

Equality, Sameness, Difference: Revisiting the Equal Rights Amendment

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The Equal Rights Amendment, originally the brainchild of suffragist Alice Paul in the early twentieth century, endorses a particular view of equality. That view, as expressed in Section 1 of the 1972 amendment, endorses equal treatment as same treatment. This understanding is both the cause of praise and of pause, historically. Harvard University professor Paul A. Freund wrote in 1971 that the standard of sameness is difficult to apply given the vast and varied roles played in society by the different sexes (1971). A 1971 piece by Barbara A. Brown, Thomas I. Emerson, Gail Falk, and Ann E. Freedman championed the amendment on the standard of sameness, noting, "Our legal structure will continue to support and command an inferior status for women so long as it permits any differentiation in legal treatment on the basis of sex" (873). The equation of equality with sameness has been the subject of intense feminist debates, perhaps most famously characterized in Joan W. Scott's essay "Deconstructing Equality-Versus-Difference" (1988). Deconstructing this binary, Scott insists that when we claim that equality and difference are antithetical,

it denies the way in which difference has long figured in political notions of equality and it suggests that sameness is the only ground on which equality can be claimed. It thus puts feminists in an impossible position, for as long as we argue within the terms of a discourse set up by this opposition we grant the current conservative premise that because women cannot be identical to men in all respects, we cannot expect to be equal to them. (46)

In spite of Scott's powerful argument, this dichotomizing of equality and difference not only hindered ERA advocates in the 1970s but it also continues to constrain several struggles for so-called equality today. In our work as a collective, we see this struggle most starkly in debates surrounding "marriage equality," where rhetorical and visual narratives of sameness saturate pro-gay-marriage political campaigns.¹ "Sameness" in this case both makes a claim to normalcy and respectability that has been historically denied to sexual minorities but also levels a demand that the state recognize only gay and lesbian kinship structures that mimic the ideology of family already upheld by contemporary marriage law: family units headed by monogamous conjugal couples. Here, difference is once again sacrificed in the clamoring toward equality, while ignoring much greater need for comprehensive family law reform. As legal scholar Nancy D. Polikoff notes, gays and lesbians are asking what straight people have that they don't, instead of asking what kind of legal protections might we need to support our families as they are lived and sustain us, not as they are imagined (2008).

In *Against Equality*, we see the question of "equality" as one that is overlaid by the history of the ERA, but also by the history of what are broadly construed as "minority rights" and/or affirmative action in the U.S. Today, especially after the June 2015 Supreme Court decision effectively legalizing gay marriage, it is—incorrectly—assumed that women and ethnic and racial minorities have achieved their share of equality, while the right of gays and lesbians to equality remains one of the last frontiers. We know, of course, that this is false on several fronts, even putting aside the problem of framing the attainment of rights in such ahistorical terms.

Women in the U.S. still only earn seventy-eight cents to the dollar and face considerable challenges in a culture and an economy which penalizes women for pregnancy and single status despite legislative fixes like the 2009 Lilly Ledbetter Fair Pay Act, which have yet to rectify the matter of unfair pay discrimination for women (Ellis, Hartmann, and Hegewisch 2015, 1). For people of color, the bar has hardly moved, and the recent attention finally being paid to the criminalization of black and brown people, the result of several publicly documented murders by police in particular, indicates that people of color have hardly achieved anything approaching parity. In addition, they still make less than their white counterparts, and women of color have historically made less than white women and are stigmatized both for childbearing (which is perceived as a burden on

the state) and for single status (resulting in cultural and political narratives about their promiscuity) (2015, 2).

In this context, what does equality mean when neoliberalism ensures that the most marginalized are also the ones pressed most into service for the few who make profits off their labor? What does equality mean when people of color and women still have years to go before gaining even the most sustainable living wages? While the mainstream gay movement relies on the myth of gay affluence, research indicates that LGBT people also suffer disproportionately from economic inequality (Badgett, Durso, and Schneebaum 2013).

Against the backdrop of the ERA, and if we take the meaning of equality not simply as a unilaterally uncomplicated matter of parity, we see that the concept becomes far more muddled and fraught. The ERA was conceived at a time when families and the people inhabiting them were rendered in particular terms, terms that have since drastically changed and shifted, not only the institutions, like marriage or the workplace, but our very bodies. What does it mean to support women when the very category of “woman” is a contested one? What happens to the political and economic rights of trans, intersex, and gender nonconforming people whose claims to equality are more fragile because of structural disenfranchisement and severe stigma, and whose rights cannot be granted through legislation alone?

As an example, Chicago is one of the cities that pushed through a sexual orientation clause in its Human Rights Amendment in 1988; the ordinance was expanded to Cook County in 2005. Ostensibly, queer people seeking redress for, say, housing discrimination can effectively sue under the amendment. But the fact remains that proving legal discrimination is usually an onerous task and that there are ways to deny someone housing without revealing that their sexual orientation, for instance, might have been the reason.

We might argue that the best hope in gaining rights for people is through cultural change, in creating a different social structure and a set of cultural attitudes that ensure that people are not discriminated against. But that creates exactly the sort of activism we see so prevalent today in the mainstream gay and lesbian equality movement: the fervent push to ask for an acceptance on the basis of conditions of normality and sameness, and the blatant impulse to look the other way when marginal figures are pushed under the bus. In 2007 the Human Rights Campaign (HRC) point-blank refused to integrate trans people into its campaign for the

Employment Non-Discrimination Act (ENDA). Today, under new leadership, the HRC has insisted it will never do this again. In all the fuss over ENDA, however, it is easy to forget that the act itself places very precise conditions on trans people, and that in all states except Montana it is, in fact, legal to fire anyone for any reason (Nair 2013).

This is the particular conundrum of the equality question: no matter how it is framed, it is bound to not only exclude people but actively create strategies with which to exclude specific groups of people. So the questions remain: How do we transform cultural and civic institutions by bringing both analytic and activist frameworks to bear upon them? How do we work within the liberal discourse of acceptance of differences *and* make the more radical demand that all of us, regardless of identities and kinship structures, have a right to what we term human rights?

Against Equality is an online archive, publishing, and arts collective founded in 2009 that critiques mainstream gay and lesbian politics. As queer thinkers, writers, and artists, we are committed to dislodging the centrality of equality rhetoric and challenging the demand for inclusion in the institution of marriage, the U.S. military, and the prison industrial complex via hate crimes legislation.

Notes

1. For a case study in pro-gay-marriage visual and rhetorical narratives, see Conrad 2014.

Works Cited

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