

The Community Of Women

On women, the European Community has proved, over the last decade, to be a progressive force. It has forced the Thatcher government to retreat on several fronts. But **Catherine Hoskyns** argues this development has barely been noticed by the Left.

In February 1986, the European Court of Justice (the court of the European Community) ruled, in the Helen Marshall case, that it was contrary to the provisions of European law on equality to force women to retire before men. Consequently, it is now unlawful in this country, at least in the public sector, to set different retirement ages for men and women. Four months later, in the Jackie Drake case, the European Court ruled that it was discriminatory to exclude married women from a welfare benefit that was paid to men and single women. As a result the government is now for the first time paying invalid care allowance to married women.

Those rulings received considerable publicity and, beyond those who follow these developments closely, generated some surprise. How was it that the European Court and the European Community had power to deal with these issues and that they came down on the side of women? What were the implications of the rulings? How should the women's movement and the Left react in these circumstances?

In fact, the two cases had very different origins. Helen Marshall (a nutritionist working for the South West Area Health Authority) brought her own case arguing European law from the start. Only in the final stages of the appeal process was she supported by the Equal Opportunities Commission. Retirement age is not an issue about which there has been much concern either in the trade union movement or among feminists. Nor is it clear what a women-centred policy should be. The ruling has in a sense caught activists on the hop and there is little agreement as to how it can be used to the best advantage.

The Jackie Drake case, on the other

hand, was deliberately brought as a test case by the Child Poverty Action Group and formed part of a well-orchestrated campaign by the disability lobby over the operation of the invalid care allowance. In the months preceding the ruling married women caring for disabled people were encouraged to apply for the allowance writing on their forms: 'I am a married woman but I am claiming the invalid care allowance because of the EEC directive on equal treatment'. The European Court's ruling was therefore the result of, and related to, forceful and well-organised pressure group activity.

These cases, together with similar ones in other member states of the Community, illustrate the power which the Community is beginning to have on issues to do with women's equality. As will be shown, the Community has had a policy on women's rights which has grown and expanded since the early 70s. The impact of the policy on national politics opens up space and creates a fluidity which can be of benefit to women. However, the decisions which are taken at the European level tend to be narrow and legalistic and often seem divorced from the normal political process. The Jackie Drake case is extremely unusual in its direct connection with political activity in a member state.

It has proved difficult for the women's movement in the different states of the European Community to come to terms with the possibilities of this situation, or to work out a strategy around them. In Britain this is partly a result of the Left's general hostility to the EC. It is also that the scope and form of the European policy on women's rights is such that it does not connect easily with the thinking or the practice of the women's movement as this has developed since the early 1970s. Nor is

the European Community set up in a way that makes it easy for grassroots movements to become involved in its activities.

However, despite these limitations the European Community deserves to be taken more seriously as a political arena. Economic interdependence has been increasing rapidly and governments are far more constrained than they used to be by developments in other countries and at the European level. It is already the case that some labour movement campaigns must be co-ordinated throughout Europe (and beyond) if they are to have any chance of success. The logic of this situation is that sooner or later the rights of workers, as well as those of citizens, will have to be fought for and secured at the European level. But as far as women's rights are concerned, a formal legal basis for this already exists in Article 119 of the Treaty of Rome and subsequent legislation and policy. The vital connection still has to be made however between these bare forms of words and the obscure political processes which produced them - and the real concerns and struggles of women throughout Europe which alone can give them positive content.

Before we can carry this debate any further, however, it is necessary to look in more detail at the origins and development of the European policy on women's rights, at how it relates to the aims and demands of the women's movement and at the impact it is having at the moment in Britain.

The policy of the European Community on women's rights springs out of the provisions on social policy included in the Treaty of Rome in 1957. Social policy was included in the treaty for two main reasons. First, because it was seen as necessary to take some action to cushion the effects on workers of the kind of economic restructuring envisaged in the formation of the Common Market; and second, because the objective of greater labour mobility in Europe required the opening up of national welfare schemes to workers from other member states. As a result, the European Commission was given some competence to begin to develop a European social policy in the employment field and to encourage the harmonisation of national regulations. The main rationale for all of this was economic, but there was also a desire among some of those present at the original negotiations to incorporate in the treaty a more overall concern with improving living standards and conditions of work.

These provisions in the Treaty of Rome are termed 'social policy', but they are in effect an employment policy and they deal only with the situation of people at work. Responsibility for all other aspects of life is considered to be the prerogative of the national state. This restriction perhaps helps to explain why women have found

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'Women's rights at work seemed an area where the Community role could be developed and expanded'



work seemed an area where the Community role could be developed and expanded. The result was the adoption by the Community in the mid-1970s of the three women's directives - on equal pay, on equal treatment at work and on equal treatment in social security. It is the results and consequences of these that we are now experiencing 10 years later on.

Both the provisions contained in Article 119, and the three directives, are rooted in the idea of formal equality and equal treatment. Equal treatment, whether of goods, services, or workers, is one of the basic concepts upon which the Community is founded. Removing 'restrictive practices' so that women can 'compete freely' in the labour market fits in well with the Community ethos. But the emphasis on equality is not one which fits well with the preoccupations and activities of the women's movement across Europe. For since the early 1970s, the women's movement has sought to emphasise the 'difference' of women and it has concentrated on the need to transcend the idea of equality and set up alternative structures based on women's needs and experience. Such positive discrimination, or measures which involve intervention or redistribution, are much harder for the Community to adopt and this has proved to be the case with the women's policy also.

Despite this gap between women's needs and European law, the provisions are important. Firstly, they carry with them considerable legal sanction and this has to date been rigorously enforced. Secondly, the formal commitments have been broadly interpreted both by those who originally drafted them and by the European Court of Justice. So equal pay specifically included equal pay for work of equal value; equal treatment included the idea of indirect discrimination, and the terms 'pay', 'working conditions' and 'social security' have been broadly defined and interpreted.

Perhaps surprisingly, since 1978 it has been the European Parliament which has kept the policy alive. In 1979 after the first direct elections, more women MEPs came into the parliament which now has 16% women members compared with a far lower percentage in the national parliaments of member states. Some of the women had been active in the women's movement at home - others had been involved on women's issues in a more official capacity. A cross-party caucus of women MEPs met to discuss the issue of women's rights and began to collect evidence on the situation of women in Europe. They drafted an enormous and jumbled resolution which was adopted by the full parliament in February 1981. This resolution went far beyond the employment field and included provisions on equal opportunities in education, the funding of rape crisis

it difficult to take seriously the Community's commitment to women's rights since for women their position at work is so closely tied to their situation in the home. Such a distinction therefore makes little sense. It also prevents the Community from taking up those issues around which the women's movement has mobilised most strongly - in particular abortion, divorce and custody, and issues to do with male violence.

The provisions of Article 119 of the Treaty of Rome deal with equal pay and act as the basis for the European policy on women's rights. At first these

provisions were regarded as merely rhetorical and attention was concentrated on the establishment of the Common Market and on removing barriers to trade. So social policy was left to one side. However, student/worker protest in the late 1960s, together with the need to accommodate the interests of Ireland, Denmark and Britain which were due to join the Community in 1973, gave a new impetus to the Community's social policy in the early 1970s. Because of the existence of Article 119 and because women were achieving a new visibility at national level, women's rights at

centres and the availability of contraception.

But there is no compulsion for other institutions in the Community to adopt proposals initiated by the parliament. In this case, however, appropriate parts of the resolution were picked up by the Social Affairs Directorate in the European Commission and redrafted into the 'New Community Action Programme on the Promotion of Equal Opportunities for Women'. Reluctantly this was approved by the Council of Ministers in July 1982. The action programme gave the Commission a budget for the women's policy and enabled work to go ahead to implement the existing directives, commission new research and prepare new draft legislation in areas such as parental leave and occupational social security. Increasingly, however, the development of policy has come up against the refusal of national governments to contemplate new action in these fields or commit any financial resources to the achievement of equality.

One effect of the existence of a Community policy on women's rights has been that very gradually links are being established at both an official and unofficial level between women across Europe. This, however, has been stronger among civil servants and 'experts' and the more traditional women's organisations. Real and sustained contact has yet to be established both between the feminist movements in the different countries and between these movements and the Community institutions.

However, a start has been made. Since 1980 the Centre for Research on European Women (CREW) has published a lively and informative journal, *CREW Reports*, which spreads information and interprets developments at the European level in terms of the aims and objectives of the women's movement. CREW has also helped to establish the European Network of Women (ENOW) which aims to create links between more grassroots women's groups, to develop joint campaigns and to lobby both in Brussels and in the member states. In November this year, the European Forum of Socialist-Feminists met in Hamburg to try to develop a common strategy and have some impact on the policies of the European Left. All of these more unofficial networks are hampered by lack of funds and by the logistical difficulties of organising across Europe.

This background helps to explain the curious and contradictory effect which the European provisions of women's rights are now having in Britain. Since 1978 it seems that virtually all changes which have taken place in government policy on sex discrimination and equal opportunities have their origins in some aspect of European legislation. The effect of

The European Community

Formed: March 1957, to create a common market, and remove barriers to trade and economic activity.

Founding Constitution: The Treaty of Rome.

Members 12: France, West Germany, Italy, Belgium, Netherlands, Luxembourg (1957), Britain, Denmark, Republic of Ireland (1973), Greece (1981), Spain, Portugal (1986).

Main Institutions

European Commission: The administration of civil servants and experts, divided into directorates which deal with different subject areas. It has the power to initiate policy and legislation and to carry out decisions. Intended to represent 'the European interest'.

Council of Ministers: Made up of representatives drawn from the member state governments, who safeguard national interests. Its role is to discuss and adopt policy and legislation. Works at the moment on consensus and unanimity so each state effectively has a veto.

European Parliament: Has no power to pass legislation, it can only advise and consult. However, its influence has grown since 1979, when its members (MEPs) were directly elected by the member states.

European Court of Justice: The court of the community whose rulings are binding on all member states'. It enforces and interprets all legislation, and has the power both to hear cases directly and to give 'opinions' on cases referred to it by national courts.

these changes has been patchy and only rarely do they correspond to areas of real need or relate directly to political struggle at the national level.

European law and policy affect government action in three main ways: through the necessity to implement the directives adopted in Brussels; through legal action which can be taken by the European Commission to ensure this implementation; and through cases referred from the national courts to the European Court of Justice. However, it is really only civil servants, politicians and experts who are directly involved in this interface between national and European policy. Only in a very sporadic way do trade unions, individuals or interest groups become involved.

The way this works out in practice can be seen by looking at three areas of equality policy where there have been important developments in Britain: equal pay, equal opportunities at work

and equality in social security schemes. Each of these areas correspond with one of the three European directives on women's rights discussed above.

The British Equal Pay Act (EqPA) which came into effect in 1975 was adopted before the negotiations which led to the European Equal Pay Directive (EPD). British officials and politicians maintained that no changes were needed to the British legislation to implement the EPD. However, a series of British cases, referred to the European Court between 1979-1981, showed that European law did differ in some small, but important, respects and that British women were able to gain additional rights by making use of it. Though these cases were important in themselves, they seemed to be isolated victories and aroused little sustained interest either among women's groups or in the trade union movement.

Meanwhile, the European Commission was bringing a legal action against the British government, claiming that the EqPA did not give a sufficiently clear right to claim equal pay for work of equal value. When the European Court endorsed this view, the EqPA was amended but in such a complex way that it seemed highly unlikely that any women would actually be able to bring an equal value case in the courts.

Rather surprisingly, despite the difficulties, the whole issue of equal pay for work of equal value, and its implications, has aroused considerable interest and publicity. And, against the odds, a small number of important cases have been won. Clearly this law, however inadequate, touches on a deep-seated dissatisfaction and a sense of injustice among women in varied working environments.

Equal opportunities at work is another area where European provisions have had considerable effect though not always to the advantage of women. The Sex Discrimination Act (SDA) was drawn up at almost the same time as the European Equal Treatment Directive (ETD). Although it was clear that there were differences between the SDA and the ETD, no changes were made to the SDA to ensure that it complied. Here again the European Commission took legal action and the British government has been forced to bring in the Sex Discrimination Bill (1986) to make amendments.

Out of spite, the government tacked on to this bill a provision to repeal all major restrictions on women's hours of work including night work and overtime. The ETD does require strict monitoring of protective legislation of this kind, but the European Commission has recommended that any change should be made carefully and with full consideration of the implication for workers of both sexes. The British government has ignored this, and has used European law as an excuse to

'A cross-party caucus of women MEPs met to discuss the issue of women's rights'



abolish restrictions - but clearly with deregulation rather than women's equality in mind.

The European Directive on Equal Treatment in Social Security (SSD) does not correspond directly to any one piece of British legislation. However, recent changes in British social security law, for example the opening up of family income supplement to women wage-earners are certainly due to the European directive. The government has also withdrawn the housewives non-contributory invalidity pension because of the directive. But instead of putting housewives on the same footing as men and single women it has achieved equality by levelling down. The replacement, the severe disability allowance, has made it harder for anyone to get the benefit.

The implications of the SSD for the British social security system are considerable. It relates to a whole range of interlocking provisions previously exempted from anti-discrimination legislation. As a result, interest groups and women's organisations dealing with these issues are becoming aware of the existence of the European Community and are beginning to seek ways of lobbying more effectively in Brussels.

The evidence in this article suggests that European law on women's rights is now becoming an important factor in the struggles around women's

issues in the member states of the EC. The British situation is particularly striking since, with a government intent upon deregulation and cutting costs, the power of European law has attained a higher visibility. Nevertheless a roughly similar situation exists in the other member states.

The effects that we are now experiencing result from policy decisions taken at the European level in the mid 1970s. Things have changed since then. The prevailing ethos among governments is against social legislation of this kind and the emphasis is now on reducing public expenditure, deregulating business, and 'freeing' the labour market. Since 1978 the Council of Ministers has rejected a series of directives on social policy. The British government has taken an extreme position in vetoing legislation on parental leave and part-time work which would have been of enormous benefit to women. And to add insult to injury, in June of this year the Council finally adopted a directive on equal treatment in occupational social security schemes, but in such a watered down form that the effect is likely to be minimal.

In the face of these attempts by right-wing governments to cut back on any initiatives for women's rights, there is a need for more concerted action by the women's movement. To be effective this requires more links

among women across Europe, both to encourage greater co-operation and also to form a more effective lobby and exert greater pressure.

The peace movement already has an effective transnational structure in Europe and there is growing evidence that this is needed in other areas of social and political action. This is difficult for the women's movement with its emphasis on grassroots action and small-scale autonomous organisation. The European Community provides some kind of framework for such developments but contacts would have to be multiplied across a wide range of issues and organisations and in areas which go far beyond the formal scope of the European institutions.

Clearly there is much greater interaction now between European and national levels of policy-making, and issues previously considered 'domestic' are now being internationalised. All this demands much more thought and analysis both from the women's movement and from the Left in general. In this country the women's movement is now paying greater attention to the need for more formal interventions in national politics. As this article has attempted to show, an awareness of the transnational level needs to be built into such a strategy.

For more details see Catherine Hoskyn's 'Women, European Law and Transnational Politics' in a special issue of the *International Journal of the Sociology of Law* (Nov 1986) dealing with feminism and the law.

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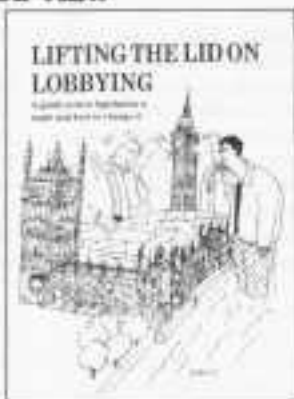
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