

Looking Intersectionally and Seeing Structural Bias

Author : Wendy Anne Bach

Tagged as : [Poverty Law](#)

Date : September 27, 2016

Priscilla Ocen, [\(E\)Racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors](#), 62 **UCLA L. Rev.** 1586 (2015).

Every day, across the criminal justice system, state and private actors wield discretion in making decisions: Is a girl standing before a police officer, prosecutor, child welfare official, or social worker a victim in need of protection or a perpetrator, in need of punishment? Does she need harsh correction or gentle, resource-rich protection? Is she a prostitute or is she a victim of trafficking? In [\(E\)Racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors](#), Priscilla Ocen presents compelling data suggesting that these discretionary decisions open a door to the exercise of implicit bias and lead to devastating outcomes, disproportionately removing Black girls from the realm of protection embodied by anti-trafficking laws and placing them squarely in the hands of the punitive mechanisms of the juvenile justice system. These facts are tremendously important but, sadly, not surprising. They only add to the wealth of information definitively establishing the disproportionate negative outcomes for Black women, men, boys, and girls in the social welfare, child welfare, criminal, and juvenile justice systems.

While the statistics are jarring, the important questions to ask are causal: Given that Black girls are disproportionately vulnerable to exploitation and disproportionately victimized, why, as a society, do we tolerate them being disproportionately punished? Why are they not, as both the data and intersectionality theory might suggest they should be, at the very center of our efforts to protect girls?

Ocen's major contribution is her ability to help her readers ask, and begin to answer, these questions. She deftly draws the lens back, helping us understand how history, social construction of identity, implicit bias, failing social institutions, and legal mechanisms allowing for discretionary determinations work together to produce these outcomes. Here we see clearly structural racism and gender bias at work. We see embodied, too, the very real human impact of failing to think and work intersectionally as we purport to solve social problems. To make these crucial arguments, Ocen beautifully marries the particular with the more general, interweaving narrative, data, theory, sociology, history, and psychology in her text.

Ocen argues that while we have a strong cultural construct equating childhood with innocence and the need for protection, Black girls occupy a space of "liminal childhood," placed at the excluded margins of idealized forms of white girlhood, both included in the concept of girlhood for the purposes of rights deprivation but excluded from notions of childhood innocence. Black girls are "at once viewed as dependent, limited rights-bearing subjects while at the same time they are imbued with adult characteristics such as sexual maturity, individual agency, and criminal responsibility." (P. 1594.) If the image of the trafficking victim is the innocent girl next door, the Black girls are Jezebel, excluded from protection, blamed for their actions and subject to punishment as prostitutes. Taking us through history, from slavery and the black codes forward, Ocen traces the roots of these powerful cultural stories, arguing compellingly that the reasons that we, as a society, have tolerated Black girls' disproportionate victimization and punishment are found in this history. But the answers to those why questions are

rooted not only in powerful, historical imagery but in important cultural institutions: under-resourced communities; failing schools; high crime rates; and “limited housing, education, and health care” (*Id.*) all explain why Black girls are situated in positions that make them more likely to be targets for sexual exploitation than their white counterparts.

Ocen’s solutions flow directly from her careful analysis: remove discretion of police, prosecutors, and other state actors by enacting mandatory decriminalization; focus on institutional structures that render Black girls more vulnerable; and establish “race-conscious and gender responsive programs in schools and other social service agencies ... where Black girls are most vulnerable to being trafficked.” (P. 1595.) Ocen proves, once again, that intersectionality is not just a theory. It is lived reality, and applying its lens exposes deep injustices and leads toward solutions that address some of our most pressing societal problems.

Cite as: Wendy Anne Bach, *Looking Intersectionally and Seeing Structural Bias*, JOTWELL (September 27, 2016) (reviewing Priscilla Ocen, *(E)Racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 **UCLA L. Rev.** 1586 (2015)), <https://lex.jotwell.com/looking-intersectionally-and-seeing-structural-bias/>.