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Which Way Forward for Gender Equality – and is there an Alternative to Running with 'Wolves'?

By

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Abstract

This paper examines recent thinking about viable ways forward for gender equality at work. It questions both the lingering attachment to feminization in popular commentary and the renewed interest in positive discrimination within academic circles. Arguing for greater attention to be given to the frontline agency of disadvantaged women and material conditions that affect equality activism, it also highlights contradictory pressures on trades unions and tensions in equality bargaining. Other third party agents, particularly ‘no-win-no-fee’ lawyers, are considered to be neglected actors, having greater relevance than the literature typically acknowledges, covering gaps in representation and helping to mobilize women and politicize pay inequality in the public sector.

Keywords
workplace equality, gender and career, positive discrimination, equality bargaining, legal action, equality politics

Word Count: 6934 (excluding references)
**Introduction**

Gender inequality in work and management is persistent. In an era of positive action, and despite four decades of legislation enacted to reduce workplace inequality in Britain, pay disparities and an elaborate structure of glass walls, ceilings and cliffs continue to disadvantage working women. If there ever was “gender revolution” in employment (Cotter et al., 2012; England 2010) it certainly stalled before sufficient progress was achieved.

This is not to deny positive developments. Few observers doubt that the situation of women seeking employment, promotion and fair treatment at work has improved through the last half century, and there is no shortage of information about the key developments. Government policies in many countries now openly encourage female participation, and legislative interventions (including the 2010 Equality Act in Britain) make it easier to challenge gendered inequalities in pay, recruitment and promotion through the courts (Al-Ahmadi, 2011; Broadbridge and Simpson, 2011; Conley, 2012). There are many more women in the workforce, greater numbers progressing through higher education (Equality Challenge Unit, 2011), and a larger proportion securing supervisory and managerial positions (Scott et al., 2010).

It is possible to acknowledge this progress in employment rights and workforce participation for women without accepting that recent change is sufficient or secure. Indeed, there is reason to believe that the latest economic downturn, the Great Recession, has spoiled any optimism or confidence that could reasonably be attached to these developments. Sectors with high female concentrations, including local government and health care, are at the forefront of those facing cutbacks, tight controls and austerity budgets (Fawcett Society, 2012). Areas that were previously associated with unhindered opportunities for women to progress in work and management have also failed to deliver positive outcomes.

Call centres fall into this second category, providing a major source of employment for women though with very restricted routes to high-quality work and to supervisory and managerial responsibilities. Recent research by Scholarios and Taylor (2011) indicates that men have a much better success rate in securing team leader and managerial appointments in this sector than women with the same educational qualifications, despite the preponderance of female workers. Following earlier studies (including Belt, 2002), these authors confirm that women are disproportionately segregated into routinized and highly regimented jobs that are subject to remote monitoring and stress-inducing targets. The opportunities for them to find an escape from this type of work into more responsible or varied roles are limited, and appear to be receding as the proportion with weaker educational qualifications increases. Rather than highlighting progressive developments, the findings from this research point to a sharpening of gender inequalities in call centre employment, with female workers increasingly ‘trapped’ in poor quality jobs while men secure access to most of the supervisory and managerial roles that are available.

The significance of gender at the highest levels of management hierarchies is also raising concerns about continuing, and indeed entrenched, inequality. Although some women
have successfully broken through the glass ceiling, evidence suggests that their experience on the other side is far from palatable or fair. The ranks of senior management continue to be dominated by men, who tend to be better rewarded, less stressed and have more secure employment than their female counterparts (Alvesson and Billing, 2009; Vinnicombe et al., 2010). Most were also better supported, mentored and developed en route to the top.

Studies of women in major leadership roles have cast further light on the dilemmas experienced by women when they reach executive positions, demonstrating how ingrained notions and ways of acting and communicating in predominantly male management environments can produce cliff-edge anxieties among female entrants (Al-Ahmadi, 2011; Weidenfeller, 2012). On the one hand, they often struggle to be taken seriously, and feel obliged to push for visible roles and responsibilities in which they can prove their abilities. On the other, they feel scrutinized and isolated, more exposed to criticism and challenge than the men around them, sensing that they can’t afford to make a mistake. Accounts of the glass cliff capture feelings of vulnerability among women who are not reasonably integrated or accepted into leadership communities, who may be treated as outsiders or interlopers, and who recognize that they can be marginalized as ‘the others’ if their decisions prove to be less than successful.

Considering the weight of available evidence, it would be naïve to believe that the days of gendered inequality in employment are past or numbered. Female disadvantage remains a major issue in work and management. Of course there are success stories of women who have secured ‘better’ jobs and reached management, and even executive, positions. However, many more experience limiting ‘dead end’ jobs, and those who do find ways of shattering the various glass barriers often encounter additional, unanticipated forms of disadvantage. So what is to be done? As Noon (2010) indicates, something needs to happen, although a consensus about the best way forward is sadly lacking.

Media interest has focused quite heavily on the business context and the commercial value of essential qualities that supposedly give working women an edge over men in the aftermath of the banking and other scandals associated with the Great Recession. From here, the logic of the market will provide a happy release. In sharp contrast with this faith in the ‘invisible hand’, academic accounts often stress the importance of an interventionist approach, either with positive discrimination or collective action via trades unions and equality bargaining. This paper critically evaluates these various positions, highlighting some basic limitations and calling attention to the independent views of disadvantaged women and their inclinations towards more directly challenging associations and interventions. Questioning the long-established view that non-unionized women are more vulnerable to employer authority and lack the resources and collective leverage to tackle inequality directly or by other means, it examines the recent influence of other third party agents, specifically ‘no-win-no-fee-lawyers’. Reflecting upon the situation and agency of disadvantaged women in the public sector, some of these third party agents are considered to be highly significant for women’s mobilization, and potentially for measured thinking about the future of equality activism.
“Gender revolution”- what revolution?
For all that has been written about gender disadvantage and the marginalization of women in employment, some commentators have argued that this is not the issue it once was. There is a view, certainly in prescriptive management circles, that gendered privilege is ‘a thing of the past’ (Fondas, 1997), that the future of work and management looks good for women, and even that ‘the future is female’ (Davidson, 2007; Craven, 2009).

Women have been credited with distinctive qualities and capabilities that have latent economic value and the potential to secure a progressive feminization of work and management (Fondas, 1997; Weidenfeller, 2012). Media reports, especially since the Great Recession, have popularised the notion that there are innately feminine ways of working and managing which have found their time, which resonate with demands for socially responsible corporate behaviour and address the most pressing of contemporary business imperatives (Davidson, 2007; Craven, 2009). Women, it seems, are more responsive, empathetic and participative than men. There are suggestions that they are naturally inclined towards engaging and nurturing behaviour, pursuing profits and wider organizational objectives in a principled, collaborative and networked fashion, rather than issuing directives and resorting to autocratic control.

If the claims in these promotional reports are correct, women are also less inclined towards reckless risk-taking and the self-centred, bonus-pursuing individualism that triggered so many of the difficulties experienced with the Great Recession. Given adverse public reaction to aggressive corporate behaviour, and prescriptive business models that prioritize leaner structures, flatter hierarchies, flexible teams and responsive service, women are ostensibly well-equipped for modern management, and have the mindset to fare much better than their male counterparts (Fondas, 1997; Davidson, 2007; Craven, 2009; Weidenfeller, 2012).

This feminization thesis is evidently attractive, especially to the younger women of Generation Y, the children of the 1980s and early ‘90s, who evidently sense that there are now fewer constraints on work and career (Kelan et al., 2009). The celebration of femininity as an asset, as a distinct advantage in the emerging organizational landscape, may be encouraging young women to believe that they have choices and opportunities that were denied to earlier generations, to imagine that gender disadvantage was a problem for their parents and grandparents, though is less of an issue for their own employment.

Some writers are fearful that claims about the feminization of work and management will instill complacency, or worse, a denial of gender disadvantage and a naive belief that market forces will provide a happy release, eliminating historical inequalities between men and women in employment (Broadbridge and Simpson, 2011). Available research and recent debates in the media (Kantor, 2012; Medland, 2012) provide important counterweights to this, however.
Prominent authors have challenged the functionalist parts of the feminization thesis, the notion that corrective markets and business imperatives will deliver equality because feminine virtues are lucrative (Mills, 2002; Noon, 2010). The point that tends to be made here is that markets are far from perfect, and that progress since business prescriptions about responsive and flexible working first appeared has been slow and insecure. Even if there is a link between market forces and feminine qualities, this could be weak rather than strong, mediated instead of direct. Estimates based on the rate of change over the past decade suggest that equal pay could be sixty years away (Street, 2010), and that seventy years could pass before men and women are equally represented on the boards of the top one hundred British companies (Noon, 2010).

Other commentators target the essentialist position that men and women are fundamentally different, focusing particularly on the proposition that male and female managers adopt intrinsically different management styles (Wajcman, 1998; Ramsay and Scholarios, 2005). The balance of available academic research on this issue – including ‘life cycle’ studies that account for age and social status when examining attitudes and orientations, for example - indicates that the substantive differences between men and women at work are marginal (Vogel et al., 2003; Ramsay and Scholarios, 2005; Alvesson and Billing, 2009; Medland, 2012). This evidence casts doubt on the argument that women occupy a separate realm of management, or adhere to a consistently different set of values and orientations. It also raises a question about the implications of accentuating difference. By some accounts, this could have a damaging effect in seeming to legitimize, rather than challenge, established divisions and inequalities (Mills, 2002).

Some of the most telling criticisms of feminization concentrate on the images of a nascent meritocracy that flow from accounts of market and business-driven equality, and the corresponding treatment of women who fail to secure the positions they pursue, or realize their ambitions and potential. Research confirms that merit-arguments are often used to conceal privilege and disadvantage, and deflect attention from prejudicial views (Noon, 2010; Broadbridge and Simpson, 2011). The incidence of inequality in recruitment and promotion is clouded by justifying statements that focus on personal shortcomings, in terms of skills, experience or endeavour, for example. In other words, the disadvantage is covert, and applied with the added twist that those on the receiving end are somehow responsible for not meeting required standards.

In these circumstances, notions of meritocracy effectively re-frame inequality as a matter of personal choice or inability. Women who are unsuccessful with job and promotion applications have supposedly made the wrong choices (say, about developing their skill-set or experience) or lack the requisite talent. One of the key dangers that researchers associate with the feminization thesis is that it increases the pressure on women to succeed, and then opens them to criticism if equality is not achieved. The corollary is that women are more likely to be identified as the source of any disadvantage they experience.

This emerged as a key issue in recent media debates between women from different generations of the equality movement. During the summer of 2012, a New York Times
report on reactions to feminization encouraged women to ‘stop blaming themselves’ and to be less susceptible to the ‘higher-harder-faster school of female achievement’. A former American State Department official, Anne-Marie Slaughter, offered the following view:

“Women of my generation have clung to the feminist credo we were raised with…because we were determined not to drop the flag for the next generation…But when many members of the younger generation have stopped listening, it is time to talk…Glibly repeating ‘you can have it all’ is simply airbrushing reality. “ (Kantor, 2012, p. A14).

From here, the future is not so assuredly female, and the feminization thesis itself is problematic and potentially damaging. Naïve references to essential qualities that are finding their time commercially in fact de-politicize the equality project and deny the importance of considered activism.

**The case for positive discrimination**

Positive discrimination has attracted considerable academic and political attention in recent years, with proponents (most notably Noon, 2010, 2012) arguing that it offers some much-needed leverage to secure meaningful change. Though often confused and conflated with positive action, positive discrimination is quite different, involving concerted attempts to redress the effects of earlier disadvantage and deliver a “progressive leap towards greater equality of opportunity and outcome…” (Noon, 2012: 86).

This interest in compensating for the effects of historical injustice has been highly significant in British political circles since the late 1990s, ensuring that a moderate form of positive discrimination was included in the 2010 Equality Act. This allows employers to hire and promote women in preference to men whenever a tie-break situation arises and a shortlisted group of men and women are equally qualified for available positions.

In the event of a tie-break on job-specific qualifications, women can be lawfully appointed over men. The intention with this is to counteract any hidden or tacit endorsement of men in such situations, through the ‘old boy’ network, for instance. The Act calls for systematic and transparent differentiation based on recognized imbalances, rather than spurious or questionable assumptions. However, employers are not obliged to follow this convention. It is permissive rather than mandatory, meaning that it is not unlawful to recruit or promote a woman with qualifications equivalent to any male candidates. It is left to employers to decide whether they adhere to the provisions and favour women in a tie-break situation, and the legislation was presented as an extension of positive action and not a form of positive discrimination.

This optional aspect reflects the sensitivities that surround positive discrimination, although it also provides a focal point for critical reaction based on disappointment and frustration. By some accounts, the British Equality Act is a fudge or tame intervention (Noon, 2010). Since the process of acquiring skills, qualifications and experience is itself problematic for women, the voluntary tie-break provisions are considered to be largely
irrelevant for many, to apply after the fact of their disadvantage, and to have little or no impact on the basic barriers to progress, such as prior assumptions about the suitability of women for training or impact of their domestic situation on the uptake of developmental opportunities. From this standpoint, the tie-break provisions of the Act amount to an incremental adjustment at the margins of the problem, benefiting some women though failing many more. Rather than concentrating on the niceties of non-discrimination and equal treatment, progressive action is needed on the fundamental sources of disadvantage, and this ostensibly means treating women differently, granting them preferential status with stronger forms of positive discrimination.

Noon advocates a less compromised variant, threshold selection, which encourages recruitment and promotion panels to follow a two-step process of evaluating candidates against explicit job requirements and, additionally, organizational objectives relating to equality and diversity (Noon, 2010, 2012). The purpose is to discourage impressionistic rankings of personal achievement and acceptability which privilege male applications, and to secure preferential access for women by magnifying relevant strategic objectives and expressed organizational priorities. This is innovative and attractive, certainly as a means of promoting progressive change among human resource professionals, especially when coupled with focused comments that counteract the regular oversimplification and hasty dismissal of positive discrimination in public discussion (Noon 2010). Whether it offers the ‘progressive leap’ that Noon anticipates is open to question, however. Is this sort of development really likely or sufficient?

Despite Noon’s assault on typical objections, oppositional thinking remains deeply entrenched. Public opinion appears to be steadfastly against any form of positive discrimination, and for this reason there is little likelihood of politicians looking beyond the provisions of the Equality Act or of large numbers of practicing managers acting on Noon’s advice any time soon. Numerous studies reflect the strength of negative reaction, including those surveying the opinions of disadvantaged women (Johns, 2005; Miller, 2006; Siebert, 2009; Foster and Williams, 2011). The consensus in this research is that positive discrimination cuts against popular interpretations of equality and fair treatment. For some, it amounts to ‘reverse discrimination’, and ‘two wrongs don’t make a right’. Discrimination of any sort is morally wrong, and this approach ostensibly discriminates against men. Others fear that if gender is fixed among the key criteria for differentiating between people in employment then less qualified women will inevitably be given preference over more qualified men, and organizational performance may suffer. These and other associations with queue-jumping, tokenism and slipping standards are frequently reinforced through the lobbying of groups such as the Chartered institute of Personnel and Development in Britain, and so have a crucial bearing upon the willingness of those in the position to force the issue and implement positive discrimination.

A question mark can also be placed against the capacity of these leaders, politicians and senior executives, should they accept the robust counter-arguments and rebuttals by Noon and others, to deliver the anticipated outcomes (Treanor, 2011; The Observer, 2012). There is broad-ranging evidence that even serious or considered attempts to enact equality initiatives on a top-down basis through bureaucratic procedures and operating
requirements frequently deteriorate in practice as a result of regular backsliding, prevarication and avoidance (Mills, 2002; Johns, 2005; Scholarios and Taylor, 2011). Reactions further down the hierarchy are all too often half-hearted and contradictory. Research has regularly underlined the unwillingness of frontline managers and supervisors to engage with top-driven equality agendas, and their adverse responses to even modest examples of positive action provide little encouragement for progress with positive discrimination. Initial studies of employer responses to the British Equality Act and earlier Equality Duties in the public sector (Foster and Williams, 2011) also point to an increase in symbolic and ritualistic behavior, with intense policy making and strong rhetorical commitments producing few substantive gains.

Of course Noon is acutely aware of these difficulties and the tendency for equality policies to become ‘empty shells’ (Hoque and Noon, 2004). He acknowledges the space for choice in decision making behavior, and the often opportunistic endorsement of equality objectives. He concedes that threshold selection will be compromised if equality and diversity are not, or cease to be, serious organizational objectives. However, he insists on the potential for this to create favourable conditions for transformative change (2010: 737), and for human resource practitioners to use it as a viable means of changing organizational behavior (2012: 86). Given the balance of available evidence, popular opinion and political reaction, it is difficult to share this confidence. Noon’s argument for positive discrimination targets rejectionist logic and negativity without explaining how it can be secured or enacted as anything approaching regular practice.

Interventionist measures on the part of employers and the state are undoubtedly important for challenging the entrenched norms and interests which permeate the decision-making arrangements of work organizations and the historical traditions which make them work better for men than women. Formal policies and bureaucratic procedures inevitably provide the framework for top-down action on equality, though when these are at odds with popular opinion, and so regularly and easily compromised, their transformative potential is decidedly limited. There is no evidence, as yet, that positive discrimination can capture sufficient commitment to provide favourable conditions for change, far less cut to the core of discriminatory thinking and workplace inequality (Web and Liff, 1988).

Trade unions and equality bargaining
Trade unions figure prominently in debates about equality activism, although mixed views are expressed about their impact and the commitment they represent. Historically, of course, the union movement can point to some notable gains, initiating legal action on behalf of women to establish important precedents and negotiating collective agreements that address equality issues. This is demonstrated to compelling effect on the history website produced in Britain by the Trades Union Congress and London Metropolitan University (www.unionhistory.info/equalpay). Landmark interventions that influenced employment law and delivered substantive gains for women in both the private and public sectors – from the struggles of striking box workers and ‘bus girls’ in the early twentieth century to sewing machinists at Ford, Dagenham in the 1960’s and on to Hull fish packers, Belfast hospital cleaners and catering staff at Cammell Laird shipbuilders in
the 1980’s - are recorded in telling detail, often with archive film footage and media capturing the reflections of those involved. It is clear from this resource, especially the associated interviews, that trade unions are capable of making a significant difference on equality, and that their interventions are often deeply appreciated by women who experience discrimination.

Confidence in the union contribution has grown recently, with sympathetic commentators suggesting that this could be a major source of improvements into the future (Foster and Williams, 2011). Some detect a greater willingness on the part of union officials to develop equality agendas, internally, within their own structures and operating arrangements, in addition to employer bargaining and legal action (Dickens, 2000). There are echoes of the business case in this, with self-interest put forward as a powerful reason for representing women more effectively, actively recruiting and retaining women as union members, transparently addressing their concerns in bargaining, and extending gender democracy with more inclusive forms of decision-making. Given the decline of their traditional male heartlands, this is a matter of renewal and revival, of recognizing the diversity of modern labour markets and mobilizing key constituents who have been under-represented or marginalized in the past (Jenkins, et al, 2002; Martinez Lucio and Stuart, 2004; Foster and Williams, 2011). For Dickens (2002), the incentive for unions to extend their work on equality is potentially transformative, paving the way for more ambitious agendas and concerted action on a broader front. Whether unions are living up to this promise is open to question, however.

Available research suggests that unions have indeed been more active on equality over the last decade (Greene and Kirton, 2004; Foster and Williams, 2011), and that unionized workplaces have a stronger record of formulating equal opportunities policies and guidelines (Hoque and Noon, 2004). It also highlights a shortfall in substance relative to pronouncements, claims and expectations, with union and non-union organizations just as likely to spin rhetoric and present an appearance of useful intervention via hollow or ‘empty shell’ provisions (Hoque and Noon, 2004).

Evidence also points to a deepening disillusionment with trade unions among female workers and members, especially in the public sector. There is now a substantial literature on women’s involvement with trade unionism (Kirkton, 2005; Milkman, 2007; Foster and Williams, 2011; Kirkton and Healy, 2013), and some of the recent material shows an increase in negative attitudes and experiences. Similar studies by Walters (2002) and Tomlinson (2005) reveal a decline in the proportion expressing favourable opinions, often from a sense that unions were of little or no help when they raised grievances about their employment. While some union officials are undoubtedly keen to address historical criticisms about neglect and marginalization, there is still a lingering suspicion that union interests are quite distinct from, and occasionally counter to, those of working women.

The recent controversy around gendered pay inequality in British local authorities provides a dramatic demonstration of the issues and difficulties here. Variations in the pay and bonuses of men and women in this sector were exposed following extensive job
evaluation and re-grading exercises that were encouraged by Labour Governments from the late 1990s. Ostensibly, these would promote equality by transparently classifying different jobs according to the value they generate. A ‘single status’ model would ensure that male and female workers on the same grade, regardless of their traditional concentrations in different types of work, would enjoy the same pay and conditions. There would be parity, for instance, between care assistants and refuse collectors. This was not the typical outcome, however, with developments over the past decade magnifying union vulnerability on gender equality.

These pay reviews revealed major anomalies, including discriminatory bonuses that inflated male pay over many years, and which re-grading threatened to remove, prompting fears about reduced earnings among large numbers of men. With hostile reactions from their male members, including strikes by refuse workers in Leeds and Brighton during 2009 (Fuller, 2009), unions such as UNISON and the GMB sought and secured pay protection agreements to soften the blow of pay harmonization among the male recipients of the task-based bonuses. These became, and remain, highly controversial, attracting opposition from working women on the grounds that they reinforce inequality. Many critical comments have been recorded by women who feel that the unions have ‘let them down’, have been colluding with the employers and failing to represent the interests of all of their members (Poling, 2005; BBC 2012; Butler, 2012).

Feminist commentators have argued for some years that unions are part of the problem of inequality, that as masculinized organizations they perpetuate rather than tackle discrimination. This view is certainly shared by some female council workers (Poling, 2005), although it would be too much of a simplification to reduce the trade union position on local authority pay to resistance or oppositionalism founded upon male bias. Without denying that there are reactionary elements within unions, and that male norms of employment are expressed in collective agreements and through appeals to ‘custom and practice’ (Jenkins et al, 2002; Ramsay and Scholarios, 2005), material conditions have an important bearing upon the politics of equality activism in this sector, as in any other.

There is evidence of union officials taking equality seriously, even to the point of tackling such negativity among male workers and members (Foster and Williams, 2011; Tomlinson, 2005). There are genuine financial and political constraints on their activism, however. Representatives of the employers have repeatedly pointed to the financial burden attached to pay equality, arguing that this would impose unacceptable costs on local tax payers, and potentially damage the politicians who sanctioned such change in subsequent elections. This is what prompted the settlement of protection agreements for better paid men, and subsequent negotiation of compensation arrangements involving lump-sum payments that have been accepted by many women in cities such as Glasgow, Newcastle and Aberdeen (Poling, 2005). Responding to some of the criticism, union representatives claim to have secured responsible compensation packages that avoid any job-threatening damage to local authority budgets.
Writing in 2000, Linda Dickens anticipated some of the tensions and contradictory tendencies that are now evident in trade union activism, certainly in the public sector: “In adopting an equality dimension to bargaining unions may find that hard won practices, seen to protect the general interests of existing members, may appear threatened.” (Dickens, 2000: 202).

Unions are obliged to act in furtherance of the material interests of both their established and newer categories of membership, although there are complex trade-offs and contradictory pressures in this, certainly in the local authority sector with limits set nationally on council tax increases and pressure from some politicians to level wages downwards rather than raise women’s pay to match men on the same grade. As Dickens warned, with multiple and competing pressures on unions, action for some members may be discriminatory for others. Regardless of the compensation offers negotiated for women in Glasgow and elsewhere, the pay protection arrangements that the local authority unions secured for men undoubtedly perpetuated inequality and undermined their credentials as equality activists. Disadvantaged women were marginalized by union pragmatism and politicking, rather than inherently patriarchal tendencies.

By some analyses, this should be a major concern (Foster and Williams, 2011). Without the resources, collective experience and networks that unions can provide, women will be unable to challenge discriminatory practices. The absence of alternative support structures ‘puts justice beyond the reach of all but a few’ (Foster and Williams, 2011: 333). This is not a view that working women, certainly in the local authorities, necessarily share. Many have eschewed trade unionism because they are convinced that unions are compromised, that they are either incapable of securing equality or actively perpetuate inequality. They have also demonstrated a capacity for purposeful action and association that has pushed some employers, managers and trade unionists beyond their equality comfort zones. With alternative third party advice and representation, women at the sharp end of inequality have been ‘doing things for themselves’.

Reorganizing the disaffected
One of the most significant effects of the equality legislation has been to create space for campaign groups, activists and other agents to challenge discriminating employers, particularly on pay inequality. There is a growing literature on ‘new actors’ and new forms of activism on gender equality. Conley (2012) highlighted the efforts of the Fawcett Society, a British campaigning charity on women’s rights, in launching a legal challenge to a government budget in 2010 on the grounds that it had a disproportionately negative effect on women. This particular intervention was unsuccessful. However, another group, Action-4-Equality, has made a considerable difference on pay inequality, forcing local authorities in Britain to accept their legal responsibilities under the equality legislation, while exposing the weaknesses and contradictions in trade union representation on this issue.

Action-4-Equality has encouraged thousands of female local authority workers to use the services of ‘no-win-no-fee’ lawyers to pursue compensation on their behalf (Poling, 2005). The evident overpaying of men provides women with scope to lodge claims for
the difference in back pay, legal provisions allowing them to seek redress for up to six years of pay discrimination. A substantial number of women have turned to ‘no-win-no-fee’ lawyers for assistance over the past decade, expressing their disaffection with their employers and unions by ‘voting with their feet’ for less compromised or limiting interventions. The Action-4-Equality lawyers, most notably Stefan Cross, have successfully forced the issue with employers and unions through the courts, magnifying discriminatory agreements and helping to focus and mobilize disadvantaged women in the public sector.

From a union background, Cross has successfully challenged discriminatory behavior by local authority employers and trade unions, winning compensation cases for women in Cleveland, Middlesborough, Glasgow, Birmingham and elsewhere (Poling, 2005; Hattenstone, 2010). In 2005, he represented clients in a tribunal case against their union (Allen v GMB), where the GMB was held to have indirectly discriminating against them by concentrating on pay protection for men at the expense of compensation for women. With Courts of Appeal ruling in cases involving Redcar and Cleveland and Middlesborough Borough Councils (2008) and Birmingham City Council (2012) that pay protection schemes unlawfully reinforce discrimination, disadvantaged women across the country have been able to pursue their rights to equal pay despite equality bargaining.

Through cases pursued by ‘no-win-no-fee’ lawyers, tribunals have established, and the employers have conceded, that women in the British public sector have been illegally and systematically underpaid for many years, and are eligible for substantial settlements that could have a major impact on local authority finances. Some estimates suggest that the costs to Glasgow and Aberdeen city councils could run to £200 million and £40 million respectively (Poling, 2005). These disparities, and broader debates about the financial impact of pay equality in this sector, have triggered some acrimonious exchanges, many of them reminiscent of patriarchal arguments about the role of trade unions in perpetuating disadvantages imposed on women by management practices. Alongside employer spokespeople, union officials have condemned the ‘no-win-no-fee’ lawyers as a mercenary, self-serving group with no long-term commitment to the health and wellbeing of the sector. References to ‘predatory lawyers’ (John Fricker, Transport and General Workers Union, 2007), ‘hawkishness and opportunism’ (Jim Savage, Public Sector Managers Association, cited in Berry, 2008), and the hijacking of equality cases are quite common. Against this, the Action-4-Equality campaign claims to have moved the employers further and faster than the unions, demonstrating a far more serious commitment to reducing gendered pay inequality.

To judge by the available feedback from women using this service, there is a broad measure of satisfaction with these ‘new actors’ on equality, and some genuine appreciation for their interventions and relative success in securing positive outcomes for low-paid female workers (Poling, 2005; Personnel Today, 2007; Hattenstone, 2010). While legal fees draw between twelve and twenty five per cent of the final amount awarded to their clients, Action-4-Equality representatives argue, with some merit, that their ‘third party’ representation invariably delivers far more that any union-negotiated compensation package. Those pursuing legal redress have been achieving around three
times more than union negotiated compensation packages, with additional pension benefits and more rapid pay rises as part of their final settlement. Perhaps there are signals here about the sort of leverage that is necessary for progress on equality and the empowerment of women and which is lacking with more traditional patterns of intervention and regulation.

Of course, caution is needed given the hawkish behaviour of some ‘no-win-no-fee lawyers. A wolvish or mercenary streak is discernible in the wider market for claims to pursue, and in various attacks on trade union failures which have more to do with generating business and securing short-term financial returns than addressing the wider challenges associated with gender equality. Moreover, pay inequality is not the only issue, though on this aspect of equality activism reputable legal representatives seem to be making a difference for the better. Their activities may have limited impact on job segregation and the glass barriers, although they have improved the financial situation of low paid workers and made it difficult for employers and unions in the public sector to avoid or conceal thorny matters of progress associated with re-grading and pay restructuring.

**Conclusion: Some Unpalatable Realities?**

Gender represents one of the most widely-analyzed and frequently-discussed sources of privilege and disadvantage at work and in management, and has been at the centre of some heated debates and controversial thinking about workplace equality. There is broad agreement that progress towards gender equality has been far too slow, and that something needs to change. Indeed, there is an impatience for this among disadvantaged women, especially those working for British local authorities. So what are the options for securing a progressive shift to equality at work? Where can viable sources of, or levers for, transformative change be located?

Considering the naivety of the feminization thesis, markets and business imperatives are less than reliable, and are unlikely to promote the sort of wholesale endorsement of feminine qualities that popular media reports anticipate, even if this could be construed as progressive. An interventionist approach seems vital, although this needs to be more focused on grassroots concerns and material conditions than contemporary debates on either positive discrimination or trade union action.

While Noon (2010) offers a powerful riposte to the fearful accounts and negativity that surround positive discrimination, this seems detached from national and micro political realities. It is not difficult to agree with his suggestion that more radical developments in this direction could create favourable conditions for ‘a progressive leap towards greater equality’ (Noon 2012: 86), although rapid and serious movement on this is unlikely. Public and political opinion is at odds with the advocacy on this front. Embracing positive discrimination is not a serious prospect for large numbers of citizens and politicians. In this light, the academic debate is detached, and may even be a distraction from the pressing concerns of the frontline women who experience inequality on a daily basis.
Too many accounts of what trade unions potentially or actually contribute - including those offered by trade unionists themselves - also deflect attention from the frustrations and the agency of disadvantaged women. There is a strong tradition of equality activism within the trade union movement, although the influence of particular unions and officials can be negative as well as positive. As the controversy around pay equalization in the local authority sector demonstrates, unions are open to criticism for their strategies in dealing with inequality and for setting limits on equality bargaining. The pay protection agreements negotiated with British local authorities narrowed, though perpetuated, pay inequalities and obscured the entitlement of working women. The female council workers identified in the previous section earn less than men performing the same grade or classification of work, and even identical tasks (in janitorial jobs, for instance). Their employers and union representatives acknowledged this, yet settled on compensation arrangements that attached significant weight to the interests of higher paid male workers, council tax payers and elected politicians. This had less to do with crude male bias than material conditions and politicking, which revealed tensions between the idealistic and pragmatic orientations of trade unionists.

As Dickens noted in 2000, gender equality presents a challenge to traditional thinking and approaches to bargaining within many unions. It also forces a re-consideration of women’s representation and propensity to follow other routes to equality. The disadvantaged local authority workers raise doubts about the familiar promotional view that non-unionized women are more vulnerable to employer authority, and lack the resources necessary to tackle discrimination or change established workplace norms and conditions. Much of the union and wider equality literature deflects attention from women as thoughtful, resourceful people who are capable of reading and responding to the obstacles they face. It can encourage a preoccupation with victims who rely on others, and who may even internalize patriarchal values and come to accept that gender inequality is ‘normal’ or acceptable. Some studies of pay differentials show that women evaluate their contributions less favourably than men, for example, and will pay themselves less for the same work or invest more hours for a comparable wage than will men (Major et al. 1984). The local authority workers expose the narrowness of vision in this literature, revealing the danger of analytical slippage to a default position where women are essentially passive and dependent. These women developed strong views about their employers and especially their unions, turning in large numbers to no-win-no-fee lawyers as a pragmatic - though possibly temporary - means of securing meaningful, unrestricted progress on pay equality.

Legal groups such as Action4-Equality have usefully mobilized and effectively represented disadvantaged women, securing valued financial entitlements when their unions were unable or unwilling to do so. Of course, many more in the no-win-no-fee legal community have now moved into the pay equality arena, possibly chasing business and profits more selfishly than those, such as Stefan Cross, who came from a background in trade unionism and employee activism. There is no reason to suppose that disadvantaged women are any more susceptible to their overtures and arguments than those of the employers and union officials who became the focus of their criticism, however.
This is one of the key insights to be taken from the local authority case, so that interventionist thinking leaves room for purposeful action by people at the sharp end of inequality, and resists any temptation to act on behalf of, rather than together with, frontline, disadvantaged women. To judge by their reactions in the courts, to the cases pursued by Action-4-Equality, and the hostility displayed towards Cross, there is little sign of union officials and employers reflecting upon a fresh approach. The climate has changed, however, and it is more difficult for them to reach accommodations or operate symbolically when disadvantaged women and these new third party agents are ready to force their hand.

References


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