

# *The Structural Limits of Title VII in Addressing Intersectional Discrimination*

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**Abstract.** This paper examines the structural limits of Title VII of the Civil Rights Act of 1964 in addressing intersectional discrimination. While the statute prohibits employment discrimination “because of race” and “because of sex,” its categorical design requires courts to treat each ground discretely, producing legal invisibility for women of colour whose harms cannot be parsed into single axes. Through doctrinal analysis, the paper interrogates this paradox: Title VII has achieved significant advances, from recognising sex stereotyping in *Price Waterhouse v. Hopkins* to dismantling overt exclusionary practices, yet its single-axis framework consistently erases intersectional claims, as illustrated by *Price Waterhouse v. Hopkins* and *DeGraffenreid v. General Motors*. Engaging with jurisprudential theory, the analysis situates Title VII within broader debates between Hart’s positivist emphasis on rule-based clarity. The paper argues that equality statutes function as boundaries: they forbid certain conduct but cannot repair systemic subordination. Comparative reference to international frameworks such as CEDAW highlights alternative models of substantive equality, though enforcement remains weak. The conclusion considers both legislative reform and judicial reinterpretation but emphasises the central paradox of equality law: the very clarity that secures its enforceability also renders it least capable of recognising injustice in its most entrenched, intersectional forms.

**Keywords:** Title VII, sex stereotyping, disparate impact

## **1. Introduction**

The Civil Rights Act of 1964 marked a transformative moment in U.S. legal history, embedding principles of equality into the statutory fabric of employment relations and reshaping the relationship between law and social justice [1]. Title VII of the Act, in particular, prohibited discrimination in employment “because of race, colour, religion, sex, or national origin.” This language was revolutionary: it aimed to dismantle entrenched systems of exclusion and open workspaces to groups that had been historically marginalised. The inclusion of “sex” was itself politically contested, introduced late in the legislative process by Southern opponents who hoped its addition would weaken the bill’s chances of passage, only for it to survive and become a central feature of American employment law. Yet, despite the statute’s expansive scope and symbolic power, its textual design remained categorical. Each protected trait was enumerated discretely, with no explicit recognition that multiple traits might intersect to produce compounded disadvantages [2].

Title VII could address discrimination against women as women and against racial minorities as racial minorities, but it lacked a framework to address the discrimination faced by those positioned at the intersection of both identities, such as Black women in the workforce.

The history of Title VII thus reveals both the strength and the limitations of this categorical design. On one hand, the statute facilitated landmark advances, as courts applied it to strike down overtly exclusionary practices, to recognise sexual harassment as sex discrimination, and to hold employers accountable for enforcing gender stereotypes. These accomplishments underscore the transformative capacity of doctrinal innovation to reshape workplace norms. On the other hand, courts have consistently treated sex and race as separate silos of analysis, requiring plaintiffs to fit their claims neatly into one category or the other [3]. This single-axis framework has produced what Kimberlé Crenshaw famously theorised as the “intersectionality problem”: when discrimination is experienced simultaneously along multiple dimensions, the law fails to apprehend it.

Intersectionality, first articulated by Crenshaw in 1989, functions both as a descriptive tool and as a diagnostic critique of law. Descriptively, it captures the reality that oppression is rarely experienced in isolation; instead, it is constructed through the interaction of multiple categories such as race, gender, and class. Diagnostic in nature, it exposes how law’s commitment to categorical clarity systematically disadvantages those whose identities straddle more than one protected trait. For example, Black women may face discrimination not only as women or as Black individuals, but as Black women, which is a form of subordination that is qualitatively distinct from either racism or sexism alone. Yet Title VII, in its current form, cannot apprehend this indivisible experience, because its statutory language assumes that identity can be neatly disaggregated.

This research project interrogates that problem directly. It asks: How has the ambiguity in Title VII’s treatment of “sex” and “race” limited the recognition of intersectional discrimination against women in the workforce? In doing so, the project situates Title VII within broader debates about the meaning of equality. Is equality merely the categorical prohibition of disadvantage “because of” a protected trait? Or must equality law evolve to capture the cumulative and structural realities of oppression that exceed categorical analysis?

The significance of this inquiry is twofold. Academically, it exposes the doctrinal tension between clarity and complexity in equality law. Title VII’s categorical structure promotes administrability, but at the cost of nuance. Practically, the stakes are profound for plaintiffs whose discrimination claims multiple axes of identity. Black women, Latina women, and other intersectional plaintiffs’ risk having their experiences rendered invisible by a statutory framework that insists on parsing harms into separate silos. If equality law cannot recognise the most entrenched forms of discrimination, then its capacity to achieve substantive justice is fundamentally in question.

Methodologically, the project adopts a doctrinal and jurisprudential approach. It proceeds through case studies, each chosen to illustrate the paradox of categorical equality. *Price Waterhouse v. Hopkins* (1989) demonstrates the Court’s willingness to expand Title VII to cover sex stereotyping, but also its continued reliance on single-axis analysis [4]. *DeGraffenreid v. General Motors* exemplifies the law’s categorical rigidity, where Black women plaintiffs were denied the right to litigate as Black women [5]. These cases will be contrasted with international frameworks such as CEDAW, which gesture toward substantive equality but often falter in enforcement.

This comparative gesture highlights the global significance of the problem. While Title VII’s categorical model is uniquely American, its structural blind spots echo international challenges. Instruments like CEDAW and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) purport to capture discrimination “in all its forms,” and have

acknowledged intersectional harms in principle. Yet enforcement mechanisms remain weak, and domestic implementation often replicates the same categorical parsing found in U.S. law. The persistence of this problem across jurisdictions reveals a structural tension: equality law is most enforceable when it is categorical, but most just when it is contextual.

The thesis advanced is that Title VII, while historically central to the project of women's liberation and racial equality, remains structurally constrained by its categorical drafting. The statute's silence on intersectionality means that it can prohibit certain discriminatory conduct, but it cannot capture the most complex and entrenched forms of subordination. Scholarly debates reflect this tension. Legal positivists, drawing on H.L.A. Hart, celebrate Title VII's rule-based clarity as the source of its legitimacy: categorical drafting ensures predictability and uniformity [6]. Equality statutes thus act as boundaries: they forbid particular practices, but they cannot fully dismantle systemic injustice. Through doctrinal case studies, jurisprudential theory, and comparative analysis, this project argues that Title VII exemplifies both the promise and the limitations of equality law. It represents progress, but progress circumscribed by the categories through which law apprehends identity.

## **2. Title VII and the categorical design of equality**

### **2.1. Historical context and legislative background**

The implementation of the Title VII of the Civil Right Act of 1964 symbolised a profound moment with the U.S. equality jurisprudence. Around this time, Individuals rights have progressively shifted from the 'individual' towards the 'collective' after the establishment of the United Nation 1945. The acidification of the convention after the implementation of the Universal Declaration of Human Rights has progressively uplifted the specific minority groups that were originally marginalised within history. While during this time many many individuals sought to claim their rights and provoked many other correspondent movements such as the second wave feminism and Civil Rights movement, where individuals weaponised the core values embedded within the UDHR in desire for their liberation. However, one fundamental flaw within the Title VII of the Civil Rights movement was its categorical design, despite the expansive scope, where it prohibits discrimination "because of race, colour, religion, sex, or national origin" [7]. This enumerated each protected characteristic directory with no recognition of overlap prevented a true pathway towards substantive equality within the US, which hindered the administrable categories and dismantled overt exclusionally created in employment. However, its clarity also produced ambiguity in cases where discrimination could not be distinctly attributed to one axis of identity.

### **2.2. Doctrinal limits: ambiguity and single-axis framework**

Yet the very clarity of Title VII's language is also its limitation. The statute's insistence on discrete categories creates a doctrinal framework that is ill-equipped to handle discrimination that does not fit neatly within one box. This ambiguity is not simply theoretical. In practice, courts have frequently resisted claims that assert harm "as Black women," insisting instead that plaintiffs pursue claims either as "Black" or as "women," but not as both simultaneously. The rigidity of single-axis analysis obscures the compounded nature of discrimination, leaving plaintiffs whose experiences straddle multiple categories without full recognition under law. The result is that the most entrenched forms of structural inequality, where those operating at the intersection of race and gender are often evading judicial redress. The tension between clarity and complexity lies at the

heart of equality law. Title VII can prohibit, but it cannot fully recognise and therein lies its limitation.

### 3. Case studies and doctrinal developments

#### 3.1. Price Waterhouse v. Hopkins: expanding sex discrimination doctrine

Ann Hopkins, despite her strong record in client acquisition and management, was denied partnership after evaluators urged her to “walk, talk, and dress more femininely,” wear makeup, and adopt a “softer” demeanour. These documented remarks provided direct evidence that sex stereotyping shaped the decision. Hopkins’ case thus starkly illustrated the persistence of gender stereotypes in elite professional environments, raising the question of whether such stereotyping was cognisable as discrimination “because of sex” under Title VII.

The Court held that these remarks were direct evidence of sex discrimination [8]. The Courts made clear that sex stereotyping belonged to the Title VII’s prohibition on disparate treatment, confirming that discrimination need not be explicit exclusions, such as a rule barring women from management, but cajole also take the subtler form of imposing gendered behavioural expectations. Hopkins also established the mixed-motive framework: where direct evidence of bias exists, the burden shifts to the employer to prove it would have made the same decision absent discrimination. This more demanding standard reduced evidentiary barriers for plaintiffs with explicit proof of bias. By shifting the risk of error away from plaintiffs in cases with direct evidence, the Court recognised the corrosive effect of stereotyping once it infects the decision-making process. The doctrine thus enhanced the enforceability of Title VII by reducing the evidentiary barriers facing plaintiffs who could show explicit bias.

Hopkins’ contribution to equality law is therefore twofold. First, it entrenched the principle that sex stereotyping itself constitutes actionable discrimination. The decision rejected the view that only categorical exclusion such as an explicit “no women allowed” rule, which often falls within Title VII. Instead, it acknowledged that discrimination often operates through the enforcement of normative expectations about how women should look and behave. Second, Hopkins broadened the conception of disparate treatment to include cases where discriminatory and legitimate motives coexist. The recognition that mixed motives still give rise to liability was a significant step toward addressing the complexity of workplace bias.

Yet Hopkins also underscores Title VII’s limits. Because the case was framed purely as sex discrimination, the Court did not address how stereotyping may operate differently for women of colour. The statute’s categorical design left no space to recognise compounded harms at the intersection of race and sex. If Hopkin had been a Black woman judged against both gendered expectations and relocalised stereotypes, the Title VII would have required her to disentangle those harms in separate claims. The textual mechanism of the Statute does not offer the recognition of intersectional discrimination and Hopkin did not provide one. This inability underscored the limitation of the statute to capture the compounded realities of discrimination that occurs at the intersections of identity.

The concept of intersectional discrimination captures a truth that categorical equality law resists: oppression is rarely experienced by one factor at a time, rather it is constructed and foregrounded through multiple categories such as race, sex, class and sexuality which creates compounded and qualitatively distinct forms of exclusion. Here, the Title VII exposes its fundamental flaws, where the prohibition of discrimination “because of sex” and “because of race” categorises the assumption of these traits to operate in isolation. However, this single axis logic obscures the authentic

experiences of plaintiffs whose shares are inseparable from such an intersection [9]. Thus, the marginal gap exposed by the intersectionality becomes a structural flaw where the statutes very form cannot apprehend the compounded character of discrimination.

### **3.2. DeGraffenreid v. General Motors: the invisibility of black women**

The limits of this form diverge within the DeGraffenreid v. General Motors (1976). In that case, Black women plaintiff argues that the company's seniority often perpetuates systems that enable historic exclusion. Since GM had not hired black women until after 1964, layoff based on seniority significantly disproportionately disadvantaged them. However, the court refused to recognise surrounding “black women” as a cognisable class, asserting that the plaintiff, it held, could sue as “black” or as “women” but not as both [10].

## **4. Jurisprudential and theoretical perspectives**

### **4.1. Hart’s positivism: clarity and administrability**

Jurisprudentially the ambiguity of the Title VII provokes long standing debates surrounding the functionality of law. More specifically, H.L.A. Hart’s positivism emphasises that the legitimate nature derived from law is stemmed from its rule-based quality and predictable application, making the correspondent repercussions and retributions clear to society. The application for Title VII succeeds precisely because it delineates administrative categories, where “race”, “sex”, and “religion” can be applied by the court consistently [11]. The McDonnell Douglas burden shifting framework establishes this positivist approach, as it provides a structured judicial reasoning through stepwise tests that secures uniformity across cases. However, intersectionality remains invisible within Hart’s framework, as the “rule of recognition” built into Title VII was never included in compounded identities, meaning judges cannot “see”. Black women as such without stepping outside the statute's rule-based logic. From a Hartian perspective, this case was a faithful application of categorical rules rather than an error, where clarity overrides complexity [12].

### **4.2. Crenshaw’s intersectionality: structural blindness**

These dynamics could be posited by Kimberlé Crenshaw’s theory of intersectionality, in which the intervention was descriptive and diagnostic [13]. She showed that legal systems commitment to categorical influence systematically disadvantages this satisfies the intersection. The discrimination upon Black women was not a sum of racism and sexism, but an indivisible form of subordination that arises from their simultaneous racialisation and gendering. This challenges the concept of equality within intersectionality embedded in Title VII. Where the statute treats categories as separate silos, intersectionality insists on their interdependence. Where Title VII aspires to formal clarity, intersectionality demands substantive recognition [14].

The two diverging paradigms within the categorical law and intersectional realities generate a significant jurisprudential repercussion. By asserting the plaintiff that fits into silos or another, courts transforms the most deeply entrenched forms of subordination into legal non-problems, causing the consequence to be visibility hierarchical, where white women are granted the ability to litigate “sex” discrimination, while Black men can litigate “race” discrimination, however Black women are the nexus of both are too complex to be categorised [15]. This reveals the paradoxical nature of the Title VII, where the statue of the promised equality produces latent pervasive forms of inequality for this who embodies the characteristics of “women” and “Black”.

## 5. Limitations and comparative framework

### 5.1. Doctrinal constraints and invisibility

The Doctrinal constraint of the categorical equality produces the following correspondent repercussions. Firstly, for Black women, Latina women, and the other at the intersection experiences what scholars described as “invisibility”, where their authentic experiences are legally unrecognisable, even when they are the most affected exclusionary practices. This so-called “invisibility” is a structural reproduction of inequality through legal forms and technical oversight. Secondly, the categorical model hampers the law's ability to address systemic discrimination since Title VII was initially drafted to combat overt international exclusion, however, discrimination today often operates in subtle, structural forms through a network of bias that ultimately cumulates disadvantaged and institutional inertia.

### 5.2. The BFOQ defence and categorical rigidity

The Bona Fide Occupational Qualification (BFOQ) defence further foreground the Title VII's categorical logic where employers may justify discrimination where sex, religion, or national origin is “reasonably necessary to the normal operation” of business, despite race is never recognised as a valid BFOQ [16]. Courts have strictly limited this defence: in *Diaz v. Pan Am*, customer preference for female flight attendants was rejected, and in *Dothard v. Rawlinson*, sex-specific hiring was allowed only in the narrow context of correctional officers in male prisons [17]. These cases show how the statute enforces bright lines around when identity may legitimately matter. Yet this very precision highlights the paradox of Title VII, where it's vigilant in policing the boundaries of categorical discrimination, drawing sharp limits on when sex or religion can ever be invoked as occupationally relevant, while refusing to recognise the compounded harms that arise when categories overlap. BFOQ thus underscores the statute's comfort with categorical clarity, even as it perpetuates blindness to intersectional realities.

### 5.3. Doctrinal constraints and invisibility

A comparative note with international law highlights both the possibilities and the limits of alternative approaches. Instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) adopt a broader conception of equality [18]. These frameworks endorse not merely formal equality but also substantive equality, which recognises the structural and contextual nature of disadvantage. CEDAW, for example, obliges states to eliminate discrimination “in all its forms,” and its committee has acknowledged the compounded vulnerabilities of women subject to multiple forms of discrimination. However, International conventions depend on state ratification and domestic implementation, and enforcement mechanisms are weak. Many postcolonial states ratify such conventions but fail to implement them meaningfully, constrained by economic dependency or political resistance. Moreover, even where substantive equality is embraced rhetorically, the legal frameworks still tend to enumerate categories separately, echoing Title VII's structural ambiguity.

The evaluation of Title VII's limits raises broader jurisprudential questions about the nature of equality law itself. Should equality be understood as a categorical prohibition, no decision “because of sex” or “because of race”? Or should it evolve to capture the structural and intersectional realities

of discrimination? Title VII embodies the first model: administrable, categorical, and rigid. Intersectionality theory demands the second: flexible, contextual, and structural. The gap between the two reveals law's paradox. The more predictable and administrable the statute becomes, the less capable it is of apprehending complex injustice. Conversely, the more law stretches toward intersectional complexity, the more it risks unpredictability and judicial overreach.

Title VII reveals a doctrinal constraint with systemic consequences. Its single-axis model enforces clarity at the expense of recognition, producing invisibility for those who experience compounded harms. The BFOQ doctrine illustrates this paradox acutely: the law is strict in drawing categorical lines but silent on intersectional overlaps. Comparative frameworks like CEDAW offer a more expansive conception of equality but lack effective enforcement. The result is that equality law, both domestic and international, remains better at prohibiting overt exclusion than at addressing structural subordination. This tension underscores the central thesis of this project: equality statutes act as boundaries.

#### 5.4. Pathways for reform

Rather than forcing the plaintiff to disaggregate a single injury into separate race and sex count, congress could adopt a statutory route to amend the Title VII, so its liability can attach when protected traits operate jointly. An example such as the congress should authorize claims "because of one or more protected characteristics individually or in combination". This could maintain the predictability and integrity while acknowledging the interactive causation without surrendering administrability while ensuring an accurate descriptive payoff.

This jurisprudential technique can provide the court to read "because of" purposively, treating iterative causation as consistent with the statute's aim to dismantle historically entrenched exclusion that leaves the text untouched, but changes the lens. This approach would recognise multiple indispensable conditions since it fit comfortably with existing motivation factors doctrine and with modern but for analysis. In order for this to happen, an operational test would firstly enquire whether the protected traits function together whether than additively, and second, whether single-axis comparators fail to account for disparity. In order to manage discretion and maintain equality within the court, this could adopt grade remedies which could be achieved through intersection specific stereotypes or decision process evidence showing that the combined identity triggered the adverse action to justify whether full relief was for interaction but-for causation, or limited relief where the intersection was a motivating factor. To manage discretion, courts can look for intersection-specific stereotypes or decision-process.

#### 6. Conclusion

The Title VII explores the paradoxical nature of equality law, where its framework provided categorical clarity that the court could apply consistency through delivery landmark victories against overt discrimination in hiring, and workforce culture. Moreover, the jurisprudential senate foreground the intersectional dilemma through Harts Positivism explanation in which the Title VII's legitimacy through the rule-based clarity enumerates discrete categories due to the court's ability to apply the statute informally. The structural blindness within the intersection of Title VII is further captured within Crenshaw's theory, where it posited that the discrimination at the intersection of race and gender is indivisibles, however, the statutes treat identities as though they can be disaggregated, resulting in invisibility for precisely those who endures the historical systemic subordination.

The issues within the intersectionality of the Title VII are also reinforced by comparative frameworks though utilising instruments such as CEDAW and CERD, articulating substantive equality and broader commitments to acknowledge the compounded vulnerabilities. However, these comparative frameworks often falter in their enforcement capabilities and reveals a broader global pattern, in which equality regimes are most administrable when they are categorical and the most when just contextual. Whether it is the domestic law or international law, they both embodied the same structural tradeoff between recognition and clarity. Moving forward, reforms must maintain legislative permit plaintiff to bring claims on the basis of combined characteristics, and acknowledgement of the paradox rather than denying it, providing statutory recognition of intersectional harm. Judicial reinterpretation, drawing on purposive and anti-subordination principles, could extend Title VII's protection without textual amendment, though at the cost of predictability and accusations of activism. Neither path is free from difficulty, but both highlight that the current framework is insufficient.

Ultimately, Title VII illustrates the central dilemma of equality law: the clarity that secures enforceability also narrows vision. To remain legitimate, law must do more than forbid explicit exclusions, it must recognise the structural injustices that shape lived experience. Only by moving beyond categorical silos can equality law honour its promise to those most vulnerable to compounded discrimination.

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