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Reflections on the paradoxes of gender equality bargaining

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“One hundred and ninety heads of state; nine are women. Of all the people in parliament in the world, 13% are women. In the corporate sector, women at the top, C-level jobs, board seats, tops out at 15-16%. The numbers have not moved since 2002, and are going in the wrong direction.”

Sheryl Sandberg (CEO of Facebook) speech to TED, Washington DC (*Guardian*, 25.01.12)

"I am deeply concerned that the gender pay gap has barely fallen over the last 15 years and in some countries it is even increasing."

Viviane Reding (EU Commissioner for Fundamental Rights) launching a campaign for pay equality (Brussels, 10.03.10)

Our 2009 article in *BJIR* reported on findings from an earlier comparative study which looked at how work-life balance policies were implemented in organisations in two sectors, insurance and social work, in two European countries, France and Britain. Two preliminary remarks are relevant here in terms of how our findings fit with the workshop on gender equality bargaining.

First, our research used the terminology of work-life balance (and within this frame, distinguished between family-friendly measures and flexibility measures): we were interested in how policies (and understanding of these policies in practice) were framed, whether as stand-alone policies or as components of wider sets of policies, in practical terms on working time (often in the French but less so in the British context) and/or on gender equality (sometimes, in both national contexts, but with marked variations between organisational settings). So, as in Sue Williamson's work (e.g. 2009, 2010), there is room to interrogate the relationship between gender equality, work-life balance, and family-friendly or family-supportive measures. Of course, these issues are linked but the way in which they are framed deserves attention and is likely to influence outcomes.

Second, we noticed that even when we as investigators framed the question of work-life balance in gender neutral terms, respondents (whether HR officers or trade union representatives) often spontaneously framed their response in gendered terms and that the outcome of ostensibly gender-neutral measures was strongly gendered in practice. Our findings thus echoed other work which notes that organisational policies may have gendered effects which are not always conducive to gender equality.

Our 2009 article focused specifically on the activities of trade union representatives within our case study organisations and at the level of national policy (sectoral and peak), and made four sets of observations, based on the findings from our project: first, trade union policies were strongly influenced by wider gender cultures within each trade union, according to the

accounts provided by the national-level representatives; second, these policies were linked both at national policy level and on the ground locally with wider issues of trade union renewal, including tactical use of partnership (in the public sector) and bargaining (see also Rigby and O'Brien-Smith, 2010); third, trade union responses were shaped principally by the opportunity structures provided by legislative and other pressures on the organisation; and fourth, that unions very rarely took the initiative or had substantial leverage (apart from some flagship initiatives which were widely promoted by the unions as part of their bargaining "toolkits") but took advantage of these opportunity structures where they were available.

This workshop provides us with a chance to reflect further on our earlier work, in light of more recent research and on initiatives and assessments in both countries and more broadly at European level.

Mike Rigby and Fiona O'Brien-Smith (2010) point out that since our research was carried out the work-life balance agenda has been strongly promoted in the UK and we would therefore expect to see an increase in gender equality awareness and in concrete actions to promote gender equality. In the French context too, as we will see, important new initiatives to promote equality bargaining were adopted in the mid-2000s. So in both countries, we would expect to see an increase in equality bargaining, and if the bargaining is effective we would also expect to see a positive impact on indicators of gender equality.

In both countries, indeed, there is evidence of increased activity around gender equality bargaining. In the UK, the absence of any statutory requirement to bargain – or even (as e.g. in Australia) for workers to be consulted and included on employment equity committees (Blackett & Sheppard, 2003) – means that there is no reliable, centrally collected indicator of the number of agreements on gender equality. But the Trade Union Congress's annual equality audits show a rise in the number of unions taking part in activities which are either about recruiting women, black and ethnic minority workers, disabled workers, and LGBT workers and/or ensuring that members in those social groups are adequately represented within the union (internal activities) as well as those engaged in workplace bargaining on equality (external activities). Over two fifths of unions now have provision for the nomination of equality reps (TUC, 2011; see also Kirton, 2011).

In France, the number of equality agreements is monitored nationally and shows a rise since 2006 when a new requirement to bargain on reducing the gender pay gap was introduced. However, in both countries the evidence of concrete outcomes is very limited. Even where equality bargaining is underpinned by statutory obligations, as in France, whole sectors are still not covered by bargaining, and the government notes that the number of agreements overall is disappointing, rising to only 7.23% of all sectoral agreements in 2009 and 5.6% of all company-level agreements (in 2008). Pay bargaining tackled gender equality in less than 10% of cases. Moreover, the process showed little sign of sustainability over a longer period, with few new cases emerging (the later agreements often taking the form of extensions of

the previous year's) (Ministère du Travail, 2009). Even where bargaining takes place, there is a general feeling that bargaining often remains an "empty shell" in the sense that it lays down a commitment to gender equality without specifying precise objectives, timetables, or mechanisms (Meilland, 2010).

Regarding the broader gender equality outcomes, the evidence is similarly mixed. The gender pay gap appears to be closing very slowly year on year in both countries, with a more significant change in the UK in the last few years.¹ In both countries, however, the gender pay gap at the level of executive pay, is stubbornly high, and in France there are signs that it is growing (CIPD, 2011; Meilland, 2010). In the UK, progress on equal pay has been made from a relatively poor starting point, and is fragile as it is largely driven by pay deals in the public sector² which are about to be swept away by public sector pay freezes and job cuts.

Three broad questions are therefore raised:

1. what is the relationship between gender equality bargaining and gender equality outcomes, and how can these be explained?
2. more generally, can equality bargaining make a difference or is it just an "empty shell" (Hoque & Noon, 2004)?
3. what is the capacity of the actors in the workplace to effect change, and can it be enhanced?

These questions highlight two central paradoxes identified by Trevor Colling and Linda Dickens (1998) and picked up more recently by Linda Briskin (2006): state retreat has made collective bargaining more important as a vehicle for achieving equality, but has also served to undermine it; the need for union renewal has encouraged unions to promote equality internally (in their recruitment strategies and organisational policies and practices) and externally, but this process has created new internal tensions and exposed internal and external weaknesses.

Gender equality bargaining covers a range of interrelated workplace policies and practices. For British unions, for example, equal pay is the main priority of equality bargaining, for the British TUC (Kirton, 2010) as for other European unions (EIROnline, 2010). Other related priorities, according to the TUC's 2009 report, are parental rights (51% of trade unions reported success); flexible working and work-life balance (44%); age (37%); disability (35%); and

¹ It is difficult to compare across both countries using nationally produced statistics, as they use different measures (British national statistics use median wages, which give a lower gender pay gap, rather than the more usual mean wage measure). Eurostat figures from 2009 show the EU-27 average at 17%, with France very slightly below average and the UK significantly higher at 21%. The unadjusted Eurostat figures confirm significant recent change for the UK (down from 24.3% in 2005) but suggest that the gender gap in France, which was already below the EU average, has seen little recent change.

² The ETUC's recent draft report, although not exhaustive, tends to confirm this analysis as the three key agreements highlighted are all in the public sector. See Crawford, 2012 (we would like to thank the ETUC for kindly providing us with a copy of this document and allowing us to cite it here).

race equality (35%) (Kirton, 2010). EIRO's (2010) survey of recent social partner activities suggests that trade unions are more likely than employers to take the initiative on gender equality. A large proportion of these activities are awareness-raising campaigns. Unions are also increasingly likely to have established regular (often annual) national-level reporting and monitoring exercises on gender equality. Finally, a significant number of unions are actively engaged in training of their own officials and lay representatives on gender equality.

Employers on the other hand tend to see gender equality as resulting from factors external to the workplace such as socialisation and education, although a growing number of initiatives are reported particularly around work-life balance and support for childcare (as we noted above, these are likely to increase rather than diminish gender segregation), as well as measures to promote increased numbers of women in senior positions.

The EIRO report also finds that bargaining on gender equality takes place primarily in multi-employer (sectoral or national) rather than single-employer settings, and takes the form of framework agreements. This is likely to have an impact on outcomes: as noted earlier, these general agreements give considerable leeway for firms to escape obligations or to interpret them freely, and also allow for individual discretion in implementation which has been identified, as noted above, as reducing equality of outcomes. It has therefore been suggested that employers may engage in equality bargaining as an alternative to "harder", i.e. enforceable, action, in which case agreements are more likely to be marginalised (and therefore eroded by the weight of other organisational practices) or dependent on the action of individuals (and therefore easily overturned if those individuals leave) (EIRO, 2010). Overall, then, bargaining which is primarily a response to legislative pressure or a means of forestalling it is likely to be an empty shell.

It has also been suggested that policies framed in terms of diversity rather than addressing the wider issues raised by a focus on equality tend to narrow the bargaining agenda (Ashley, 2010; Laufer, 2003; Noon, 2007) to one of anti-discrimination (for example, training interview panellists) rather than addressing the fundamental reasons why groups of workers are trapped in low-skill jobs, held back from promotion, or prevented from achieving their full potential at work.

Even where formal policies are put in place by statutory means or by collective agreement, they are less effective where there is a high level of discretion for local line managers and supervisors. Our findings regarding the importance of line managers have more recently been confirmed by Burnett et al (2010). However, the recent Ballarin report in France has suggested that equality bargaining can help foster a more holistic approach where, in some large companies at least, line managers undergo training in people-centred management and staff are encouraged to raise work-life balance as part of their personal development in the context of appraisal (Ballarin, 2012).

The differential capacity of trade unions and employers to raise issues and set the agenda therefore appears crucial to understanding the limited impact of the gender equality bargaining agenda. Put simply, trade unions are too weak to influence the broader framework of organisational policies and policies. Gill Kirton notes, on the basis of WERS 2004 data, that although unions can be demonstrated to have a positive outcome on equality policies, they are not even informed or consulted on such policies in most cases (Kirton, 2010). Unions not always able to translate equality into wider campaigns, or to get leverage in bargaining. Bargaining agendas are usually restricted (Kirton, 2011: 36) and unions may have difficulty in mobilising support in the workforce (Ibid: 37). Employers often want to “do it their way” without union involvement, and unions report that employers are currently more reluctant than in 2005 to bargain on equality.

The capacity of trade unions to raise and pursue equality issues is related both to internal factors and to external factors, notably their strength in relation to employers and their skill as negotiators. Much of the literature on equality bargaining has focused on the internal factors, particularly the question of whether unions are willing to raise gender equality issues or remain entrenched in more traditional male concerns and practices. As Kirton acknowledges, trade union membership has become more feminised so that women constitute at least as many members as men in many countries (52% in UK, 44% in Australia), even if they are still under-represented in posts of responsibility within unions.

French unions are less feminised (the CFDT with nearly 46% has the highest proportion of female members, with the biggest confederation CGT at only 34% in 2010, up from 28% in 2006) and the equality officers we interviewed recognised this as a problem. Jacqueline Laufer writing in 2003 attributed the weakness of equality bargaining to under-investment by social actors on the ground. The trend towards feminisation of union membership and bargaining representatives appears to have accompanied other factors driving the equality bargaining agenda rather than being the main factor in itself, and there are signs that the development of external and internal pressures for equality bargaining can encourage change within unions.

This does not mean a straightforward or overnight change of union cultures and practices. Pascal Bernard, CEO of Eau de Paris, claimed at a high-profile symposium on company equality policies in France in 2006 that bargaining had to be suspended in his company due to differences of opinion between male and female union negotiators (ORSE, 2006). Rather, tensions within unions over equality strategies may be seen as part of a process of wider change as well as reflecting uncertainty about the right way to renew practices in a highly unfavourable climate (see e.g. Kullander and Björklund 2011 on the Swedish case).

In our 2009 article we highlighted the link between the development of an equality bargaining agenda and trade union renewal. For example, we noted the link between bargaining on work-life balance and the partnership agenda.

Unions are likely to engage in qualitative issues such as equality and work-life balance where there are mutual gains to be had (see also Williamson, 2010). Samuel and Bacon (2010) have questioned this cooperative bargaining agenda, arguing that in the British case where they are not buttressed by strong statutory arrangements, partnership agreements will be hollow shells reflecting an imbalance of power. Family-friendly policies accounted for 18% of the agreements they surveyed, but they dismiss such agreements as dealing with “non-core” issues and lacking in substance. Rigby and O’Brien-Smith (2011) similarly query the idea of a shift towards integrative bargaining in the print and media industry. However, it is important not to dichotomise “old” (hostile, pay-related) and “new” (cooperative or integrative) logics and modes of bargaining: as Williamson (2011) shows, equality bargaining can follow a number of paths which may combine hostile and cooperative modes. The more recent literature on trade union renewal (see e.g. Gall, 2009) has emphasised the diversity of renewal strategies and the need in many circumstances to draw tactically on a range of repertoires. Of course, this very diversity can also be a source of weakness in some ways – by creating the possibility of confusion and inviting disagreements over strategy - and is in itself a reflection of weakness.

But it may also open up new possibilities for renewal. As Christian Levesque and Gregor Murray (2010) argue, union revitalisation may less be about shifting from one strategic choice to another than about developing linkages - substantively and organisationally – and the ability to manage such linkages. Organisationally, their argument recalls Nicky Le Feuvre’s point about the weakness of French trade unions in developing links with grassroots women’s organisations. Substantively, their argument corroborates Briskin’s call (2006, and see Lim et al, 2002) for a multi-pronged equality bargaining strategy.

The ETUC’s (2012) study of collective bargaining on the gender pay gap highlights, alongside the feminisation of trade union leadership, two key sets of variables: the first set relates to collective bargaining structures (degree of centralisation) and coverage, and the second to the nature and extent of supportive legislation to support bargaining processes. Our comparison of France and the UK corroborates this analytical framework. In Britain, the erosion of collective bargaining coverage (alongside union density) and the dominance of decentralised (single employer) bargaining means equality bargaining has been limited outside the public sector, although pockets of innovation have emerged. Overall, it means equality bargaining is very fragile. Samuel and Bacon (2010) argue, following Adams (1995), that progressive change in employment relations requires state action, without which any bargaining process is unlikely to be effective. Their analysis follows other work which indicates that equality bargaining is most effective where it is supported by legislation (Briskin, 2006, and see Cook et al, 1992; Kumar, 1993). This argument may respond to an anglophone bargaining environment.

However, it has also been noted that over-reliance on legislation can weaken bargaining (Briskin, 2006, and see Kravaritou, 1997, based on a continental European overview) and that bargaining presents several advantages over statutory approaches, notably a broader perspective and more room for

creative local innovations. If the UK case highlights the first of these two points, the French case illustrates the second. In France, the exceptionally high rate of bargaining coverage (around 98%) masks exceptionally low density rates and weak union presence, showing instead heavy reliance on state action both to initiate and to monitor change.

Quantitatively, bargaining in France is more developed than in the UK. A law adopted in 2006 establishes principles of gender equality and sets objectives for the social partners. Bargaining on equality and diversity is now an obligation for companies, alongside bargaining on other issues such as pay, working conditions and working time. At sectoral level, the number of agreements rose from 33 in 2007 (3.2% of the total number of agreements made at this level) to 167 (13.5%) in 2011. At company level, a similar but slightly slower pace of increase in the intensity of bargaining took place: from 1214 (4.4% of the total) in 2007 to 3173 (12%) in 2011 (Ministère du Travail, 2012: 7). The 2006 law (based on a 2004 framework agreement at national level) set the specific – and extremely ambitious – objective of removing gender pay gaps by December 2010 by means of annual pay bargaining. Quite clearly, however, this key objective has not been met, and significant gaps remain, as noted above.

The French equality and anti-discrimination body HALDE carried out its own survey of businesses in 2008, finding that 37% of companies reported having adopted gender equality measures but observing that such measures usually failed to consider causes of inequality and tended to assume a masculine career model. Fewer than half of companies in their survey had taken part in equality bargaining, despite it being a legal obligation to do so. The bulk of measures undertaken were limited to support for women returning from maternity leave and awareness-raising campaigns aimed at encouraging women to apply for promotion. Measures to develop women's access to training was seen as particularly weak, and (as noted by others) companies tended to focus on support for high-flying women. Instead, HALDE argued that effective policies depended on strict anti-discrimination measures, and commitment to moving towards parity across all areas of employment, focusing in particular on recruitment, career development and promotion; training; pay; and working conditions. Nevertheless, HALDE was able to identify several examples of good practice, usually limited to one or two discrete areas, such as support for home-working and policy on holding meetings (L'Oréal: see also the very recent Ballarin report which highlights good practice at L'Oréal), extended support for paternity leave and awareness-raising campaigns to support new fathers (BNP-Paribas) (HALDE, 2009). Equality bargaining appears to have become relatively well established in the largest French companies (Ministère du Travail, 2012: 8), which cover a large proportion of the workplace and which can act as showcases for the benefits of workplace equality measures, but this still leaves most companies unaffected, creating further disparities between employees.

Noting the disappointing response to the 2006 law, and following up the Grésy report which in July 2011 had made a series of recommendations for work-life balance (focusing particularly on maternity, paternity and parental leave), the

French government decided in November 2010 to introduce a penalty (applicable from January 2012) of up to 1% of salary costs for companies which failed to bargain on gender equality or at least to put in place an action plan for bargaining, based on monitoring by the labour inspectorate (ORSE, 2012). This new provision, if effectively policed, is likely to see a dramatic rise in equality bargaining by shifting the balance of incentives from inaction towards specified outcomes (although as in other countries the under-resourcing of the labour inspectorate may limit implementation). Moreover, as Laufer (2003, and see also Meilland, 2010) pointed out, recent moves to introduce new leave arrangements are likely to create a more supportive environment for equality bargaining. The new Socialist Party administration made workplace equality one of its priority areas and it featured as one of seven key areas for discussion at the “grand social conference” which marked the beginning of the presidency in July 2012, in line with François Hollande’s presidential campaign commitment.

Three final remarks on the French case tend to support the idea of equality bargaining, however weak, contributing to longer term change. First, in line with Briskin’s (2006) arguments, there is some evidence that it may open up a space for innovative agreements: for example, the CGT’s recent agreement with a Nice-based hotel to award parental leave benefits to same-sex parents. Second, there are signs that equality demands have been integrated into other bargaining and campaigning agendas: for example, the big confederation’s campaigning on stress in the highly-publicised of France Télécom has also highlighted the need for a gender equality strategy and helped to further the renegotiation of an earlier agreement there. Third, despite the weaknesses and tensions within the equality bargaining process in France, a public debate on how to support working parents and how to reduce gender inequalities has been launched. Top-level (national, inter-sectoral): trade unions and employers’ associations sit on the Haut Conseil de la Famille, and contributed to the 2012 Ballarin report. In this latter context, Laurence Laigo (CFDT confederal secretary) argued that “we need to reposition equality at the heart of the issues that are decisive for companies today and conduct holistic bargaining on equality, the quality of working life and work-life balance”, but at the same time to have precise indicators to measure progress, so that equality “doesn’t get watered down in all the other issues” (Ballarin, 2012: 24-25). All of these points support the idea that a longer-term process of equality bargaining has been opened and will be carried forward under the Hollande presidency.

However, an important countervailing feature of much policy intervention around the work-life interface is that gender differentiation in the name of equality can have negative effects, most obviously by encouraging occupational segregation by gender (see Dex, 2010). This policy conundrum is particularly pertinent in France which any move towards equality bargaining needs to recognise. Women are highly concentrated in low-paid sectors and in part-time work, which is linked to more unfavourable pay and conditions (as shown by the fact that women are likely to receive less pay for overtime than men) (Ministère du Travail, 2012: 12).

What will be the impact of changes in the economic and political climate? Our research was carried out well before the onset of economic crisis. Colling and Dicken's (1998) case study of British Gas showed that equality bargaining can be quickly sunk under the weight of economic imperatives, with trade unions "running to catch up". Judy Fudge (2000: cited by Briskin, 2006: 13) points out that equality bargaining is threatened by two features of restructuring: attacks on the public sector, and downward pressures on wages leading to a polarised pay structure.

At European level, the blockage of proposals on maternity leave – part of the 2008 Work-Life Balance package – reflects intense employer lobbying on grounds of costs as well as a shift to the right (not least in the UK, which is attempting to build alliances to block social legislation). It has also been suggested that, in the Australian case at least, gender equality outcomes (measured by domestic division of labour) were related to the policies of governments in office (Craig, Mullan and Blaxland, 2010). They attribute a reversal of a previous trend towards convergence between fathers' and mothers' paid and unpaid work to the Conservative government's fiscal support for single earner households on one hand, and ideological promotion of motherhood on the other.

Nevertheless, this very brief review of recent European developments suggests that the equality bargaining agenda is likely to progress further even as it is constrained by state and economic restructuring. In the process, it has raised some internal tensions which are likely to intensify. The paradoxes of gender equality bargaining persist. In all national contexts, the need for supportive legislation appears stronger than ever.

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