

Introduction: elusive equalities – sex, gender and women

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Despite the fact that the Millennium Development Goals promised to achieve gender equality and maternal health by 2015, equality remains elusive for too many women.¹ Indeed, austerity, the rise of fundamentalism and the continuing gendered division of labour, especially when it comes to socially necessary but unremunerated care work, have contributed to the increase in gendered inequalities in many areas of social life and in most regions of the world. There is a plenitude of international, transnational and national equality instruments and strategies at the same time as gendered inequality is increasing both within and between nations. These equality instruments and strategies have also had an uneven impact: some women benefit more than others. Moreover, if interpreted in a formal manner, equality can be achieved as much through levelling down men's employment opportunities as by elevating women's life chances.

How can the right to equality be developed to respond to these complexities and paradoxes? In order to address the vexed question of how to achieve greater equality for women, we organised a workshop in September 2012 in Oxford, which was sponsored by the Oxford Human Rights Hub.² Our goal was to bring together a multidisciplinary group of economists, political scientists, geographers, lawyers and sociologists from the Global North and Global South to consider the barriers and challenges to achieving gender equality in practice. The workshop, which included eighteen participants, aimed to explore current developments, to analyse existing weaknesses, and to identify future improvements in the ways in which human rights frameworks can address the problems that women face in pursuing lives they have reason to value. The workshop participants both confirmed the complications in the contemporary quest to achieve equality for women and the necessity of grappling with these challenges. On behalf of the other contributors to this issue, we would like to thank all the participants in that workshop.

Despite different disciplinary perspectives, geographical locations and specific foci of study, the participants were united in adopting both an institutional approach to gender relations and a normative commitment to an emancipatory vision of equality for women. These epistemological and normative commitments also inform the seven papers contained in this special issue, and require elaboration in this Introduction.

The benefit of an institutional approach to gender relations is that it avoids what Jill Rubery identifies as the 'current dominant but opposing frameworks within mainstream economics and policy analysis' (2014, p. 17). Rubery explains that

'these alternate between a perspective that treats women universally as essentially carers first and thereby permanently in a state of contingent and temporary participation in labour market work and the more optimistic scenario which regards discrimination as only a residual legacy linked to a past where institutional arrangements did indeed dominate, as opposed to the present where

1 United Nations Millennium Development Goals, online: <<http://www.un.org/millenniumgoals/>> (last accessed 15 June 2014).

2 Oxford Human Rights Hub Blog, online: <<http://ohrh.law.ox.ac.uk/elusive-equalities-workshop-live-blog/>> (last accessed 27 June 2014).

the market ensures the triumph of meritocracy and the even treatment of individuals, whatever their gender.’ (2014, p. 17)

By contrast, an institutional approach links the social construction of gender relations within a specific institutional and political context to longer-term changes in national employment and social models (Rubery, 2014, p. 17). While this approach has typically been used to analyse the situation of women in advanced capitalist countries, such as those in Europe, Canada, the United States and Australia, it is also helpful for understanding the position of women in developing countries. Gender relations are shaped by the institutional arrangements of the labour market and different forms of family and social systems.³ In developing countries, in which informal employment predominates, family forms and kinship norms shape women’s incorporation into the labour market in ways that eschew formal equality. In the developing world, informal employment is a larger source of employment for women than for men, and women tend to be in the most precarious forms of informal employment.⁴

Equality is a contentious concept both philosophically and legally. In her contribution, Kendra Strauss distinguishes between formal and substantive dimensions of equality both as a concept and as a right in order to elucidate the relationship between equality and socio-economic rights.⁵ This distinction between the conception of equality, on the one hand, and the legal form it takes, on the other, is helpful in illuminating why equality for women is so elusive. Strauss argues that a formal conception of equality, such as equal pay, even if embedded in a substantive right, such as affirmative action policies, does not address the underlying wage hierarchy that gives rise to inequalities in the first place. Both Strauss and Goldblatt expressly draw upon Sandra Fredman’s conception of substantive equality, which entails four aims:

‘First, it aims to break the cycle of disadvantage associated with status or out-groups. This reflects the redistributive dimension of equality. Secondly, it aims to promote respect for dignity and worth, thereby redressing stigma, stereotyping, humiliation, and violence because of membership in an identity group. This is the recognition dimension. Thirdly, it should not exact conformity as a price for equality. Instead, it should accommodate difference and aim to achieve structural change. This captures the transformative dimension. Finally, substantive equality should facilitate full participation in society, both socially and politically. This is the participative dimension.’⁶

A key problem with mounting a challenge to policies that roll back equality laws is that feminism’s demand for equality has lost its emancipatory edge (Stewart, 2013, p. 341). Equality for women workers is compatible with the rampant commodification of care, increasing polarisation amongst women, and increasing inequality for men. Thus, it is crucial to revitalise feminism by emphasising solidarity and transformation as well as equality. Equality is about emancipation, not

3 The term ‘gender regime’ is used to refer to these different institutional gender arrangements. See Rubery (2014, p. 22).

4 International Labour Organization, ‘The Informal Economy and Decent Work: A Policy Resource Guide Supporting Transitions to Formality: Promoting Equality and Addressing Discrimination’ (Geneva: Employment Policy Department, 2013, p. 4, online: <http://www.ilo.org/emppolicy/pubs/WCMS_210460/lang-en/index.htm> / <<http://www.ilo.org/emppolicy/lang-en/index.htm>> (last accessed 15 June 2014).

5 Strauss ‘Accessing Pension Resources: The Right to Equality Inside and Out of the Labour Market’ (this volume).

6 Goldblatt, ‘Gender, Poverty and the Development of the Right to Social Security’ (this volume), quoting Fredman (2011, p. 577). This work draws on Nancy Fraser’s multidimensional notion of justice, most recently articulated by her in (2009). See also Burton (2014).

protection, from the market (Fraser, 2011, p. 137). While differing in its precise details, each of the contributors adopts a multidimensional approach to equality that emphasises women's emancipation rather than their protection.

There is, moreover, a complex relationship between equality and human rights law and the gender order. Legal rights, like other norms, emerge out of the struggles over meaning, representation, power and legitimacy by social actors. Although these struggles over meaning are dynamic, they can nonetheless take on stabilised forms at specific moments and can be reproduced over time (Jensen, 1989). Stabilisation can be achieved as a result of compromises reached by social actors. If they become widely shared among social actors, these compromises can congeal as 'societal paradigms', which are hegemonic sets of interconnected premises or meaning systems, and they include gender discourses. However, opportunities for temporarily subordinated identities to extend their representational reach and strength surface during periods of 'crisis', which occur when the dominant paradigm's ability to absorb its internal contradictions becomes compromised. Moments of crisis, such as the current climate of austerity, which is described in Janine Brodie's contribution, are the 'moments of efflorescence', which can lead to a shift in gender relations (Jensen, 1989, p. 239).

There is no preordained directionality to this shift; it can be progressive or regressive. In her contribution, Sandra Fredman uses recent decisions of the Court of Justice of the European Union and the European Court of Human Rights to illustrate how it is possible to develop a legal approach to equality that brings men as fathers back into the frame by valuing their contribution to parenting. Yet, as she is careful to acknowledge, 'equality on its own is insufficient to achieve change'.⁷ Given the complex relationship between legal and social norms, specific policies designed to encourage men to take on a more participative role in parenting are needed.

In addition to a shared epistemological approach to gender and normative commitment to a multidimensional view of substantive equality, the individual contributions to the special issue are unified by several overarching themes. The first, best exemplified by Janine Brodie's discussion of the 'austerity hypothesis', is that economic ideas as well as economic conditions matter when it comes to equality.⁸ The invisible hand of the market does not simply dole out winners and losers; instead, as Brodie demonstrates, actors and institutions consciously shape markets in ways that have profound distributive consequences. Moreover, there are feedback loops between labour and the financial markets. Although the crisis was caused by deregulation and lax supervision in the financial markets, household indebtedness compensated for increased wage inequality and the resulting asset price inflation contributed to the fragility of the financial system. The current European austerity policies shift macro-level risks and costs from financial markets to labour markets through policies of 'internal devaluation', which entail cuts to social benefits and services as well as reductions to minimum wages, extension to working time, increased fragmentation in collective bargaining, and changes to employment protection in order to encourage atypical work arrangements (Deakin & Koukiadaki, 2014, p. 175).

A second theme of the special issue, which is highlighted in Beth Goldblatt's contribution, is the need to broaden the conception of work beyond employment if there is to be any hope of achieving substantive equality for women. In developing the principles that ought to inform a gender-sensitive right to social security, Goldblatt is sensitive to the different forms of work that women perform, ranging from productive paid formal work, which typically falls within the narrow legal category of employment, to unpaid reproductive work that is socially necessary but outside most formal mechanisms of value. Goldblatt insists upon the need to look at the social security right through

7 Fredman, 'Reversing Roles: Bringing Men into the Frame' (this volume).

8 Brodie, 'The Great Recession and the Austerity Hypothesis' (this volume).

the lens of women's work in all its multiple forms.⁹ This attention to the different forms of women's work, in turn, draws into focus both women's different circumstances and needs across race, class, ethnicity, caste, sexual orientation, disability and so on.¹⁰ Significantly, according to Goldblatt, it also raises what Nancy Fraser identifies as the issue of the scale of justice – that is, in a globalising world it is no longer possible to frame issues of justice as exclusively within the purview of the nation state. Thus, she argues that the transnational, national and subnational scales are all critical in framing an effective right to social security for women.

Kendra Strauss's contribution, like Goldblatt's, draws upon a multidimensional notion of substantive equality and is attentive to women's unpaid reproductive work. But instead of focusing on social security, Strauss considers pensions which, through highlighting the 'dynamic relationship between individual and collective approaches to risk in capitalist welfare states', provide a 'lens onto processes and institutions that concomitantly reflect, and shape, equality goals in developed and developing welfare states'.¹¹ After providing an overview of a range of different pension regimes, she focuses on that of the United Kingdom in order to explore in more depth the gendered pension gap and other forms of pension inequality. She concludes by showing how pension rights reinforce existing gendered inequalities that are deeply rooted in the gendered division of labour and women's disproportionate responsibility for unpaid care work.

A third theme uniting the papers in this special issue is an appreciation of the complexity of the idea of gender and how it intersects with other social relations that combine to configure an individual's social location. In her contribution, Savitri Goonesekere focuses on girl children in order to probe the extent to which international human rights bodies have developed a conception of substantive equality that can address their specific social location. She demonstrates how the Committee responsible for interpreting the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has developed an approach to substantive equality that is sensitive to women's different social locations through the life-course. She contrasts this approach to that of the Committee that interprets the Convention on the Rights of Children, which has tended to take a gender-neutral approach that fails to specifically address the issues of discrimination and inequality experienced by girl children. Goonesekere emphasises the importance of declaring victories, and to this end she recounts how the 'international human rights project has strengthened local initiatives to work towards gender equality and the rights of girl children in many developing countries of Asia, the Pacific and Africa'.¹²

Exploring how race and gender figure in Brazilian equality discourse, Daniela Ikawa proposes a relational conception of identity that combines moral agency and individual history as a foundation for a theory of rights which is sensitive to the 'problem of in-group oppression'.¹³ Instead of using the language of intersectionality, which has become a familiar location for articulating complex discrimination, Ikawa argues for the need to appreciate the extent to which the 'multiple sources of oppression will lead to the recognition of identities (and rights) that are fluid and multilayered and that vary along time'.¹⁴ Using cases from the Brazilian Supreme Court she illustrates how a 'theory of rights that captures such complex identities ... should be built from the bottom up'.¹⁵

9 Goldblatt (this volume).

10 *Ibid.*

11 Strauss (this volume).

12 Goonesekere, 'From Social Welfare to Human Rights for Girls – A Path to Achieving Gender Equality' (this volume).

13 Ikawa, 'The Construction of Identity and Rights: Race and Gender in Brazil' (this volume).

14 *Ibid.*

15 *Ibid.*

A final theme of the special issue, clearly evident in the papers of Fredman and McCann, is that equality is not enough if women are to obtain justice. Sandra Fredman's contribution also reveals how courts, in this case the Court of Justice of the European Union and the European Court of Human Rights, can develop an approach to equality that gets them beyond the horns of the sameness/difference dilemma when it comes to parenting responsibilities.¹⁶ Using a critical framework to assess legal developments in the United States, Canada, the UK and Europe, she compares how different courts have approached equality in the context of pregnancy and parenting. Arguing for the need to bring men into the frame when it comes to parenting, Fredman shows the importance of breaking down the gender stereotypes associated with the idea of maternity rights and shifting to a conception of parental rights that does not level women down to that of men, but, instead, includes men within their ambit. Sounding the recurring theme of the importance of valuing unpaid care work, Fredman claims 'that the goal of equal participation of women in the workplace needs to be matched by equal participation of men in the home', and that this 'is only possible if the conception of equality is shaped by a conscious and explicit commitment to the social value of parenthood'.¹⁷

Deirdre McCann focuses on paid domestic work in private homes to argue that the 'curbing of precarious employment is a prerequisite for substantive equality'.¹⁸ Using domestic work as an exemplary form of precarious employment, McCann argues that, especially in the current economic context in which women's employment has become even more precarious, it is important to develop a 'reconstructive ... role for labour law' in which 'a central objective of regulatory intervention is to build coherent and protected working relationships from intermittent episodes of economic exchange'.¹⁹ Although mindful of the critique that non-standard work laws embody an adherence to a standard – and male-dominated – model of employment that 'undermines the protective capacities of these frameworks', McCann argues for the construction of a flexible standard employment relationship for the context of fragmented labour markets.²⁰ While rejecting the traditional form of the standard employment relationship, which historically excluded forms of employment in which women predominated from its protective purview, McCann wants to rehabilitate its substantive role in regulating labour markets.

Combined, these contributions argue that equality for women will be elusive so long as we do not cultivate both 'new modes of life beyond male and female roles'.²¹ They also show the need to encourage solidarity not just amongst women, but also between men and women. Jill Rubery has forcefully argued that solidarity is critical in times of austerity: 'the importance of establishing common ground across the sexes is raised by the danger that the current crisis is changing the role of the state from an agent that in principle promotes gender equality to one that may reverse equality gains made over recent decades' (Rubery, 2014 p. 32). Men as well as women need to be liberated from a rapacious economic system that both degrades the environment and does not value the necessary work that goes into maintaining social life.

¹⁶ Fredman (this volume).

¹⁷ *Ibid.*

¹⁸ McCann, 'Equality Through Precarious Work Regulation: Lessons from the Domestic Work Debates in Defence of the Standard Employment Relationship' (this volume).

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Gonas (2002, p. 64), quoting Beck (1992).

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