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## Inequality and Austerity after the Global Financial Crisis: Law, Gender and Sexuality

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### Abstract

This special issue of the Oñati Socio-legal Series analyses legal and economic inequality, and policies of austerity after the global financial crisis (GFC) at the intersections of gender and sexuality. Each of the articles included in this issue speak to one or more of these themes. Collectively, the articles place questions of gender and sexuality at the centre of an analysis of reforms motivated by 'economic rationalisation' and austerity measures. They highlight the political economy of policies that differentially impact women, indigenous populations and socially or economically marginalised groups.

### Key words

Gender; sexuality; austerity; global financial crisis; financialisation; law and political economy

### Resumen

Este número especial de la Oñati Socio-legal Series analiza la desigualdad legal y económica, y las políticas de austeridad después de la crisis financiera global (CFG) en las intersecciones entre género y sexualidad. Cada uno de los artículos de este número tratan sobre uno o más de estos temas. De forma colectiva, los artículos plantean cuestiones sobre género y sexualidad en el centro de un análisis de las reformas motivadas por la "racionalización económica" y las medidas de austeridad. Destacan la política economía de las políticas que impactan de forma diferente en mujeres, población indígena y grupos marginados social o económicamente.

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**Palabras clave**

Género; sexualidad; austeridad; crisis financiera global; financiarización; derecho y política económica

This special issue of the Onati Socio-legal Series analyses legal and economic inequality, and policies of austerity after the global financial crisis (GFC) at the intersections of gender and sexuality. Each of the articles included in this issue speak to one or more of these themes. Collectively, the articles place questions of gender and sexuality at the centre of an analysis of reforms motivated by 'economic rationalisation' and austerity measures. They highlight the political economy of policies that differentially impact women, indigenous populations and socially or economically marginalised groups.

Recent World Economic Forum Global Risks Reports have identified a constellation of risks revolving around rising socio-economic inequality, rising structural unemployment, strained public finances and resulting austerity budgets, all aggravated by the legacy of the GFC and contributing to one of the most interconnected risks: profound social instability. (World Economic Forum 2013, 2015, 2016) The 2016 report notes the risk of profound social instability is perceived to be increasing in both likelihood to occur and likely impact if it does occur. (World Economic Forum 2016, p. 12) The 2013 Report stated that on the economic front, 'global resilience is being tested by bold monetary and austere fiscal policies.' (World Economic Forum 2013, p. 11) It also pointed out that stress on the global economic system was diverting attention from environmental issues, which could result in 'the perfect global storm'. (The Sydney Morning Herald 2013 quoting Lee Howell, World Economic Forum Director)

The Global Risks Reports rarely mention women, and do not provide analysis of the gendered implications of the risks identified. Yet we know that the GFC, increasing economic disparity and 'austerity' measures taken to respond to fiscal imbalances all impact on women and children, and particularly indigenous women and women of colour, as well as other vulnerable members of society, disproportionately. Indeed, the World Bank estimated in 2009 that the GFC had driven 50 million people into extreme poverty, mostly women and children. (The World Bank 2009, p. xi, 14) Women across many countries are more often in part-time or temporary employment, with fewer protections, and are thus more economically vulnerable. (The World Bank 2009, p. 4)<sup>1</sup> Jane Kelsey's piece in this collection, 'A Gendered Response to Financialisation,' argues that feminist theorists and politicians must address the gendered effects of the GFC and financialised neoliberalism head on. That is, not by simply 'adding' gender or gendered impacts to existing economic analyses, but by implementing what Kelsey names a 'grand vision' whereby 'strategies for transformation [of the current economic system] and debates on alternatives are informed by rigorous feminist analysis that engages with questions of political economy.' She offers Iceland and its anti-austerity response to the GFC as a site for reflecting on the value and potentially transformative power of feminist critiques of neoliberalism and financialisation.

In contrast to the exceptional Icelandic response to the GFC, the downward pressure on public budgets resulting from the impacts of the crisis, including the costs of bailing out investment banks, and the decreasing government tax take due to lowered demand, has resulted in policies of 'austerity' across OECD and other countries. These policies impact disproportionately on women, who are more likely to be affected by state welfare cuts, and more likely to be employed in education, health and social services. (The World Bank 2009, p. 3) Simultaneously, subsequent to the GFC the proportion of wealth funneled to the top one percent of the population has increased. Ninety three percent of the additional income generated in the United States in 2010 (over 2009) went to the top one percent; CEOs' annual compensation was back up to pre-GFC levels of 243 times that of the typical worker by 2010, and the 'gains of the recovery have accrued overwhelmingly to the wealthiest Americans.' (Stiglitz 2012, p. 3) By 2015 the top one percent of global wealth holders owned half of all household wealth, (Credit

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<sup>1</sup> In Australia most of those in lower paid jobs are women (Australian Council of Social Service 2015).

Suisse Research Institute 2015, p. 4) and in the United States the top one percent of income earners captured ninety-one percent of the income gains from 2009-2012, the first three years of the recovery from the GFC. (Saez 2015) As such, those who gained from pre-GFC financial policy settings continue to gain disproportionately. Asta Zokaityte's contribution on financial literacy picks up on the theme of 'responsibility' for financial decisions and outcomes. Zokaityte carefully examines the way in which the OECD's literature on financial literacy fails to attend to gender inequalities produced by financial markets, misattributing irrational financial behavior to so-called 'vulnerable consumers' and women. In particular, she examines the social and political implications of the techniques used to measure financial literacy, and exposes the major limitations of 'the financial literacy project' in tackling gender inequality and financial exclusion.

Austerity policies, which Zokaityte highlights as producing gender inequality, range from severe cutbacks to the welfare state, public employment and public pensions taking place in Europe justified by the 'sovereign debt crisis'; to proposed responses to the 'fiscal cliff' and the extreme budget cuts in states such as Nevada in the US; to Australian federal and state cuts to welfare benefits, public services and employment; and in Canada, austerity measures to cut government spending. Austerity as an ideological project is also closely linked with policies of privatisation of government-owned assets, and both types of policies contribute to increased economic disparity. For example, austerity and privatisation policies have heightened the 'volatile and contradictory' (O'Malley 1999, p. 175) character of criminal justice policy. The tightening of welfare provision has been accompanied by increased surveillance and criminalisation of the poor, with a disproportionate impact on women. Amrita Kapur's piece on the role of international norms in catalysing national prosecutions of sexual violence, for example, takes the deprioritisation of sex-based and gendered crimes as its point of departure. Kapur argues that the International Criminal Court's norms and practice work to expose the gendered dimension of state criminal policy, and that such practice has the capacity to facilitate gender-sensitive responses to crime.

Perhaps paradoxically, at the same time as disproportionately disadvantaging women, fiscal stringency has been one of the factors driving a welcome and belated recognition of the unsustainable economic (and human costs) of penal expansion, a theme taken up in Julie Stubbs' contribution on justice reinvestment and women's imprisonment, 'Downsizing Prisons in an Age of Austerity?' Justice Reinvestment (JR) emerged in the US as a program intended to divert expenditures from the prison system to those communities that generate high numbers of prisoners, to fund services to provide support and supervision for offenders within the community and to prevent crime. (Lanning *et al.* 2011) Stubbs' contribution explores the extent to which JR has been actively promoted and embraced by some activists and policy makers as a promising approach that may curb the over-reliance on incarceration and gross over-representation of Indigenous people and other minorities in the penal system. However, Stubbs' research questions the benefits of JR for women and girls. The 'evidence base' for JR policies does not include the experiences of women offenders, or Indigenous women offenders in particular. Stubbs also demonstrates that the conceptual vagueness of JR has meant that in the US its 'progressive potential to respond to issues generated by mass incarceration' has often been thwarted by JR in practice, focussing more on cost reduction in an age of financial stringency than on investing in communities with high incarceration rates.

At the peak of the financial 'boom' preceding the GFC, and in the wake of 9/11, issues of equality on the basis of sexual orientation, particularly marriage and immigration equality, have been at the forefront of some human rights discourses, and in some countries, such as Canada, marriage equality was achieved with 'startling rapidity' once the first legal inroads were made. (Young and Boyd 2006, p. 216) Scholars have used Lisa Duggan's (2002) term 'homonormative' to consider

the ways in which recognition of these rights tended to require alignment to heteronormativity without the structural power backing of compulsory heterosexuality. (Seuffert 2009) Jasbir Puar (2007) identified 'homonationalism' as allowing an alignment of some (white, middle-class) gay men with nationalist projects, and analysed the ways in which homonationalism has often involved contrasting the so-called freedoms of gays and lesbians in developed Western democracies with the 'intolerance' of countries with Muslim populations, some of which are seen to be influenced by Islam. Tanja Dreher's contribution explores some of the costs, or indeed conditions of gay and lesbian inclusion through an examination of the gay marriage debate. Dreher traces the 'dilemma' of increasing public support for gay marriage in Australia at a time of 'renewed assaults on Indigenous rights, austerity measures and the silencing of dissent.' She argues that the liberal vision of gay rights and 'gay friendliness,' exemplified by same-sex marriage, is complicit in a nationalist and militarized version of Australian history. Dreher's piece suggests that the demand and celebration of support for 'marriage equality' glosses over the violent dispossession of Indigenous peoples, overwrites historical, social campaigns for civil rights in Australia and constrains possibilities for queer dissent.

The assumption that the achievement of 'gay rights' is part of progressive modernity occludes the extent to which, as David Eng argues, this recognition consigns racial equality to a prior historical moment and underwrites the demise of affirmative action. (Eng 2010, p. 38) A progressive stance on gay rights claimed by Israel in order to attract the 'gay dollar' in tourism has also been identified as 'pinkwashing', analysed as an attempt to gloss over Israel's occupation of Palestine. It has been argued that a few high profile asylum cases, granting entry to the US to gay men from Muslim countries during a short window of opportunity post 9/11, also served to position Western democracies as open societies in contrast to the countries against which the West has been waging illegal wars. This geopolitical moment of opportunity for particular asylum seekers is contrasted, as Anthea Vogl documents, by systemic and generalised means of excluding 'other' and 'undocumented' migrants seeking entry to Global North states. Vogl's piece documents the acceleration and truncation of refugee status determination mechanisms in Australia and Canada, which she argues function to exclude asylum seekers who cannot articulate 'genuine' asylum claims immediately and efficiently. She highlights way in which such procedural reforms, presented as 'cost-saving' and efficiency measures, simultaneously construct asylum seekers as 'abusing' process and time-wasting. Like the austerity measures discussed in other contexts, Vogl draws attention to the way in which the acceleration of refugee status determination in both jurisdictions disproportionately affects women and those alleging gender-based harms or violence.

The papers in this collection collectively make a case for attention to the gendered impact of current fiscal and social policy. They highlight the often unexpected or unpredictable effects of post-GFC policy *at the same time* as they reveal the predictable fact that women, indigenous and queer populations are those whom are frequently the most 'punished' by neoliberal and austerity reforms. This reinforces Kelsey's suggestion that feminist economic analysis must be 'mainstreamed' and integrated into political-economic policies in order to challenge, and even replace, the systemic effects and institutions of neoliberalism and austerity. Certainly, resistance to the effects of the GFC, to austerity measures, to growing inequality and to the commodification of sexual minority identities has come in many forms and locations. The 'Occupy Wall Street' movement, arguably in part an attempt to radically challenge current configurations of democracy 'for the 1%' while simultaneously re-invigorating a broad-based participatory democracy, involved a complex set of gender relations in its insistence on 'leaderless' resistance. (Seuffert 2014) This collection contributes to urgent calls for attention to configurations of both gender and sexuality, and to the geo- and bio-political impact of economic

policy on the material lives of women and sexual minorities, in order to address current trends in inequality and oppression.

Finally, this collection arises out of a mentoring *Bilkura* (meeting) held at the International Institute for the Sociology of Law in Onati, Spain, in July 2013. The meeting drew together leading senior academic women and promising early career researchers (ECRs) in law from the United Kingdom, Canada, the United States, Australia and New Zealand to provide a forum specifically designed for mentoring women. The aims of the workshop included contributing to filling the gender gap in mentoring for women ECRs. The meeting included intensive workshopping of all papers, and a series of career development and advancement discussions and analyses of gender in the academy, over fabulous food and company. From the perspective of the ECRs mentored, the meeting provided an enjoyable opportunity to engage in lively discussions about gender, sexuality and economic trends, as well as rare relaxed time for reflection on career trajectories and challenges for women in academia. Many thanks to all of the participants, including those who, due to various family commitments and other life interventions, were not able to contribute to this collection or who were not able to attend but have continued to mentor participants.

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