



At a Snail's Pace: From Female Suffrage to a Policy of Equality in Germany *

by Beatrix Bouvier

1. INTRODUCTION: THE STRUGGLE FOR FEMALE SUFFRAGE

Equal rights were a central demand of the women's movements which emerged in the nineteenth century in the USA and Europe, including the movement in Germany which shall serve as an example in what follows. The early demands for equal rights were concentrated on property, education and, above all, women's right to vote. It took a decade of incessant struggle. Apart from anything else, women with different origins and political ideas also had different interests. This was the case in almost every country. Some organisations represented female workers and servants, while others represented women from the higher social strata, who were interested mainly in maintaining their privileges. Many women from the middle classes accepted their exclusion from politics as the supposedly necessary corollary of woman's so-called »natural destiny«, arising from her place in the household of a man (husband). That was the definition and point of view of the developing bourgeois class. The situation of women in the proletariat, which was growing in the nineteenth century, was different again, and the gulf between the bourgeois and proletarian women's movements was profound.

The German Social Democratic Party was the only party in the nineteenth century which included women in its policy demand for universal and equal suffrage with secret ballot. Towards the end of the nineteenth

century Social Democratic women's voting associations formed which organised women's meetings and demonstrations. However, women had a hard time even in the SPD because not only men in general or middle class men, but also many workers were opposed to women working. They demanded a wage which would enable them to support a wife and children so that the wife – in accordance with the bourgeois ideal – could remain at home. In addition, they feared what would happen if women got the vote (female suffrage) because it might encourage women to seek to assert their independence. They also continued to believe – until well into the twentieth century – that female suffrage, due to what they observed to be women's stronger commitment to the Church, tended to bolster the conservative vote, which was considerable in the first place. Female suffrage, therefore, was considered detrimental to the SPD.

August Bebel, the legendary Social Democratic workers' leader and party chair, was a prominent advocate of female suffrage, which eventually found its way into the party programme. The demand for female suffrage was supported by international conferences of socialist women. The first one took place in 1907 in Stuttgart. In 1910, the Second International Conference of Socialist Women in Copenhagen established Interna-

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* The image of the snail is borrowed from Sabine Berghahn "Riding on a snail – legal equality in the Federal Republic of Germany", Gender Politik Online, June 2003 (in German).

tional Women's Day, whose primary aim was to promote »agitation« for female suffrage. Under the battle cry »Give women the vote!« on the first International Women's Day, on 19 March 1911, more than 1 million women went out onto the streets and demanded social and political equality for all women. Only after the First World War, with the collapse of the empire and the founding of the republic in 1919 was female suffrage introduced in Germany. Women entered parliament for the first time: 37 (8.7 per cent) of the 476 MPs were women. Other European countries followed suit.

The first German democracy, the Weimar Republic, lasted fourteen years. That was also how long women could vote and stand for election. During the twelve years of the National Socialist (Nazi) dictatorship, however, the clock was turned back for women. Their organisations either fell in with the new circumstances, or were wound up or banned. Women were supposed to concentrate on their »natural function«. That meant: »Giving the Führer children«. When war came, however, it also meant »labour conscription« and work in arms production, because women were a kind of industrial reserve army. They were excluded from all important bodies and their right to seek election was withdrawn. Like men, they both risked persecution and engaged in resistance.

2. FROM EQUAL RIGHTS TO EQUALITY

After the end of the Second World War women – like men – were able to resume the development of democracy of the Weimar period. The rights to vote and to seek election were no longer contentious issues. What mattered now was to anchor the demand for equal rights in the as yet to be formulated constitution of the Federal Republic (Basic Law), but also in the German Democratic Republic (DDR). In the newly established (1949) Federal Republic of Germany it was thanks to a few courageous women that Article 3 was inserted in the Constitution. They remained steadfast in the face of indignation from all sides. It therefore states unambiguously: »Men and women have equal rights«. The DDR's Constitution declared that »man and woman have equal rights«. After the unification of the two German states the Basic Law was supplemented by a passage pointing in the direction of equality, which reflected a decades-long process which began with the adoption of the Basic

Law. That was just over sixty years ago. For a long time it appeared that nothing would come of it. It was not until the 1970s – in other words, almost 25 years – that, for example, marital and family law was reformed. For over one hundred years now women have been able to establish political organisations and also to go to university; and it is over ninety years ago that they were first given the right to vote. Evidently, it takes a long time to bring about change. Progress seems to move at a snail's pace, and of course not only in Germany.

The incorporation of equal rights in the Basic Law, the constitution of the Federal Republic of Germany, was a considerable initial success. Equal treatment had been demanded: in other words, women and men should not be treated differently on the grounds of gender. However, exceptions were to be permissible. And it is precisely these exceptions – for example, their definition and scope – that changes in the interpretation of the requirement of equal rights seize upon. Three stages are evident. In the first two decades of the Federal Republic – *the 1950s and 1960s* – »natural« differences between men and women were taken for granted. Differentiation based on biological differences makes sense when it concerns, for example, the health of pregnant women and mothers. In that case, the point is to prevent discrimination against women because of their ability to give birth. Problems arise with regard to possibilities to discriminate in accordance with functional (related to the division of labour) differences which have tended to characterise social life circumstances. These differences are identical with stereotypical gender roles, in accordance with which women are ascribed sole responsibility for raising children and household duties. Men, by contrast, are apportioned the role of breadwinner based on gainful employment. This traditional model is known in Germany as »*Hausfrauenehe*«, literally »housewife marriage«. It became officially redundant only with the major marital and divorce reform of 1977.

In the *1970s*, the ideology of rigid gender roles ceased to be acceptable. It came to be recognised that differences are not necessarily biologically determined but arise in large part from tradition and role attribution. Explicit discrimination or disadvantages – passing on German citizenship to a legitimate child only if the father is German and the mother is a foreigner (only after 1975 the German citizenship was also passed down by the mother) – were abolished, as were also residual sup-

posed »privileges« of women, such as easier access to a widow's pension.

In the *1980s and 1990s*, the idea of equal treatment was pursued further, accompanied by a growing tendency towards compensation or to actively combat discrimination. For example, earlier access to an old age pension for women of 60 years of age was justified as compensation for numerous disadvantages experienced by women, particularly mothers, in working life. The idea was to get closer to realising the objective of equal rights in society. Consequently, the argument based on biological differences was no longer applied.

The next step – after unification of the two German states in 1990 – was to augment the text of the Constitution. A state goal of promoting equality was added in *1994*, formulated as follows: »The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist«. It remained controversial whether quotas – in other words, giving women priority with regard to recruitment and promotion in the civil service – are declared permissible by the new state goal.

In the meantime, the intensely debated quota has been introduced into political parties in a different form and is established in most regional and federal equality laws. The notion of quotas is often taken to imply that women would be given priority automatically and regardless of whether they meet the relevant qualitative criteria until a certain numerical proportion is reached. In fact, however, the individual female applicant has to possess an equivalent »aptitude, suitability and expertise« or be assessed as such. Furthermore, women must be underrepresented in the relevant area of the civil service (or of other institutions subject to quotas). In other words, this is not a privilege, but rather an additional factor when qualifications are otherwise equal.

It is important to note that European bodies – for example, the European Court of Justice – have also been looking into this issue since the *second half of the 1990s*. The current situation is that national regulations are subject to three requirements when preference is to be given to a female applicant in competition with a man. *First*, a quota rule may be applied only when women – in the relevant career or wage bracket – are underrepresented (underrepresentation). *Second*, the woman concerned must have exactly the same qualifications as the male candidate on the final shortlist (an

»impasse« with regard to qualifications). *Third*, the law must provide for the review of individual cases (individual or hardship clause). A man can also prevail in this way.

There is hardly any formal dispute about *this* kind of quota, but there certainly is about others. Furthermore, matters of detail remain. How much discrimination is permitted in order to establish real equality? To what extent may the objective of promoting equality of social outcomes breach the principle of equal treatment? For example, criteria for the resolution of impasses – such as length of service or breadwinner status – remain controversial. Another hotly disputed issue concerns whether having a husband who is in employment should be counted against a female applicant. And can the sole male breadwinner in a family invoke hardship provisions? In theory, family status may not play a role. But should this also apply in the case of a single mother who is given preferential treatment over a father with a wife, or a single mother over a childless woman? These are urgent questions in times of unemployment. And other questions arise. Should other criteria be applied in the assessment of qualifications (apart from professional experience alone)? Is bringing up children to be given parity with, for example, the long-term management of a nursing home for the elderly when it comes to jobs in social management? These are only a few of the questions which come up with regard to the implementation of quotas.

It should be clear that, in practice, quotas can be extremely problematic. They are a »crutch« which do not necessarily achieve desirable outcomes, but they may raise awareness. They should therefore not be overrated. Sometimes they merely give rise to a bad conscience which only results in personnel policy having to justify itself more. Nevertheless, experiences with quota rules and other equality measures – gender mainstreaming, non-sexist language, equality officers – show that they are by no means superfluous. However, the latter charge continues to be made, for example, in the context of the current vehement discussion of the introduction of a female quota in German companies (supervisory boards). Measures of this kind are often described as »out of date« and declared to be superfluous, based on examples of successful and prominent women in politics, the media and the business world. Remaining deficiencies – wage inequality, risk of poverty, and underrepresentation in important executive positions – are simply air-

brushed out of the picture.

Quotas have been monitored and supported for over ten years now (since around 2000) by the strategy of gender mainstreaming. This was made compulsory by the European Union as a top-down strategy for all areas in which quotas are applied. The basic principle is that all policy decisions must take account of the interests and life situations of women and men in all their diversity. This means that the gender aspect must be made an issue in all areas and the egalitarian participation of women must be promoted. It remains an open question whether the success of this policy will be merely rhetorical or whether substantial long-term progress will be made with regard to equality. Not everyone shares the goals of gender mainstreaming. Many consider the approach too theoretical and complicated, while others are disturbed by the prospect of changing structures and the idea that gender roles are not natural.

3. OUTCOMES OF EQUALITY AND THE IMPACT OF THE WOMEN'S MOVEMENT

The evolution from the establishment of equal rights in the constitution to actual equality was a slow one. However, there is a generally positive trend with regard to the elimination of patriarchal relics. The successive decades described above can be taken as evidence of this.

The first decades of the Federal Republic – the time up to the end of the 1960s – can be regarded as restorative with regard to women's policy issues. That period saw the advent of a general reformism, first of all in the areas of education and the labour market, which also benefited women. At the same time, there were reforms in family law and with regard to the controversial abortion laws. Many of the advances enjoyed by women – for example, measures to integrate women in the labour market – were clawed back again as a consequence of the oil crisis in the 1970s and as unemployment grew. The fact that, even so, progress continued to be made can be linked to the so-called »new women's movement«. They countered government policy by raising an outcry against patriarchal conditions. They struck a chord with the general public and fostered a change in attitudes. There is little to say about the 1980s as far as women's policy is concerned. There were some improvements and a great deal of symbolic policymaking, but scarcely any structural reform.

One such reform would be in tax law, which fre-

quently discriminates against women (wives) because they tend to earn less than their husbands. The possibility thus arises that tax brackets can be chosen which are more favourable to the higher income and tax the lower income more heavily. This heavy burden often means that employment simply doesn't pay for women in this position, and so they stay at home. Indirectly, this conforms with the notion of the »housewife marriage«, mentioned above, an idea which persists, despite being officially frowned upon. Another structural reform would be making equality measures binding in the private economy. Such a structural reform has yet to take place. However, it will come, and the next stage in its realisation is women's quotas in the supervisory boards of German companies. The form this will take – whether legislation or a last attempt at voluntary compliance within a fixed period, as well as the size of the quota (probably 30 per cent) – has not yet been decided. The European Commission also advocates such a regulation based on 30 per cent, but it continues to prefer the voluntary approach, albeit with a time limit.

Nevertheless, the changes wrought over the decades were important and achieved in the teeth of fierce opposition. After equal rights were established in the Constitution it was almost another decade before the Equal Rights Act (*Gleichberechtigungsgesetz*) was passed in 1958. Even so, this attempted to preserve the patriarchal order by such regulations as the father's »casting vote« in the case of differences of opinion about children's upbringing. In addition, it consolidated the unequal marital division of labour in the form of the so-called »housewife marriage«, which implied a duty on the part of the wife to take care of the household. Although the management of the wife's property by the husband was abolished and a husband could no longer hand in notice on behalf of his wife, a wife could go out to work only »to the extent that this could be reconciled with her marital and family duties«. Also, women had to take the name of their husbands.

Matrimonial and divorce law was amended only 20 years later (1976/1977) and the law on names only in the 1990s. Thus regulations related to gender were officially abolished. The notion of »housewife marriage« ceased to apply. In reality, however, based on gender-specific structures, in many marriages things often remained as before, partly due to unequal power and occupational relations.

One of the principal achievements of the divorce law reform of 1976/1977 was the abolition of the principle of »fault« in favour of the principle of irretrievable breakdown. Since then, subsequent to divorce the basic principle of economic self-responsibility has applied. However, the alimony law and the question of need and child care are so complex that new regulations continue to be required.

With regard to the »quality« of gender relations, aspects of family law governing the relationship between parents and children are also important. The following were the main issues in this connection: the legal status of illegitimate children, the discriminatory paternalism applying to the mothers of illegitimate children, the law on parentage and custody and visiting rights and, above all, the revision of inheritance rights. The central idea here was the alignment of the legal positions of legitimate and illegitimate children with regard to their mothers and fathers. Much of this was revised only in the 1990s due to the necessity of aligning legal relations in the western and eastern parts of Germany. However, in particular in this realm – child custody – women have to accept a loss of rights and power and an increase in their obligations. They are treated as if they are entirely equal, even if in reality it is still not justified to talk of gender symmetry.

Family and employment are the most debated issues today, especially in view of demographic aging. Particularly striking in Germany in comparison to other countries – such as France – is the low birth rate (Germany: 1.38; France: 2.0). One of the causes of this is that in Germany it is more difficult to reconcile work and family life than in other countries, especially countries in which child care is regulated differently and better than in Germany. Furthermore, protection for motherhood and parenthood is a particularly complicated area of social legislation. Officially, it is about »freedom of choice« for women with regard to the reconciliation of work and family life. There is now the possibility of a two-year parenting allowance. Also, parental leave enables between one and three years' release from work. And even though in theory fathers, too, can take parental leave, the financial situation of most families means that it is almost always the mothers who exercise the option: loss of the wife's income amounts »only« to the loss of the lower of the two incomes. In practice, putting their careers on hold tends to be injurious to mothers because

they are not compensated by either social benefits or via pension law. The approximate equalisation of family work and waged work is now a key demand of the women's movement. The rules applying to single mothers are particularly problematic because they cannot live on child benefit and are dependent on additional income support. This mode of existence is common among young women today and goes hand in hand with a high risk of poverty.

The abovementioned reforms have modernised women's family roles, giving them a social security underpinning. However, there has been no structural change. In working life, there have been signs of the elimination of discrimination only since the 1980s. And this has taken place only under duress, as German law has been brought into line with EU directives. This includes the »Equal Treatment Act« of 1980, amended in 1994. Accordingly, discrimination on grounds of gender is now prohibited, although this is not backed up with sanctions.

Despite the reluctance of German politicians – particularly at federal level – progress has been made since the 1990s to achieve more equality and less discrimination in labour law. First and foremost, this refers to regional laws on quotas and the promotion of women for the civil service (and regulations in line with that). Almost everywhere – in the public administration – there are officers for women's issues or equality bodies. Their tasks encroach on all policy areas, although as a rule they are somewhat lacking with regard to status and authority. Their successes often take the form of improving the climate – in the workplace or in the company – for women in employment or for women in civil society.

All German *Länder* now have equality laws. They include more or less binding rules on quotas or on giving women priority. The Federal Government has also had to follow suit and in 1994 passed a law on the promotion of women for the Federal administration. The increases in the proportion of women in the Federal administration observed since then have been relatively modest and it is not certain that they are the result of the legislative measures.

In the mid-1990s an important opportunity was missed, which could have utilised the Federal Government's de facto competence with regard to labour law legislation, to apply at least some of the measures for promoting women to private companies. It is likely that

the then Chancellor, Gerhard Schröder, felt that the opposition of business leaders would be too great. A draft compromise bill existed. It could have been a first step towards the active promotion of equality and would have provided the possibility of applying the principle of gender mainstreaming also to the non-state realm. Whether the anticipated quota for the corporate sector points in this direction and changes anything remains to be seen. In many cases, only the possibility of establishing the promotion of women in collective agreements and company agreements remains. On top of that, where improvements can be discerned they are usually applicable only to a few women. Lined up against this in recent years are a whole range of reduced standards and deregulation – including with regard to continued payment of wages, wage cuts, employment protection and the erosion of regular employment – which are regarded as gender-neutral but in reality are disadvantageous to large numbers of women.

Looking at the development of the »new women's movement« over the decades since its emergence the focus has been the demand for exemption from prosecution for abortion (§218). Only in 1974, after considerable efforts, was a law introduced allowing termination of pregnancy, on medical advice, in the first twelve weeks. The law never came into force because an action was filed against it with the Federal Constitutional Court. The Court ruled against the »first-trimester law« and demanded a regulation on so-called »indicated abortion« in accordance with which the woman's doctors had to certify that there was a legitimate reason (indication) for a termination. Four indications were provided for: the life and health of the woman; a risk of deformity in the child; rape; and general hardship. In particular, »general hardship« – the social indication – was issued most frequently. A new regulation was required after German unification in the 1990s because in the German Democratic Republic the first-trimester regulation had applied. A compromise was reached: first-trimester regulation with mandatory counselling. The stand-off continues between the conflicting parties, among other things concerning the prohibition on killing an unborn child. Together with the Catholic Church they oppose those – women – who demand the right of self-determination for pregnant women. These are different values which will not be reconciled.

Another taboo issue on which the »new women's

movement« launched a debate was male violence against women and children. In this instance, too, it took twenty years for legislation to be passed. The Protection against Violence Act of 2002 is undoubtedly a victory for the women's movement.

4. DESPITE THE SUCCESSES – CRITICAL REMARKS

If one looks at developments over the decades, from the establishment of equal rights in the constitution to the institution of the state goal of promoting equality, the overall judgement must be positive. However, it is cause for concern that this development took more than half a century. Changes took place only when the state of public awareness virtually demanded it. The women's movement has contributed much to a change in awareness. There are still – and this is quite normal – political and social conflicts of interest and part of social reality is still neglected because politics has a tendency to uphold the gender-policy status quo.

If one wishes to go beyond a politically pragmatic standpoint to criticise this development from equal rights to equality one should recall the concept which underlies the words »parity« or »equality«. Although the liberal notion of equality was a positive achievement of the European Enlightenment it was and remains a gendered idea. It meant and continues to mean the civil equality of men, in particular the fathers of families and the heads of households. It was secured in the French Revolution and then established in law. Women as legal subjects with equal rights and as political actors did not then exist – they were not even implied »prospectively«. Achieving equal civil status took place in the Western democracies only in the twentieth century.

In particular because of its origin, however, the right to equality even today reflects androcentric and patriarchal ideas. In the vast majority of legal and societal domains the man is the measure of all things: for example, as full-time and continuously active worker exempt from family duties. On this basis feminists criticise the ideology of »equality in masculine terms«. Some emphasise female difference and wish to see recognition of the »equal value« of female »modes of existence«, derived in terms of social and cultural history. In this understanding, gender problems are not characterised by the alternative of »sameness or difference« but by discrimination and oppression of »women as women«. A situation must

be achieved in which male domination is combated and its effects prevented. It has therefore been proposed that measures which could temporarily disadvantage men – or women – should always be permitted when one gender is clearly »dominated« by the other gender in a given realm.

For others – for example, US social philosopher Judith Butler – that is not enough. They believe that not only social but also biological gender (sex) is socially constructed. Consequently, although they advocate equality policies they fear that this will reinforce the conception of sexual difference. They are apprehensive that differences among women and differences among men would be denied and individuals forced into a norm of binary gender and heterosexuality. Such positions seek to push aside the feminist debate about »equality or difference« by propagating the need to address the very category of gender. Such discussions may help to bring about some recognition of increasing individualisation and pluralisation with regard to models of life and society, as well as gender identities and political interests.

When one considers still existing forms of societal discrimination against women, they tend to go together with an interpretation of the German constitution that is virtually set in stone, according to which »marriage and the family shall enjoy the special protection of the state« (Art. 6). This has a decisive influence on the slow pace at which »actual implementation of equal rights« has proceeded. Just decades ago there were voices which sought to raise awareness that this was an obstacle to equal rights and women's emancipatory struggle. Traditionalists and largely also the Church saw or still see »woman's place« primarily as in the family. Marriage and the conjugal family were (and are) regarded as almost »sacred« institutions and as structural elements for societal regulation. This is implied by the very word »family« understood as the core of every society. In this light, marriage and family are supposed to take priority over the individual wishes of women concerning their self-development. This way of looking at things is widespread and persistent.

Discriminatory effects continue to arise as a result of the old institutional marriage concept, even if some are only indirect. Although today family law, tax law and social insurance or social security law no longer make distinctions in terms of gender, unequal effects occur nevertheless. Women are economically dependent on

their partner more frequently than are men. They are therefore reliant on derived security which for the most part barely suffices for subsistence. An adequate independent livelihood for women in old age has therefore been demanded by the women's movement – although not only by them – for decades. Progress in this respect has been glacial, however. Structural reform of pensions in recent years has shifted protection at least partly to private provision. Mothers raising children have been compensated to a certain extent, however. At the same time, the danger is that women will be even less adequately protected in old age as a result of the general scaling-back of the welfare state. Furthermore, the social order is making even higher demands of them. In future, women will almost inevitably have to be in employment, although for the most part they will not be able to support themselves in this way. Yet they are often treated as if they do not need to work because their husbands will look after them anyway. This kind of care has long since ceased to function, however. The option of falling back on derived protection will gradually become blocked for women in the future without their employment prospects improving substantially in the meantime. In any case, the double burden of job and family work remains for most women. Even worse, men are also now increasingly threatened by discontinuous employment, unemployment and inadequate pension provisions.

5. SUMMARY: GENDER RELATIONS ARE NOT AS THEY SHOULD BE

By international comparison, Germany's welfare state regime is categorised as »conservative«. In terms of gender policy, that means that the model of the »strong male breadwinner« still prevails. In effect, family law, social law and tax law combine to take women out of working life, at least for the period they are raising children, and to make them dependent on their husbands. This hinders a return to work at a later date: the disadvantages that thereby accrue to women are accumulated throughout their lives and can scarcely be compensated on an individual basis.

All this is also connected to the fact that the idea of the so-called »housewife marriage«, although no longer the accepted norm, lives on in the details of the partial social security net provided by family and social security law or social law. It is supplemented by the principle of »spousal subsidiarity« which defines the family, marriage

or marriage-like partnerships as taking priority when it comes to social provision. In this way, in turn, asymmetries between certain life situations and phases of life are reinforced in a gender-specific way.

This means that the basic social unit is not the individual and thus that independent security is not made available for him or her. Instead, most state regulations continue to strive for communal integration at the level of marriage and family. This is accompanied by the institutional conception and privileging of marriage. Proposals aimed at removing this privileged status and instead conferring it on the family – based on a non-traditional definition – have not enjoyed majority support so far. Despite what many people think, the debate is not about abolishing the institution of civil marriage, but rather about reducing its strong guiding function in the tax and social systems. It's all about introducing small steps promoting social support for women regardless of the existence of a marriage certificate and for women who wish to secure their own livelihoods.

The snail therefore continues to creep slowly forward and full gender equality perhaps remains utopian. Precisely because the gender problem is no longer regarded as virulent it is overlooked that gender shapes life and gender policy is a never-ending task. But the task is never finished.

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