



CONFERENCE REPORT

**Encountering Human Rights:
Gender/Sexuality, Activism
and the Promise of Law**

5 and 6 January, 2007
University of Westminster

Introduction

This report provides a short analysis of a conference co-organised between the Centre for Law, Gender and Sexuality, Liberty and LAG entitled 'Encountering Human Rights: Gender/Sexuality, Activism, and the Promise of Law', which took place on 5 and 6 January 2007. It has been written with valuable input from a group of conference attendees, who gave feedback on the sessions. These reporters were: Shamle Begum, Anna Fairclough, Joanne Sawyer, James Welch, Alex Gask, and Deidre Malone, all from Liberty. If, after reading the report and the conference website, you require further information, please contact us. You can find our contact details at the end of the report.

We first started planning this conference in 2005 out of a perceived need to discuss whether and how the Human Rights Act 1998 ("the Act") could be used to advance gender equality. It seemed that the constitutional watershed that the Act represented could provide the basis for securing fundamental protections to women. But in two workshops, hosted separately by Rights of Women with Liberty, and by Kent Law School¹, activists and academics asked why feminists were not using the Act, and human rights arguments generally, more often, and in more innovative ways, to address their concerns.

The aim of this two-day conference was therefore to explore a range of urgent questions about the immediate relevance of human rights to those campaigning around gender and around social inequalities that intersect with gender (for example, sexuality, ethnicity, disability, class and age). These questions included:



- whether the structural and philosophical basis of the Act, and of human rights instruments generally, obscures women's perspectives and experiences;
- whether and how feminist litigation on human rights can be effective in the long-term;
- whether the problems associated with making rights claims are outweighed by their strategic utility; and
- what lessons can be learnt from other jurisdictions about litigation and campaigning.

We wanted to combine an analytical attitude to rights litigation with an open, and collaborative attempt to think creatively about how to use human rights arguments to achieve substantive goals. We also wanted to draw together activists, academics and legal practitioners who either already work on gender and/or human rights, or whose area of focus might usefully accommodate a human rights dimension, for example activists working on criminal justice and prisons. Our aim was to take an innovative approach to discussing gender and human rights issues across disciplinary and professional boundaries. We also wanted to open up the discussion of gender and human rights to consider issues that are not currently at the forefront of debate. For example, what are the human rights implications if a taxation or social security benefits system has a negative impact on poor women?

¹ Half day workshop held at Rights of Women on 9 October 2003, and 'Gender Auditing the Human Rights Act 1998', a seminar hosted by Kent Law School in conjunction with the universities of Keele and Westminster, 28 – 29 June 2004. See the special issue of *Feminist Legal Studies* entitled 'Gender, Sexuality and Human Rights', January 2005.

Conference Themes

The conference was organised across four plenaries and twelve workshops. We were very lucky to have a group of committed workshop organisers, each of whom conceived a session, contacted and liaised with the participants and, in many cases, chaired sessions. Their expertise and hard work in constructing this part of the programme enabled us to reach a range of subject areas that would otherwise have been impossible.

Workshop Organisers: Helen Carr (Kent Law School), Tania Pouwhare (Women's Resource Centre), Rupa Reddy (SOAS), Susan Millns (University of Sussex), Noel Whitty (University of Strathclyde), Toni Johnson (Kent Law School), Stewart Motha (Kent Law School), Alison Hannah (LAG), Clare McGlynn (University of Durham), Brenna Bhandar (University of Reading – now at Kent Law School), Sally Sheldon (Kent Law School).

Plenary Speakers:

Gwen Brodsky and Shelagh Day (Poverty and Human Rights Centre, Canada)
Justice Yvonne Mokgoro (Constitutional Court of South Africa)
Pragna Patel (Southall Black Sisters and Women Against Fundamentalism)
Professor Zillah Eisenstein (Ithaca College, US)

The following paragraphs draw out some key themes from plenaries and workshops over the two days. Such an assessment obviously reflects the situated impressions of the co-ordinating author and reporters and, as such, does not form a comprehensive or 'objective' representation of what happened. Nevertheless, it has been possible to discern clusters of shared interests:

- Using human rights arguments to achieve social change
- The impact of conservative or neo-liberal policies on feminist and anti-racist activism
- Contemporary projects of empire
- Addressing poverty through human rights
- "Multiculturalism"
- Human rights in the body
- The relationship between equality instruments and human rights

Working within the law – **using human rights arguments to achieve social change** – was a current running through the conference as a whole, with lawyers from Liberty (Joanne Sawyer, James Welch, Alex Gask and Anna Fairclough) sharing their perspectives and thoughts on strategy in a number of panels. Plenary talks given by Yvonne Mokgoro (Justice of the Constitutional Court, South Africa), Shelagh Day and Gwen Brodsky (Poverty and Human Rights Centre, Canada) addressed strategic issues surrounding the use of constitutional instruments to challenge gender and sexuality inequalities (see further below).

In the panel session entitled 'Strategies in Action: Sexuality and Asylum in the UK', Barry O'Leary (UK Lesbian and Gay Immigration Group) focused on issues arising in the representation of lesbians and gay men in refugee and asylum hearings. Acknowledging the positive impact of human rights arguments in the context of asylum, he also raised particular practical and cultural difficulties faced by lesbian and gay claimants who may be reluctant to discuss issues of sexuality or may not see themselves as having a gay 'identity' in the Western sense. For her part, Kaveri Sharma showed how Newham Asian Women's Project has used human rights arguments – particularly articles 2 (right to life), 3 (prohibition on inhuman or degrading treatment or punishment), 8 (right to respect for private and family life) and 14 (non-



discrimination) in their work advocating for Asian women and children who have experienced domestic violence. She concluded that while the Human Rights Act did not answer all the problems that women face, it was useful in the advancement of women's rights. Echoing these conclusions, the panel entitled 'Gender and Human Rights under the ECHR' (Jennifer Temkin, Barbara Hewson, Anastasia Vakulenko and Ivana Radacic) assessed the potential use of human rights arguments for women in a range of situations: the prosecution of sexual violence, women's right to wear Islamic dress in public educational establishments, and case law on sex discrimination.

A second major theme running through plenary papers, workshops and discussion was **the impact of conservative and/or neo-liberal policies on feminist and anti-racist activist projects**. Such policies are sometimes positioned 'against' human rights, but many also use a form of human rights rhetoric to achieve goals related to, for example, achieving 'security' in the context of the 'War on Terror' (see

below), bolstering the role of the market in the provision of public services, or resisting attempts to secure minimum standards of living for disadvantaged women through social security programmes. Shelagh Day and Gwen Brodsky spoke about neo-liberal reductions to social programs in Canada, the impact of these reductions on women, and the role of litigation under the Canadian Charter of Rights and Freedoms as one way of campaigning on these issues. The panel entitled 'Resourcing, Activism and Human Rights', organised by Tania Pouwhare of the Women's Resource Centre, took up these concerns in the UK context. The speakers (Tania, Jane Standing (Kairos) and Sharminder Ubhi (Ashiana Network)) challenged reliance on government funding for voluntary groups, pointing out the negative impact on these groups of 'gruelling' managerial tendering processes. However, the panel also concluded that in this context, human rights arguments can be very useful in advancing the objectives of feminist and lesbian groups. In the panel entitled 'Democracy's

Empire and the Dis-Charge of Human Rights', Tshepo Madlingozi (University of Pretoria) focussed on neo-liberal social policies in post-apartheid South Africa, which fail to address the high levels of unemployment and poverty amongst Black and lesbian women. He concluded that without redistributing resources in an effective way, there can be no re-evaluation of racialised and gendered power relationships in South Africa.

Whilst neo-liberal policies constrain activist attempts to use human rights in oppositional and social justice movements, **contemporary projects of empire** have been seen to co-opt the language of human rights in furtherance of militaristic goals. Zillah Eisenstein (Ithaca College) focused on the adoption of women's rights arguments to justify United States military projects in Afghanistan and Iraq. She argued that war is being re-gendered with female bodies and women's rights being used as 'sexual decoys'. Against such an 'imperial feminism', she called for 'radicalised insurgent feminisms' to challenge these new forms of patriarchal militarism. Shamle Begum (Liberty) in her comments on the 'Multiculturalism, Gender and Human Rights' panel also raised the potential for 'women's human rights' arguments to be used to inflict harm. And a similarly critical eye was turned on projects of democracy in the 'Democracy's Empire' panel. Sari Kouvo (former Rule of Law, Human Rights and Gender Advisor to the EU Special Representative in Afghanistan) argued that Western feminists and human rights activists working in areas of conflict and/or transition, such as Afghanistan, should approach their work reflexively, bear in mind their relative power in relation to some foreign governments, and acknowledge their capacity to do more harm than good.

The themes of neo-liberalism and empire also connected with an over-arching concern with **whether, and how, it is possible to address poverty through the rubric of human rights**, especially where poverty has been entrenched through racist laws and policies. Yvonne Mokgoro

spoke about the challenges of using the South African Bill of Rights to turn around the lives of Black and rural women. In the context of massive under-investment over decades in infrastructure services such as running water, sanitation, housing and communications technologies, she pointed out the 'upfront' and 'unapologetic' position of the Bill of Rights on affirmative action and socio-economic rights. But she also raised the challenge of how to use rights that have been framed from Western feminist perspectives to improve the position of women in rural areas, who are very often affected by customary laws (those laws having been concretised and 'frozen' by colonial British policies).

The panel on 'Anti-social behaviour; Gender and Human Rights' (Caroline Hunter; Bethan Harris, Maya Sikand) addressed questions of poverty from a different angle. This panel focussed on how New Labour policies on 'anti-social behaviour', including the use of 'ASBOs' (anti-social behaviour orders) impact on female single parents, women experiencing domestic violence, and sex workers, many of whom live and work in potentially dangerous environments and survive on very low, and unpredictable, incomes. Taking a comparative perspective, the 'Gender; Land Claims and Human Rights' panel included a talk on the importance of property as a social protection against domestic violence in the agrarian sector in India (Jayoti Gupta, Delhi School of Economics) alongside Helen Carr's (University of Kent) assessment of the role of evangelical Christian notions of gender and home in the emergence of social housing in the United Kingdom.

In the UK context, recent policy initiatives in the areas of equality law, 'race relations' and anti-terrorism have drawn on **the rhetoric of 'multiculturalism.'** Pragna Patel (Southall Black Sisters and Women Against Fundamentalism) raised concerns about this rhetoric, arguing that 'multiculturalism' has been used to silence women's voices through new alliances between government bodies and faith groups that follow an authoritarian and patriarchal agenda. This has



impacted negatively on racialised women in a range of situations, including the recent non-prosecution of a rape case on the basis that the survivor, a Muslim woman, did not want to speak to male barristers for cultural reasons, despite the options of female barristers and video links in court not being discussed. Multiculturalism can therefore be deployed in a gendered manner that re-embeds the many ways in which women are racialised. The 'Multiculturalism, Gender and Human Rights' panel (Jill Marshall, Adwoa Kwateng-Klavitse, Harriet Samuels) brought out some of these issues, with Harriet Samuels (University of Westminster) highlighting that human rights arguments can objectify women as victims and reinforce ideas of non-western cultures being primitive and uncivilised. These tensions were also addressed by Adwoa Kwateng-Klavitse (Forward), who outlined the problems with UK health and social services professionals' fear of responding to instances of female genital mutilation ("FGM") due to assumptions that these are cultural practices "best left alone." As Shamle Begum pointed out in

connection with this panel, Western cultural attitudes to FGM do not extend as far as prohibiting surgeries to create 'designer vaginas', and it should also be noted that surgeries on intersex individuals have also not received the same degree of critical attention within human rights discourse as FGM.

Such concerns connect with a further theme of the conference, which was **human rights in the body**. All three speakers on the 'Reproductive Rights and Human Rights' panel (Audrey Simpson, Barbara Hewson, Rachel Roth) focused their talks on abortion. Audrey Simpson (Family Planning Association (FPA), Northern Ireland) outlined the class issues surrounding the non-availability of abortion in Northern Ireland and discussed the FPA's litigation strategy in attempting to obtain access for women to termination facilities. Barbara Hewson (Hardwicke Building, London) spoke about recent developments in ECHR case law in relation to abortion in the Republic of Ireland. And Rachel Roth (Soros Justice Fellow, United States),



whilst considering the US Supreme Court's approach to abortion, also highlighted the lack of federal funding for abortion (it is left to individual state discretion) and the impact of this on low income women. Speakers on the 'Gender and Criminal Justice' panel also addressed issues relating to human rights in the body, but this time from different perspectives. Vanessa Munro (King's College London) questioned the meaning of "exploitation" in relation to people trafficking and considered the applicability of ECHR rights in this context, whilst Anupma Kaushik (Banasthali Vidyapeeth, India) reported on her survey of the conditions of 150 women imprisoned in Jaipur Prison in India. Focusing specifically on rape, Clare McGlynn (University of Durham) critically assessed Catherine Mackinnon's view that rape is torture whilst Sharon Cowan (University of Edinburgh) on the panel entitled 'Crossing Borders: Rights Discourses in Scotland' assessed the recent Scottish Law Commission paper on rape.

This brings us to the final major theme in the conference: **the relationship between equality instruments and human rights**. This theme was addressed in a range of different panels. Ivana Radacic (University College, London) in the session entitled 'Gender and Human Rights under the ECHR' focussed on ECHR case law under article 14 (non discrimination), arguing that the provision is limited to equality of treatment and not equality of results, and that the Court, in interpreting the provision, has failed to take account of intersectional discrimination affecting women. Taking a different angle, Joanne Conaghan (University of Kent), speaking at the 'Women in the Workplace' panel, discussed the possibilities of taking a human rights approach to dilemmas surrounding the work/life balance in the UK.

Feedback

We asked attendees to fill in feedback forms and so we were able to get a rough measure of what people thought of the conference. Many respondents said that it was a good opportunity to meet people from other backgrounds. Some people said there needed to be more activists. Some people said there needed to be more lawyers. There seemed to be a lot of support for an “anti-jargon” rule, which required all participants to avoid using jargon or to explain it where necessary. There was also a lot of support for including students as organisers of panels and plenary session chairs, as this was seen to help break down hierarchies. People also thought the conference, as a whole, was stimulating, and this is what we wanted to achieve.

Comments on the feedback forms included the following:

"A fantastic conference! I was really impressed with the diversity of speakers in terms of nationality, profession, perspective and race - the representation was meaningful and purposeful and not tokenistic."

"I very much enjoyed all the plenaries and seminars. However, maybe it would have been possible to make more strategic use of peoples experiences from activism/academia/global context. That said: great work!!"

"I really enjoyed the streams as they were suitably diverse yet well linked under the rubric of gender, sexuality, and law. I learnt a lot too thanks to the 'anti-jargon' rule!"

"I was very pleased that the conference fees were accessible for grad students – I might not have otherwise attended. I was also glad that students facilitated panels and plenary sessions as it helped to break down hierarchies, encourage grad students to engage more fully and feel welcome to participate."

"It would be interesting to have heard more from lawyers involved in cause lawyering or activist lawyers."

"High quality, current and creative delivery, relevant and engaging participants. Papers were creative and did not assume specialist legal knowledge."

Acknowledgements

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The conference would not have been possible without generous funding from the **Modern Law Review, Social and Legal Studies, CentreLGS** and **Kent Law School**. The **University of Westminster** also provided assistance in kind by allowing us to use their rooms for the conference.

Further Information and Contact Details

CentreLGS

Founded on 1 June 2004, CentreLGS involves close collaboration between the University of Kent (the physical base), and the universities of Keele and Westminster. Our aim is to pioneer and facilitate work that deepens understanding of the relationship between gender, sexuality and law ("GSL"). In order to achieve this aim, we have an ongoing programme of research that seeks to use humanities methods (philosophical, historical, doctrinal, literary and cultural) to analyse legal issues relating to gender and sexuality. Work is focussed around three substantive areas: medical ethics and healthcare, governance and regulation, and law and culture.

The Centre has already established itself as a focal point in the United Kingdom for studies in law, gender and sexuality, and it has extensive international connections. We have over eighty academic members across the three institutions. We also have a visiting scholar programme, an associate fellowship programme for lawyers and activists, and we offer postgraduate training for students working in the field.

The AHRC Research Centre for Law, Gender and Sexuality

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Liberty

Liberty (National Council for Civil Liberties) is an independent human rights organisation. It was formed in 1934 and works to defend and extend civil liberties and human rights in England and Wales. We aim to secure equal rights and freedoms for everyone by providing legal advice and assistance, research and publications and raising awareness of human rights and civil liberties issues throughout the media and in government. We believe in a society based on the

democratic participation of all its members and on the principles of justice, openness, and the right to dissent and respect for diversity. Accordingly we aim to secure the equal rights and liberties of everyone.

Through a combination of research, parliamentary lobbying, public campaigning, advice services and strategic litigation, we aim to further these beliefs. Liberty's legal department act as solicitors for clients in cases raising human rights issues in the domestic courts and tribunals, and at the European Commission and Court of Human Rights. We currently have over 50 major cases before the Courts. These cases are at the heart of the work we do and, when we win, they often have a significant effect on the way the British government and courts operate.

Liberty

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The Legal Action Group (LAG)

LAG was formed in 1972 out of a desire to encourage a more active approach to the delivery of legal services and the role of non-lawyers. A major concern was the inadequate access to advice for private inner city tenants. In November 1971, four prominent solicitors called a meeting which was attended by about 80 advisers, lawyers and academics. The aim was to raise money for an information service and to monitor the delivery of legal services around the country. This led to the launch of the Legal Action Group.

Founded with a grant from the Nuffield Foundation, the Legal Action Group is a self-financing educational charity which aims to provide greater knowledge of the law and support to lawyers and advisers through its programme of publications and training.

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