

**International Perspectives on
Gender Equality
&
Social Diversity**

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Chapter 5

Beyond Entrenchment : Race, Gender and the New Frontiers of (Un)equal Protection

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1. Introduction

I would like to introduce the term “intersectionality.” By intersectionality, I simply mean to mark this as a provisional framework, to mark the linkages, to theorize, to eliminate and to critique the separation that traditionally has been drawn between race discrimination, as it is conceptualized in remedied and gender discrimination and as it is also conceptualized in remedy at its most ambitious level. It’s a metaphorical device to capture the content and meaning that would otherwise remain dormant and underexposed under the way of conventional analysis and practices. So, it seeks to bring actors to re-conceptualize their relationships with other modes of discrimination (in the relationships with each other). It’s pressed into services as a prism or method of reading discrimination and reading inequality.

It’s a template, which I suggest is revisable and supple enough to be deployed in a variety of contexts. So, in this particular talk, I want to mobilize intersectionality as a way of thinking about contemporary

dynamics surrounding gender rights, with a particular focus on political participation.

II. Structural Intersectionality

Now as a general objective of intersectionality, one of the main points is to use it to better understand how race and gender intersect but it's not meant only to be applied to race and gender; it's equally useable and applicable in the whole range of axes of domination that intersect in half interactive affects.

Secondary, intersectionality is not simply to mark or track the actual interactive affects of discrimination, but also to help us think critically about the advances in practices of that advance both by advocates as well as by human rights institutions seeking to create remedies for these forms of discrimination.

Now there are two points of departure that I want to highlight as I move forward in explaining intersectionality. These points of departure have been referenced in some of my colleague's talks. The first place departure is trying to bridge gaps, bridge gaps between intersectional experiences and feminism in anti races politics. The basic observation is that where race and gender do intersect in real people's lives. They seldom intersect in the way we conceptualize discrimination and in the way we pursue human rights practices. Now we have a range of ways in which we can rethink these practices and borrow offered advances that we've already made in other areas in human rights and civil rights.

First one tool, highlight and lift up, that we have tools that have been used by women over the last several decades. To recognize that women are in fact humans, as professor McKinnon said yesterday, as subjects of human rights practice and, thus, they have every right to human rights with the experience abuses of in ways that are similar to men or (the experience of abuses) in ways that are dissimilar to men.

As my colleague just preceded me pointed out, there's a whole range of human rights practices that are developed in the human rights mechanism surrounding gender to draw our attention to the various ways gender manifest itself in women's lives. It's called gender mainstreaming. Now my basic point is that we can use the various

tools and practices that we develop to make sure women's difference shouldn't make difference in their enjoyment of human rights, to acknowledge the differences among women shouldn't make a difference in women's enjoyment of human rights.

So, to the same extent that we embrace and practice gender mainstreaming as way of recognizing the social construction of gender, as way of drawing attention to the ways that are failure to think about gender often marginalizes women. I want to argue that there is a call for a similar practice: a race mainstreaming. Why do we not think that this is a parallel imperative if we are serious about making sure the differences do not make a difference in the enjoyment of human rights?

So drawing on both historical practices of women at UN and also the domestic practices of both gender base rights program as well as race base. I want to argue that we can extend these practices from the margins to the intersections to better pay attention to the women who fall between the cracks.

III. Intersectional Discrimination

A. The Autragle Debate

So the theme of this panel has been political participation in so on human rights. So let me draw out two rests of examples of the problematic that intersectionality seeks to name. One of these debates I draw up from is the suffrage debate. The other example I draw up from a mid century legal case around the discrimination on the basis of race in gender in the United States. Now, for the first example, historically one need only think about suffrage and in particular the moment when African Americans were given the right to vote, the fifteenth amendment, which is still framed as the Negro's hour. Subsequent to providing blacks the right to vote, women, some several decades later and several amendments later, were also given the right to vote. Now here is the problematic: quick, when is it that I, as African American women, should celebrate my right to vote. Did I get it in the 1860s or did I get it in the early 20s century. If you are to read conventional history at least read the text in that footnotes. Then, we would have no idea when is the African American woman, I, actually

got right to vote?

One of the most interesting reversals in the US constitutional equality discourses is that efforts to address discrimination actually began with race discrimination as supposed to gender discrimination. Unfortunately, however, the attempt to deal with race discrimination is actually a deal with men. It wasn't until the women received the rights to vote that the gender exclusion written in the 14th amendment and later into the 15th amendment was actually addressed and to some extent overturned. Now unfortunately, suffrages were not happy about having been excluded from the fourteenth and fifteenth amendment. There was sense of betrayal, of course, was perfectly understandable. What is problematic is the particular way that the betrayal was articulated. It was articulated not in the sense that the coalition of excluded had been politically atone a sunder, but instead the betrayal was betrayal that white women were articulated against white men for having excluded them from the privileges of the suffrage. Unfortunately, women suffrage campaign was not hostile to these particular images or messages about the importance of women suffrage. Women suffrage was, many instances, argued as the final bulwark of the protection against the moral in immigrants who undermine American civilization.

Now why do I tell this story, I tell you this story, first of all, to point out structural intersectionality, namely the way that certain women, particularly black women in this case, can fall between the cracks of broad skill social categorical analysis. The more importantly, I tell the story to talk about the consequences of mutually opposing rhetorical discourses on the part of African American in a white feminist in particular moments in history. Not only were white women feminist not particularly embracing of African Americans, neither were African American men particularly embracing of the suffrage rights of black women. So here we have double intersectional exclusion, first structural inequalities exclude African American women and then political intersectionality marginalizes this exclusion. In other words, African American women at this particular juncture have no leaders neither allies; they are quintercentury people without care.

Now the more recent example, they exist to inquire whether these intersectional exclusions are still shaping political and legal rhetoric about race and gender. One might agree that this historical story I told

was problematic, but these too have contemporary markings on a contemporary social order.

B. Race and Gender Discrimination

So, I'm going to move forward to the mid twenty century and clearly how black women fair this time in legal practices design to address questions of discrimination. And the case that I want to talk about (is an old case but a telling case). It's the case involves General Motors, an American company, that like many American companies practiced both race and gender discrimination in constituting their workforce. In this case, African American women are thought to claim they had been discriminated against as African American women.

The court first disaggregated the claim into two particular questions. The first question that the court asked was whether there was race discrimination. Well, the answer to that question according to the court was that there particularly was not race discrimination because GM does hire African Americans to work the floor.

The second question was GM practiced gender discrimination; sex discrimination was framed at that point. And the answer to the question was no as well. GM did hire women.

The problem was that the African Americans that GM hired weren't women and the women that GM hired weren't black. So, although GM hired blacks and women, it certainly did not hire black women. Now one would think that this would be enough to in the case with respect to whether black women had something to complain about, to clear they were subject to discrimination. But the court lectured women about the threat of opening a Pandora's box, if they were able to combine their causes of action into one super claim that will give them status to demand a super remedy.

Now of course to borrow from Catherine Mackinnon again, the absurdity of the court's position is that the court framed giving black women access to the courts on terms that only they needed was an unjustified preference to deny them what they needed, constituted equality.

Now this is the sameness and difference playing out within categories of constituency because black women's experienced discrimination is

different from the way white women experienced it or different from the way black men experienced it. Their experiences won't be recognized as discrimination at all. To be heard then, black women would have to make their experience of race discrimination like black men's experience or their experience of gender discrimination like white women's experience. These experiences more over are framed as the central parameter of race and gender discrimination respectively, race as what happens to blacks who happen to be men, genders what happens to women who happen to be wives. Racism is not what happens to blacks who happen to be women, and sexism is not what happens to women who happen to be black.

Other courts reinforce these black women attempt to pose themselves as class representatives. Many courts were not receptive these claims. They claimed that black women were too different from white women to represent all women, or black women were too different from black men to represent all blacks. Yet white women aren't different from white women as white women are different from them. No court has ever denied class representative status to a white woman upon the claim she could not possibly represent all women because she was white. But the courts repeatedly rejected black women as class representatives because they were black. Indeed, one court forth rightly claimed that a black plaintiff didn't claim that she was discriminated against as a woman but only as a black woman. So preservably a white woman's claim would be more representative solely because she needs not to articulate her race as part of a claim. But this doesn't make her more representative, it just makes her difference normalized.

These are differences the court has struggled to manage. And, although formally the rules of depravity have changed, there is little evidence to suggest its actual practices in the majority of the employment contexts have changed significantly. So, depravity represents two staffs along the way to understanding intersectional discrimination. First, black women cannot prove their cases in an aggregate way, and then, the court takes this marginalization to suggest that to create a remedy for them is to give them a privilege that no other groups actually have. So, at the end, this creates double burden of discrimination. There is structural discrimination that actually creates the working condition or the material inequality. And then there is remedial and

subsequent political marginalization of this intersectional discrimination.

IV. Intersectional Invisibility

So one of the questions that this raises for us is : Why is it and how is it that this set of practices are continuing to frame the way that we think about discrimination. One of the ways in which this is simply normal way of framing discrimination is that we have imagined ourselves as a political and social world constituted around mutually exclusive practices. So gender discriminations is what happens to a group called women, race discrimination is what happens to a group called people of color, class discrimination is what happens to economically marginal people, homophobia has sexism, agism, ableism, all these things happen to groups that are characterized as such as minorities, such as differently able people and as older people.

Now one of the consequences of thinking about discrimination in these particular terms is that the remedial structures both of law and politics are engendered by single axes' analogical frames. These frameworks determine what kind of interventions are precluded, what illusions occur, when it is that the more tied dimensional field of power is reduced to a single cause of factors. In some, then, history, law and politics all seem to present mutual exclusive constituencies experiencing distinct modes of disempowerment which can be captured in addressed with distinct legal and political interventions. But, across the world, the situation doesn't look like this. The world looks a little bit more like this with overlapping groups where any claim for a whole potentially erases the diversity within these groups. The reality then is that none of us live in exclusive boxes. We are always simultaneously members of lots of groups and sometimes members of more a lot of groups, there are subject to different forms subordination and exclusion. What happens then is that we face interactive forms of discrimination, and these interactive effects sometimes defy the political remedial interventions because these interventions are so partial. As a consequence, for example, depravity is where all real entries are ignored because of their intersectional nature.

Yet, the diversity and the actual reality of difference, advance is little

unless we can theorize what difference these differences make. It seems to be, for example, in early debates between women of color and white feminist. There, often difference was cited without thinking or talking about what difference that difference made. To politics, to law, to coalition building, some differences matter some do not. So intersectionality is a way of thinking about the intersections of these various movements and to call attention to the way race is thought about in narrow ways and the way the gender is thought about in their ways. In particular, in ways that highlight those who are dominated in the group as suppose to draw attention to those who are marginal in the group.

V. Defining Intersectionality

So let me turn my attention quickly to the actual metaphor of intersectionality. As you can tell, I'm a visual person I use metaphors, graphs, charts, cartoons to try to mark certain ideas so that I can remember them, convey them and theorize them more directly. My main objective in thinking about how to map intersectionality was to figure out how we think about these issues conventionally and drive that thinking to the places where this thinking actually intersects. In other words, taking race as mutually exclusive from gender in the way we think about it and thinking about what happens when those dynamics intersect with one another. There are few listed but they do the work I believe in bringing to visibility what is often invisible. So if we think about intersectionality in terms of axes of subordination and traffic. The axes of subordination represent the deep grooves in more societies that had been created through millennia of social practices, such that these dynamics are pretty much natural; they structure society, structure relationships. They are the roads, the axes. So we think about the road of racism as traveling along the north south direction, in the road of sexism traveling western on it east west direction, if we think homophobia is going from northeast to southwest, and class is going from southeast to northwest, we have sensed it in many different roads upon which parallel travels. And the vehicles are the contemporary articulations, the policies, the practices they get reinvented in every generation, that carry subordinating messages and

disempowerment along those tracks.

Now we think of intersectionality in that way. We focus then on those who exist in the intersections of these various forms of subordination. Now my interest is not only in thinking about what happens to people who are located in those intersections, in other words not just the structure of inequality but the structure of remediation. In other words when women are caught in the intersection when they are subject to discrimination on the basis of race, class and gender, the question is when the ambulance rushes to the intersection to determine whether she is in short against this particular entry. The tendency is to say that if we can't tell for short that injury is completely caused by race or completely caused by gender or completely caused by class, no one claims responsibility for the victim that's in the intersection and tendency is getting in the ambulance and driving away. So I want to maintain in focus both under structure and also rhetorical marginalization within traditional human rights, civil rights and political practices that these women face.

VI. The Consequences of Intersectional Invisibility

So let me draw attention very quickly to some of the consequences of this and then move into two examples before I conclude.

I often say that as consequences not focusing on intersectionality, there is invisibility that's being created. What do I mean when I say invisibility? There are various ways in which intersectional dilemmas. A woman of color I render invisible.

One way is what I called over inclusion. Over inclusion is one of the particular problems frame that the gender problem or sometimes the race problem, but in fact the problem is far more nuance and far more targeted to a subgroup of women because of another identifier or another subcategory in which they exist.

So for example, we might talk about the feminization of poverty, which is a conversation that we had a lot about ten years ago, with a more contemporary conversation about trafficking. It's pretty clear not all women are subject to trafficking, it's pretty clear on that certain women in certain societies who are socially marginal within those societies for a range of reasons tend to be more vulnerable to trafficking

than women who are not socially marginal. Often this social marginality is not simply a class marginality. It's based on other identifiers. It's based on the relationships of their very communities to dominate of communities.

The problem is if we don't fully understand the problem, the remedies are unlikely to fully address the vulnerability. In additional over inclusion, there was what I call under inclusion ; that is when there is clearly a problem of gender or problem of race, because in addresses, a subgroup of women within a broader group, usually a marginal subgroup is not really regarded as high on the list of priority.

So for example, incarceration of women in the United States, women represent the highest and the fastest growing group of incarcerated individuals ; most of those women are black and brown, and most of the reasons for their incarceration are entirely gender from their vulnerability to violence from their relationship to men who are engaged in drug trade. To the conditions of their confinement in which their relationship to their families are far more fractured than those of men because of gender reasons. For all these gender contexts that play out one might think that incarceration of women would be high on the list now in various other organizations of women. Organizations of traditional mainstream feminism virtually never talk about incarceration of women. Well, it is not high on the list. Why, I would theorize, it's intersectional problem, it's a problem that is just as a subgroup of disempowered women, it is not one that reflex the interest of mainstreaming women.

So I could go further and talk about other forms of discrimination. There are ranges of intersectional discrimination. Some are targeted exclusions, which were discussed yesterday in terms of violence against a certain kind of women, in terms of rhetoric that frame certain women as lower class women in large part because of the intersectional sex and race stereotypes. There is intersectionally as plays out with respect to a man who is also subject to a range of stereotypes. There is structural intersectionality where backgrounds social practices, economic and historical conditions, shapes, the basic life of many people, and make them subject to discrimination.

For example, a lot of violence in India against Dholot women is often framed just anti violence. It's actually intersectional because of

a background set of conditions that place upon women a whole range of responsibility is including negotiating in the public sphere for the basic life necessities or means they are put in the situations where they are subject to violence. There is compound discrimination which is what we discussed as depravity, structural dynamic discrimination which is the example that I just gave.

VII. Conclusion

So now in conclusion, I want to suggest two examples, to worry about the extent to which contemporary political practices potentially lead us, of the exclusion that I talked about at the beginning of this talk. One of those examples draws from what I just mention about what is happening about women in prison. What we have in the United States is two different movements.

We have anti incarceration movement, which focuses on African American men as endangered species and we have anti violence movement, which focuses on women as subject to violence. What we don't have is an overlapping movement that recognizes that violence against women is one of the primary risk factors for the incarceration of women. We also don't have anti incarceration movement that recognizes that male violence is also one of the precursors for male incarceration. So we have a mutually exclusive improvement that unfortunately does not draw all the resources that it could draw in order to mount a more affective political and regal attack on the growth of incarceration. Incarceration in the United States is now one of the most significant budgetary items in most states. We spend more money on prison guards in California than we do on undergraduate education.

The second final example is what's happening in the realm of affirmative reaction. Now I would like to have a little final with this but I don't have time right now. So let me give you a hint about why I give you this picture.

This is a Newsweek cover that seeks to engage readers on the question of whether affirmative action is still necessary. One might think that putting this person on the cover has some kind of relevance to affirmative action. This is beneficially ; perhaps he is a plaintiff of

one of the cases. In any of them its suggested illustration is trying to give you some kind of symbol, some kind of way of thinking about whether we still need affirmative action. Now light up the back, it tells you a couple of ways that you should think of affirmative action.

No. 1, it's about race not gender, No. 2, it's about a middle class not providing opportunity for working class in poor people, No. 3 it's about lots of other people of power. So light up the back, that's telling you something. Let me tell you that this person has nothing to do with this case. Let me tell you this person is a model. Let me tell you that those aren't his clothes, neither are his titles or his glasses. If you looked into inside cover, there is credited given to GAP, to Ralph Lauren, to designers for creating this image to give you particular narrative for thinking about affirmative action.

What does this have to do with the problem that I'm discussing? The main problem of affirmative action today is as it's framed in race terms as a black entitlement problem. It means many white women don't recognize their beneficiaries. Primary beneficiary is affirmative action. There've been numerous political campaigns to eliminate affirmative action.

Understandably the attempt now is to draw white women into the defense of affirmative action. But the problem, as the other examples that I gave you, suggests a mutually exclusive rhetorical approach when white women are brought into affirmative action, it is as the substitute to talking about race as suppose to talking about race and gender. And not too surprisingly, it has not been successful in none of the campaigns to save affirmative action has this approach won the majority of white women. So affirmative action lost in California, it lost in Washington and just last year, it lost in Michigan. So my suggestion is that intersectionality might help us re-imagine politics in ways that more that create more opportunities for us to create women coalitions.

I will suggest provocatively in conclusion, and this kind of intersectionality then calling for is not US only a product, it is not something that's only domestic, it is something that I would suggest would help us reverse the reversals of human rights, gains that we've lost both on the basis gender and on the basis of race around the globe.

Thank you.

Chapter 6

New Dimensions of Law and Gender in Canada

Nathalie Des Rosiers

1. Introduction

April 2007 marked the 25th Anniversary of the *Canadian Charter of Rights and Freedoms*⁹⁴ which provides for an equality provision⁹⁵ and a special guarantee that "Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons."⁹⁶ The adoption of the Charter and its recogni-

⁹⁴ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (U.K.) 1982, c.11 (hereinafter the *Charter*).

⁹⁵ Section 15 reads as follows:

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

⁹⁶ Section 28 of the Charter, *supra* note 93.