
GENDER POLICIES IN THE WELFARE STATE – A COMPARISON OF GERMANY AND DENMARK

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Abstract

This article compares the gender orders of two different European countries and their historical development. The theory of the path dependent development within gender orders is tested in three different policy fields. The results show a definite variation between the two cases and a clear path dependent development of both countries.

Introduction

Talking about the welfare state means talking about gender relations. Indeed, it is a definite and established finding that politics of the welfare state have an influence on the gender order. The research on this issue has slowly developed for over 30 years and has been growing in popularity.

I am using the term "gender order" referring to Connell (1987) and Pfau-Effinger (2000). There is a sub-structure called "gender regime", underlying the various different institutions of a society, characterizing and realizing the gender relations of that society. In order to designate the interacting ensemble of these gender regimes, Connell coined the term (dynamic) "gender order". Pfau-Effinger suggested the following extension to this definition: underneath each gender order lies a specific "complex of 'guiding ideas' on gender relations" (Pfau-Effinger, 2000: pp. 49). This extension facilitates the analysis of the cultural foundations of social gender relations. I will

refer to the regulations of gender relations within sub-areas of society or within an institution as "gender arrangement".

During the 1970s and 80s, as the women's movement grew, as feminist politics became institutionalized and as the question of women's rights became an academic issue, the topic of the shaping of women's life courses by the welfare state emerged. Some of the classics examining the influence of the welfare state on women's lives are Gerhard/Schwarzer/Slupik (1988), Hernes (1989), Kopp-Degethoff/Schaeffer-Hegel (1991), and Schaeffer-Hegel (1990). In the 90s, stimulated by the US-American debate on gender and sex, this issue of *women's rights* broadened and incorporated the *gender* perspective. Increasingly, the formation and persistence of hierarchical gender relations was analyzed (cf. e.g. Hirdman, 1988; Pfau-Effinger, 2000). An enormous amount of comparative and case studies emerged during the 90s. A broad comparative study is Schunter-Kleemann (1992). With reference to Esping-Andersen (1990), Lewis/Ostner (1994), Sainsbury (1996), and von Wahl (1999) sketch typologies of gender regimes. Case studies on specific policy fields or countries are for instance Becker (2000) and Kulawik (1999). In this manner, the mainstream research, which had up until this point been mainly or partly gender-blind, was supplemented and the corpus of welfare state studies was widened. In his recent book, Gøsta Esping-Andersen (1999) includes the gender perspective into his analysis of postindustrial economies.

In this article, I want to compare two least similar (cf. Esping-Andersen 1990) cases of gender orders: Germany and Denmark. Comparing these two examples illustrates the wide range of variation in gender orders. The chosen countries are well suited because both of them are members of the same international alliances: the EU, the Council of Europe, OSCE, NATO, and UNO.

Policy analysis (cf. Windhoff-Héritier, 1987; Schubert, 1991) alone is not sufficient for analyzing gender relations – i.e. power-relations (cf. Mayntz, 2001, who discusses the selectivity of a theoretical perspective on governance), but policy analysis can open up insights on politics and policies of the welfare state and, by generalizing *types* of policies, highlight political scopes and the path dependency or convergence of the development and reform of welfare states. This

article cannot give a detailed analysis of policy cycles, but a description and comparison of some selected policy fields.

I am starting out with the premise that the post-war Keynesian welfare states developed various, distinguishable gender orders. The thesis of my article is that in the transformation process of Keynesian to post-Keynesian welfare states, the change of gender arrangements occurs dependent on the developed specific Keynesian gender orders, it occurs *path dependent*. The thesis of path dependency has been discussed frequently with reference to other issues. Some authors stress the convergence of politics and policy, while others find national specific, path dependent developments (cf. Esping-Andersen 1996; Pierson 2001; Schmid 2001). As changes in economic or military policy occur dependent on external *and* internal (country specific) conditions, the respective gender order changes as well. These changes could arise in relation to international political and economical transformations (increased engagement of UNO and EU for women's rights, liberalization of labor markets), and/or in relation to specific national peculiarities (e.g. strength and character of conservative parties, the specific institutionalization and meaning of marriage and family). Consequently, post-Keynesian welfare states, however one names them, also produce specific gender orders. These are not fully developed yet, but the tendency of change and the respective shape of "modernization" appear.

For testing my thesis, I will examine the German and Danish cases along the lines of three policy fields: pension schemes, parental leave schemes, and abortion law. These three issues are of different kinds: one is redistributive social politics (pensions), the other is regulative politics (parental leave), and the third is – at least in Germany – a highly politicized, sensitive issue of criminal law (abortion). Because the former GDR has been incorporated into the present BRD, and is presumably influencing the shaping of post-Keynesian Germany, I am also taking into account the gender order of the GDR (a country which by no means could have been called a Keynesian welfare state).

Structure of the Article

The diachronic comparison of the development of the chosen countries and the synchronic comparison of both together leads to the

following structure: section 1.1, with the examples of the mentioned policies, sketches the gender orders of the Keynesian FRG and the GDR; section 1.2 describes that of the unified, post-Keynesian Germany. Sections 2.1 and 2.2 elucidate the gender order of the Keynesian and the post-Keynesian Danish welfare state. Section 3 gives the comparison of the cases and section 4 offers some conclusions.

1 The Case of Germany

1.1 FRG and GDR before Unification

1.1.1 Federal Republic of Germany: The Keynesian Welfare State

When founding the Federal Republic of Germany in 1949, the formal equality of women and men was – disputed, but nevertheless – admitted into the German constitution: "Men and women have equal rights" (Art.2, sect. 3 GG; cf. Böttger, 1990). The Civic Code was not completely adapted to this constitutional demand before 1977. After the Second World War, the society was marked by growing prosperity, redistribution and the insurance of the population against the risks of losing their income. During this time a clearly hierarchical gender order was established in the making of social policy. Within the process of societal destabilization, the nuclear family with a male earner and a female housewife became the financially privileged standard. Social security was centered on marriage and benefits based on employment and contributions. The wife with no or little income was covered via her husband. Just when all these safeguards failed, the welfare state provided social assistance (for those in need). This system encouraged a high personal dependence of wives on their husbands and led to a high poverty-rate among female pensioners. The political participation of women was low, and their employment rate was modest. When it came to the well-known labor shortage at the beginning of the 60s, foreign workers were brought to the FRG, but the female labor force participation did not rise and was not encouraged to rise. In 1990, the participation rate was 57% (Gerhard/Schwarzer/Slupik, 1987; Kopp-

Degethoff/Schaeffer-Hegel, 1991; Schunter-Kleemann, 1992: pp. 159-169).

In the 1970s, the women's movement gained some influence. Part of the women's movement demanded, as the conditions suggested, not mainly the redistribution of reproductive work, but claimed its societal and financial recognition (Enders/Block/Müller, 1981). Another strand of the movement actively sought the full opening of the labor market for women and demanded male participation in reproductive work. Both goals were hardly reached, but the women's movement gave a significant impetus to societal modernization and contested the high amount of everyday sexist discrimination.

Pension

The West-German pension scheme was fundamentally reformed in 1957. Main elements of this reform were the shift from the funded system to the pay-as-you-go and index-linked system of pensions. The minimum pension was abandoned. Therefore, the reform was a gain for pensioners with a typically male biography with continuous full-time employment, and a loss for those who had worked in typically female, discontinuous and/or part-time jobs. From this time on, many women received minimal pensions (Kohleiss, 1987). Also from 1957 on, the widow's pension of 60% was granted not only to housewives, but to formerly employed widows, too (Friedrich, 1998). Between 1957 and 1968, when a woman got married, she could have her contributions be paid out. However, if she did so, she lost all personal entitlements. The financing of pensions was based on a typically male lifelong career with a medium income. Those who had earned a medium wage for 45 years, received the 'medium pension'. Each year without employment or with an income below the average seriously reduced the entitlements. Not until 1972, when a new pension reform was passed, could women pay contributions when they were not employed – which of course only well-off women could afford. Also in 1972, the 'pension according to minimum income' was introduced. This pension was a gain for those who had paid contributions for at least 25 years, but had worked for a pay below 75% of the average wage. Their contributions were revalued to 75%. For many women, this new legislation meant a gain – but for many others, who had not been working for more than 25 years, it meant nothing at all. In 1977, women's situations were improved by the introduction of divorce due to a broken marriage. A divorced woman

could take the entitlements she had from her husband with her. Previously, when a woman was found guilty of causing the marriage break-up, she would have lost all her financial claims in the divorce (Friedrich, 1998). The pension reform of 1986 introduced the allowance of one year of credited contributions for each child. However, this year was only covered by 75% of the average wage (see Hülsmann et al in this volume).

The wage segregation and women's low, often minimal pensions, which result from discontinuous employment, highlight the sex-discriminating effect of a contributory pension scheme.

Parental Leave

Maternity leave in the FRG lasted 6 weeks before and 8 weeks after the birth. During this period, a woman received full pay and was protected against dismissal from her employer. Between 1979 and 1985, the mother could take up additional maternity leave of four months, after which she had the right to return to the workplace. In 1985, this law was reformed. The new law granted parental leave of 18 months and for each child 300 % of monthly child benefits – at first for 10 months, but since 1988, for 12 months. During the first half year, child benefits were given to anybody, later on it was earnings-related. Single parents received child benefits – up to a maximum limit of income – for the whole duration of parental leave. The new law allowed paternity leave unless the mother was a housewife. The protection against dismissal was abandoned, and the parent just had the right to get a 'comparable' job (Trappe, 1995; Slupik, 1987: pp. 105-106). This option of return was not used very often, because, in most cases, there was no day nursery available for children under three years of age, and kindergartens were just available for 30% of the 3-to-6-year-olds. Kindergartens and schools were part-time and without lunch, which made full-time employment of both parents very difficult. Child nursery often depended on private arrangements. Because of the high sex-specific wage segregation, the low child benefits usually were no incentive for fathers to take up parental leave, because doing without the man's wage was a much higher financial burden (Kommission, 1998a).

Parental leave in case of a child's illness was allowed for 5 days per year per child, and allowed for mother and father respectively until the child was 8 years old.

Abortion

In the Federal Republic of Germany, the abortion law was a highly explosive and polarizing issue. Feminists, liberal politicians and many affected women struggled for the right to self-determination; however, the Catholic Church, the Christian-conservative parties and pro-life activists fought for the state's right in the determination of the womb. Paragraph 218 stating the abortion law from the Weimar Republic was in force until 1969. This law prohibited abortion, with just one exception in the case of an acute threat to the life of the pregnant woman. In the mid 60s, a reform movement gathered, and after years of public controversy, the social-liberal government suggested the so-called 'indication bill' (the German 'Indikation' designates the conditions under which an abortion will be exempted from punishment). This bill was not passed, and in 1973, the same government suggested a law allowing the termination of a pregnancy within the first three months, including obligatory counseling. This bill was passed in 1974, but after one year the Federal Constitutional Court declared it to be incompatible with the German Constitution. The Court judged the right of the fetus to be more important than the right to self-determination of a pregnant woman. The law that was passed in 1976 legalized abortion for medical, genetic, ethical and social grounds, if the woman underwent state-approved consultation and the consultant decided for one of the four reasons. The period for legal abortion was twelve weeks, in the case of medical or genetic grounds 22 weeks. Abortions were done in clinics or practices and paid for by the health service (Eser/Koch, 1988; Kraiker, 1988).

The abortion law and, above all, the decision-making powers of the advisory centers were discussed again and again – many of the affected women criticized the highly formalized procedure. Feminists and liberal critics stated that the procedure led to twofold discrimination: the advisory centers differed highly among regions. In strongly religious rural areas, it was by far more difficult to get the allowance for a legal abortion. Handling the detailed forms and arguing with the consultants was easier for well-educated women than for others, which was a form of social discrimination. The Christian pro-life

activists also took up the topic again when the new Christian-liberal coalition came to power in 1982. The governing parties did not take up the pledge for tightening the abortion law, because the small coalition partner, FDP (the Free Democrats), had an absolutely liberal view on the issue (Kraiker, 1988).

1.1.2 German Democratic Republic: Socialist Gender Order

In the German Democratic Republic, the formal equality of women and men was also established in the constitution of 1949. The principle of equality was put in concrete terms by the right of equal pay, and all laws opposing the principle of equality were abandoned with immediate effect. In the following years, various laws were passed which were meant to grant the compatibility of parenthood and employment (Trappe, 1995: pp. 55). The gender order laid down in the constitution provided formal equality and the full integration of women into the labor market, and the normal household incorporated the two-earner family (Kolinsky, 1993). The leap from low qualified, discontinuous female labor to qualified, continuous female labor was carried out quickly (Merkel, 1990), but the labor market remained highly segregated (Nickel, 1990). Motives for this leap forward were, on the one hand, the socialist principle of equity, and, on the other hand, the grave labor shortage, which required a mobilization of all those capable of work, plus a stable birth-rate. But the politicians did not question women's responsibility for reproductive work. The compatibility of family life and employment was regulated by law. Social benefits in cash and kind were designed for the child-rearing two-earner family. Above all, a comprehensive supply of crèches, kindergartens and nurseries were provided, as well the monthly "housework day", a paid day off of work for women with children or relatives in need of care (Kolinsky, 1993: pp. 260-265). In spite of the ideal of equity, the political participation of women on the central level, for instance in the Parliament (Volkskammer) or in the council of ministers, was minimal (Merkel, 1990). Education at school and in the family did not raise the issue of a double burden for women, but conveyed more or less traditional values (Nickel, 1990).

The task of emancipation was therefore on the women who usually spent 30 hours per week on reproductive work. Their husbands were content with 10 hours (Nickel, 1990). The issue of women's rights was subordinated to the social question; there were no independent Women's Studies in the interest of women and no actual theory formation about gender relations in the socialist society. The existing feminist politics and research were under the obligation of the SED (the socialist party); the existing image of the male worker remained the benchmark for the emancipated woman (Keiser, 1997).

Pension

In the GDR, every citizen was entitled to regular old age pension if she or he had been regularly employed for at least 15 years. Especially until the pension reform of 1971, the level of pensions was quite low. Time and continuity of employment were not relevant. If a person had no other pension entitlement, she or he received a minimum pension. The retirement age was 60 years for women and 65 for men. The so-called "baby years" (see below) were fully taken into account as if the woman had been employed. Additionally, women had the possibility of assuming further entitlements: for each child, they received an additional three years credit even if they had not interrupted their employment for that long. If they had been working regularly for at least 20 years, they were credited cumulative bonus years. Their earlier retirement age, too, was compensated partly or fully. The pension reform of 1971 introduced a voluntary supplementary pension for recipients of higher incomes. People who signed up for this insurance gained a pension of about 25% above average (Hübner/Schäfer, 1986; Schmidt, 1998; Veil/Prinz/Gerhard, 1992).

The pension schemes' redistributive elements and the strong orientation towards lifelong employment offered a sufficient old age pension for those women who were of working age. Those who already had had a discontinuous working life when the GDR was founded, often were dependent on the minimum pension, which on the other hand was comparatively high: the minimum pension was 330 Marks, men's average pension 588 M and women's average pension 455 M (Merkel, 1990; Veil/Prinz/Gerhard, 1992).

Parental Leave

Maternity leave (since 1976) had a comparatively long duration of 26 weeks; 20 weeks postnatal. The woman received full wage replacement (Hinze/Rauer/Sälzler, 1979). Parental leave and other regulations, which should facilitate the combination of child rearing and employment, were specified according to the number of children and social circumstances. After delivering the first child, there was no additional parental leave. After giving birth to the second child, the mother could stay out of work until the child's 1st birthday, and from the 3rd birth and subsequent births she was allowed to be out of work for 18 months. The compensation for this "baby year" amounted to 70-90% of her net earning. Single mothers could, when there was no nursery available, extend the parental leave until the 3rd birthday of the child. If married women stayed off work that long, they did not get compensation for this extra-time (Merkel, 1990; Trappe, 1995).

In the case of illness of an under-14-year-old child, women had another possibility to stay at home. The maximum duration of this sickness-leave amounted for one child four weeks per year, for every other child two additional weeks, and women with 5 or more children could stay at home for up to 13 weeks per year when their children were sick. The compensation was also 70-90% of the net wage. The reduction of the weekly working hours from 43 $\frac{1}{3}$ to 40 hours counts for the parental leave scheme as well (Trappe, 1995).

All leave schemes and privileges were normally provided for women, whereas to fathers or other relatives these allowances were given only in special cases.

Abortion

In most districts of the Soviet occupied sector, the National Socialist abortion law (which treated abortion as a serious crime) was abandoned, and instead, a social indication was established. In 1950, the GDR passed the law on 'Protection of mother and child and the right of women' (Gesetzblätter der DDR, Oct 1st 1950, p.1037; cited from Mehlan, 1988). This law regulated abortion tighter than any other European socialist country: abortions were only legal if they were carried out for medical grounds (serious threat to the life or health of the woman) and genetic grounds. Decision-makers were publicly

summoned commissions, against whose decisions, however, the woman had the right to object. The 'medical grounds' left scope for interpretation, so that different commissions came to a very different quota of approval or prohibition. For this reason, the grounds were specified in 1965. From then on, there were seven grounds for the termination of a pregnancy, which included the age of the pregnant woman (under 16 or over 40 years of age), psychological endangerment, the number of children, and ethical grounds (rape). From hence forth, contraceptives were free of charge and strongly propagated. Abortion and consultation were free of charge anyway, and in industrial and social legislation abortion was classified as an illness (Mehlan, 1988).

After several liberalizations of the law, in 1972 the termination of a pregnancy within the first three months was legalized. Now, the pregnant woman could decide about the continuation or termination of pregnancy self-determined and on her own. No public or governmental debate preceded this decision, and the public reacted surprised but with acceptance (Trappe, 1995: pp. 69). The West German press campaign of 1970 had led the SED to pass a law legalizing abortion immediately, because the general release, which in the Weimar Republic had been claimed by the Communist Party, should not be left to the capitalist FRG (Hahn, 2000: pp. 270; Schmidt, 1998: pp. 113-135). After the Parliament passed the bill and the press reported this, the Catholic and Protestant Churches objected to the legalization of abortion (Lammich, 1988).

1.2 The Post-Keynesian Gender Order in Unified Germany

The gender order became transformed in unified Germany in the 90s. The accession of the GDR raised the hopes of many feminists. They expected that the emancipated Eastern German women, the Eastern German infrastructure they were used to and the liberal abortion law could give a new impetus for the modernization of the gender order in Western Germany. For the time being, these hopes failed. The collapse of the Eastern German economy turned out to be especially detrimental for women. Rapidly rising unemployment in the so-called 'New Länder' affected women more than men and many facilities of the public childcare were phased out. To this day there exists in the former East a higher amount of childcare institutions, especially for children aged 0 to

3. In the 'Old Länder', however, surprisingly little was set in motion in this respect (Schunter-Kleemann, 1992). Nevertheless some changes took place in the West: up until the change of government in 1998, many citizens had begun to change some of their attitudes on gender, even though very little happened in the field of governmental policy. Housework and child minding became increasingly viewed as the duty of mother and father (Kommission, 1998b). This corresponds to the rising female employment participation despite its discouragement by the conservative Christian-democrats minister for women and family, Claudia Nolte. Today some of the German Länder have grasped the momentum of the European Union, and they have set into place some gender policy which goes far beyond the policy of the central German government. The deregulation of the labor market opened up some new possibilities of combining family and working life for women: taking up a part-time job is now a common way of staying in the labor market despite the lack of childcare and despite the irregular part-time schooling (Fagan/Rubery, 1997; Kolinsky, 1993: pp. 182-185; Rubery/Smith/Fagan, 1999: pp. 62-79). Nevertheless, the two-earner model does not set the norm in Germany, but it is the family with one continuous full-time wage and one discontinuous, mostly part-time wage as additional income that is dominant as norm. The change of government in 1998 increased the legitimacy of the equality of women and men. Both, in the field of regulative policy (legalization of homosexual partnership) and in the field of redistributive policies (increase of child benefits), there are steps of modernization of society – but no fundamental reform of the structure of the social security system. After three years of a red-green party coalition government, a reform bottleneck is left. This can be seen in the drive for law on gender equality in the private economy and for keeping the formal right to childcare for 3-to-6-year-olds. Powerful forces still prevent a fundamental regulative change of the hierarchical gender order. These are, for instance, the German Employer's Federation (BDA) and the Catholic Church.

Pension

The day the Berlin Wall fell down, the German Bundestag passed a pension-reform, which by the Unification Treaty was valid also for the New Länder and came into force on January 1st in 1992. The policy process proceeded largely closed off to the public (Nullmeier/Rüb, 1993). Only after the reform bill reached the public, was the problem of

women's old age pension discussed, whereupon some compromise was added to the reform bill (Veil/Prinz/Gerhard, 1992).

The main innovations of the pension reform were the modified calculation of time relevant for pension, although no payments were made (time of training and education, unemployment or not being capable to work) and the raising of countable parental leave from 1 to 3 years for each child. The latter counts only for children born after 1992. Furthermore, the time spent nursing old or ill relatives is included in the calculation of a pension, if the time spent caring is at least 10 hours weekly. The years that count towards pension when no payments were made are valued with 75% of the median income. This means that the pension scheme keeps its principle of calculating wages and remains centered around lifelong full-time employment. Typically female (house) work is valued below the median, although the social system with its inadequate caring and nursery institutions sets strong incentives towards a discontinuous employment and exactly these life courses result in low or minimal pensions. Furthermore, the "pension according to minimum income" was retained, but the minimum period of insured employment was lifted from 25 to 35 years, so that a large group of women dropped out of this scheme. Also the level of pension for a minimum income was lowered on the whole, because the contributions were not increased to 75% of the medium income, but only increased by up to factor 1.5 of the contribution paid. Pensions thus deteriorate in the situations of part-time workers who have paid in only small contributions (Friedrich, 1998).

The lowest pensions from 150 to 250 EURO, typically female pensions, are not abolished in favor of a minimum pension. The pension reform is no instrument to fight the significant poverty among old people. To this day the German pension scheme stays centered upon employment in a twofold sense: On the one hand, only a (at least) median wage guarantees an acceptable level of pension (the average hourly wage of women lies one third below the men's wage), and on the other hand, one has to gain this average wage each year between leaving school and retiring, because every non-contributory year and every year with reduced contributions accounts significantly for pension entitlements. The latest pension reform, passed in 2001, admits private pension funds (Hauser, 2001). The private funds are a new pillar of the pension scheme, but taking up a private insurance is voluntarily, so that it can be expected that people with a low income will not take up

the private insurance, which has severe consequences for their retirement income. The market laws suggest that women, who in general can expect a longer life, will have to pay higher contributions for the same payment. Thus far the pension scheme still reconfirms the dependence of women on her (ex-) husband's pension or on a widow's pension. This dependency stabilizes hierarchical gender relations, because the typically female life course (discontinuous employment, child rearing) is not sufficiently covered.

Parental Leave

Maternity leave still lasts 6 weeks before and 8 weeks after delivery and the woman receives her full net wage (which is financed by state and employer). Since 1997, domestic servants are also entitled to maternity leave.

Parental leave can last up to three years, but is only allowed to be received by those who are employed and only until the 3rd birthday of the child. The parent taking the leave might hold a part-time job up to 19 hours weekly. The benefit still is 300 €, and is reduced in many cases after six months because it becomes family-income-related, and granted for a maximum of two years. Two reforms of the 'law for the promotion of employment measures' should improve the prospects of former leave takers – today, in Western Germany 50% and in Eastern Germany 60% of leave takers successfully return to the labor market (Kommission, 1998a).

Innovations have taken place in the child-care sector: Since 1992, each child has the formal right to a place in a kindergarten from the age of 3 to the age of 6. Because there were hardly enough places in 1996, an interim arrangement was passed. However, childcare is still precarious, not the in the least because of the short opening hours of crèches and kindergartens in Western Germany. In the field of care for children up to 3 years of age, people are increasingly turning to private arrangements. These private child minders care for additional children while still attending to their own families. Child minding is commonly non-secured, illicit work. In other cases, parents' initiatives cover part of the required childcare. The latter two arrangements are often, while the parent's groups are also quite time-consuming, what in turn stands in the way of regular, full-time employment (Bundesministerium, 1998).

Abortion

After the unification of the two German states in 1990, the abortion law quickly entered the agenda. A new law had to be found because the women in the New Länder were not willing to accept the Western German restrictive regulations. After a heated public debate in which many women's groups and others demanded the adoption of the GDR's principle of self-determination, a compromise of outrageous originality was concluded. This compromise was slightly modified, but all in all, upheld by the Federal Constitutional Court in 1993. The new § 218 StGB (Criminal Code) makes abortion a punishable offence in principle (the threat of punishment is up to five years of imprisonment for the person carrying out the abortion, and up to one year of imprisonment for the pregnant), but offers the possibility of pregnancy termination on medical and ethical grounds. In spite of this, a final decision is left to the woman, after she undergoes state-approved consultation. This abortion is not legal, but it counts as 'illegal, but not subject to prosecution'. The Federal Constitutional Court put the consultation in concrete form: the consultation has to be 'targeted, but without consequence' in a pro-life-sense. The status of a self-determined abortion as 'illegal' bears consequences: The expenses of an illegal act cannot be reimbursed by any health insurance. After a woman has undergone tendentious consultation, she is allowed *to buy a service*. If she cannot afford this service, she should not be exposed to health risks resulting from an illegal abortion, and therefore, the health insurance is required to pay for an abortion for those women who have passed a means test (cf. § 218, § 219 StGB; Frommel, 1993).

In the second half of the 90s, the Catholic Church became a frequent subject of discussion when the majority of the German bishops and the Pope ordered the Catholic advice centers to opt out of the 'pregnancy conflict consultation'. The argument was that the absolute goal of carrying the child to full term cannot be achieved because the pregnant woman is allowed to decide in favor of abortion after a consultation.

2 The Case of Denmark

2.1 The Keynesian Welfare State in Denmark

The egalitarian heir of the Danish welfare state roots in the mid of the 19th century. After having adopted the constitution in 1849, the family and inheritance law was modernized: the principle of the patriarchal kinship group was abandoned. The main innovations were the majority of married women and the formal equality of the sexes in marital property and inheritance law (Krause, 1990). The legal development of the following decades was characterized by the inclusion of expelled groups in the name of social equalization. Until 1915, the Danish women had pushed through suffrage (Dahlerup, 1978), and with the reform in 1953, the constitution was amended to include equal treatment of women and men. During the recent decades of social and legal reforms, a gender order developed which is among the most democratic ones of the world. Social and gender equality have been high ideals for decades. The broad mobilization of the female work force in the 60s and 70s was a decisive step towards getting women out of the private sphere. Since, the majority of Danish women work in the public sector, the female employment-rate was 58% in 1970 and 77% in 1990. The share of part-time work was high (1990: 79,4%); the average working hours of part-timers was 20 to 30 hours weekly. The social benefits have been universalistic and tax financed since the 30ies, the Danish tax system comprises no extra tax bracket for spouses. As Hernes (1989) elucidated, the dependency of the Scandinavian women shifted: they no longer depended on a man, but on the welfare state, which facilitated their employment by offering child care and their retirement income by paying a basic pension. Therefore, the double burden was a serious problem during the post-war decades. In the 70s, the Danish women's movement criticized the lack of political participation of women and within short time had remarkable success. In the second half of the 70s, many feminists joined the existing large parties and organizations to look after their interests there. Hernes (1989) and others call it "state feminism".

Pension

The pension reforms of 1891 and 1922 had introduced a universalistic old age pension for all citizens who did not have a

disposable income. In 1956, the pension scheme was reformed anew. The minimum pension was raised and the retirement age set up to 67 years for men and 62 for women. More far-reaching was the reform of 1965: now, the popular people's pension was introduced. The pension scheme was based on two pillars: the people's pension and an income-related additional pension, which were both tax financed. Besides, many employees received occupational pensions. The level of the people's pension was standardized and tied to the wages in the metal industry. In 1965, the people's pension amounted to 50% of the average wage of blue-collar workers, but was raised significantly in the following years, in order to make it a basis of livelihood. In 1967, for those pensioners who did not have an income besides the people's pension, an income-related additional pension was introduced (ITP-pension) (Esping-Andersen, 1985). In 1970, the 'full people's pension' law was passed, which aimed at covering every pensioner. In the following years, the pensioners, be they male or female, were much better off than in 1970. In spite of this, those who received only people's pension were in poor financial condition. Therefore, for this group, a supplementary pension was introduced. Until 1984, a widow's pension existed for those widows who couldn't provide for themselves (Hansen, 1983). After abandoning the widow's pension, those widows who did not gain an income out of employment were equated with all other recipients of social benefits (Schunter-Kleemann, 1992). Besides the people's pension and any additional benefits every previously employed person received a partly contributory, partly tax financed labor market pension (ATP-pension). The level of the labor market pension was not bound to the gained wage, but to the duration of employment during the life course. In this way, wage-inequalities were compensated (Hansen, 1983; see also Hülsmann et al in this volume).

Parental Leave

In 1984, the maternity leave was prolonged from 14 to 20 weeks after delivery, in 1985 to 24 weeks. Now, the last six weeks (from 1985 on 10 weeks) could be taken over by the father. Also new was the original paternity leave of 2 weeks. The earning replacement was up to a maximum of 90%, 100% in the public sector. Subsequently, one parent could take a parental leave of 10 weeks, and the earning replacement was the same as during maternity leave. Every employed person had the right to stay off work the first day of a child's illness for regular wage (Schunter-Kleemann, 1992). In case of illness or delivery, the

authorities put domestic help at somebody's disposal, if necessary (Hansen, 1983).

The leave schemes were supplemented with a fully developed childcare system and social education facilities. This made the compatibility of family and working life possible: in 1989, there were nurseries for 48% of the under-3-year-olds, and kindergartens for 85% of the 3-to-6-year-olds, publicly financed and available as a full-time service (Schunter-Kleemann, 1992).

Abortion

In Denmark, the abortion law repeatedly was reformed in order to bring it into line with social reality. The first 'modern' abortion law was passed in 1939. This law introduced medical and ethical grounds for termination of pregnancy. The medical grounds included so-called non-organic factors (psychological threat of the pregnant), because the formerly planned social grounds were not passed, as a broad public protested against this point. In 1956, the law was suited, and separate 'social-medical grounds' were included. Still, publicly appointed councils had to decide on the legality of any abortion. During the 60s, public pressure demanded the complete legalization of abortion. In 1970, therefore, separate "social grounds" were adopted. In the following period, the councils decided 96% of all appeals to be legitimate. Facing this quota, no justification of the power of the councils was left, and in 1973, the Parliament passed the general allowance of the termination of a pregnancy within the first three months. A later abortion (possible until the 22nd week of pregnancy) had to be decided by a council and was bound to the mentioned grounds. Each abortion is tax-financed (Heisterberg, 1988).

2.2 The Post-Keynesian Gender Order in Denmark

Following the deep recession of the 70s that led the country close to bankruptcy, some social benefits were cut in the 80s. These cuts did not question the universal coverage in principle. The social-liberal government, in office from 1993 on, introduced major reforms to make the financing of the welfare state sustainable. Problems in the labor market were eased with the help of classical means of labor market

policy with expanded early retirement, and the introduction of some internationally recognized leave schemes (Fuhrmann, 2000). In the field of social and labor market policy the government has since relied on the mobilization of the whole workforce, firstly in order to decrease public spending and increase public revenue and, secondly, to increase the support of all sections of the population (Cox, 1997). This orientation towards employment leads to a further equalization of the Danish gender order. The low birth rate is a problem, too, but nevertheless men as well as women are and want to be employed as continuously as possible and for as many hours weekly as possible. Therefore, it is not that public child-care is cut back, but instead it was adapted and further optimized, along with the possibilities of temporary leave and, above all, the conditions of returning to the labor market. The generous social benefits are commonly viewed as a necessary insurance of the workforce and as a condition for the high flexibility of labor (Eurostat, 1998). Increasingly, the duty and desire of fathers' participation in the family are on the agenda. The Danish women, self-confident and democracy-conscious, are scornful of the difficulties of reconciling family with working life, and because of this high meaning of equality, Danish men and politicians are not willing and not able to repeal public concern on this issue. Consequently, a more equal distribution of child rearing duties can be found in the younger generations (Kommission, 2000). The priority of collective bargaining is today the quality of work places and additional holiday for parents. All in all, the post-Keynesian welfare state is tied to the equality norms of the developed Keynesian welfare state – which is made even easier since there was no typically Keynesian broad mass production of consumer goods in Denmark, which is why the economy had to cope with less drastic transformations (Torfing, 1999). The gender order had its great leap forward in the 70s, when discrimination which opposed the 'passion for equality and justice' (Graubard, 1988, transl. N.F.) was moved into the foreground of public debate and dismantled step by step. There remains wage segregation (although the lowest in the European Union) and a strong sex-specific segregation of the labor market (Eurostat, 1998). However, the legitimacy of equality issues is high and the Danish welfare state is – as a long historical development shows – eager for reform. The high status of gender democracy was expressed in the Maastricht-referenda and -debates in 1992 and 1993. Therefore, the development of the gender order of the 90s is to be seen within a larger historical context. Here is a development towards the better redistribution of productive and reproductive work, and many see the sex of a person as dwindling

in political relevance. For this reason, specific feminist politics in the sense of "women's politics" (which can be found in Germany and elsewhere) hardly can be legitimized in Denmark (Borchorst, 1995).

Pension

Ever since the mid 80s, there were some qualitative improvements of the situation of the elderly. This had very positive effects on their financial situation. Domestic help is free of charge and granted by demand. This regulation is meant to reduce the need of expensive old peoples homes. Since then, the inhabitants of old age homes are paid out of their pension and in turn they pay for home, meal and service according with their own estimation. Before, however, the pension had not been paid out, except for a small pocket money. Since 1988, no new homes are built, but rather flats adapted to the special needs of elderly people. These are flats with at least two rooms and a terrace. If the rent exceeds 15% of the occupant's income, the state covers the difference (Greve, 1992).

In the end of the 80s, the Conservative Party had suggested abandoning the people's pension, but this only harvested broad protest. The suggestion had no political chance of being carried through (Hansen, 1990). An achievable way of reducing pension expenses now is reducing the options of early retirement (Plovsing, 1994).

On January 1st, 1994, the people's pension was converted into a taxable income, but the pensions were increased at the same time, so the net income of pensioners grew on the whole. Furthermore, receiving people's pension was made income-related (Plovsing, 1994), so that, strictly speaking, it cannot be called a basic pension. Nevertheless, all citizens who do not have other sufficient income receive a non-contributory pension.

The introduction of private pension funds that will be paid out in 20-30 years enlarged the fragmented pension schemes with another category. The pension scheme today consists of 1) the income-related people's pension, 2) the labor market pension for which the duration of employment, but not the wage, is decisive, 3) many occupational pensions, 4) the private pension funds and 5) additional tax financed pensions for retirees with low income. The vast majority of Danish citizens receive pensions of several types, and poverty among the

elderly is avoided by means of the people's pension and the needs based housing benefit. The pension scheme has a strong redistributive effect; and the people's pension and the pensions based on the duration of employment even out previous wage differences to a large degree.

Parental Leave

On January 1st, 1994, all possibilities of temporarily leaving the labor market were comprehensively broadened, as was parental leave. After the end of maternity and paternity leave, one parent could take up parental leave for up to twelve months. The leave could be shared between the parents and could be taken until the child is 8 years old. In 1994, the earnings replacement rate was 80% of the highest amount of unemployment benefit (which up to a certain limit is 90% of the previous earning). It was up to the local authorities to increase this benefit. Two thirds of the authorities actually paid additional benefits. Many women took parental leave so that it quickly came to personnel bottlenecks in the public sector, where two thirds of all female employees work. For this reason, most of the local authorities cut the additional benefits. The broadened parental leave corresponded to two matters of concern: many parents had demanded an improvement, and the labor market (unemployment had reached 12%) was relieved within a short time (Jensen, 2000; OECD, 1996).

In the mid-90s, a rapid economic growth developed and produced a shortage of qualified workers. Now, all the recently introduced leave schemes have been restricted and/or made financially more unattractive. The wage replacement for parental leave was reduced to 60% of the maximum unemployment benefit in 1997, although the minimum benefit was about 900 □ per month in the year 2000. The comparatively short duration of parental leave was not restricted; parents rather demanded an extension of this period (Fuhrmann, 2000).

Parental leave and its financial compensation are especially generous in the female dominated public sector. On the one hand, this responds to the demands of many employed women, but, on the other hand, it is an incentive to stay in the public sector. The parental leave offers no incentive to reduce the strong segregation of the labor market. Critics demand the improvement of leave schemes in the private sector, in order to make this sector attractive to women, and to make it easier for men to take up parental leave (Nordic Council of Ministers, 1998).

Abortion

The abortion law had not been reformed since 1973. On May 5th, 1998, the Danish Parliament celebrated the 25th anniversary of the law. On this occasion, the Members of Parliament discussed the abortion rate. The debate resulted in passing the preparation of an action plan designed to lower the abortion rate by means of improved sex education and contraception. The Christian Peoples Party was the only participant in the debate stating that each abortion was one too much and that lowering the rate should have priority. Even this party only suggested the improvement of contraception and consultation. However, they also demanded that the advice centers be controlled. The neoliberal Progress Party demanded further liberalization of the abortion law as well as requiring a woman to cover the expense of the abortion. All other parties emphasized unanimously the achievement of the women's right to self-determination and demanded the further improvement of the quality of abortions and consultations, as well as comprehensive sexual education.

3. Comparison

Summarizing statements about policies or even whole countries are inevitably generalizing. In spite of this, the comparison of Germany and Denmark offers unambiguous findings on the character of the respective gender orders (in a synchronic comparison) as well as on the path dependency of the development of these two national gender orders (in a diachronic comparison).

Synchronic Comparison

The gender orders in the three countries FRG, GDR, and Denmark differ significantly.

- *Pension:* In the FRG, the contributory pension scheme and the necessity of working continuously and long term to access a sufficient pension placed a high dependency on the pensions of (ex-) husbands for the majority of elderly women. Women run a high risk of poverty. In the GDR and in Denmark, the risk of dependency or poverty was/is avoided by the increase of continuous female employment and by the highly re-distributive pension scheme.

- *Parental Leave:* In the FRG, the lack of income replacement leads to a high financial dependency within the family. At the same time, high sex specific wage segregation is a strong incentive to hold up a classical division of labor. The comparatively long duration of parental leave, the shortage of professional child care and the difficulty of re-entering the labor market are (even more severe in combination) a strong incentive to establish a one-earner marriage or at least for the wage earner contributing financially less to the household to interrupt (her) employment for a while. In the GDR in 1949, and in Denmark through the years, a system was established that allowed high female employment participation. The short duration but high compensation of parental leave, as well as the tight net of public childcare, prevented inner-familial dependencies and encouraged a quick and successful return to employment.
- *Abortion:* In the Keynesian FRG, the decision on legal abortion was not the responsibility of the pregnant woman, but the responsibility of a state-approved adviser. In the GDR and in Denmark, the right to self-determination as a law was passed in the beginning of the 70s.

The gender orders in the post-Keynesian welfare states Germany and Denmark are differing to a high degree, too.

- *Pension:* Although the female labor market participation increased in Western Germany, retiring still holds the risk of dependency and poverty for women, because the German pension scheme still requires long-term full-time employment for receiving a sufficient pension. Regarding the shortcomings of professional child-care and the low consideration parental leave finds in the pension scheme, many women cannot manage this. The Danish pension system with its combination of people's pension, ATP-pension and additional benefits offers full coverage of all citizens and a clear balancing of wage differentials and parental leave.
- *Parental Leave:* The prolonged, but still financially insufficient parental leave in Germany also reinforces personal dependence of mothers as offers them an incentive to uphold a classical work division within the family. Childcare, in essence, remains the responsibility of the parents (mothers) and at best can be combined

with part-time work. The public childcare in Denmark is not in danger of being cut down; its purpose is to support the two-earner family and single parents. In this sense, the parental leave is still short, but well compensated.

- *Abortion:* In Germany, the new abortion law reflects conflicting interests: the law in force reconciles the right to self-determination and the demands of pro-life activists. In Denmark, the right to self-determination is sacrosanct.

Diachronic Comparison

Germany

The unification of on the one hand a hierarchical (FRG) and on the other hand a much less hierarchical (GDR) gender order in 1990, brought only little impetus to modernize the gender order in the new Germany. The Unification Treaty was concluded with reference to Article 14 of the (West) German Constitution, which intended the entry of the GDR and therefore the takeover of the political, the economic and the social security system of the FRG. In the field of pensions and parental leave, the Western German regulations are still in force. These regulations were partly reformed and brought in line with changed social conditions, but there is no noticeable input of the GDR's equality principle in the sense of covering different life courses for equal value. The compatibility of family and working life still is on the agenda, and poverty among old women has been the subject of public debate since 1999. Nevertheless, the principles of contributory pension and a family-based (instead of self-reliant) social security were held up. This counts negatively for women because, for financial reasons, women still carry the burden of part-time work and parental leave. Regulative politics is liberalized in some areas, with the result of less direct state interference in questions of personal life styles. The abortion law had to be reformed, but the demand for female self-determination was not successful.

All in all, it has to be concluded that the former GDR during the unification process took over the hierarchical gender order. The female participation in the labour force dropped rapidly and today, different expectations towards the availability of child-care have become noticeable as the diagnosis of lack. In the 90s, this regime was

modernized in some areas (not least in the field of peoples opinions and preferences), but at least in its regulation by the welfare state all in all and in principle it remained hierarchical.

Denmark

The several economic recessions led to severe cuts of social benefits in many European countries and therefore worsened the situation of women in relation to that of men. In Denmark, the recession neither brought substantial changes of the social benefits in cash and kind, nor did the relative substantial and financial situation of women worsen. Instead, a strong orientation towards the mobilization of the whole work force motivated the Danish welfare state to cover the needs of women and men with continuous qualified employment. Social and sexual equality are highly legitimated in the eager-for-reforms Danish welfare state, and nobody would be successful in promoting the idea of "essentially" different duties and needs of women and men, which is why sex specific inequalities have been continuously reformed. The 90s meant further improvement, but no break in the development of gender politics.

4. Conclusion

Living in Germany as a woman bears a severe financial risk. Therefore, when one looks beyond the German-Danish border from the south, the Danish gender order seems heavenly. However, Danish feminists steadily claim obvious and hidden inequalities of their situation; above all, the strong labor market segregation and the resulting wage differentials.

The examination of gender arrangements in certain fields shows that the German hierarchical gender order is stable, and the Danish is not free of any hierarchy, but its present gender differences are weak and the gender relations only modestly hierarchical. Furthermore, the examination shows that the Danish gender order is much more dynamic than the German. The Danish policy steadily follows the aim of equalizing many social and sexual differences. In Germany, some modernization processes have taken place, but until now, those processes were integrated into the existing order without substantially changing it. In Denmark, societal and political modernization happens simultaneously and in accordance with each other. The development in

both countries is, as we can see now, clearly path dependent; in Germany this is the case even despite the integration of the GDR.

The European Union has given political impetus in gender issues for some time now. The new "gender mainstreaming"-approach which was passed in 1996 (Kommission, 1996; Pollack/Hafner-Burton, 2000), is to a far extent in line with the Danish gender order, whereas the implementation of such a concept in Germany would lead to severe, fundamental change. The status and influence of supranational policy in the field of social policy might change. Possibly, the European Union is gaining a status which allows it to give some modernization impetus to its (or some of its) member countries. If so, if the future development of the countries gender policies and gender orders would be increasingly influenced by this factor, the analysis has to consider the supranational level and the quality of European policy far more.

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