

Social Rights as Women's Rights

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I BETWEEN CIVIL AND POLITICAL RIGHTS AND ECONOMIC RIGHTS

Are social rights a special concern of women? The struggle for women's rights has usually been identified with the right to equality, a primary tenet of the scheme of political and civil rights. This was the nature of the suffragist movement that fought for women's right to vote.¹ Still, it would be wrong to associate feminism only with political and civil rights. The struggle for women's rights has always included the aspiration to achieve freedom through economic independence. Important feminist efforts have focused on the rights of women, and married women in particular, to own property,² and on the opening of occupations and professions to women.³ The ability to own property and earn a living independently is a preliminary condition for personal freedom, and therefore constitutes a crucial first step on the long way towards the equality of women. One can compare this to the vision of Virginia Woolf, who wrote many years ago that a basic condition for the evolvement of women's literature is that the writer would have money and a room of her own.⁴ The insight for the present context is that the evolution of women's rights depends on their material condition. Similarly, even Catharine

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¹ This struggle, identified with the first wave of feminism, was successful in many countries, due to the social changes brought about by the First World War (during which women provided for their homes and replaced men in various positions). In the United States, for example, the right to vote was granted to women by the 19th amendment that was passed in 1919 and ratified in 1920.

² Laws in the matter of the property of married women were enacted throughout the nineteenth century (eg, New York Married Women's Property Act 1848).

³ See *Bradwell v Illinois* 83 US 130 (1873).

⁴ V Woolf *A Room of One's Own* (London, Hogarth Press, 1929). Woolf's argument can serve as a source of inspiration in this context although she herself, belonging to the educated and affluent classes in England, represents an elitist type of feminism of women who never had to work for their living.

MacKinnon, whose feminist work has usually focused on other issues, pointed out that:

most women can survive only by being connected to a man's income. This fact powerfully structures women's lives... In money economies, income means survival; its treasure and resources also contribute to freedom, human flourishing, enjoyment of life's possibilities.⁵

II BETWEEN ECONOMIC RIGHTS AND SOCIAL RIGHTS

Social rights are aimed at securing the ability to live a life of dignity for everyone, without dependence on others (other than the state), while reasonably fulfilling all basic needs, including welfare rights, rights in the sphere of employment, and rights to education and health. Therefore, the social rights movement and the feminist struggle, which strives to achieve these goals for women, have a great deal in common

In earlier stages, the feminist claim, with regard to the economic sphere, was focused on liberty: aspiring for the recognition of the rights of women to own property and choose their professional occupations. The struggle for social rights developed only later. Even today, in developing countries, the most important struggles are aimed at recognising the rights of women regarding ownership of property and freedom of occupation.⁶ These are of special importance in countries that are still unable to guarantee significant welfare rights.

It is indeed evident that although the right to own property and to choose an occupation cannot always secure the goal of dignified life for everyone, it is important to emphasise that the universal application of these rights to women should be considered a preliminary condition. There are still many countries in the world where women are not able to own property and are limited to traditional occupations. In those countries, women are almost inevitably being led to poverty. Another way to put this argument is that in every system where property rights and freedom of occupation are recognised, it is crucial to recognise the equal rights of

⁵ CA MacKinnon, *Sex Equality* (New York, Foundation Press, 2001) 77.

⁶ See MC Nussbaum 'Public Philosophy and International Feminism' (1998) 108 *Ethics* 762. Nussbaum focuses on the needs of women in developing countries, which are completely different from those of women in the western world. In particular, she refers to the lives of women in different regions of India. Nussbaum points to the importance attached to property rights, the availability of credit, and the possibility to get a job away from home, as prior conditions for the possibility to protect wholeness of the body and the ability to make reasoned choices about one's course of life. Without these pre-conditions, existence becomes dependent only on the good will and mercy of others. See also MC Nussbaum 'International Human Rights Law in Practice: India: Implementing Sex Equality through the Law' (2001) 2 *Chicago Journal of International Law* 35.

women to enjoy these liberties—not only in the name of equality and autonomy, but also for achieving dignified life without poverty.

This emphasis is important due to the tendency to perceive economic rights, and especially constitutional property rights, as rivals of social rights. The feminist struggle for indiscriminate application of the right to property and the right to freedom of occupation for women demonstrates the potential ingrained in the interpretation of these rights in light of distributive justice rather than competitive Darwinist ideas. Feminism illuminates the importance of the right to freedom of occupation not for the sake of promoting business competition free from government regulation, but rather as an expression of the natural right to make a living, and the role of the right to property as a source of personal freedom, and not merely as a tool for protecting the wealthy from taxation.

III SOCIAL RIGHTS AS A FEMINIST ISSUE

As economic development in western countries shows, even legal systems that recognise property rights and freedom of occupation do not guarantee a life of dignity for everyone. This understanding has been a source of motivation to promote the concept of social rights. The recognition of social rights is important for various groups, but it is of special importance for groups that are economically vulnerable, for those who are integrated into the job market less successfully and are paid less even when they are employed. Women constitute a group which shares these characteristics, alongside other disempowered groups, such as people with disabilities, minorities and work immigrants. The rate of working women is lower than the rate of working men, and more women than men are working in part-time jobs, mainly because of existing social norms regarding their domestic role. In general, women usually spend less time in the labour market, due to their family responsibilities, whereas the tasks they fulfil in the domestic sphere are not recognised as having economic value (for the purposes of social benefits). In addition, more women than men are employed in temporary jobs, jobs in the informal sector as domestic workers, and jobs that often do not provide social benefits and economic security. On average, the wages of women in the job market are lower, both in terms of their absolute earnings and their earnings per hour. As a result, women are more likely candidates for poverty. The likelihood of being poor is even greater for the numerous women who raise their children alone as single parents. These women are often forced by their circumstances to limit their hours of work, and face a merciless job market, which tends to discriminate against people with parental duties. The result is that welfare recipients are often women and their dependent children.

Indeed, the feminisation of poverty is an increasing phenomenon, particularly when it comes to single parent families headed by women.⁷ In addition, the new challenges to the welfare state, deriving from prolonged lifespans, are especially relevant to women, who, on average, live longer and outlive their male partners. From these perspectives, the interest in welfare rights is definitely a feminist issue, because women constitute a group that needs the safety net provided by social rights. In addition, in an environment in which workers' rights continue to deteriorate due to the pressure of globalisation, the difficulties faced by working women are increasing because of the conflict between the long hours they are required to work and their family duties.⁸

Growing awareness as to the importance of social rights was inspired also by critical race feminism, which argued that traditional feminism was focused mainly on the aspirations of middle class white women, women who are relatively well off and often detached from economic needs.

Welfare rights are considered a feminist issue also from the perspective of cultural feminism and its 'ethic of care'.⁹ In this context, the argument is that feminism should be committed to the welfare of women who dedicate their lives to caring for their dependants, as many women in fact do. This view inspired the feminist critique of welfare reforms in the United States, which conditioned welfare entitlements on getting a so-called 'real job' outside the home. The criticism focused on the tendency of these reforms to overlook the social and economic value of the work of women in their homes. Poor women who were required to work outside their homes in order to be entitled for welfare payments often worked in the households of other families, taking care of other people's dependants. However, when they did the same job in their own homes, the social value of their work was not acknowledged. Feminist writers condemned this legislative approach for its disregard of the value that should be attributed to dependency work.¹⁰ Similarly, in the international sphere, women who live

⁷ See, for instance, D Pearce 'Welfare is not for Women: Why the War on Poverty Cannot Conquer the Feminization of Poverty' in L Gordon (ed), *Women, the State and Welfare* (Wisconsin, University of Wisconsin Press, 1990) 265; 'Symposium: the Changing Face of Need: Feminization of Poverty and the Law' (2003) 5 *Journal of Gender Race and Justice* 233.

⁸ See K Rittich, 'Feminism after the State: The Rise of the Market and the Future of Women's Rights' in I Merali and V Oosterveld (eds), *Giving Meanings to Economical, Social and Cultural Rights* (Philadelphia, University of Pennsylvania Press, 2001) 95. The consequences of the pressures of globalisation for working class women are demonstrated in Barbara Ehrenreich, *Nickel and Dimed – On (Not) Getting By in America* (New York, Metropolitan Books 2001).

⁹ Carol Gilligan presented her thesis regarding the 'ethic of care' which characterises women in her influential book *In a Different Voice – Psychological Theory and Women's Development* (Cambridge Mass, Harvard University Press, 1982).

¹⁰ See, for instance, EF Kittay *Love's Labor* (New York, Routledge, 1999). For feminist criticism on the American welfare reform regarding mothers who are required to work, see: M Minow, 'The Welfare of Single Mothers and Their Children' (1994) 26 *Connecticut Law Review* 817; L White, 'On the "Consensus" to End Welfare: Where are the Women's Voices?' (1994) 26 *Connecticut Law Review* 843. On the other hand, for criticism focusing on payments

in the developing countries benefit less from the economic aid given to these countries for purposes of growth since their work in their houses and rural surroundings is not considered 'productive' (even when it produces most of the food manufactured in their countries).¹¹

The complex relationship between feminism and the welfare state derives also from the role of women's caring work as an alternative to welfare rights or as a tool for achieving welfare goals. On one hand, traditional care by family members, usually women, has obscured the need for social rights. On the other hand, in the context of developed welfare states, working class women and immigrants from developing countries are the basis for the mechanism of paid care, which becomes more accessible to middle class families due to the low wages for such work.

Another feminist perspective on the issue of social rights relates to the difficulties in dealing with the bureaucracy of the welfare state. In many cases, poor women are those who carry the burden of dealing with the requirements of the welfare bureaucracy because they are usually responsible for the daily subsistence of their children and families.¹² These difficulties are represented even more clearly with regard to welfare rights given to single parent families, usually headed by women. In other words, women are those who are in the 'front lines' of the battle over the realisation of social rights in practice. They are those who struggle for the recognition of entitlements for their families in terms of welfare payments, housing aid, etc. In doing so they are the first to confront the constant gap between social rights laws and their realisation.¹³

IV WHO ARE THE WOMEN CLAIMING SOCIAL RIGHTS?

The focus on social rights emphasises existing gaps between different groups of women. The distress and needs of women coming from different

for housework (either by the welfare system or through the recognition of equal rights in family property), see V Schultz, 'Life's Work' (2000) 100 *Columbia Law Review* 1881 (arguing for the importance and centrality of work in people's lives—for the development of their personality and self-esteem, sense of belonging, communal support and independence. Focusing on housework payment is a withdrawal towards traditional perceptions of the distribution of roles between men and women, in a way that denies women the advantages of the work, eg, joy, independence, self-esteem, etc); for an answer to this critic, see MM Ertman 'Love and Work: A Response to Vicki Schultz's "Life's Work"' (2002) 102 *Columbia Law Review* 848.

¹¹ See H Charlesworth, C Chinkin and S Wright 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 613, 639–41.

¹² An article focusing on the tragic encounter of a needy mother with the welfare state bureaucracy is LE White 'Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs G' (1990) 38 *Buffalo Law Review* 1.

¹³ D Barak-Erez 'The Israeli Welfare State: Growing Expectations and Diminishing Return' in G Nolte and E Benvenisti (eds), *The Welfare State, Globalization and International Law* (Berlin, Springer, 2004) 103.

backgrounds are not identical, and nor are their aspirations and priorities. As already noted, these differences were emphasised by feminists who dissociated themselves from the pretence of traditional feminism to represent all women and argued that it was actually representing the interests of educated middle and upper class women, and not reflecting the problems of other women (black women, working class women, etc). This critique has special relevance in the context of the debate over social rights. First of all, the priority of the struggle for social rights varies between groups of women according to their social and economic status. Feminist organisations in which middle and upper class women set the agenda tend to fight more for equal opportunities and career options, and less for 'bread and butter'—minimum wages, income security, etc. Second, the struggle for social rights reveals the conflicts of interest that exist between different groups of women. For instance, securing the right to a minimum wage for women who are domestic workers is a central goal for working class women. At the same time, it threatens educated women, who often use a large percentage of their income to pay the salaries of women who work in their households and take care of their children.¹⁴ In a similar manner, public financing for public day care centres is more important for working class women (who cannot hire the services of other women to work in their households) than to career women who can afford a nanny. It is important to note that issues which are not identified with the struggle for social rights also have a social rights aspect when they are applied to protect women with high economic vulnerability. For instance, sexual harassment law has a social rights aspect when it is applied for the protection of women who depend on their jobs due to acute economic need, such as migrant workers.

V SOCIAL RIGHTS OF WOMEN IN INTERNATIONAL LAW

Each country grants social rights to its citizens and residents as it sees fit. In the background, however, there are the standards set by international law. With regard to the social rights of women, there are several conventions to consider. The first among them is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹⁵ adopted in 1979. Alongside its main reference to equality in the political and public sphere, the Convention dedicates important provisions to the social and economic

¹⁴ Indeed, paying for help in the household is no less important also for working fathers, but in fact, due to social inequalities regarding the traditional separation of responsibilities in the family, the salaries of care-workers has more impact on the tendency of women to work outside their households.

¹⁵ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

spheres. Article 3 includes a general commitment to take any means for securing the development and promotion of women, not only in the 'public' sphere, but also with reference to the 'social, economical and cultural' spheres. The Convention refers both to economic rights (the right to property and the right to work) and to guarantees of social rights. Article 15 states that women should enjoy legal capacity identical to that of men, including with regard to contracts and property. Article 16 makes a specific reference to equality in property rights with regard to married women. Article 11 states that women should have the equal right to 'work as an inalienable right of all human beings'. Other provisions deal with securing the rights of women in different social spheres—education, health, social security and work. Article 10 deals with the rights of women to access and equality in the field of education. Article 11, which deals with rights in the sphere of work, adds to the basic right to work, mentioned above, several additional rights: a prohibition on discrimination in employment opportunities and in promotion; a right to equal wages; a right to social security; a right to health and safety at work, including during pregnancy; a prohibition on discrimination on the grounds of pregnancy, delivery and marriage; and a duty to introduce paid maternity leave. It also refers to the encouragement of integrating parents in the job market, including by establishing networks of child-care facilities. Article 12 sets out the right of women for access and equality in the area of medical services, while referring especially to suitable services related to pregnancy, confinement and the post-natal period. Article 13 states that women are also entitled to equal rights in the field of family benefits, mortgages and other forms of financial credit. Article 14 refers especially to the weak population of rural women, and emphasises the need to ensure their right to have access to health care services, social security programmes, education, financial credit, adequate living conditions and employment. Some of the rights are anchored also in other international treaties, which deal with specific issues, such as the right to equal wages addressed by the Equal Remuneration Convention.¹⁶

The social rights of women have also been recognised in the main international instrument concerning social and economic rights—the International Covenant on Economic, Social and Cultural Rights of 1966.¹⁷ Article 3 of the Covenant determines generally that

the states parties to the present covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present covenant.

¹⁶ The ILO Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (adopted 29 June 1951, entered into force 23 May 1953) (No 100).

¹⁷ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

Article 7 of the Covenant, which refers to the right to fair and equal wages, emphasises 'in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work'. Article 10 of the Covenant refers to the duty to ensure protection to mothers 'during a reasonable period before and after childbirth', during which they should be accorded paid leave.¹⁸ In addition, there are treaties of the International Labour Organization on the rights of pregnant women and mothers (eg the Maternity Protection Convention 2000).¹⁹

VI SOCIAL RIGHTS OF WOMEN IN PRACTICE: PROBLEMS OF DISCRIMINATION

A separate discussion dedicated to the social rights of women has to focus on areas in which the application of social rights tends to discriminate against women, usually backed by tradition.

In the area of education, there is a relevant distinction between western societies and traditional societies, usually in developing countries. In western states, the right of education is usually not confronted by unique problems, because education of women has become the norm (in contrast to the past, where women were limited in their possibilities, especially in the context of higher education). In developing countries, the case is different when the prevailing social norms do not approve of full access of women, including young girls, to educational opportunities. The result is that girls in areas populated by traditional societies, mainly in rural areas, are not always sent to school.

In addition, even in western countries, some tensions relate to the full accomplishment of education rights. An indirect challenge to the fulfilment of education rights of women is raised by the so-called 'scarf cases', which deal with Muslim girls who insist on wearing traditional headscarves when they attend school. Some countries have adopted an uncompromised negation towards the wearing of headscarves based on several arguments, mainly secularism on the one hand and equality of women on the other (associating the traditional headscarf with non-egalitarian views towards women). In practice, even when the ban is motivated by equality concerns,

¹⁸ For discussion concerning the social and economic rights of women in the context of international law see also: K Tomasevski, 'Women' in A Eide et al (eds), *Economic, Social and Cultural Rights* (Dordrecht, M Nijhoff, 1995) 273; P Hunt, *Reclaiming Social Rights – International and Comparative Perspectives* (Aldershot, Ashgate, 1996) 71–106; E Brems, 'Social and Economic Rights of Women' in P van der Auweraert et al (eds), *Social, Economic and Cultural Rights: An Appraisal of Current European and International Developments* (Antwerp, R Bayliss, 2002) 17.

¹⁹ The ILO Maternity Protection Convention (adopted 15 June 2000, entered into force 7 February 2002) (No 183).

it threatens the opportunities of traditional Muslim girls to receive education.²⁰

Another problem, in a completely different setting, is the standard provision included in many welfare laws, which denies entitlements to people who pursue higher education. Such provisions are in general harmful for the chances of getting out of the trap of poverty, but even more problematic for single mothers who try to pursue education programmes and provide for their children at the same time.²¹

The area of health care rights poses even more questions of discrimination against women. First, many legal systems limit access to birth control and abortions.²² These limitations do not only infringe the autonomy of women but also affect their health, at least in some circumstances. Second, health care plans afforded by the government do not always cover the health problems and needs of men and women to a similar extent.²³

Another aspect of discrimination in the scheme of the welfare state concerns social security laws that do not benefit home-makers, or assigns to them lesser rights. The other side of the same problem is the tendency of welfare legislation to deny eligibility of single mothers who cohabit with a

²⁰ The legal debate in this area has led to different results in different countries. In England, a decision forbidding Muslim girls to wear traditional clothes of their choice was overruled: *R (on the application of SB) v Head Teacher and Governors of Denbigh High School* [2006] 2 All ER 487. In contrast, the European Court of Human Rights refrained from overruling a prohibition on headscarves in a Turkish university. The majority decision was founded on the principle of secularism as well as on the identification of the headscarf with the alienation and inequality of women. The minority opinion pointed out that the headscarf should not always be associated with inequality of women and criticised the majority decision as infringing on the right to education of traditional women: *Leyla Sahin v Turkey* [2005] ECHR 44774/98 (10 November 2005). In Germany, the litigation focused on a decision of a public school teacher to wear a traditional scarf. At the same time, religious clothing of students did not seem to pose a problem: C Landgenfeld and S Mohsen, 'Germany: The Teacher Head Scarf Case' 3 *ICON* 86 (2005); Oliver Gerstenberg, 'Germany: Freedom of Conscience in Public Schools' 3 *ICON* 94 (2005).

²¹ See, eg, *Clyke v Nova Scotia (Minister of Community Services)* 2005 ACWSJ 218.

²² The US Supreme Court has ruled against prohibitions on the use of birth control: see *Griswold v Connecticut* 381 US 479 (1965). The well-known precedent of *Roe v Wade* 410 US 113 (1973) professed to guarantee the right of women to choose an abortion. This is still the rule, despite harsh criticism of the decision and partial curtailment of its details in later decisions: see *Planned Parenthood v Casey* 505 US 833 (1992). It is worthwhile adding that according to the rule of *Roe v Wade* abortions in the so-called second trimester were supposed to be available based on considerations regarding the health of the mother. This rule emphasised the clear connection between abortion law and women's rights to health.

²³ See *Geduldig v Aiello et al* 417 US 484 (1974). This judgment dismissed a challenge to a California Health insurance programme which did not cover pregnancy-related problems. The US Supreme Court held that the programme distinguished between pregnant and non-pregnant people, and therefore did not discriminate against women. A similar decision was made in *General Electric Co v Gilbert* 429 US 125 (1976), which dealt with an insurance plan of a private employer. Eventually, this discrimination was abolished by legislation. For a discussion of the problem of scarce resources invested in pregnancy and birth related risks, see RJ Cook 'Advancing Safe Motherhood Through Human Rights' in I Merali and V Oosterveld (eds), *Giving Meanings to Economic, Social and Cultural Rights* (Philadelphia, University of Pennsylvania Press, 2001) 109.

partner, based on the assumption that men are providers and women are dependent on them. While it is understandable that the state should take into consideration the support that welfare recipients may get from family members and partners, it is problematic that the very fact of joint residence is considered a sole arbiter, when in fact the welfare recipient and her children are not being supported by her male partner or when she is simply in the beginning of a new relationship which may or may not last.²⁴ The enforcement of these norms is often entangled with infringements of the privacy and autonomy of single mothers.²⁵

VII SOCIAL RIGHTS OF WOMEN AS WORKERS

The rights of working women relate to different aspects of demands for equality: equal opportunities at work, equal wages, freedom from sexual harassment, and accommodation for pregnant women and parents in the workplace. In the present context, the discussion will focus on problems of working women that have implications for their ability to live a life of dignity, without dependence. The reason for this choice is that a woman, who is discriminated against in the context of promotion, might be a worker who earns sufficient wages allowing her to live in reasonable conditions. In this case, the main problem with her discrimination is the infringement of her equality rights and her full citizenship rather than the impact on her ability to sustain herself and her family, which is at the centre of the struggle for social rights. Accordingly, the analysis will focus on cases of discrimination in which the harm to the rights of working women does not only infringe their equality and status but rather affects their ability to achieve independent existence in fair conditions.

From the perspective of working class women, a major problem is their low wages—not simply in comparison to their male colleagues, but also in absolute terms. Women, as the weaker participants in the job market, can be pushed to low-paying positions, and are sometimes even paid salaries that are lower than statutory minimum wages. In this sense, the enforcement of minimum wage laws is not only a matter of general concern, but also a group interest of women.

Legislative schemes which secure the ability of women to remain part of the world of work during pregnancy and immediately following childbirth are also of utmost importance. The first layer of protection is composed of

²⁴ For two Canadian precedents which criticised and interfered with over-broad provisions of this kind, see: *Regina v Rehberg* [1994] 111 DLR (4th) 336; *Falkiner v Ontario (Ministry of Community and Social Services)* 59 OR (3d) 481; OJ No 1771 (Ont CA).

²⁵ For this criticism in the context of American legislation, see T Plank, 'Human Rights, Women's Rights and Welfare Reform: An Analysis of HR 4 from an International Human Rights Perspective' (1996) 17 *Women's Rights Law Reports* 345.

anti-discrimination laws which prohibit discrimination on the basis of pregnancy. The second layer consists of schemes which secure the ability of women to take maternity leaves (as a separate entitlement, not dependent on the ordinary regulation of vacations or sick leaves).²⁶ Such legislative schemes are considered problematic from the perspective of formal equality, due to fears of a slippery slope effect that would enable discrimination against women. This view should, however, be opposed, based on substantial concepts of equality, since the survival of women in the labour market necessitates that their jobs be kept for them when they choose to have children. Otherwise, women, in contrast to men, will have to make a cruel choice between parenthood and work.²⁷ A similar concern, relevant to all workers who are parents of children and are interested in involved parenting, is the adaptation of the workplace to workers who are not interested in working long hours.²⁸ In this context, adaptation means mainly enforcement of laws which limit maximum hours of work per day.²⁹ These laws are more relevant to low level positions, and are not applied (officially or unofficially) to high-ranking managerial positions. With regard to those, the more relevant norms would be anti-discrimination laws (with an emphasis on the prohibition of discrimination against parents). These norms would not necessarily help in cases of a so-called relevant distinction between workers who are more invested in their jobs and those who are not, unless another approach is adopted, based on a view that long office hours cannot serve as criteria for distinction, but rather actual accomplishments.

Sexual harassment law is also very important in the context of social rights. Indeed, anti-harassment measures are aimed at protecting equality

²⁶ Emphasis should be put on the possibility of taking leave with no effect on the position of the employee upon return: see *Margaret L Prescod v Unemployment Insurance Appeals Board* 57 Cal App 3d 29 (1976). It should be stressed that mandatory long pregnancy leaves in the last months of pregnancy are not an equality-promoting scheme, but rather another form of discrimination: see *Cleveland Board of Education v LaFleur* 414 US 632 (1974).

²⁷ In American law the current view is that granting privileges concerning pregnancy and delivery do not constitute discrimination. This question was debated in the context of the Pregnancy Discrimination Act 1978, which prohibited discrimination on grounds of pregnancy, in *California Federal v Guerra* 479 US 272 (1987). This case concerned a state law which granted pregnant women unpaid maternity leaves while keeping their jobs. The US Supreme Court dismissed the argument that this law contradicts the federal prohibition on discrimination on grounds of pregnancy.

²⁸ For the construction of the ideal worker as one who delegates all his family responsibilities, see: JC Williams, *Unbending Gender – Why Family and Work Conflict and What to Do about It* (Oxford, Oxford University Press, 2001).

²⁹ An emphasis should be put on the legislation and enforcement of laws limiting the hours of daily and weekly work for women and men equally, thus enabling both to function as active parents (or pursue other leisure time occupations). In *Lochner v New York* 198 US 45 (1905) the US Supreme Court invalidated a law which limited weekly employment to sixty hours, thus unofficially declaring the beginning of the so-called *Lochner* era characterised by judicial suspicion towards the regulation of economic activities. At the same time, it was open to uphold a similar law, limiting the daily employment of women in laundries and factories to ten hours: see *Muller v Oregon* 208 US 412 (1908).

and human dignity, but they also protect the ability of women to be part of the world of labour and support themselves. In addition, it is quite clear that working class women who are more dependent on their employment are more susceptible to being used and pressured by methods of sexual harassment.

VIII SOCIAL RIGHTS OF WOMEN AND SOCIAL RIGHTS OF CHILDREN

Social rights of children, such as the rights to free public education and health care, have significant impact on the lives of women, and in this sense indirectly serve women as well, because women are usually the prime carers of their children. At the same time, it would be a mistake to argue that the rights of children and the rights of their mothers always go hand in hand. For example, equal integration of women in the career world may not necessarily be favourable to their children if the norms of this world will continue to be based on unlimited working days.³⁰

IX SOCIAL FEMINISM AND SOCIAL RIGHTS OF WOMEN

The discussion so far has demonstrated an argument which was two-fold: first, social rights are especially important to women since they constitute a relatively less well-off segment of society but nevertheless usually serve as the primary care providers for their families; and, second, the application of social rights entitlements to women is not always conducted on an equal footing to the application of the same rights to men. The analysis becomes even more complicated due to the different interests of women coming from various backgrounds and the competing priorities of the feminist struggle (traditionally more associated with civil and political rights). In other words, the social rights of women are contingent, among other things, also on a broader understanding among women as well that the struggle to achieve social rights should be regarded as a prioritised feminist goal.

³⁰ See also the text accompanying above nn 28–9.