

Thinking about Gender and Democracy

Yvonne Galligan¹

Queen's University Belfast

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ABSTRACT

DRAWING LESSONS from Europe, and in particular on how gender fares under conditions of multi-level governance in the European Union, this lecture deliberates on what gender democracy tells us about parliamentary decision-making. It highlights what needs attention if gender is to form an integral part of democratic politics.

INTRODUCTION

What does putting the words 'gender' and 'democracy' together imply? It first of all highlights one of the fundamental principles on which democracy is based, that of political equality. This equality is not confined to voting rights. It is more substantive than that. Indeed, putting the word 'gender' alongside the word 'democracy' casts a light on democracy in action. It draws attention to the extent to which women, and women's representatives, are included in policy making. It highlights the occasions when women's and men's life patterns, perspectives, and interests diverge. And it draws attention to the manner in which a political system chooses to tackle gender inequalities.

The study of politics in one way or another places a spotlight on democracy and its performance. The two basic principles of representative democracy – political equality and popular control – serve to assess the state of democracy around the world. The questions asked in various democratic audits relate to how well democracy is working, and what can be done to enhance and improve this form of public decision-making. In a paper for the Democratic Audit of Australia in 2007 entitled *Democratic principles: political equality?* Professor Marian Sawer succinctly discusses Australian democracy with respect to the principle of political equality. In my work, along with colleagues in Northern Ireland and other European countries and regions, I bring the gender question to bear in assessing the quality of democracy by asking how democratic from the gender point of view is the political life of a region, country, or transnational body, and how well are the rights of women protected in these contexts.

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I use the case of the European Union because this is a transnational political entity with an explicit commitment, in principle and in practice, to gender equality. At its founding, in 1957, the European Economic Community provided for equal pay between men and women for equal work (article 119). The principle of equal pay was finally given legal form in 1974. Since then, a further nine directives - laws binding on member states – have been enacted in the field of employment and social protection. These cover the equal treatment of men and women in social security, in self-employment, the protection of pregnant workers, and parental leave. Indeed, some of these issues, the debate on parental leave in particular, are topical in Australia at this time.

An additional directive was introduced in 2004 covering women's and men's equal access to goods and services available to the public, such as housing and accommodation, banking, insurance, and transport. I will discuss this law in more detail in a moment. Other measures too, support the principle of gender equality. Positive action, in the form of preferential treatment, is permitted to redress gender inequalities. Gender mainstreaming is a policy instrument used to incorporate the different situations and perspectives of women and men into all stages of policy-making. Multi-annual equal opportunities programmes have given focus and direction to the principled commitments to gender equality found in successive EU Treaties. The European Court of Justice has played a significant role in interpreting the gender equality provisions of EU Treaties, and in enabling individuals to enforce their right to gender equality. In short, the commitment to gender equality has been visible and progressive over five decades of the Union, bringing tangible improvements to the working lives of women across the now 27 member states.

Today, the situations of women and men in the EU and Australia are similar. The gender pay gap is similar to that of Australia, at 18%, and the gender composition of the workforce is also similar: 59% of women between 15 and 65 are in the workforce in Europe, compared with 57% in Australia. Men's workforce participation is at 73% in Europe, 71% in Australia. Life expectancy is better in Australia: 79 years for men, 84 years for women², while the average life expectancy in the EU is 75 years for men, 81 years for women.³

Getting back to the EU, though, the impressive record on supporting and advancing gender equity that I have previously mentioned leads many of my colleagues from other parts of the world to suffer from what one of them calls "EU envy"! They can only dream of a regional transnational standardising authority, with real clout, that could for instance address the parental leave debate currently at issue in Australia, in a woman-friendly way: or tackle sexual harassment in the workplace, or other employment and occupational discrimination issues that arise in all countries in one shape or form.

HOW GENDER DEMOCRATIC IS THE EU?

This strong principle-based, and action-focused commitment to gender equality is nonetheless subject to stresses, bargaining, and limits. And this is where I want to go now in my talk today. I want to show, through one instance of gender equality policy-making, that even the EU's commitment to gender equity can be

² http://www.aihw.gov.au/mortality/life_expectancy/compares.cfm (consulted 21 April 2010)

³ http://www.eu-oplysningen.dk/euo_en/spsv/all/101/ (consulted 21 April 2010)

compromised when powerful economic interests over-ride the equality commitment. And through an exploration of these limits I hope to be able to say something about the relationship between gender and democracy more generally. What does this story tell us about the EU's democratic decision-making processes when it comes to gender equality. What aspects of the gender equality agenda end up being included, and what pieces go by the wayside? To what extent can gender equality be at the core of the deliberations by the three key decision-making forums - the Parliament, the Commission and the Council? And what lessons can we learn from this story that can be illuminate the study of democratic quality in general?

This is a relatively new set of questions in EU research that treats the European Union as a democratic entity in its own right, rather than as a regulatory regime, as some see it, or as a forum for intergovernmental bargaining and negotiation, as others say it is. Certainly, there are elements of regulation and intergovernmentalism present in all EU affairs. But neither of these concepts convey the full picture of European transnational decision-making.

Against this backdrop, then, I want to take a closer look at the enactment of one directive, that of equal treatment and access to goods and services, passed by the European Council in 2004. It is a story that delves into the EU decision-making process, and illuminates the gendered nature of democracy. From this story, we will consider the lessons it holds for gender and democracy more generally. Because this research is still in its infancy, it is not possible to draw on extensive studies of this kind at this point in time. In the future, though, the gendered nature of democratic decision-making in other areas, such as humanitarian aid, security, and energy, will be studied to reveal its gendered imprint.

So now, to the story. In June 2000, the European Commission made it known that for the first time that it was going to draft legislation on gender equality for areas other than employment. This was an important move, as the European Council had just at that time assented to a Race Equality directive, banning discrimination on the basis of race or ethnic origin. The Race Equality law went beyond the fields of employment and social protection – the usual remit of EU social law - to include education and access to goods and services available to the public, including housing. It was a short step from this law to a plan that would extend gender equality to areas not already covered by the extensive equal opportunities employment and employment-related laws.

The proposal for a non-employment gender equality directive received the approval of the European Council in December 2000. It was evident around this time that the Commission intended to bring education and goods and services into the new gender equality law to make it commensurate with the Race Equality law. The Council's approval mobilised women's civil society organisations and EU official advisory groups on gender equality to making their views known as to what the new law should contain. The European Women Lawyers' Association (EWLA) and the European Women's Lobby (EWL) began to develop positions on the content of this new directive. The EWLA sought a broad, proactive law covering all aspects of life. This group specifically wanted the rights of women and men to maternity and paternity provisions, and the right of all individuals to reconcile work and family responsibilities supported. In other words, they sought to make it illegal for

landlords to refuse to take families with young children as tenants, or for airlines to refuse pregnant women as passengers, or for banks to refuse loans to businesswomen with young children. In addition, the EWLA wanted to see a ban on sex-discriminatory advertising, effective judicial sanctions for breaking the law, and a general requirement for positive action in all fields.⁴

The European Women's Lobby, after consultation with its members across the EU, sought to have ten areas of life included in the new law, including gender parity in decision-making, access to and supply of goods and services and violence against women.⁵ While drafting its proposals, the EWL cooperated closely with the Advisory Committee on Equal Opportunities between Women and Men, who were tasked with preparing an opinion on the proposed law for the Commission. This opinion, issued in February 2002, was very much in keeping with the content of the EWL 'shadow' directive, as it cited eight areas to be addressed including decision-making, access to and supply of goods and services, and violence against women.⁶ (explain term shadow directive/report)

Despite the creation of a consensus between women's civic and official advisory groups on the broad content of the proposed directive, the Commission circulated an unofficial, internal draft proposal suggesting a more narrowly-defined directive that addressed access to and supply of goods and services including education, taxation, advertising, and the media. It bore more relation to the women lawyers' submission, though, than to that of other women's civic and consultative groups. However, this early draft provoked a strong reaction from the insurance and media industries. Media representatives launched a hostile campaign in which they argued that the proposed directive - and more particularly its intention to ban gender stereotypes in media and advertising - represented 'an extraordinary move towards censorship' which would clash with the principle of freedom of expression.⁷ This campaign involved attacks in the media directed against the Commissioner for Employment and Social Affairs, Anna Diamantopoulou. Some of the more moderate articles had titles such as *Big sister is watching you: Feminist Eurocrat who wants to ban "sexist" TV shows and adverts.*

Similarly, the insurance industry argued that the proposal to eliminate sex differences as a factor in the calculation of insurance premiums and benefits would have serious repercussions for consumers, since it

⁴ EWLA first position, Sept 2002.

⁵ The ten areas for inclusion advocated by the EWL were 1) parity participation of men and women in decision-making; 2) access to and supply of goods and services; 3) taxation; 4) right to reconcile family and working life; 5) social protection, social security, social benefits and non-occupational healthcare and the fight against social exclusion; 6) education, training and research; 7) family and society-based violence against women; 8) health; 9) the images of women and men portrayed in advertising and the media, 10) the surname.

⁶ The full range of areas for inclusion advocated in the Advisory Commission report were 1) decision-making; 2) access to and supply of goods, services and facilities (including taxation and social protection); 3) health; 4) education and training; 5) violence against women; 6) sexual harassment; 7) commercial advertising and the media, 8) and membership of associations.

⁷ Financial Times, 'EU plan for law against sexism draws fire', 24 June 2003.

would result in an increase in prices in order to compensate for the loss of accuracy in prediction and risk.⁸ In addition to the objections of these interest groups, some Member States, as well as a number of Commissioners⁹ also expressed their opposition to this proposal.

When it seemed that the process would not advance due to a strong polarization of positions among the key actors involved, women's organisations (EWL, EWLA, and the Association of Women of Southern Europe) continued to lobby in favour of a directive that at least provided equal treatment in insurance premiums and benefits, taxation, education, and advertising and the media.¹⁰ In addition to this, MEPs from different political groups involved in the work of the Women's Rights and Gender Equality Committee (FEMM) signed a declaration of solidarity with Commissioner Diamantopoulou, stating that the sexist attacks against her 'put into great danger the adoption of a new proposal for a directive aiming to eliminate sex discrimination'.¹¹

Yet, despite this pressure by all parts of the women's sector for a broad directive, the proposal finally issued by the Commission provided for equal access to and supply of goods and services, prohibited discrimination on pregnancy and maternity grounds, prohibited harassment and sexual harassment in the supply of goods and services, and contained a positive action provision.¹² Thus, it went some way to meeting the requirements of the European Women Lawyers, and accommodated the demands of the insurance industry. However, it excluded education, taxation, the media and advertising. It included a provision giving the insurance sector an extended transitional period of six years to implement the directive, significantly beyond the more usual transposition period of two years.¹³ The proposal also specified that the legal base of the directive was article 13 of the Treaty, which meant that its adoption required unanimity in the Council, with the powers of the European Parliament limited to issuing an opinion.

The narrow scope of the proposal was criticised not only by women's and equality advocates but also internally by other European institutions consulted on the draft. Thus, in its opinion of April 2004, the Committee of the Regions expressed disappointment at the scope of the proposal, regretted the concessions made to some powerful interest groups, and called for a more comprehensive directive that included at the

⁸ The views of the insurance sector on the proposal are described in the Commission's document SEC(2003) 1213: Commission Staff Working Paper: *Proposal for a Council Directive Implementing the Principle of Equal Treatment between Women and Men in the Access to and Supply of Goods and Services - Extended Impact Assessment*

⁹ A number of Commissioners expressed deep concerns about the proposal, including the Internal Market Commissioner, Frits Bolkestein; the Trade Commissioner, Pascal Lamy; and the Competition Commissioner Mario Monti (Financial Times, 'EU plan for law against sexism draws fire', 24 June 2003).

¹⁰ The Commission received statements from the following women's organisations supporting a broad directive that included education, taxation and the media as well as goods and services: EWL (9 July 2003), EWLA (5 September 2003) and AFEM (7 September 2003).

¹¹ 02.COM.FEMM/03/D_30306/ES/ddl, available at: www.karamanou.gr {check}

¹² Prechal and Burri, 2009, p. 22

¹³ COM (2003) 657 final.

very least the same grounds covered by the race directive.¹⁴ Similarly, the Economic and Social Committee, in its opinion delivered on 28th September 2004, regretted the exclusion of education from the scope of the directive and deemed 'unwise' the provision which deferred the implementation of unisex rates in insurance for an extended period of six years.¹⁵

Despite the controversial character of the Commission's proposal, the European Parliament sought to strike a middle ground between the Commission and those groups and institutions advocating a more comprehensive law. The European Parliament's Women's Rights Committee presented a total of 34 amendments when the issue was debated in the Parliament. These amendments were supported by a 60% majority in the EP that crossed political lines.¹⁶

However, during this debate the Commission representative would not accept any of the substantive amendments tabled by the EP. When the draft law came to the Council for deliberation, it needed a unanimous vote to pass. Seven of the 25 member states - Belgium, Finland, Luxembourg, Malta, The Netherlands, Portugal and Sweden –disagreed with the narrow scope of the draft law. Their concerns were outweighed by a second, more even, split among member state representatives. One group was concerned with the potential discrimination against women in the use of sex as a basis on which to calculate pension and other insurance contributions. This was also the view of the Commission. The other countries argued that the potential costs of a gender-equal provision would harm the insurance industry. The disagreement was resolved with a decision that in principle, the use of sex as a factor in the calculation of premiums and benefits may not result in differences in individual premiums and benefits, unless 'objectively justified'. So, for example, insurance premiums could not load women for reasons of pregnancy or maternity. However, the fact that women live longer than men could be taken into account in calculating premiums and benefits. Although Germany did not accept this arrangement, it decided to abstain in order to avoid blocking the directive. The directive was finally adopted on 13th December 2004.

As a codicile: this directive is now in place across Europe. A recent assessment of its implementation indicates that most countries have amended existing legislation to take account of its provisions. Twelve countries have gone further, and provide for non-discrimination in education on gender grounds.¹⁷ Six have banned discrimination in the media and advertising.¹⁸ The sorts of issues being highlighted by the application of this directive include the advertising of 'children-free' spa hotels in Estonia, hospitals not allowing fathers to stay with their hospitalised children in Romania, and the free entry to night clubs for women, but not for men, as in Austria. But, in a controversial case involving a male-only golf club in Ireland taken under the national

¹⁴ 2004/C 121/06

¹⁵ 2004/C 241/13

¹⁶ European Women's Lobby, 'New European Directive on Gender Equality in the Area of Goods and Services Adopted in December 2004', available at: www.womenlobby.org

¹⁷ Belgium, France, Slovakia, Sweden, Greece, Hungary, Ireland, Lithuania, Malta, the Netherlands, Spain and Finland.

¹⁸ Greece, Ireland, Spain, Malta, France and Belgium.

provisions of the Goods and Services law, the Irish High Court ruled that “there is nothing inherently undesirable with persons seeking – in a social context – the society of persons of the same gender”.¹⁹

WHAT DOES THIS TELL US ABOUT GENDER AND DEMOCRACY?

First, it tells us that powerful sectional economic interests can sway policymakers more readily than a stated commitment to ensuring equality between women and men. This is not new, nor specific to the EU. But it is a stark reminder that the democratic process is one of contestation, and there is often little counterweight to the power of vested insiders (in this case the insurance and media industries). Democrats should be concerned about this imbalance, and particularly so when it directly affects one half of the population. The principle of political equality is clearly compromised in this case.

Second, it tells us that women’s representatives, civic and institutional, took an active part in developing ideas as to what the proposed law should contain. But their efforts were largely in vain, apart from the contribution of the European Women Lawyers Association. The proposals of the European Parliament were not taken on board, nor were those of the Committee of the Regions and the Economic and Social Committee. Thus the broad consensus on the content of the law, built around women’s views, found little purchase in the Council’s discussions. Although the voice of Parliament was procedurally restricted in the passage of this law, it was still open to the Council to consider the views of the EP. This points to the limits of EU democratic decision-making in institutional terms in this case. It also illustrates the limits of influence by women’s advocates (group and institutional) at EU level. And it also suggests, and this is open to further research, that the Goods and Services directive did not excite national representatives of women’s views, in civil society and among elected representatives. There are issues of communication and accountability here. The question is, to what extent did European women’s civil society organisations alert their national representatives as to the significance of this law? To what degree did MEPs raise it in their national contexts, either with parliamentarians, or women’s ngo’s, or both? The fact that some countries went beyond the EU law to include education, the media and advertising in their national arrangements suggests that there was a *post-hoc* national awareness of these issues and a commitment by some government to extend the Directive. On the more general point, though, the distance between what happens at European level and the concerns of national politics is emblematic of the democratic deficit that the representative elites in Europe – elected and civil society - need to answer for.

The third point in relation to democracy that this case makes is that the recognition of gender equality is a contingent matter. It tells us that, even with the extensively-stated EU commitment to supporting equality between women and men, recognition of this equality in practice continues to be a struggle, a site of contestation. Although in this case the principle of non-discrimination was upheld, it was compromised by the narrow remit of the law and the exceptions afforded to the insurance industry.

¹⁹ Quoted in Prechel and Burri, 2009, p. 23-4.

In conclusion, and to return to my starting point: if gender is to form an integral part of democratic politics, this case suggests that three things are required:

1. The positions of gender and equality-seeking representatives must be included, and accorded equal weight with the perspectives of powerful sectional groups; (equality of access)
2. All representatives must be accountable for their positions to those whom they represent, and the decision-making processes must be open and transparent for the public to judge the basis on which decisions are arrived at. In other words, accountability goes hand in hand with popular control of government, at whatever level this may be. And the obligation on civil society and sectional interest representatives to be accountable to their members also facilitates popular/membership control on the leadership of these organisations. (popular control, political accountability)
3. A recognition of women's legitimate claims to equality with men should infuse democratic decision-making processes. Realisation of this equality calls for a recognition of 'difference' as well as according women the same rights as men. (political equality)

Though my non-EU colleagues may suffer from EU envy, this case shows that improving the position of women to one of equality with men, even in the EU nirvana, is a project still in the making.

END

Appendix 1

European Union directives on equality between women and men

Equal Pay Directive – 1975

Provides that sex discrimination in respect of all aspects of pay should be eliminated.

Equal Treatment Directive – 1976

Provides that there should be no sex discrimination, either direct or indirect, nor by reference to marital or family status, in access to employment, training, working conditions, promotion or dismissal.

Social Security Directive – 1979

Requires equal treatment between women and men in statutory schemes for protection against sickness, invalidity, old age, accidents at work and occupational diseases and unemployment.

Occupational Social Security Directive – 1986

Aimed to implement equal treatment between women and men in occupational social security schemes.
Amended in 1996.

Self-employment Directive – 1986

Applies principle of equal treatment between women and men to self-employed workers, including in agriculture and provides protection for self-employed women during pregnancy and motherhood.

Pregnant Workers Directive – 1992

Requires minimum measures to improve safety and health at work of pregnant women and women who have recently given birth or are breast-feeding, including a statutory right to maternity leave of at least 14 weeks.

Parental Leave Directive – 1996

Provides for all parents of children up to a given age defined by Member States, to be given at least 3 months' parental leave and for individuals to take time off when a dependant is ill or injured.

Burden of Proof Directive – 1997

Required changes in Member States' judicial systems so that the burden of proof is shared more fairly in cases where workers made complaints of sex discrimination against their employers.

Equal Treatment in Employment Directive – 2002

Substantially amends the 1976 Equal Treatment Directive adding definitions of indirect discrimination, harassment and sexual harassment and requiring Member States to set up equality bodies to promote, analyse, monitor and support equal treatment between women and men.

Goods and Services Directive – 2004

Applies the principle of equal treatment between women and men to access to goods and services available to the public. Extends gender equality legislation outside the employment field for the first time.

Recast Directive Equal Treatment in Employment and Occupation – 2006

To enhance the transparency, clarity and coherence of the law, a directive was adopted in 2006 putting the existing provisions on equal pay, occupational schemes and "the burden of proof" into a single text.

Revised Parental Leave Directive -2010

Revises and replaces parental leave directive of 1996. Provides for 4 months leave, one month of which is non-transferable, and the time can be taken until a child reaches eight years of age.

Source: MEMO/07/426 Date: 25/10/2007 "50 years of gender equality law"; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:068:0013:0020:EN:PDF> (consulted 20 April 2010)