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CHAPTER 14: EU EQUALITY LAW: FROM PROTECTING ‘GROUPS’ TO PROTECTION OF ‘ALL’

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INTRODUCTION

The extended number of grounds for discrimination identified for protection by Article 13 of the EC Treaty (inserted by the 1997 Treaty of Amsterdam, now Article 19 TFEU), reflects the emergence and policy recognition of new constituencies based on identity politics, such as the gay rights, disability and older peoples’ movements. This trend towards the social (re)construction of group boundaries as intersecting and relational, in favour of an understanding of group-defined identity, multiple discrimination, and also protection for ‘all’, including those who do not fall within legally recognized social categories, has been given prominence in various jurisdictions on the international level, particularly Canada, South Africa, the USA, and the UK. Growing knowledge of the complex legal consequences arising from an increasing number of prohibited grounds, which are also intersectional, has led to an emergent debate within global jurisprudence, and feminist and critical race socio-legal scholarship, as to where the cut-off line should lie between protection for enumerated groups and recognition of individual differences and diversity. This has raised the question as to just how extensive and exhaustive such lists of grounds should be, and to related discussions comparing the merits of the ‘open’

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and ‘inclusive’ lists of enumerated grounds, often found in constitutional equality guarantees, including Canada, South Africa, and the European Convention of Human Rights, which accommodate analogous and intersectional grounds, with those of the ‘closed’ and exhaustive lists found in the EU, USA, and UK. This chapter will first examine the origins and development of EU equality legislation and its significant expansion of protected grounds, before undertaking a global comparison of the EU, UK, US, and Canadian and South African jurisdictions, with a view to evaluating how effectively the recent EU Directives on equality can address the phenomenon of multi-discrimination and accommodate the needs of individuals and/or groups currently unprotected.

BACKGROUND

The origins of equality provisions within EU law can be traced back to the 1957 Treaty of Rome, and the formation of the European Economic Community (EEC). The Treaty and its later amendments comprised the Treaty Establishing the European Community (EC Treaty), which has now become the Treaty on the Functioning of the European Union (TFEU). The Treaty centred on creating an internal market by the removal of trade barriers preventing the free movement of people, goods and services across borders. To this end, discrimination on the basis of ‘nationality’ or unequal pay on the basis of ‘gender, with respect to workers of any Member State, was prohibited in Article 12 EC and Article 141 EC respectively. Yet, Article 141 of the EC Treaty specified that the key objectives of the common market were not solely economic, they also sought to ‘ensure social progress and...the constant improvement of living and working

conditions'. Since the 1976 ruling in *Defrenne*,¹ development of European Court of Justice (ECJ) case law not only established that the dual economic and social aims embraced by the equal pay measures in Article 141 EC were central to the very foundation of the community, it also incrementally entrenched and expanded the scope of the principle of equality over the following two decades. By 2000, the balance tipped towards social justice to a point where the ECJ ruled² this should now be considered a fundamental human right, and privileged over economic competitiveness.

However, non-discrimination law focused solely on 'nationality' and 'gender' until the enactment of Article 13 of the EC Treaty in 1999 (when the Treaty of Amsterdam entered into force), which significantly extended the number of grounds for protection, and marked a major shift towards the development of a comprehensive body of EU equality law. Article 13 EC comprised the basis of four key equality Directives, which rapidly ensued. *Monaghan*³ attributes this speed of enactment to persistent lobbying by the European Parliament, and the highly effective anti-racism Starting Line Group.⁴ The

¹ Case 43/75, *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena* (Defrenne II) [1976] ECR 455; Case 149/77, *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena* (Defrenne III) [1978] ECR 1365.

² Case C-50/96, *Deutsche Telekom AG v Lilli Schroder* [2000] ECR I-743.

³ K. Monaghan, *Equality Law*, Oxford: OUP, 2007, p. 115.

⁴ 'The very important Starting Line Group was no doubt inspired in selecting its own name by the comment of the European Council on the Joint Declaration Against Racism & Xenophobia, signed by the European Parliament, Commission and Council, that this was not a "starting point for concrete action."' Ibid, p. 115.

latter, created in 1991 as a largely Anglo– Dutch initiative,⁵ took just under a decade to garner the support of over 400 bodies drawn from across Europe, ranging from non-governmental organizations, and trade unions, to academic specialists in the field, and called for enhanced legal measures to strengthen equality protection within the EU. A draft Council Directive outlawing racial discrimination followed; however, the Commission was reluctant to authorize such a mandate, which led the Starting Line Group to ratchet up it’s campaign with a renewed focus on changing the EC Treaty to reflect the proposals, which were soon after successfully realized in the form of a general, as opposed to race-specific, non-discrimination amendment.

The Racial Equality Directive (2000/43/EC) was the first Directive to arise from Article 13 EC, and required Member States to legislate against discrimination on the grounds of racial and ethnic origin within not only employment and vocational training, but social security, education and the supply of goods and services. The second enactment, the Employment (Framework) Directive (2000/78/EC), now rendered discrimination unlawful on the basis of religion and belief, disability, sexual orientation and age, but its scope only covered employment and vocational training. Both Directives hinged on four definitions of discrimination (direct and indirect⁶ discrimination, harassment, and

⁵ It was formed by the Commission for Racial Equality UK, the Dutch National Bureau against Racism, and the Churches Commission for Migrants in Europe. Ibid, p. 117.

⁶ The Race Directive provides that ‘Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary’. Monaghan (2007), op. cit., p. 121, notes this progressive amendment, as ‘it does not require proof of the existence of a rule or condition constituting an

instruction and pressure to discriminate) and also required Member States to establish national authorities to further equality initiatives. They were closely followed by the Gender Employment Directive (2002/73/EC),⁷ which prohibited discrimination between men and women in employment and vocational training, and the Gender Goods and Services Directive (2004/113/EC),⁸ which extended protection on the basis of sex to the provision of goods and services (excluding education). As *Fredman* pointed out, the material scope of discrimination law within the EU is uneven and hierarchical across the grounds, ‘with race and ethnic origin privileged over gender, which in turn is privileged over age, disability, sexual orientation and religion or belief.’⁹ The Directives also fell short of including any substantive moves towards addressing the underlying causes of discrimination through the inclusion of positive obligations. All EU Member States were required to have legislative measures in place to cover the listed protected grounds in employment by 2003, with the exception of age and disability, which were given until 2006 on account of their complexity. However, notwithstanding the recent enactment of the UK Equality Act 2010, the variable scope of the EU provisions would

absolute bar’, and therefore, does not now ‘require proof of a statistical disadvantage’, nor the need to ‘show actual group disadvantage’.

⁷ The Equal Treatment Directive 76/207 was repealed in August 2009, and replaced to incorporate ECJ case law, and some of the principle elements of the Race and also Employment Framework Directives.

⁸ This led to the 2006 Recast Gender Employment Directive 2006/54/EC which consolidated legal provisions which were spread over a number of Directives.

⁹ S. Fredman, ‘Positive Rights & Positive Duties’, in D. Scheik and V. Chege (eds), ‘*European Non-Discrimination Law: Comparative Perspectives on Multidimensional Equality Law*’, London-New York: Routledge/Cavendish, 2009, p. 74.

have failed for instance, to protect two men who faced discrimination when they were recently turned away from a UK guest house on account of their sexual orientation.¹⁰

Yet, the transposition of the EU Directives into the national law of the 27 Member States marks a major advance, as ‘the majority did not possess anti-discrimination legislation in respect of disability, age and sexual orientation,’¹¹ and now nearly all¹² have provisions which outlaw discrimination on these grounds. *Bell* argues that the extent of the influence of the EU Directives ‘in (re) shaping national law’ should not be underestimated, especially in relation to the 12 new Member States who joined the EU post 2004, ‘for whom anti-discrimination law was likely to be more novel.’¹³ Moreover, even Member States, such as the UK, who already had a well developed corpus of non-discrimination provisions, embarked on a series of progressive legislative reforms. In respect of the specific example of the UK, as *Waddington* noted, the transposition posed a threat to ‘the coherency and consistency of a pre-existing system of discrimination law.’¹⁴ Although the EU had attempted to equalize the stark differences in the levels of protection accorded to its specified grounds, this nonetheless resulted in an anomalous situation in the UK, where the amendments to the Race Relations Act 1976 in response

¹⁰ ‘Gay Couple turned Away from B&B by Christian Owner’, *The Guardian*, 21st March, 2010.

¹¹ M. Bell, ‘The Implementation of European Anti-Discrimination Directives: Converging towards a Common Model’, *The Political Quarterly* 79(1), 2008 (Jan-March), p. 36.

¹² With the exception of Sweden, which has still to enact age legislation. *Ibid.* p. 36.

¹³ *Ibid.* p. 42.

¹⁴ L. Waddington, ‘European Developments, Taking Stock & Looking Forward: The Commission Green Paper on Equality & Non-Discrimination in an Enlarged European Union,’ *Industrial Law Journal* 33, 2004 (December), p. 367.

to the EC Race Directive 2000 led to a reduction in the level of protection accorded to the ground of nationality to comply with the Directive.¹⁵ Furthermore, to meet the 2006 deadline, the UK also implemented the EC Framework Directives in the form of the Race Relations Act 1976 (Amendment) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, and the Employment Equality (Age) Regulations 2006. Yet, these provisions were strongly criticized on a number of levels: from the use of the subsidiary legislation for implementation,¹⁶ and the complexity of the existing framework of non-discrimination law,¹⁷ to its failure to reflect the inter-relationship between the grounds, and to address the needs of all those who do not fall within the boundaries of the EC list of protected groups, and/or those who have multiple and intersecting claims based on not just one, but two or more grounds of discrimination.¹⁸ The twin measures,

¹⁵ M. Bell, 'A Patchwork of Protection: the New Anti-Discrimination Law Framework', *Modern Law Review* 67(3), 2004, pp. 465-477.

¹⁶ Legal experts and campaigning organisations criticised the use of s. 2 (2) of the European Communities Act 1972, which allows delegated legislation as opposed to primary legislation to be applied to implement EC law; I. Leigh and C. Hart, *Implementing the EU Employment Directive*, London: RICS, 2002, point out, that such subsidiary law is first, 'cramped' as it limits the Government's ability to step outside of the terms of the Directives, a move which may lead to what could be regarded as an abuse of its powers; second, that it cannot be amended, only accepted or rejected as it passes through Parliament; and third, it is less robust than an Act of Parliament in the courts, and more subject to attack.

¹⁷ The then Labour Government undertook a 12 month review of the complex raft of existing equality legislation and guidance (currently comprising 35 acts, 52 statutory instruments and 13 codes of practice), with a view to establishing 'a simpler and fairer legal framework.' P. Grattan et al., 'Comment & Analysis: Letters: Fight for Equality', *The Guardian*, 26 February 2005.

¹⁸ S. Fredman, 'Equality: A New Generation', *Industrial Law Journal* 30, 2001, p. 145.

comprising the UK Equality & Human Rights Commission (EHRC), a single equality authority,¹⁹ and the (Single) Equality Bill, now the UK Equality Act 2010,²⁰ (which entered into force in Autumn 2010), were developed to meet these challenges.

THE PROLIFERATION OF GROUNDS FOR DISCRIMINATION

The extended number of grounds for discrimination identified for protection by Article 13 of the EC Treaty is indicative of the emergence and policy recognition of new constituencies based on identity politics, such as women's, black, gay rights, disability and older people's movements which have challenged the deeply embedded, stereotypical assumptions of 'normality', based on the hegemony of the nuclear family headed by an able-bodied white male. The rapid proliferation of protest groups and their subsequent fragmentation into further sub-groups,²¹ has led to an ongoing process of negotiation and re-negotiation of their boundaries. Their status as discrete and unambiguous social categories are now contested and have led a number of critical

¹⁹ The Equality and Human Rights Commission amalgamated the previous Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE), and the Disability Rights Commission (DRC).

²⁰ The UK Equality Act 2010 has now replaced the complex raft of previous equality legislation and guidance, and extends protection for all the grounds beyond the provisions of Employment (Framework) Directive (2000/78/EC) to cover social security, education and the supply of goods and services.

²¹ Such as the Royal National Institute for Deaf People (RNID), which has separated itself from the main disability movement, by arguing that although deaf people are impaired they are not disabled.

theorists²² to argue that groups should not be considered in essentialist terms, that is as in some way biologically fixed, unalterable and homogeneous, but rather as sharing cross-cutting differences and affinities. Yet, this trend also reflects an inherent tension, as many of these groups, for reasons of political expediency, have been organized around, and have successfully campaigned upon, unitary, essentialist representations of their identity, which are expressed as mutually exclusive, rather than as relational and fluid categories.

To *Solanke*,²³ this ‘single issue focus’, whilst now out of step with the complex and changing backdrop of social reality, has served as a valuable legal tool, as it has provided remedies specifically tailored to each separate head of discrimination, which may be far from analogous, whether disability, race or gender for instance. Thus it has been necessary for each characteristic ‘to be isolated, and magnified, bracketed from all other aspects of identity’²⁴ and to be articulated in legal terms as the ‘grounds’, or bases, on which discrimination is prohibited. *Bell* also highlights the benefits of such a pragmatic approach, by explaining that

[...] in order for everyone to be treated equally it is simply necessary that irrelevant characteristics, such as gender or race, be removed from the decision

²² I. Young, *Justice and the Politics of Difference*, New Jersey: Princeton University Press, 1990; P. Leonard, *Postmodern Welfare: Reconstructing an Emancipatory Project*, London: Sage, 1997; M. O’Brien and S. Penna, *Theorising Welfare: Enlightenment and Modern Society*, London: Sage, 1998.

²³ I. Solanke, ‘Putting Race & Gender Together: A New Approach to Intersectionality’, *Modern Law Review* 72(5), 2009, pp. 723-749.

²⁴ *Ibid.* p. 724.

making process. This type of strict rationality has the advantage of being widely applicable. Once a given characteristic is deemed inappropriate/irrelevant, then the non-discrimination norm can be extended accordingly.²⁵

Awareness of the complex legal consequences of the increasing number of prohibited grounds of discrimination has led to a debate as to where the cut-off line should lie between protection for enumerated groups and recognition of individual differences and diversity. This has raised the question as to just how extensive and exhaustive such lists of grounds should be. Ireland's Employment Equality Act 1998 covers nine suspect grounds, whilst the EU now renders discrimination unlawful on the basis of six grounds comprising sex, racial or ethnic origin, religion or belief, age, disability and sexual orientation, which as *Schiek et al.* point out, clearly 'delimits the scope of the application of Community non-discrimination law.'²⁶ *Bell* argued that although long 'elaborate' lists of specific groups can 'implicitly devalue those grounds not mentioned...for the less established grounds, such as sexual orientation, an express mention can be a valuable source of affirmation.'²⁷

²⁵ M. Bell, 'Walking in the Same Direction: The Contribution of the European Social Charter & the EU to Combating Discrimination', in G. de Burca and B. de Witte (eds), *Social Rights in Europe*, Oxford: OUP-Hart Publishing, 2003, p. 93.

²⁶ D. Schiek, L. Waddington, and M. Bell (eds), *Cases, Materials & Text on National, Supranational & International Non-Discrimination Law*, Oxford & Portland: Hart Publishing, 2007, p. 4.

²⁷ M. Bell, 'Equality and the European Union Constitution', *Industrial Law Journal* 33, 2004 (September), p. 244.

Whilst the EU, UK and Ireland's lists of grounds are examples of closed and exhaustive obligations on the one hand, Article 14 of the European Convention of Human Rights (ECHR) which ensures that the Convention's rights are guaranteed, 'without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status,' is on the other hand an example of an alternative open and non-exhaustive list. Although open systems of grounds are normally found in constitutional level guarantees and human rights treaties, such as Article 14 ECHR²⁸ and Article 1 of Protocol 12 to the ECHR,²⁹ Article 26 of the International Covenant on Civil and Political Rights (ICCPR),³⁰ and the Canadian Charter of Rights and Freedoms,³¹ such non-exhaustive lists can also be found in the national non-discrimination legislation of a number of EU Member States including Finland, Latvia, Poland and Slovenia.³²

Sheppard points out that a comparison between the Quebec Charter of Human Rights and Freedoms, a closed system, and the 'open' Canadian Charter of Rights and Freedoms shows that although the former is more comprehensive, the latter 'leaves

²⁸ Article 14 is not a freestanding Convention right, this guarantee only extends to equal enjoyment of the other Convention rights and freedoms.

²⁹ This was adopted in 2000 and has been in force since 2005; it offers a freestanding right to non-discrimination, but by August 2010 only 19 out of the 47 Council of Europe Member States had ratified it.

³⁰ Article 2(2) of International Covenant on Economic, Social and Cultural Rights (ICESCR), on the other hand, is less specific, and only requires that states ensure 'the rights enunciated in the present Convention will be exercised without discrimination of any kind.' See Schiek et al. (2007), op. cit., p. 8.

³¹ Adopted in 1982 as a constitutional 'Bill of Rights'.

³² Solanke (2009), op. cit., p. 723.

open the possibility that analogous grounds can be added through judicial interpretation and application.³³ However, just as the non-exhaustive, open-ended list might have sufficient flexibility to reflect changing societal trends in respect of outlawing new ‘irrelevant’ grounds of discrimination, such as genetic endowments or social caste, *Bell* argues that

[...] the very openness of this notion of equality leads to accusations that it is an empty vessel, differences in treatment are only discriminatory if the ground for differential treatment is irrelevant, but it is a constantly shifting and expanding list.³⁴

Yet, a clear drawback with the grounds-based, especially the closed system, is that no matter how long the list of prohibited categories might be, as *Iyer* claims, it ‘obscures the complexity of social identity in ways that are damaging both to particular rights claimants, and to the larger goal of redressing social relations of inequality.’³⁵ This issue is considered below.

MULTIPLE GROUNDS FOR DISCRIMINATION

One important consequence arising from the rapid expansion of protected non-discrimination grounds has been the increased potential for the number of claims by

³³ C. Sheppard, ‘Grounds of Discrimination: Towards an Inclusive and Contextual Approach’, *Canadian Bar Review* 80, 2001, p. 895.

³⁴ *Bell* (2003), *op.cit.*, p. 93.

³⁵ N. Iyer, 1993, cited in E. McColgan, ‘Reconfiguring Discrimination’, *Public Law*, Spring 2007, p. 77.

individuals who argue that their experiences are not reducible to a single, discrete category. Rather, they would prefer to seek redress for experiences of adverse treatment they feel falls into two or more categories, such as ‘race’ and ‘religious belief’ for instance, which may more accurately reflect their reality. However, multiple claims for discrimination conflict with the existing EU legislative framework aimed at outlawing discrimination, which is based on unitary social characteristics, such as the Racial Equality Directive and the Employment (Framework) Directive of 2000, and the Gender Employment Directive of 2002. The difficulties of pursuing an intersectional claim under these Directives (given their variable material scope), where the Racial Equality Directive has the most extensive coverage and the Employment (Framework) Directive the least, are highlighted by *Fredman*, on the basis that this would render it problematic for people who were discriminated against on more than one ground, if one was less protected than the other, such as ‘older members of ethnic minorities who wish to bring a claim of multi-discrimination relating to health care or housing. Such claimants, would only have a claim on the grounds of ethnic origin.’³⁶

Moreover, the exhaustive scope of the EU grounds was strongly underlined by the ECJ ruling in *Chacon Navas* (2006)³⁷ where it was held that ‘sickness’ under the mandate of the Employment (Framework) Directive did not constitute a ‘disability’, nor could it be considered an ‘additional’ ground in respect to the listed classifications. Yet, the inflexibility of this ruling does not chime with the preambles in both the Racial Equality

³⁶ Fredman (2009), op. cit., p. 3.

³⁷ Case C-13/05, *Chacon Navas v Eurest Colectividades SA* [2006] ECR I-6467.

Directive³⁸ and Employment (Framework) Directive³⁹ which state that when implementing equal treatment, the Community should ‘aim to eliminate inequalities and promote equality between men and women, especially since women are often victims of multiple discrimination.’⁴⁰ Notwithstanding the inclusion of multiple discrimination in the above EU Directives, this term has been largely confined to soft law, and the concepts of ‘multiple discrimination’ and ‘intersectionality’ have not been legally defined by the EU ‘in contrast to other equality concepts such as direct and indirect discrimination, harassment and sexual harassment.’⁴¹

A GLOBAL COMPARISON OF ‘CLOSED’ VERSUS ‘OPEN’ LISTS OF PROTECTED GROUNDS

Having grown belatedly as a response to consistent lobbying, and to counter the resurgence of the Austrian far-right in the late 1990s, the development of the current body of EU non-discrimination law owes much to the earlier Anglo-Dutch models of law which inspired and pre-figured it. This discussion will therefore now turn to the emergence and growth of equality protections within the UK and the USA (both of which are older jurisdictions with respect to anti-discrimination provisions, and which like the EU have ‘closed’ lists of protected grounds), as they relate to the principle of

³⁸ Directive 2000/43/EC Recital 14.

³⁹ Directive 2000/78/EC Recital 3.

⁴⁰ Solanke (2009), *op. cit.*, p. 725.

⁴¹ R. Nielsen, ‘Is EU Equality Law Capable of Addressing Multiple and Intersectional Discrimination Yet? Precautions Against Neglecting Intersectional Cases’, in Schiek and Chege, *op. cit.*, p. 32, notes, ‘the term “intersectionality” is not explicitly used in EU legislation, soft law, or case law.’

equal treatment and multi-discrimination,⁴² before moving on to contrast these with the newer Canadian and South African jurisdictions, which comprise ‘open’ lists of equality protections, with a view to better understanding the current challenges faced by the EU.

UK and USA: ‘Closed’ Lists of Grounds

The UK’s fragmentary body of non-discrimination law based on identity characteristics, typically reflects the emergence and chronology of identity politics, which as it developed over time, applied pressure, and shaped legislation on a ground by ground, and unitary basis. As *Schiek et al.* observe, this ‘ground-specific’ developmental approach is most notable in common law countries ‘which results in a patchwork character to the law.’⁴³ Although the separate statutes comprising the Equal Pay Act (EqPA) 1970, the Sex Discrimination Act (SDA) 1975, the Race Relations Act (RRA) 1976, and the 1995 Disability Discrimination Act (DDA), shared common and overlapping elements, such as the need to demonstrate ‘direct’ or ‘indirect’ discrimination, they each had separate sets of mechanisms for dealing with allegations. This issue came to the fore in *Mandla v Dowell Lee*⁴⁴ which centred on whether Sikhs constituted an ‘ethnic group’ under the terms listed in the s. 3 RRA, which outlawed discrimination on the grounds of ‘colour, race, nationality and ethnic or national origin.’ In searching for a test which separated ethnicity from religion, *Lord Frazer* found a

⁴² The EU favours the term ‘multiple discrimination’ over ‘intersectionality.’

⁴³ Schiek, Waddington, and Bell (2007), *op. cit.*, p. 5.

⁴⁴ [1983] IRLR 209.

definition framed in the New Zealand case *King-Ansell v Police*,⁴⁵ which rested on an essentialist conceptualization of groups as having fixed boundaries, rather than flexible or permeable boundaries. Ethnic groups, it was held, had a long historical and shared cultural tradition of beliefs, customs, language, geographical origin and/or religion which has served to give them a distinctive and separate social identity. This test therefore enabled Jews,⁴⁶ Sikhs and Gypsies⁴⁷ to fall within the tightly specified definition of an ethnic group, whilst Rastafarians and Muslims did not. In *Walker v Hussain*⁴⁸ for instance, *Pitt* observes, that although it was not explicit, the rationale for excluding Muslims from the definition of ethnic group would be ‘that Islam, like Christianity, is so widespread that it is not possible to identify any common characteristic among its adherents beyond their religious faith.’⁴⁹

If another social category is closely examined, for instance ‘age’ – i.e., progression throughout the life-course – it is clear that it is a universal experience, shared by everyone. It therefore intersects with all other groupings of social identity, and cannot be easily reduced to a discrete construct, and thus, may be more likely to be conceptualized as part of a multiple-discrimination claim. As *Fredman* explains, ‘The basic opposition between “self” and “other” which marks much of racism and sexism is

⁴⁵ [1979] 2 NZLR 53.

⁴⁶ *Seide v Gillette Industries* [1980] IRLR 427.

⁴⁷ *CRE v Dutton* [1989] QB 783.

⁴⁸ [1996] ICR 291.

⁴⁹ G. Pitt, *Employment Law*, London: Thomson, Sweet & Maxwell, 2004, p. 27.

not present in the same way.’⁵⁰ Age discrimination, for example, can be so closely intertwined with sex⁵¹ discrimination and/or race⁵² discrimination, that there has been ambiguity as to whether the head of discrimination is gender, race or age. This was highlighted in *Rutherford & Bentley v Secretary of State for Trade & Industry*.⁵³ The case centred on whether the upper qualifying age of 65 years for bringing a claim of unfair dismissal was contrary to Article 141 EC Treaty, as it indirectly disadvantaged ‘a substantially higher’ proportion of men than women.⁵⁴ The UK Court of Appeal held that it did not, on the basis of statistical evidence reappraised to include the entire workforce in the pool.

Non-discrimination law in the UK and the US has, therefore, been structured around the concept of ‘immutability’, which as *Solanke* explains is ‘a permanent and involuntary character trait which causes an individual to suffer discrimination.’⁵⁵ She points out that this idea can be traced to early discussions by the *Society of Labour Lawyers* in 1965, who, when developing the first Race Relations Act, argued that ‘the law should protect

⁵⁰ S. Fredman, ‘The Age of Equality’, in S. Fredman and S. Spencer (eds), *Age as an Equality Issue*, Oxford: Hart Publishing, 2003, p. 21.

⁵¹ *Price v Civil Service Commission* [1978] 1 All ER 1228.

⁵² *Perera v Civil Service Commission (No 2)* [1983] ICR 428.

⁵³ [2004] 3 CMLR 53.

⁵⁴ On the basis of the argument, that a higher proportion of men rather than women continue in employment after the 65 years.

⁵⁵ I. Solanke, ‘Stigma: A Limiting Principle Allowing Multiple – Consciousness in Anti-Discrimination Law’, in Schiek and Chege, op. cit., p. 117.

those attacked for what they are, rather than what they may believe or do.’⁵⁶ Such an essentialist construct of social identity, therefore, does little to accommodate social characteristics which are ‘mutable’, that is, which are not voluntary and do not neatly fit within the tightly specified definitions of ‘sex’, ‘race’ or ‘disability’, for instance. Accordingly, whilst differences between groups are highlighted, differences within groups are invisible. There are two main ways in which multiple discrimination can occur: where the grounds of discrimination are ‘additive’; and where it is based on an inextricable combination of two or more characteristics, which has been described as ‘cumulative’ or ‘intersectional’ discrimination, a critique advanced in the 1980’s by feminist legal theorist *Kimberle Crenshaw*.⁵⁷ Whereas the former describes the situation where experiences of oppression are fragmented into essentialist, unitary categories, such as ‘sexism’ plus ‘racism’, which suggests that racism is a further, and discrete disadvantage, additional to the discrete disadvantage of sexism, the latter ‘arises out of a combination of various oppressions, which together, produce something unique and distinct from any one form of discrimination standing alone.’⁵⁸

To achieve success in the courts, claimants are required to frame their unequal treatment along a single as opposed to a multiple axis, irrespective of how they actually perceived their experience. Yet, if they are female and from an ethnic minority for instance, they

⁵⁶ Ibid p.117.

⁵⁷ K. Crenshaw, ‘Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of Anti-discrimination Doctrine, Feminist Theory and Anti-racist Policies’, *University of Chicago Legal Forum*, 1989, pp. 139-167.

⁵⁸ S. Hannett , ‘Equality at the Intersections: The Legislative & Judicial Failure to Tackle Multiple Discrimination’, *Oxford Journal of Legal Studies* 23(1), 2003 (March), p. 65.

may feel that they cannot sever the two characteristics, as they amount to an indivisible combination, which is quite different from the experience of being either a woman or from an ethnic minority. They are thus required to select a specific ground, and exclude others, or risk losing the claim. Therefore, claimants tend to plead only one ground even when they may have experienced adverse treatment on a number of grounds. This is best exemplified by the case of *Burton v De Vere Hotels*:⁵⁹ Two Afro-Caribbean waitresses brought an action against the hotel, as whilst serving at a club dinner for 400 men, they were indirectly exposed to disparaging sexual and racial jokes by the comedian Bernard Manning. This was later followed by a series of very offensive, sexualized insulting behaviour and comments directly aimed at them. Yet, the successful claim was only brought under the RRA, when it also clearly fell into the ambit of the SDA.

When claimants do decide to pursue a claim based on multiple discrimination, *Hannett* argues that the courts tend to ‘minimise complexity’ by focusing on one ground and overlooking the others, or by adopting an ‘additive’ rather than ‘intersectional’ approach.⁶⁰ In the US, for example, even where a more integrated statute exists, such as Title VII of the Civil Rights Act 1964, in the case *DeGraffenreid v General Motors*⁶¹ a claim based on intersectional discrimination on the grounds of ‘race’ and ‘sex’ failed, as the court held that ‘they must choose to bring either a race action or a sex action in order to avoid the creation of an unauthorised class which would give black women greater

⁵⁹ [1997] ICR 1.

⁶⁰ Hannett (2003), *op. cit.*, p. 65.

⁶¹ [1976] 413 F. Supp. 142, 143, (E.D. Mo. 1976).

standing and relief.’⁶² The deciding factor hinged on the risk that a successful outcome for black women, who if perceived as a special class, would amount to a new ‘super-remedy which would give them relief beyond what the drafters of the relevant statutes intended.’⁶³ A further related problem was coined the ‘sex-plus’ concept, where women are forced to ‘choose gender as their principle means of identification, thereby perpetuating a fundamental misunderstanding of the nature of discrimination experienced by black women, most of whom do not consider their race to be secondary to their sex.’⁶⁴ This was illustrated by another US case *Jeffries v Harris County Community Action Association*,⁶⁵ four years later in 1980. Although a multiple discrimination claim was now permitted, this was on condition that a claimant was able to plead discrimination on the basis of sex, plus an additional characteristic or factor related to sex. Yet, by 1986, in *Judge v Marsh*,⁶⁶ it was held that the ‘sex-plus’ concept must be limited to just one additional factor, as there was a concern that given the complexity of multi-discrimination cases within employment law, it would become ‘a many headed Hydra, with sub-groups existing for every possible combination of race, colour, sex, national origin and religion.’⁶⁷

⁶² D. Ashiagbor, ‘The Intersection between Gender & “Race” in the Labour Market: Lessons for Anti-Discrimination Law’, in A. Morris and T. O’Donnell (eds), *Feminist Perspectives in Employment Law*, London: Cavendish Publishing, 1999, p. 158.

⁶³ Hannett (2003), op. cit., p. 65.

⁶⁴ Ashiagbor, op. cit., p. 159.

⁶⁵ 615. F. 2d. 1025 (5th Cir 1980).

⁶⁶ 649. F. Supp. 770 (DDC 1986).

⁶⁷ Hannett (2003), op. cit., p. 71.

Moreover, where a claimant alleges multi-discrimination, but one ground, such as ‘age’, is unprotected, this may undermine the protected ground, and as such the whole claim. In the UK case of *Pearce v Governing Body of Mayfield School*,⁶⁸ a lesbian teacher was subjected to homophobic abuse by pupils and forced out of her job. The claimant argued that she had been discriminated against on the basis of her sexual orientation and gender, however, as sexual orientation was not protected at that time, she was forced to frame her claim in terms of sex discrimination. Yet, this was too narrow in scope, as it had been held in *Smith v Gardner-Merchant*⁶⁹ that it did not include sexual orientation. The House of Lords ruled on the basis that as she was not treated differently to a male homosexual, her claim did not meet the criteria for sex discrimination. To *Hannett*

Pearce appeared to be caught in a double bind: she was unable to claim discrimination on the basis of her sexual orientation, yet her sexuality resulted in an inability to claim sex discrimination in a scenario in which a similarly situated heterosexual woman, after *Strathclyde Regional Council v Porcelli*⁷⁰ and *Insitu Cleaning Co. Ltd v Heads*,⁷¹ would have succeeded.⁷²

A further critical issue to arise in multiple or intersectional cases of discrimination, is the requirement for symmetry; derived from the Aristotelian idea ‘that likes should be treated alike’, it encapsulates the principle that ‘basic fairness requires consistent

⁶⁸ [2003] IRLR 512.

⁶⁹ [1998] 3 All ER 852.

⁷⁰ [1986] IRLR 134.

⁷¹ [1995] IRLR 4.

⁷² *Hannett* (2003), op. cit., p. 74.

treatment.⁷³ Accordingly, adverse treatment can be best demonstrated by identifying someone who has been treated more favourably, in a similar situation. As *Bell*⁷⁴ points out, although a suitable comparator may be pivotal to the success of a claim, this can prove problematic, as there may be lack of agreement as to the precise characteristics an appropriate comparator should possess, an issue, which may be further exacerbated by the complexities of a multi-discrimination claim. The problem of symmetry is not just confined to pregnant woman, but the asymmetrical experiences of all those who do not conform to normative assumptions of the average legal subject as a white, middle-class married male. This was highlighted in *Grant v South West Trains*,⁷⁵ *Croft v Post Office*⁷⁶ and above-mentioned *Pearce v Governing Body of Mayfield School*,⁷⁷ where there was either disagreement or even failure to identify an appropriate comparator, and came to the fore in *Bahl v Law Society*.⁷⁸ *Kamlash Bahl* alleged that as an Asian woman, she had been discriminated against by her employer, the Law Society, on grounds of her race and her sex, on a ‘single combined’ and hence, intersectional basis. The Court of Appeal, however, overturned the Employment Tribunal (ET) decision which had ruled in her favour, on the basis that she could use a ‘white male’ comparator. *Lord Justice Gibson* held that the ET had erred

⁷³ Fredman (2003), op. cit., p. 21.

⁷⁴ Bell (2004), op. cit.

⁷⁵ C-249/96, [1998] ECR I-621.

⁷⁶ [2003] IRLR592.

⁷⁷ [2003] IRLR 512.

⁷⁸ [2004] IRLR 799.

[...] as it was necessary...to find the primary facts in relation to each type of discrimination against each alleged discriminator and then to explain why it was making the inference which it did in the favour Dr Bahl on whom lay the burden of proving her case.

Thus, the grounds of gender and race had to be considered separately, on the basis of two sets of evidence, and not together as an inextricable claim. This case marked a turning point in UK non-discrimination law, as it was clear that unless there was legislative reform, such was the rigidity of the ‘appropriate comparator’ principle in the case law, it was likely to pose a considerable barrier to any future ‘intersectional’ claims. The recent Equality Act 2010 sought to remedy the foregoing difficulties by including a provision for dual discrimination on two combined ‘intersectional’ protected characteristics. Although the effectiveness of this provision remains to be seen, the Act marks a major inroad, which might feed into any proposed European Directive. It aims to overcome the comparator problem by accommodating either a ‘real’ or hypothetical one, but the Act’s scope in this regard is limited to direct discrimination on the basis of just two protected grounds. As *Monaghan* points out, this

[...] seems difficult to justify [as] the experience of being a mentally unwell black man can be very different to the experience of being a mentally ill white man or a well black man, or a mentally ill black woman, for all sorts of institutional and social reasons.⁷⁹

⁷⁹ K. Monaghan, ‘The Equality Bill: A Sheep in Wolf’s Clothing or Something More?’, *European Human Rights Law Review* 4, 2009, p. 517.

Clearly, this demonstrates the paradox of the formal equality approach, where according to *Hannett* ‘it must be recognised...that every difference in treatment may not necessarily result in inequality and...that identical treatment may frequently produce serious inequality.’⁸⁰

Canada and South Africa ‘Open’ Lists of Grounds

The discussion will now turn to the jurisdictions of Canada and South Africa, which by contrast to the UK and the US adopt inclusive or ‘open’ approaches, which on the one hand enumerate ‘suspect’ grounds for protection, whilst on the other leave open the possibility to add further non-enumerated and analogous grounds. As the Canadian Charter of Human Rights and Freedoms of 1982, including Section 15,⁸¹ has quasi-constitutional status, and assumes primacy over other legislation, the Canadian Supreme Court has ruled that it should be interpreted in a ‘purposive’ way, which expresses

⁸⁰ *Hannett* (2004), *op. cit.*, p. 78.

⁸¹ Section 15 reads: ‘(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.’

underlying legislative intent.⁸² This was emphasised in the influential dissenting judgement of *Madam Justice L'Heureux-Dube*, whose argument in *Canada (Attorney General) v Mossop*⁸³ took the line that 'unless constrained by the clear words of the statute, adjudicators should adopt a "living tree" approach to the interpretation of human rights laws,'⁸⁴ especially, if there was a lack of detailed definition in the legislation. The case in question, centred on *Mr Mossop*, a gay man who claimed discrimination on the basis of 'family status' when he was denied paid bereavement leave by his employer to attend his partner's father's funeral. Although 'sexual orientation' was not a protected characteristic at that time, 'family status' was; *Madam Justice L'Heureux-Dube* argued that notwithstanding the majority ruling (that there was insufficient evidence to uphold protection for this ground alone), 'the enumerated grounds of discrimination must be examined in the context of contemporary values, not in a vacuum. Their meaning is not frozen in time and the scope of each ground may evolve.'⁸⁵ This scope for purposive judicial reasoning, when combined with a 'willingness to interpret the language of the statute broadly,'⁸⁶ has, as *Monaghan* noted, 'recognised the value in a framework that has sufficient flexibility ... to accommodate societal changes,'⁸⁷ and so offered an

⁸² *Law v Canada (Minister of Employment & Immigration)* [1999] 1 SCR 497: 'It is sensible to articulate the basic principles under s. 15(1) as guidelines for analysis, and not as a rigid test which might risk being mechanically applied. Equality analysis under the *Charter* must be purposive and contextual.'

⁸³ [1993] 1 SCR 554.

⁸⁴ Sheppard (2001), *op. cit.*, p. 905.

⁸⁵ *Canada (Attorney General) v Mossop*, *op. cit.*

⁸⁶ Sheppard (2001), *op. cit.*, p. 906.

⁸⁷ *Monaghan* (2007), *op. cit.*, p. 198.

opportunity to address the needs of non-traditional groups who do not neatly conform to existing often, immutable anti-discrimination categories.

Charter jurisprudence with respect to s. 15 has over time moved away from an explicitly symmetrical interpretation of discrimination, which focused on an assessment of the key elements of listed and analogous grounds, towards a more contextual analysis, largely found in asymmetric open systems. This shift is clearly evident, as *Monaghan*⁸⁸ explains, in both *R v Turpin*⁸⁹ and *Andrews v Law Society of British Columbia*,⁹⁰ where ‘the Court reiterated the importance of determining what constitutes an analogous ground by examining not only the context of the law subject to the claim, but also the context of the place of the group’ with respect to ‘social, political and legal disadvantage in our society.’⁹¹ *McGolgan* also highlighted this change of emphasis in the dissenting judgment of *Madam Justice L’Heureux-Dube* in *Egan v Canada*,⁹² who, she noted, now placed the greater emphasis on ‘the effects, rather than the constituent elements of discrimination.’⁹³ However, whilst the inclusive, open-ended protection offered by the Canadian Charter has enabled the Canadian Court to keep pace with changing concepts of inequality by recognizing additional analogous grounds,⁹⁴ such as sexual

⁸⁸ *Ibid.*

⁸⁹ [1989] 1 SCR 1296.

⁹⁰ [1989] **ISCR** 143.

⁹¹ *Ibid.*

⁹² [1995] 2 SCR 513.

⁹³ A. McColgen, ‘Reconfiguring Discrimination’, *Public Law*, Spring 2007, p. 89.

⁹⁴ Including in *Corbiere v Canada* [1999] 2 SCR 203, the new multi-dimensional ground of being a non-reserve Aboriginal.

orientation⁹⁵ and non-citizenship,⁹⁶ and the emerging jurisprudence⁹⁷ and amendments to the Canadian Human Rights Act in 1998⁹⁸ (catering for intersectionality) suggest that Canada is as at the forefront of this field, as *Sheppard* observes ‘its concrete application is rare.’⁹⁹

The Canadian Charter of Rights and Freedoms of 1982 strongly influenced the development of section 9, the right to equality, of the South African Constitution 1996, which outlaws discrimination

[...] against anyone *on one or more grounds*, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth [and] *any other ground* where discrimination based on that other ground, causes or perpetuates systemic disadvantage, undermines human dignity; or adversely affects the equal enjoyment of a person’s rights and freedoms. [emphasis added]¹⁰⁰

⁹⁵ *Vriend v Alberta* [1998] 1 SCR 493.

⁹⁶ *Andrews v Law Society of British Columbia* [1989] op. cit.

⁹⁷ L’Heureux-Dube, J. in *Canada v Mossop* [1993] op. cit., and *Egan v Canada* [1995] op. cit.

⁹⁸ Section 3 (1): ‘For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.’

⁹⁹ *Sheppard* (2001), op. cit., p. 913.

¹⁰⁰ Promotion of Equality and Prevention of Unfair Discrimination Act, s. 1(1)(xxii), which gives effect to s. 9 of the South African Constitution 1996.

This clearly not only provides the flexibility to address claims based on multiple and analogous¹⁰¹ grounds, but it is also underpinned by a substantive approach, which obliges the South African Constitutional Court to address the context and impact (as it relates to the promotion or amelioration of disadvantage) of any unequal treatment which may constitute a breach of s. 9(3). This, as *Hepple* argues, ‘eliminates the main obstacles to bringing a claim of intersectional discrimination by focusing on whether the way in which the claimant was treated is related to systemic disadvantage or undermines his or her dignity.’¹⁰² This approach therefore negates the need to find an appropriate (whether hypothetical or actual) comparator, as the requirement to prove that the claimant was subjected to a detriment on one of the prohibited grounds should be sufficient, which leaves the remaining issue of establishing proof. To *Hepple*, the question of how this might be dealt with could be instructive with regard to the future development of EU Directives, for just as the Directives require the claimant to demonstrate there is evidence of direct or indirect discrimination, so the defendant must prove there has been no such differential treatment. However,

[...] if discrimination were defined in terms of detriment, the burden of proof would be simply to show that he or she had been subjected to a detriment by the defendant; it would then be for the defendant to prove that the decision was not made on any one of the prohibited grounds. An inference of unlawful

¹⁰¹ In *Hoffman v South African Airways* [2000] (12) BCLR 1365 CC, HIV status was found to be an analogous ground as differential treatment on the basis of HIV status impaired human dignity.

¹⁰² B. Hepple, ‘The Aims of Equality Law’, in C. O’Cinneide and J. Holder (eds), *Current Legal Problems* 61, 2008, New York: OUP, 2009, p. 10.

discrimination could be drawn in the absence of a satisfactory non-discriminatory explanation by the defendant.¹⁰³

The responsiveness of the South African Constitutional Court to accommodate intersectionality has been demonstrated in a number of key rulings, including *Brink v Kitshoff*,¹⁰⁴ where *Judge O'Regan* highlighted the importance of appreciating the 'acute' disadvantage experienced especially by 'the case of black women...as race and gender discrimination overlap.' In addition, *Justice Goldstone* in *Harksen v Lane NO and others*¹⁰⁵ noted there is 'often a complex relationship between these grounds' and cautioned that 'the temptation to force them into neatly self-contained categories should be resisted.'

THE WAY FORWARD

The inherent essentialism or 'immutability' which underlies the UK equality protection has also served to play a large part in informing the development of EU non-discrimination law, which, as *Schiek and Chege* point out, has 'to date...been modelled upon only a few jurisdictions, the UK and Netherlands being predominant.'¹⁰⁶ Indeed, they further add that – UK and Netherlands aside – the EU has leaned towards a top-down prescriptive model, which has 'tended not to be grounded in developments in and

¹⁰³ Ibid.

¹⁰⁴ [1996] (4) SA 197 CC, para. 44.

¹⁰⁵ [1997] (110) BCLR 1489 CC, para. 47.

¹⁰⁶ Schiek and Chege (2009), op. cit., p. 7.

adapted to the routines of national legal cultures.’¹⁰⁷ This in turn suggests that if the EU is to continue to impose an ‘Anglo-Dutch’ model on the 27 Member States, which effectively addresses the needs of all those who do not fall into tightly demarcated and protected groups based on identity ascriptions, then it must rise to this challenge and find ‘ways to address complex phenomena such as multiple-discrimination in different circumstances.’¹⁰⁸

In July 2008, the European Commission acknowledged the principal shortcomings of the Article 13 EC Directives, including their uneven material scope with respect to the specified ‘irrelevant’ grounds, and related lack of accommodation of multiple discrimination, by publishing a proposal for an additional Directive addressing such issues.¹⁰⁹ The proposal sought to extend the coverage of the grounds of religion or belief, disability, age, and sexual orientation to comprise the areas of social protection, social advantages, education, and goods and services, including housing. Yet, as *Bell* notes, this would lead to a situation which rendered gender the least protected ground, as ‘presently, discrimination on the grounds of sex is forbidden in employment, vocational training, aspects of social security law and the provision of goods and services. There is no protection against discrimination in education.’¹¹⁰ Moreover, *Bell*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ European Commission, “*Proposal for a Council Directive on Implementing the Principle of Equal Treatment between Persons irrespective of Religion or Belief, Disability, Age or Sexual Orientation*,” COM (2008) 426.

¹¹⁰ M. Bell, ‘Advancing EU Anti-Discrimination Law: The European Commission’s 2008 Proposal for a New Directive’, *The Equal Rights Review* 3, 2009, p. 9.

further highlights that the proposal also dismissed the problem of symmetry and the selection of an appropriate comparator issue arising in multiple discrimination claims, by stating that ‘these issues go beyond the scope of this Directive, but nothing prevents Member States taking action in these areas.’¹¹¹ In the meantime, as *Schiek and Chege*¹¹² point out, this therefore leaves it up to Member States, who were required to implement the Article 13 Directives by 2006, to develop ‘bottom-up’ approaches with sufficient flexibility and scope to respond effectively to this challenge, and the further analysis of existing and further comparative socio-legal research to establish a way forward, notwithstanding the recent research undertaken to this effect by the Commission in 2007.¹¹³

CONCLUSION

This chapter has shown that equal protection for ‘all’ is a highly problematic objective to achieve in practice, for just as there has been an increased recognition that social groups are not mutually exclusive and have intersecting and fluid boundaries, there has been a recognition that complainants may not fall into the specified list of protected grounds, nor are able to frame their claims on the basis of a single ground of discrimination. Whilst it is clear that the development of future equality protections within the EU must address the plurality of individual and group needs by moving beyond the limitations of both the essentialist infrastructure and the formal equality

¹¹¹ Ibid.

¹¹² Schiek and Chege (2009), op. cit., p. 7.

¹¹³ European Commission, ‘*Tackling Multiple Discrimination: Practices, Policies and Laws*’, Luxembourg: Office for Official Publications of the European Communities, 2007.

principle underpinning existing equality legislation, it is argued that to date the EU has failed to keep pace with changing societal trends and concepts of equality. Comparison of a range of international jurisdictions and related jurisprudence centring on the ‘open’ and ‘closed’ lists of grounds indicates that by adopting a substantive approach, which focuses on the context and impact of discrimination, the former – favoured by both Canada and South Africa – has sufficient flexibility to accommodate multiple and analogous grounds, and is instructive for the future development of EU equality law.

Abstract (please revise to 100 words max):

The extended number of grounds for discrimination identified for protection by Article 13 of the 1997 Treaty of Amsterdam, reflects the emergence and policy recognition of new constituencies based on identity politics, such as the gay rights, disability and older people's movements. This trend when combined with the social (re)construction of their boundaries as intersecting and relational, has resulted in an EU led policy shift in favour of protection for 'all', whilst at the same time retaining an awareness of group-defined identity. Growing knowledge of the complex legal consequences of an increasing number of prohibited grounds, which are also intersectional, has led to an international debate as to where the cut off line should lie between protection for enumerated groups and recognition of individual differences and diversity. This has raised the question as to just how extensive and exhaustive such lists of grounds should be. This paper will examine both Canadian human rights legislation and EU anti-discrimination legislation, and its significant expansion of protected grounds, with a view to evaluating first, how effectively equality guarantees, such as the new UK Single Equality Bill, can accommodate multi-discrimination claims and/or claims from those individuals/groups currently unprotected by the EU, and second, future directions beyond the formal equality approach.

Bio (please revise to 40 words max):

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