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In July Professor Hazel Conley joined CESR from Queen Mary, University of London. The focus of Hazel's work is on the workplace and trade unionism, particularly in the public sector, but here she discusses how her recent research has broadened in response to changes in the law and a growing understanding that social movements are strongest when they act in unison.

Background

Promoting social justice by researching exploitation and discrimination are at the heart of what CESR does and, it has to be said, the current political and economic crises are testing these objectives to the limits. Public sector jobs and services are central to social justice but both are under attack in ways that dwarf the cuts and privatisation that we witnessed in the 1980s and 90s. Voluntary sector organisations that stepped in to gaps left by privatisation and out-sourcing of public services are now themselves facing decimation in the face of unprecedented constraints on their funding. The loss of organisations such as Equalities South West is acutely felt in communities where equality is still a pipedream, especially since increased competition for scarce resources provokes discrimination and intolerance that divides society. But communities fight back and one of the central themes of my own research is to understand how collective organisation can resist the negative redistribution of wealth and resources that politicians have euphemistically called austerity.

As a feminist I know that what happens in the home and the community are directly related to what happens in the labour market and the workplace. I do not therefore see a sharp dividing line between what is work and what isn't work, which perhaps makes it clearer for me why trade unions and other social movements can and must collaborate if they are to champion social justice. I am interested in the tools that social movements need to be able to collectively mobilise and resist disadvantage and inequality. In relation to this my recent research has examined new approaches to the law that have been described as responsive or reflexive. Using the law is not historically the tool of choice for trade unions who have preferred voluntarism and collective industrial strength to further their aims. But responsive and reflexive legislation are related concepts that theorise alternative, collective approaches to legal jurisprudence.

Responsive legislation is part of a theoretical model developed by Nonet and Selznick (1978, 2001) who argue that the 'social turbulence' of the 1960s and the growth of civil rights movements are one indication that legal systems had become distanced from the social context in which they operated. They further argue that, to understand this phenomenon, it was necessary to move away from abstract legal theory to consider the relationship between legal institutions, the state and society.



In developing their theory of responsive law Nonet and Selznick contend that, rather than coerce citizens to follow a legal code ultimately created by elites to serve their own ends, responsive law is 'more receptive to cultural diversity, less prone to brutalise the deviant and eccentric' (2001: 91). At its heart is a participative, pluralistic and negotiated social order predicated on joint problem-solving. The emphasis is on making institutions supportive of social goals that are valued by citizens by requiring inclusive decision-making – a form of statutory participative democracy.

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These theories may seem utopian, but my interest in responsive and reflexive legislation was sparked by the introduction of innovative law in the UK. The public sector equality duties are quite different to the majority of equality law and originally adopted some of the characteristics evident in Nonet and Selznick's theories. The first public sector equality duty, the race equality duty, was contained in the Race Relations (Amendment) Act 2000 and which came into force in 2001. This duty was the culmination the Macpherson Report in 1999, which found endemic public sector institutional race discrimination had hampered the investigation of the murder of Stephen Lawrence. This was followed by the Hepple *et al.* report in 2000 arguing for reform of the equality legislation and, importantly, a political climate more receptive to equality (Hepple, 2010). After a gap of five years the public sector equality duty covering disability was introduced as part of the Disability Discrimination Act 2005 and the gender equality duty followed in 2007 contained in the Equality Act 2006. These later pieces of legislation were won following extensive lobbying and campaigning by disability and women's civil society groups (see Conley and Page, 2015). The three duties supplemented the existing anti-discrimination legislation on race relations, sex discrimination and disability discrimination. They were subsequently incorporated into s. 149 of the Equality Act 2010 to include further equality strands covering age, religious belief, sexual orientation, gender reassignment and pregnancy and maternity.

Covering both public service employment and service provision, the public sector equality duties are innovative because, unlike the established anti-discrimination legislation, they do not provide individual rights to seek reparation reactively after discrimination has occurred. Instead they require public authorities to act proactively to consider the impact of their policies and decisions on equality outcomes for protected groups. This aspect of the legislation is reflexive rather than responsive as it requires only internal consideration. The logic here is to avert discrimination in the workplace and in the provision of public services before it occurs. The three earlier duties covering race, disability and gender also contained a responsive element in that they required, to a different degree, public authorities to seek input from each of the respective protected groups. In the race equality duty there was an 'expectation' that groups affected by the policies and decisions of public authorities would be consulted. There was a specific duty in the disability equality duty to involve people with disabilities.

However, the focus was on direct participation rather than collective representation. In the gender equality duty, there was a specific duty that required public authorities to consult stakeholders and their collectives, including trade unions, and to take into account their views

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in formulating gender equality objectives. The responsive potential in the public sector equality duties made them a powerful tool for social movements, not only for getting their voices heard, but also for shaping the policy and decisions that affect public service employment and delivery by holding public authorities to account (Conley and Page, 2010).

The enforcement of the public sector equality duties is also innovative. Although there are no individual rights as in the anti-discrimination legislation, there are powers for the Equality and Human Rights Commission to serve compliance orders on public authorities that do not carry out their duties. There are also powers for individuals and groups to seek judicial review of any policies or decisions that they feel have an adverse impact on protected groups. Although judicial review rarely provides compensation, it can result in policies and decisions being set aside. Since the government are considered to be a public authority for the purposes of the public sector equality duty, the legislation provides social movements with a potentially powerful tool to hold the state to account and to halt policies that have adverse equality impacts. This aspect of the legislation has been tested on numerous occasions and most controversially in the Fawcett Society's challenge to the coalition government's first emergency budget in 2010 on the grounds that it would adversely affect women to a much greater extent than men (Conley, 2012). With the intervention of some nifty legal reasoning the Fawcett Society was not granted permission to take their case further and the coalition government was saved from a constitutional crisis within weeks of its administration. The outcome of the Fawcett challenge was a vivid reminder that the law, although having potential to serve social movements, is a rather fickle friend.

Nonet and Selznick (1978/2001) warn us that responsive legislation is not easy to achieve because it is a 'high risk' strategy that requires the state to cede some of its power by making governments answerable to citizens beyond the ballot box. The precarious existence of the public sector equality duty since the enactment Equality Act 2010 is a clear example of the nervousness of governments towards responsive legislation. The duty contained in s.149 of the Act is much weaker than its predecessor duties, particularly because the responsive element is missing from the duty that covers Englandⁱ. Furthermore, following the threat posed by the Fawcett challenge, the government has sought to further undermine the duty, launching a very premature review under the 'Red Tape Challenge'. When that was postponed until 2016 following local and concerted opposition of united social movementsⁱⁱ, the government issued new regulations limiting the judicial review process.

ⁱ Parts of the Duty, the specific duties are devolved to the Scottish Parliament and the Welsh Assembly

ⁱⁱ See Stephenson (2014) for an excellent critique of the review

Having made the duty weaker and difficult to enforce, it is likely that it will come under further attack in the 2016 review. Ideally we should be researching ways to strengthen and improve the public sector equality duty as the fifth generation of equality law (Hepple, 2010). The reality is that in 2016 we are likely to need strong, evidence based research and concerted collective action to rescue it, once again, from the brink of repeal. In the coming months CESR will be organising events to bring together academics, practitioners and activists to get the ball rolling in the south west, see below for details of an event in September. We hope you will join us!

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The provision of state funded and democratically accountable care services represents one of the most potentially transformative advances in gendered social relations and equality for women by 'defamilizing' care and providing paid work. But the cost of providing these services, which women have access to them and how they should be provided are always at the forefront of debate, especially during economic crises. Socially funded and publicly accountable care services are therefore a key site of feminist activity, but also the frontline for spending cuts and 'reform' during times of austerity. *Gender Equality in Public Services* analyses how gender equality work in British public services is changing in response to factors including: equality legislation; the erosion of local democracy, privatisation of public services and new forms of feminist activism and leadership. It also assesses the challenges and opportunities for promoting women's equality in producing and using public services.

Impacting upon developed and developing economies, the arguments in this challenging book explore the potential of equality and feminist activism and leadership for radical and transformational change. It will appeal to advanced students, researchers and practitioners interested in social policy, feminist organisation theory, equal opportunities and gender mainstreaming practice.



CESR, together with the Bristol Leadership Centre and Fair Play South West Gender Network, invite you to a workshop on Thursday 17 September 2015: **Women's equality in public services: Researching and organising for the future**. Please visit our [event page](#) which gives further details and the programme for the day.