and women, and to people from all ethnic backgrounds; indeed, this is at the heart of their philosophy since they are usually predicated on a principle of fundamental human rights and the dignity which should be accorded to all human beings. However, the underlying injustice which they actually seek to counter applies predominantly to women and to people from ethnic minorities. In seeking to treat everyone alike, the law in effect forces a male, ethnic majority paradigm on all. This, it is argued, may appear to produce equality but it is in reality only a formal, superficial kind of equality which reinforces the pre-existing hegemony.[20] In addition, as Fredman has pointed out, these types of model also ignore the fact that cumulative disadvantage makes it difficult for members of the disadvantaged group ever to attain the threshold of equal qualification or merit with the dominant group.[21] Furthermore, these models usually rely heavily upon individual action, normally through litigation, to vindicate the rights protected. They do not provide either the support or the subsequent legal protection offered by a collectivist or group-based remedy. In addition, they may never actually achieve legal redress, since there may never emerge a particular 'wrong-doer' whose actions can be challenged; many manifestations of disadvantage result from an agglomeration of factors and circumstances for which no one person or body may be legally responsible.

Some systems and some bodies of law therefore approach equality from a different angle.[22] Rather than attempting to be blind to differences, they actually focus on differences, especially those which produce disadvantage in practice, and in doing so they clearly come into headlong conflict with the basic non-discrimination principle. They characteristically aim for equality of results, but the extent to which they intervene into the activities of people and organizations varies considerably. In some, there is little more than an obligation to be aware of differences and to endeavour to offer equal participation to all. Others expressly require public authorities actively to promote equality of opportunity.[23] And some are openly re-distributive, for example allocating jobs and other opportunities on the specific basis of membership of an under-privileged group.[24] Such models are clearly, though to varying extents, in tension with the liberal, non-collectivist view of equality which sees it as an individual human right.[25]

[20] MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press, Cambridge, Mass/London, 1987); Fredman, 'European Community Discrimination Law: A Critique' (1992) 21 ILJ 119; Lacey, 'From Individual to Group' in Hepple and Szyszczak (eds), *Discrimination: The Limits of Law* (Mansell, London, 1992).

[21] Fredman 'The Future of Equality in Britain', op cit, n 12. See also Fredman, *Women and the Law* (Clarendon Press, Oxford, 1997).

[22] See further O'Cinneide, 'Extending Positive Duties Across the Equality Grounds' (2003) 120 EOR 12.

[23] Notable examples of this approach in the UK include the Northern Ireland Act 1998, s 75, and the Race Relations (Amendment) Act 2000, s 2.

[24] The clearest example of this approach in the UK is to be found in the Police (Northern Ireland) Act 2000; pursuant to the so-called 'Patten' reforms to the Northern Ireland police service, a 50:50 split between Catholics and Protestants was, on a temporary basis, required for recruits to that force.

[25] For a thought-provoking attempt to resolve this tension, see Collins, 'Discrimination, Equality and Social Inclusion' (2003) 66 MLR 16; the author asserts that 'deviations from equal treatment are required in order to achieve the distributive aim of social inclusion. This aim requires preference or priority to members of a particular group, if the group can be classified as socially excluded. The preferential measures required are those that will contribute to the reduction of social exclusion' (at 40).

It must be emphasized that these models are often much less distinct from one another in practice than these descriptions might suggest. Legal systems frequently blur the distinctions concerned, in particular by combining the principle of non-discrimination with a requirement to promote equality of opportunity and to celebrate diversity and pluralism.[26] Such blurring is sometimes also a consequence of the fact that a court may be required to enforce law from several different sources simultaneously. In addition, it should be acknowledged that different times and political climates require different and increasingly sophisticated responses, and that this is an area where one must therefore expect a constantly shifting legislative, as well as judicial,[27] response to society's demands. The title of the present work reflects the fact that the substance of most of the existing EU law in this area refers primarily to the principle of non-discrimination; however, it is not to be taken to preclude discussion of the concept of equality, which is (as will be seen) also often referred to both in the legislation and in judicial decisions.[28]

The dynamism inherent in EU law

EU law has proved an ideal vehicle for upholding the principle of sex equality, in part at least because of the EU's undoubted potential for growth. That growth has taken place, and continues to occur, in a number of different ways. With the expansion of the Union's concerns to cover other grounds of discrimination, it would appear well-nigh inevitable that what has been true in the past for sex equality will also hold good for other fields of equality law.

When the European Coal and Steel Community (ECSC) Treaty was concluded in 1951, and the Treaties establishing the European Economic Community (EEC) and European Atomic Energy Community (Euratom) were concluded in 1957, their chief instigators intended their immediate end to be economic welfare but their long-term goal to be political integration amongst the States of Europe.[29] The architects of the three European Communities had personally witnessed the destructive forces of nationalism; many had seen their countries overwhelmed and

[26] See Schiek, 'A New Framework on Equal Treatment of Persons in EC Law?' (2002) 8 ELJ 290.

[27] See, eg, Lord Lester's account of attitudes to discrimination expressed in the past by UK courts and judges in 'Equality and United Kingdom Law: Past, Present and Future' [2001] Public Law 77. See also the analysis of the EU case law on sex discrimination by Pager in 'Strictness v Discretion: The European Court of Justice's Variable Vision of Gender Equality' (2003) 51 American Journal of Comparative Law 553; the author there argues that the EU's judiciary adapts the level of scrutiny which it applies according to the nature of the provision under review.

[28] For discussion of the way in which the draft EU Constitution (examined further below) reflects notions of formal and substantive equality, negative and positive duties, and diversity, see Bell, 'Equality and the European Union Constitution' (2004) 33 ILJ 242.

[29] See in particular Ionescu, *The New Politics of European Integration* (Macmillan, London, 1972) and Kitzinger, *The Politics and Economics of European Integration* (Greenwood Press, Westport, Conn, 1963).