁹⁵ It fails to account for the conditions that many of these women face in their home countries, such as the ones previously listed. Domestic abuse and gang related violence are realities which many women must encounter and battle on a daily basis in areas of

⁹² Grace et al. V. Sessions *Matter of A-B-*

⁹³ Grace et al. V. Sessions *Matter of A-B-* citing Safe Horizon, Domestic Violence Statistics and Facts

⁹⁴ Grace et al. V. Sessions *Matter of A-B-*

⁹⁵ Powell, Moncino 2018

the world such as the Northern Triangle.⁹⁶ These conditions reflect the reality of female existence in many parts of the world, including their personal socio-economic conditions, as well as the conditions of their countries as whole. Data from the World Bank shows that in 2018, the rate of wage and salaried male workers in Honduras was 10 percent higher than females.⁹⁷ The Step Up for Rights of Females project reports that men are “twice as likely to be employed”, are 21 percent more likely to have home ownership, and are paid far more than their female counterparts.⁹⁸ Additionally, in more than “670,000 homes, single mothers are responsible for generating an income for their families, which represent 30% of all households in Honduras”.⁹⁹ Women in these conditions are facing a multitude of oppressive forces, that are limiting in countless ways. There are economic restrictions, social expectations, and cultural norms all deeply rooted in conventional thought processes that effect their lived experiences. However, when immigration policy views these women as numbers and does not consider all of the factors that contribute to their decision to immigrate, it fails to create adequate policy that takes into account the ways that migration may have alternative economic effects on women.

⁹⁶ Ibid.

⁹⁷ World Bank Gender Data Portal

⁹⁸ Step Up for Rights of Female

⁹⁹ Step Up for Rights of Female

Sub-Chapter 2.5.3: Religion

An example of how the various facets of an individual's identity can come together is evident in the case of individuals who seek refugee status on the basis of religion. According to Immigration and Nationality Act 101(a)(42), a "refugee" is

any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion....¹⁰⁰

In this definition, gender would presumably fall under the category of social group, as its manifestation is dependent on societally constructed norms and connections. According to a study conducted and released by the United Nations High Commissioner for Refugees, American "jurisprudence, for the most part, also supports defining "particular social group" to encompass gender.¹⁰¹ Furthermore, the federal court system established a precedent for doing so through several cases. In a reference to a government document on female asylum seekers, the study states that "US administrative authorities ... instruct that "women hold a significantly different position in many societies than men....Women may suffer harm solely because of their gender"¹⁰² While generalizable, and somewhat attentive to the realities of gender based

¹⁰⁰ Immigration and Nationality Act 101(a)(42)

¹⁰¹ United Nations High Commissioner for Refugees

¹⁰² United Nations High Commissioner for Refugees

discrimination, this definition still fails to account for the way that multiple of these grounds for persecution may overlap or become interconnected.

According to the same study, the complexities of a refugee status on the basis of religion has to do, in large part, to the inextricable relationship between religion and other facets of an individual's identity such as race, gender, ethnicity, etc.¹⁰³ There may be, for example, cultural practices that are based in religious traditions that lead to discrimination or violence perpetuated against women.¹⁰⁴ It is important to note that culture and religion are not necessarily linked to the oppression of women. However, there are instances of certain practices in some countries that are deeply imbedded cultural norms, rooted in a religious ideology, that would qualify as a human rights violation (this may include sexual abuses, physically violent actions, etc.).¹⁰⁵ In these instances, the women's gender is just as much a factor in the discrimination they face as the religious and social practices that are inflicting it.¹⁰⁶ As mentioned in the discussion of the violence against women, gang violence and the perpetuation of violent acts by armed groups can be an especially prevalent source of harm that women may encounter. These groups "may threaten basic religious rights, for instance, where people are morally opposed to violence and resist joining gangs".¹⁰⁷ Thus, it is evident that an individual's religious identity is indivisibly linked with their culture, gender, ethnicity, and several other features of their lived experience.

¹⁰⁸

¹⁰³ Ibid.

¹⁰⁴ Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ United Nations High Commissioner for Refugees

¹⁰⁸ Ibid.

Sub-Chapter 2.5.4: Political Opinion

As the definition suggests, seeking liberation from oppression and persecution “on the account of ...political opinion” is also a relevant factor in determining an individual’s ability to immigrate to the United States under refugee status.¹⁰⁹ While instances of outright resistance against social or cultural norms are more clearly grounds for seeking refugee status on political opinion, there are also more subliminal expressions of it as well.¹¹⁰ An individual’s opinions on gender as a concept both in regards to their own identity as well as more generally can be considered political opinions.¹¹¹ If a woman resists certain gender-based norms, such as submission to violence or maltreatment by men, they may face dire consequences. This “non-conformist” behavior could cause “a persecutor to impute a political opinion to that person”.¹¹² Whether a woman is outspoken or even implicitly holds or promotes beliefs that oppose those perpetuated by a dominant force (i.e. gangs, armed groups, etc.), her views may be considered a challenge to norms.¹¹³ Any “opposition to institutionalized discrimination of women”, “expressions of independence from male social and cultural dominance in society”, or “refusal to comply with traditional expectations of behavior associated with gender” could be considered forms of political opinion in the eyes of the United States government when considering individuals for refugee status.¹¹⁴ Thus, this presents another clear example of how gender is inherently linked to other qualities which are critical in establishing a woman’s ability to

¹⁰⁹ United Nations High Commissioner for Refugees

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ United Nations High Commissioner for Refugees citing Asylum Officer Basic Training Course, Female Asylum Applicants and Gender-Related Claim

immigrate to the United States as a refugee or individual seeking freedom from persecution or oppression.¹¹⁵ Gender, in this case, is responsible for, if not completely interwoven with, a basic ground for seeking refugee status under American law and immigration policy. Applying an intersectional lens to this allows for a deeper understanding of both the motivations for and barriers to immigration.

Conclusion

Though there is evidence of United States policy acknowledging the way gender can play a role in the immigration process, truly validating the interwoven nature of it in the very phenomenon which they must protect people from requires more in depth understanding of the role it plays. Applying an intersectional framework to policy provides a lens through which the government can incorporate all aspects of a woman's lived reality into legislation and policy. The current administration's movement to create restrictions on women who are disproportionately affected by violence from gaining refugee status is a clear example of immigration policy inadequacies in terms of its ability to capture fully the experience so of women.¹¹⁶ Understanding that many women face extreme economic limitations and social restrictions in addition to the risks they endure makes it clear that allowing them to seek asylum and refugee status is an issue of human rights, not standard immigration policy. Evidence for this can be found when examining the previously addressed phenomena that play a role in immigration in tandem with one another. The reality is, many women who face one of the

¹¹⁵ United Nations High Commissioner for Refugees

¹¹⁶ United Nations High Commissioner for Refugees

obstacles that qualify as grounds for seeking refugee or asylum status, are likely facing multiple of them. Economic issues, gender-based violence, issues surrounding religion, and the controversies surrounding political opinion are all salient features of life for many women across the globe. If, then, it is possible to conceptualize an individual who faces all of these conditions, how can the complexity of their reality be properly realized without understanding the interconnected nature of these facets of their identity with one another?

In the first section of this paper, intersectionality was defined as; “a framework for analysis which allows for a perspective on a piece of policy or social phenomenon that takes into consideration the many potential facets of an individual's lived reality, and how that impacts an individual's relationship to the power structures at play in that policy or social phenomenon. Furthermore, it acknowledges these experiential “categories” as dynamic and indivisible from each other in the context of the identified individual or community” (Citation?). As has been established, there are many facets of the lived reality of women across the world that contribute to their experiences as immigrants? Their economic standing, religion, race, exposure to violence, culture, language, and gender are just a few of the many qualities that shape their lived experiences. As much as these facets of their identity alter their everyday lives, they impact the way they as individuals are viewed as potential immigrants to the United States. However, the nation's current immigration policy lacks the depth to take into consideration how much the interconnectedness of these qualities impacts their lives. If intersectionality was applied to legislation and policy surrounding immigration in the United States, it would allow for the development of a more comprehensive system that truly accounts for the best interests of the individuals effected.

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