

# Towards a gendering of the labour market regulation debate

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Gender equality has become an issue in the labour market regulation debate. Now that evidence suggests that regulation is not always a barrier to good employment performance, recent contributions have focused on its impact in exacerbating within-workforce inequalities, including gender inequality. This article reveals that the evidence supporting this proposition is thin and inconclusive and questions the search for a cross national relationship between regulations and gender. This approach leaves out of consideration the differences in institutional interactions in specific national contexts and the differences in the institution of gender across time and space. This critique is developed through more detailed and context specific analyses of interactions between gender and six areas of labour market regulation. The article concludes by arguing that simply introducing a general gender variable into non gendered analyses of labour markets misleads more than informs and distracts from the development of regulations to promote gender equality.

*Key words:* Regulation, Flexibility, Gender, Gender mainstreaming

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## 1. Introduction

The supposedly negative relationship between labour market regulations and employment performance has dominated not only the labour economics literature but also the major national and international policy making arenas since the publication of the Organisation for Economic Cooperation and Development (OECD) Jobs Study in 1994 (OECD, 1994). However, even before the recent financial crisis demonstrated beyond doubt that deregulated economies do not always achieve superior employment performance, the evidence in support of this proposition was looking a little thin. The OECD (2006, p. 192) has itself stated that two varieties of countries have performed equally well since the publication of its Jobs Study, those with deregulated and those with more centrally coordinated labour markets. Furthermore, the balance of evidence with respect to, for

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example, the most widely used indicator of regulation—the OECD’s Employment Protection Legislation index (EPL)—was found to have, at most, rather small effects on overall employment and unemployment levels. These review findings come on top of a number of critical analyses of the robustness of the main results that support the Jobs Study approach (see, in particular, Baker *et al.*, 2004; Howell, 2004; Freeman, 2005, 2007; Howell *et al.*, 2007; Berg and Kucera, 2008; Deakin and Sarkar, 2008).

From these assessments of the evidence one might anticipate a drawing to a close of the long labour market flexibility debate. However, two new twists to the analysis have been introduced, which may sustain interest. The first is the argument that deregulation speeds up the adjustment to exogenous shocks rather than promotes better long term employment performance (Blanchard and Wolfers, 2000). The second twist is the one which concerns us here, that is the argument that, while regulation may not harm overall levels of employment, it may still harm employment prospects for disadvantaged social groups or the low skilled. The main social groups investigated are the young, the old and women (Bertola *et al.*, 2001; OECD, 2006). Part of the argument in favour of labour market deregulation is thus now being made in the name of gender equality.

This article explores the validity of this approach. There are four parts to the exploration. In Section 2 we identify some theoretical and methodological problems embedded in the flexibility approach with respect to the nature of labour markets, the analysis of institutions and the conceptualisation of gender. In particular we identify how both gender and labour market regulation are treated as universal variables, without appropriate attention to location, context and time period. In Section 3 we provide a brief overview of the evidence base for the effects of labour market regulation on women’s employment. While this evidence is found in its own terms to be neither substantial nor always robust, our focus is on the limited, and indeed often gender blind, approach taken to the analysis of how gender may interact with specific forms of regulation. Section 4 develops this critique further by providing more detailed evidence and analysis on how gender interacts in different contexts with six main areas of labour market regulations. Section 5 concludes by drawing on these three sections to suggest that the approach followed by the OECD and others of introducing a sex variable to explore cross national effects of regulation may mislead more than it informs. Instead what is required is both a more gendered analysis of institutions and a more social analysis of gender as the starting point for the more positive task of analysing how reregulation could be used to reduce gender difference and inequality.

## **2. Gender and labour market regulations: some methodological and theoretical considerations**

Two sets of methodological issues are considered here. The first is to locate this recent concern with compositional effects within a broader analysis of the causes and consequences of labour market difference and segmentation. The second is to review the approach to institutions adopted in the flexibility debate.

The case for considering the compositional effects of regulation is set out clearly by Bertola, Blau and Kahn in their 2001 paper.

Composition effects also have important normative/interpretation implications: while ‘the’ unemployment rate or average real wage level may be adequate performance indicators from a macro perspective, the welfare and distributional implications of short/long term unemployment and differences in employment and wage rates across groups are clearly also very important

in evaluating the success of labour market policies. Hence, a positive theory of institutional effects on labour market performance should take composition effects into account. (Bertola *et al.*, 2001, p. 42)

This statement carries additional weight as it is made by some of the key authors on whom the OECD (2004, 2006) relies for evidence of such impacts. The proposition appeals to common sense reason and raises concerns over labour market equity. However, there is a presumption behind this compositional analysis that labour markets can be expected to adjust quickly to provide equal opportunities and rewards for all according to their relative productivity. Labour markets, however, are known to be inherently sticky. The standard employment relationship is still based on an open-ended and relatively long term contract between employers and employees (Simon, 1991) which many employers are not anxious to break even if not constrained by regulation and even if new and potentially cheaper supplies of labour become available on the labour market. Long term relationships may fit the preferences of insider employees but they are also functional for employers, enabling them to address issues of imperfect information, individual and group motivation and the costs of hiring and training (Lindbeck and Snower, 2002). In the flexibility literature young people and women are singled out as constituting vulnerable groups, primarily because they are overrepresented in labour market flows, but if women do have variable and intermittent attachment to the labour market, equality of outcomes according to potential productivity is not necessarily a reasonable expectation, particularly for those entering the labour market in periods of low aggregate labour demand. Differentiation in outcomes between insiders and outsiders cannot be attributed solely to regulation but is also a consequence of the interdependencies between employers and employees in the employment relationship (Lindbeck and Snower, 2002). Regulation may act to intensify insider/outsider divisions but forms of regulation can equally be used to create more inclusive labour markets by extending the scope of protection to job sectors such as service sectors or to non-standard contracts where women may be overrepresented. This argument draws on some of the early debates on labour market segmentation where, in contrast to the analysis presented by Doeringer and Piore (1971), others argued that trade unions and labour market regulations acted to extend protection beyond that which employers would have voluntarily introduced to protect investment in firm-specific skills (Rubery, 1978; Jacoby, 1984). The effect was to extend the scope of the standard employment relationship and encourage wider investment in the labour force.

Within the historical and wider social science literature there has been long recognition that labour market regulations may not only modify labour market divisions but at the same time create new lines of division, including those between the sexes. For example, the formation of unions was associated not only with reducing the power of capital but also with the creation of a labour aristocracy on the one hand and a male breadwinner society on the other (Humphries, 1977; Barrett and McIntosh, 1980). What is distinctive about the labour market flexibility debate is that it considers inequalities to be the product of worker-worker conflicts rather than capital-labour conflicts (Lee *et al.*, 2008). This contrasts with accounts within the industrial relations and labour market segmentation literature on the one hand (Rubery, 1978; Jacoby, 1984) and feminist history on the other (Humphries, 1977) in which labour force divisions emerge out of struggles between capital and labour. For some authors negative effects on women are more an unintended consequence of class struggle (Humphries, 1977) while for others they are more a product of the dialectical interactions of capitalism and patriarchy (Hartmann, 1981; Walby, 1986). However, neither camp would regard the relevant comparator to be an ideal-type perfectly

competitive labour market. The flexibility literature in contrast regards deregulated labour markets as potentially more gender neutral even though a range of contributions within the mainstream labour economics tradition have suggested otherwise. Thus the flexibility literature tends not to address the impact of fixed labour costs, asymmetry of information, monopsony power (Manning, 2003) and gender discrimination on gender outcomes. Furthermore, the prime concern with simply the presence of regulation sidelines debates on the modernisation of regulation. For example, the transitional labour market literature (Schmid, 2006) has been concerned with how to design regulations to allow for more varied participation patterns while protecting those taking the non-standard options. This approach not only often requires more rather than less regulation but also demands greater attention to the detail of institutional arrangements rather than to indices of their presence or absence.

This raises a second set of theoretical and methodological issues with respect to how institutions and regulations are analysed. The standard approach in the flexibility literature is to analyse the effect of a particular policy or institution through pooled cross-national and time-series regressions. The range of measured variations in each institution tends to be narrow. For example, the unemployment insurance system may be captured only by average replacement rates and/or duration of benefits and the impact of unionisation by average trade union density. These restricted measures reflect both data limitations and a presumption that institutions operate in comparable ways across countries, only varying along one or two dimensions of intensity. Furthermore, interactions between institutions are looked for cross nationally and not according to regime type. This contrasts with institutional analyses of labour markets in which institutions may complement or conflict with other institutions, such that the employment effects are dependent not on a policy taken alone but on how it fits with other elements of the policy regime (Hall and Soskice, 2001). The OECD (2006) did recognise this shortcoming in one of its final assessments of the impact of the Jobs Study and did consider that different policy packages may have similar employment performance outcomes. However, this approach was not applied to the analysis of the interaction between gender and regulations.

Indeed in the search for a cross national relationship between regulations and gender equality, gender is treated as a categorical variable with universal characteristics that does not allow for differences in gender relations or gender regimes between societies. If, however, the division of labour in the household and the organisation of labour market participation is subject to influence by institutions, then the constitution of gender as a relevant labour market variable that affects average outcomes can also be expected to vary between societies. In developing this critique of the use of a universal sex variable in the empirical cross-national research literature we still regard it as relevant and appropriate to look for aggregate national differences between men and women as there are systematic forces of discrimination or domination (Lawson, 2007) that influence the behaviour and experience of men and women in the labour market. However, in contrast to the flexibility literature, we also recognise the likelihood of differences at the aggregate societal level in the extent and form of these gender differences in behaviour and experience, thereby distancing the analysis from an essentialist sex differences approach.

Our concern here is primarily with diversity at the aggregate national level in the size and shape of average gender differences in labour market behaviour and experience. These aggregate differences are important, notwithstanding the increasing diversity in women's experiences within individual societies, as they may reflect the influence of specific national institutional arrangements beyond those of labour market regulation—such as support for

working parents—as well as long standing country-specific gender attitudes, culture or regime that may be interpreted as legacies, for example, of the pattern of integration of women into the capitalist wage economy (Pfau-Effinger, 1993). In addressing issues of different national gender regimes it is interesting to note that the tendency to regard gender as a universal labour market variable also applies to much of the work undertaken within the leading institutional framework of varieties of capitalism. Estevez-Abe (2005) and Soskice (2005) both suggest that women are likely to be disadvantaged within coordinated-markets economies (CMEs) compared to liberal market economies (LMEs), due to the emphasis on firm-specific investments in skills within these systems but this premise assumes that women are equally likely to be viewed as contingent participants across coordinated economies even though CMEs contain many varieties of welfare states and gender regimes (see Rubery (2009) for an elaboration of this point).

In critiquing the flexibility literature we will thus also seek to develop a more rounded analysis of how institutions and path-dependent pattern of societal change may lead to variety both in the gender regime and in the organisation of the labour market. We follow the approach of institutional theorists in rejecting a policy by policy analysis due to the likelihood of complementarities and/or conflicts between institutions such that the effects of a specific policy will vary by context. Likewise we anticipate variations in the content and meaning of institutions, which in turn may influence how they interact with or give rise to gender difference.

### 3. Reviewing the evidence base

The OECD's 2006 report, in reviewing the evidence base for the impact of labour market regulations on employment, mentions adverse effects on women's employment in relation to unemployment benefit generosity, union density, employment protection, legislation, the tax wedge on labour costs and product market regulation. As these effects are mentioned separately under each regulatory form, the impression given is that there is a stack of empirical evidence. In practice, only three main studies are referred to. The first two are the OECD's own studies, namely its OECD 2004 Employment Outlook and the background work for the OECD 2006 Employment Outlook undertaken by Bassanini and Duval (2006), and a single study by Bertola *et al.* (2002). These same authors have also produced a later 2007 paper that also makes similar claims to have found negative impacts on women's relative employment and unemployment (Bertola *et al.*, 2007). The only other main study quoted, that by Jimeno and Rodriguez-Palenzuela (2002), is primarily concerned with the effect on young people. In addition to these studies our own review of the literature revealed some studies relating to Latin America that find negative effects on women's employment from regulation (Heckman and Pagés-Serra, 2004). Montenegro and Pagés (2004) were also able to use a single country, Chile, to investigate the effects of changes in EPL due to the significant swings in the intensity of the index over time and found some negative impacts for women. Even so the body of evidence can be considered relatively thin.

Looking in more detail at these key pieces we also find that the results are not as robust or as strong as implied by the frequent mention of effects on women. For example, Bassanini and Duval (2006) recognise that their results suggest much stronger effects from education in promoting women's employment than from deregulation. The OECD (2006, p. 128) acknowledges that policy reforms only account for around 10% of the spectacular increase in women's employment in countries such as Australia, Canada and Spain but justify

a continued focus on labour market regulation on the grounds that 'as women's participation rates approach those of men, future increases become more dependent on reforms aimed at reducing remaining disincentives for women to work and encouraging the diffusion of family-friendly employment practices'. However, even here the primary focus of required reforms is on eliminating discriminatory taxation and developing more positive gender policies. Their actual findings are of rather weak effects from the more general labour market regulations. These effects are also often different for full- and part-time work for women, thereby reducing the extent of aggregate differences between women and men. The main negative significant effects on aggregate women's employment are associated with unemployment benefits, the tax wedge and product market regulation but it is only in product market regulation where a significant difference is found for women as a whole relative to men.<sup>1</sup> Union density has positive effects on employment for men and for women in full-time work but is negative and non-significant for women as a whole. The only significant negative impact of EPL is on full-time women's work, not on overall female employment.

The OECD places considerable reliance on Bertola *et al.*'s (2002) study to back up its own findings. However, it reports the findings of the study in a rather loose way. For example, it reports that 'though Bertola *et al.* (2002) do not identify any significant impact on overall unemployment, their regressions show significant relationships between benefit generosity and lower employment of women, youth and older workers, relative to prime-age men' (OECD, 2006, p. 59). However, the paper in fact records the opposite result, with the higher first year unemployment benefit replacement rates associated with higher relative male unemployment and lower relative male employment. The authors comment that 'These male-female comparisons suggest greater UI system coverage of men than women' (Bertola *et al.*, 2002, pp. 26-7). These findings point to the problems of missing data on entitlements to unemployment benefits (see also Nickell *et al.*, 2005, who acknowledge this as a deficiency in the evidence base). The Bertola *et al.* (2002) study in fact primarily focused on the effects of union density but their findings in this respect are also cited by the OECD (2006) as supportive of the notion that outsider groups suffer, while in practice their results for women are mixed. Union density is found only to raise women's unemployment rate relative to men's and not to lower their employment rate. This puzzle is explained by the hypothesis that 'women who would otherwise be disemployed by high wage floors are able to find work in unregulated sectors or are absorbed by public employment' (Bertola *et al.*, 2002, p. 1). The later paper (Bertola *et al.*, 2007) also finds more robust effects of union density and collective bargaining in raising women's relative unemployment rate. Their effect on women's relative employment is found to be negative but not significant (and reverses sign once country dummies or North America is excluded from the analysis). Despite these less than convincing results, the conclusions to the paper refer to the negative impacts of unionisation on women's employment without any qualification. Even the findings of higher female unemployment raise issues of interpretation. The starting hypothesis for the paper is that unions will raise wages for groups who, if displaced, will find useful things to do outside the labour force and will not remain unemployed. The authors deploy this argument to explain the lack of higher unemployment for younger women relative to younger men but prime age women

<sup>1</sup> The product market regulation variable does not cover personal and retail services but the OECD attributes this effect to problems with reconciling work and family life where there are regulated shopping hours.



do show higher relative unemployment even though many mothers fall into this age category. At best the results are too ambiguous for these to form the basis for support for policies of labour market deregulation.

In many respects, the argument that labour market deregulation has negative effects on women's employment has yet to find strong legs on which to stand. However, weak evidence has not deterred belief in the past in the employment benefits of flexibility (Howell, 2004). This review of evidence reveals a similar weakness in the gender analysis as undertaken within the labour market regulation/flexibility debate. Furthermore it suggests that the 15 years experience, following the UN World Congress on women, in implementing gender mainstreaming of employment policy—in the EU and elsewhere—have had little impact on mainstream labour market policy analysis (Rubery, 2005). It is to bringing these insights into the labour market flexibility debate that we now turn.

#### **4. Gender and labour market regulations: a more context specific approach**

The current standard menu of regulations expected to add to the 'rigidity' of labour markets includes six areas related directly to the labour market, namely employment protection, working time, unemployment protection (passive and active), the tax wedge on employment, unionisation and collective bargaining and minimum wages.

In the first two columns of Table 1 we set out the mainstream thinking on the effects of regulations on employment performance, first in relation to the whole labour market, second in relation to gender impacts, where gender is primarily associated with women being an 'outsider' group. Within mainstream economics, there are, of course, significant variations in approach. Here we focus primarily on the predictions of those economists who have largely signed up to the notion that regulations tend to distort labour markets, that is, to use Freeman's (2005) term, they have strong 'priors' that lead to hypothesised relationships based on primarily perfect competition models. The third column aims to extend, nuance or even contradict these standard interpretations of regulation effects by gender. In some cases these variations from the orthodoxy relate to general critiques of the relationship between regulation and employment, in others they draw on the variations within the mainstream in predicted effects that are often forgotten about within the labour market regulation debate. To give some substance to these general critiques, in the following sections we explore how the specifics of the context, particularly the form of gender regime and the form and function of the regulation may influence outcomes within each of these areas of labour market regulation analysis.

##### *4.1 Employment protection*

Employment protection legislation is predicted to reduce employment opportunities for women in two ways: through reducing job vacancies for returners and by restricting job creation in volatile sectors, many of which are female-dominated sectors. However, the extent of the risks facing women relative to men depends on the extent of gender differences in participation patterns. Where women are relatively continuous participants in the labour market, they are less dependent on the number of vacancies for access to employment in prime age.

Moreover, the impact also depends on the coverage of the legislation. Employment protection if applied to female-dominated sectors may stabilise employment, thereby reducing in part women's exits from employment that increase their risk of long-term

**Table 1.** *Gendering the analysis of labour market regulations*

	Assumed effect on employment/unemployment	Assumed effect by gender	Expanding the gender analysis
Employment protection legislation	Reduces labour turnover, limiting opportunities for outsiders. Reduces employment in cyclically volatile sectors.	Women re-entrants excluded due to limited vacancies particularly if women concentrated in cyclically volatile sectors. Restrictions on non-standard or part-time work reduces participation.	i) Coverage and asymmetry of EPL matter as well as level. ii) EPL can help stabilise women's employment sectors and thereby promote continuity of employment status. iii) Policies to facilitate women's continuity of employment may reduce the impact of EPL.
Working time regulations	Limits on length and flexibility of working time increase employer costs with negative impacts on job creation. Requirement to offer part-time jobs and/or provide leave likewise increase costs and/or reduce employment.	Women assumed to be negatively affected by regulations that reduce employer's right to offer flexible/part-time jobs. Also negatively affected if employers required to offer part-time and leave options.	i) Lack of general working time regulations may reinforce women's domestic roles and restrict opportunities to work full-time. ii) In some contexts part-time work may be a means of evading regulations, in others it may be promoted by harmonisation of regulations. iii) Part-time work opportunities may either facilitate women's integration or serve to marginalise women. The impact depends on the path-specific integration of women into the labour market and other factors that may lead to segmentation of full and part-time jobs. iv) Regulations that facilitate reduced hours working in all jobs protect mothers from occupational downgrading.
Unemployment benefits and active labour market policies	High replacement rates and/or long duration reduces job search activity and raises reservation wage.	Assumes women as eligible as men for benefits and ALMPs. May be encouraged to be passive if replacement rate high for low paid.	i) Women's entitlements to unemployment benefits varies across countries and by job type. ii) Women's economic status when not in employment is likely to be influenced by access to unemployment benefits, social norms and childcare availability.



Table 1. *Continued*

	Assumed effect on employment/unemployment	Assumed effect by gender	Expanding the gender analysis
	ALMPs encourage job search and skill renewal.		iii) Women may have less access to active labour market policies if they have lower representation among benefit recipients.
Taxes and social protection	High tax wedge on employment reduces job creation in price elastic sectors.	Women less likely to find employment in price elastic services, more likely to be employed in informal sector.	i) Informality may be encouraged by the tax and benefit system, which may encourage women to work in unprotected jobs. ii) Informality may increase risk of poverty in old age or after divorce. iii) Tax and benefit systems may create segmentation between protected/unprotected jobs through demand and/or supply side effects. iv) Taxes are also a source of revenue for generating services and employment of significance for gender equality.
Trade unions and the structure of collective bargaining	High wages for insiders reduces job opportunities for outsiders.	Women either excluded from unionised and collectively regulated sectors or employment opportunities reduced in female sectors due to higher wages.	i) Gender pay discrimination is persistent in both deregulated and regulated labour markets. ii) Wage compression tends to benefit women's pay; the evidence on employment effects is inconclusive. iii) Unions and collective bargaining are likely to have different gender effects across countries, reflecting different traditions and orientations of institutional actors as well as differences in women's attachment to employment. iv) Women may be less willing to bargain for pay on an individual basis and may face discrimination in discretionary pay systems; they may therefore benefit more from institutionalised wage setting.

Table 1. Continued

	Assumed effect on employment/unemployment	Assumed effect by gender	Expanding the gender analysis
Minimum wages	Reduces employment in the formal sector.	Women's employment reduced due to their lower productivity relative to the minimum wage and their concentration in price elastic sectors.	<div><div>i) Minimum wage policy may help promote equal pay for work of equal value; impact on household poverty is not the only consideration.</div><div>ii) Minimum wage policy can help counter the undervaluation of women's work embedded in the values of specific goods and services, particularly in non-traded services such as care.</div><div>iii) Changes to minimum wage levels may impact on a high share of women, even those in stable employment; minimum wage policy should not only focus on employment impacts for young people and/or new entrants.</div><div>iv) Minimum wage increases may not lead to significant employment losses, according to some new theoretical arguments and empirical evidence.</div></div>

EPL, OECD's Employment Protection Legislation index; AMPL, active labour market policy.

unemployment or inactivity; for example, cycling between unstable jobs and inactivity has proved to be a particular problem for lone parents in the UK (Evans *et al.*, 2004). Very divergent practices and outcomes, even in the same sector and in apparently very similar countries, may be found linked to the coverage of regulation. For example, in Portugal there is a high employment rate for women and they work full-time under strong employment protection. This applies to not just male-dominated segments but also the female-dominated textiles and clothing sector (Tavora, 2009). In Italy employment protection is also strong but primarily applies to men as the measured female employment rate is low and much of the female employment, for example in textiles and clothing, is found in informal economic activity, particularly in southern Italy (Mingione, 2002).

Tendencies to female exclusion can, however, be exacerbated by legal regulations and it is in the details of the EPL legislation that its relationship to labour market exclusion or inclusion may be found. One of the 'details' is the extent of asymmetry between regular and temporary employment. As the OECD and others have noted, where there is asymmetry it may be that temporary employment becomes a separate labour market and temporary jobs may not provide stepping stones to permanent jobs. The now famous Dutch flexicurity legislation (Wilthagen and Tros, 2004) can be considered an attempt to reduce asymmetry, with new rights for temporary workers to have greater security—both while working in temporary jobs and with prospects of moving to permanent contracts—while employment protection for permanent workers is modified in the opposite direction. However, segmentation between standard and non-standard employment may be influenced by factors other than EPL. In particular, where opportunities to pay lower wages are constrained by internal notions of equity, outsourcing to segmented labour force groups may be used as a means of reducing wage costs. Thus, high EPL or EPL asymmetry constitute only one influence on segmentation.

To summarise, gender equity effects depend upon the coverage and asymmetry of employment protection as well as on the level of protection. If extended to female sectors, EPL may stabilise women's jobs and promote continuity of employment status and policies to facilitate women's continuity of employment may reduce the impact of EPL. Moreover, any negative impact of EPL on part-time job creation will not have universal effects on women's participation. Even though a shortage of part-time work may restrict female participation in some contexts, in others women may be seeking full-time rather than part-time work, as we discuss further below.

#### 4.2 Working time regulation

According to the World Bank's Doing Business Index, rigidity of working time will deter potential employers. Its rigidity index treats any restrictions on employer rights to schedule long hours of work to beyond 5.5 days or to require night work as negative for 'Doing Business'. The ILO has pointed out (Lee and McCann, 2008) that this index is in direct conflict with core labour standards. From a gender perspective, unconstrained opportunities for businesses to schedule long, variable and unsocial hours are clearly in conflict with work–family reconciliation. The need for regulations to promote work–family balance in working time arrangements has recently been recognised by the OECD:

Since 1994, it has become clearer that there are cases where greater working-time flexibility has made it more difficult to reconcile work and family life. In effect, the types of flexibility that employers seek to enhance production efficiency sometimes create scheduling difficulties for workers. This suggests that it may be desirable to modify the Jobs Strategy by placing increased

emphasis on assuring that working-time arrangements are also 'family friendly'. (OECD, 2006, p. 103)

This change of perspective opens up a divide between the approaches of the OECD and the World Bank.

Regular and limited working hours may contribute to gender equality in a number of ways. Without such regulations it is less likely that male partners will be able to participate in a regular and predictable way with care arrangements or that women with children will be able to continue in full-time work. Long hours for full-time workers also limits opportunities for part-time working alongside full-time working in the same types of occupations and firms. If there is no limit to hours in full-time work and unpaid overtime is frequent and expected, it is difficult to provide fair treatment for part-time and full-time work within the same occupation and workplace. Part-time work is thus likely to be confined to a narrow range of occupations with negative implications for gender equality (Rubery *et al.*, 2006).

Some proponents of labour market regulation (e.g. Botero *et al.*, 2004) tend to regard an absence of regulation with respect to part-time work to be positive for its spread and development. This approach is in contradiction to that of the EU which, through its employment strategy and its directive on part-time work, has promoted harmonisation of treatment between non-standard and standard employment contracts as a policy consistent both with gender equity and with promoting flexibility. Greater security for part-time workers has been seen as one way of overcoming traditional trade union opposition to the proliferation of non-standard contracts. The outcome of the EU policy has been the progressive removal of obstacles to part-time working embedded in, for example, social protection systems based on per capita contributions.

This promotion of part-time work through harmonisation is regarded as having mixed effects on gender equality. One problem is that the EU has taken a 'one size fits all' approach to the notion of barriers to women's employment and assumed that low shares of women working part-time implies an unrealised demand for part-time work among women currently not in the labour market. However, some countries have traditionally integrated women on a full-time basis into employment, for example Finland (Pfau-Effinger, 1993), Portugal and the ex-socialist countries. In these countries the promotion of part-time work may be regarded as regressive, potentially encouraging employers to substitute part-time for full-time work. The EU policy of promoting part-time working in countries where its incidence is low and where female participation is low has had some limited success in Spain and Italy but in Greece a similar policy has had little take up, despite financial incentives for part-time work. The preferred flexible work option remains self employment (Karamessini, 2008). Much of the part-time work in Spain and Italy is outside the main area of EPL, in temporary jobs or in sectors not covered by the formal protection enjoyed by male-dominated large firms in Italy.

Although the labour market regulation literature would predict part-time work to be higher in more regulated economies where women may be excluded from core labour market jobs, comparisons across OECD countries do not suggest that differences in part-time working are primarily related to level of labour market regulation, even regulation of part-time working. The factors leading to part-time work include the path specificity of women's integration (Pfau Effinger, 1993) as well as the current welfare, tax and labour market arrangements. Moreover, where LMEs have high incidence of part-time working this may be less well distributed across the jobs structure (e.g. the UK) than in more

regulated societies (e.g. the Netherlands) where there have been more part-time work opportunities at all levels (Fagan *et al.*, 1995). Part-time workers in LMEs may be more likely to be concentrated towards the bottom end of the hierarchy, in part because employers may require full-timers, particularly those in higher level jobs, to work long and variable hours. Dolado *et al.* (2003) found that high part-time shares increase segregation and this reinforcement of gender segregation may lead to low pay for part-timers and an increased gender pay gap (Bardasi and Gornick, 2008).

Differences in part-time work incidence can be found among liberal market economies. For example, in the US labour market it is legal to provide different benefits to full- and part-time workers in contrast to the EU where such actions are treated as indirect sex discrimination. The consequence is to deter women from working part-time where health benefits are often not provided. Mothers in the US, even if they may work part-time for a while, will tend to move back in to full-time work (Dex and Shaw, 1986; Dex and Joshi, 1999) while in the UK they are more likely to remain concentrated in the low paid, low skilled part-time jobs that are available to women returners. This example indicates that the US labour market should not be treated as 'institution free'.

To summarise, general working time regulations, not just specific working-time opportunities for women, matter for gender equality as they affect domestic roles and opportunities for women to work full-time. Part-time work plays different roles in different contexts; in some it may be used to evade regulations but in others it may be integrated within standard employment and social protection and more widely diffused through the occupational structure. Likewise, dependent on context and women's historical pattern of integration, part-time work opportunities can be considered either a means of facilitating women's integration or a means of reinforcing women's marginalisation. Opportunities for mothers to reduce working hours in current jobs provide mothers with more protection against occupational downgrading than if they have to seek a new job in order to work fewer hours (see Neuburger *et al.* (2010) on the effect of staying with the same employer in reducing penalties to part-time working in the UK).

#### *4.3 Unemployment policies: passive benefits and active labour market policies*

There is an active debate on whether or not high or long duration unemployment benefits cause rigidities in labour markets by extending job search and raising reservation wages. While the OECD (2006), with support from other studies such as Feldman (2008, 2009A, 2009B), finds strong evidence that high benefits reduce employment and that reforms in these areas have been effective, Howell (2004), Baker *et al.* (2004), Freeman (2004, 2005) and Howell *et al.* (2007) all argue that the jury is still out as the results on which these arguments are based are not robust. Others point to the long term improvements in efficiency through better job matching, facilitated by unemployment benefits (Altman, 2004). What all these studies share in common, however, is a neglect of gender issues. This criticism applies even to those studies that analyse employment outcomes by gender as they usually lack information on benefit entitlements by gender or on other factors that might affect women's propensity to identify themselves as inactive rather than unemployed. From time to time the absence of information on coverage of benefits is remarked upon and regretted but this does not seem sufficient to cause any reassessments of the robustness of the results. Bassanini and Duval (2006, pp. 43–4) comment on the apparently surprising result that high unemployment benefits do not have a more significant effect on part-time women workers without reflecting on the absence of data on their entitlement to these benefits.

Table 2 shows that, even in the EU, among those who define themselves as unemployed under ILO criteria, there are major variations between countries in coverage of unemployment benefits and within some countries major variations in coverage by gender. These probably understate gender gaps as more women than men tend to be hired direct from inactivity rather than unemployment, suggesting that ILO unemployment figures do not pick up all women seeking work. The countries in the EU15 with large gender gaps among unemployed benefit recipients are the UK, Ireland, the Netherlands and Spain, while Italy and Greece have low coverage for all (Grimshaw and Rubery, 1997A; Gallie and Paugam, 2000; Azmat *et al.*, 2004; Leschke, 2007). While women's greater involvement in employment on a continuous basis may be improving their access to benefits, in some contexts the tightening of eligibility requirements, particularly affecting those in non-standard jobs and with intermittent employment, may be reducing access (Jepsen and Meulders, 1997; Leschke, 2007). Leschke's research shows that there is a much higher tendency for women in part-time jobs to leave employment to inactivity in countries such as the UK and Germany when likelihood of receiving unemployment benefit is low compared to the pattern in Denmark.

These gaps in unemployment benefit coverage suggest that high benefit levels do not uniformly raise the reservation wage of all groups and attention needs to be paid to whether most of the women seeking a job are eligible for benefits (Gregg, 2000). A second consequence is that women may also be excluded from active labour market policies. In the EU there has been some progress in opening up active labour market policies (ALMPs) to non-benefit recipients in some countries (Rubery, 2005), partly in response to requirements on member states to 'gender mainstream' employment but these developments are not universal. For example, the UK still restricts its new deal schemes to benefit recipients or spouses of recipients.

Thus, cross country analyses of the impact of unemployment benefits need to pay more attention to variations in entitlements to unemployment benefits for those in non-standard jobs or with intermittent employment. Likewise, whether women regard themselves as unemployed or inactive when they are out of employment will depend on a range of factors, including access to unemployment benefits, social norms with respect to women's activity and childcare availability. Women's access to active labour market policies is likely to be restricted if they are underrepresented among benefit recipients.

#### 4.4 Tax wedge and social protection

A high tax wedge is presumed to price jobs out of the formal sector and promote informality. However, tendencies towards informality may also be the result of the design of tax and welfare systems. When benefits are primarily household-based, many second income earners may be willing to work outside the social protection net to avoid wasted employee contributions that are unlikely to yield any significant additional benefits. Employers are also likely to take advantage of an available labour supply for non formal jobs. Where there are thresholds for contributions they may also redesign jobs to fit under social insurance thresholds. Tax and benefit systems may also deter women from seeking extra hours where thresholds to contributions, family-based income tax arrangements or in-work benefits lead to high effective marginal tax rates. These effects may promote the growth of marginal part-time jobs. Although women may be complicit in working outside of social protection systems, they may face future risks of poverty due to lack of careers or benefit entitlements in their own right as marriages are increasingly fragile. Moreover, in



**Table 2.** *Benefit receipt among the unemployed and the gender gap*

Country	Percentage of the unemployed in receipt of benefits	
	Male	Female
Spain	34.6	15.9
Greece	13.6	9.4
Italy	4.3	3.3
France	51.0	40.6
Belgium	79.9	74.0
Luxembourg	22.2	17.9
Germany	68.7	69.4
Denmark	85.8	83.7
Portugal	26.9	23.4
Finland	79.7	75.4
Austria	59.5	43.5
Ireland	87.9	44.9
UK	33.3	17.2

*Notes:* Based on European Community Household Panel Survey: the question asked is 'Do you receive unemployment benefit or assistance?'

*Source:* Azmat *et al.* (2006).

flexible labour markets male breadwinners may also lose access to employment through redundancy or sickness.

A further problem with the argument that a high tax wedge has a negative impact on women's employment is that the revenues from the tax wedge may fund the social services on which women depend to enable them to enter the labour market and which may also serve as an employment generator for women in these service areas.

The key arguments are thus that the design of the tax and benefit system, particularly those that are household-based, may be just as important in promoting informal employment among women as the level of the tax wedge. Moreover, even though women may be willing to work in unprotected jobs, their exclusion from social protection and from core employment increasingly exposes them to risks of poverty in old age or after divorce. Tax and benefit systems may also, by acting on both the demand and supply side incentives, promote segmentation between marginal/non marginal or protected/unprotected jobs. Finally, taxes should be regarded as not just a cost but also a source of revenue for generating services and employment of significance for gender equality.

#### *4.5 Collective regulation and unionisation*

There is well established evidence that more compressed wage structures, associated with wage setting through collective bargaining and with relatively strong unionisation, tend to reduce the gender pay gap. Women may still be ranked low in the earnings hierarchy but the penalty for that ranking under wage compression is lower than in more unequal wage structures (Blau and Kahn, 1992, 2001; OECD, 2002). The flexibility literature has accepted this positive impact on the gender pay gap but has questioned whether it comes at a cost of lower employment/higher unemployment among women. Consistent with the findings by the OECD (2006) that coordinated economies may be as efficient as deregulated economies in managing employment and pay, no strong relationship was

found between unionisation or degree of coordination and employment, either in aggregate or for labour force groups (Bassanini and Duval, 2006). Bertola *et al.* (2007) found that unionisation depresses women's employment relative to male employment and raises prime age female unemployment relative to male unemployment but, as we have already discussed, the employment estimates are neither significant nor robust. Further, while the results are stronger for the relative unemployment variable, there is the issue of how to interpret unemployment status in cross national comparisons, where propensities to be unemployed among the non-employed may vary.

The study was in fact motivated by the hypothesis that unions across countries will seek to raise pay where displaced workers can be expected to be willing to withdraw from the labour market. This hypothesis assumes a universal tendency for women to be contingent workers and a universal union strategy towards pay bargaining and gender issues. Both assumptions are questionable. Not only are there differences in women's commitment to employment but there are also wide variations in industrial relations systems and union orientations across and within national systems. Unions are recognised to have dual roles as both promoters of vested interests and as swords of justice, concerned to spread protection even to non union members (Flanders, 1970). Although the vested interest dimension has dominated the modelling of trade union action in economics, variations can be expected across space and time and between types of unions in the balance of these perspectives. The notion of a common strategy towards the exclusion of women does not fit such as in the differences in unions' approach to part-time work in Europe. For example, the Dutch unions have led the way in regulating part-time work and providing for its protection (Wilthagen and Tros, 2004) while the southern European trade unions have largely resisted its development (Karamessini, 2008).

The proposition that wage rises associated with regulation may have negative impacts on women's employment presupposes that wages set in deregulated economies are more reflective of women's relative productivity. Three sets of evidence provide some challenges to this position. First, there is no evidence that deregulation eliminates gender pay discrimination. Indeed in both deregulated and regulated economies the proportion of the gender pay gap explained by observable productivity characteristics such as education and experience has been declining and the unexplained share growing, even if the overall gap is declining (Harkness, 1996; Joshi and Paci, 1998; Myck and Paull, 2001, 2004). Grimshaw and Rubery (2002) in a review of a number of studies of the gender pay gap found that the gap attributed to gender differences in returns to characteristics varied from 43% to 90% of the wage gap. This unexplained share of the gap may be attributable either to unobserved characteristics or to discrimination. Economic theory has thus still effectively failed to account empirically for the gender pay gap, a result that applies under all types of regulatory regimes. Unions or collective bargaining may not be, therefore, the only factors breaking the presumed relationship between wages and productivity.

In a similar vein, Gannon *et al.* (2007) found the influence of economic rents on wages to be higher in deregulated than regulated economies and that the pattern of rent sharing varied by sector and by gender. That is, not only did the degree of wage dispersion by sector differ across Europe, but the variation was greater in more decentralised and deregulated economies. Furthermore, the size of the industry differentials varied between men and women, indicating different patterns of rent sharing. Similar findings were reported by Schettkat (2002, p. 11) in his empirical analysis of wage structures in 20 OECD countries where he found that 'the unexplained wage variations (the residuals) ... correlate

negatively with the centralization of bargaining institutions, suggesting that decentralized bargaining systems create wide wage dispersion not related to “economic fundamentals”. Women may in some cases be less able to engage in such insider bargaining or in other cases they may be excluded from sectors/firms with significant economic rents to share. In either case deregulation may disadvantage them relative to their productivity as workers. There is in fact considerable evidence that women are less likely to bargain or bargain hard over their pay (Blackaby *et al.*, 2002; Hall and Kreuger, 2008). These findings may reflect family restrictions on women’s external job opportunities but they may also indicate that workplace cultures are not supportive of women bargaining over wages. Deregulation increases individualisation and reduces transparency in wage determination, which may have negative impacts for gender equality.

If national wages structures and systems differ, they are also likely to have varying effects on particular groups of women. Thus, those countries that tend to pay women well at the bottom of the labour market may not provide the highest rewards for women’s skills in the middle or higher rungs (Grimshaw and Rubery, 1997B). Some countries tend to pay women better in the public than in the private sector, in others the advantages are reversed. Some pay women working part-time very low wages but in others where part-timers are better paid (for example the Netherlands), the gender gap for full-timers is relatively large (Fagan *et al.*, 1995). Any analysis of the linkages between pay structures and women’s employment thus needs to take these compositional effects into account.

The debate on the impact of wage setting has not therefore taken sufficient account of the evidence of continuing gender pay discrimination in deregulated as well as regulated labour markets. Moreover, wage compression, which is associated with regulation, tends to have positive effects on women’s pay, so the argument that collective bargaining damages gender equality hinges on the employment effects, where the evidence is mixed at best. Contrary to hypotheses of common effects from unions across countries, the differences in both the traditions and in the orientations of institutional actors and in women’s attachment to the labour market can be expected to lead to some country variations. Finally, trends towards individualised and discretionary pay determination may also disadvantage women who are less likely to engage in effective individualised bargaining.

#### *4.6 Minimum wages and women’s employment*

Women are more likely than men to be low paid and thus in developed countries are more likely to benefit from increases in minimum wage levels. Young people may be proportionately more affected by minimum wages but women are still likely to constitute the largest share of low wage workers (Low Pay Commission, 2008). In countries with high levels of part-time working, it is also part-timers who are disproportionately affected, the majority of whom are women. Despite these tendencies, minimum wage debates are rarely linked to gender issues or the gender pay gap (Rubery, 2003; Rubery and Grimshaw, 2011). The gender impact is in fact cited as a reason not to use minimum wages to promote equality as women, and indeed young people, are often in households above or at the poverty line. For example, Burkhauser and Harrison (2000) suggest that the lack of a relationship between low wages and household heads has rendered the minimum wage tool outdated. This focus on household-based poverty is to the exclusion of the promotion of the principles of equal pay for equal work or for work of equal value, which presumes that wages should be related to the job and not to household position or need.

Furthermore, even though the findings of persistent gender pay discrimination are widely acknowledged, often no link is made to women's concentration in jobs at the bottom of the pay hierarchy where minimum wages might be expected to be effective in reducing pay discrimination.

Some authors working from a political economy and historical perspective have associated the low valuation attached to women's work with the tradition of women being second income earners and subsidised by the family wage (Humphries, 1977; Power, 1999; Mutari *et al.*, 2001; Figart *et al.*, 2002). This low valuation of women's jobs may be built into the organisation of whole sectors, such as textiles and clothing (Seguino, 2000A, 2000B) or care work. While international action may be needed to raise the value of work in traded sectors such as clothing, the value attached to caring skills and activities is more under the influence of individual countries and governments (England, 2005) and could be raised by effective minimum wage policy.

These approaches have been complemented by some recent developments within the economic literature, which have emphasised the importance of monopsony and power in labour markets and in explaining the low wages attached to many women's jobs (Card and Krueger, 1994; Manning, 2003; see Neumark and Wascher 2006 for a more sceptical review). Under monopsony women are constrained in their employment opportunities due to their family responsibilities and limited geographical mobility. Women are not only less likely to be willing to travel long distances to work but are also less likely to have access to their own transport, even in high car-owning societies, and are more reliant on public transport.<sup>2</sup> The impact of strong employers is compounded by women's weak representation within trade unions for historical reasons and because of problems in engaging in public life due to family responsibilities. Minimum wages can thus be a way of spreading the impact of unions to the non-union sector.

Empirical support for the monopsony argument has been provided by studies that have shown that minimum wage increases had either a positive or an insignificant effect on employment levels. Furthermore, whether or not monopsony arguments are accepted, there is limited evidence that minimum wages have been associated with any dramatic changes in employment (Freeman, 2007). Certainly the strong upward trends in women's employment across most Western economies cannot be attributed to the rise or fall of minimum wages. Indeed upward trends have been found even in the context of improving relative and real wages linked to regulatory change. For the UK women's employment showed strong growth following both implementation of equal pay legislation and, more recently, the national minimum wage (Low Pay Commission, 2008; Grimshaw, 2009; Vaughan-Whitehead, 2009). Other country studies suggest there has been no adverse effect on employment from the introduction in Ireland of a minimum wage, nor from a major increase in the minimum wage in Bulgaria; indeed the rise was associated with employment and wage growth (Vaughan-Whitehead, 2009).<sup>3</sup> Where minimum wages are set at a very low level or are non-existent, women's employment may accumulate in low paid segments, detached from the mainstream of the wage structure. Thus, in the 1980s and 1990s, before the minimum wage was introduced in the UK, there was a long-term

<sup>2</sup> These local barriers to mobility tend not to be part of the flexibility debate and instead the mobility debate is focused only on barriers to the geographical mobility of male breadwinners (and often without reference to the impact of dual earner households on mobility).

<sup>3</sup> However, in Hungary, where the minimum wage also rose sharply, there was some evidence of a shake out in the small and medium size enterprise sector (Vaughan-Whitehead, 2009), although this change was not analysed by gender effects.

deterioration in the relative pay of part-time workers while the gender pay gap for full-time workers remained stable or even improved. In Germany the growth of mini jobs for women has taken place to a large extent outside of the regulated sectors and is associated with the growth in the share of low-wage work in Germany, from 15% to 22% over the last decade (Bosch and Kalina, 2008).

To bring gender equity arguments into the minimum wage debate, attention needs to be directed to its contribution to the implementation of equal pay for work of equal value not just to its impact on household poverty. Minimum wage policy could be one means to counter the undervaluation of women's work embedded in the value of some female produced goods and services. Such action may be more effective for domestic sectors such as care work. Moreover, even when women are in stable employment, their pay may be more sensitive to minimum wage rates. Minimum wage policy, even in a recession, should take into account the effect of declining minimum wages on the gender pay gap and not focus solely on the employment impact on young people or new entrants. Minimum wage increases, in fact, have not been found to lead to significant employment losses—results supported by new theoretical arguments as well as empirical evidence.

## **5. Conclusions**

This article examines the emerging focus within the flexibility debate on the impact of regulation on disadvantaged groups, including women. The first task was to identify the specific theoretical perspectives embedded in the flexibility literature. The key assumption of the flexibility literature was found to be that exclusion and inequalities between groups are the outcome of regulations and worker against worker divisions. This contrasts with historical and institutional accounts of the development of labour market regulations where regulation was developed to stabilise employment and protect against inequalities within the employer–employee relationship. Segmentation and gender divides may still be an outcome, intended or unintended, of employment regulation, but the origins of the divisions from these perspectives are found in efforts to regulate an exploitative labour market. The corollary is that the model for gender neutral or well functioning labour markets is not the deregulated labour market. Contrasting the flexibility literature to the varieties of capitalism literature, we found that the former treats institutions as individual policies with universal effects while the latter focuses on interactions between sets of institutional arrangements in particular economies that may give rise to different logics of competition and modes of organising production and social relations. However, in both sets of literature, that is the flexibility debate and the varieties of capitalism, differences between the sexes are implicitly taken to be universal and invariant, whatever the form of institutional support for working parents and whatever the prevailing system of gender relations. The relevance of gender for labour market analyses is implicitly located in women's tendency to be intermittent labour market participants. The fact that this tendency varies empirically across and within countries does not deter most investigators of regulatory effects from seeking a cross national impact of regulation by gender.

The second task was to review the existing evidence, as generated within the flexibility debate, for the claims that regulation has a negative impact on women's employment and unemployment. We found the evidence to be both thin and inconclusive. Most of the changes in women's employment have been driven by factors outside the labour market reform agenda, such as women's education, and if a reform agenda were to be implemented

to promote women's employment, the main focus would need to be not on general regulatory reform but on reducing barriers to women's employment embedded in, for example, tax and benefit systems. Thus, women's tendency to be intermittent or marginal participants is in part an outcome of the prevailing welfare and tax systems and is not only or even mainly to be explained by women's biological characteristics. Moreover, while the evidence that general employment regulation had a more negative impact on women than men was marginally stronger for unemployment than employment rates, this finding raised the related question as to how cross national differences in unemployment should be interpreted as women may have different propensities to withdraw into inactivity across countries.

Section 4 built on this insight by developing a gender perspective to each of six areas of employment regulation and policy. This discussion of the six areas pointed to how the standard analysis of the effect of the regulation and the potential for women to be disproportionately affected tended to focus on women's position as intermittent participants. Other issues are not directly addressed such as the widespread segregation of labour markets, the gendered access to unemployment benefits, the persistence of gender pay discrimination and undervaluation of women's work in deregulated as much, if not more than, regulated economies and the role of segmentation and monopsony in maintaining and sustaining gender disadvantage. These analyses extend and in some cases reverse the emphasis or even direction of the standard gender analysis of employment regulation effects, pointing to ways in which regulation may promote rather than reduce gender equality.

This discussion sought to provide a more holistic gender mainstreaming of employment policies and practices that was also sensitive to differences between countries in both institutional configurations and gender regimes, for example to differences in female participation patterns and working time preferences across countries. Far from the inclusion of a gender analysis in OECD reports and elsewhere making a positive contribution to women's visibility within employment policy debates, this review suggests that the impact has been more to mislead than inform. The problem is that gender is treated as a universal variable, based around a natural state in which women are always carers first and employees second. This is the shortcut approach to gender mainstreaming, which fails to recognise that it is the specifics of the institutional arrangements and their interactions that really matter for gendered patterns of both demand and supply.

To move forward we need to reverse the fashionable tendency to put gender into all analyses without any real understanding of either how gender differences may be constituted differently across time and space or how gender differences may interact in specific and varying ways with employment and social regulations. One way forward could be to develop an index of gender difference in relation to labour market behaviour (e.g. based on participation levels, interruptions and working time patterns). This would be preferable to developing a typology of gender regimes that fitted a particular time period or set of countries as it would enable the measure to capture secular change and movement away from the traditional gender model. Such a gender regime index could provide some control for gender differences in participation and thereby provide insight into whether effects commonly attributed to women's contingent labour force participation reflect more deep-seated tendencies to gender discrimination. However, developing better measures of gender differences in behaviour across countries, while representing an advance on the current categorical variable, could also be said to distract from the more important issue of investigating how to use regulation actively to reduce rather than reinforce gender difference and inequalities. These policies need to be targeted at the specific sources of



gender inequality in specific countries and for specific groups of women and therefore require a different research approach that does not rely on cross-sectional research to seek universal negative effects on gender equality.

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