

# Perspectives on Intersections of Race, Ethnicity, Gender, and Other Grounds: Latinas at the Margins

---

*Julissa Reynoso\**

## INTRODUCTION

A review of United States law reveals that the most common approach to discrimination claims is one that focuses on a single ground for discrimination, such as race,<sup>1</sup> gender, disability, or national origin.<sup>2</sup> This Article proposes an alternative approach to discrimination claims—an analysis that takes into account the lived realities of individuals and the social context of discrimination. I use the “intersectional approach” as a vehicle and focus on the lived realities of racially or ethnically defined women—specifically, Latinas. I contend that intersectional oppression arises out of a combination of multiple variables, which together produce something distinct from any one form of discrimination standing alone. An intersectional approach recognizes the unique experience of the individual based on the intersection of all relevant grounds—gender, color, ethnicity, class, immigrant status, and disability. This argument acknowledges that disadvantage arises from the way society treats particular individuals, rather than from any characteristic inherent in those individuals.

Moreover, I argue that traditional top-down, rigid legal prescriptions are insufficient to solve these complex matters of intersectional oppression. A regulatory scheme that emphasizes collaborative problem solving, especially when tackling workplace discrimination, may create the most effective space in which to deal with discrimination claims, since the full scope of the intersectional vulnerability can best be understood from the ground up. The idea is to create judicial standards that require more proactive anti-discrimination programs and laws.

---

\* B.A., Harvard University; M.Phil., University of Cambridge; J.D., Columbia University School of Law. Ms. Reynoso clerked for the Honorable Laura Taylor Swain of the Southern District of New York from 2001 to 2003. In the fall of 2003, she served as a research fellow for the Project on Public Innovations at Columbia University School of Law. Ms. Reynoso is currently an associate at a New York law firm. The title of this Article was inspired by a piece written by Kimberlé Crenshaw. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

<sup>1</sup> The terms “race,” “racism,” and “racial discrimination” will be used broadly to capture all forms of group-based discrimination, including those predicated on formal racial distinctions, as well as those based on color, ethnicity, national origin, and ancestry.

<sup>2</sup> See discussion *infra* Part II.C.

With this framework in mind, I argue that Latinas have unique vulnerabilities and are more likely to experience multiple forms of discrimination because they have multiple identities, which in turn shape their experience of discrimination. For example, a Latina immigrant may be more vulnerable to sexual harassment by virtue of her recent arrival to the United States. In other words, “Because the specific experiences of racially defined women are often obscured within broader categories of race and gender, the full scope of their intersectional vulnerability cannot be known and must in the final analysis, be built from the ground up.”<sup>3</sup>

This Article has two principle objectives. First, it builds on work that recognizes the complexity of how people experience discrimination, describes a framework for a contextualized approach to analyzing discrimination claims, and presents a possible model for problem solving. In addition, this Article presents a narrative of the Latina experience within the intersectional framework.

## I. AN INTRODUCTION TO THE INTERSECTIONAL APPROACH

The concept of intersectionality has been defined as the oppression that arises out of the combination of various forms of discrimination, which together produce something unique and distinct from any one form of discrimination standing alone.<sup>4</sup> Indeed, “Intersectionality is a conceptualization of the problem that attempts to capture both the structural and dynamic consequences of the interaction between two or more axes of subordination.”<sup>5</sup>

For purposes of the present analysis, it is assumed that racially or ethnically defined women experience discrimination in a completely different way from racially or ethnically defined men, or even women as a gender. This is because groups often experience distinctive forms of stereotyping based on a combination of race, ethnicity, and gender. An intersectional approach recognizes this concept.

Although applying the intersectional approach to discrimination claims can be quite difficult, the method has numerous advantages. Intersectionality acknowledges the complexity of how people experience discrimina-

---

<sup>3</sup> Kimberlé Crenshaw, *Gender-Related Aspects of Race Discrimination*, at 3, U.N. Doc. EGM/GRD/2000/WP.1 (2000).

<sup>4</sup> The importance of recognizing the intersectionality of multiple forms of discrimination was recognized at the United Nations Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance at Durban, South Africa, in 2001. According to the United Nations High Commissioner for Human Rights, “You are also, I know, aware of the intersectionality of multiple forms of discrimination—how gender intersects with race, how sexual orientation intersects with race, how poverty intersects with race. This is a dimension which is deservedly receiving particular attention at this Conference.” Mary Robinson, *Address of High Commissioner for Human Rights* (Aug. 28, 2001), available at [http://www.un.org/WCAR/pressreleases/ngo\\_forum.htm](http://www.un.org/WCAR/pressreleases/ngo_forum.htm).

<sup>5</sup> Crenshaw, *supra* note 3, at 7.

tion, recognizes that the experience of discrimination may be unique, and takes into account the social and historical context of the discriminated group. Most importantly, it focuses on society's response to the individual as a result of the confluence of grounds for discrimination, and does not require the person to slot herself into rigid compartments or categories.<sup>6</sup> Moreover, society can improve its understanding of the impact of multiple forms of discrimination when dealing with discrimination claims arising in the courts. In this sense, the intersectional approach is ideal in addressing grievances and complaints from local and state human rights commissions and Equal Employment Opportunity Commission offices, since these entities typically define discrimination to include that which occurs on the basis of gender, race, ethnic origin, ancestry or place of origin, disability, and (in some states) sexual orientation.<sup>7</sup>

Failing to adopt an intersectional approach can be particularly harmful in many sexual discrimination and harassment cases. Stereotypes arising from particular conceptions of race and gender are often the source of discriminatory treatment. Sexual harassment cases tend to proceed on the basis that the race, ethnic origin, and ancestry of the alleged harasser and complainant are not relevant. However, a harasser may harbor certain stereotypes about the sexuality of a woman based on her race or ancestry that eventually lead to discriminatory conduct. In the international arena, genocidal violence in Bosnia, Rwanda, Burundi, and Kosovo illustrates how ethnically based violence against women has not been relegated to the distant past.<sup>8</sup> Moreover, incidents of racially motivated rape in Bosnia and Rwanda were consistently the norm.<sup>9</sup>

Women of color in particular are often the subject of both racism and sexism. In the United States, black women and Latinas are the least likely to have the men accused of raping them prosecuted and incarcerated.<sup>10</sup> Studies suggest that the racial identity of the victim plays a significant role in determining such outcomes.<sup>11</sup> Jurors may be influenced by sexualized propaganda into believing that racialized women are more likely to consent to sex in circumstances that jurors would find unlikely if the victim were not a racial minority.<sup>12</sup>

---

<sup>6</sup> See ONTARIO HUMAN RIGHTS COMMISSION, AN INTERSECTIONAL APPROACH TO DISCRIMINATION: ADDRESSING MULTIPLE GROUNDS IN HUMAN RIGHTS CLAIMS (2001), available at [http://www.ohrc.on.ca/english/consultations/intersectionality-discussion-paper\\_1.shtml](http://www.ohrc.on.ca/english/consultations/intersectionality-discussion-paper_1.shtml).

<sup>7</sup> See, e.g., 42 U.S.C. § 2000e-5 (2000).

<sup>8</sup> See Jocelyn Campanaro, Note, *Women, War, and International Law: The Historical Treatment of Gender-Based War Crimes*, 89 GEO. L.J. 2557, 2569–70 (2001).

<sup>9</sup> Kimberlé Crenshaw, *The Intersectionality of Race and Gender Discrimination*, Nov. 2000, at 7, available at <http://www.isiswomen.org/womenet/lists/apgr-list/archive/doc00009.doc>.

<sup>10</sup> *Id.* at 10.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Moreover, racially or ethnically defined women may be disproportionately affected by the experience of racism when, due to labor market segregation and relative economic disadvantage, they bear the brunt of exploitative labor practices.<sup>13</sup> This intersection of race and gender is amplified by economic rights violations, which disproportionately affect women who face dual or multiple forms of discrimination based on race, gender, immigration, and other characteristics—as is the case with Latinas.<sup>14</sup>

Women faced with multiple forms of discrimination are often left with remedies that do not fully take into account the injury. Finding out how to best address multiple violations in an intersectional manner is imperative to preserving civil rights, which are themselves interdependent and indivisible. This requires both establishing a new way of analyzing oppression and creating an innovative role for courts and other complementary institutions.

## II. COMPARATIVE AND INTERNATIONAL APPROACH

### A. *International Bodies*

Several international human rights organizations and mechanisms have acknowledged, either explicitly or by reference, that race and gender are frequently interrelated. In 1995 at the Fourth World Conference on Women, the Platform for Action acknowledged that gender subordination may be informed and heightened by racism, xenophobia, and other experiences.<sup>15</sup> The Convention on the Elimination of All Forms of Discrimination Against

---

<sup>13</sup> *Integrating Gender into the Third World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, U.N. Doc A/CONF.189/PC.1/17 (2000), reprinted in Catherine Powell & Jennifer H. Lee, Comment, *Recognizing the Interdependence of Rights in the Antidiscrimination Context Through the World Conference Against Racism*, 34 COLUM. HUM. RTS. L. REV. 235, 243 (2002).

<sup>14</sup> *Id.* at 243–44. Generally, Latinos are more likely than whites to suffer economic hardship. According to the United States Census Bureau, 21.4% of Latinos in 2002 were living in poverty compared with 7.8% of non-Latino whites. Latinos represented 13.3% of the total population of the U.S. but constituted 24.3% of the population living in poverty. UNITED STATES CENSUS BUREAU, THE HISPANIC POPULATION IN THE UNITED STATES: MARCH 2002 6 (2003), available at <http://www.census.gov/prod/2003pubs/p20-545.pdf>.

Looking at Latinas by themselves, the numbers are even more dramatic. In New York City, for example, Latinos were the largest minority group in 2001, constituting 27% of city residents. Latinas had an unemployment rate of 7.9%, which was almost double that of the 4.7% unemployment rate for white women. Latino men had an employment rate of 6.6%. The total unemployment rate for New York City in 2001 was 5.5%. Similarly, the average annual income per capita among female-headed households in New York was \$11,359 in 2001. Among white New Yorkers, female-headed households had an average annual per capita income of \$19,194. Francisco L. Rivera-Batiz, *The Socioeconomic Status of Hispanic New Yorkers: Current Trends and Future Prospects*, Jan. 2002, at 11–12, available at [http://www.pewhispanic.org/site/docs/pdf/study\\_-\\_rivera-batiz-paper-final.pdf](http://www.pewhispanic.org/site/docs/pdf/study_-_rivera-batiz-paper-final.pdf).

<sup>15</sup> *Fourth World Conference on Women, Platform for Action*, at ¶ 46, U.N. Doc. A/Conf. 177/20 (1995), available at <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm>.

Women further stated that the “eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women.”<sup>16</sup> Several other major human rights treaties provide anti-discrimination protections based on race and gender. Such guarantees are articulated in the Universal Declaration of Human Rights,<sup>17</sup> the International Covenant on Civil and Political Rights,<sup>18</sup> and the International Covenant on Economic, Social and Cultural Rights,<sup>19</sup> among others.

### B. Supreme Court of Canada

Although most of the world has not acknowledged the significance of intersectionality in addressing racism,<sup>20</sup> sexism, and related intolerances, Canadian courts have made progress in recent years in developing an approach and suggesting practical forms of implementation. For instance, the Supreme Court of Canada has recently included comments on multiple and intersecting grounds of discrimination. In *Canada v. Mossop*, the dissent acknowledged that “categories of discrimination may overlap, and that individuals may suffer historical exclusion on the basis of both race and gender, age and physical handicap, or some other combination.”<sup>21</sup> The dissent further recognized that:

On a practical level, where both forms of discrimination are prohibited, one can ignore the complexity of the interaction, and characterize the discrimination as one type or the other. The person is protected from discrimination in either event.

However, though multiple levels of discrimination may exist, multiple levels of protection may not. There are situations where a

---

<sup>16</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>17</sup> *Universal Declaration of Human Rights*, U.N. GAOR, 3d Sess., art. 2, U.N. Doc. A/217 (1948) (“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”).

<sup>18</sup> International Covenant on Civil and Political Rights, Dec. 19, 1966, art. 2, sec. 1, 999 U.N.T.S. 171 (“Each State Party to the present Covenant undertakes to respect and ensure . . . the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex . . . or other status.”).

<sup>19</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, art. 2, 993 U.N.T.S. 3 (observing that Convention rights are guaranteed to all “without discrimination of any kind, such as race, colour, sex . . . or other status”).

<sup>20</sup> The problems of multiple disadvantage and discrimination as experienced by minority women have not been acknowledged by the case law of the European Court of Human Rights or the Human Rights Committee. See ONTARIO HUMAN RIGHTS COMMISSION, *supra* note 6, at 13–14.

<sup>21</sup> *Canada v. Mossop*, [1993] S.C.R. 554, 645.

person suffers discrimination on more than one ground, but where only one form of discrimination is a prohibited ground. When faced with such situations, one should be cautious not to characterize the discrimination so as to deprive the person of any protection.<sup>22</sup>

More recently, the majority in *Law v. Canada* recognized that “[t]here is no reason in principle, therefore, why a discrimination claim positing an intersection of grounds cannot be understood as analogous to, or a synthesis of, the grounds listed in [the Canadian Charter of Rights and Freedoms].”<sup>23</sup> Canadian courts are thus evolving from addressing intersectionality within a limited context to fostering a broader understanding of the concept and using it to remedy problems of intolerance.

### C. *United States*

Intersectional claims have become more visible in the United States, especially in cases of employment discrimination, even though U.S. courts are still not as developed as Canadian tribunals or international human rights treaties in recognizing and acknowledging the intersectionality of race and gender. Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of various factors, including sex, race, and national origin.<sup>24</sup> U.S. courts have slowly accepted the notion that discrimination may be based on multiple factors, but many continue to have difficulty conceptualizing intersectional claims.<sup>25</sup> Although a few courts have begun to recognize combined race and gender discrimination claims under Title VII, commentators observe that they have not yet achieved a fully developed or adequate analytical construct for examining dual race and gender considerations.<sup>26</sup>

Discussions regarding intersectional theory first took place in the context of black women’s experiences.<sup>27</sup> In 1987, for instance, the Tenth Circuit Court of Appeals used a sex-plus analysis in *Hicks v. Gates Rub-*

---

<sup>22</sup> *Id.* at 645–46.

<sup>23</sup> *Law v. Canada*, [1999] S.C.R. 497, 554–55. Section 15 of the Canadian Charter of Rights and Freedoms guarantees the right to equality based on a list of enumerated grounds—namely race, national or ethnic origin, color, religion, sex, age, and mental or physical disability. Can. Const. (Constitution Act, 1982) pt. I (Canadian Charter of Rights and Freedoms).

<sup>24</sup> 42 U.S.C. § 2000e-2(a)(1) (2000).

<sup>25</sup> See Kathryn Abrams, *Title VII and the Complex Female Subject*, 92 MICH. L. REV. 2479, 2483 (1994).

<sup>26</sup> *Id.* at 2481.

<sup>27</sup> See, e.g., Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989); Judith A. Winston, *Mirror, Mirror on the Wall: Title VII, Section 1981, and the Intersection of Race and Gender in the Civil Rights Act of 1990*, 79 CAL. L. REV. 775, 799 (1991).

*ber Company* and remanded the case for determination of the role of race discrimination in a sexually harassing environment.<sup>28</sup> The black female plaintiff in *Hicks* was subjected to racial slurs and jokes, which were tolerated by the employer.<sup>29</sup> The court reasoned that Title VII permits evidence of race discrimination to be considered as contributing to a hostile work environment in the context of a sexual harassment claim.<sup>30</sup> The Tenth Circuit instructed the lower court to evaluate the existence of a sexually harassing hostile environment, but did not provide it with guidance as to the relative weight the racial slurs should carry.<sup>31</sup>

Notwithstanding *Hicks*, courts have been reluctant to accept the theory of combined claims because Title VII does not explicitly state that a plaintiff may bring an action on the basis of simultaneous, multiple claims.<sup>32</sup> The legislative history of the text excludes the word “solely” and bolsters the argument that Congress did not foreclose the possibility of intersectionality.<sup>33</sup> For example, in *Jefferies v. Harris County Community Action Association*, the Fifth Circuit recognized that discrimination against a woman of color is distinct from other types of discrimination.<sup>34</sup> The court reasoned that the word “or” in Title VII’s text indicated Congress’s intent to prohibit employment discrimination based on any or all of the protected categories.<sup>35</sup> With this legal precedent in place, Latinas in the United States have a greater chance of ensuring that their narratives are heard.

### III. THE CASE FOR LATINAS

Latinas experience unique forms of discrimination based on characteristics attributed to Latinas as a whole. The myths and realities of Latino life in the United States have affected the treatment of Latinos in general and have added to the devaluation of Latinas in particular. The Latina serves as a prime example of how stereotypes intersect. Latinas, as minority women, face multiple forms of subordination, “coupled with institutional expectations based on inappropriate nonintersectional contexts.”<sup>36</sup> As one commentator explained, this “shapes and ultimately limits the opportunities for meaningful intervention on their behalf.”<sup>37</sup>

The Latina experience with domestic violence illustrates how particular Latina norms can affect the ability of the legal regime to protect

---

<sup>28</sup> *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1419 (10th Cir. 1987).

<sup>29</sup> *Id.* at 1409.

<sup>30</sup> *Id.* at 1417.

<sup>31</sup> *Id.* at 1413–17.

<sup>32</sup> See 42 U.S.C. § 2000e-2(a)(1).

<sup>33</sup> See 110 CONG. REC. 2728 (1964); *Jefferies v. Harris County Cmty. Action Ass’n*, 615 F.2d 1025, 1032 (5th Cir. 1980).

<sup>34</sup> *Jefferies*, 615 F.2d at 1031–32.

<sup>35</sup> *Id.* at 1032.

<sup>36</sup> Crenshaw, *supra* note \*, at 1251.

<sup>37</sup> *Id.*

them. For example, a batterer who is a United States citizen may manipulate and control his immigrant wife by threatening to have her deported if she complains about his violence and may coerce her to stay with the empty promise of filing her residency papers.<sup>38</sup> Language barriers pose another obstacle. Community outreach programs for Spanish-speaking victims of domestic violence are practically non-existent, and few materials are created specifically for Latinas or translated into Spanish.<sup>39</sup> Moreover, Latinas without economic resources must often rely on public service providers. Yet, police officers and others who interact with battered Latinas seldom offer culturally sensitive responses or Spanish language assistance.<sup>40</sup> Understanding the lived historical experience of Latinas is also of utmost importance. In Mexico, for example, a law referred to as *abandono de hogar* punishes women who leave their homes, even when fleeing domestic violence.<sup>41</sup> Women convicted of “abandoning the home” often lose custody of their children.<sup>42</sup> Some Mexican women who immigrate to the United States erroneously believe that these laws still apply.<sup>43</sup>

Latinas are also more likely to experience discrimination in the workplace. Latina immigrants, for example, are more vulnerable by virtue of their recent arrival in the United States and relative inability to speak English fluently.<sup>44</sup> Further, claims involving sexual harassment and discrimination of immigrant factory workers by their foreman are often exacerbated by the complainants’ ethnic and linguistic characteristics, as well as their place of origin and immigration status.<sup>45</sup>

To combat these problems, it may be appropriate to determine cases on the basis of all relevant forms of discrimination, even where sufficient evidence of wrongdoing exists on a single ground. If a woman who is a recent immigrant alleges sexual harassment, it may also be appropriate to consider her place of origin, citizenship, and ethnic origin so that the investigator—and later the board of inquiry—can determine whether the harassment was related to the woman’s actual or perceived vulnerability as a recent immigrant or a perception of her sexuality based on her place of origin.

---

<sup>38</sup> See Michelle J. Anderson, Note, *A License to Abuse: The Impact of Conditional Status on Female Immigrants*, 102 YALE L.J. 1401, 1424 (1993).

<sup>39</sup> Mujeres Latinas en Acción, *Latinas and Domestic Violence*, at <http://www.mujereslatinasenaccion.org/Latinas%20&%20DV.html> (last visited Jan. 20, 2004).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* See generally Julia Pérez Cervera, *Balance Sobre Violencia Doméstica* (2003), available at <http://www.cladem.org/espanol/regionales/Violenciadegenero/Proyecto/mexico.doc>.

<sup>42</sup> Mujeres Latinas en Acción, *supra* note 39.

<sup>43</sup> *Id.*

<sup>44</sup> See Maria L. Ontiveros, *To Help Those Most in Need: Undocumented Workers’ Rights and Remedies Under Title VII*, 20 N.Y.U. REV. L. & SOC. CHANGE 607, 618 (1993–94).

<sup>45</sup> See *id.* at 620–21.

To tackle these complex cases effectively, courts must shift from a single-ground perspective to an analysis based on the assumption that an individual's experiences are based on multiple identities that can be linked to more than one form of oppression. Further, this analysis requires consideration of contextual factors, which vary from case to case. This would require a review and examination of the discriminatory stereotypes faced by Latinas, which would include the nature and situation of the individual at issue, and the social, political, and legal history of the person's treatment in society. A contextual analysis mandates a pragmatic, bottom-up approach with clear parameters and standards that take into account the complex intersections of racially and ethnically defined women.

#### IV. DEVELOPING AN INTERSECTIONAL AND PRAGMATIC APPROACH

In light of the complex intersections of gender, race, and other status, changes in reporting methodologies, information gathering, and the working methods of the U.S. legal system and other institutions are necessary in order to stem the tide of discrimination and determine the most appropriate remedy.

##### *A. Reporting Methodologies and Information Gathering*

Government agencies and nongovernmental organizations should disaggregate information, particularly statistical data, collected on the racial and ethnic characteristics of a certain population according to gender. Information collection should include a focus on issues that are particularly relevant to women of disadvantaged racial groups, like Latinas, which may be different from issues of women generally—even those within the same geographic community.

Since community spokespeople are often men, especially those in Latino neighborhoods, information gathering should seek out women's perspectives.<sup>46</sup> This may require confronting language barriers, women's inability to speak freely with governmental officials regarding potential abuses, and community norms that pressure women not to speak about their rights violations.<sup>47</sup> For example, facilities and sites should be found where women can speak directly to officials in conditions designed to safeguard women's security and confidentiality. Staff members should receive training in dealing with gender-related issues and female interpreters should be available.

---

<sup>46</sup> See *Integrating Gender*, *supra* note 13.

<sup>47</sup> See *id.*

### *B. Legal Remedies*

Even if courts acknowledge the reality of discrimination on multiple grounds, courts must take the further step of developing appropriate remedies to address these claims. As the aim of remedies is, in part, to restore the person to the position she would have been in had the discrimination not occurred, evaluating the damage inflicted on a person as a result of discrimination is crucial to establishing an appropriate remedy. Thus, there may be circumstances in which an individual's vulnerabilities—based on multiple forms of discrimination—warrant acknowledgement in the damages phase for harms such as injured dignity or mental anguish.

The principles of affirmative action provide some further guidance in remedying and preventing systemic discrimination. By acknowledging that existing social and legal arrangements have benefited certain groups and disadvantaged others, affirmative action programs attempt to restore balance by targeting disadvantaged persons—namely, those who experienced compounded or intersectional discrimination.

### *C. New Approaches to Problem Solving*

Rather than following rigid legal prescriptions or prohibitions against clear discriminatory action, in the context of employment, employers should embrace problem solving efforts to identify and root out subtle causes of discrimination. Employers can target discrimination directly, for example, by increasing workplace diversity and adopting creative approaches to fostering a non-hostile work environment.

Although the anti-discrimination laws of the 1960s were passed to combat acts against minorities and women, the discrimination that these laws sought to stop was on average clear, intentional, and well-established.<sup>48</sup> While these measures have been effective in fighting the most blatant kinds of racial and gender discrimination, they have not been as effective in combating more subtle and contemporary forms of discrimination—what is often referred to as “second-generation discrimination”—including discrimination arising from intersectional oppression. According to Susan Sturm,

[Second-generation discrimination] results not from an intentional effort formally to exclude, but rather as a byproduct of ongoing interactions shaped by the structures of day-to-day decisionmaking and workplace relationships. The glass ceiling remains a barrier for women and people of color largely because of patterns of interaction, informal norms, networking, training, mentoring, and evaluation . . . .

---

<sup>48</sup> See Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458, 466–67 (2001).

Claims of hostile workplace environment, exclusionary subjective employment practices, and glass ceilings are, by their nature, complex. Their complexity lies in multiple conceptions and causes of the harm, the interactive and contextual character of the injury, [and] the blurriness of the boundaries between legitimate and wrongful conduct . . . This complexity resists definition and resolution through across-the-board, relatively specific commands and an after-the-fact enforcement mechanism.<sup>49</sup>

Indeed, fighting intersectional oppression requires a move away from minimal grievance and education procedures towards innovative participatory collaboration concerning all forms of discrimination.<sup>50</sup> Judicial standards should be created which mandate that employers establish concrete anti-discrimination policies and procedures that guarantee feedback and participation from those whom are most vulnerable to discrimination—in many cases, racially or ethnically defined women. This model seeks to deal with the real problems of limited information, articulateness, and foresight. A judicial standard should specify precise targets and performance measures, while leaving enough discretion to employers and other interested parties for them to derive effective solutions. The goal is to induce internal deliberation and external transparency by forcing employers and other stakeholders to agree on a clear description of their practices. This would, in turn, force them to reflect on and explain their potentially discriminatory actions.

#### CONCLUSION

The multiple factors that comprise a person's identity are impossible to separate—so too are the elements of discrimination that occur because one is a woman of color. The case of the Latina demonstrates the urgent need for legislatures, courts, and administrative agencies to include gender-based acts in the definition of racial and national origin discrimination. A methodology which takes into account the full dimensions of a person's experiences is best suited to preserving rights and remedying wrongs. This analysis proposes a process of problem solving that requires legal standards and a means of measuring progress that induces internal, contextually based deliberation and external transparency. This prescription requires the legal system, along with its complementary institutions, to play an innovative role in addressing intersectional discrimination.

---

<sup>49</sup> *Id.* at 469.

<sup>50</sup> See ARCHON FUNG & ERIK OLIN WRIGHT, *DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE* 272–75 (2003).

