Contract No. 028545-2

QUING

Quality in Gender+ Equality Policies

Integrated Project

Priority 7 – Citizens and Governance in a knowledge based Society
7.1.2. Gender and Citizenship in a Multicultural Context

Deliverable No. 47/49: Series of explanatory country and thematic comparative reports in WHY

Paper Title: Intersectionality and the quality of equality architecture in Britain

Authors: Sylvia Walby, Jo Armstrong and Sofia Strid

Due date of deliverable: 30.06.2009
Actual submission date: 29.06.2009

Start date of project: 01.10.2006 Duration: 54 Months

IWM Vienna

Project co-funded by the European Commission within the Sixth Framework Programme (2002-2006)		
Dissemination Level		
PU	Public	
PP	Restricted to other programme participants (including the Commission Services)	
RE	**Restricted to a group specified by the consortium (including the Commission**	**X**
CO	Confidential, only for members of the consortium (including the Commission Services)	

INTRODUCTION

The merger of the equality Commissions in Britain into the Equality and Human Rights Commission has the potential to either develop a more effective set of interventions against inequalities or to dilute the expertise and capacity to act in relation to specific ones such as gender. The outcome depends in part on the nature of the intersection of the inequalities in practice and in the equality policy architecture.

Does the inclusion of multiple inequalities in the same policy institutions in the UK reduce or enhance the efficacy of the equality architecture in addressing gender inequality? Are the new institutional arrangements better or worse for the quality of gender equality policies? What is meant by better or worse gender and equality policies? What is the equality architecture: what are the implications of revising how the equality architecture is described and conceptualised?

How should the relationship between multiple inequalities be conceptualised and theorised? Are the changes best understood using the conceptualisation of intersectionality as mutually constitutive, or are there better ways of conceptualising the relations between multiple inequalities that allow better understanding of the most important issues at stake? What is the best way of conceptualising and theorising the relationship between multiple inequalities: going beyond the dichotomy of additive vs. mutually constitutive to include additional variations in practice of singular, parallel, hegemonic and mutually adaptive. What are the implications for theorising intersectionality of the implications of the restructuring of the equality architecture in the UK to encompass a wider range of inequalities within the Equality and Human Rights Commission set up in 2007?

The paper will address these questions by: reviewing and rethinking what counts as the equality architecture and its quality as well as the conceptualisation of the relationship between multiple inequalities; identifying

and assessing the implications of the changes in Britain for the quality of gender and equality architecture; and finally assessing the implications of the British changes for conceptualising and theorising intersectionality.

REVIEWING AND RETHINKING INTERSECTIONALITY AND EQUALITY ARCHITECTURE

What is meant by 'equality architecture?

The term 'equality architecture' refers to the set of institutions that address equality policy as well as their inter-relationship. A range of terms has been used in this field of enquiry, which are often narrower in scope than that intended here.

The concept of 'gender machinery' was used in the discussion of this issue as one of the Critical Areas in the Platform for Action developed at the UN Beijing Conference on Women in 1995 (UN 1995). International debates have often used the term 'gender machinery' more or less interchangeably with that of 'gender equality institutions' (Rai 2003). Some recent UN debates have adopted the term 'gender architecture' during the discussions of the reform of the range of institutions and their interconnections in the UN system that address gender inequality (Gear 2009).

Within political science a key term was that of 'women's policy agencies', which was used in the Research Network on Gender Politics and the State (RNGS) project analysing the implications of 'state feminism' and the impact of women's movements on the state (Stetson and Mazur 1995; Mazur 2002). Women's policy agencies included governmental policy units, implementation quangos and formal consultation bodies. Key questions examined were whether the women's policy agencies are important in pushing forward gender equality policy, and the extent to which this depended on the nature of the agency (type, proximity to power, administrative capacity and mandate) and the wider environment (especially but not only the women's movement),

though the outcome of the analysis is complex rather than clear (Lovenduski 2005; Squires 2005).

The political science focus may be a reason that this concept does not include the body of law on equality nor the most important institutions that implement these laws. Yet, state interventions to reduce gender equality often use the law as a tool of policy, and its detailed specification and varied implementation can be important for the effectivity of state interventions into equality issues (Hepple et al 2000; Bell 2004).

Additionally, and recently, the focus of attention in the debates on equality institutions has broadened beyond women or gender, as a consequence of the increasing tendency to address multiple inequalities within the same set of policy institutions (O'Cinneide 2002; European Commission 2004; Verloo 2006).

In order to encompass the wider range of institutions, including law and its implementation bodies, and the implications of the intersection of multiple inequalities in policy and practice, the concept of 'equality architecture' is adopted here as the one that is the more comprehensive and adequate to the analytic task. The concept of equality architecture includes not only the Commissions responsible for over-seeing the implementation of the law, the governmental policy-making units that are focused on new policy developments and institutionalised consultation mechanisms that engage with constituencies in civil society but also the law and the institutions to implement the law.

While the focus of this paper stays with the implications of changes in the equality architecture for gender equality, the range of bodies considered includes those that address the full range of inequalities. The equality architecture is not a monolithic unity, but a complex set of partially inter-dependent institutions. There are different relationships between the equality strands in each of these four kinds of institutions that require separate attention before conclusions as to the nature of the whole can be drawn.

What is quality in gender and equality architecture?

What are the criteria for determining the quality of the gender and equality architecture? There is quality according to the scope of vision of equality, quality in the range of people encompassed, quality in relation to the range of policies included, and quality in the scale and depth of resources available (Armstrong, Walby and Strid 2009). While the main focus is on gender equality, there is concern for broader equalities both because they overlap in the same policy arenas and in their own right. There is a challenge to reach the highest quality for specific strands when institutions engage with multiple inequality strands.

The best quality architecture embeds as its guiding principles an ambitious vision of equality as its goal. While some have argued that the vision of equality is best achieved through equal treatment, or through the equal valuation of different contributions, the most supported approach involves the thorough transformation of both standards and practices of gender relations (Fraser 1997; Rees 1998).

The best architecture ensures that the widest range of inequalities is encompassed in some way. There is a challenge to encompass equality viewed from the position of different groups, especially those at the intersection of different inequalities (Crenshaw 1991). There is a substantial debate as to whether addressing multiple inequalities is best done within single or separate institutions. A move to a single body is recommended by the European Commission 'It is also positive to note the trend towards the establishment of single equalities bodies dealing with all of the grounds of discrimination covered by the Directives' (2004: 26), but such a move has been critically reviewed by others (Verloo 2006). There is a tension between attention in depth to the specifics of each inequality and the engagement of several inequalities through similar tools (O'Cinneide 2002; Walby 2007). Is there the development of 'effective cross-strand strategies, addressing overlapping and multiple forms of discrimination' or instead the 'diluting of

levels of expertise, creating a hierarchy of grounds and serving as an excuse for watered down resources' (O'Cinneide 2002: v)? The best architecture is inclusive and takes account of the complexity of intersecting multiple inequalities: but how this is to be done is contested.

The best architecture promotes the inclusion of a broad range of policies relevant to gender and equality. These may be narrowly defined and limited to non-discrimination or broadly defined as recommended by the more ambitious strategy of gender mainstreaming in which almost all policy arenas are relevant. In institutions that attempt to address multiple inequalities, there may be pressure to narrow the policy strategies to anti-discrimination since this is a common issue, rather than the detailed engagement with many policies that is required by the more ambitious mainstreaming strategy. Will there be a dilution to the lowest common denominator, such as anti-discrimination, or effective transfer of expertise and levelling up across strands (O'Cinneide 2002; European Commission 2004; Verloo 2006; Walby 2007)?

Resources? How substantial are the resources available to pursue policy objectives, for example trained staff (Veitch 2005), proximity to power (Lovenduski 2005), and rhetorical inclusion. A key question for the restructuring of the equality Commissions is whether their merger into the same body means that resources for each strand (especially older strands) are spread more thinly thus with a net reduction in resource, or whether the sharing of resources for similar tasks mean that there is more effective effort? Are there attempts to cut costs, or to boost delivery of policy initiatives? Are the Paris Principles, laid down in 1991 at the first International meeting of the National Institutions for the Promotion and Protection of Human Rights of 'independence guaranteed by a constitutional or legislative framework, autonomy from government, pluralism including pluralism of composition, a broad mandate, adequate powers of investigation, sufficient resources' (PLS Ramboll 2002: 2) met?

In order to assess the quality of the gender and equality policy architecture it is important to identify: whether the scale of the ambition of the vision of gender equality is transformative; whether all women are appropriately included; the range of the policies that are addressed; and the resources available including expert staff, funds, legal powers, appropriate discursive positioning and connections to other resources and power.

How should the relationship between multiple inequalities be conceptualised in theory and policy?

The importance of addressing the nature of the relationship between multiple inequalities is well recognised in gender theory and becoming to be recognised in policy practice (Hartmann 1976; Crenshaw 1991; McCall 2005). There is a range of ways in which these relationships are conceptualised. A key division has emerged between the approach that treats inequalities as separate and additive and that which treats them as mutually constitutive. However, there are a range of further possible conceptualisations of the relationship between inequalities (Hancock 2007). A typology of five forms of relationship between multiple inequalities is utilised here: single, multiple, additive, mutually adaptive and mutually constitutive (Walby, Armstrong and Strid 2009).

First, all inequalities are reduced to a single over-arching inequality, such as class or social exclusion. Although long rejected in feminist theory, it is important not to ignore those approaches that are centred on class. Second, multiple inequalities are treated as separate and distinct, addressed by different policies, laws and agencies. While rarely recommended in the academic literature, this approach has a substantial history in policy practice. Third, multiple forms of inequality are treated as additive, for example, through the notions of 'doubly disadvantaged' or 'vulnerable women'. This approach has a substantial policy presence. Fourth, inequalities are treated as mutually adaptive, in that each is shaped by other sets of social relations, even while maintaining a specificity of their own. Fifth, inequalities are treated as mutually constitutive, so significantly shaping each other that they are co-

constituting. This is a typology of ideal types. It is useful for distinguishing between different practices in the equality architecture that have can have diverse effects on its quality (Walby, Armstrong and Strid 2009).

There are three further sets of distinctions in the way that the relationships between multiple inequalities can be conceptualised that are useful for the analysis of the equality architecture. First, whether the relationship is one of antagonism, alliance, coalition or hegemony. Second, adding a focus on the relationship between the advantaged and disadvantaged in each strand, for example in class between employers and employees. Third, in addition to the consideration of groups or strands as sets of people, to include projects and policy fields, which may expand or reduce in scope (Walby, Armstrong and Strid 2009).

WHAT IS THE RELATIONSHIP BETWEEN MULTIPLE EQUALITIES IN THE EQUALITY ARCHITECTURE IN BRITAIN AND HOW HAS IT CHANGED?

The relationship between multiple inequalities within each of several types of equality institutions and the changes in them in Britain is the focus of this section. The equality architecture in Britain is made up of four sets of inter-related institutions: the implementation agencies or Commissions; governmental policy units in central government; and government funded but partly independent consultation institutions at the interface of state and civil society; and the law and the specialised legal machinery including tribunals and courts for its implementation. While the main interest has been in the creation of a single Commission, the Equality and Human Rights Commission, out of the merger of the three 'legacy' Commissions on ethnicity, gender and disability, and the addition of responsibilities for age, religion/belief, and sexual orientation together with human rights in 2007, the continuation and revisions to the governmental policy units, the consultation units and the legal machinery are also of significance.

In Northern Ireland the laws on discrimination are slightly different, with early priority to religious discrimination and the setting up of a single implementation agency. The remit of the EHRC does not extend to Northern Ireland, hence the focus of this paper is on Great Britain (England, Wales, Scotland), although some aspects of the governmental policy units do cover the whole of the UK. Further both Scotland and Wales, with their devolved administrations since 1999, have additional initiatives of their own, including in Scotland, a separate Human Rights Commission for Scotland (Scottish Human Rights Commission 2008).

Equality Commissions

Equality Commissions were separately established for ethnicity in 1965 (the Race Relations Board was established in the 1965 Race Relations Act and transformed into the Commission for Racial Equality in the 1976 Race Relations Act), for gender in 1975 (the Equal Opportunities Commission (EOC) was established by the Sex Discrimination Act of 1975), and for disability in 2000 (the Disability Rights Commission (DRC) was established by the 1999 Disability Rights Commission Act). The equality strands of age, religion/belief, and sexual orientation did not have Commissions of their own prior to the establishment of the Equality and Human Rights Commission.

The responsibilities of these Commissions were to promote, analyse, monitor and support the equal treatment of all persons with regard to their specific equality strand. They had powers to assist victims of discrimination to take cases through the courts, to produce and commission surveys and research, to conduct formal investigations, to engage in awareness raising, to launch campaigns and to make recommendations to government.

What is the model of the relationship between inequalities in these Commissions? Institutionally it might appear that they adopt the second model, ‘multiple’, since they have separate jurisdictions for distinct inequalities. However, in practice the Commissions did address some of the issues that arose from the intersection of inequalities, not least because their own client

base was differentiated by these other inequalities. For example, the EOC commissioned research reports and ran policy initiatives for women minoritised by ethnic and religious status. Since they tended to interpret the position of these women as doubly disadvantaged by additional discrimination due to ethnicity and/or religion, they might be best understood as working with the third model: 'additive'. The EOC tended not to address this as a cultural issue, so the notion of mutually adaptive or constitutive appears not to apply.

There is a further Commission, the Low Pay Commission (established in 1997), which oversees the Minimum Wage. This is not traditionally seen as part of the equality architecture, even though low pay is a priority issue for all the equality strands. This Commission might be considered an example of a class-first institution that has significant if barely visible or effects on other inequalities. Its model of the relationship between multiple inequalities might be considered closest to the 'single', in that all other inequalities are seen as ultimately stemming from its focus on class or socio-economic inequality.

The Equality and Human Rights Commission was formed in 2007 from the merger of the CRE, EOC, and DRC together with competence for the inequalities of age, religion/faith and sexual orientation, as well as for human rights. While the several inequality strands were initially explicitly named, it does not have an internal organisation that is based around separate inequalities, but rather one that is divided by function. There are small exceptions, such as an internal committee for disability, but these are minor.

The establishment of the single equalities body that included human rights was provoked by the extension of the grounds on which discrimination became illegal in the EU, following the Treaty of Amsterdam 1999, and subsequent legally binding Directives that were transposed into UK law, and by the UK Human Rights Act, again a consequence of EU developments. There was in addition extensive consultation within the UK as to the form that the equality architecture should take in this new legal environment from 2001 onwards (Office of the Deputy Prime Minister 2001, 2002; Department for Trade and Industry 2004) including discussion as to whether there should be

a separate commission for human rights (House of Lords 2002). A key constituency in these consultations was employers, who preferred a one-stop shop for their dealings with equalities issues in employment (Confederation of British Industry 2003). In most instances the civil society groups associated with the 'old' (ethnicity, gender, disability) strands did not want merger (e.g. see Women's National Commission 2004), while the 'old' Commissions were only reluctantly brought into alignment with government plans. Thus it is important to include the relations within a strand (class: employer, employee) in order to understand the dynamics of the restructuring of the equality architecture in Britain: it is not only the disadvantaged groups that are consulted and contribute to the shaping of new institutions.

Governmental Policy Units

Governmental policy units are located within the central government Departments. They are responsible for policy innovation and development, while the Commissions have had a narrower remit focused on the oversight and implementation of the specific equality laws. They usually have a Ministerial (that is political) lead, though this is more often a junior than senior appointment.

There have been separate governmental policy units for racial equality and gender equality for many years, more recently, for disability, and more recent still for religion/faith. The governmental policy unit for racial equality had as its main location for many years in the Home Office, and is currently in the Department of Communities and Local Government, as is the governmental policy unit for religion/faith. The governmental policy unit for disability is located in the Department for Work and Pensions, as is the unit for age (Government Equalities Office 2009a). The governmental policy unit for gender issues was originally located in the Department of Employment. In 1997 it moved to the Cabinet Office, where it was known as the Women's Unit, then it moved to the fair markets section of the Department of Trade and Industry, and became known as the Women and Equality Unit (Squires and Wickham-Jones 2004). While the Equality and Human Rights Commission

was formed in 2007, the governmental policy units were not merged in parallel. There has been the formation of a new government Department, the Government Equalities Office in 2007. This addresses gender and sexual orientation. It also has the overall lead on equality issues, for example the EHRC reports to it (GEO 2009a) and it is the lead on the Public Service Agreement on equality agreed with the Treasury. There is thus a significant lack of alignment of the governmental policy units with the merged equality Commission.

Thus it would appear that the model of relations between multiple inequalities in most of the governmental policy units is that of 'multiple', except for the Government Equalities Office where the model is perhaps mutually adaptive or constitutive.

Consultation Bodies

There is a wide range of ways in which consultation with civil society is organised by government. These include specialised bodies permanently established to engage in this consultation as well as specific bodies set up to engage in specific consultations. Most civil societal groups which are consulted by government on equalities issues are separately organised, however, frequently co-operative through coalitions, thus in practice adopting the additive or mutually adaptive models.

Government has established formal channels of communication with relevant civil society groups in some instances. This includes for example, the Women's National Commission (WNC), established in 1969, which provides an interface between government and civil society (Women's National Commission 2009). At the point of establishment of the EHRC, there was a light touch review of the WNC; which it survived.

A recent addition to the consultation arena is the Equality and Diversity Forum, a well-funded, independent civil society discussion forum that is explicitly cross-strand and involved in consultations on equalities issues.

A further recent addition has been a panel of academic experts, the National Equality Panel, to review the evidence on inequalities (Government Equalities Office 2008). The prioritisation of particular forms of data and analysis are associated with a soft class-led analysis, with infrequent mention of the specificity of each strand

Law and legal machinery

Laws making discrimination illegal initially developed separately one by one for each of the six inequalities in Britain. From 2006 there have been legal developments that covered all these inequalities in a single act. The tribunals and courts which implement the laws are largely part of a pre-existing legal system, some important parts of which are organised through class-based contestations in employment tribunals.

Unlike most of the European Union, the first laws addressing discrimination concerned ethnicity rather than gender, and the deepening of the laws has likewise typically occurred first in relation to ethnicity and then followed in other areas. The 1965 Act made illegal discrimination on grounds of race (or colour, ethnic or national origins) in public places. In 1968 the Act was extended to make illegal discrimination in employment and in the provision of goods and services (which includes housing and education). The 1976 Act made indirect as well as direct discrimination illegal, and provided redress through employment tribunals and courts. The Race Relations (Amendment) Act 2000 places on public authorities a statutory duty to promote racial equality, not merely to avoid discrimination. The first major law on sex discrimination was the Equal Pay Act of 1970 which came into force in 1975 alongside the Sex Discrimination Act, jointly making illegal discrimination against women in employment and setting up the EOC (there was an earlier law on the removal of sex discrimination in citizenship issues such as jury membership after partial female suffrage in 1918). Laws making illegal discrimination on the grounds of disability, and additionally enshrining requirements to make reasonable accommodation, quotas and establishing

the Disability Rights Commission were passed in 1995 and 1999 (laws; Goss et al 2000). Laws making illegal discrimination in employment on the grounds were passed for age in 2006, religion/faith in 2003 and sexual orientation in 2003, followed by the Civil Partnerships Act which was passed in 2004 coming into effect in 2005.

In this suite of laws the multiple inequalities were treated separately. There were similarities and parallels, as a consequence of drawing on the same legal requirements of the EU and of legal learning within Britain that was transferred from one equality ground to another. But there are also some significant differences between the strength of the legal framework for different inequality strands (Hepple et al 2000).

After 2006, new laws on equalities were sometimes contained within the same piece of legislation. The Act of 2006 and the Bill of 2009 contain some significant moves to even out the differences. Most of this was a process of levelling up, not levelling down, and during which the main beneficiary groups are the new equality strands of age, religion/faith and sexual orientation, rather than the old, within which gender is located. There has been contestation between equality strands on specific areas, especially regarding religion, where there have been clashes with rights for women and sexual minorities, since religious beliefs and practices can include discrimination against these groups (EVAW 2009).

There is an official consultation on whether discrimination against a member of a group at the intersection of two grounds (for example black woman) can in itself be used as a basis of a legal claim (Government Equalities Office 2009b).

The implementation of the law in specialised legal machinery of tribunals and courts is, unlike the laws themselves, not divided between the different strands, but rather shared. The employment tribunals (and appeals tribunals) used to adjudicate on employment discrimination claims are the same as those set up to adjudicate on class-based disputes between employers and

employees. Thus, when the specialised legal machinery to implement equalities laws is included within the concept of the equality architecture, then class emerges as a very important equality strand. This is because the specialised tribunals that adjudicate on the equality laws on employment issues were originally developed for class-based inequalities in disputes between employees and employers. The use of tribunals set up for class issues for ethnic, gender then other inequalities means that they are still structured by class divides rather than ethnic or gender divides. The tribunals (less formal than courts), where most cases are heard and resolved, are adjudicated a panel of three people which is usually made up of: a legally qualified chairperson, and two 'lay members': one with an employer background, and one with an employee background (EHRC 2009).

Legal disputes in employment over ethnic, gender and disability discrimination issues are heard in the same tribunal and court system. The representation on the panel of three deciders remains the same class based system. It has not changed to ensure representation of black and white; male and female; disabled and able-bodied. Class divisions remain as the central division in the legal system that adjudicates on employment discrimination on the grounds of ethnicity, gender, disability as well as age, religion/faith and sexual orientation.

The equality legislation discussed so far includes only the legislation that is explicitly named as equality legislation. This is centred on employment, though broadly defined, and extends to the sale and distribution of goods and services for most equalities. However, there are important policy fields in addition to these where equalities issues are important. An example of this is violent crime against women and other minoritised groups. Whether crime policy should be included within the field of equality policy or indeed human rights policy has potentially significant implications for the discussion of multiple inequalities and the equality architecture.

There have been significant developments in improving the policing and prosecution of violence against women and minorities, the latter often termed 'hate crime'. There are new forms of training for the police, specialised

policing units with developing expertise, reformed prosecution strategies in the Crown Prosecution Service, and experimental domestic violence courts with specially trained magistrates (Home Office 2006). The largest and most important of these developments concerns gender-based violence. Within this field there is special attention to the intersection with some ethnic and religious divisions where there are distinctive forms of violence, such as forced marriage and female genital mutilation. The developments on hate crime have often been led from work on racialised violence into the other equality strands.

Within the field of equality and the law, there are simultaneously several models of the relationship between multiple inequalities. It is possible to find the single (where a class-led court system of employment tribunals is used for discrimination cases), multiple (separate equality laws for each strand between 1965 and 2006), mutually constitutive (consultation on whether membership on intersecting group can be the basis of a claim of discrimination). Within the field of equality, human rights and violent crime, there are simultaneously several models of the relationship between multiple inequalities. It is possible to find the single (single legal system), multiple (separate addressing of violent crimes against women, ethnic, religious, disability, gay/lesbian minorities by specialised law enforcement agencies), mutually constitutive (specialised interventions against forced marriage and female genital mutilation).

WHAT ARE THE CHANGES IN THE QUALITY OF GENDER AND EQUALITY ARCHITECTURE?

Ambition of vision

The scope the ambition of the vision has changed in complex ways. This includes the shifting balance between equality of outcome and equality of opportunity or treatment. The greater use of additional justice-based

concepts today than in the past may be interpreted either as expanding or narrowing the scope of ambition of vision.

While there is reference to the concept of 'equality', as in the title of the Commission, there has always been ambiguity as to whether this was intended to be the ultimate goal of the equality architecture. In practice, in both past and present, equal opportunities and equal treatment are more important in defining the scope of the vision than is the outcome of equality. The EU-based legislation has always focused on equal treatment (implicitly equal opportunities) rather than on equality of outcomes. Nevertheless, there are some important issues where equality of outcome and equal treatment are very close, as in the goal (of the EOC, EHRC, GEO and Treasury PSA) to narrow the gender pay gap (an outcome) and to equally pay work of equal value (both outcome and opportunity) (embedded in law as well as policy institutions).

The addition of justice frameworks other than equality or equal opportunity presents both risks and opportunities for the scope of the ambition of vision. These include 'fairness', 'human rights' and 'capabilities'.

A privileged position is given to the concept of 'fairness' in the foundational document of the EHRC, *Fairness and Freedom* (2007), and this is continued in the justification of the 2009 Equality Bill. This might be considered a strong concept, since it is popular and consensual (who could not want to be fair?), but in practice it is a weak basis on which to build a vision since it is so poorly defined and referenced, and not embedded or stabilised in any effective way in a set of institutions that might effectively operationalise it.

Human rights are built into the EHRC as part of its remit, and rest on the UK Human Rights Act, itself the product of EU legislative developments. Such rights might be considered to be a strong basis for a vision, drawing on a powerful universalistic vision of human progress but this perspective is limited in several respects. The concept of human rights is a 'threshold' concept, while that of equality is one of the relative positions of groups and when

applied to the economic or employment field this is limiting, except perhaps in matters of dignity and freedom from harassment.

The concept of ‘capabilities’ is used by the GEO and EHRC to articulate its vision of progress. This draws on a powerful philosophical development following the work of Amartya Sen, which has been used to broaden the goal of development so as to include that of human not merely economic development. However, there are various interpretations of this school of thought and the GEO appears to have embraced the version that is focused on the choice or opportunity aspect of this approach, rather than a focus on human outcomes as pioneered by the United Nations Development Project. Hence, while there is strength in broadening the field of relevant policy arenas, there is a significant weakness in the preferred operationalisation as choice and opportunity rather than outcome.

There is a further tension between a single standard of justice (such as equality) and diversity in some approaches to the underlying vision of the equality architecture. In some approaches the priority awarded to difference and diversity means that the scope for a single standard against which equality or justice can be assessed is reduced. However, this is not a necessary consequence. It is possible to retain a singular standard of justice if it is appropriately defined, while paying appropriate, but not more, attention to diversity. The inclusion of multiple inequalities within the same equality institutions adds to the potential of the diversity project undermining the equality project.

In summary, the proliferation of approaches to justice within the new institutions of the post-2007 equality architecture, especially the EHRC and GEO, destabilises established authoritative visions. This destabilisation has led to both the widening of the range of issues under consideration but also to the reduction in the authority of the equality tradition that had previously underpinned the vision of the architecture to the detriment of its vision and effectiveness.

Multiple equality groups addressed in different ways

The relationship between multiple inequalities is treated differently in different branches of the equality architecture and pre and post 2007. However, the differences should not be exaggerated.

There are questions as to the extent to which the treatment of the relationship between multiple inequalities has changed as a consequence of the merger of the old Commissions into the EHRC. At first glance it might appear that there has been a move away from an old model of separate treatment of multiple inequalities to a new model in which multiple inequalities are treated as mutually constituted. However, the picture is much more complex. While each of the legacy Commissions was organised around a separate strand, in practice they each engaged the intersection of their primary inequality with others. For example, the EOC had specialised reports and policy initiatives for ethnic and religious minority women (EOC 2007). In practice they worked with an additive model of the relationship between inequalities. In the new Commission there is no significant organisation by equality strand, which implies that they have adopted a model of multiple inequalities either as similar and in parallel or one in which multiple inequalities are treated as mutually constitutive.

The governmental policy units are still primarily organised on a model of separate multiple inequalities, except that the GEO has some overarching functions.

The new expert panel, the National Equality Panel, has prioritised income inequality and thus class-led forms of inequality, with lesser attention to the specificities of the different equalities. This is might be characterised as a return of a class-led hegemony, although the focus is more often on poverty than the social relations of class. However, some civil societal forms of consultation remain specialised by strand.

The law still separately specifies the equality groups that are protected, while the legal implementation is still based on a class-led model. There is contestation at some of the intersections of inequality strands, especially between on the one hand religion and on the other gender and sexual orientation. There is a proposal that the 2009 Act specifically addresses groups at two intersections, so that in some cases no longer need to choose one or the other.

These changes to the law and to the equality commissions have benefited the 'new' grounds (age, religion/belief, sexual orientation) more than they have the 'old' grounds (women, ethnicity or disability).

Range of policy arenas

The policy range of the pre-2007 equality Commissions was centred on employment broadly defined, with additional concern for the sale and distribution of goods and services. This was based on the legal powers provided by the legislation, which was largely restricted to these areas. However, despite this ostensibly narrow remit, the interpretation of relevant policy areas became quite broad, at least partly because of the adoption of transformative approach to equal opportunities and equality, rather than merely justice within the status quo. This meant that its policy range in relation to gender included not only the immediate conditions of employment, such as reducing discrimination, but also wider concerns such as the childcare necessary to facilitate women's effective equal employment.

The post-2007 EHRC has openly claimed a wider policy remit beyond employment and services. So the merger of the multiple equalities into one unit has not led to a narrowing of policy interest towards only anti-discrimination. For example, in response to pressure from feminist civil society groups for attention to the issue of violence against women the EHRC response, Phillips (2008) declared that this was a matter for the EHRC, although practical action beyond support of levelling up of services for survivors of rape and domestic abuse has not yet been very visible. A further

example of the intended extended range lies in the commitment to ten domains of equality, identified in the Equalities Review that is being built into the equality measurement framework: longevity, physical security, health, education, standard of living, productive and valued activities, individual, family and social life, participation, influence and voice, identity, expression and self-respect, legal security (Equalities Review 2007).

However, while these are increases in the policy range of the implementation Commissions, the policy range of the governmental policy units has always been wider than the remit of the existing equality laws in employment and services, and is little altered by the 2007 changes. So, this is a change in one of the several branches of the equality architecture, not all of them.

Further, most of the development of policies against violence against women and minorities has occurred outside of the policy field usually identified as 'equalities', being focused on the police, Crown Prosecution Service, Home Office and Ministry for Justice. Inclusion of violent crime in the equalities policy arena may be justified in theory, but this is not often how it is seen by the policy practitioners. Hence, the argument about the broadening of the policies in the equality architecture has serious limits. These policy developments are more a consequence of sustained pressure from civil society, rather than processes within the equality architecture.

Resources spread more thinly

Were the resources of the new Commission raised in line with its additional responsibilities for three further equality strands and human rights? Or was this restructuring used as an opportunity to reduce funding on these matters? In one branch of government, there was a claim that the forming of the EHRC would lead to cost savings of around 25%, while actively seeking suggestions as to how to reduce the administrative impact of the equalities legislation (GEO 2008).

There has not been the increase in resources commensurate with the doubling of the number of strands and the addition of human rights. The new Commission had around the same budget and fewer staff than the combined totals for the three old Commissions. In 2006-7, the last year of the existence of the separate commissions, their expenditure was combined expenditure was £23million (CRE £10m; EOC £5m; DRC £8m). In 2008-9, the first year of existence of the new EHRC its projected staffing costs were £24m. In 2006-7, the old Commissions employed a total of 628 staff (CRE 247; EOC 172; DRC 209). In 2008-9, the EHRC employed 514 staff (Commons Hansard, 10th March 2009).

The implication is that increased governmental resources were deployed for age, religion/belief, sexual orientation and human rights and that either they were decreased for gender, ethnicity and disability, or maintained or indeed increased if it is considered that there are cost savings and efficiency improvements. The more likely conclusion is that the net resources for the 'old' strands, including gender, were reduced.

Overall

The lack of additional resources to take on extra strands and tasks means that it is unlikely that there has not been a reduction in the net resources devoted by the equality architecture to gender, ethnicity and disability during the change from three to one equality Commissions. The governmental policy units have remained largely unchanged and separate, except that the Government Equalities Office, where gender is situated, has the lead where there are overall equalities issues. While the EHRC has noted the significance of violence as a policy domain relevant to equality, this is not generally within the remit of conventionally understood equality architecture. The changes to the law have benefited especially the new equality strands of age, religion/faith and sexual orientation, but there has been no down-grading of the others, and indeed gender won its 'public duty' during the process of formation of the EHRC.

CONCLUSIONS

The changes in the equality architecture would appear to confirm the view that prior to 2007 each inequality was treated as separate, since there are separate institutions for each equality strand for policy development (governmental unit), implementation (Commissions) and consultation (e.g. WNC). However, there are two major challenges to this assumption of separation of strand activity: first, some institutions were shared between the equality strands; second, the practice of the institutions sometimes included engagement with intersectionalised groups.

First, the implementation of the anti-discrimination law in employment, a key policy instrument for equalities, was contained within a system that had an overarching class logic, since all inequalities shared the same class-led system of specialised employment tribunals where all employment discrimination cases were heard. While the employer-side was always represented, the worker-side representation did not require a specific representation of relevant gender, ethnic or disability interests.

Second, the pre-2007 Commissions did not ignore either the additive multiplication of inequalities or intersectionalised groups. In particular, the EOC had specific projects that addressed women in minoritised ethnic groups. The consultation machineries did not ignore intersectionalised groups either. For example, the WNC had several of its sub-groups and working groups that addressed women in minoritised groups, especially Islamic women.

So, while the most visible part of the architecture of the equalities system that developed between 1965 and 2007 appeared to develop on the basis of addressing separate and increasing numbers of inequalities, this was not the only model utilised; various alternative models were used. There was an element in which class was treated as the overarching inequality, in the employment tribunal system through which all legal claims about discrimination in employment would pass. There were elements of additive

inequality and of mutual adaptation or constitution in the approach of the separate equality Commissions and consultation machineries, when they addressed the additional inequalities and vulnerabilities of specific groups of women at the intersection of gender and ethnicity, and gender and religion.

It is important to broaden the range of institutions usually included in discussions of equality architecture; these include not only the implementation Commissions, but also specialised legal courts, governmental policy units and institutions for consultation with civil society. There have been significant changes in the equality architecture, in particular the merger of the equality Commissions, but some types of institutions, such as the governmental policy units remain separate. The broadening of the range of institutions shows stability as well as change in the equality architecture in relation to multiple inequalities.

The changes in the equality architecture have implications for the outcomes of particular equality goals. However, these outcomes are also shaped by the wider environment, of civil society, polity and economy; they are not uniquely determined by the equality institutions themselves. Civil society pressure on the EHRC may well represent the separate interests of strands since many civil societal equality organisations are organised by strand; although far from all. Exceptions include the Equality and Diversity Forum, which deliberately tries to include all strands in a deliberative forum, and Southall Black Sisters, which is linked to an intersectional group. Trade unions are perhaps hybrid, in that while primarily organised around class interests, they usually have an internal committee structure that separately represents the interests of major strands. The organisations are often constructed around communities of perceived interest; though some significant entities take a deliberately coalitional form, including the Equality and Diversity Forum, the Women's Budget Group and End Violence Against Women. Despite the merger of strand specific Commissions, and the expressed interests of the business community, the new single Commission has not narrowed its focus to the shared policy arena of discrimination in employment. This might be at least partially attributed to the pressure from a diverse and active range of civil

societal organisations that have engaged with and pressured the new Commission.

The usual typology of distinctions in the way in which multiple inequalities and intersectionality are treated needs to be broadened to include different forms. Not only is it useful to make a distinction between additive and mutually constitutive forms of multiple inequalities; it is important to include the reduction to a single overarching inequality, especially class or social exclusion, as well as the separate treatment of multiple inequalities.

Where there is a model of mutual adaptive relations between multiple inequalities, there is a tendency for the potential to be lost since it is used in a static way with a focus on particular small groups. The conceptualisation of each of the multiple inequalities as a social relationship of inequality tends to be obscured or lost.

Mutual constitution is only one of several ways in which the relationship between multiple inequalities occurs in the context of policy development. There are other important models including: parallel; additive; mutually adaptive; hegemony; new project. A wider spectrum of possible relationships between equality strands needs to be included in analyses of multiple inequalities. The new gold standard of 'intersectionality as mutual constitution' needs to be re-thought in the light of practical experience of equality architecture development.

REFERENCES

Armstrong, Jo, Sylvia Walby and Sofia Strid (submitted 2009) 'The gendered division of labour: how can we assess the quality of employment and care policy from a gender equality perspective?' *Benefits: A Journal of Poverty and Social Justice.*

Bell, Mark (2004) *Critical Review of Academic Literature Relating to the EU Directives to Combat Discrimination*. (Brussels: European Commission). Accessed at:
http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/crirev.pdf

Commission for Racial Equality (2005) *40 years of Law Against Racial Discrimination.* http://83.137.212.42/sitearchive/cre/40years/introduction.html

Commons Hansard (10.3.09) Written answers 'Manpower: Equality and Human Rights Commission'. Accessed (24.6.09) at:
http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090310/text/90310w0028.htm

Communities and Local Government (2007) *Discrimination Law Review.* London: CLG.

Communities and Local Government 'Race Cohesion and Faith'. Accessed (24.6.09) at:
http://www.communities.gov.uk/communities/racecohesionfaith/

Confederation of British Industry (2003) "Equality and diversity: making it happen": the CBI response.

Crenshaw, Kimberlé Williams (1991) 'Mapping the margins: Intersectionality, identity politics, and violence against women of color', *Stanford Law Review*, 43, 6, 1241-99.

Department for Trade and Industry (with the Department for Constitutional Affairs, Department for Education and Skills, Department for Work and Pensions, Home Office) (2004) *Fairness for all: a new commission for equality and human rights*. London: Department of Trade and Industry.

End Violence Against Women (2009) 'Second Reading Briefing' Equality Bill'. Accessed (24.6.09) at: http://www.endviolenceagainstwomen.org.uk/

Equal Opportunities Commission (2007) Moving on up? The way forward. Report of the EOC's investigation into Bangladeshi, Pakistani and Black Caribbean women and work. Equal Opportunities Commission: Manchester.

Equalities Review (2007) *Fairness and Freedom: The Final Report of the Equalities Review*. London. Available at:
http://archive.cabinetoffice.gov.uk/equalitiesreview/upload/assets/www.theequalitiesreview.org.uk/equality_review.pdf

Equality and Human Rights Commission (2009) 'The employment tribunal process: the hearing itself'. Accessed (January 2009) at:
http://www.equalityhumanrights.com/en/yourrights/equalityanddiscrimination/howtouseyourrights/Pages/Theemploymenttribunalprocess.aspx?section=7

European Commission (2004) *Equality and Non-Discrimination in an Enlarged European Union*. Green Paper. (Brussels: European Commission).

European Commission (2007) *Gender Equality: Legal Acts on Equal Treatment*. Accessed at http://ec.europa.eu/employment_social/gender_equality/legislation/legalacts_en.html

Fraser, Nancy (1997) *Justice Interruptus*. New York: Routledge.

Gender Equality Architecture Reform Campaign (2009) 'Gear up: building a United Nations that really works for all women'. Accessed (25.6.09) at: http://gear.groupsite.com/

Goss, David, Fiona Goss and Derek Adam-Smith (2000) 'Disability and employment: a comparative critique of UK legislation', *International Journal of Human Resource Management,* 11 (4): 807-821. http://web.ebscohost.com/ehost/pdf?vid=2&hid=8&sid=668c0dbc-5a85-4a83-b989-54dbade70bde%40sessionmgr108

Government Equalities Office (2008) *Government Equalities Office: Simplification Plan Summary December 2008.* Accessed 14.1.09: http://www.equalities.gov.uk/news/geo_simplification_plan.aspx

Government Equalities Office (2008) 'Harman: Professor John Hills to Chair National Equality Panel' (press release, accessed 24.6.09 at: http://www.equalities.gov.uk/media/press_releases/prof_john_hills.aspx)

Government Equalities Office (2009a) *Business Plan 2009-2010.* London: Government Equalities Office. Accessed (24.6.09) at: http://www.equalities.gov.uk/PDF/295311_GEO_BusinessPlan_acc.pdf

Government Equalities Office (2009b) *Equality Bill: Assessing the impact of a multiple discrimination provision.* London: GEO. Accessed (24.6.09) at: http://www.equalities.gov.uk/pdf/090422%20Multiple%20Discrimination%20Discussion%20Document%20Final%20Text.pdf

Hancock, Ange-Marie (2007) 'When Multiplication Doesn't Equal Quick Addition: Examining Intersectionality as a Research Paradigm', *Perspectives on Politics,* 5 (1): 63-79.

Hartmann, Heidi (1976) 'Capitalism, patriarchy and job segregation by sex', *Signs*, 1, 137-70.

Hepple, Bob, Mary Coussey and Tufyal Choudhury (2000) *Equality: A New Framework – Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation*. (London: Hart Publishing).

Home Office (2006) 'Number of specialist domestic violence courts to double'. (12.9.06)Accessed (24.6.09) at: http://www.homeoffice.gov.uk/about-us/news/domestic-violence-courts

House of Lords, House of Commons, Joint Committee on Human Rights (2002) *The case for a Human Rights Commission. Twenty second report of session 2001-2002.* London: The Stationary Office.

Low Pay Commission http://www.lowpay.gov.uk/ (Accessed 24.6.09)

Lovenduski, Joni (Ed.) (2005) *State Feminism and Political Representation.* Cambridge: Cambridge University Press.

McCall, Leslie (2005) 'The complexity of intersectionality', *Signs*, 30, 3, 1771-1800.

Mazur, Amy (2002) *Theorizing Feminist Policy* (Oxford: Oxford University Press).

O'Cinneide, Colm (2002) *A Single Equality Body: Lessons from Abroad*. (Equal Opportunities Commission, Commission for Racial Equality and Disability Rights Commission). Accessed at: http://www.eoc.org.uk/PDF/4_single_equality_body.pdf

Office of the Deputy Prime Minister (2001) *Towards Equality and Diversity: Implementing the Employment and Race Directives.* London.

Office of the Deputy Prime Minister (2002) *Equality and Diversity: The Way Ahead.* London.

Phillips, Trevor (2008) 'An undeclared war on women', *New Statesman.* (24.3.08) Accessed 14.1.09: http://www.newstatesman.com/life-and-society/2008/03/rape-women-violence-equality

PLS Ramboll Management (2002) *Specialised Bodies to Promote Equality and/or Combat Discrimination*. Accessed at: http://ec.europa.eu/employment_social/fundamental_rights/pdf/stureps/equalitybodies_final_en.pdf

Rai, Shirin M. (2003) *Mainstreaming gender, democratizing the State? National machineries for the advancement of women.* Manchester: Manchester University Press.

Rees, Teresa (1998) *Mainstreaming Equality in the European Union: Education, Training and Labour Market Policies*. (London: Routledge).

Scottish Human Rights Commission: http://scottishhumanrights.com/

Squires, Judith (2005) 'Is mainstreaming transformative? Theorizing mainstreaming in the context of diversity and deliberation', *Social Politics*, 12, 3, 366-388.

Squires, Judith, and Mark Wickham-Jones. 2004. New Labour, gender mainstreaming and the Women and Equality Unit. *British Journal of Politics and International Relations* 6:81-98.

Stetson, Dorothy Mcbride, and Amy G. Mazur (2000) Women's Movements and the State: Job-Training Policy in France and the U.S. *Political Research Quarterly* 53 (3):597-623.

United Nations Office of the High Commissioner for Human Rights (1993) *Fact Sheet No.19, National Institutions for the Promotion and Protection of Human Rights.* 'Principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles)'. Accessed (24.6.09) at: http://www.unhchr.ch/html/menu6/2/fs19.htm

United Nations, Division for the Advancement of Women (1995) Fourth World Conference on Women, Beijing, China: *Platform for Action.* http://www.un.org/womenwatch/daw/beijing/platform/

Walby, Sylvia (2007) 'Complexity theory and intersectionality', *The Philosophy of the Social Sciences,* 37, 4, 449-470.

Walby, Sylvia, Jo Armstrong and Leslie Humphreys (2008) *Review of Equality Statistics.* Manchester: Equality and Human Rights Commission.

Walby, Sylvia, Jo Armstrong and Sofia Strid (2009) *Conceptual framework for gender+ equality policies in a multicultural context.* D52 Quing Deliverable.

Women's National Commission (2004) Response to the Government White Paper "Fairness for All: A New Commission For Equality and Human Rights"

Women's National Commission 'Who we are'. Accessed 15.1.09: http://www.thewnc.org.uk/about-wnc/about-us-who-we-are.html

Veitch, Janet (2005) 'Looking at gender mainstreaming in the UK government', *International Feminist Journal of Politics*, 7, 4, 600-606.

Verloo, Mieke (2006) 'Multiple inequalities, intersectionality and the European Union', *European Journal of Women's Studies*, 13, 3, 211-228.

Laws
Acts: Office of Public Sector Information

National Minimum Wage Act 1998. Accessed (24.6.09) at: http://www.opsi.gov.uk/acts/acts1998/ukpga_19980039_en_1

Equal Pay Act 1970. Accessed (24.6.09) at: http://www.opsi.gov.uk/acts/acts1970/pdf/ukpga_19700041_en.pdf

Sex Discrimination Act 1975. Accessed (24.6.09) at: http://www.opsi.gov.uk/acts/acts1975/pdf/ukpga_19750065_en.pdf

Disability Discrimination Act 1995. Accessed (24.6.09) at: http://www.opsi.gov.uk/acts/acts1995/plain/ukpga_19950050_en#pt2-pb2

Disability Rights Commission Act 1999. Accessed (24.6.09) at: http://www.opsi.gov.uk/acts/acts1999/plain/ukpga_19990017_en

Equality Act 2006. Accessed (24.6.09) at: http://www.opsi.gov.uk/acts/acts2006/ukpga_20060003_en_1

Bill
Equality Bill 2008-09. Accessed (24.6.09) at: http://services.parliament.uk/bills/2008-09/equality.html