

Book Review

Gender and Rights

Edited by Deborah L. Rhode and Carol Sanger
Ashgate Publishing Limited, 2005, RRP US\$275

Gender and Rights, edited by Deborah L Rhode and Carol Sanger makes a valuable contribution to the series 'The International Library of Essays on Rights'. The book is helpfully divided into six parts; gender and rights, sources of well-being and harm, family, violence, work and finally, political process and participation. Each part contains a series of essays by international scholars examining issues related to gender and rights. Carol Sanger begins with an introduction outlining the essays, with emphasis on their strengths and different viewpoints. Whilst not holding any claims to an all encompassing stance, *Gender and Rights* gives a broad focus to gender based issues both geographically and topically. The essays approached the subject matter in a way that was both surprising and challenging.

Part I begins by exploring the problematic nature of rights themselves as a way to promote gender equality. It raises questions such as 'are rights the best way to promote equality?' and 'do legal rights equate to real changes in society?' The opening essay by Carol Smart explores the way gender arguments, when couched as 'rights' can lead to an escalation in conflict, a pervading sense that the problems of gender discrimination are now 'fixed', an assumption which perpetuates ignorance of underlying social realities. In further chapters, rights are both criticised and defended, Elizabeth Kiss points out the ability of rights to individualise and so undermine an 'ethic of care', Jeremy Waldron notes the importance of rights as security when marriages breakdown. Kristin Bumiller examines the downside of rights claims for those seeking help; if they must assume 'victim' status, will this be potentially more detrimental than the violation of rights itself? Finally Carlos A. Ball observes the link between acknowledgment of rights and whether minorities or the disadvantaged are treated as fully human by society. An interesting point given the discussion on the problematic nature of rights is that none of these essays advocate the total abandonment of rights based claims, yet their acknowledgment of the controversial nature of rights based claims gives the reader a questioning lens to enhance the interpretation of the subsequent chapters.

Part II encompasses the topic, 'Sources of Well-being and Harm'. Amartya Sen begins by asking questions based on the disparity in gender distribution in various regions. The essay avoids generalising on distinctions such as East or West, rich or poor, noting these criteria are too simplistic, instead drawing links between ratios of men to women and gainful employment, education, social policies, healthcare and community structures. Martha Nussbaum builds on the essay of Sen, pointing out the juxtaposition between society's 'progress' and the inordinate amount of respect allowed to 'custom' even in the face of oppressive or abusive standards. She argues for a universal approach to rights based on basic human capabilities, asking what makes a life human. Bina Argarwal's discussion of gender and land rights in South Asian communities presents a convincing argument for intervention and change in approaches to land distribution and control.

Catherine A. MacKinnon's essay 'Reflections on Law in the Everyday Life of Women' demonstrates a questioning perspective on the current value of law in improving the lot of women. Her essay confronts the patriarchal history of the law, stressing the harm that the law can inflict on those seeking its protection. I felt the confrontational tone of this essay has the potential to limit its audience to those already convinced and it was perhaps apt that this essay is followed by Deborah L Rhode's discussion of 'The "No Problem" Problem'. Rhode examines the sensitive nature of gender based arguments, including the trend to dismiss gender problems as solved, irrelevant or non-existent, a belief not supported by statistics. The controversial nature of the 'no problem' problem leads many to deny its relevance to them, many instead blaming the victim of discrimination or ignoring the social reality behind the 'choices' open to women. Whilst the subject matter of Rhode's essay is controversial, it is presented clearly and convincingly.

Part III 'Family' confronts the question of whether family should be considered private, untouched by the individualism that is associated with rights? Discussion ranges from the need for a system of relational rights, the dangers of accommodation policies, progress towards same-sex unions, to vulnerability created by marriage. Ayelet Shachar brings attention to the way gender discrimination is contributed to by accommodation policies which allows cultural subordination of individuals within nations that claim to reject such behaviour. William N. Eskridge, Jr in his examination of the incremental process towards full recognition of same-sex unions, argues rather than being destructive to commitment, the right to full recognition of same-sex unions would encourage a variety of relationship choices. *Gender and Rights* gives an extensive scope to the idea of what is family and provides a variety of illustrations of an individual's role within those structures.

Part IV delves into the troubling area of violence. The essays cover a broad range of perspectives from torture, honour killings, Sati, domestic violence protections, 'cultural defences', to homosexuality as a basis for granting asylum. Many of the essays note the integral role that culture, the protection of culture, or cultural bias plays on the interpretation of fundamental rights. Against this backdrop Radhika Coomaraswamy argues for a minimum core of rights, based on autonomy as a guiding principle which must be immediately granted to all. The way culture can be used as a reductive stereotype is evident in the disturbing examples highlighted by Leti Volpp, where the 'cultural defence' saw a man excused for the gruesome murder of his wife. By focusing on several case studies, Renee Romkens draws links back to Rhode's essay, illustrating the ways in which society's ambivalence and discomfort manifests in holding victims of domestic violence in some way morally responsible for their own victimisation. Law, she argues is like the Trojan horse, invited in to protect, but arriving with its own agenda and refusing to leave.

Part V involves discussion of work, stigmatisation, theoretical frameworks around sexual discrimination, and 'the myth of meritocracy'. Martha C. Nussbaum begins with an examination as to why prostitution is stigmatised, how it differs from other work for bodily services and what are the results of society's attitudes to the prostitute. She argues the real question is how to increase humanity and dignity in workers lives, including a range of underpaid, overworked, and degraded occupations. If I had any criticism of Susan Baer's contrast of the dignity and equality bases to workplace harassment policy, it is that it might benefit from a little practicality, as the discussion is heavily theoretical and at times a little elusive as to its implications. Rhode returns with a look at the myth of meritocracy, with a specific focus on the law profession. Her discussion points out flaws in the arguments of equal opportunities and highlights the lack of flexibility afforded to men in the workplace, which in turn serves to increase the strain on families and perpetuate the status quo.

Part VI, 'Political Process and Participation' begins with Noga Morag-Levine's examination of legal culture and local dynamics in Israeli Abortion Politics. She discusses the differences between policy and reality, contending that reproduction control can be based around ethics and principles other than rights. Essays by Susan Gal, Judy Fudge, Karen Bird and Sally J. Kenney present more examples of the problematic nature of rights discussions and how equal rights and representation claims do not always in reality result in the easing of inequality. With her essay on abortion debates in post socialist Hungary, Gal observes that

although abortion rights are the platform for discussion, they have been largely hijacked by competing claims for political higher ground. The political focus continues with Judy Fudge's examination of equal rights in the Canadian Charter, and how steps towards equal rights have been fought and lost through litigation.

Gender and Rights illustrates the degree to which equality rhetoric and reality are often contradictory and while progress is being made, the ways and means will continue to be problematic. The 'gender question' is in no way fully resolved.

The placement of essays is well structured, logical and keeps the reader from getting too overwhelmed by any one topic. The variety of issues and the global range of discussion provide a broad ranging set of arguments which are often hard to dismiss. It certainly is not cheap, but I would definitely recommend it as an invaluable tool for those researching in the area, or just reading out of their own curiosity.

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