

## Equal opportunity policy and feminist political science: the "invisible avant-garde" of governance research?

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Silke Bothfeld / Mara Kuhl

**Equal opportunity policy and feminist political science –  
the “invisible avant-garde” of governance research?**

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# Equal opportunity policy and feminist political science – the “invisible avant-garde” of governance research?<sup>1</sup>

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## Abstract

In Germany equal opportunity policy has been conducted from the beginning by forms of regulation, which are currently the subject of governance research. Feminist political science can thus offer important answers to the core questions of this new research perspective. By drawing on the main results of feminist research, the authors first clarify the boundaries of governance in the areas law, the economy, and social policy. Specifically, the diversity of forms and modes of governance will be illustrated for policies concerning wage equality, equality in childcare, and in administrative policy. In the conclusion the authors address the synergetic effects and the common concerns of feminist political science and governance research.

## Zusammenfassung

In Deutschland wurde Gleichstellungspolitik von Beginn an über Steuerungsformen betrieben, die heute Gegenstand der Governanceforschung sind. Die feministische Politikwissenschaft kann darum dieser neuen Forschungsperspektive wichtige Antworten zu ihren Kernfragen anbieten. Im Rückgriff auf zentrale Ergebnisse feministischer Forschung machen die Autorinnen die Grenzen der Steuerbarkeit in den Bereichen Recht, Ökonomie und Sozialpolitik deutlich. Konkret wird die Vielfalt der Gover-

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- 2 The author wish to thank the Volkswagen Foundation for financing her research visit to the Center for Social Policy (ZeS) Bremen, which made the work on the present paper possible.

nanceformen und -modi an der Politik zu Entgeltgleichheit, zu Gleichheit in der Sorgearbeit und in der Verwaltungspolitik herausgearbeitet. Im Fazit werden die Synergieeffekte und die gemeinsamen Anliegen der feministischen Politikwissenschaft und der Governanceforschung aufgezeigt.

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## Introduction

Despite numerous measures aimed at equal opportunities, the equal opportunity of women and men is not yet a reality everywhere in Germany. How can this continuing discrepancy between *de jure* and *de facto* gender equality be explained? If we conceive this phenomenon as the result of governance deficits, these deficits could be caused either by the particularities of the policy area and thus by the limited governability of equal opportunity policy itself. Or we must ask ourselves to what extent the selected instruments are suited at all for achieving the political objective. Parts of the feminist political science debate additionally point to the increasing neo-liberal dominance in defining state tasks as well as the resulting withdrawal of the state and the re-privatisation of the gender issue. Our hypothesis is that the typical structures, modes of action, and processes behind equal opportunity policy exhibit regulatory patterns which are currently addressed by governance research, meaning that equal opportunity policy could in fact be regarded as the “invisible avant-garde” of governance-related developments in mainstream political science. Moreover, political science gender research has already thoroughly analyzed the approaches, potentials, and boundaries of these governance-like forms of steering. Our second hypothesis is that scientific synergies could result from the merger of the insights from political science gender research and governance research. The former has identified the separation between public and private as a constitutive element of gender relations, pointed to the weak power resources of the networks of actors dealing with equal opportunity policy and accurately described the diversity, complexity and dynamics of the gender equality dilemma, which tends to normatively and cognitively overstrain state actors. These features of equal opportunity policy are addressed by governance research as perceived changes in social and political reality (Benz 2004; Kooiman 2003)]. These analyses not only distinguish between the instrumental and institutional level. They also identify a meta-level of state action, and thus raise questions about the democratic superstructure of political steering (Abels/Sifft 1999; Benz 2004; for gender research see for example Kreisky/Sauer 1997a; Sauer 2001). We believe that the paradigmatic shift towards the governance concept is an ideal window of opportunity to expand the base of political science knowledge on gender research and

that the merger of both approaches offers an added value for the analysis of other policy areas.

We conceive governance research as an analytical perspective that improves our understanding of political processes, which pre-structure the interactions between social actors from different backgrounds (politics, business, society). This view attaches great significance to institutions as framework conditions for human actions, but also assumes alternative steering instruments to regulation on the basis of laws as highly influential and conceives cooperation and communication between state and non-state actors to be policy-relevant mechanisms. Thus, in our view governance as a heuristic concept corresponds with the *broad* concept of governance in political science, which comprises the entire spectrum of state and non-state forms of regulation and possibility of combining them (see Mayntz 2006; Mayntz 2008) and simultaneously refers to the dimensions of the regulatory structures, the regulatory modes, and the processes of political action (see Schuppert 2008). We believe that these three dimensions are ideally suited for analyzing equal opportunity policy and will enable us to identify and explain its strengths and weaknesses.

In order to elaborate on our avant-garde and synergy hypotheses, we first would like to discuss the individual logics guiding human action during the establishment of equality in various different segments of society, while incorporating fundamental results from gender research in political science. In a second step we will examine three exemplary areas of equal opportunity policy with regard to their governance character and then expound on their specific structures, modes and processes. Thirdly, we will draw conclusions on the effectiveness of the forms of governance identified in equal opportunity policy, before we elaborate in an inevitably cursory manner on the insights resulting from the merger of both research perspectives and draw up proposals for the further development of the governance perspective.

## 1. The German gender regime: The equal opportunity policy arena

Gender equality is subject to the individual logics of different areas of society and thus also transcends the boundaries of activity of the ministries concerned with equal opportunity policy. The structural perspective of governance research emphasizes the interlinkages and interdependences, which pose high demands for state regula-

tion and/or coordination activities. This entails not only (technical) problems of coordination: different individual logics also comprise specific knowledge and normative standpoints. Identifying them and making them visible in policy analysis is the new aim of governance research (see Benz 2004 for an implicit view) – but at the same time an old focus of gender research in political science (see Kreisky/Sauer 1997b; Kulawik/Sauer 1997), which has subsumed this standpoint under the term of gender regimes.<sup>3</sup> This “meta-governance” constitutes the implicit, normative set of rules, which shapes the framework for action (Kooiman 2005: 169). In the following we will demonstrate how this varies depending on the regulatory area (law, economy, social affairs) and also has gender-specific ramifications.

### *1.1 Equal opportunities in the realm of law*

The state objective of equal treatment of men and women is institutionalised in the executive branch by the federal and state ministries for women’s affairs (for the structure and development of state equal treatment policy see Bothfeld 2005b). Within the legal framework, these ministries also interact with other institutions, for example the Ministry of Justice or the Ministry of the Interior. The implementation of laws is monitored by the judicial branch, which applies and interprets the legal foundations. The European Court of Justice also plays a significant role in the implementation of laws (see e.g. Wrase 2006, p. 89 et seq). The legal procedures of interpreting laws, of which the legal dogmatic (*Rechtsdogmatik*) represents a core approach in the German legal system, generally manage without incorporating knowledge from the social sciences. Not so much the social, complex reality – in this case the gender relations –, rather the concept of “legal reality” (*Rechtswirklichkeit*) is the basis for action. Thus, the individual logic of the legal system potentially is opposed to the implementation of political and social learning processes (see Krautkrämer-Wagner/Meuser 1988). The actors of the German legal system have undergone learning processes –

3 “A gender regime describes the formal and informal authority structure of political power along gender lines. A regime comprises institutions and organisations as well as norms and discourse. Gender regimes govern the relation between the sexes, access to resources and to positions of power as well as the perceptions of and attributions to women and men.” (Rosenberger/Sauer 2004, p. 259)



in particular due to the intervention of women seeking equal treatment by law (see Czelk et al. 2006) – on which we can distinguish three phases.

In the first phase the gender equality issue was addressed on the basis of the perception of the relation between women and men as being complementary. Due to the principle of equal treatment, the biological difference was no longer to be drawn on as justification for legal incapacitation. However, the principle was exclusively understood in formal and legal terms and only made the abolishment of directly discriminating laws necessary. This policy was pursued into the 1970s, in particular through the jurisprudence of the German Constitutional Court (Wilde 2001: 139 et seq). Increasing political interventions by women's advocates and the legal distinction within the concept of discrimination between indirect and direct discrimination (see Pfarr/Bertelsmann 1989) led to the recognition of gender as a social structure category in the second phase. The principle of equal treatment was increasingly interpreted as a guarantee for an equal "legal status of women, which signifies besides the equal legal protection and equal legal relief above all the equal efficacy of rights and laws in the social areas of politics, family and professional life" (Wilde 2001: 149). Gender equality was no longer seen only as issue of equal treatment but also as matter of equal opportunities.<sup>4</sup> The representation of women (descriptive representation) and their interests (substantive representation)<sup>5</sup> were considered core factors for the realisation of gender equality. Besides the ban on discrimination, a differentiation imperative in cases of social inequality applies ever since (ibid., p. 148). Moreover, changes in the understanding of law also changed the role of the state, which was mandated with the "actual implementation of equal rights for women and men and [to] take steps to eliminate disadvantages that now exist". (Art. 3 II 2 German Basic Law Code) due to changes to basic law in 1994. Various implementation laws, such as the gender equality acts for the state and federal administrations and the Composition of Federal Advisory Bodies Act (*Gremienbesetzungsgesetz*) were passed. They provide the framework for organisational instruments for the planning and implementation of equal opportunity measures. In the third phase a correction of the androcentrism in law became evident: Various matters which previously had not

4 The German Federal Constitutional Court further specifies equal treatment as the "establishment of factual opportunities to equal participation, factual freedom to choose without the reinforcement of handed down role expectations, freedom from discrimination as well as the compensation of disadvantages, which typically affect women" (see Federal Constitution court cit. in Wilde 2001, p. 148 and the summary of various rulings in Baer 2002, p. 53).

5 For the term representation see (Mazur 2002).

attracted attention due to an assumed gender-neutrality were now recognised as requiring a regulatory framework, for example the gender-specific protection requirements of weaker partners (in contract).<sup>6</sup> With this the lawmakers endorse the implementation of the state monopoly of power in areas previously regarded as “private” as well (see Dackweiler 2002). Starting in 2000 the repertoire of action for equal opportunity policy was expanded with the introduction of a strategy which directly focuses on administrative activities. This strategy of gender mainstreaming<sup>7</sup> was then adopted by the Common Rules and Regulations of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien*). It can be considered as the realisation of equal opportunity policy as the “operationalisation of the right to equality” (Baer 2002).

## 1.2 *Equal opportunity in the economic sphere*

The fundamental conflict between capital and labour is structured in Germany by means of neo-corporatist forms of regulation, i.e. the participation of the social partners in state regulation, as well as self-regulation by means of wage autonomy which is stipulated by the German Constitution. However, gender policy interests not represented by interest associations are blended out by such regulatory models, that organise interests into a hierarchy, promote occupational segregation, and marginalise women’s interests in political and organisational terms (Neyer 1997: 93).<sup>8</sup> The hierarchisation of different interest constellations is manifested above all by the adherence to the traditional concept of labour, which is aligned with masculine patterns of work and availability. This results in an andocentric perception of work, gender-specific segregation, and gender-specific differences in income.<sup>9</sup> Problems of gender equality related to economic institutions additionally result from the alignment of social protec-

6 Examples of this are the Employment Protection Law of 1994, the Violence Protection Law and the Prostitution Law (both 2001).

7 “Gender mainstreaming is the (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making.” (Council of Europe 1998):

8 This raises the governance-related issue of the relationship between input and output legitimacy. For a discussion of the “interests” from a democracy theory standpoint (Köpl 1997: 77).

9 Using the example of part-time employment in particular, labour (market) research has demonstrated that women work in less adequate and recognized forms of employment (for a summary see German Federal Government / Bundesregierung 2001).

tion systems towards normal employment conditions. In contrast to men, women amass the economic dependency on work (commodification) with the dependence on a “male breadwinner” conditioned by the social allocation of roles - as long as they are not to the same extent gainfully employed (for the German term Familiarisierung see Appelt 1997)<sup>10</sup>

Alternative concepts of regulating labour conditions (see Kurz-Scherf 2005) imply the rejection of the normal employment relationship which is typical for the Fordist production system and requires the gender-specific division of labour. Hence the promotion of part-time work generates parallel practices, but does not challenge the norm. In the labour unions there has also been a lack of understanding for the problems stemming from the impact of economic institutions and neo-corporatist behavioural logic on gender relations. Like in all political organisations, this resistance to the incorporation of feminist objectives can be explained by the “mannedness” i.e. the descriptive over-representation of men, and the formation of “men’s alliances” (Kreisky 1997) in the labour unions, which have a negative impact on the internal democratic gender structures and the aggregation of gender-related knowledge in the organisational process (Bothfeld 2005b: 3045).

The crisis of the Fordist model of regulation does not inevitably lead to an erosion of the division of labour between women and men. Instead the neo-liberal demands of labour market and social policy reforms have a paradoxical impact on gender relations: on the one hand demands are raised for consistent individual responsibility, while on the other hand the dismantling of social protection measures and the enhancement of the principle of subsidiarity increase the dependencies within a partnership (Berghahn/Wersig 2005; Pühl 2004). Even though it is evident that these re-commodification effects exert pressure on antiquated roles and models, one must consider that the lowering of protection and security standards not only increases gender-structured social inequality (poverty, precarious employment) among other things, but that the structures of social recognition (attitudes and values) and thus notions of justice and mutuality also change altogether. Thus, there is reason to fear that basic attitudes motivated by solidarity can be replaced with individualist utility-maximizing rationalities which decrease the acceptance of emancipatory equal opportunity policy.

10 For the role of the basic income in the rectification of this relationship of double dependence, see (Pateman 2004).

### *1.3 Equal opportunities in the social sphere*

State actors are faced with a dual problem when enforcing equal opportunity measures. They must decide for an understanding or concept of equality and they must decide whether state interventions are to lead to the enforcement of gender equality directly, indirectly or not at all, e.g. when a specific area of gender relations is regarded as “private”. To what extent should the social activities such as employment and care activities, which are differently connoted according to gender by the state welfare institutions, be recognised as having equal or unequal political status? The impact of welfare state institutions has been examined on the basis of the concept of the “male breadwinner” (Lewis 1992), while (female) inequality theorists point out that material as well as non-material goods are crucial for equal status in society (Fraser 1996). Only an understanding of inequality that takes the distribution of material and non-material goods (e.g. leisure time, respect) as well as the distribution of obligations into account (see Orloff 1993) can be instrumental in the creation of true social equality. Such notions are implicitly embedded in the institutions dealing with gender and family policy, as well as the debates and programmatic principles of the political parties<sup>11</sup>.

With regard to the decision on legal intervention, it is crucial to challenge the purported neutrality and the separation of the public and private spheres. After all the state is never neutral, rather defines alone through its actions what is to be regarded as a “public matter”. Furthermore, it constitutively intervenes into the identity of people as citizens by guaranteeing state objectives and regulating collective matters (see Baer 2006). To this extent the “private sphere” is also never free of the state (Berghahn 1997: 205), rather the state creates incentives for private conduct in accordance with gender-policy models. With its slogan “The private sphere is political” the women’s movement demonstrated that inequalities in power between men and women result from the positively sanctioned separation of the public and private sphere. Women’s and gender research has thoroughly examined the “structure-forming force (...) of the exclusion of women” for the emergence of the political public (Habermas in Sauer 2001: 135) as well as the economic and political relevance of

11 For gender models in the center-right Christian Democratic Union see Reichart-Dreyer (Reichart-Dreyer 2005).

this separation (see the volumes by Behning 1999; Kerchner/Wilde 1997) and thus “radically challenged the historically institutionalised relation of separation between the public and private sphere as a hegemonic” (Sauer 2001: 186).

This cursory and selective overview of the “meta-level” of the gender regime thus already indicates that the desired effects, i.e. the creation of legal, economic and social equality, can hardly be achieved with traditional hierarchical state regulation. The governance perspective makes the interlinkages between different coordination structures understandable, while making existing modes of action and processes visible and thus useful for political and practical action.

## 2. Forms of governance in equal opportunity policy

In the following we wish to illustrate the significance of the three dimensions of governance in all three areas of equal opportunity policy: wage equality, equality with regard to childcare and gender mainstreaming in public administration. It will become evident that very different instruments are combined and modes of governance developed depending on the specific issue.

### *2.1 The problem of wage equality*

The difference in wages between full-time employed women and men is still over twenty per cent in Germany and thus unchanged to date. The reasons for these wage disparities are sufficiently clear – they result from labour market segregation, the differential recognition and assessment of typically male and female labour (indirect discrimination) as well as direct discrimination (Bothfeld/Ziegler 2005). Potential political measures would be to influence the career selection behaviour of young women, support women in career advancement, influence wage agreements based on work evaluation as well as a substantial ban on discrimination. Very different actors would be affected by such measures.

At an individual level, career selection and the orientation towards and support of career advancement, which result from complex interactions between selection and self-selection mechanisms, operate as segregating behavioural patterns. Biographi-

cal experiences and the orientation towards gender-typical models potentially contribute to strengthening these mechanisms. However, long-term panel studies show that we can hardly assume that the orientation towards (full-time) employment among young women has increased over time despite an increase in regular employment among women (Schmidt/Schmitt 2005). Above all though, social role attributions and their social sanctioning mechanisms, which come to bear in all social interactions, offer incentives for certain types of behaviour. Political actors responsible for the further development of institutional framework conditions, or e.g. implement labour market policies, are not necessarily aware of this gender-specific impact (for the case of career counselling see Ostendorf 2005). The willingness of social and political actors to acknowledge and/or promote new types of behaviour not (yet) acceptable for a majority thus calls for a high degree of openness and ability to learn among actors (Bothfeld 2005b: 305 et seq).

At the meso-level equal opportunity plans for the workplace reflect the consensus of the company actors for an objective as well as the appropriate instruments. However, their agreement is not obligatory, because the equal opportunity laws only institute "state regulated self-steering" (Schuppert 2005: 402) for the federal and state administration. By lack of further legal specification economic actors are individually responsible for respecting the principle of gender equality. Nevertheless according to the Work Constitution Act (*Betriebsverfassungsgesetz*) the works councils may regulate measures to support women and wage equality by means of company agreements since 2001 (for a first assessment see Klenner/Lindecke 2005) Since the mid-1980s there have been workplace activities, which are usually carried out in cooperation with women's advocates from labour unions and primarily aimed at the re-integration of women returning to their careers.<sup>12</sup> Only more recent equal opportunity strategies contained regulations on career advancement as well as training or mentoring programs, which aim to change the objective and subjective framework for action for women (see Krell 2004). The success of this strategy based on voluntary cooperation is dependent on the support from powerful actors (Schumm 2000). Even though the view has prevailed in some segments of the business and commerce sphere that the preservation of female human capital can also be advantageous from a micro-

12 According to the Maternity Leave Law of 1979 only one leave of absence and guarantee of further employment was provided by law for the duration of six months. As a result, a longer leave of absence resulted in the termination of the employment contract.

economic perspective, this likely only applies in the high-qualified segments of the employment system which are characterised by large companies.

Thus coordination structures have emerged within the framework of the applicable legal provisions that provide structure and shape beyond the mechanisms of hierarchical steering. The business-oriented networks of women's advocates do preliminary work for company-based equal opportunity policy, which the Federal Ministry can draw on. In the 1990s the scientific analysis of the regulatory potential of actors from labour unions and businesses was encouraged (Bäcker/Stolz-Willig 1994) and the federal competition for "Family-Friendly Firms" developed. The female works council members and their networking activities in particular with the local female union representatives in the accumulation of specialised and detailed knowledge played a central role here. However, this pertains not only to knowledge on causal relations and legal consequences, but also to "normative knowledge" on the needs and wishes of the female employees (for different categories of knowledge see Nullmeier 1993). Incidentally, the accumulation of knowledge, the definition of problems and the creation of instruments by the female business actors also clearly fulfil the requirements of the principle of deliberative democracy.

Direct discrimination when setting wages in employment contracts, which ultimately accounts for a third of the gender-specific wage differences, results from the economic logic of action of employers striving for the greatest possible profit (see Sunstein 1997). Due to theoretical considerations in terms of wage efficiency, employers could certainly be interested in the principle of gender equality to sustain the motivation of female employees. Yet this only applies to those firms, in which the commitment and motivation of women appears to be important from a micro-economic standpoint. However, in most cases efforts to reduce wage expenses makes cooperation with equal opportunity policy actors more difficult.

It is not self-evident that union wage policy-makers deal with this problem, as it is only kept on the agenda due to the activities of women's advocates from labour unions. The resource of the women's advocates is their specialised knowledge and networking activities which have developed by means of their long-term strategy of coordination and cooperation between female advocates from businesses and labour unions. Within these (non-state) networks, the problem of wage equality was defined as such, knowledge on causal relations accumulated and scientific research on this issue encouraged, while solution proposals were ultimately developed. However,

these networks prove to be insufficient in cases in which no consensus can be reached on the policy aim and the measures to be taken. The relative powerlessness of women's advocates results here not only from the classic clash of interests between employer and employee representatives though, as all employee matters are equally affected by this, rather also due to the lack of a "power-political backdrop". This can be traced back to the circular nature of the organisational aggregation processes of labour unions' equal opportunity policy (see Bothfeld 2005b: 237 et seq) as well as the lack of powerful actors in the essential decision-making networks who are simultaneously interested in equal opportunity policy. As a result, equal opportunity policy actors cannot fall back on the organisational resources in wage equality policy. Even if the wage-based assessment of labour changes and indirect discrimination is thereby decreased, the problem of direct discrimination at the company level would remain. This power imbalance can only be changed by two measures: legal codification of a ban on discrimination and the allocation of instruments to enforce it. Paragraph 611a of the German Civil Code (BGB) was previously the only narrow basis for legal action due to wage discrimination.<sup>13</sup> The European provisions, which are binding for German courts, are only applied in individual cases. However, the equal opportunity policy activities of the German Federal Government were limited to the definition of the problem of wage equality until very recently<sup>14</sup> and are characterised by their repeated renunciation of substantial regulation (see e.g. Koch 2003a; see e.g. Koch 2003b). The legislative bill presided over by the cabinet in 2001 would have created an effective and acceptable framework – at least for employees –, which obligates firms to apply the principle of equality, but would have left the development of appropriate instruments up to them. At the same time, the affected women and their representatives would have been given strong leverage in the form of a substantial right of the employees associations to take legal action (*Verbandsklagerecht*), because the individualised legal procedures would have been replaced by a right to take collective action (Pfarr 2001). This strategy would have changed the balance of power on the firm level and restricted the autonomy of businesses to the favour of the enforcement

13 The paragraph bans discrimination on the basis of gender by employers e.g. in hiring procedures. Originally the so-called "Porto-Paragraph" (Postage Paragraph) did not lead to any notable claims for damages, as the first women who were compensated for discrimination according to this regulation were reimbursed the postage costs for their candidature. This regulation was then reformed several times subsequent to rulings of the European Court of Justice (see Kocher 2004). Monetary compensation can now amount to several months' wages.

14 For a first report on women's labour conditions including wage inequality see (Bundesregierung 2001)



of equal opportunity. However, the new General Equal Treatment Law (*Allgemeines Gleichbehandlungsgesetz*) does not correspond to this very gender-based diagnosis of the problem, as it is still only possible for individuals to take action against discrimination within its framework. The example of equal opportunity in the private sector thus makes it clear that the coordination and governance structures are very complex and build on the cooperation and coordination of various non-state actors, while the framework conditions are to be laid down by legislation.

## *2.2 Equality in childcare*

Not only employment conditions, but also care and support activities are still divided between women and men in a highly unequal manner. Biographical experiences involving the internalisation of behavioural norms as well as the normatively pre-shaped patterns of conduct in concrete decisions-making situations and institutional incentives provided by taxation and social laws can be regarded as factors resulting in the gender-specific uneven distribution of labour. The policy field for equal opportunities in society is thus for the most part normatively structured, while negotiated clashes of interests between men and women in which individual-rationalist utility-maximizing orientations come to bear, only play a secondary role (for deeply anchored conservative views in Germany see Kolbe 2002; Schütze 1986). Those majoritarian normative structures are reflected by recurrent media debates, but also by the results of empirical attitude surveys.

The “compatibility regime” (*Vereinbarkeitsregime*) designates rules on leave of absence, work-time flexibility, and childcare. It also is impacted by the social protection systems and the income tax system ( for an overview see Bothfeld 2005b: 57; Dingeldey 2001) as well as the regulation of employment conditions themselves. From the governance perspective, institutional steering is discussed under the label of “second-order governance”, which defines the structural conditions of technical steering (first-order governance) (Kooiman 2005: 163). Here the sanction or incentive (constraint) character as well as the orientational function of institutions, i.e. their “fa-

cilitating” character must be taken into account (Göhler 1994).<sup>15</sup> This notion is important for gender equality in society, because “the normative aspects of institutional steering [...] are of crucial significance, in particular at the line of demarcation between the state and society and the public and private sphere (Kooiman 2005: 166). From this perspective, governance not only takes place intentionally and by means of singular measures, but through the interactions between a broad array of regulations and programs, whose relevance and mutual interplay are in part difficult to discern. This makes it comprehensible that explicit attempts at steering can indeed produce incoherencies or contradictions in the respective “governance regimes”.<sup>16</sup>

Thus how do state policies now attempt to ensure true “freedom of choice” with regard to the division of childcare? The parental leave reform of 2001 indeed reflects a move away from the model of gender-specific work division, because it increases the scope of activity of mothers and fathers. For example, the entitlement to long-term family leave was individualised, the right to part-time parental leave introduced and the period of entitlement made more flexible (Bothfeld 2005b: 30). For the first time it has essentially enabled and institutionalised the simultaneous – and even part-time – entitlement of parents to go on absentee leave, and the previously clearly norm-based attribution of roles has been supplemented by an egalitarian model. The Parental Leave Benefit Law (*Elterngeldgesetz*) of 2006 draws on two gender-policy views. It follows the scientific insight that the loss of income from work has been the most important reason why fathers have abstained from their right to parental leave (BMFSFJ 2004), and that – based on Swedish experiences – the “father months” indeed are an incentive to make use of their parental leave privileges. The new parental leave benefit payments now allow couples to openly negotiate the division of work, because the now lost income is replaced up to 67 % by the parental leave benefit payments.<sup>17</sup> However, inconsistencies and contradictions come to bear here

15 To this extent, institutions should not only be understood as “coagulated interests”, rather as “coagulated ideals”. This makes the assumption of the neutrality of the impact of institutional framework conditions appear naïve.

16 For governance research this implies what feminist research in social policy and welfare state analysis already practices: the systematic identification of “regimes”, “i.e. institutionally framed interactions between state and non-state actors and under certain institutional framework conditions which make certain behaviour more likely” (Kooiman 2005).

17 The limitation to employed parents results from the calculation method, which only takes into account income from employment, but not unemployment compensation or repayable student grants (BaföG) or the like, which would reduce parental leave benefits in the case of previous non-employment. However, a basic allowance of 300€ is generally paid out for a duration of 12 months regardless of income.

as two implicit incentives for the traditional division of work still exist. Firstly, the regular duration of twelve plus two months also allows for the traditional division of work, because the “father months” are additionally granted. According to the law, it technically would have been possible to stipulate seven months for both parents. Yet this option was rejected, because it would have meant a reduction of the entitlements of women not living in a partnership with an egalitarian division of work. This very issue led to the failure to introduce the “father months”, which had already been negotiated in 2000. Hence, despite the narrow financial framework additional months were ultimately agreed on. Secondly, parents, who opt for an egalitarian division of work, and e.g. at the same time lay claim to part-time or divided parental leave, are at a disadvantage because the law has specified 14 months as the maximum period of entitlement. If the parents claim the benefits only on a part-time basis (if e.g. both reduce their working time to half of the regular time because both parents wish to go on parental leave at the same time), the partial claims are then nevertheless fully credited to the overall duration. This means that both parents are only entitled to simultaneous parental leave benefits until the child’s eighth or ninth month (including two-month maternity leave). The highest amount of child benefit payments is reached when both parents sequentially take advantage of parental leave benefits on a full-time basis i.e. with a total absence from work. Thus from an economic standpoint, the most egalitarian form of work division is the least beneficial option. A budgetary provision – with benefits up to a full wage replacement rate during the first 14 months being paid regardless of how parents would divide work during 12 months - would have guaranteed more freedom of choice than this arrangement.<sup>18</sup>

Above all though, systematic coordination with the development of the childcare possibilities is lacking, in particular with regard to care for children of 0-3 years. This can be primarily traced back to the coordination structures of the German federal system (Evers et al. 2005). Beside the reinforcement of the legal regulation that stipulates the expansion of child care facilities for under 3 year-olds until 2013, the German Federal Government has mainly focused on the self-regulation potential of local actors who are supposed to coordinate and develop local family-policy activities within the framework of “Local Family Alliances”. From the perspective of governance theory it is interesting that the incorporation of new actors is leading to a re-definition of politi-

18 Perhaps the authors of the law underestimated the consequences of the wording, or the indirect economisation effects were desired for financial reasons.

cal objectives. The expansion of childcare is no longer primarily about removing the burden of family care from women based on gender-policy considerations, rather an “investment” in the human capital of future generations. The incorporation of the Federal Ministry into this new strategy indeed gives an impetus to equal opportunity policy objectives, but generally social policies based on social investments cannot be expected to realise emancipatory political objectives (Jenson 2004). Addressing the question of gender equality, the policy field of reconciliation of paid work and family work thus sheds light on an interesting phenomenon: the extent and the direction of state intervention reflect the lack of political consensus on the regulatory objective and the fact that political actors do not wish to prescribe *one* particular pattern of social behaviour. The framework for institutional governance is also a potentially relevant mode for other policy areas, in which no consensus exists on the extent and necessity of state intervention and/or the state regulatory objective deliberately left unspecified.

### *2.3 Equal opportunity in public administration activities*

The development of the state objective of gender equality by equal treatment in formal terms towards actual equal opportunities mirrors the fact that political actors increasingly recognise the complexity of gender relations. The imperatives for state action thus have become very demanding and the state has come to the fore as the “producer” of gender relations (by means of institutional provisions) and of equality (as a central actor). However, the state is also subject to typical organisational obstacles to the realisation of gender equality. A structural problem is the underrepresentation of women in decision-making positions. Furthermore, the typical dynamics of organisations as well as the cognitive aspect of “gender knowledge” are worthy of mention.

Along these lines “social processes can be characterised as having their own momentum when the motives for action of the involved actors are reinforced through interactions between them (...)”. The involved actors often do not react to the actual behaviour of other actors, rather orient themselves towards their expectations on this behaviour.” (Mayntz 1995: 11). In this respect, micro-political processes can run counter to the momentum of regulatory intentions (ibid p. 10 et seqq). This means

that in organisations in which gender equality – in particular among leadership positions – has little prestige or even is viewed as superfluous<sup>19</sup>, this topic remains at the level of symbolic politics. The momentum of social processes makes it unattractive even for women themselves, whose very interests are primarily concerned, to deal with issues of equal opportunity.

An additional problem in the governance of gender equality concerns fundamental, cognitively determined behavioural orientations, which make it difficult to recognise the need for action with regard to equal opportunity policy. These are notions and certitudes on gender and gender relations, which have been analyzed on the basis of the concept of “gender knowledge” (Andresen et al. 2003). The empirically proven gender knowledge of administrative employees and state officials, which corresponds with the everyday understanding of gender (Andresen 2003: 57), is based on a universalistic understanding of equality. Men and women are subsumed under the label “humans” and the identification of humans as men or women, which takes place spontaneously in interpersonal interactions, and the corresponding adaptations of behaviour and processes of attribution are negated. Because people “to a certain extent are ‘de-gendered” (Dölling 2003: 199), the administrative employees do not understand gender relations as a professional aspect of their work and do not view the administration as a producer of gender relations and gender equality. This is reinforced by institutionally shaped behavioural orientations, such as the definitions of objectives of administrative action (Mayntz/Scharpf 1995: 52).

The new strategy of gender mainstreaming is conducive to the realisation of gender equality in and by means of state institutions, in particular through the assessment of the impacts and consequences of state actions on gender relations. GM aims at structuring political *processes*. Accordingly, everyday organisational conduct is considered to provide a contribution to the development of gender equality, which is to be achieved both through institutional and organisational modernisation as well as through the professional competence of the employees. As a cross-section strategy for equal opportunity policy GM is thus supposed to lead to the systematic consideration of the different social circumstances of men and women, in order to prevent unintended discrimination effects resulting from programs supposedly developed as gen-

19 For this reason the statement of the former German Chancellor Schröder, who called the BMFSFJ the “Ministry for making a fuss” (*Ministerium für Gedöns*) is not trivial either. Evidently, clearly expressed positions of powerful people (in terms of discourse) ultimately structure the expectations and the behaviour of subordinates.

der-neutral. Gender Mainstreaming is implemented by instruments of administration modernisation (see Kuhl 2007), such as impact assessment and knowledge management, and by now in all EU member countries.<sup>20</sup>

Through the regulation of gender equality by GM, equal opportunity policy is interlocked with the organisational development for the first time. The introduction of GM in European administrations is the result of political learning processes (see Callenius 2002; Woodward 2003) and can be understood as a “request for organisational learning” (Bothfeld 2005a: 131). In 2000 the Federal Government added GM to the joint rules and procedures of the federal ministries as a universal guiding principle. Their implementation in the Federal Government involves an entire catalogue of measures, of which the regulation of the implementation processes as well as knowledge management will be particularly elaborated on here, because they can be conceived in terms of meta-governance as “changes in the impact of institutional rules which guide behaviour” (Benz 2004, p. 20).

Under the auspices of the Federal Ministry for Family, Seniors, Women and Youth (BMFSFJ) an interministerial working group (IMA) consisting of the top administration of all ministries (department management) agreed on an implementation concept.<sup>21</sup> It provided for a target agreement between the IMA members. The objectives included, among others, the visible commitment of the management level to GM (top-down principle), the development of instruments for implementation (e.g. impact assessments with regard to gender equality, further training for the implementation of GM and for the integration of the equal opportunity policy into the professional activities of the ministries and testing implementation by means of pilot projects. The IMA was the steering committee, to whom the ministries had to report on implementation, for which the individual ministries were responsible themselves. The secretariat of the IMA, the later department for Gender Mainstreaming in the BMFSFJ, assumed responsibility for the compilation of the overviews of the reports for monitoring purposes (for a more detailed analysis see Sellach et al. 2006).

20 After the United Nations in 1995, the European Union recommended the member countries this new strategy for equal opportunity policy. The main documents for GM are among others Article 2 and 3 of the Treaty Establishing the European Community (ECT) and the overall strategy of Community to promote the equal treatment of men and women (2001-2005). For a comparative account of Gender Mainstreaming and other equal opportunity strategies see (Stiegler 2005).

21 The site of the German Federal Government on GM, which includes implementation reports among other things: <http://www.gender-mainstreaming.net/>

During the first three years of implementation the IMA and the Secretariat of the IMA were advised and accompanied by scientific experts. Several ministries cooperated with external gender experts while integrating the equal opportunity measures in organisations and/or gender aspects in various policies. Altogether a total of 34 pilot projects were implemented in all ministries. The aim was to evaluate the learning processes on the integration of gender equality objectives into the professional activities for their application in everyday practice. This resulted in five manuals which were agreed in the IMA for all ministries. However, their application was not declared to be obligatory. During the first phase of implementation (2000-2003) a need for knowledge had become evident with regard to the GM strategy and gender relations in the fields of activities of the ministries. To support the equal opportunity activities of public administration, the Federal Government therefore decided to establish a Gender Competence Center at the Humboldt University in Berlin.<sup>22</sup>

How can we now interpret the impact of this new strategy? By obligating management staff to accompany the implementation process top-down in a visibly partisan manner by means of the target agreement, an attempt was made to avoid the hostile attitudes towards gender equality issues and their underlying momentum. For example, the internal IMA reporting obligations in combination with the target agreement triggered constructive dynamics, such as competition between the ministries. Furthermore the orientation towards gender equality was postulated as a new quality criterion for activities in public administration. This heralded a changed behaviour of management staff, because the rules of distribution for the recognition of achievements were now to be shifted. Such a new criterion creates the necessity to expand one's own professional knowledge as well as the organisational knowledge base, while using already existing knowledge. The testing of GM in pilot projects created institutional "learning spaces" for the acquisition and accumulation of gender knowledge. The content of these learning processes was "third-order learning", which was concerned with the "re-formulation of political objectives" as part of a paradigmatic change (Bothfeld 2005a: 133). In the case of GM this is a new understanding of gender and gender relations (gender knowledge) and an orientation towards gender equality in professional work. In order to enable employees to engage in long-term political learning the access to knowledge is an important condition (ibid, p. 131 and

22 Gender competence signifies the ability to recognise and understand the impact of gender as a social structural category and implement this knowledge in professional activities.

p. 149). This access was partly made possible by means of cooperation with generally recognised experts and institutes dealing with gender research. As a result, the knowledge base of women's and gender research as well as societal groups with an equal opportunity policy profile (e.g. from youth welfare services and the health sector etc.) gained plausibility and normative acceptance (see Bothfeld 2005a: 131). At the same time, their own resources were safeguarded through internal administrative knowledge management (e.g. the specification of quality criteria in the assignment of ministerial research jobs).

The shift of the formulation of objectives away from the political arena into the specialised departments of public administration can be interpreted as the realisation that political actors are overburdened<sup>23</sup>. Equal opportunity policy aims can now be developed with the specific knowledge of the logics underlying the respective policy areas. This offers opportunities to no longer define area-specific and equal opportunity policy goals as a conflict of aims, rather in a synergetic manner. However, this simultaneously leads to the danger that the area-specific actors do not (yet) have sufficient knowledge on gender relations and that therefore processes with a dynamic of their own cannot be influenced after all. In this case, the result of GM would be the decentralisation of the authority for equal opportunity policy into the "institutional no man's land" with the negative side-effect of undermining the position of equal opportunity policy actors. Since the results of the pilot projects do not yet appear to have been translated into everyday practice, the question arises whether the implementation of GM is binding enough and in particular whether learning processes are sufficiently institutionally safeguarded, in order to prevent such a development in the long-term.

### 3. Equal opportunity policy as the "invisible avant-garde" of governance research

From the very beginning of the state institutionalisation of equal opportunity policy, actors drew on a broad array of hierarchical and non-hierarchical modes of regulation as well as combinations of them. A particularly innovative example is the develop-

23 As shown by legal developments (see above) the political actors have so far abstained from defining objectives with regard to gender equality and left the further specification of the state objective up to the Federal Constitutional Court. The lacking political specification of equal opportunity objectives in various policy areas has been identified as a problem for the effectiveness of equal opportunity policy (see Henniger/Ostendorf 2005, p. 31).



ment of organisations to implement political aims under the label “governance through political learning”. The features which governance research describes as expressions of changed realities also characterise the policy area of equal opportunity. One particularly observed problem with regard to wage equality concerned the effects of self-regulation by the social partners and the women’s advocate networks and thus the formation of non-hierarchical regulatory *structures*. The segment on the parental leave provisions illustrated a special *mode* of regulation, namely framework regulation by means of an institutional regime with its (intended and non-intended) effects. Using the example of GM, we demonstrated how typical self-regulatory instruments were complemented by learning *processes*.

Yet how can we now assess the impact of these forms of governance? The logics of action and individual logics of various policy areas make it difficult to regulate equal opportunity policy and push modes and instruments of governance to their limits. With regard to wage equality, self-regulation already developed at a very early stage through networks of women’s advocates, who in turn developed the corresponding instruments (Kooiman 2005). However, since they lacked access to neo-corporatist and state committees due to the mechanisms of representation and informal rules, the problem did not become a broader political issue. Therefore equal opportunity and economic interests are still viewed as competing objectives. Even after the “discovery” of the problem the state has made this view its own, while refraining from intervening and delegating the problem to those actors, who had already presided over this conflict of objectives at the expense of the goal of gender equality. This circular reading can also be observed in such cases in which the gender policy advocates within labour unions do not succeed in mobilizing the power resources of their organisations to support their concerns. In situations in which a consensus over political objectives is lacking, power is distributed unequally, and no “shadow of hierarchy” exists, self-regulation proves to be ineffective and makes strong hierarchical regulation for the sake of the result (wage equality) appear desirable (see Mayntz 1995: 20).

On the one hand, the example of parental leave benefits made it clear that institutional framework conditions only have a long-term and non-foreseeable regulatory impact, because as institutions they offer parameters for action, which in turn interact with other logics of action. It is thus also not possible to plan a large-scale behavioural diversification by means of financial incentives. On the other hand, institutional

regulation can be deliberately used to formalise and support existing minority practices (e.g. the egalitarian division of work). However a prerequisite for this is that lawmakers identify and deliberately opt to support (minority) patterns of behaviour and take into account the interactions with complementary and competing incentives for action (tax relief, access to childcare, etc.). It may have been the intention of lawmakers not to clearly commit to the withdrawal of the privileges associated with traditional patterns of behaviour and privilege non-traditional patterns of behaviour. Although new practices have been institutionalised (expansion of part-time arrangements, individualisation), the traditional model has been deliberately maintained and even reinforced (basic parental leave allowance regardless of income). Kooiman (2005) at least suggested this indecisiveness with his reference to the dynamics of social reality, which are reflected here in the shift in goals and the development of new coalitions. In any case the erosion of the old paradigm and the transition towards a new paradigm observed here are typical by-products of institutional regulation (Streeck/Thelen 2005).

The implementation of GM has shown that processes of organisational learning require the ability and willingness to learn. Dominant societal discourses on gender and gender relations as well as micro-political mechanisms thwart this strategy (Bothfeld 2007). The successful implementation of GM thus should be more tightly linked with a stronger orientation towards equal opportunity policies in the design of organisational cultures and the coordination with existing committees, which are able to break open the organisational marginalisation mechanisms and resistances to learning. After all, learning guidelines which are not supplemented with binding procedural rules (reports and monitoring, assessments of consequences) remain ineffective in organisational processes with a momentum of their own.

The three illustrated areas show that equal opportunity policy and the analysis of it can be conceived as a previously “invisible” avant-garde. Its “invisibility” can be explained by the fact that the development of these forms of regulation did not develop at the initiative of the state and thus for the most part remained unnoticed by mainstream governance research. By drawing on the rich empirical and theoretical insights from gender research in political science, our analysis has shown that equal opportunity policy outstandingly illustrates the possibilities and boundaries of governance-based steering.

#### 4. Synergies between gender research in political science and the governance perspective

The insights resulting from the merger of gender research and the governance perspective on the instrumental, institutional and meta level of governance are also relevant for the analysis of other policy areas. The conclusions at the instrumental level appear to be almost trivial: policy development requires the accumulation of specific knowledge in order to anticipate the effects in the most comprehensive manner. This calls for specific academic research as well as application-oriented research of individual departments and ministries, which enables public administration to make a viable assessment of the consequences. Furthermore, the anticipation of the regulatory impact of individual detailed legal provisions is highly relevant, while the development of reflexive regulatory instruments also must be considered (see Schuppert 2005: 397). At the meso-level it is apparent that network-like structures are becoming increasingly significant. The example of wage equality has shown that equal opportunity policy networks are only loosely linked with the neo-corporatist structures and relatively weak when enforcing their interests. Thus they are indeed effective in accumulating knowledge and defining problems, but are still not sought after as co-producers of decisions or cooperation partners. The example of care work made it clear that a high degree of interdependence exists between the different subsystems, which is also self-evident for other policy areas. However, this interdependence not only exists on the level of the actors and those addressed and affected by policies, rather at the level of normative and cognitive knowledge as well. Hence a law can lead to contradictory assessments and justifications with regard to its impact in terms of gender equality and compatibility. The realisation that governability by law has its boundaries is not a specific insight of gender research. Yet the example of GM makes it particularly clear how crucial it is to establish procedures for conveying knowledge towards social and political processes in order to increase effectiveness. The conclusions from the combination of both approaches at the meta-level lead us to question the representation mechanisms of not only the neo-corporatist but also the state-bureaucratic regulatory model (Kreisky 1997). At the same time, the construct of the economic interests regarded as given and relevant loses its general applicability, when political privileges granted to certain interests are explained by the selectiveness of the principles of representation. Distributive conflicts which are sub-

stantiated by interest constellations should therefore be analyzed with regard to their origins and the hidden power structures behind them, in order to make the political dimensions of distributive conflicts visible. Knowledge- and idea-oriented policy research also incorporates knowledge and paradigms as central or additional categories of analysis (see Maier 2001). Looking at gender equality in legislation with the double lenses of both research approaches ultimately teaches us that the mere fact of political intervention is never neutral, rather always the result of the politicisation of an issue, meaning that the definition of political problems themselves requires an explanation (see Wildavsky 1987).

Hence we can only follow the cues of Benz (2004) and Kooiman (2005) and emphasise the necessity of the systematic incorporation of normative and democracy theory issues into governance research. This touches on the question of the effectiveness of attempts at political regulation, for which policy analysis must develop categories that systematically take into account the political need for knowledge, its production, evaluation, and transferability to policy processes. This not only involves the solution of problems in terms of substance, rather social-political targets in various dimensions and the social acceptance of normative guidelines, in particular in strongly normatively framed policy areas. Perhaps the juxtaposition of representation and policy results as competing principles of legitimacy (input vs. output legitimacy) is relativised, because the social acceptance is equally decisive as the effectiveness of policy instruments (outcome). It appears that political science should address knowledge and communication more thoroughly, not only because altered realities increasingly require political learning process, but also because communication and discourse are core components of modern forms of governance in a policy model, which includes social and political interactions beyond formal structures.

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