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## Equal Employment Policies for Women in the United States from a Comparative Perspective

This essay comes out of current work on my dissertation, which is a comparison of equal employment policies for women in the United States and West Germany and concentrates on patterns of policy-making concerning the transformation of gender and race inequality in the workplace. This paper touches a crucial problem in Western democracies, namely, how to achieve and secure a greater degree of equality among its citizens? Because work is at the heart of many equity issues, equal employment policies can give an excellent insight into the ideas and functions of the German and American political systems concerning equality.

What is especially interesting about equal employment policies for women is how the state interacts with society on this issue. My central questions are, first, what variables have determined the scope, development and content of these particular policies, and, second, how do they fit into the theoretical framework of "strong" and "weak" states?

But first of all: What *are* equal employment policies? Ronnie Steinberg-Ratner, an American sociologist and consultant for pay equity studies, defines them as policies including equal pay, equal opportunity and family policy. (1988: 307) "They encompass those policies and programs that aim at the removal of barriers preventing the full integration of women into the paid labor force." (1980: 41). The German translation would be "berufliche Gleichstellungspolitik." They are designed to deal with problems like low pay and exclusion from occupations. Women still earn about 2/3 of men's income, get less benefits and training, work mostly in sex segregated underpaid jobs and are responsible for most of the housework and childcare.

The field of Comparative Public Policy of which this study is a part compares policies in different sectors of one state or similar policies in different states. According to Arnold Heidenheimer and Hugh Hecló it is the "study of how, why, and to what effect different governments pursue particular courses of action or inaction" (1990: 3). What matters in comparative policy is the string of decisions that add up to a fairly consistent body of behavior sanctioned by government authority (ibid: 4). This is what I want to explore for equal employment policies, especially in the public sector.

In the course of the theoretical development of the field of Comparative Public Policy, one framework has been especially influential in determining research and explaining outcomes; this is the theory of the "strong" and "weak" states. "Weak" states are defined as decentralized, fragmented and adversarial, a description that is most often applied to states with a liberal state tradition like Britain and the United States. On the other hand, Sweden and Germany are seen as "strong", because the state is less fragmented, more centralized, corporatist and more autonomous from interest groups and capable to implement policies thoroughly. The characterization of a strong German state in comparison to the US. is, in general, undoubtedly true.

Nevertheless, we are confronted with a puzzle when we compare and analyze equal employment policies for women in the United States and West Germany: The "weak" American state has relatively strong equal employment policies for women while the "strong" German state has "weak" ones!

To explain the reason for this apparent paradox I shall describe the development of equal employment policies, their origins, means and goals (especially in the US) and attempt to fit these findings into the framework of "weak" and "strong" states. My own research has supported the thesis that equal employment policies cannot be explained monocationally, but must be placed into a historical, political and legal context that takes into account the political opportunity structure (ie. the party system, the bureaucracy, the judiciary and political ideologies) and the activities of interest groups. If we consider both of these aspects, we will find that since the 1960s both the American state and the women's movement have supported policies of formal equality, while in Germany the state and the social movements have traditionally often emphasized women's difference.

Because the US lacks a coherent family policy directed at the problems of equal employment, I will concentrate my analysis on the two most important approaches concerned with equal pay and equal opportunities: affirmative action and comparable worth. What is affirmative action and what is comparable worth and to whom do they each theoretically apply?

My research shows that the rationale behind *affirmative action* in the US is that because of past discrimination, some groups in society (especially the African Americans) are entitled to be hired and promoted into formerly exclusively white male occupations in representative and sometimes even higher percentages. That means that affirmative action applies to women who *compete* with men for job - like lawyers, for example. Because of a high degree of sex segregation in most occupations, this policy only applies to a minority of women, i.e. those who can and want to be integrated into the male workforce.

*Comparable worth*, on the other hand is an approach that applies to women in female dominated jobs, i.e. to the majority of working women. This approach questions the common assumption that women's work equals cheap work. Comparable worth demands equal pay for work of equal value, not for the same work only. Its advocates ask, for example, why employees in female dominated occupations such as nursing make much less than employees in male dominated occupations such as truckdriving even if these jobs require comparable or less training, skill and responsibility? One answer is that the value of women's work, which is often interpersonal, has been undervalued because these jobs seem to fall into the category of "natural" female abilities, such as caretaking.

Both West Germany and the US are advanced capitalist democracies with laws and policies concerned with women's rights in the workforce. Both countries are confronted with the reality of women's low pay and actual exclusion from many jobs, but they have taken very different paths in dealing with this problem. My dissertation goal is to describe the different paths that German and American policy-making took and my particular goal in this essay is to analyze the reasons behind the American path.

Steinberg distinguishes three different equal employment approaches: 1. the "discrimination" model, which perceives labor market inequalities as result of individual discrimination by employers, 2. the "affirmative action" model which assumes that occupational segregation and wage gaps are an inherent feature of the labor market, ie. a systemic problem and 3. the "expanding opportunities" approach which sees the source of women's market inequality outside the boundaries of the market and located within women's family responsibilities, lack of training and tenuous commitment to full time employment (1988: 320). While the US follows the discrimination and affirmative action model, Germany supports the expanding opportunities and the discrimination approach. This means that American policy-makers believe that the inequality in employment stems from individual and systemic discrimination, while in Germany equal employment policies are directed mainly towards problems outside the labor market, such as the need to improve women's education, etc.

I am interested in how these different policies developed on a national and state level, especially between 1963 and 1989. Therefore, I selected a state in each country in order to compare their equal employment policies. The fact that Germany and the US are both federal states makes it important to select a casestudy carefully. Size, density of population, degree of industrialization, laws, economic situation, political climate, etc. should not be too different from other states in the country, but must also be

comparable to the foreign counterpart. For my study I chose West Berlin and Massachusetts, because they are, in comparison to the rest of the country, both moderately progressive in their legislative attempts to institute equal employment policies. They are also important on the national political stage and probably will provide leadership to other reformist states. Furthermore, in both states a large segment of society works in the public sector. My research in Massachusetts mainly consists of the expert interviews I conducted with public officials and members of interest groups.

This paper is not concerned with equal employment policies in the private sector but in the state itself. I chose equal employment policies for female state workers because the state's function is not to maximize profit but to administer and implement laws and policies, including its own equal employment policies. Furthermore, a high number of women work for the state in both countries, so that the state's action or inaction concerning equity is a signal to society and the private sector as to whether equal employment policies are an important issue or whether they can be ignored. Analyzing equal employment policies in the state workforce is revealing, because it shows what priority equal representation and equal opportunity enjoy there and what stand the state takes toward issues of race- and sex-equality.

The dominant political-cultural ideology in the US. is liberalism, which is the basis for the strength of the concept of equal opportunities. Over the last century the American Constitution has been interpreted as including more and more groups under its promise that "all men are created equal." The expansion of formal rights has been enormous, especially after pressure was exerted to implement them. The activities of the Black Civil Rights Movement in the late 50's and early 60's and the political programs of Johnson's Great Society are the key to understanding the unparalleled dynamics in the build-up of equal employment policies:

The Equal Pay Act, passed in 1963, made unequal pay for equal work between the sexes unlawful. This law was followed by the inclusion of women into the Civil Rights Act of 1964 - the foundation and heart of all civil rights legislation - but it was originally meant as a "joke." A Democratic Senator from Virginia suggested to add the category "sex" to kill the bill, because the law guaranteed Southern blacks voting rights and prohibited racial discrimination. The bill passed despite the addition of "sex" and opened, in the decades to come, new access to jobs and training for millions of people, including many women (Mezey, 1992: 38). At the same time, an independent regulatory agency was created to monitor and enforce these new laws. This agency still exists and is called the Equal Employment Opportunity Commission (EEOC). It is a crucial institution for the development of relatively strong equal employment policies in the US. The commission symbolizes one of the decisive differences between

German and American equal employment policies, because Germany does not have an equivalent to this national institution. Germany, on the other hand, has an anti-discrimination article in its constitution from 1949 (Art. 3 GG), but it has been implemented slowly. Employment related equity issues in particular had to wait until the harmonization of European Community laws made certain adjustments inevitable in 1982. This shows that political pressure for economic equality of the sexes came mostly from outside and not from inside the German political system, ie. neither from social movements nor from the political parties.

It is interesting to note that the first American laws in the 60's regarding equality between the sexes have also developed without the pressure of a women's movement. In the case of the passage of the Civil Rights Act, the Civil Rights Movement was the decisive factor and the inclusion of "sex" was an accident. In the case of the Equal Pay Act we find an autonomous action by the state. At the same time, protective labor laws in many states were abolished with the support of employers, so that not only adjustment in pay between man and women was achieved but also the hardships of labour were adjusted.

When the Equal Employment Opportunity Commission (EEOC) was first created it was interpreted merely as a symbolic act towards the civil rights movement because it was a weak agency without enforcement power. However, policymakers underestimated its symbolic message because hopes in the country went up dramatically and the EEOC received a total of 52.000 charges in the first 5 years. 25% of these charges were concerned with sex-discrimination. Because of the high number of complaints, the EEOC was unable to process the charges and quickly fell behind with over 100,000 cases by 1975 (Mezey: 39). This ineffectiveness changed when Congress decided to give the EEOC more power and the means to achieve its objectives. The most important new instruments were: class action suits, the ability of the agency to sue in the name of a person, and the power to investigate a case by themselves. Furthermore, I want to mention the inclusion of state workers into the law by 1972. It took 12 years until the EEOC became an effective anti-discrimination agency on both nationally and the state levels. This development has been undercut by Reagan and Bush appointees. Still the agency is an important organization that can be revitalized by a President who wishes to further its objective. As Representative Pat Schroeder told me after a speech in November, 1992, President Clinton will revitalize the EEOC thoroughly.

Considering the nationwide presence of the EEOC, its litigative efforts, the number of cases processed annually, and the changed public opinion on different work-related

race and gender issues, I maintain that this commission plays a crucial part in strong equal employment policies in the US.

While the institutionalization and implementation of equal employment policies lie at the heart of their success it is important to consider how the legal system has dealt with demands for more economic equity. What has been the position of the Supreme Court towards these civil rights demands? I shall pick out some cases to show how important racial anti-discrimination laws have been for the development of equality between the sexes and how problematic the interpretation of "equality" has been at times: One important case is *Griggs v. Duke Power* (1971) in which the principle of the "disparate impact" was first used. The principle states that it is irrelevant if a company discriminates with or without intent. This is very important because it shifts attention away from individual to systemic discrimination. This reasoning has also been used by women's groups in their litigation efforts.

Another well-known case concerning equal opportunity is *Bakke v. University of California* which dealt with the legality of quotas. Here the term "reverse discrimination" is used for the first time as an argument by a white male student. The Supreme Court dismissed the argument because of the original intent of the anti-discrimination law which was to eliminate the continuing effects of past discrimination. At the same time it declared rigid quotas as unconstitutional. This meant that the Supreme Court sent a mixed message to the people: affirmative action: yes - quotas: no.

Another important case demonstrates that being a woman does not mean the same thing as being black (the phrase "women and blacks" excludes black women) and that it is sometimes useless to rely on the "race-analogy" (ie. equating race discrimination with sex discrimination). In the case of *General Electric v. Gilbert* (1976) the Court had to decide under Title VII if pregnancy had to be covered by health insurance, i.e. if pregnancy could be considered a "sickness." The claimant had argued that the refusal to pay was a discrimination against women. But the court decided that the company who refused to pay health insurance did not discriminate against women but against "*pregnant people*" and such people were not covered by anti-discrimination laws.

This controversial decision shows the inability of the judiciary to develop a theory that takes into account biological differences between the sexes without discriminating against women. In 1978 Congress decided to include pregnancy as a category in the Civil Rights Act. At last, 3 month ago, the long awaited Family Leave Bill was passed by Congress and made unpaid maternity leave possible. From a German point of view this basic legal recognition of women as mothers would seem to be long overdue. The

reason for the German perspective lies, I contend, in the orientation of German employment policies for women along the lines of family policies.

These various examples show that in comparison to Germany, where maternity leave and child allowances are an established fact, the US has weak family policies and women's "difference" is not taken into account. In contrast American policies emphasize equality of the sexes in male terms.

The last case I want to present is on the question of equal pay for work of equal value. In a Supreme Court case from 1981 (*County of Washington v. Gunther*) it was decided that female prison guards should be paid as much as male guards even though their work was not identical but comparable. This decision opened the doors for a new evaluation of the value of women's work and gave rise to the known as the concept of comparable worth, which led to policy changes in many states - including Massachusetts.

Along with the important variables that have influenced the development of equal employment policies for women we will now turn to the women's movement. What role did the American women's movement play in the development and implementation of equal employment policies? As we have seen, the federal equity laws in the early 60s passed without pressure from an organized women's movement, but were designed either inside the state bureaucracy or were unintended or passed because of pressure from the Civil Rights Movement. But, after 1965, the second feminist movement grew, organized nationally and locally, and became the driving force behind such important legislative changes as the revision of credit laws, Title IX (which is the anti-discrimination clause in the field of education), the Pregnancy Discrimination Act, abortion laws, and different issues of economic equity like affirmative action, comparable worth and sexual harassment. Their goals and successes lay mainly in the field of achieving "role equity," ie. equal access and opportunity for women, as Joyce Gelb and Marian Palley have found (1987). Those are goals that can be integrated very well into the prevailing liberal American discourse. The women's movement has also used litigation as a means for changes in the workplace, something German feminists have rarely used. Since their re-creation in the 60's and 70's feminist interest groups in the US. have functioned as lobbies, pressure groups, mobilizing grassroots organizations, networks and watchdogs concerning equal employment policies and their implementation. Without them even formal equality would be a distant goal in some political and economic areas.

These functions of the women's movement are also revealed in my research in Massachusetts, where affirmative action has been closely monitored by the women's movement even though they were not part of its original inception. The issue of

comparable worth, on the other hand, is connected from its beginning to both politically influential women inside the statehouse who are concerned with economic equity and to outside women's groups that lobby or organize for equal pay for work of equal value. Only reluctantly have other groups - such as the unions for public employees and civil rights groups - joined these attempts to increase wages for women in female dominated jobs.

Generally my research suggests three things: *First*, it suggests that different states handle the problem of inequality in female employment differently. American policymaking follows - with some exceptions - a line of formal equality for women that opens up many possibilities, but struggles with women's difference from men, especially with their reproductive role and its consequences.

Therefore, demands which are directed towards issues concerning equal opportunity have been more successful than "women centered" approaches such as comparable worth.

*Second*, my research suggests that something more than pressure from the feminist movement alone is responsible for favorable legislation: a. that other social movements can produce positive "spin-offs" and b. state agencies and individual decision-makers concerned with equity issues, like affirmative action officers, act as important agents in strengthening equal employment policies. These individuals often rely on the expertise and support of interest groups or even consider themselves to be part of them. The openness of the American political system, unlike Germany's, makes it possible that issues of gender equality find supporters over party lines and in the bureaucracy.

*Third*, it becomes clear that America's liberal ideology is receptive to arguments of sex equality as part of the basic belief in equal opportunity for all. This furthers formal equal employment policies for women.

Returning back to my initial theoretical framework of "strong" and "weak" states, I would like to suggest that the strength of equal employment policies in the US can be explained by basic beliefs in equal opportunity, a receptive political opportunity structure and a pragmatic integrationist women's movement. Insofar as equal employment policies are concerned, I would claim that the "weakness", ie. the openness of the American political structure, becomes its strength on the way to a more democratic society.

## Literature

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