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W G HART LEGAL WORKSHOP 1990

DISCRIMINATION AND LAW

The Interaction of Race and Gender

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The Interaction of Race and Gender

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In this workshop we would like to address the similarities and differences between race and sex discrimination and the implications these may have for law. We argue that the nature of discrimination differs in important ways but the law uses the same concepts of discrimination for both sex and race discrimination. We would question whether these concepts are adequate.

Some examples of the points of difference are:

1. In sex discrimination issues child care and domestic responsibilities play a crucial role, both in reality and in effect in creating stereotypical assumptions of women as workers. Women with domestic responsibilities are limited in their hours of paid work, mobility, access to training education and trade union activities. All women may be threatened by assumptions about lack of seriousness, conceptions of the 'male breadwinner', the desire to leave or limit paid work to satisfy domestic responsibilities. This has important implications for legal structures. For example, the need for law to address issues such as flexible working, career breaks, child care facilities, good maternity protection. There is also the problem of addressing the role and implications of protective legislation for women.
2. In race discrimination issues the concept of "race" is more diverse. It includes concepts such as nationality, ethnicity as well as race. Different demands are made of law. For example, there is the need to consider the impact of immigration laws, recognition of external qualifications (*Hampson*), removal of nationality or work experience requirements (*Perera*, *Meer*, *Ojutiku*) and the possible conflicts such measures may have with the European Community's measures on free movement of persons.

In addition the issue of ethnicity raises the issue of recognising different cultural norms in law, (*Mandla v Lee*, *Singh v Rowntree*, *Kingston v Kaur*). By so doing, a possible conflict with sex discrimination ideals may emerge, for example, moslem views of women, attitudes towards economic independence, the desire for single sex schools.

In considering race discrimination it is arguable that the causes of discrimination may diverge from the causes of sex discrimination. For example, residential segregation, leading to poorer housing, welfare services education. There may be stereotypical assumptions but they may be different in content from sex discrimination assumptions. The implications for law may be the need to focus upon housing and education needs as well as prejudice at the point of selection and promotion in the labour market.

In this workshop we would also like to address the debate generated by articles in *Between Equals* as to how the cumulative disadvantage of being a woman and a black or a member of an ethnic minority group, should be addressed in legal measures designed to combat discrimination. The workshop will take a comparative (U.S./U.K.) approach comparing and contrasting the different legal structures, concepts, enforcement mechanisms and remedies for addressing sex and race discrimination in the United Kingdom and the United States. We will then explore some of the criticisms levelled by black and ethnic minority women at the traditional, feminist and radical critical legal studies approaches to the discrimination legislation. In contrast to the position that is now being taken of attempting to amalgamate the different systems of sex and race discrimination legislation we will consider the opposite thesis: the recognition of black and ethnic minority women as a separate class of "discriminated-against persons". In recognising such a class of protected persons the path might be opened for expanding the conceptual basis and role of discrimination law away from an assimilationist perspective to recognise and protect "differences" between various groups in society.

The following are useful background reading:

M Wilson, "Racism is the Main Issue" Between Equals Issue 2, Autumn 1989 (London, Women's Legal Defence Fund)

M Coussey, "Why We Need a Joint Strategy" Between Equals, Issue 3, Winter 1990

J Gregory, Sex, Race and the Law (1987, Sage, London)

K Crenshaw, "Race Reform and Retrenchment: Transformation and Anti-discrimination Law" 101 Harvard Law Review 1331 (1988)

C Scarborough, "Conceptualising Black Women's Employment Experiences", 98 Yale Law Journal 1457 (1989)