

# Review: Getting Emotional at the Intersections of Intersectionality, A Review of ‘Intersectionality: Traumatic Impressions’, by Emily Grabham

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## Introduction

In a time when our own unique identities within society are becoming ever more important to us, one has to ask: just how well are our identities represented within the law? For example, in the context of employment discrimination an employee can seek redress for discrimination on the grounds of certain ‘protected characteristics’, as defined by section 4 of the UK Equality Act 2010.<sup>1</sup> However, these categories tell us nothing about the compound types of inequality experienced by subjects whose complex identities mean that they do not fit neatly into those categories. In her 2009 essay, ‘In Intersectionality: Traumatic Impressions’, Emily Grabham critiques ‘the law’s propensity to classify’ and discusses a need for law that not only focuses on the ‘intersections’ of these legal categorisations of our identity, but that also takes into account the more complex inequalities that victims of discrimination experience.<sup>2</sup>

Grabham refers to intersectionality in her essay as an approach within law that aims ‘(1) to challenge or destabilise traditional legal

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<sup>1</sup> Section 4 of the Equality Act 2010 describes the following characteristics as ‘protected characteristics’ – age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

<sup>2</sup> Emily Grabham ‘Intersectionality: Traumatic impressions’ in Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman (eds), *Intersectionality and Beyond: Law, Power and the Politics of Location* (Routledge-Cavendish 2009).

categories of identity and their necessary separation in law, and (2) to take account of varied and complex types of inequalities and the ways in which they are experienced by subjects who do not “fit into” those categories’.<sup>3</sup> For Grabham, intersectionality is about more than just the intersections of disciplinary identity categories. It ‘describes a much broader field of practice and analysis engaged in critiquing hierarchical and categorical concepts of oppression’, and it traces ‘the complex forms of inequalities that get lost in traditional categorical analysis’.<sup>4</sup> However, Grabham’s analysis of intersectionality casts doubt on its ability to represent complex identities and to contest complex inequalities, as she argues that ‘focusing on the “intersections” between categories merely leads to the production of “more” categories’.<sup>5</sup> To overcome this, Grabham draws on the works of Wendy Brown, Ann Cvetkovich and Sara Ahmed to suggest that focusing on victim experiences of trauma could provide new avenues for understanding complex inequalities without reproducing or being limited by ‘governmentally produced identity categories’.<sup>6</sup>

Although Grabham’s essay was published six years ago, the arguments that she raises are still as important and as relevant today. As demonstrated by section 4 of the UK Equality Act 2010, the law has not lost its propensity to classify since the publication of Grabham’s essay. As such, intersectionality continues to be relevant as an approach for countering ‘law’s repressive, inegalitarian effects’,<sup>7</sup> and for challenging law’s disciplinary constructions of identity. How well intersectionality is able to do this is another question. Since its introduction in the 1980s, it would appear that intersectionality may be forgetting its feminist roots. As its critics point out, intersectionality fails to capture the full complexity of dynamic identities and the relevance of the social processes and relationships within

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<sup>3</sup> *ibid* 185.

<sup>4</sup> *ibid* 184.

<sup>5</sup> *ibid* 186.

<sup>6</sup> *ibid* 199.

<sup>7</sup> Joanne Conaghan, ‘Intersectionality and the Feminist Project in Law’ in Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman (eds), *Intersectionality and Beyond: Law, Power and the Politics of Location* (Routledge-Cavendish 2009).

which they are entwined.<sup>8</sup> Grabham's essay is therefore important because her proposal to view discrimination claims as expressions/impressions of trauma offers a fresh perspective on the role of intersectionality in legal discourse. Furthermore, her proposal aims to resolve intersectionality's reproduction of law's propensity to classify and, ultimately, could help to realign intersectionality with the two main aims that she identifies, as described above.

Anyone with an interest in governmentally produced identity categories or who is affected by them will likely find Grabham's piece to be of some use. However, a weakness of Grabham's work is that she neglects to mention how viewing discrimination claims as expressions/impressions of trauma could be implemented on a practical level. Law could be said to be primarily a practical subject<sup>9</sup> and, as such, there is the possibility that Grabham's proposal may be too detached from practical considerations to be useful. However, as long as discrimination claims continue to rely on governmentally produced identity categories, and as long as intersectionality continues to focus on such categories, Grabham's work will remain relevant until a more practically viable approach to challenging these issues is developed. By carrying out a review of Grabham's work some six years after it was published, I hope to reignite interest in Grabham's proposal and to explore its merit as a springboard for further academic enquiry. I begin by providing an overview of 'Intersectionality: Traumatic Impressions', before examining the location of the piece within scholarly feminist tradition, considering the originality of the piece and outlining its main strengths and weaknesses.

## Overview of 'Intersectionality: Traumatic Impressions'

In the first part of Grabham's essay, she traces the history of intersectionality from its introduction in the 1980s as a method of integrating an anti-essentialist approach into feminist perspectives on

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<sup>8</sup> *ibid*; Davina Cooper, *Challenging Diversity: Rethinking Equality and the Value of Difference* (Cambridge University Press 2004) 48.

<sup>9</sup> Mathias M Siems, 'Legal Originality' (2008) 28 (1) OJLS 147, 164.

law, through to its wider use, after Crenshaw's 1989 article,<sup>10</sup> by feminist legal scholars and activists to focus on the 'intersections' where traditional identity categories fail to represent complex inequalities. Although intersectionality analysis has been fundamental to the deconstruction of essentialist identity positions within the field of feminist legal theory and practice, Grabham notes that there have been problems with its application. As highlighted by Davina Cooper, intersectionality is a conceptual model. It is therefore difficult to conceive what the intersection looks like or what its effects are. Furthermore, Cooper points out that 'intersectionality implies a model through which it would be possible to exercise more power in one aspect of one's identity than in another ... but this would require a polarised analysis that would view the individual either at the midpoint of different social positions, or as see-sawing between them'.<sup>11</sup> As such, the concept of the intersection appears to be too static to respond to the complexity of real-life identities.<sup>12</sup> Intersectionality has also faced criticism from Joanne Conaghan, who argues that 'intersectionality has reached the limits of its potential for the feminist project in law'.<sup>13</sup> In her opinion, this is because 'it prioritises a focus on the individual and on identity formation, and does not adequately address social processes and relations'.<sup>14</sup>

Grabham uses a particular case study from her time as a legal advisor at Lesbian and Gay Employment Rights (LAGER) as a foundation from which to think through some of the questions around intersectionality. In the second part of her essay, Grabham refers to a case involving M, a trans woman and out lesbian whom Grabham had assisted in an intersectional discrimination claim against her former employers. Although Grabham was unable to elaborate on whether an intersectional approach was applied throughout the case due to the fact that her involvement in M's case ended prematurely, she reflects on this case in particular because it 'raises a number of questions about engaging with law to obtain

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<sup>10</sup> Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' [1989] *The University of Chicago Legal Forum* 139.

<sup>11</sup> Cooper (n 8) 48.

<sup>12</sup> Grabham (n 2) 184-185.

<sup>13</sup> Conaghan (n 7) 29.

<sup>14</sup> *ibid.*

redress for discrimination and in order to challenge inequalities'.<sup>15</sup> Furthermore, Grabham states that although she wanted to present M's complex identity and experiences to the law as an 'intersectional' claim, she was not sure what she wanted the law to do in response.<sup>16</sup>

In the third part of her essay, Grabham meticulously guides the reader through the complexities of Brown's Foucauldian analysis in her 1995 book *States of Injury*.<sup>17</sup> Grabham demonstrates how such an analysis could be applied not only to address the issues arising from the use of intersectionality in her case study on M, but also within law more generally. In *States of Injury*, Brown explores 'what it is about the way that identities are constructed that leads to self-subversive effects when those identities are politically articulated'.<sup>18</sup> As Grabham explains, Brown 'situates her analysis of identity within an understanding of how disciplinary power works on subject formation' and argues that 'the politics of identity in contemporary liberal society is based on an investment in powerlessness and injury that undercuts its apparently emancipatory goals'.<sup>19</sup>

Grabham also introduces Brown's concept of 'ressentiment', which Brown in turn has adopted from Nietzsche. According to Brown, resentment is the result of the tensions that come about when a variety of social inequalities prevent subjects from achieving the dreams that liberalism promises them. Brown then states that there are two possible ways in which subjects can respond to this invidious state of affairs: they can either turn the suffering inwards on themselves or they can externalise it.<sup>20</sup> A politicised identity is thus 'what ensues when subjects turn the suffering outwards, because identity itself is always a reaction to something outside of oneself'.<sup>21</sup> This creates 'wounded attachments', which Brown defines as 'identities

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<sup>15</sup> *ibid* 188.

<sup>16</sup> *ibid* 188-189.

<sup>17</sup> Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton University Press 1995).

<sup>18</sup> Grabham (n 2) 189.

<sup>19</sup> *ibid*.

<sup>20</sup> Brown (n 17) 67-9.

<sup>21</sup> Grabham (n 2) 189.

that have been constituted through turning pain outwards onto the law'.<sup>22</sup>

Applying Brown's analysis to her case study on M, Grabham suggests that it is possible to consider discrimination law as an investment in 'wounded attachments'. In light of this, Grabham describes how, by deploying an intersectional approach in M's case, she had externalised M's pain onto the law—onto a 'politically paralysed system embedded in disciplinary identities'.<sup>23</sup> As a result, such an intersectional approach had little chance of successfully challenging the law's basis in disciplinary constructions of identity. Grabham then compares Brown's work to intersectionality analysis. According to Grabham, both approaches 'deconstruct, although in different ways, the identity positions—or categories—that are supposed to ground political claims'.<sup>24</sup>

In recognition of Brown's insights, Grabham notes how 'fighting to obtain individualised rights for abstract liberal subjects cannot be politically empowering or transformative'.<sup>25</sup> This, according to Grabham, could provide a clue as to why mobilisations of intersectionality analysis within feminist legal studies, and within Grabham's own experience of practice, appear to have been unsatisfactory. Furthermore, Grabham states that many forms of intersectional analysis, and especially the way she applied intersectionality to M's case, do not interrogate social positions as effects of power. Crucially, Grabham points out that because of intersectionality's reliance on a combination of 'wounded attachments' in discrimination law, 'intersectionality does not challenge law's own role in supporting a politics of resentment, and the effects of such a failure ... have a considerable material effect on the lives of subordinated subjects'.<sup>26</sup>

In the fourth part of her essay, Grabham uses the work of Cvetkovich<sup>27</sup> to explore alternative ways in which political subjects

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<sup>22</sup> *ibid* 192.

<sup>23</sup> *ibid* 190.

<sup>24</sup> *ibid*.

<sup>25</sup> *ibid* 191.

<sup>26</sup> *ibid* 192.

<sup>27</sup> Ann Cvetkovich, *An Archive of Feelings: Trauma, Sexuality and Lesbian Public Cultures* (Duke University Press 2003).

can respond to the invidious state of affairs created when liberalism does not live up to its promises, other than turning the suffering inwards or externalising it. Grabham begins by comparing the similarities between Brown and Cvetkovich's accounts. Firstly, Grabham describes how their accounts relate 'suffering' or 'trauma' to conditions of inequality in late modernity. Secondly, Grabham examines how Cvetkovich's account of how trauma is embedded into everyday life coincides with Brown's understanding of 'failure as a state of being intimately connected with one's position within power relations'.<sup>28</sup> Thirdly, Grabham describes how their accounts focus on the lived experience of power configurations. Grabham then moves on to describe how Cvetkovich's account differs from that of Brown. According to Cvetkovich, subjects who experience trauma can externalise their pain in a way that does not result in the 'culturally dispersed paralysis and suffering' that Brown equates with resentment.<sup>29</sup> Grabham then reveals how Cvetkovich's account presents a third potential option available to Brown's liberal subject: 'the expression of trauma and anger ... through cultural media such as music and performance, instead of institutionally-based resentment, on the one hand, or turning the pain inwards, on the other'.<sup>30</sup>

In the final part of her essay, Grabham uses Sara Ahmed's work on impressions to gain further insight into the concept of trauma in relation to intersectionality.<sup>31</sup> Grabham explains that 'impressions describe how emotions are socially and historically mediated, and how they reside outside the individual subject'.<sup>32</sup> Furthermore, Ahmed's work considers how 'impressions are shaped by contact with objects and also by historical and cultural memories'.<sup>33</sup> Adopting Ahmed's line of reasoning, Grabham argues that Cvetkovich's 'mundane, everyday trauma' is intertwined with the impressions that we make on each other, leading to an awareness of the ways in which inequalities and their histories combine with emotions and physical encounters.<sup>34</sup> Drawing on Ahmed's argument that emotions

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<sup>28</sup> Grabham (n 2) 195.

<sup>29</sup> Brown (n 17) 55.

<sup>30</sup> Grabham (n 2) 196.

<sup>31</sup> Sara Ahmed, *The Cultural Politics of Emotion* (Edinburgh University Press 2004).

<sup>32</sup> Grabham (n 2) 197.

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid* 198.

can function as an affective economy,<sup>35</sup> Grabham then proposes an intersectional approach focused on impressions in order to ‘allow for a political reading of encounters that goes beyond the individual subject and beyond the law’s construction of individuals through disciplinary identities’.<sup>36</sup> To illustrate her point, Grabham refers back to her case study on M, concluding that although a traditional intersectional approach ‘invokes her identity as a trans woman and a lesbian ... it says nothing about the productive force of the encounter between her and her colleague in aligning her body, through hate and fear, as a threat’.<sup>37</sup>

### Scholarly Context

Emily Grabham’s essay on intersectionality appears to be predominantly situated within the feminist legal scholarly movement for a number of reasons. Indeed, Grabham mentions explicitly that one of the main aims of her piece is to ‘address some of the problems with the ways in which intersectionality analysis has been mobilised within feminist legal theory and practice’.<sup>38</sup> Furthermore, Grabham’s piece is predominantly focused on the experiences that women may have at the intersections of law’s disciplinary constructions of identity.

Grabham makes use of a number of feminist perspectives throughout her work. Early on in her essay, Grabham refers to Crenshaw’s<sup>39</sup> black feminist critique as instrumental in shifting the focus of intersectionality analysis onto the categorising function of equality and anti-discrimination laws and policies.<sup>40</sup> Furthermore, Grabham then uses the critique on intersectionality provided by Conaghan,<sup>41</sup> a distinguished feminist legal scholar, as a springboard from which to launch her own enquiry into intersectionality. One could also say

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<sup>35</sup> Sara Ahmed ‘The Organisation of Hate’ (2001) 12(3) *Law and Critique* 345.

<sup>36</sup> Grabham (n 2) 198.

<sup>37</sup> *ibid.*

<sup>38</sup> *ibid* 186.

<sup>39</sup> Crenshaw (n 10).

<sup>40</sup> Grabham (n 2) 184.

<sup>41</sup> Conaghan (n 7).

that Grabham's case study on M is in itself essentially feminist, as it describes the experience of a trans woman in bringing an intersectional claim within the categorising function of discrimination law. Grabham herself states that the use of intersectionality in M's case emerged from her own desire to put into practice the feminist anti-essentialist work that she had come across while she was completing her LLM degree in Canada.<sup>42</sup> Furthermore, Grabham uses the work of Cvetkovich, another distinguished feminist scholar, to gain new insight into how subjects can respond to the mundane, everyday trauma of liberalism's failed promises. Grabham then goes into some detail in describing the performance given by the feminist punk band Tribe 8 at the 1994 Michigan Women's Music Festival that Cvetkovich uses in her work on trauma. Initially it was hard to see the relevance of including a description of Tribe 8's performance in Grabham's work on intersectionality. However, one discovers later on that Tribe 8's performance illustrates the third option available to Brown's traumatised liberal subject: the expression of trauma through cultural media such as music and performance.<sup>43</sup> In the case of Tribe 8, some of who self-identified on stage as sexual abuse survivors, they used their music as a way of expressing their reactions to their experiences without resorting to resentment or turning the trauma inwards.<sup>44</sup>

An important element of feminist critique is the examination of how identities are constructed by unequal power relations. This provides another clue to the feminist orientation of Grabham's piece as her analysis is predominantly focused around such an examination. This is particularly evident in the works that Grabham uses to support her analysis: Brown's analysis of identity in *States of Injury* is situated within an understanding of how disciplinary power works on subject formation;<sup>45</sup> Cvetkovich adopts a similar line of inquiry in her account by focusing on the lived experience of power configurations;<sup>46</sup> and Ahmed's work on impressions provides insight into the physicality of power relations.<sup>47</sup> Furthermore, adopting Ahmed's line

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<sup>42</sup> Grabham (n 2) 187.

<sup>43</sup> *ibid* 196.

<sup>44</sup> Cvetkovich (n 27) 85.

<sup>45</sup> Brown (n 17).

<sup>46</sup> Cvetkovich (n 27).

<sup>47</sup> Ahmed (n 31).

of reasoning, Grabham states that ‘physical encounters, movements towards and away from other people in acts of affection, violence or aversion are determined by, and determine, one’s position in relation to power relations’.<sup>48</sup> Power relations therefore lie at the very heart of Grabham’s piece. Furthermore, Grabham then seeks to apply this line of reasoning to her own case study on M, commenting that many forms of intersectional analysis do not interrogate social positions as effects of power.<sup>49</sup> In particular, intersectional analysis says nothing about the power relations that were at play between M and her colleagues during their construction of M as an object of hate.<sup>50</sup>

Grabham’s predominantly feminist analysis also meets many of the criteria set out in Roger Cotterrell’s article on socio-legal studies.<sup>51</sup> In his article, Cotterrell describes how socio-legal scholarship had been involved in studying the social effects of behaviour in legal contexts. In particular, he describes how power, as an important concept within socio-legal studies, has resulted in most socio-legal work focusing on the power of law. Cotterrell then identifies how people find themselves differentially affected by such power of law as one aspect of such work.<sup>52</sup> However, it could be argued that this socio-legal dimension to Grabham’s piece is merely a reflection of what Margaret Davies describes as the now interdisciplinary nature of feminist research.<sup>53</sup> According to Davies, such research now incorporates socio-legal approaches to gain new perspectives on law beyond its normal positivist and state-determined frame. As such, Grabham’s piece could be said to be an example of such interdisciplinary feminist research, gaining a fresh perspective on intersectionality through its incorporation of a socio-legal approach.

Interestingly, the particular socio-legal dimension of Grabham’s piece has similarities to Davies’s description of research that is based on legal consciousness studies. Davies describes the particular

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<sup>48</sup> Grabham (n 2) 198.

<sup>49</sup> *ibid* 192.

<sup>50</sup> *ibid* 198.

<sup>51</sup> Roger Cotterrell, ‘Subverting Orthodoxy, Making Law Central: A View of Sociolegal Studies’ (2002) 29 *Journal of Law and Society* 632.

<sup>52</sup> *ibid* 643.

<sup>53</sup> Margaret Davies, ‘Law’s Truths and the Truth About Law: Interdisciplinary Refractions’ in Margaret Davies and Vanessa Munro (eds), *The Ashgate Research Companion to Feminist Legal Theory* (Ashgate 2013).

features of such research as expanding the notion of law beyond the set of norms determined by state institutions and illustrating, empirically, the ways in which power differences, such as those relating to race, class and gender, are written into legal narratives and legal experiences.<sup>54</sup> These are features which are also present in Grabham's work.

Margaret Davies's work on the power of the law to construct truth provides additional insight not only into the role of intersectionality within feminist legal theory and practice, but also into the line of reasoning that Grabham adopts in her piece. Davies describes how 'from its inception, feminist legal theory has had to confront a matrix of interrelated and mutually reinforcing legal "truths" which are substantive, jurisprudential and declarative (or performative) in nature'.<sup>55</sup> Law's substantive truths are the particular representations of the world upon which law is premised, which may include false stereotypes and normative biases, while jurisprudential truth reflects certain presumptions about the capacities and functions of law in society. Intersectionality, however, appears to challenge law's declarative or performative truth, that is, the material practices through which whatever is declared by law becomes truth. This authority to define in all circumstances what the truth is in the face of reality<sup>56</sup> in some ways describes the law's disciplinary constructions of identity that intersectionality seeks to challenge. Furthermore, Davies describes how 'performative truths can only be challenged by oppositional, subversive or alternative performances'.<sup>57</sup> Therefore, law's performative truth is challenged by the alternative performance proposed by Grabham of viewing discrimination claims as expressions/impressions of trauma rather than as institutional projects relying on governmentally produced identity categories.

Any lingering doubts about the situation of Grabham's piece within the feminist scholarly movement can be laid to rest by Conaghan's statement that 'feminism purports to offer a better understanding of the social world by addressing aspects which have hitherto been ignored or misrepresented, while, at the same time, countering the

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<sup>54</sup> *ibid* 78.

<sup>55</sup> *ibid* 65.

<sup>56</sup> *ibid* 66.

<sup>57</sup> *ibid*.

ideological effects to which such misconceptions give rise'.<sup>58</sup> In some ways, it could be argued that Grabham's piece offers the same 'better understanding' of the social world as is offered by Conaghan's account of feminism due to Grabham's consideration of how complex inequalities have been misrepresented by current legal approaches to intersectionality. Furthermore, by suggesting an alternative view based on expressions/impressions of trauma, Grabham is at the same time addressing the problems of such a misrepresentation.

### Grabham's Originality

The prominent use of the case study on M gives the appearance that Grabham's piece is original, as her focus on this one particular case study throughout her essay has similarities with what Matthias Siems describes as a 'micro-legal question' way of being original in legal research.<sup>59</sup> According to Siems, research into a micro-legal question involves analysis of a specific legal problem, such as a specific provision of a statute, or a specific case or series of cases.<sup>60</sup> Therefore, the particular focus of Grabham's work on the intersectional approach that she used in M's case appears to fall within this category. However, that is where the similarities end as Siems states further criteria for achieving originality via the micro-legal question approach,<sup>61</sup> which Grabham's piece falls short of. It is therefore unlikely that Grabham's piece achieves originality via this approach. Although Grabham's analysis of her case study on M involves more than just a summary of the case and incorporates sociological work from Brown and Ahmed to enrich her micro-legal analysis, her analysis of this case study only forms one aspect of her essay. This is because the main objective of Grabham's piece was not solely to analyse the effectiveness of her intersectional approach in M's discrimination

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<sup>58</sup> Joanne Conaghan cited in Davies (n 53) 73.

<sup>59</sup> Siems (n 9).

<sup>60</sup> *ibid* 148-149.

<sup>61</sup> *ibid* 149-152: According to Siems, these further criteria could be one of the following: (1) Pursuing an overall aim for coherence and integrity of the law; (2) An examination of legal history; (3) Adding macro-legal topics to a micro-legal analysis; (4) Comparing the laws of two or more legal systems in comparative law; (5) Incorporating work from other academic disciplines to enrich a micro-legal analysis; and (6) Connecting law to life.

claim, but, rather, to use the issues raised from this analysis as a launch pad from which to investigate the effectiveness of using intersectionality more generally within discrimination law. As such, although an analysis of M's case is present, it is in some ways superficial, as it lacks the level of detail that Siems describes as necessary for achieving originality.<sup>62</sup>

Originality is more likely to have been achieved in Grabham's essay via her macro-legal analysis of intersectionality, as Siems describes such research into a macro-legal question as 'concerned with general concepts, problems and principles of law', whilst not 'primarily about a specific micro-legal problem, such as a specific provision or case'.<sup>63</sup> Therefore, because Grabham's essay was primarily focused on intersectionality's general application within law, rather than on the intersectional approach that she had used in a particular case, Grabham's essay has the hallmarks of the macro-legal approach of achieving legal originality. Furthermore, Siems describes how it is useful to include micro-examples in such a macro-legal analysis to prevent it from becoming too abstract.<sup>64</sup> This is consistent with the approach used by Grabham, as she includes the micro-legal example of her intersectional approach in M's case at various points throughout her primary macro-legal analysis of intersectionality. However, other than preventing it from becoming too abstract, it is uncertain whether such an approach also makes macro-legal analysis original. Siems describes how adding macro-legal topics to a micro-legal analysis can make that micro-legal analysis original,<sup>65</sup> but he neglects to mention whether the same would work vice versa, so one can only speculate that a macro-legal topic can be made original by adding a micro-legal analysis to it. Siems describes a number of ways through which legal originality can be achieved by asking macro-legal questions.<sup>66</sup> However, the list of examples which Siems provides is by no means definitive and possibly represents a fraction of the ways in which legal originality could be achieved with a macro-legal analysis. Therefore, Grabham's approach of enriching her macro-legal analysis with both a micro-legal example and with academic

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<sup>62</sup> *ibid* 149.

<sup>63</sup> *ibid* 152.

<sup>64</sup> *ibid*.

<sup>65</sup> *ibid* 150.

<sup>66</sup> *ibid* 153-156.

work from the sociological field could be one such way of achieving legal originality in a macro-legal question not yet considered by Siems.

Grabham's extensive use of the works of Brown, Cvetkovich and Ahmed in her macro-legal analysis could lend itself to the argument that her work is not original because she is merely describing other people's views in her essay. However, Grabham does more than just describe these authors' views. Grabham draws comparisons between them, whilst also demonstrating the significance and relevance of these authors' work to her essay, such as her application of Brown's concept of wounded attachments to discrimination law.<sup>67</sup> By combining and applying insights from Cooper, Brown, Cvetkovich and Ahmed to discrimination claims, Grabham displays originality via her development of a new way of viewing complex inequalities in which discrimination claims are viewed as expressions/impressions of trauma.

### **The Main Strengths and Weaknesses of Grabham's Work**

A potential weakness of Grabham's work is that although she proposes viewing discrimination claims as expressions/impressions of trauma, she neglects to provide suggestions as to how such a view may be implemented on a practical level. This is probably because, by Grabham's own admission, she was not necessarily interested in what such a view could mean for the conduct of legal cases.<sup>68</sup> Siems, in his article on legal originality, states how law could be said to be primarily a practical subject.<sup>69</sup> Therefore, one has to consider the practicality of Grabham's proposal of viewing discrimination claims as impressions of trauma and whether such a proposal would be attractive to judges, lawyers and other practitioners. Is Grabham's impression based solution too theoretical to be practical? According to Siems, original research like Grabham's can lead to a breakthrough. However, one also gets the impression from his article that a balance must be achieved between theoretical and practical legal

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<sup>67</sup> Grabham (n 2) 190.

<sup>68</sup> *ibid* 199.

<sup>69</sup> Siems (n 9) 164.

scholarship, as ‘the latter may have the advantage of an immediate relevance for legal practice but the former can have a greater impact on legal practice in the medium and long term’.<sup>70</sup> Without further research into Grabham’s work, it is difficult to speculate whether she achieves this balance. It may be that Grabham’s proposal will have a greater impact on legal practice in the medium and long term without its influence being immediately apparent. Grabham has perhaps left her ideas in the hands of others, in the hope that they will inspire further examination into the practicalities of her approach.

Another potential weakness of Grabham’s work is that it is unclear how such an impression based view would help discrimination claims brought by subjects such as M, who do not fit into traditional legal categories of identity. Grabham states that she is not interested in what her proposal would mean for the conduct of legal cases, but then the almost practitioner nature of her work, due to her extensive use of the case study on M, leaves the reader with an expectation of some hypothetical description from Grabham as to how her impression based view would work in the context of M’s case. Apart from representing the complex inequalities experienced by the complex identities of subjects such as M better, it is unclear how viewing discrimination claims as expressions/impressions of trauma ultimately helps subjects such as M within the context of their discrimination claims. Subjects such as M ultimately want an approach that helps them to achieve the best outcome in their discrimination claims, regardless of whether that approach is intersectional or not, and it is unclear how Grabham’s consideration of trauma and impressions helps to achieve this.

Weaknesses aside, Grabham has produced a particularly well structured and well thought out piece of work that carefully guides the reader step by step, in a methodical fashion, through her development of an impression based view of discrimination claims. The possible influence on Grabham’s writing by her time in practice as a discrimination lawyer in M’s case gives the appearance that her work is written from a practitioner’s perspective. However, the potential audience for Grabham’s work is wide, as anyone with an interest in or who is affected by governmentally produced identity categories will likely find Grabham’s research to be of some use. Furthermore,

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<sup>70</sup> *ibid.*

Grabham's engaging writing style makes her work accessible to this wide audience. Interestingly, M was aware of the theoretical work on intersectionality when she contacted LAGER.<sup>71</sup> Therefore, a further potential audience of Grabham's work includes subjects like M who do not fit into traditional legal categories of identity and who are considering turning to the law as a form of redress for discrimination that they have suffered. Grabham's piece could in some ways empower them to take some control over the ways in which their discrimination claims are constructed by making them aware of intersectionality and the issues surrounding such approaches.

Without carrying out an in-depth analysis of current research into the field of intersectionality as applied to discrimination claims, as such an analysis would be outside this review's scope, one can only speculate that Grabham's impression based view represents just one possibility for challenging traditional legal categories of identity. Therefore, longevity-wise, as long as discrimination claims continue to rely on governmentally produced identity categories, it could be argued that Grabham's impression based approach will remain relevant until other approaches are developed that are more practically viable for both challenging legal categories of identity and representing complex inequalities.

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<sup>71</sup> Grabham (n 2) 187.