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After Legal Equality: Family, Sex, Kinship, edited by Robert Leckey (book review)

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Robert Leckey, ed.

After Legal Equality: Family, Sex, Kinship. London: Routledge, 2015, 224 pp.

In his thoughtful introduction to *After Legal Equality*, McGill law professor Robert Leckey makes a strong case for the breadth and significance of the book's titular theme. "Research 'after legal equality,'" he writes, should explore "at least five phenomena": 1) the "dismantlement" of victories won "in the name of legal equality"; 2) other types of "backlash"; 3) formal equality's failure to engender "significant redistribution or substantive equality"; 4) the "impact" of successful equality movements on groups "left behind or further disadvantaged"; and 5) egalitarian law reform's sometimes-regrettable effects on its "intended beneficiaries" (3–4). This list is not (and does not purport to be) exhaustive. For one thing, it focuses exclusively on the crueler side of equality's double edge.

That formal equality can have perverse consequences will not be news to readers acquainted with civil rights history or with a number of critical traditions in legal and political theory. Yet *After Legal Equality* reflects a justifiably "urgent sense that law reforms driven by equality call for fresh lines of inquiry" (i). The anthology is, first and foremost, an extended meditation on the aftermath of two momentous developments in certain countries' regulation of sex, family, and kinship: the consolidation of gender-neutral norms governing parenting and cohabitation, and legal recognition of same-sex conjugal relationships. Insofar as the latter is, as Leckey puts it, the volume's "prevalent site of investigation" (3), the collection constitutes an early and important instance of academic reckoning with life "after" gay marriage.¹

Several contributors to *After Legal Equality* do an admirable job of illuminating the post-equality phenomena enumerated in Leckey's introduction. Egalitarian law reform's potentially onerous "impact [on] those left behind or further disadvantaged" (3) is neatly suggested by Rosie Harding's account of gay marriage advocates' exclusionary insistence on the dyadic and permanent nature of marital love. The distinction between formal and substantive equality is likewise illustrated in Susan Boyd's analysis of how British Columbia's *Family Law Act* does and does not mitigate the "uncomfortabl[e]" fit between sex-neutral rules and "familial realities that remain stubbornly gendered" (42). (That distinction also underlies Janet Jackobsen's intriguing essay on "economic justice after legal equality" (77), which effectively proposes to "queer" the welfare state by making it more responsive to, and supportive of, a range of care networks well beyond the nuclear family.) "Dismantlement" and "backlash" (3), by contrast, appear only in passing, as when Roderick Ferguson alludes to the US Supreme Court's nearly simultaneous invalidations of key provisions of the Defense of Marriage and Voting Rights Acts. This coincidence, which suggests to Ferguson homosexuality's "mainstreaming ... via the marginalization of anti-racist protections" (159), lends urgency to his

¹ See also *After Marriage: The Future of LGBT Rights*, ed. Carlos A. Ball (New York: NYU Press, 2016); *From Civil Partnership to Same-Sex Marriage: Interdisciplinary Reflections*, ed. Nicola Barker and Daniel Monk (London: Routledge, 2015).

otherwise familiar argument that contemporary lesbian, gay, bisexual and transgender (LGBT) advocacy obscures the radical and often-shared aspirations of earlier movements for sexual and racial justice.

Context rather than content accounts for the novelty of several other contributions to *After Legal Equality*. Jonathan Herring, for instance, puts an avowedly “mainstream” cast on Martha Fineman’s influential proposal that bonds of care and dependence rather than sexual ties should underlie legal recognition of family relationships (25). Claire Young’s chapter reaffirms her own longstanding—and powerful—objections to tax rules that encourage gendered divisions of marital labor. The message in both cases seems to be that, new or not, these are ideas whose time has come. Catherine Donovan’s chapter is explicit in this regard. Reminding us of the ill fit between gender-based theories of domestic violence and many queer relationships, Donovan argues that, having secured equality for British same-sex couples in terms of public recognition, “it is to equality in the intimate sphere that our attention [now] should be turned” (168).

Thus a number of contributions to *After Legal Equality* draw our attention back to problems that, unsurprisingly, legal equality has failed to solve. This is not the same thing as describing law reform’s inadvertent consequences for “intended beneficiaries” (as Leckey’s introduction would have it) (4), but it is important work nonetheless. Indeed, calls to resume or reinvigorate neglected or stagnant political projects may constitute some of the most salient and ultimately liberating modes of “research ‘after legal equality.’” Witness Rose Harding’s deft use of two English cases, both involving lesbian couples and known sperm donors, to show that the advent of gay marriage has hardly eradicated heterosexist conceptions of legal parenthood. Or take Daniel Monk’s superb piece on “sexuality and children post-equality,” which offers a non-monogamous same-sex couple’s stalled adoption bid as evidence of the difference between ending discrimination based on sexual orientation and ending discrimination based on queer sexuality.

Two of *After Legal Equality*’s most compelling entries relate to the continued inequality of married and unmarried couples. As Kim Brooks notes, both groups may be treated as “spouses” under Canada’s *Income Tax Act*, but only the latter must be able to prove that the material conditions of their lives entitle them to such treatment. Using facts gleaned from cases of contested spousal status, Brooks presents a fascinating set of “cameos from the margins of conjugality” (99). Meanwhile Helen Reece cleverly analyzes an unsuccessful British campaign to promote cohabitation agreements and disabuse citizens of the widespread misimpression that married and unmarried cohabitants are treated comparably when their relationships end. Neither chapter quite describes a phenomenon named in Leckey’s ambitious agenda for post-equality studies. Yet, like most other contributions to *After Legal Equality*, both raise issues that merit some portion of the intellectual energy and activist effort so long consumed by the fight for gay marriage.

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