

Applying an Intersectional Approach in Legal Scholarship

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Contents

I. Introduction	39
II. Intersectionality	43
A. Intersectionality's Structural, Political and Representational Dimensions	43
B. Multidimensional Disadvantage and Law's Single-Axis Logic	44
C. Examples of Intersectional Discrimination in the European Context	47
D. Simultaneity of Difference and Sameness	50
III. In Search of an Intersectional Legal Methodology	52
A. Intersectional Perspectives in Diverse Legal Fields	52
B. Basic Features of Intersectional Approaches	54
C. An Intersectional Methodology?	56
IV. How to Apply an Intersectional Approach in Legal Research	57
A. Law's Role in Reproducing and Obscuring Intersectional Subordination	57
B. An Intersectional Understanding of Categories as a Means of Critique	58
C. Multiple Categories of Analysis: How Many and Which?	59
D. Looking for Connections and Relations: Typical Questions and Research Strategies	65
E. Centering: Typical Questions and Research Strategies	66
F. Bottom-Up Perspectives Complementing Legal Methods	68

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V. Conclusion: Between Legal Doctrine and Subversion.....	70
VI. Bibliography	71

I. Introduction¹

For some time now, the concept of intersectionality has been used in both political and multidisciplinary academic discourses as a “buzzword”². It refers to interlocking relations of domination and inequality, as well as to an analytical need to avoid focusing on only one category of inequality (e.g., gender, race, class, etc.) at a time. Instead, it emphasizes the importance of considering multiple categories and their various interactions.

Intersectional theory building is multifaceted, multidisciplinary and comprises various interconnected strands.³ Two pivotal texts by the US-American legal scholar Kimberlé Crenshaw, published in 1989 and 1991,⁴ entrenched⁵ the term “intersectionality” across disciplines and geographic contexts.⁶ Her work stands in a

¹ I want to thank those who gave me valuable advice and Jaelyn Arndt for copyediting an earlier version of the article. In particular I want to thank the anonymous reviewers as well as Christian Demmelbauer and Mary Barrett for helpful feedback. As always, any errors or oversights are mine alone.

² Davis, ‘Intersectionality as buzzword: A sociology of science perspective on what makes a feminist theory successful’ (2008) *Feminist Theory* 67.

³ E.g., Combahee River Collective, ‘A Black Feminist Statement’ (1977), in Moraga and Anzaldúa (eds.), *This Bridge Called My Back. Writings by Radical Women of Color* (1981) 210; Moraga and Anzaldúa (eds.), *This Bridge Called My Back. Writings by Radical Women of Color* (Albany, NY, 1981/2015); Anthias and Yuval-Davis, ‘Contextualizing Feminism: Gender, Ethnic, and Class Divisions’ (1983) *Feminist Review* 62; Mohanty, ‘Under Western Eyes: Feminist Scholarship and Colonial Discourses’, (1984) *Boundary* 333; Hill Collins, *Black feminist thought* (New York and London, 1990); Lugones, ‘On Borderlands/La Frontera: An Interpretative Essay’ (1992) *Hypatia* 31. For an intervention of Women of Color in Germany see also: Ayim (Opitz) and Oguntoye and Schultz, *Farbe bekennen: afro-deutsche Frauen auf den Spuren ihrer Geschichte* (Berlin, 1986).

⁴ Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) *University of Chicago Legal Forum* 139; Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color’ (1991) *Stanford Law Review* 1241.

⁵ Earlier usages of the terms ‘intersect’ or ‘intersection’ for describing the interweaving of categories of inequality can be found in Dill, ‘Race, Class, and Gender’ (1983) *Feminist Studies* 131 (131, 138); Anthias and Yuval-Davis, (1983) *Feminist Review* 62 (63 f); Smith and Smith, ‘Across the Kitchen Table’, in Moraga and Anzaldúa (eds.), *This Bridge Called My Back. Writings by Radical Women of Color* (Albany, NY, 1981/2015) 111 (111).

⁶ Davis and Lutz, ‘Intersectionality as Travelling Theory - Possibilities for Dialogue’, in Davis and Lutz (eds.), *The Routledge International Handbook of Intersectionality Studies* (Abingdon and New York, 2024) 3; Davis, ‘Intersectionality in Transatlantic Perspective’, in Klinger and Knapp, *ÜberKreuzungen* (Münster, 2008) 19; Lewis, ‘Unsafe Travel: Experiencing Intersectionality and

rich tradition of theory developed by Black women in the US, highlighting the dynamics between gender and race, that dates back to the 19th century.⁷ Crenshaw focuses on the situation of Black women and girls in the US context, but she explicitly suggests that scholars should also examine the interplay of other categories of inequality, such as sexual orientation, class, and age.⁸ With respect to legal theory, Crenshaw's approach is rooted in the traditions of Critical Legal Studies and Critical Race Theory,⁹ Crenshaw herself being one of the founding figures of Critical Race Theory.¹⁰

In Europe, Crenshaw's intersectionality concept, though very much shaped by her legal thought,¹¹ first made its way into the field of Gender Studies alongside other strands of intersectional theory. It only later returned to also influence the field of legal research,¹² although it has never become part of the legal mainstream. It is still much better known and more widely discussed in the field of social sciences than in legal scholarship.¹³ In the legal context, intersectionality has been taken up primarily in the fields of antidiscrimination and human rights law.¹⁴ Yet an intersectional

Feminist Displacements' (2013) *Signs*, 869; Bereswill and Degenring and Stange (eds.), *Intersektionalität und Forschungspraxis* (Münster, 2015).

⁷ Crenshaw, (1989) *University of Chicago Legal Forum* 139 (139, Fn. 1 und Fn. 2, 153 f, 160); Crenshaw, (1991) *Stanford Law Review* 1241 (1243, Fn. 3); for a succinct overview of the genealogy of intersectional thinking see Rössl, *Intersektionale Rechtskritik* (Wien, 2025) 12-19.

⁸ Crenshaw, 'Beyond Racism and Misogyny: Black Feminism and 2 Live Crew', in Matsuda et al (eds.), *Words That Wound. Critical Race Theory, Assaultive Speech, and the First Amendment* (Boulder, CO, 1993) 111 (113 f).

⁹ Crenshaw, 'Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law' (1988) *Harvard Law Review* 1331; Crenshaw, 'Postscript', in Lutz and Herrera Vivar and Supik (eds.), *Framing Intersectionality. Debates on a Multi-Faceted Concept in Gender Studies* (Abingdon and New York, 2011) 221; Rössl, *Intersektionale Rechtskritik* 41-46.

¹⁰ Crenshaw, 'Twenty Years of Critical Race Theory: Looking Back to Move Forward' (2011) *Connecticut Law Review* 1253; Crenshaw et al (eds.), *Critical Race Theory: The Key Writings that Formed the Movement* (New York, 1995); Crenshaw, 'Unmasking Colorblindness in the Law. Lessons from the Formation of Critical Race Theory', in Crenshaw et al (eds.), *Seeing Race Again: Countering Colorblindness across the Disciplines* (Oakland, 2019) 52.

¹¹ For a critical stance against its juridical character see Lorey, 'Kritik und Kategorie. Zur Begrenzung politischer Praxis durch neuere Theoreme der Intersektionalität, Interdependenz und Kritischen Weißseinsforschung', in Demirović (ed.), *Kritik und Materialität* (Münster, 2008) 132 (141).

¹² Davis, 'Intersectionality in Transatlantic Perspective', 19; Mangold, *Mehrdimensionale Diskriminierung - Potentiale eines materialen Gleichheitsverständnisses* (2016) (2016) *Rechtsphilosophie* 152.

¹³ Rössl, *Intersektionale Rechtskritik* 2-4.

¹⁴ See e.g., Makkonen, *Multiple, Compound and Intersectional Discrimination* (2002), <www.abo.fi/wp-content/uploads/2018/03/2002-Makkonen-Multiple-compound-and-intersectional-discrimination.pdf> accessed 15 September 2025; Fredman, *Intersectional discrimination in EU gender equality and non-discrimination law* (Luxembourg, 2016); Philipp et al (eds.), *Intersektionelle Benachteiligung und Diskriminierung* (Baden-Baden, 2014); Baer and Bittner and Götsche,

approach need not be confined to these topics, and a number of scholars are indeed trying to insert intersectional thinking into other legal fields.¹⁵

Against this backdrop the article sets out to provide theoretically grounded guidance for doing intersectional legal research. However, its subject is not intersectional discrimination and the problems of legally tackling this kind of discrimination from an antidiscrimination law perspective.¹⁶ Instead, readers are invited to apply an intersectional lens also to other fields of law. The intersectional legal methodology presented draws on multidisciplinary accounts of intersectional methodology and theory, with Crenshaw's work playing a central role due to its explicitly legal outlook. It is not possible within the scope of this article to go into significant detail regarding

Mehrdimensionale Diskriminierung (2010), <www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/expertise_mehrdimensionale_diskriminierung_jur_analyse.pdf?__blob=publicationFile> accessed 15 September 2025; Holzleithner, 'Law and Social Justice. Intersectional Dimensions', in Davis and Lutz (eds.), *The Routledge Handbook of Intersectionality Studies* (Abingdon and New York, 2024) 251; Holzleithner, 'Intersektionale (mehrdimensionale) Diskriminierung', in Mangold und Payandeh (eds.), *Handbuch Antidiskriminierungsrecht* (Tübingen, 2022) 543; Mangold, *Rechtsphilosophie* 152; Atrey, *Intersectional Discrimination* (Oxford, 2019) ; Schiek and Lawson (eds.), *European Union non-discrimination law and intersectionality* (Abingdon and New York, 2011); Chege, *Multidimensional discrimination in EU law* (Baden-Baden, 2011); Solanke, 'The EU approach to intersectional discrimination in law', in Abels et al (eds.), *The Routledge Handbook of Gender and EU Politics* (Abingdon and New York, 2021) 142; Bond, *Global intersectionality* (Oxford, 2021); Atrey and Dumne, *Intersectionality and Human Rights Law* (Oxford, 2020); de Beco, 'Protecting the Invisible: An Intersectional Approach to International Human Rights Law' (2017) *HRLR* 633; Chow, 'Has Intersectionality Reached its Limits? Intersectionality in the UN Human Rights Treaty Body Practice and the Issue of Ambivalence (2016) *HRLR* 453; Yoshida, 'Towards Intersectionality in the European Court of Human Rights: The Case of B.S. v Spain' (2013) *Feminist Legal Studies* 195.

¹⁵ See e.g., Rössl, *Intersektionale Rechtskritik*; Grabham et al (eds.), *Intersectionality and Beyond. Law, Power and the Politics of Location* (Abingdon and New York, 2009); Markard, 'Zwangssehen und Scheinehen: Intersektionalität als Analyseinstrument im Recht', in Bereswill and Degenring and Stange (eds.), *Intersektionalität und Forschungspraxis* (Münster, 2015) 20; Markard, 'Persecution for reasons of membership of a particular social group: Intersectionality avant la lettre?' (2016) *Sociologia del diritto* 45; Rössl, 'Heterosexuelle Cis-Männlichkeiten im Asylrecht. Fälle außerehelicher Sexualität und intersektionaler Männlichkeit' (2017) *juridikum* 498; Rössl, 'Ausnahmen vom Einbürgerungskriterium des gesicherten Lebensunterhalts: Kritische Betrachtungen zu § 10 Abs 1 Z 7 iVm § 10 Abs 1b StBG' (2022) *juridikum* 462; Sußner, 'Invisible intersections, queer interventions: same sex family reunification under the rule of asylum law', in Spijkerboer (ed.), *Fleeing Homophobia. Sexual orientation, gender identity and asylum* (Abingdon and New York, 2013) 176; Çelebi, 'Intersektionalität und Strafrecht. Eine theoretische und dogmatische Annäherung' (2024) *KJ* 30; Atrey, 'Beyond Discrimination: Mahlangu and the Use of Intersectionality as a General Theory of Constitutional Interpretation' (2021) *IJDL* 168; Hugentobler and von Rütte, 'Die sogenannte "intersektionelle" Diskriminierung. Der Umgang Schweizer Gerichte mit dem Konzept der Intersektionalität am Beispiel des Einbürgerungsrechts' (2022) *Cognitio* 1.

¹⁶ For a method for intersectional discrimination focusing on stigma and synergy see Solanke, 'A method for intersectional discrimination in EU labour law', in Bogg and Costello and Davies (eds.), *Research Handbook on EU Labour Law* (Cheltenham and Northampton, 2016) 445.

the theoretical grounding of the methodological advice given.¹⁷ Rather, the article aims to provide scholars with some methodological guidance, suggestions for research strategies and steps for (self-)reflection when considering an intersectional research project in law.

For the purpose of this article, the term methodology is understood as the link between theory and a praxis of research. Intersectional methodology reflects upon the question how an intersectional approach can be put into practice. Methodology also signifies the product of this process of reflection, such as specific research questions and fundamental perspectives on the object of research. As Kathy Davis put it: “Methodologies should [...] provide help in doing research. [...] Methodologies should also stimulate the researcher’s curiosity and creativity. They should [...] tantalize scholars to raise new questions, engage reflexively and critically with previously held assumptions, and explore uncharted territory.”¹⁸

Although antidiscrimination law is not the focus, some brief remarks regarding intersectional discrimination are indispensable. They allow for introducing some aspects of intersectional theory that also have methodological repercussions. Therefore, the ideas of intersectionality and intersectional discrimination (II) are outlined first, before turning to intersectional scholarship in diverse legal fields and to core features of intersectional approaches across disciplines (III). This is followed by suggestions for how to apply an intersectional approach in legal scholarship and research (IV).

At this point, a clarification of terminology is in order. In the literature, “intersectionality” often refers both to the object of analysis and to the style of analysis. However, “[t]his can lead to apparently tautological statements – conflating the empirical ‘problem’ with the analytic ‘solution’ – in which ‘intersectionality’ is ‘used to study intersectionality.’”¹⁹ I therefore prefer to use “intersectionality” to refer to the social phenomenon of intersectionality (i.e., the interaction of grounds of discrimination, social positions, structures of inequality, etc.) or to the theoretical concept of intersectionality (i.e., the abstract idea of the interrelated nature of systems of domination and inequality, which can be used as an analytical lens). When referring to a methodology or a style of research, I instead use terms such as “intersectional approach”, “intersectional methodology”, and “intersectional

¹⁷ For further reading see Rössl, *Intersektionale Rechtskritik*.

¹⁸ Davis, ‘Intersectionality as Critical Methodology’, in Huxel et al (eds.), *Postmigrantisch gelesen: Transnationalität, Gender, Care* (Bielefeld, 2020) 109 (115 f). – Whereas “methods” are the concrete steps in a research project, e.g., certain qualitative or quantitative methods in the social sciences, in legal scholarship they are (amongst others) the methods of legal interpretation.

¹⁹ Carastathis, *Intersectionality: Origins, Contestations, Horizons* (Lincoln, 2016) 42.

thought”. Of course, the two are closely interconnected, as intersectional approaches primarily reflect on the various aspects of the social phenomenon of intersectionality. Nevertheless: “Method concerns the way one thinks, not what one thinks about, although they can be related.”²⁰

II. Intersectionality

In the following section some central aspects of the concept of intersectionality are presented. First, the occasional assumption that intersectionality is primarily preoccupied with identities is rebutted by pointing out its focus on structural relations of inequality and domination (II. A.). Their multidimensional interactions produce specific vulnerabilities and disadvantages, such as intersectional discrimination (II. B.). As Crenshaw famously pointed out, the hegemonic categorial framings in antidiscrimination and human rights law tend to sideline this kind of discrimination. Examples hereof can also be found in the European context (II. C.). Theorizing intersectional discrimination reveals intersectionality's awareness of complex patterns of difference and sameness (II. D.).

A. Intersectionality's Structural, Political and Representational Dimensions

Intersectionality refers to the interlocking relations of domination and inequality, which can manifest themselves at various levels. Crenshaw distinguishes three dimensions of intersectionality: structural intersectionality, political intersectionality, and representational intersectionality.²¹ “Structural intersectionality” refers to the interaction of various systems of inequality (such as “systems of race, gender, and class domination”²²), engendering particular social positions and vulnerabilities for certain persons or groups. The concept of intersectionality refers not only to this multidimensionality of social structures and individual social positions. It also includes the political dynamics of invisibilization and marginalization of those who are disadvantaged along multiple axes of inequality. This second dimension of intersectionality is called “political intersectionality”. “Political intersectionality” can refer both to the marginalization of multiply disadvantaged groups within social movements as well as to their lack of legal protection, e.g., in antidiscrimination and human rights law. Legal measures, social movements and identity politics likewise tend to marginalize the realities and political claims of groups that are subordinated

²⁰ MacKinnon, ‘Intersectionality as Method: A Note’ (2013) *Signs* 1019 (1019).

²¹ For the following see Crenshaw, (1991) *Stanford Law Review*, 1241 and Crenshaw, ‘Beyond Racism and Misogyny’; Rössl, *Intersektionale Rechtskritik* 38-41; Rössl, (2021) *juridikum* 31.

²² Crenshaw, (1991) *Stanford Law Review* 1241 (1246).

along multiple “axes of inequality”²³. Hence, multiply disadvantaged groups face legal obstacles and they also fall between the political cracks.²⁴ The third dimension, “representational intersectionality”, designates the (stereotypical) representations of intersectionally subordinated persons or groups in political discourses, the media, and (pop) culture.

With the help of intersectionality's three dimensions, problems such as gender-based violence against migrant women can be analyzed as an interplay of various factors: First, gender-based violence against migrant women happens against a specific structural backdrop (partly structured by legal provisions such as migration law). Second, gender-based violence engenders certain political claims and (legal) measures. And third, public discourses are influenced by images and narratives regarding perpetrators and victims of gender-based violence. Thus, gender-based violence does not only comprise the experiences of violence as such, but also the political, legal and cultural (mis-)representations of these experiences as well as gender-based violence's structural backdrop. It should be noted though, that the three dimensions are not neatly demarcated. On the contrary, they form an interrelated complex: “Indeed, representational intersectionality is not only implicated in the political interactions of race and gender discourses, it can also be inclusive of these intersections. Moreover, political and representational intersectionality can also be included as aspects of structural intersectionality.”²⁵ As such, the concept of intersectionality is in itself multidimensional. It is both structural and dynamic, and its focus is on power and domination. It thereby “transcends an exclusive focus on identity or mere categorization”.²⁶

B. Multidimensional Disadvantage and Law's Single-Axis Logic

According to Crenshaw, the interplay between structural and political intersectionality exhibits a typical dynamic: “This is the paradigmatic political and theoretical dilemma created by the intersection of race and gender: Black women are caught between ideological and political currents that combine first to create and then to bury Black women’s experiences.”²⁷ A central theme in Crenshaw's early work is how Black

²³ Klinger and Knapp, ‘Achsen der Ungleichheit – Achsen der Differenz: Verhältnisbestimmungen von Klasse, Geschlecht, “Rasse”/Ethnizität’, in Klinger and Knapp and Sauer (eds.), *Achsen der Ungleichheit* (Frankfurt, 2007) 19.

²⁴ Rössl, ‘Rereading Crenshaw: Aspekte einer intersektionalen rechtswissenschaftlichen Forschungsperspektive’ (2021) *juridikum* 31 (37).

²⁵ Crenshaw, ‘Beyond Racism and Misogyny’, 111 (120).

²⁶ Crenshaw, (2012) *UCLA Law Review* 1418 (1426).

²⁷ Crenshaw, (1989), *University of Chicago Legal Forum* 139 (160).

women's experiences of discrimination – which are a product of their intersectional social position – get buried by the compartmentalizing character of antidiscrimination law.

There are various constellations of multidimensional discrimination and vulnerability which are caused and characterized by an interplay of several structural relations of inequality and domination.²⁸ Crenshaw pointed out the diversity of experiences:

Black women 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. And sometimes, they experience discrimination as Black women – not the sum of race and sex discrimination, but as Black women.²⁹

Often only the latter is termed intersectional discrimination in the narrower sense. It is characterized by a synergistic³⁰ non-additive interweaving of grounds of discrimination. Crenshaw criticized both antidiscrimination and human rights law for not dealing properly with multidimensional disadvantage and vulnerability.³¹ As long as antidiscrimination law relies on a “single-axis” framework,³² it tends to ignore or at least misinterpret instances of multidimensional discrimination.³³ In international human rights law, the tendency to adopt a single-axis perspective partly stems from the fragmentation of the UN human rights treaty system.³⁴

Crenshaw discussed several antidiscrimination cases in her article ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989). But it is the so called

²⁸ For further reading see Rössl, *Intersektionale Rechtskritik* 60-72, 88-116.

²⁹ Crenshaw, (1989) *University of Chicago Legal Forum* 139 (149).

³⁰ Solanke, ‘A method for intersectional discrimination in EU labour law’, 445; Holzleithner, ‘Intersektionale (mehrdimensionale) Diskriminierung’, 543.

³¹ Crenshaw, (1989) *University of Chicago Legal Forum* 139; Crenshaw, *Gender-Related Aspects of Race Discrimination* (2000) (United Nations Division for the Advancement of Women/Office of High Commissioner for Human Rights/United Nations Development Fund for Women, Background Paper for the Expert Meeting on the Gender-Related Aspects of Race Discrimination, November 21–24, 2000. Prepared by Kimberlé Williams Crenshaw, 16.11.2000, EGM/GRD/2000/WP.1.)

³² Atrey, *Intersectional Discrimination*, 85-108.

³³ Atrey, *Intersectional Discrimination*; Schiek and Lawson (eds.), *European Union non-discrimination law and intersectionality*; Chege, *Multidimensional discrimination in EU law*; Solanke, ‘The EU approach to intersectional discrimination in law’, 142; Holzleithner, ‘Intersektionale (mehrdimensionale) Diskriminierung’, 543. See also the ongoing project ‘Intersectional Rewrites: European Court of Human Rights Judgments Reimagined’, <https://intersectionalrewrites.org>.

³⁴ Bond, *Global intersectionality*.

DeGraffenreid case against General Motors³⁵ which became the paramount example of intersectional discrimination. Until 1964, General Motors had not hired any Black women. In 1974, when the company implemented staff cuts, it adhered to a “last hired, first fired” policy, resulting in the dismissal of all its Black female employees, except for one janitor, who had been hired before 1970. Two years later, the United States District Court, E.D. Missouri, held that the claimants could claim only race or gender discrimination, but not a combination of both. Subsequently, the Court rejected discrimination on the ground of gender because General Motors *did hire women* before 1964 – albeit only white women. The review of race discrimination was rejected for procedural reasons.³⁶ As a result, the claimants did not receive legal protection against the discrimination they experienced as Black women.

Crenshaw famously used the metaphor of traffic at an intersection to illustrate Black women's experiences with antidiscrimination law:³⁷ Discrimination, like traffic at an intersection, might flow in various directions. A person standing at the crossroads can be hit by cars from either direction, but she can also be hit by cars coming from all directions at the same time. Surprisingly, when being hit by several cars at the same time obtaining quick and effective help becomes more complicated.³⁸ In a paper presented in an expert meeting preceding the World Conference against Racism, Xenophobia and Related Intolerance (2001), Crenshaw used the traffic metaphor in order to point out the interactions between structural background and discriminatory events: “Injuries are sometimes created when the impact from one direction throws victims into the path of oncoming traffic while in other occasions, injuries occur from fully simultaneous collisions. These are the contexts in which intersectional injuries

³⁵ Crenshaw, (1989) *University of Chicago Legal Forum* 139 (141-143); United States District Court, E.D. Missouri, 4.5.1976, No 75-487 C (3), 413 F. Supp. 142, *Emma DeGraffenreid et al v General Motors Assembly Division, St Louis, et al.* See also: United States Court of Appeals, Eighth Circuit, *Emma DeGraffenreid et al v General Motors Assembly Division, St. Louis, et al*, 15.7.1977, No 76-1599.

³⁶ United States District Court, E.D. Missouri, 4.5.1976, No 75-487 C (3), 413 F. Supp. 142, *Emma DeGraffenreid et al v General Motors Assembly Division, St Louis, et al.*; Crenshaw, (1989) *University of Chicago Legal Forum* 139 (141-143).

³⁷ Crenshaw, (1989) *University of Chicago Legal Forum* 139 (149).

³⁸ The traffic metaphor is widely discussed. See e.g., Hoffart, ‘The Quest for the Right Metaphor’, in Davis and Lutz (eds.), *The Routledge International Handbook of Intersectionality Studies* (Abingdon and New York, 2024) 138. Far less known is Crenshaw's basement-metaphor, Crenshaw, (1989) *University of Chicago Legal Forum* 139 (151 f). It is discussed in Carastathis, ‘Basements and Intersections’ (2013) *Hypatia* 698. It should be noted though, that Crenshaw uses both metaphors for illustrating specific aspects and problems. They should not be misinterpreted as being metaphors for the entire concept of intersectionality as such.

occur – disadvantages or conditions interact with preexisting vulnerabilities to create a distinct dimension of empowerment.”³⁹

In the following, some additional examples of intersectional discrimination are sketched out. They were widely discussed in European intersectional legal scholarship⁴⁰ and will further illustrate what intersectional discrimination is about. Subsequently, theoretical reflection shall deepen the understanding of intersectionality and intersectional approaches.

C. Examples of Intersectional Discrimination in the European Context

In 2016, nearly 30 years after the DeGraffenreid case, the Court of Justice of the European Union (CJEU) had its “DeGraffenreid-moment”⁴¹ when it ruled on the case of Mr. Parris in a preliminary ruling.⁴² Parris, a lecturer at Trinity College Dublin, had been living in a same-sex partnership for 30 years. Trinity College offered survivor pensions for employee spouses where the marriage had been entered into before the employee’s 60th birthday. Since 2011, when registered partnerships for same-sex couples became available in Ireland, the regulation has also applied to registered same-sex couples. Because entering a registered partnership was not possible before 2011, homosexual employees who reached the age of 60 before 2011 (i.e., those born before 1951) could not benefit from Trinity College’s occupational survivor pension scheme. Parris was 64 years old when, in 2011, his partnership (which had first been registered in the UK) could be recognized in Ireland. Consequently, he and his partner were excluded from the survivor pension scheme. Ultimately, the problem arose from a combination of their age and sexual orientation. Notably, neither heterosexual employees (including those born before 1951) nor younger homosexual employees were affected. The CJEU rejected the claim of (direct and indirect) discrimination on grounds of homosexuality because Trinity College’s pension scheme did not differentiate on the ground of sexual orientation

³⁹ Crenshaw, *Gender-Related Aspects of Race Discrimination* 7.

⁴⁰ For some more recent cases where intersectionality played a role, see Ganty, Haumont and Cannoot, ‘European Anti-Discrimination Case Law in 2021-2022: A Tour d’horizon of Crucial Developments’ (2023) *European Journal of Human Rights* 284.

⁴¹ Schiek, ‘Intersektionelle Diskriminierung vor dem Europäischen Gerichtshof – Ein erster verfehelter Versuch? Urteil des Europäischen Gerichtshofs vom 24.11.2016 – Rechtssache Parris’ (2017) *EuZA* 407 (415).

⁴² CJEU Case C-443/15 *Parris/Trinity College Dublin and others*, 24 November 2016, ECLI:EU:C:2016:897. Decisions of the CJEU can be accessed via <https://curia.europa.eu/juris> with their ECLI, case number or party names.

and because member states are autonomous in their policies regarding civil status.⁴³ The Court also rejected the claim of discrimination on the ground of age, because Article 6, para. 2, Directive 2000/78 allows that age limits be fixed for admission to occupational social security schemes or entitlement to retirement benefits.⁴⁴ Having rejected discrimination on the grounds of both sexual orientation and age, the question remaining before the CJEU was whether there could be discrimination based on a combination of the two grounds. Without further reasoning, the Court concluded:

[W]hile discrimination may indeed be based on several of the grounds set out in Article 1 of Directive 2000/78, there is, however, no new category of discrimination resulting from the combination of more than one of those grounds, such as sexual orientation and age, that may be found to exist where discrimination on the basis of those grounds taken in isolation has not been established. Consequently, where a national rule creates neither discrimination on the ground of sexual orientation nor discrimination on the ground of age, that rule cannot produce discrimination on the basis of the combination of those two factors.⁴⁵

The fact that Parris and his partner could not benefit from Trinity College's survivor pension scheme because they were an elderly homosexual couple did not constitute discrimination according to the CJEU, which thereby ignored the intersectional insight that situations can occur in which discrimination results only from the combination of several grounds.⁴⁶

Bans on wearing the Islamic headscarf constitute another widely discussed example of intersectional discrimination in the European context.⁴⁷ This discrimination is

⁴³ CJEU Case C-443/15 *Parris/Trinity College Dublin and others*, 24 November 2016, ECLI:EU:C:2016:897, paras. 45-62.

⁴⁴ CJEU Case C-443/15 *Parris/Trinity College Dublin and others*, 24 November 2016, ECLI:EU:C:2016:897, paras. 64-78.

⁴⁵ CJEU Case C-443/15 *Parris/Trinity College Dublin and others*, 24 November 2016, ECLI:EU:C:2016:897, paras. 80 f.

⁴⁶ The critique voiced by many commentators was harsh, see e.g., Holzleithner, 'Intersektionale (mehrdimensionale) Diskriminierung', 543 (para. 67-74); Schiek, (2017) *EuZA* 407; Atrey, 'Illuminating the CJEU's Blind Spot of Intersectional Discrimination in *Parris v Trinity College Dublin*' (2018) *Industrial Law Journal* 278; Howard, *EU Anti-Discrimination Law: Has the CJEU Stopped Moving Forward?* (2018) *IJDL* 348; Möschel, 'If and when Age and Sexual Orientation Discrimination Intersect: *Parris*' (2017) *Common Market Law Review* 1835.

⁴⁷ For an early discussion see Holzleithner, 'Intersecting Grounds of Discrimination: Women, Headscarves and Other Variants of Gender Performance' (2008) *juridikum* 33; see also Kühler and Sterki, 'Kopftuchverbot im privatrechtlichen Arbeitsverhältnis: verfassungsrechtliche Grenzen der unternehmerischen Freiheit', in Stöckli et al (eds.), *Recht, Religion und Arbeitswelt* (Zürich, 2021)

suffered neither by non-Muslim women nor by Muslim men. In the cases brought before the CJEU, the Court downplayed the gender and racial dimensions of this issue and focused primarily on the question of discrimination on religious grounds;⁴⁸ this is one reason why many commentators employing an intersectional perspective voiced critique on the CJEU's stance.⁴⁹

A final example is the coercive sterilization of minority women, such as the cases concerning Romani women in Slovakia, which the European Court of Human Rights (ECtHR) ruled upon in 2011 and 2012.⁵⁰ The cases brought before the ECtHR showed similar patterns clearly indicating the structural and discriminatory nature of the incidents, in which class, race, age, and gender converged. Nevertheless, the ECtHR did not deem it necessary to separately determine whether the facts also gave rise to a breach of Article 14 (prohibition of discrimination), even while finding there had been violations of both Article 3 (inhuman or degrading treatment) and Article 8 (respect for private and family life) of the European Convention of Human Rights. Interestingly, a dissenting opinion criticizing this approach focused on the racial or ethnic dimension of the cases alone and only indirectly mentioned the gender

111. For a discussion from an intersectional perspective of the jurisprudence of the ECtHR and the UN human rights treaty bodies practice on Islamic headscarves see also e.g., Vakulenko, 'Islamic Headscarves' and the European Convention on Human Rights: An Intersectional Perspective' (2007) *Social & Legal Studies* 183; Chow, (2016) *HRLR* 453.

⁴⁸ CJEU (Grand Chamber) Case C-157/15, *Achbita/GAS Secure Solutions NV*, 14 March 2017, ECLI ECLI:EU:C:2017:203; CJEU (Grand Chamber) Case C-188/15, *Bougnou/Micropole SA*, 14 March 2017, ECLI ECLI:EU:C:2017:204; CJEU (Grand Chamber) Case C-804/18, *IX/WABE*, 15 July 2021, ECLI:EU:C:2021:594; CJEU (Grand Chamber) Case C-341/19, *MH Müller Handels GmbH/MJ*, 15 July 2021, ECLI:EU:C:2021:594; CJEU Case C-344/20, *L.F./S.C.R.L.*, 13 October 2022, ECLI:EU:C:2022:774; CJEU (Grand Chamber) Case C-148/22, *OP/Commune d'Ans*, 28 November 2023, ECLI:EU:C:2023:924.

⁴⁹ Howard, *Islamic Headscarves and the Court of Justice of the European Union. An Analysis of the Case Law* (Abingdon and New York, 2023); Schiek, 'On uses, mis-uses and non-uses of intersectionality before the Court of Justice (EU)' (2018) *IJDL* 82; Holzleithner, 'Islamische Bedeckung in rechtlicher Perspektive', in Biele Mefebue and Bührmann and Grenz (eds.), *Handbuch Intersektionalitätsforschung* (Wiesbaden, 2022) 413; Holzleithner, 'Law and Social Justice' 251; Holzleithner, 'Intersektionale (mehrdimensionale) Diskriminierung', 543; Ulrich, 'Kopftuchverbote - Neutralitätspolitik von Unternehmen auf dem Prüfstand' (2017) *Österreichisches Archiv für Recht und Religion* 560; Xenidis, 'Intersectionality from critique to practice: Towards an intersectional discrimination test in the context of 'neutral dress codes'' (2022) *European Equality Law Review* 21; Dube, 'OP v. Commune d'Ans: When equality, intersectionality and state neutrality collide' (2024) *MJ Online*, 1.

⁵⁰ *V.C. v Slovakia* App no 18968/07 (ECtHR, 8 November 2011); *N.B. v Slovakia* App no 29518/10 (ECtHR, 12 June 2012); *I.G. ua v Slovakia* App no 15966/04 (ECtHR 13 November 2012); decisions of the ECtHR can be accessed via via <https://hudoc.echr.coe.int/eng> with their case number or party names. See also Curran, 'Intersectionality and Human Rights Law: An Examination of the Coercive Sterilisations of Romani Women' (2016) *The Equal Rights Review* 132.

dimension.⁵¹ Conversely, the United Nations Committee on the Elimination of Discrimination Against Women – which reviewed a complaint in a similar case regarding Hungary – concerned itself only with the aspect of gender discrimination, while ignoring the racist dynamics at play.⁵²

It should be noted, though, that there are signs of progress. The UN human rights treaty bodies have become more aware of the intersectional dimensions of human rights and we might begin to see a “paradigm shift toward systematically embracing an intersectional framework for human rights analysis.”⁵³ And even the ECtHR might be slowly recognizing intersectional discrimination, first only reluctantly in *B.S. v. Spain*,⁵⁴ but recently in a quite elaborated manner.⁵⁵

D. Simultaneity of Difference and Sameness

Theorizing intersectional discrimination reveals intersectionality's focus on interactions, connections and relations. Human rights legal scholar Shreya Atrey aptly points out that intersectional discrimination “is defined by both sameness and difference simultaneously.”⁵⁶ It is the product of interacting “patterns of group disadvantage”.⁵⁷ Sometimes, it is imagined as a Venn diagram.⁵⁸ A Venn diagram

⁵¹ *V.C. v Slovakia* App no 18968/07 (ECtHR 8 November 2011), dissenting opinion of judge Mijovic.

⁵² United Nations Committee on the Elimination of Discrimination Against Women (CEDAW-Committee) 14 August 2006, CEDAW/C/36/D/4/2004, *A.S. v Hungary*; views of the CEDAW-Committee can be accessed via <https://juris.ohchr.org>. See also Ravnbøl, ‘The Human Rights of Minority Women: Romani Women’s Rights from a Perspective on International Human Rights Law and Politics’ (2010) *International Journal on Minority and Group Rights* 1.

⁵³ Bond, *Global intersectionality* 240.

⁵⁴ *B.S. v Spain* App no 47159/08 (ECtHR 24 July 2012).

⁵⁵ *F.M. and others v Russia* App nos 71671/16 and 40190/18 (ECtHR, 10 December 2024); *I.C. v The Republic of Moldova* App no 36436/22 (ECtHR, 27 February 2025). See also La Barbera and Cruells López, ‘Toward the Implementation of Intersectionality in the European Multilevel Legal Praxis: B.S. v. Spain’ (2019) *Law & Society Review* 1167; Atrey, ‘At Long Last: The Recognition of Intersectional Discrimination at the ECtHR in FM v Russia’ (2025) *MLR* 1013; Sosa, ‘From institutionalisation to exploitation: structural failures and stereotyping in I.C. v. the Republic of Moldova’ (2025) *Strasbourg Observers* <<https://strasbourgobservers.com/2025/07/02/from-institutionalisation-to-exploitation-structural-failures-and-stereotyping-in-i-c-v-the-republic-of-moldova>> accessed 17 September 2025.

⁵⁶ Atrey, *Intersectional Discrimination*, 117.

⁵⁷ Atrey, *Intersectional Discrimination*, 41–45.

⁵⁸ A Venn diagram is a set diagram typically characterized by two or more overlapping circles. Several authors use Venn diagrams for visualizing intersectional discrimination or intersectional social positions, see Atrey, ‘Lifting as We Climb: Recognizing Intersectional Gender Violence in Law’ (2015), *OSLS* 1512 (1518); MacKinnon, (2013) *Signs* 1020; Schiek, ‘Organizing EU Equality Law around the Nodes of ‘Race’, Gender and Disability’, in Schiek and Lawson, *European Union non-discrimination law and intersectionality* (Abingdon and New York, 2011) 19 (24).

pointedly visualizes the both/and⁵⁹ character of intersectional discrimination: the diagram's overlapping region shows the “synergistic”⁶⁰ dynamic between multiple grounds of discrimination producing a specific kind of discrimination that is distinct from a simple addition or cumulation of grounds. But, at the same time, the overlapping segments remain part of the respective, distinct circles.⁶¹

Legal philosopher Elisabeth Holzleithner makes this aspect clear in her intersectional analysis regarding bans on the Islamic headscarf in the workplace. She emphasizes that this discrimination is characterized by a synergistic interplay of race, religion, and gender, producing a very specific kind of discrimination. Furthermore, Holzleithner contends that prohibitions of the Islamic headscarf need to be understood at least as direct discrimination on the ground of gender, because they ban the display of unwanted forms of femininity. In this aspect, they are comparable to other dress codes that apply to female employees (e.g., female flight attendants) prescribing a certain gender performance that conforms to conventions of femininity.⁶² Hence, intersectional discrimination is characterized by both difference and sameness in regard to other forms of discrimination.⁶³

Intersectional approaches highlight the specific discriminations, marginalizations, and structural vulnerabilities faced by those who are intersectionally disadvantaged. At the same time, they connect these particular experiences to other marginalized social positions and emphasize the potential for solidarity between seemingly distinct social and political groupings.⁶⁴ This emphasis on the simultaneity of difference and sameness resonates with Crenshaw's observations regarding antidiscrimination cases with Black female claimants. Not only does she point out how, in some cases, antidiscrimination jurisprudence swept aside any discriminatory experiences that could not easily check the seemingly separate boxes of race or gender (such as in the DeGraffenreid case), but she also finds that, in other cases, Black women were deemed too ‘other’ to represent women as such. Apparently, courts had difficulty recognizing “that discrimination experienced by Black women is indeed sex discrimination.”⁶⁵ Black women were not only denied effective legal protection “when they were forced into sameness, but also when their difference was interpreted as

⁵⁹ Rössl, *Intersektionale Rechtskritik* 58-60.

⁶⁰ Solanke, ‘A method for intersectional discrimination in EU labour law’, 445; Holzleithner, ‘Intersektionale (mehrdimensionale) Diskriminierung’ 543 (para. 43).

⁶¹ Rössl, *Intersektionale Rechtskritik*, 33-35.

⁶² Holzleithner, ‘Law and Social Justice’ 251.

⁶³ Atrey, *Intersectional discrimination*, 128 and passim.

⁶⁴ Rössl, *Intersektionale Rechtskritik*, 58.

⁶⁵ Crenshaw, (1989), *University of Chicago Legal Forum* 139 (148).

reflecting an experience so different from Black men and white women that they were rendered categorically distinct from them.”⁶⁶

Highlighting the simultaneity of difference and sameness and the both/and character of social positions is part of intersectional theory's fundamentally relational perspective. This perspective also informs intersectional methodology.

III. In Search of an Intersectional Legal Methodology

In the following section some thoughts are presented on how to reconstruct an intersectional legal methodology, especially outside the field of antidiscrimination law. Although an increasing number of scholars insert intersectional thinking into other legal fields (III. A.), few texts systematically approach the question of how to apply an intersectional perspective. Identifying common themes and basic features of intersectional thinking across disciplines proves a useful starting point for this endeavor (III. B.). When applying an intersectional approach in legal scholarship, the work remains rooted in the legal discipline and its methods, but the intersectional perspective will influence research questions and methodological choices (III. C).

A. Intersectional Perspectives in Diverse Legal Fields

Within legal discourse, intersectional theory found its way mostly into debates related to antidiscrimination law and international human rights law.⁶⁷ It seems a natural fit, as these legal fields explicitly draw on categories of difference in order to mitigate against social inequalities and their ramifications. In the contexts of antidiscrimination law and international human rights law the concepts of intersectionality and especially of intersectional discrimination⁶⁸ are employed as a remedy against insufficient legal protection in cases where multiple grounds of discrimination interact.

An increasing number of scholars are applying an intersectional approach to other legal fields. Intersectional legal research exists on, for example, gender-based and

⁶⁶ Crenshaw, (2010), *Tulsa Law Review* 151 (164).

⁶⁷ See above, footnote 17.

⁶⁸ For a distinction between intersectionality and the narrower concept of intersectional discrimination see Solanke, ‘A method for intersectional discrimination in EU labour law’, 445.

police violence,⁶⁹ binational partnerships,⁷⁰ regulations of forced marriages⁷¹ and marriages of convenience,⁷² migration law and capitalism,⁷³ legal struggles,⁷⁴ reproductive rights,⁷⁵ asylum law,⁷⁶ fathers' rights,⁷⁷ criminal law,⁷⁸ access to legal aid,⁷⁹ citizenship law,⁸⁰ human trafficking,⁸¹ racial profiling,⁸² and climate justice⁸³. Scholars use an intersectional lens for studying certain legal fields and problems. They focus

⁶⁹ Crenshaw, (1991) *Stanford Law Review* 1241; Crenshaw, (2012) *UCLA Law Review* 1418; Crenshaw and African American Policy Forum, *#SayHerName. Black Women's Stories of Police Violence and Public Silence* (Chicago, 2023).

⁷⁰ de Hart, 'The right to domicile of women with a migrant partner in European immigration law', in Spijkerboer and van Walsum (eds.), *Women and Immigration Law. New variations on classical feminist themes* (Abingdon and New York, 2007) 142; Rössl, 'Staatsangehörige zweiter Klasse' (2017) *Fremden- und asylrechtliche Blätter* 1.

⁷¹ Markard, 'Zwangsehen und Scheinehen', 20.

⁷² Messinger, *Schein oder nicht Schein. Konstruktion und Kriminalisierung von "Schinehen" in Geschichte und Gegenwart* (Wien, 2012).

⁷³ Sußner, 'Klasse in der Krise? Der intersektional vergeschlechtlichte Zugang zum europäischen Arbeitsmarkt', in Baer and Sacksofsky (eds.), *Autonomie im Recht - geschlechtertheoretisch vermessen* (Baden-Baden, 2018) 373; Buckel, "'Managing Migration" - Eine intersektionale Kapitalismusanalyse am Beispiel der Europäischen Migrationspolitik' (2012), *Berliner Journal für Soziologie* 79.

⁷⁴ Vestena, 'Intersektionale Rechtskritik und die Ambivalenz des Rechts', in Ludwig and Sauer (eds.), *Das kälteste aller kalten Ungeheuer? Annäherungen an intersektionale Staatstheorie* (Frankfurt, 2024) 123.

⁷⁵ Mullally, 'Migrant women destabilizing borders. Citizenship debates in Ireland', in Grabham et al (eds.), *Intersectionality and Beyond. Law, Power and the Politics of* (Abingdon and New York, 2009) 251.

⁷⁶ Markard, (2016) *Sociologia del diritto* 45; Sußner, 'Invisible intersections', 176; Rössl, (2017) *juridikum* 498.

⁷⁷ de Hart, 'Superdads: Migrant Fathers' Right to Family Life before the European Court of Human Rights' (2015) *Men and Masculinities* 448.

⁷⁸ Çelebi, (2024) *KJ* 30.

⁷⁹ Hunter and De Simone, 'Identifying disadvantage. Beyond intersectionality', in Grabham et al (eds.), *Intersectionality and beyond. Law, power and the politics of location* (Abingdon and New York, 2009) 159.

⁸⁰ Rössl, (2022) *juridikum* 462; Hugentobler and von Rütte, (2022) *Cognitio* 1.

⁸¹ Palumbo, 'Vulnerability to Exploitation through the Lens of Intersectionality. A Critical Analysis of Instruments and Approaches to Identify and Support Exploited and Trafficked Migrants Seeking Protection' (2023) *European Journal of Migration and Law* 421.

⁸² Plümecke and Wilopo, 'Die Kontrolle der "Anderen". Intersektionalität rassistischer Polizeipraktiken', in Wa Baile et al (eds.), *Racial profiling: struktureller Rassismus und antirassistischer Widerstand* (Bielefeld, 2019) 139.

⁸³ Westphal and Sußner, 'Substanzielle Gleichheit im Klimaschutz durch Recht? Geschlecht in Klimaschutzregulierungen und Klimaklagen', in Forschungsgruppe Recht - Geschlecht - Kollektivität (eds.), *Recht umkämpft. Feministische Perspektiven auf ein neues Gemeinsames* (Opladen, Berlin, and Toronto, 2025) 137.

on issues of domination and inequality and tend to examine legal texts and jurisprudence from an interdisciplinary⁸⁴ and critical perspective. As such, they expose prevailing legal concepts, omissions and discriminatory effects.

They elaborate on, among other topics, intersectional stereotypes, courts' lack of consideration for complex social positions, legal progress that only certain groups can profit from, dynamics of (in)visibility, and the difficulties of legally addressing structural inequalities as soon as class is part of the picture.⁸⁵ The research material encompasses legal provisions, legislative materials, academic legal literature, administrative practices, and case law. Courts' legal opinions are particularly useful in intersectional analysis. Crenshaw compares them to "magnetic resonance images" that reveal "the architecture" of a certain legal field,⁸⁶ including its dominant categorial framings and presuppositions.⁸⁷ One central aim is to bring to the fore how law (re-)produces intersectionally subordinated positions and ignores them at the same time. Typically, such analysis does not only imply a theoretical critique. It may also lead to political claims for change or to normative legal arguments for recognizing a problem as (intersectional) discrimination or as an infringement to human rights.⁸⁸

As has become clear so far, legal scholars who consider an intersectional perspective for a research project need not restrict themselves in regard to topics, legal fields and research material. Even so, few legal texts systematically approach the question of how to apply an intersectional perspective in legal analysis outside the field of antidiscrimination law. Identifying common themes and basic features of intersectional thinking across disciplines proves a useful starting point for this endeavor.

B. Basic Features of Intersectional Approaches

By now, the academic literature on intersectionality is vast, multidisciplinary, and highly heterogeneous, and it comprises various theoretical and methodological approaches.⁸⁹ Already in 2013, Cho et al. identified a multidisciplinary "field of

⁸⁴ Boulanger and Rosenstock and Singelstein (eds.), *Interdisziplinäre Rechtsforschung. Eine Einführung in die geistes- und sozialwissenschaftliche Befassung mit dem Recht und seiner Praxis* (Wiesbaden, 2019).

⁸⁵ Rössl, *Intersektionale Rechtskritik*.

⁸⁶ Crenshaw, 'Postscript', 221 (227).

⁸⁷ Rössl, *Intersektionale Rechtskritik*, 152.

⁸⁸ Rössl, *Intersektionale Rechtskritik*, 244 f.

⁸⁹ Some monographies and edited volumes published in the past years: Hill Collins and Bilge, *Intersectionality* (Hoboken, 2016); Hill Collins, *Intersectionality as critical social theory* (Durham, 2019); Hancock, *Intersectionality: an intellectual history* (Oxford, 2016); Carastathis, *Intersectionality*; Meyer, *Theorien der Intersektionalität zur Einführung* (Hamburg, 2017); May, *Pursuing*

intersectionality studies”⁹⁰. This field, despite internal controversies and heterogeneity, is characterized by a shared set of concepts, premises, and problems, which together serve as a “shared frame of reference” (“*gemeinsamer Orientierungsrahmen*”).⁹¹ I suggest understanding this shared frame of reference as comprising three “fields of debate” (“*Debattenfelder*”),⁹² which appear as recurring themes throughout the relevant literature, thereby constituting a sort of “cognitive architecture”:^{93,94} (1) the centering of marginalized groups, identities, or perspectives;⁹⁵ (2) references to categories of inequality while emphasizing their socially constructed nature, their internal heterogeneity and multidimensionality, and their intertwinement, especially by focusing on context-specific⁹⁶ interactions between categories;⁹⁷ and (3) critical stances against inequality and domination and the goal of social justice.⁹⁸

Although the aforementioned themes translate differently depending on the academic discipline, subject of research, and theoretical tradition, they constitute a

intersectionality, unsettling dominant imaginaries (Abingdon and New York, 2015); Bohrer, *Marxism and Intersectionality. Race, Gender, Class and Sexuality under Contemporary Capitalism* (Bielefeld, 2019); Davis and Lutz (eds.), *The Routledge International Handbook of Intersectionality Studies* (Abingdon and New York, 2024); Biele Mefebue and Bührmann and Grenz (eds.), *Handbuch Intersektionalitätsforschung* (Wiesbaden, 2022).

⁹⁰ Cho and Crenshaw and McCall, ‘Toward a Field of Intersectionality Studies’, (2013) *Signs* 785.

⁹¹ Walgenbach, ‘Postscriptum: Intersektionalität – Offenheit, interne Kontroversen und Komplexität als Ressourcen eines gemeinsamen Orientierungsrahmens’, in Lutz and Herrera Vivar and Supik (eds.), *Fokus Intersektionalität* (Wiesbaden, 2013) 265 (265 f).

⁹² Rössl, *Intersektionale Rechtskritik* 23-27.

⁹³ Hill Collins, *Intersectionality as critical social theory*, 52.

⁹⁴ For different but similar attempts to characterize intersectional approaches see Chow, (2016) *HRLR* 453 (457 f); Hancock, *Intersectionality* 29, 33; Lutz and Herrera Vivar and Supik, ‘Fokus Intersektionalität’, 9 (17); Dill and Zambrana, ‘Critical Thinking about Inequality. An Emerging Lens’, in Dill and Zambrana, *Emerging Intersections* (New Brunswick, 2009) 1 (5); Meyer, *Theorien der Intersektionalität* 62; Hill Collins, *Intersectionality* 45–50; Atrey, *Intersectional Discrimination* 32.

⁹⁵ Crenshaw, (1989) *University of Chicago Legal Forum* 139 (139); Hancock, *Intersectionality* 29–33.

⁹⁶ Crenshaw, ‘Close Encounters of Three Kinds: On Teaching Dominance Feminism and Intersectionality’ (2010) *Tulsa Law Review* 151 (165, 177 ff); Hill Collins and Bilge, *Intersectionality* 28 f.

⁹⁷ McCall, ‘The Complexity of Intersectionality’ (2005) *Signs* 1771; Hancock, ‘When Multiplication Doesn’t Equal Quick Addition: Examining Intersectionality as a Research Paradigm’ (2007) *Perspectives on Politics* 63; Dhamoon, ‘Considerations on Mainstreaming Intersectionality’ (2011) *Political Research Quarterly* 230; Yuval-Davis, ‘Intersectionality and Feminist Politics’ (2006) *European Journal of Women’s Studies* 193; Winker and Degele, *Intersektionalität*, 2nd edn. (Bielefeld, 2010); Anthias, ‘Intersectional what? Social divisions, intersectionality and levels of analysis’ (2013) *Ethnicities* 3.

⁹⁸ May, *Pursuing intersectionality* 226; Bilge, ‘Intersectionality Undone: Saving Intersectionality from Feminist Intersectionality Studies’ (2013) *Du Bois Review* 405 (405, 410).

useful starting point for characterizing intersectional approaches. When taken seriously, the premises of intersectional thought – especially the interweaving of structures of domination and inequality – point toward a relational understanding of intersectionality, highlighting dynamic relations and connections.⁹⁹ As such, this relational understanding stands in the way of viewing identities and social positions¹⁰⁰ as isolated monolithic entities or as static points of intersection. Instead, a relational understanding of intersectionality entails an emphasis on complex dynamics of sameness and difference. Potential solidarities and coalitions between subordinated groups are thereby brought into focus.¹⁰¹ Thus, a relational understanding of intersectionality counters preconceptions that associate intersectional thinking with a reinforcement of social divisions and a “battle of oppressions”.¹⁰²

C. An Intersectional Methodology?

How do the three recurring themes within intersectional theory building (centering, categories of inequality, critique) translate into methodology? The question of whether intersectionality studies should be equipped with a specific methodology is discussed in multidisciplinary literature. Crenshaw, in her characteristic laconic style, responds: “methodologies are specific to disciplines.”¹⁰³ Likewise, sociologist Patricia Hill Collins declares that there are no “inherently ‘intersectional’ methodologies or methods.” Albeit, she adds: “But there are ways in which intersectionality’s core premises, especially its premise of relationality, can influence methodological choices within intersectional scholarship.”¹⁰⁴ Thus, when applying an intersectional approach in legal scholarship, the work remains rooted in the legal discipline and its methods, but the intersectional perspective will influence research questions and methodological choices and demands an openness toward transcending and disrupting disciplinary conventions. The following section will present some guidelines and strategies for intersectional legal research. In this the three aforementioned themes (centering, categories of inequality, critique) will be

⁹⁹ For a characterization of intersectional approaches as ‘relational’ see Hill Collins, *Intersectionality* 45 f, 225–252; for some reflection on the intersectional ‘both/and’-style of thinking see Rössl, *Intersektionale Rechtskritik* 58–60.

¹⁰⁰ For the distinction between identities and social positions see Anthias, ‘Rethinking social divisions: some notes towards a theoretical framework’ (1998) *The Sociological Review* 505 (515).

¹⁰¹ Crenshaw, (1991) *Stanford Law Review* 1241 (1299); Carastathis, ‘Identity categories as potential coalitions’ (2013) *Signs*, 941.

¹⁰² Ehrenreich, ‘Subordination and Symbiosis: Mechanisms of Mutual Support between Subordinating Systems’ (2002) *UMKC Law Review* 251 (264–271).

¹⁰³ Crenshaw, ‘Postscript’, 221 (223).

¹⁰⁴ Hill Collins, *Intersectionality as critical social theory*, 152.

continuously present: We will delve, for example, into the intersectional understanding of categories, into strategies for centering marginalized groups, into approaches for bringing interactions into focus and into critical bottom-up perspectives.

IV. How to Apply an Intersectional Approach in Legal Research

How does one apply an intersectional perspective in legal analysis, especially outside the field of antidiscrimination law? Where to start? Few texts systematically approach that question. But shards of clues can be found, and when reading them together with methodological reflections from intersectional literature in the social sciences and humanities, one is able to discern possible intersectional research strategies for the legal profession.¹⁰⁵

The following section provides scholars with some theoretically grounded guidance, suggestions for research strategies and steps for (self-)reflection when considering an intersectional approach for legal analysis. It is important to note that the process of translating intersectional theory into methodology cannot be fully mapped in advance, because methodology must be adapted to the respective research project. Hence, the following thoughts serve as mere starting points of orientation.

A. Law's Role in Reproducing and Obscuring Intersectional Subordination

Crenshaw's body of work proves to be particularly useful for reflecting upon elements of intersectional methodology in legal analysis. This is due to the fact that she explicitly intervenes in legal discourses, covers a wide range of subjects and participates in debates on legal theory¹⁰⁶.

To begin with, it is worth bearing in mind Crenshaw's multidimensional conception of law, which can be traced through her work, and which is closely related to her concept of intersectionality. As has already been pointed out, she distinguishes three dimensions of intersectionality: structural intersectionality, political intersectionality, and representational intersectionality (see section II.A.). These dimensions correspond to different aspects of subordination: "the structural dimensions of domination [...], the politics engendered by a particular system of domination [...], and the representations of the dominated."¹⁰⁷ Law itself can be conceptualized as a playing field where different aspects of subordination interact. That is, law is part of

¹⁰⁵ For an example of this endeavour see Rössl, *Intersektionale Rechtskritik*.

¹⁰⁶ Crenshaw, (1988) *Harvard Law Review* 1331; Crenshaw, 'Postscript', 221.

¹⁰⁷ Crenshaw, 'Beyond Racism and Misogyny', 111 (114).

the structural makeup of society; it conditions the material parameters of social relations (structural aspect). At the same time, it is an ideological discourse that (re)produces meaning and legitimizes social arrangements (representational aspect). Furthermore, law is an arena of normative argument, where power is continually both reified and questioned (political aspect).¹⁰⁸

Against this theoretical background, it is advisable to consider law's different dimensions and their interplay. Intersectional analysis thereby brings to the fore how intersectionally subordinated positions are legally (re-)produced and ignored at the same time. It places emphasis on a “critique of the tendency of law to ideologically obscure and materially reproduce oppression.”¹⁰⁹ Hence, one preoccupation of intersectional legal research is the critical examination of hegemonic categorial framings in legal discourse and law's (mis-)conceptions of sameness and difference. For this purpose, an intersectional understanding of categories is used as a means of critique.

B. An Intersectional Understanding of Categories as a Means of Critique

The core features of intersectional thought (briefly introduced in section III.B.) reveal that a characteristic of intersectional approaches across disciplines is “to frame the object of their critique as well as their own analytical instruments in categorial terms.”¹¹⁰ However, this does not imply that they fail to critically examine categories (e.g., gender, race, class) and the processes of categorization.¹¹¹ On the contrary: not only do intersectional approaches presuppose the socially constructed character of categories¹¹² but they also deliberately focus on the interrelation¹¹³ and interweaving of

¹⁰⁸ See also Crenshaw and Bello and Macini, ‘Talking about intersectionality. Interview with Kimberlé W. Crenshaw’ (2016) *Sociologia del diritto*, 11 (15); Rössl, *Intersektionale Rechtskritik*, 41.

¹⁰⁹ Carastathis, *Intersectionality* 50.

¹¹⁰ Meyer, *Theorien der Intersektionalität* 94 (translation by I.R.).

¹¹¹ It also does not mean that scholars who take on an intersectional perspective cannot be proponents of postcategorical approaches in antidiscrimination law: Lembke and Liebscher, ‘Postkategoriales Antidiskriminierungsrecht? Oder: Wie kommen Konzepte der Intersektionalität in die Rechtsdogmatik?’, in Philipp et al (eds.), *Intersektionelle Benachteiligung und Diskriminierung* (Baden-Baden, 2014) 261; Baer, ‘Das Kategorienproblem und die Herausbildung eines postkategorialen Antidiskriminierungsrechts’, in Mangold and Payandeh (eds.), *Handbuch Antidiskriminierungsrecht* (Tübingen, 2022) 223. For a discussion of whether postcategorical approaches are (in)compatible with an intersectional perspective see Rössl, *Intersektionale Rechtskritik* 206–210.

¹¹² Crenshaw, (1991) *Stanford Law Review* 1296; Holzleithner, ‘Intersektionale (mehrdimensionale) Diskriminierung’, 543 (para 30).

¹¹³ Walgenbach, ‘Gender als interdependente Kategorie’, in Walgenbach et al (eds.), *Gender als interdependente Kategorie* (Leverkusen, 2007) 23.

categories, on their internal diversity¹¹⁴ and fluidity,¹¹⁵ and on their context-dependent¹¹⁶ and sometimes contradictory meanings. Categories are conceptualized “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.”¹¹⁷

Such an understanding of categories allows for a critique of hegemonic categorial framings. Especially in the legal field, intersectional approaches are concerned with the analysis and critique of the phenomenon that, while social relations of inequality and domination are interdependent, powerful discourses (such as the law) refer to categories as though they are isolated and mutually exclusive.¹¹⁸

Categories are a manifestation, a product, and a stabilizing factor of relations of inequality and domination. This is the reason why intersectional approaches are interested in categories at all. Using categories as an analytical tool is not an end in itself, but they refer to dynamic processes of hierarchization. To put it simply: categorial terms such as “race,” “gender,” and “class” as well as terms that refer to specific groups such as “woman” and “migrant” enable a critical perspective on race, gender, and class relations and their mutual interactions. Hence, intersectional approaches call for structural¹¹⁹ and contextualized analysis. Consequently, there is a preference for combining deductive and inductive strategies in intersectional research.¹²⁰

C. Multiple Categories of Analysis: How Many and Which?

Intersectional approaches frame their analysis in categorial terms, although – as discussed before – their understanding of categories is decidedly structural and dynamic. Intersectionality does not mean a static point of intersection of categories. Categories are used as analytical instruments in order to examine interwoven relations of inequality and domination. Since intersectional approaches demand one leave behind a single-axis framework of analysis, the question ensues: How many and which categories should be deployed? Although different proposals have been made

¹¹⁴ McCall, (2005) *Signs*, 1780–1784.

¹¹⁵ Dhamoon, (2011) *Political Research Quarterly* 230.

¹¹⁶ Crenshaw, (2010) *Tulsa Law Review* 151 (178).

¹¹⁷ Cho and Crenshaw and McCall, (2013) *Signs* 785 (795).

¹¹⁸ See also Crenshaw, (1989) *University of Chicago Legal Forum* 139 (160).

¹¹⁹ See also Sußner, ‘Mit Recht gegen die Verhältnisse. Asylrechtlicher Schutz vor Heteronormativität’ (2020) *ZIMR* 61 (73).

¹²⁰ Winker and Degele, *Intersektionalität*, 68; Rössl, *Intersektionale Rechtskritik* 211–214.

in the social sciences and social theory field,¹²¹ in the end, which categories are useful for a specific research project depends on the topic and scholarly interest driving the research.¹²² Including each and every category that might potentially be relevant in a given context is not necessary. Most often, intersectional research is not about studying the totality of society but rather about bringing to light unknown or unattended aspects and interrelations.¹²³ Focusing on the interplay between even just two categories might deepen the understanding of power dynamics in a certain context. As already mentioned, intersectional approaches very often rely on a combination of deductive and inductive strategies to discover and define the categories guiding the research. This means such approaches employ a kind of pendular movement between *ex ante* defined categories and categories that emerge from the research material itself.¹²⁴

Although the choice of categories is necessarily research-specific and there should be an openness toward the material, it is nevertheless helpful to take certain categories (and thereby certain relations of inequality) into consideration when launching an intersectional legal analysis. At least for the European context, I suggest provisionally considering four broad and encompassing categories: gender, race and ethnicity, body and (dis)ability, and class. These need to be understood as heterogenous clusters of meaning, which means that, for example, “gender” also encompasses sexual orientation, intersex, gender identity, and sexuality. It also needs to be stressed that the four categories simply serve as a starting point for reflection when beginning work on a research project. Some categories may not prove relevant, while other categories not included in the list might be better suited to the project. And, even

¹²¹ Klinger and Knapp, ‘Achsen der Ungleichheit’, 19 (20); Winker and Degele, *Intersektionalität* 25-62; Lutz, *Intersectionality’s (brilliant) career* (Working Paper Series, 2014), <www.fb03.uni-frankfurt.de/51634119/Lutz_WP.pdf> accessed 14 September 2025, 6 f; Meyer, *Theorien der Intersektionalität* 137-141.

¹²² Knapp, ‘Verhältnisbestimmungen: Geschlecht, Klasse, Ethnizität in gesellschaftstheoretischer Perspektive’, in Klinger and Knapp (eds.), *ÜberKreuzungen. Fremdheit, Ungleichheit, Differenz* (Münster, 2008) 138 (143).

¹²³ Meyer, *Theorien der Intersektionalität* 138 f.

¹²⁴ Bereswill, ‘Komplexität steigern: Intersektionalität im Kontext von Geschlechterforschung’, in Bereswill and Degenring and Stange (eds.), *Intersektionalität und Forschungspraxis* (Münster, 2015) 210 (217-221). For examples from historical science see Koller, ‘Klasse, Ethnizität und Geschlecht: Das Spannungsfeld von Quellen und Kategorien in der historischen Intersektionalitätsforschung am Beispiel von Arbeitskämpfen und Kolonialmilitär’, in Bereswill and Degenring and Stange (eds.), *Intersektionalität und Forschungspraxis* (Münster, 2015) 42; Wolff and Kretzschmar, ‘Volks Gesundheit versus Geschlechtergerechtigkeit: Die Prostitutionsfrage in der Deutschen Gesellschaft zur Bekämpfung der Geschlechtskrankheiten’, Bereswill and Degenring and Stange (eds.), *Intersektionalität und Forschungspraxis* (Münster, 2015) 59.

where relevant, the categories oftentimes require a lot of further substantiation and differentiation depending on the respective context and legal material.

Using the four categories as a starting point (again, even if they are discarded afterward) serves as a tool for critical reflection upon the researcher's presuppositions regarding which categories seem "naturally" relevant in a certain context. It also helps counter tendencies within the legal discipline or within some legal fields to systematically neglect certain categories of analysis as legally irrelevant. The proposal to use gender, race and ethnicity, body and (dis)ability, and class as reflective starting points draws from both social theory, antidiscrimination law, and human rights law. The following cursory remarks on each category explain their importance to intersectional legal analysis.¹²⁵

According to many scholars, "gender" is one of the "structural categories" ("*Strukturkategorien*") of European societies in modern capitalism.¹²⁶ Gender is also firmly established as a legal category in both antidiscrimination and human rights law,¹²⁷ which enables a comparably easy translation between theoretical analysis and normative legal argument. Gender refers to categorizations of gender, to the gender-specific distribution of labor, to the distinction between private and public spheres, and to norms regarding sexual and reproductive autonomy. This is why, then, the analytical category "gender" also encompasses, for example, gender identity, intersex, sexual orientation, and sexuality.¹²⁸

In the same vein, "race and ethnicity" is a firmly established category in antidiscrimination and human rights law¹²⁹ and a *Strukturkategorie* of European

¹²⁵ For a more detailed argument see Rössl, *Intersektionale Rechtskritik* 214–225.

¹²⁶ Klinger and Knapp, 'Achsen der Ungleichheit', 19; Aulenbacher and Meuser and Riegraf, 'Geschlecht, Ethnie, Klasse im Kapitalismus - Über die Verschränkung sozialer Verhältnisse und hegemonialer Deutungen im gesellschaftlichen Reproduktionsprozess' (2012) *Berliner Journal für Soziologie* 5; Anthias and Yuval-Davis, (1983) *Feminist Review* 62; Winker and Degele, *Intersektionalität*.

¹²⁷ See e.g.: Charter of Fundamental Rights of the European Union, as amended by the treaty of Lisbon, OJ C 2007/303, 1, consolidated version, OJ C 2016/202, 389; European Convention of Human Rights (ECHR), various EU antidiscrimination directives (Directive 79/7/EEC, OJ L 79/6, 24; Directive 2000/78/EC, OJ L 2000/303, 16; Directive 2004/113/EC, OJ L 2004/373, 37; Directive 2006/54/EC, OJ L 2006/204, 23; Directive 2010/41/EU, OJ L 2010/180, 1; Directive 2023/970, OJ L 2023/132, 21); International Covenant on Civil and Political Rights (16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407); International Covenant on Economic, Social and Cultural Rights (16 December 1966, United Nations, Treaty Series, vol. 933, p 3); Convention on the Elimination of All Forms of Discrimination against Women - CEDAW (18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13).

¹²⁸ Schiek, 'Organizing EU Equality Law', 19 (26, 28).

¹²⁹ Charter of Fundamental Rights of the European Union, as amended by the treaty of Lisbon, OJ C 2007/303, 1, consolidated version, OJ C 2016/202, 389; European Convention of Human Rights

modernity.¹³⁰ It refers to constructions of biological group affiliation and ascriptions of collective biological and/or cultural traits. A central element is an “Us” juxtaposed with a homogenized and devalued “Other”. The category of race and ethnicity is closely related to (global) distributions of labor and workforce exploitation. Racialized ascriptions are often tied to phenotypical characteristics (e.g., skin and hair color, other bodily features) but also to origin, language, religion, nationality, and culture. Therefore, racisms usually operate with a mixture of biologicistic and culturalistic elements.¹³¹ In the European context the following variants of racism can be considered, at a minimum: postcolonial racism,¹³² antisemitism,¹³³ antiziganism,¹³⁴ anti-Muslim racism,¹³⁵ anti-Slavic racism,¹³⁶ and nationalist racism against migrants.¹³⁷ Like gender, race as an analytical category has played a crucial role in the development of intersectional theory.¹³⁸ In the Mainland European context, Critical Legal Race Studies is still in the early stages of development (compared to the more established

(ECHR); various EU antidiscrimination directives (Directive 2000/43/EC, OJ L 2000/180, 22; Directive 2000/78/EC, OJ L 2000/303, 16); International Covenant on Civil and Political Rights (16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407); International Covenant on Economic, Social and Cultural Rights (16 December 1966, United Nations, Treaty Series, vol. 933, p. 3); Convention Relating to the Status of Refugees (28 July 1951, United Nations, Treaty Series, vol. 189, p. 137); International Convention on the Elimination of all Forms of Racial Discrimination (7 March 1966, United Nations, Treaty Series, vol. 660, p. 195).

¹³⁰ Klinger and Knapp, ‘Achsen der Ungleichheit’, 19; Aulenbacher and Meuser and Riegraf, (2012) *Berliner Journal für Soziologie* 5; Anthias and Yuval-Davis, (1983) *Feminist Review* 62; Winker and Degele, *Intersektionalität*.

¹³¹ Liebscher, *Rasse im Recht - Recht gegen Rassismus: Genealogie einer ambivalenten rechtlichen Kategorie* (Berlin, 2021) 81-146; Barskanmaz, ‘Rasse und ethnische Herkunft als Diskriminierungskategorien’, in Mangold and Payandeh (eds.) *Handbuch Antidiskriminierungsrecht* (Tübingen, 2022) 303 (para. 5-30).

¹³² Barskanmaz, *Recht und Rassismus: das menschenrechtliche Verbot der Diskriminierung aufgrund der Rasse* (Berlin and Heidelberg, 2019) 68-88.

¹³³ Stögner, ‘Der Antisemitismus und das Konzept der Intersektionalität’, in Biele Mefebue and Bührmann and Grenz (eds.), *Handbuch Intersektionalitätsforschung* (Wiesbaden, 2022) 93; Dhawan and Castro Varela, ‘Intersectionality and its Critics. Postcolonial-Queer-Feminist Conundrums’, in Davis and Lutz (eds.), *The Routledge International Handbook of Intersectionality Studies* (Abingdon and New York, 2024) 71.

¹³⁴ Luttmner, ‘“Schimpft uns nicht Zigeuner!” - Geschichte und Gegenwart des Antiziganismus’ in Melter and Mecheril (eds.), *Rassismuskritik: Rassismustheorie und -forschung* (Frankfurt, 2011) 106.

¹³⁵ Barskanmaz, *Recht und Rassismus* 88-98.

¹³⁶ Liebscher, *Rasse im Recht* 71 f.

¹³⁷ Liebscher, *Rasse im Recht* 73 f.

¹³⁸ See section I.

Legal Gender Studies).¹³⁹ This makes it all the more important for intersectional approaches in the legal field to bring racialized dynamics to the fore.

Alongside gender and race, “class” is the third widely accepted *Strukturkategorie* of modern capitalism.¹⁴⁰ In the context of law, class has an ambiguous status. Antidiscrimination law does not recognize it as a category, whereas human rights documents regularly refer to socioeconomic grounds of discrimination.¹⁴¹ Nevertheless, such grounds do not feature prominently in legal practice.¹⁴² For this very reason, intersectional legal approaches should consider class as a central category of analysis in order to counter the de-thematization and de-problematization of class in legal discourse. Class as an analytical category can be understood in a broad sense. It encompasses at least three dimensions: first, the relation between capital and labor, that is, a person’s situatedness in the processes of production and the ensuing dependencies and constraints;¹⁴³ second, the socioeconomic relations of inequality and domination based on the distribution of wealth and income,¹⁴⁴ but also based on the differences of social and/or cultural capital;¹⁴⁵ and third, classist ascriptions of statuses, identities, and stereotypes.¹⁴⁶ With such a broad understanding, class as an analytical category can also encompass, for example, a person’s educational

¹³⁹ Barskanmaz, ‘Rassismus, Postkolonialismus und Recht – Zu einer deutschen Critical Race Theory?’ (2008) *KJ* 296; Möschel, ‘Race in mainland European legal analysis: towards a European critical race theory’ (2011) *Ethnic and Racial Studies* 1648. There is an increasing interest in the relation between racism and the law, see Liebscher, *Rasse im Recht*; Barskanmaz, *Recht und Rassismus*; Grünberger et al, *Diversität in Rechtswissenschaft und Rechtspraxis* (Baden-Baden, 2021); and the special issue “Rassismus und Recht” (2021, edited by Rössl and Markom) published by the Austrian law journal *juridikum*.

¹⁴⁰ Klinger and Knapp, ‘Achsen der Ungleichheit’, 19; Aulenbacher and Meuser and Riegraf, (2012) *Berliner Journal für Soziologie* 5; Anthias and Yuval-Davis, (1983) *Feminist Review* 62; Winker and Degele, *Intersektionalität*.

¹⁴¹ E.g., Art. 2 para. 1 International Covenant on Civil and Political Rights; Art. 2 para. 2 International Covenant on Economic, Social and Cultural Rights; Art 14 ECHR; Art 21 CFR.

¹⁴² Röhner, ‘Sozioökonomische Diskriminierung’ in Mangold and Payandeh (eds), *Handbuch Antidiskriminierungsrecht* (Tübingen, 2022) 475; Pöschl, ‘Armut und Gleichheit’ (2016) *Journal für Rechtspolitik* 121; Rebhahn, ‘Das Diskriminierungsverbot des Artikels 21 GRC aufgrund des Vermögens als verfassungsgesetzlich gewährleistetes Recht’ (2012) *Journal für Rechtspolitik* 386; Altwicker, ‘Sozio-ökonomische Ungleichheit und konventionsrechtliche Diskriminierungsverbote’ (2019) *juridikum* 236.

¹⁴³ For a discussion of law’s role in capitalism see Vestena, ‘Intersektionale Rechtskritik’, 123; Menke, ‘Die “andre Form” der Herrschaft. Marx’ Kritik Des Rechts’ in Jaeggi and Loick (eds.), *Nach Marx. Philosophie, Kritik, Praxis* (Berlin, 2013) 273.

¹⁴⁴ Pistor, *Der Code des Kapitals: wie das Recht Reichtum und Ungleichheit schafft* (Berlin, 2022).

¹⁴⁵ Bourdieu, ‘Ökonomisches Kapital, kulturelles Kapital, soziales Kapital (1983)’ in Bauer et al (eds.), *Handbuch Bildungs- und Erziehungssoziologie* (Berlin and Heidelberg, 2012) 229.

¹⁴⁶ Röhner, ‘Sozioökonomische Diskriminierung’, para 59 f.

background, family origin, employment status (e.g., being [un]employed, working in precarious versus stable jobs), and status within the social security system (e.g., being a welfare-benefit recipient). As has already been emphasized: which concrete aspects require focus depends on the respective research project.

The fourth and final proposed orientating category is “body and (dis)ability”. Social scientists Gabriele Winker and Nina Degele suggested adding the category “body” to the “big three” (race, gender, class).¹⁴⁷ Because capacity, physical condition, appearance, and health are relevant factors for distributing social resources, recognition, and opportunities, it makes sense for intersectional legal research to take “body and (dis)ability” into account. It is all the more relevant as disability is an, albeit comparatively young, legally protected ground of discrimination in antidiscrimination and human rights law.¹⁴⁸ According to legal scholar Dagmar Schiek, the multiple grounds of discrimination of European antidiscrimination law can be grouped along three “nodes”: race, gender, and disability. Schiek's category of disability refers to physical, psychological, or cognitive deviations from a perceived standard, which are not sufficiently accommodated for in the organization of social life and hence lead to unequal participation opportunities.¹⁴⁹ It should be noted that the analytical category “body and (dis)ability” that is proposed here for intersectional research transcends the legal meaning of (dis)ability and also encompasses body norms (e.g., beauty standards), (mental) health, genetic traits, (in)fertility, and a person's age-dependent physical and mental constitution.¹⁵⁰

As should be clear by now, the four proposed categories – which serve as a starting point when considering an intersectional approach – need to be understood as interrelated and internally diverse clusters of meaning. The following point cannot be emphasized too much, either: the categories are just a provisional tool to fuel the

¹⁴⁷ Winker and Degele, *Intersektionalität* 39–41, 49–51. For a critique see Knapp, ‘Zur Bestimmung und Abgrenzung von “Intersektionalität.” Überlegungen zu Interferenzen von “Geschlecht,” “Klasse” und anderen Kategorien sozialer Teilung’ (2013) *Erwägen Wissen Ethik* 341, 341 (439 f).

¹⁴⁸ See e.g., Convention on the Rights of Persons with Disabilities (13 December 2006, United Nations, Treaty Series, vol. 2515, p. 3); Art 21 FCR; EU Directive 2000/78/EC, OJ L 2000/303, 16; Zinsmeister, ‘Behinderung als Diskriminierungskategorie’ in Mangold and Payandeh (eds.), *Handbuch Antidiskriminierungsrecht* (Tübingen, 2022) 387.

¹⁴⁹ Schiek, ‘Organizing EU Equality Law’, 19 (29).

¹⁵⁰ Rössl, *Intersektionale Rechtskritik* 221–223; Solanke, ‘A Legal Remedy for Corpulent Women of Colour’ in Schiek and Lawson (eds.), *European Union non-discrimination law and intersectionality* (Abingdon and New York, 2011) 181; Dobusch and Wechuli, ‘Disability Studies’ in Biele Mefebue, Bührmann and Grenz (eds.), *Handbuch Intersektionalitätsforschung* (Wiesbaden, 2022) 51; Ganty and Sanchez, *Expanding the List of Protected Grounds within Anti-Discrimination Law in the EU. An Equinet Report* (Brussels, 2021) 53–59.

researcher's (self-)reflection and curiosity toward the material, but they do not necessarily need to be deployed in the final research design.¹⁵¹

Intersectional thought emphasizes the complex dynamics of interrelation between categories (i.e., between various systems of inequality and domination). This understanding influences not only the intersectional conception of (analytical) categories but also where researchers direct their attention.

D. Looking for Connections and Relations: Typical Questions and Research Strategies

Intersectional approaches are based on the premise that different relations of domination and inequality are intertwined and interact in manifold ways. Often, they actively search for manifestations of this interplay between social relations and categories – they are “interaction-seeking”¹⁵². Examining legal material from an intersectional perspective is aided by a questioning technique developed by the legal scholar Mari Matsuda. She calls it “ask the other question”:

When I see something that looks racist, I ask, “Where is the patriarchy in this?” When I see something that looks sexist, I ask, “Where is the heterosexism in this?” When I see something that looks homophobic, I ask, “Where are the class interests in this?”¹⁵³

It is a seemingly simple questioning technique, but it adequately translates central aspects of intersectional theory into concrete practice: it directs the researcher's attention to interrelations and dynamics, safeguards against conventional assumptions as to which categories might be relevant in a specific context,¹⁵⁴ and refers to *structural* relations of domination and inequality.

Another strategy of research that might prove helpful for tracking down interrelations in the legal field is a focus on “interfaces” (Crenshaw),¹⁵⁵ where premises, logics, and characteristics of different legal fields, different institutions, and different public

¹⁵¹ Rössl, *Intersektionale Rechtskritik* 224–225.

¹⁵² Choo and Ferree, ‘Practicing Intersectionality in Sociological Research: A Critical Analysis of Inclusions, Interactions, and Institutions in the Study of Inequalities’ (2010) *Sociological Theory* 129 (134).

¹⁵³ Matsuda, ‘Beside My Sister, Facing the Enemy: Legal Theory out of Coalition’ (1991) *Stanford Law Review* 1183 (1189).

¹⁵⁴ Davis, ‘Intersectionality as Critical Methodology’, 109.

¹⁵⁵ Crenshaw, ‘From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control’ (2012) *UCLA Law Review* 1418 (1427, 1442 et passim).

and/or private stakeholders intersect.¹⁵⁶ In the context of human rights Crenshaw highlights, for example, how racialized policies, practices or individual acts can intersect with gendered background structures.¹⁵⁷ And when investigating the high incarceration rates of racially marginalized women and girls in the US, Crenshaw and her colleagues point towards intersectional subordination “produced in the *interface* between private institutional configurations such as the housing market or neighborhood watches and the policing power of state actors.”¹⁵⁸ They emphasize that seemingly distinct social systems may create “intersections [...] of systemic dynamics” that lead to specific vulnerabilities.¹⁵⁹ Focusing on such overlaps and interactions between social systems or legal fields can help to reveal how interrelations between social categories (such as gender, race, class or [dis-]ability) unfold and manifest themselves in a given context. In line with intersectional thinking's both/and character, it is important to note, “that while the systems are related, and mutually constitute certain harms, they are also observable as distinct in their logics, agents, and consequences. As such, they can be understood both within their own institutional spheres and in relation to others.”¹⁶⁰

E. Centering: Typical Questions and Research Strategies

As pointed out in section III.B., centering marginalized groups, social positions, identities, and perspectives is another important element of intersectional approaches. This intersectional “inclusion project” or “visibility project”¹⁶¹ often (albeit not necessarily) translates into “intracategorical”¹⁶² analysis. According to the sociologist Leslie McCall, intracategorical analysis is one of three different approaches to studying intersectional complexity.¹⁶³ Intracategorical analysis is characterized by taking “a social group at a neglected point of intersection of multiple master

¹⁵⁶ Rössl, *Intersektionale Rechtskritik* 226-228

¹⁵⁷ Crenshaw, *Gender-Related Aspects of Race Discrimination* 12; see also Crenshaw, (2012) *UCLA Law Review* 1418 (1439).

¹⁵⁸ Crenshaw, (2012) *UCLA Law Review* 1418 (1427, emphasis added); Ocen, ‘The New Racially Restricted Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing’ (2012) *UCLA Law Review* 1540.

¹⁵⁹ Crenshaw, (2012) *UCLA Law Review* 1418 (1446).

¹⁶⁰ Crenshaw, (2012) *UCLA Law Review* 1418 (1447).

¹⁶¹ Hancock, *Intersectionality* 29-33.

¹⁶² The other two being anticategorical and intercategory approaches. McCall, (2005) *Signs* 1771 (1773 f, 1779-1784).

¹⁶³ McCall, (2005) *Signs* 1771.

categories” (e.g., the group “refugee women with disabilities”) as the primary object of analysis.¹⁶⁴

In the field of legal critique, a focus on intersectionally disadvantaged persons or groups does not aim primarily at bringing to light the complexities of their living conditions and identities; rather, it has an essentially normative dimension: it is a tool for detecting legal misconceptions and dead angles of the law. It makes visible that something is *not* visible. It points out and discusses why certain problems are not visible within dominant legal frameworks and how and why intersectionally disadvantaged groups suffer specific infringements of their (fundamental) rights.¹⁶⁵

One typical research question in the legal context is whether intersectionally disadvantaged groups have really profited from progressive legal reforms. Several examples arise in the field of migration law: Has the legal recognition of same-sex relationships really been effective for homosexual refugees?¹⁶⁶ Do migrant Muslim fathers profit at all from altered legal conceptions of fatherhood?¹⁶⁷ Which specific hurdles block the path of migrants seeking protection from gender-based violence despite legal progress made regarding this issue?¹⁶⁸

Centering intersectionally disadvantaged groups also serves as a heuristic instrument for carving out the complex workings of different hierarchies in a certain field. Focusing on the (legal) situation of such a group allows one to examine “how the dynamics of each hierarchy exacerbates and compounds the consequences of another.”¹⁶⁹ For the purpose of such kind of analysis, the researcher postulates a group characterized by at least two intersecting hierarchies or axes of inequality (e.g., the group “Black, homosexual, female refugees”). She should have good reasons for assuming that this group is marginalized or subordinated in the relevant context and that this marginalization or subordination has to do with the interplay of different axes of inequality. One could call this strategy an “intersectional hypothesis,” because how dynamics of marginalization or subordination *really* work in a given context is

¹⁶⁴ McCall, (2005) *Signs* 1771 (1780).

¹⁶⁵ Rössl, *Intersektionale Rechtskritik* 188 f. For a discussion of intersectionality's function as a litigation frame for diagnosing legal invisibility see Xenidis, ‘From critical theory to litigation strategy: Can intersectionality transform EU equality law?’ (2025) *ELJ* 22 (32-24).

¹⁶⁶ Sußner, ‘Invisible intersections’, 176.

¹⁶⁷ De Hart, (2015) *Men and Masculinities* 448.

¹⁶⁸ Wessels, ‘The Boundaries of Universality - Migrant Women and Domestic Violence before the Strasbourg Court’ (2019) *NQHR* 336; Rössl, *Intersektionale Rechtskritik* 148-150.

¹⁶⁹ Crenshaw, ‘Beyond Racism and Misogyny’, 111 (114).

precisely what is to be found out.¹⁷⁰ The centering of the group aids in examining the interplay of relations of inequality and domination in a certain (legal) context.

It should be noted that the (hypothetically) disadvantaged group used as a heuristic instrument need not be (hypothetically) marginalized or subordinated on every axis of inequality. For example, not just racialized women but also racialized men are an intersectionally disadvantaged group in certain contexts. This becomes obvious when thinking of discriminatory door policies at night clubs or racial profiling that targets certain racialized masculinities.¹⁷¹

F. Bottom-Up Perspectives Complementing Legal Methods

An “analytical sensibility”¹⁷² toward intersectional social realities – that is, an understanding of complex, context-specific power relations – can hardly be developed by occupying oneself with legal norms alone. As such, practicing intersectional approaches in the legal field requires a certain openness toward the social sciences¹⁷³ and the practical knowledge developed by disadvantaged groups. In this section, I focus on the second aspect.

The integration of academic and practical knowledge is important to intersectional thought.¹⁷⁴ This also holds true for intersectional legal critique. On the one hand, social movements (e.g., feminist groups, refugee organizations) use law to advance their causes, often cooperating with “legal intellectuals” who help translate these causes into legal strategies and arguments.¹⁷⁵ On the other hand, social movements supply critical legal scholars with practical knowledge and critique rooted in day-to-day experiences. Social movements develop imaginations of transformation, and they possess concrete knowledge about social realities, shared experiences of subordination, and practical legal problems. As such, legal scholars who want to apply

¹⁷⁰ Rössl, *Intersektionale Rechtskritik* 189 f.

¹⁷¹ Rössl, *Intersektionale Rechtskritik* 190-192 (with further references).

¹⁷² Cho and Crenshaw and McCall, (2013) *Signs* 785.

¹⁷³ Marko, ‘Vom Diskriminierungsverbot zu “effektiver” Gleichheit? Zur Notwendigkeit interdisziplinärer Forschung von JuristInnen und SoziologInnen’ (2014) in Philipp et al, *Intersektionelle Benachteiligung und Diskriminierung* (Baden-Baden, 2014) 19; Rössl, *Intersektionale Rechtskritik* 237-239.

¹⁷⁴ Cho and Crenshaw and McCall, (2013) *Signs* 785 (786); Crenshaw, *Gender-Related Aspects of Race Discrimination* 12; MacKinnon, (2013) *Signs* 1019 (1020, 1024); Atrey, ‘“The Danger of a Single Story”. Introducing Intersectionality in Fact-Finding’, in Alston and Knuckey (eds.), *The Transformation of Human Rights Fact Finding* (Oxford, 2016) 155 (162).

¹⁷⁵ Buckel and Pichl and Vestena, ‘Rechtskämpfe: Eine gesellschaftstheoretische Perspektive auf strategische Prozessführung und Rechtsmobilisierung’ (2021) *Zeitschrift für Kultur- und Kollektivwissenschaft* 45 (66-71); Vestena, ‘Intersektionale Rechtskritik’, 123.

an intersectional approach are well advised to take seriously this kind of expertise born of daily struggle.¹⁷⁶

Engaging with this type of expertise does not entail uncritical partisanship regarding social movements. On the contrary: Crenshaw's early works are shaped by a critique of conventional identity politics.¹⁷⁷ Additionally, recognizing the practical knowledge of people facing multiple disadvantages as knowledge does not entail epistemologically privileging their standpoint. It simply means recognizing that knowledge production and awareness are influenced by power relations and a person's particular social position. A person's own knowledge is always situated and incomplete.¹⁷⁸ To expand it, dialogue with other perspectives and engagement with other experiences and lived realities is necessary.¹⁷⁹ According to Hill Collins, this dialogical approach is central to a critical intersectional methodology.¹⁸⁰ Matsuda likewise stresses that listening and coalition-building are necessary capacities for intersectional scholars:

I do not mean that we cannot speak of subordination second-hand. Rather, I wish to encourage us to do this, and to suggest that we can do this most intelligently in coalition, listening with special care to those who are actively involved in knowing and ending the systems of domination that touch their lives.¹⁸¹

Through this listening and coalition-building, legal scholars can develop their capacity to practice "multiple consciousness as jurisprudential method".¹⁸² This implies a style of legal thought that has the capacity to move about freely in the abstract discourse typical of the legal discipline and at the same time to look at this very discourse from the perspective of disadvantaged and marginalized groups – and to move back and forth between these two viewpoints.¹⁸³

¹⁷⁶ Rössl, *Intersektionale Rechtskritik* 240.

¹⁷⁷ See the discussion of political intersectionality in section V.A.

¹⁷⁸ Carastathis, *Intersectionality* 39; Yuval-Davis, 'Dialogical Epistemology - An Intersectional Resistance to the "Oppression Olympics"' (2012) *Gender & Society* 46; Hill Collins, *Black Feminist Thought*; Hill Collins, *Intersectionality as Critical Social Theory* 39 f.

¹⁷⁹ Hill Collins, *Intersectionality as Critical Social Theory* 270.

¹⁸⁰ Hill Collins, *Intersectionality as Critical Social Theory* 139-146.

¹⁸¹ Matsuda, (1991) *Stanford Law Review* 1183 (1191).

¹⁸² Matsuda, 'When the First Quail Calls: Multiple Consciousness as Jurisprudential Method' (1992) *Women's Rights Law Reporter* 297.

¹⁸³ Matsuda, (1992) *Women's Rights Law Reporter* 297 (299).

V. Conclusion: Between Legal Doctrine and Subversion

Intersectional approaches are most certainly not part of the legal mainstream. This lack of uptake might also be due to certain preconceptions. For some, intersectionality may seem to be the pinnacle of complexity and hence impossible to transfer into research praxis. Especially intersectional methodology's call for employing multiple categories and their respective relations may lead one to think that an endless proliferation of analytical categories is the inevitable consequence. For others, "intersectionality" is nothing but a meaningless catchphrase in the world of identity politics, rid of theoretical and methodological substance. Indeed, the term "intersectionality" also pops up in popular political discourses, and intersectional theory's take on identity politics is a complicated one, to say the least.¹⁸⁴ As such, it has been criticized for multiplying and reinforcing society's social divisions and for implicitly calling for a "battle of oppressions".¹⁸⁵

The article rebutted those preconceptions by emphasizing the inherently relational character of intersectional approaches and by providing theoretically grounded guidance for doing intersectional legal research. It introduced several strategies legal scholars can use to implement intersectional theory in their research and to transcend conventional legal approaches.

Still, intersectional legal critique remains rooted in the legal discipline. In regard to her early work, Crenshaw points out that her intersectional legal critique was about "engaging the discipline itself through doctrinal analyses while at the same time revealing the ways that law reified social relations and rationalised the power dynamics that shaped the social terrain."¹⁸⁶ Intersectional analysis is used to "advance an argument *within* law while at the same time interrogating certain dynamics *about* law and its relation to social power."¹⁸⁷ Developing normative legal arguments in the narrow sense of the word is part of intersectional legal critique, especially when it comes to exposing overlooked structural dynamics of discrimination and domination. Like intersectional methodology and theory in general, intersectional legal critique oscillates between a "reformist" focus on inclusion and a "radical" interrogation of the "larger structures in which subjects, problems and solutions [are] framed."¹⁸⁸

¹⁸⁴ Rössl, *Intersektionale Rechtskritik* 54-58.

¹⁸⁵ Ehrenreich, (2002) *UMKC Law Review* 251 (264-271).

¹⁸⁶ Crenshaw, 'Postscript', 221 (228).

¹⁸⁷ Crenshaw, 'Postscript', 221 (231).

¹⁸⁸ Cho and Crenshaw and McCall, (2013) *Signs* 785 (791).

Despite its critical examination of legal framings, premises, and concepts, and despite its inherently “transformative vision”¹⁸⁹, intersectional legal critique displays a certain pragmatism. Crenshaw emphasizes that her approach should be understood not as a “grand theory” but as “an analytical, a heuristic or hermeneutic tool – one designed to amplify and highlight specific problems.”¹⁹⁰ Intersectional legal critique does not question law or the legal form as such; in that sense, it does not formulate a fundamental critique of the law¹⁹¹ but rather deals with specific problems arising in specific contexts.

Against this backdrop, this article aimed to highlight both characteristic features of intersectional thought as well as strategies to implement it in legal scholarship, especially outside the field of antidiscrimination law. No ready-made recipe for conducting intersectional research has been provided; rather, what is on offer is a theoretically grounded orientation to begin from when considering an intersectional research project in law.¹⁹²

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¹⁸⁹ Atrey, *Intersectional Discrimination* 52.

¹⁹⁰ Crenshaw, ‘Postscript’, 221.

¹⁹¹ For examples of a more fundamental critique of the law as such see e.g., Menke, *Kritik der Rechte* (Berlin, 2015); Loick, *Juridismus: Konturen einer kritischen Theorie des Rechts* (Berlin, 2017).

¹⁹² For further reading see Rössl, *Intersektionale Rechtskritik*.

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