Practices of Implementation of Sexual Harassment Policies: Individual Versus Collective Strategies

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Abstract

This article examines the implementation of sexual harassment law in the workplace in Germany and the United States. Both countries have developed different approaches to the issue, with certain trade-offs for the pursuit of gender equality and changes in gender workplace culture. Germany has developed a corporatist, collective strategy. Yet, few German employers have adopted policies and training programs. New policy approaches focus on sexual harassment as a group-based, but gender-neutral, issue in the context of general unfair workplace practices of “mobbing.” In contrast, sexual harassment is primarily understood as an individual rights issue in the U.S. This approach emphasizes individual (internal) redress. Social and organizational change comes at a high cost for individuals who have been harassed. Employers’ practices in both countries have turned sexual harassment into a gender-neutral issue. I conclude that a synthesis of both individual and collective approaches with an explicit focus on gender inequality would be desirable.

INTRODUCTION

Legal and policy changes regarding sexual harassment have been described as a feminist success story. The evolution of employers’ policies against sexual harassment is seen as a response to the second wave of the women’s movement. This model of legal and policy changes has been promoted by international women’s organizations, has been endorsed by the European Union, and has been diffused by other supranational bodies like the International Labor Organization (ILO; Collins, 1996; Hodges, 1996; Husbands, 1992; Mazur, 1993; Rubenstein, 1988; Zippel, 2000). Although most European countries have adopted some kind of new laws in the late 1980s and 1990s, the U.S. approach to sexual harassment has been criticized and portrayed as a model for Europeans.
to avoid rather than to imitate (Mazur, 1993; Valiente, 2000; Saguy, 2003; Cahill, 2001).

There has been little research on the cross-national differences in policy approaches and their implications for gender equality and relations in workplaces. The purpose of this article is to compare policy profiles in Germany and in the United States by examining employers’ practices, workplace policies, and prevention efforts in both countries. How can we evaluate these approaches from a feminist perspective? I distinguish between policy approaches focused on sexual harassment as a conflict between individual and group-based, collective approaches (see Table One). The U.S. and Germany represent these two different models (see Table Two).

Employers in the U.S., complying with the Civil Rights Act of 1964 and following case law developments on sexual harassment, have adopted policy approaches that emphasize individuals’ (legal) rights and individual internal redress, defining sexual harassment as sex discrimination. This is also evident in training programs that focus on the legal (individual) dimensions of sexual harassment only. Group-based approaches of team-building and general sensitivity training programs are the exception.

Work organizations in Germany tend to emphasize collective rights, group-based approaches to training, and broader awareness over individuals’ redress. Since the new labor law against sexual harassment, the Bundesbeschäftigungsschutzgesetz (Federal employee protection law) in 1994 was put into effect, few employers have adopted policies against sexual harassment, and training efforts are rare. Most often, the new policies subsume sexual harassment as one incident of “unfair workplace” practices alongside nongender-specific discrimination and “mobbing.” The notion of mobbing describes the violation of a persons’ right (Persönlichkeitsrechts) through intimidation and degradation, including bullying and harassment.

Drawing on feminist theories of sexual harassment, gender, organizations, and the welfare state, I use a cross-national, comparative approach to highlight the variation in the policy profiles. As others have shown, legal systems and legal cultures are key to explaining national variation of policies against sexual harassment (Bernstein, 1994; Mazur, 1993; Elman, 1996; Cahill, 2001; Saguy, 2003). Yet, the laws leave room for the interpretation of employers’ compliance with the laws (Cahill, 2001). The implementation process itself becomes a political process in which gender and workers’ interests are negotiated (Mettler, 1998). Thus, I argue that the implementation of sexual harassment laws is shaped not only by the laws themselves, but also by systems of industrial relations and institutionalized gender equality politics. I will also briefly discuss feminist

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3The first Supreme Court ruling on sexual harassment was Meritor vs. Savings Bank in 1986.
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strategies and the political opportunity structures that women’s movements have encountered in raising the issue of sexual harassment (Zippel, 2000). However, the purpose of this article is to examine the implications of these approaches for gender relations in the workplace.

Because policies against sexual harassment are a fairly recent phenomenon, I first develop feminist policy assessment criteria to identify the gender dimensions of variation in the policy profiles. I then compare U.S. and German policy profiles and the implications of policy responses for gender relations. In particular, I examine the adoption of policies against sexual harassment and prevention efforts in the workplace. What are the trade-offs and implications of these two models for gender relations? I find that both countries’ approaches lack an explicit concern with gender equality and with changing workplace cultures. I conclude that a third model based on a synthesis of individual- and group-based approaches is necessary, a model that takes explicitly gender inequality as the underlying cause of sexual harassment into account.

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POLICY ADOPTION AND IMPLEMENTATION

Cross-national studies of policy approaches to sexual harassment have primarily examined differences in legal dimensions (Baer, 1995; Bernstein, 1994; Cahill, 2001; Elman, 1995; Hodges, 1996; Husbands, 1992; Mazur, 1993; Saguy, 2003; Valiente, 2000). Although national laws are an important dimension of cross-national variation, employers’ practices do not merely mirror these laws. Because employers have leeway in complying and implementing these laws, we need to examine employers’ practices to understand what happens at the workplace level (Cahill, 2001; Saguy, 2003).

The adoption of workplace policies is an important “first step,” reflecting, at a minimum, the acknowledgment of sexual harassment as a problem. They signal to employees that management is aware of the issue. However, more important is the second step, the implementation and enforcement of these policies, as employers could be adopting policy statements to comply with the law that would be merely symbolic or “toothless” paper tigers (Cockburn, 1991). Even well-designed policies can be ineffective if they are not publicized or enforced. Therefore, employers need to implement and enforce policies and develop effective informal and formal grievance procedures that provide redress to those who have been harassed, and to sanction perpetrators.

We know surprisingly little about the implementation process or the effectiveness of policies and educational awareness programs in changing both gender workplace culture and employers’ responses to women’s complaints (Gutek, 1997; Grundmann, O’Donohue, and Peterson, 1997; Magley et al., 1999). What we do know is that there are significant gender differences in attitudes about sexual harassment and the implementation of policies (Gutek, 1997; Reese and Lindenberg, 1999).

In addition, gender relations within workplace organizations shape the adoption and implementation of these policies (Hawkesworth, 1997; Zippel, 1994).

MODELS TO ANALYZE POLICIES AGAINST SEXUAL HARASSMENT

Policy profiles are themselves “gendered.” Feminist policy studies supply us with the following tools to identify gender dimensions of policy approaches to sexual harassment. First, an important distinction needs to be made between protectionism versus empowerment (Smart, 1995; Riger, 1991). Policies prioritizing the goal of protection could lead to increasing sex segregation and prohibition of all consensual relationships in workplaces, thus compromising women’s equality with men and women’s sexual self-determination (Segrave, 1994). Policies focused on empowerment would emphasize choices for victims and encourage and support
resistance to harassment, for example, by assertiveness training and by strengthening individual and collective rights.

Second, policies against sexual harassment can ignore its basis in abuses of gender power and gender inequality. The distinction between gender specificity versus gender neutrality helps to identify whether gender inequality or gender power is taken into account. For example, by adopting notions of “inappropriate behavior” using gender-neutral concepts, gender conflicts around sexual harassment can be circumvented. Third, policy approaches can be oriented toward rights versus needs. For example, are interventions, including investigation procedures, designed to attend to the needs of the victims? Or are the procedures oriented solely toward protecting the legal rights of those involved, without protecting the needs of the victims (Reese and Lindenberg, 1999)?

Policy approaches to combat sexual harassment can be divided into two categories: individual versus collective, group-oriented approaches (see Table One). Model 1 is characterized by defining sexual harassment as a conflict between two or more individuals, the harassed person and the perpetrator. Thus, employer policies and efforts focus on improving procedures to handle complaints. Individuals are informed about their rights and the procedures in place. Organizational change is limited to adding sexual harassment as one form of workplace conflict that needs to be resolved.

Model 2 is characterized by a focus on groups. Policy statements depict sexual harassment as an organizational problem beyond its effect on the individuals involved. Individual complaints are the basis for group interventions. Training programs focus on sensitivity, team building, respectful partnership, and cooperative teamwork. Organizational change is oriented toward improving workplace culture.

Yet, because both models lack explicit consideration of gender relations, I suggest Model 3 as the combination of both approaches with an explicit focus on gender relations. In this feminist approach, an incident of sexual harassment between individuals is interpreted as an indicator of problems caused by organizational, economic, and cultural gender inequality. Sexual harassment is defined in gender-specific terms, and policies take power differentials (hierarchical and gender power) into account. Both improving the handling of individual complaints and affecting broader changes in gender workplace culture are at the core of this approach. Interventions in workplace organizations are oriented toward changing gender inequality. Training programs focus on gender power-sensitivity training, including the assertion of, and respect for, the right to sexual self-determination.

As we will see, the first two models are prevalent in different degrees in Germany and in the U.S.: whereas the U.S. tends toward the individual-based Model 1, Germany’s approach can be characterized by the Model 2 group-based approach (see Table Two).
METHODS, DATA, AND CASE SELECTION

The cross-national comparative method is particularly appropriate for exploratory studies because comparisons highlight the variation of policy profiles. The data of this research project are based on fieldwork and content analysis of a variety of documents in the U.S. and Germany between 1994 and 1999. Primary documents include employers’ policies and brochures, and publications by state officials, unions, and women’s organizations. I used secondary documents, including social science, policy, legal, human resource, and management studies in both Germany and the U.S. In the U.S., I conducted a case study of a public educational institution, including interviews with affirmative action/equal employment opportunity (AA/EEO) personnel, consultants, and women’s groups. In addition, I participated and observed training and awareness programs as an intern in the Office for Human Resources. In Germany, little research exists on sexual harassment in general. I conducted in-depth face-to-face and telephone interviews with legal and policy experts, including lawyers specializing in sexual harassment issues, equality officers, union stewards, and feminist activists. Among the interviewees were 30 equality officers in public and private employers. Finally, I had access to a number of reports and materials through the Federal Ministry of Women in Germany, the private collections of court rulings, and the documents of a prominent legal scholar and lawyer, Dr. Barbara Degen, and the archive of the Arbeitsstelle für Diskriminierung im Erwerbsleben (ADE; Office for Discrimination in the Workplace) in Bremen.

Germany and the U.S. are compelling cases through which to explore the variation across policy developments that address sexual harassment. In both countries, increasing numbers of women have joined the workforce, and sexual harassment in the workplace is similarly prevalent in both countries (Zippel, 2000). Yet, these two countries exemplify two contrasting models of dealing with sexual harassment (see Table Two).

4I chose this particular institution for its large size, which allowed me to study institutional responses to sexual harassment both as a workplace issue and as an issue within educational settings.

5I identified the legal experts through pertinent publications in legal journals and combined this with a snowball sample: there are less than 10 lawyers in Germany with expertise in labor law and sexual harassment. Based on national directories, I selected and interviewed all 16 equality officers at the German Länder level (state) and contacted all 10 women’s units of nation-wide unions.

6I selected these equality officers through pertinent publications of “best practices” companies, known for women-friendly workplace policies, and an availability sample at a conference on women’s issues (Top 1999). The interviewees included equality officers from large national and international corporations and public administrators at city and communal levels. This selection is likely to over-represent employers most active in women’s issues, and thus those likely to be most concerned with issues of sexual harassment. Thus, my findings of the lack of policies and awareness programs among these employers is even more striking.
Cross-national comparisons such as this study will underestimate the variation among workplace organizations within countries. However, gathering data at the organizational level is problematic due to employers’ hesitance regarding legal liability and sensitivity of the issue. Because of the highly politicized nature of the issue, many respondents asked me not to reveal their names. To protect the confidentiality of these interviewees, I cite here only those who explicitly gave me the permission to use their names. I differentiate between public and private employers if the information is available to the general public.

The Individual-Liberal Legal Model of the U.S.

In 1986, the Supreme Court affirmed in Meritor vs. Savings Bank that sexual harassment constitutes sex discrimination, and thus is actionable under the Civil Rights Act of 1964. American women filing lawsuits, supported by feminist legal scholars, most prominently Catherine MacKinnon (1979), were successful in changing jurisprudence and developing a “women’s common law” (MacKinnon, 2002). In the U.S., the ideal of the liberal welfare state is minimal state intervention in the market forces. Yet, there is also a strong emphasis on the states’ responsibility to assure equal opportunities of individuals to compete on the market (Espin-Anderson, 1990; O’Connor, Orloff, and Shaver, 1999). The legal system is the primary route through which individually formulated claims can be pursued.

Similar to sex and race discrimination in employment, the U.S. approach to sexual harassment is based on an individual legal model (see Table Two). The Equal Employment Opportunity Commission (EEOC), the federal agency charged with implementation and enforcement of the Civil Rights Act of 1964, has set certain standards for employers, for example, by issuing the 1980 “Guidelines for Employers” to define sexual harassment, and to outline employers’ policies and procedures to handle complaints. Yet, case law has been the driving force in interpreting what employers’ compliance with the Civil Rights Act of 1964 means. Only recently, the U.S. Supreme Court clarified how employers should comply with the law. The 1998 cases of Burlington Industries v. Ellerth and Faragher v. City of Boca Raton allow employers the possibility of making an affirmative response. Demonstrating that an employer has taken action to prevent sexual harassment by institutionalizing policies and training programs can reduce the legal liability of an employer for a supervisor’s inappropriate behavior. In addition, these cases have emphasized plaintiffs’ use of internal grievance procedures. Facing potentially high legal

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7477 U.S. 57 (1986).
8The EEOC has, for example, supported precedent-setting cases such as the Mitsubishi class action suit, which was settled in 1998 with $34 million settlement for 300 employees. (http://www.eeoc.gov/press/6-11-98.html)
costs and punitive damage awards through court trials, employers have strong incentives to design internal grievance procedures and to make individual employees aware of them.

**Workplace Policies against Sexual Harassment**

The majority of employers in the U.S. covered by the Civil Rights Act of 1964 have developed policies to comply with these legal developments. By 1997, 95% of mid-size and large-sized public and private employers had adopted policies against sexual harassment (Dobbin and Kelly, 2001). This policy adoption process began in the late 1970s and continued throughout the 1980s and 1990s. Given that the individual liberal-legal model drives sexual harassment law, policy statements of employers formulate sexual harassment as sex discrimination and interpret sexual harassment as the violation of the right of an individual.

Legal discourse with the focus on individual conflicts has shaped employers’ approaches to sexual harassment. Although interpretations of the Civil Rights Act allow for both individual pursuit of rights against sex discrimination and group-based argument, individualized claim-making fits more easily into workplace organizations than collective claims.\(^{11}\) Previously institutionalized EEO/AA offices, which implement the Civil Rights Act of 1964, have become central in interpreting legal changes and pursuing policy implementation at the workplace (Edelman et al., 1999). In practice, these offices, often staffed with lawyers, focus on handling individual complaints internally. In line with risk-minimization strategies, policies and procedures are oriented toward, at times, conflicting goals to assure legal rights of both the recipient of harassment and the harasser while preventing the employer from being sued.

Internal advocacy groups have used laws to demand employers to take action against sexual harassment. In the aftermath of the Anita Hill/Clarence Thomas Senate hearings, (informal) women’s groups, especially in educational institutions but also in the military, as Mary Katzenstein (1997) shows, pressured employers to comply with the law. When union representation in workplace organizations is absent or weak, informal women’s groups did not have to negotiate with existing workers’ representation. Yet, formulating “collective” claims proves difficult. For example, employers argued that in the absence of individual complaints against sexual harassment, they could not take any action. Without a strong tradition on which to base “collective” or social rights in the workplace, demanding that employers take costly preventive measures is a difficult task to undertake.

\(^{11}\)Collective, group claims would be supported by Catherine MacKinnon’s argument that sexual harassment is an abuse of gender power, and women are harassed because they belonging to the group that is discriminated against (Cahill, 2001).
Awareness and Training Programs

In the U.S., precedent-setting court rulings have raised the expectation that employers should have training and awareness programs. Over 75% of medium- and large-sized employers have some form of training (Dobbin and Kelly, 2001). However, courts expect little beyond informing employees of their legal rights and the employer’s policy in place. Thus, training programs often led by lawyers emphasize individuals’ rights and encourage victims to use internal procedures rather than filing lawsuits against the company. Furthermore, employers’ training programs focus on managers and supervisors because of legal liabilities for employers if the harasser has supervisory functions over the harassed person. In addition, supervisors are responsible for handling complaints and taking action. Thus, training programs are oriented toward employers’ understandings of compliance with the law, while minimizing the costs for training.

What standard training programs teach is how men can avoid being (falsely) accused by teaching what men “should not do,” such as making remarks, jokes, or touching etc. In 30-min to one-hour seminars, there is little room for learning how men and women can work together to create a more equal gender culture. Surprisingly, the focus on individual behavior turns sexual harassment into a gender-neutral problem of morality. Setting standards for “good” or “appropriate” behaviors de-genders sexual harassment. Sexual harassment as an expression of gender inequality and power becomes invisible. More expensive group-based interventions or training programs oriented toward teambuilding are left to the employers’ discretion and constitute an exception rather than the rule.

On the positive side, U.S. employers have adopted policies rather swiftly, and the mere existence of these policies has increased awareness of the issue in the workplace. Using arguments of legal threat as the cornerstone of implementation efforts, the orientation toward individual-based solutions emphasizes individual redress and raises the expectations of those harassed that their employer cares and will act appropriately.

The U.S. model of individual redress is not without problems. Most women who have been harassed do not take advantage of these procedures. Stephanie Riger argues that “the reasons for the lack of use of sexual harassment grievance procedures lie not in the victims, but rather in the procedures themselves” (1991). Solving individual cases of sexual harassment is an enormous challenge for organizations because of the complexity of sexual harassment cases, including their highly emotionally charged nature, and the gender and hierarchical power differentials involved.

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12The number of complaints of sexual harassment filed with the EEOC has continuously risen from 4,272 in 1981 to more than 15,000 per year in 2001 (Source EEOC 2002). Yet, researchers estimate that less than 10% of women who experience sexual harassment file complaints (Welsh 1999).
Not surprisingly, complaining about harassment is still risky: after the victimization by perpetrators, retaliation and reprisals for reporting often follow. Fifteen percent of civil rights cases today are complaints about retaliation (EEOC, 2002). The experience of Anita Hill for speaking out and for miner Lois Jenson and her colleagues who filed the first class action suit demonstrate the high emotional, psychological, and physical costs. Psychologists refer to this as “secondary” and “third” victimization caused by colleagues and employers, but also by the legal system.

Despite these dangers, even among feminists in the U.S., the strategy for changing workplaces and institutions focuses on individuals: women should confront harassers (individually) and seek ways to report harassment. Training and awareness programs encourage victims of harassment to file complaints, and some employers demand that bystanders, if aware of harassment, make management aware of the incidents. An unintended consequence of the focus on individuals is also the “pressure to report” (Zippel, 1994).

It is obvious that employers should have an interest in resolving issues of sexual harassment internally. The question is just how the employers’ practices deal with the conflicting goals of tending to the needs of victims, empowering harassed individuals, and protecting the institutions from loss of reputation and costly lawsuits. The argument is that organizational improvements in handling sexual harassment can only be achieved if individuals come forward and use them (Reese and Lindenberg, 1999). But how many filed reports will it take for organizations to learn how to handle sexual harassment complaints?

In the broader picture, this strategy places the responsibility for change with individuals: instead of an invitation to report, the pressure to report puts the burden on those most affected by harassment. If organizations handle sexual harassment primarily as a conflict between individuals, other structural problems of gender inequality in organizational hierarchies will not be addressed. Grauerholz et al. (1999) argue that “the network would displace responsibility for resolving systemic problems by treating sexual harassment as an individual problem to be resolved through customary remedies.”

Consultants advise employers to prohibit intimate, mutual relationships between employees (Williams et al., 1999). Even though cases of “sexual favoritism” or so called “third-party harassment” are rare,

\[13\] An industry of (legal) consultants and human resource personal provides step-by-step advice to management for handling complaints. Yet, these procedures are oriented toward ensuring compliance with laws rather than with prioritizing the needs of victims.


\[15\] The EEOC issued guidelines in 1992 including a definition of “third party harassment.” Third party harassment means discrimination that occurs when an employee is disadvantaged because another employee has a relationship with their supervisor (EEOC Regulations to Title VII of the Civil Rights Act of 1964, 29 C.F.R. Paragraph 1604.11, 1992).
human resource (legal) consultants argue that restricting any intimate relationships (even those among colleagues) in the workplace is necessary to prevent harassment. On the one hand, the concept of sexual favoritism caters to the popular belief that women will use sexual power to “sleep their way up.” On the other hand, this stance resonates with paternalistic understandings that women need to be protected from men’s sexual advances.

However, there is no research to support the notion that prohibiting relationships will protect women from harassment. It is more reasonable to assume that employers follow the (legal) consultants’ views that these policies protect the organization itself from lawsuits that could emerge when previously consensual relationships turn sour. Even though many couples meet in the workplace, mutual relationships can now have serious consequences. As Williams et al. (1999) argue, it is most likely women who have to leave the workplace if they engage in consensual relationships with colleagues. These policies do not challenge existing (unequal) gender relations or empower women in mutual, intimate relationship with men. Ultimately, they restrict rather than support the right of women’s sexual self-determination.

Employers’ practices emphasize individual legal rights over group-based, collective rights of employees. Alternatives to formal reports such as informal complaints or “dispute resolution” through mediation, an approach promoted by the EEOC in the 1990s, still focus on solving individual cases. Furthermore, in the absence of a strong labor protection law in the U.S., employers can use measures against sexual harassment to erode workers’ rights. For example, zero-tolerance policies give little protection or internal redress to individuals, and thus, diminish collective, group-based workers’ rights.

Fitting easily with corporate interests of productivity, efficiency, etc., this strategy uses managerial discourses of risk minimization, productivity, and efficiency, and has the advantage of speedy implementation. However, from a feminist perspective, using this model of implementation is highly problematic because it comes at the cost of emphasizing individual cases and behaviors while silencing organizational and gender dimensions of the problem of sexual harassment. The more systemic aspects of sexual harassment as rooted in unequal gender relations and gender workplace culture become difficult to address.

The Corporatist Group-Based Model in Germany

As in the U.S., 1986 was an important year in the history of sexual harassment law in Germany. The Bundesarbeitsgericht (German Federal Labor Court) affirmed in a ruling the rights of employers to dismiss a supervisor for taking advantage of his authority over a young trainee (Degen, 1988). However, federal legislation strengthening the rights of harassed individuals was only passed in 1994 in the form of a new labor law, the
Bundesbeschäftigungsschutzgesetz (Federal employee protection law). The law is an amendment to the Federal Second Gender Equality law, but the tradition is based on the workplace protection law, which emphasizes the collective, group-rights of workers vis-à-vis their employers. The law emphasizes the responsibility of employers to protect employees from the nongender-specific “violation of dignity” of women and men in the workplace.16

Both the legal system and the system of workplace regulations have shaped the German approach to sexual harassment. In contrast to the U.S. common law system, the German code law system in the Romano-Germanic tradition is, in general, less oriented toward precedent-setting litigation because judges can interpret laws with or without taking previous rulings into account. In the absence of strong individual-based, antidiscrimination legislation and having less opportunities to affect legal changes through litigation, German feminists realized they would have to embark on a “political route.” Making unions their allies was the obvious way to affect changes for women in the workplace (Interview with Sybille Plogstedt, April 28, 1999).17

The German approach to sexual harassment can be characterized as “corporatist-collective, and group based” (see Tables One and Two). In the German socially conservative corporatist welfare state, the government itself plays a minimal role in the implementation or enforcement of workplace regulations in general. Employers and unions will negotiate policies and procedures to handle sexual harassment in the workplace without much interference from the state. Thus, German Federal legislators can set standards, but they have been rather vague in defining what responsibilities of employers are and how they can be held accountable. Moreover, individual legal rights remain weak.

The rights of harassed employees are embedded in labor law: because an employer who is failing to protect individuals from harassment is violating the work contract, harassed employees have the right to refuse to work.18 Employees can file a lawsuit in the labor court, demanding that employers take action against the perpetrator; however, there are no significant monetary awards.19 In addition, there is no state agency charged

16Susanne Baer (1995) criticizes the German formulation of “violation against dignity” itself for disregarding the gendered nature of sexual harassment by failing to connect sexual harassment to gender inequality.
17The passage of the new law in 1994 was in part response to the European Union recommendation on the dignity of women and men in the workplace. It also was the result of increasing awareness of the issue in Germany due to the Anita Hill/Thomas Clarence Senate Hearings in the U.S. “Femocrats,” women within the state bureaucracy, and women within unions and political parties used this window of opportunity and demanded the passage of the law.
18In practice, however, lawyers do not recommend this strategy.
19The maximum of an award in a case of sexual harassment was $500 (DM 1,000) for a woman who had been grabbed on her breast by a superior (Degen, 1999). The highest amount could be a maximum of $25,000 (DM 50,000) including back pay, etc.
with implementation and enforcement, nor are there sanctions against employers for noncompliance. Consequently, employers do not face the risk of fines or potentially high legal costs as do U.S. employers.

**Antimobbing Workplace Policies**

Thus, the adoption of workplace policies in Germany depends on the will of employers and the mobilization of unions who can demand collective agreements from employers. Consequently, antisexural harassment policies have been slow to develop. Although some employers adopted specific policies against sexual harassment in the context of the *Frauenfördermassnahmen* (women’s equality measures) in the early 1990s, the majority of employers have ignored the federal law of 1994. Public employers at the local level, including cities and universities, were the first to develop policies. They did so at a slow pace: by 1999, only two out of the 16 federal ministries had antisexural harassment policies (BMFJ, 2000). In 1996, Volkswagen (VW) was the first private company to adopt antimobbing and discrimination policies. Policies against sexual harassment in the private sector are still the exception rather than the rule. Five years after the Federal Law was passed, even companies otherwise known for “women friendly” workplace policies had not adopted any kind of policies against sexual harassment.

Since the mid-1990s, most employer policies against sexual harassment have been antimobbing/antiharassment, and discrimination policies subsume sexual harassment as one form of unfair workplace practices. The development of these nongender-specific policies is striking because there are no specific laws that prohibit “mobbing” in the workplace, nor had courts defined “mobbing” at that point. Therefore, these policies are an outcome of a political process of implementation preceding legal developments. Mobbing, a term originating in Sweden, describes conflict-laden communication among colleagues or among superiors and employees in which the attacked person is treated as inferior. It is a situation in which one or more persons systematically, and over a long time period, attack someone directly or indirectly with the goal of marginalizing and driving them out (Holzbecher and Meschkutat, 2000).

In 1997, the Federal German Labor Court defined mobbing as systematic hostility, harassment, and discrimination between employees or by supervisors (Decision January 15th, 1997: NZA, 1997). And most recently, a *Länder* (state-level) labor court ruled that mobbing can be a violation of *allgemeine Persönlichkeitsrechte* (general personal freedoms) Article 1 human dignity, Article 2 personal freedoms, and a hazard to a person’s

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20The early regulations were most often initiated by informal women’s groups that included gender equality officers and by women in works councils. For example, in the progressive city of Cologne and even in the conservative-ruled city of Stuttgart, policies against sexual harassment were passed in the early 1990s.

21German feminists criticized that individual incidents of sexual harassment can be pervasive and threatening. Thus, the definition of “over a long time” of mobbing does not do justice of women’s experiences.
health (LAG Thuringia: Decision April 10, 2001). Therefore, employers need to protect employees from mobbing.

Mobbing and sexual harassment have certain aspects in common: both can lead to intrigue, victimization, insults, and threats that cause psychosocial stress. Both phenomena reflect the lack of respect and dignified treatment of employees. However, whereas sexual harassment is rooted in unequal gender relations, the notion of mobbing does not make visible power differentials between men and women. Despite this important difference, sexual harassment in Germany has been subsumed under mobbing.

Most paradoxically, it is now women’s or gender equality offices that implement sexual harassment as a gender-neutral issue of mobbing. Beginning in the middle of the 1980s and since the Second Gender Equality Law was passed in 1994, public sector employers have institutionalized Gleichstellungsbeauftragte (offices for gender equality) or Frauenbeauftragte (women’s advocates). These “femocrats” can best be compared with the U.S. Women’s Bureau in the Department of Labor. At the local and communal level, these offices of “state feminism” have been key to creating awareness of sexual harassment and have often initiated policies and prevention efforts.

Why did employers then adopt antimobbing and nongender-specific policies against sexual harassment? With the laws being vague on what policies and procedures should look like, these policies reflect gender and organized workers’ interests in addition to employers’ interests. Informal women’s groups composed of gender equality officers, female employees, and women from works councils pressured employers to adopt policies. Yet, finding allies and coalition partners in the existing system of workers’ representation often meant compromising gender interests. In the private sector, where few gender equality offices exist, these policies against sexual harassment were entirely the result of collective bargaining between employers and works councils.

Indeed, unions are the key actors in the representation of workers’ interests in Germany. In contrast to the U.S., where only the public sector has significant degrees of unionization, the German system of “works councils” is a firmly institutionalized system of workers’

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22For example, in the public universities, active women’s groups were on the forefront of developing policy measures.

23Only around 14% of wage and salaried workers were members of unions in the U.S. in 1990s. Although less than 10% of private sector employees are unionized, public employees have significantly higher rates with 37.3% of employees in unions. Thus, the public sector in the U.S. is more similar to German rates of unionization with 35%. Women make up between 30% and 40% of union membership in both countries (Source U.S. Department of Labor Statistics 2000, Statistisches Bundesamt 1998).

24Employers with 50 or more employees must comply with the law that constitutes workplace regulations, the Betriebsverfassungsgesetz (BetrVG), to allow the establishment of a Betriebsrat (works council), or Personalrat in the public employment sector. These works councils represent the interests of employees at the company level. Works councils have a say in personnel decisions and, by law, may challenge unfair dismissals of workers.
representation at the company level. Because works councils make claims and demands for general employee protections and group-based solutions rather than promoting individual rights of (minority) groups, they broadened concerns of sexual harassment to issues of relevance to all employees.

Thus, works councils and unions were mobilizing around issues of gender-neutral “mobbing” and “unfair workplace practices.” In contrast to the U.S. concepts of discrimination, however, “mobbing” can happen to everybody, independent of a person’s sex, race/ethnicity, age, sexual orientation, etc. The German notion emphasizes the generalizability of experiences of groups treated without fairness and respect by others in the workplace. Furthermore, mobbing focuses on the group dynamics of abuse of power and exclusion. The attack of a “mob” on a person shows the lack of fairness and respect in the broader collective or team. The goal of mobbing is to get rid of this person. Thus, rather than being viewed as a conflict among individuals, the exclusion of an individual by the group dynamics is emphasized. Yet, because mobbing is silent on the specific differentials of power (based on race, ethnicity, sex, sexual orientation, disability, etc.), it fails to indicate why a person is seen as inferior and treated unfairly.

German equality officers that I interviewed explained that they had strategically adopted managerial discourses to emphasize the responsibility of management. For example, they would emphasize that both phenomena—sexual harassment and mobbing—signal broader organizational problems that employers should be concerned with: the lack of leadership and bad management. Defining the problem of sexual harassment in this way implies that supervisors are to blame if harassment occurs among their supervisees. Thus, the solution is “better management,” which fits into current German management discourse to reform and restructure workplace relations by introducing and emphasizing teamwork, flat hierarchies, etc.

What implications does this approach have for asserting individuals’ rights to file sexual harassment complaints? Even though the law requires employers to specify an office responsible for accepting complaints, employers have not created new offices. Instead, policies most often state only the usual channels: supervisors, personnel offices, and works councils. Because “mobbing” does not only affect women but also men, this strategy effectively asserted the works councils role in grievance procedures. As in the U.S., feminists in Germany argued that existing works councils and stewards were ill equipped to handle harassment cases. The elected workers’ representatives are predominately men and less than one-quarter are women (BMFSFJ, 1998). If harassment occurs among colleagues or union members, works councils’ and unions have a conflict of interest. Formally, they are supposed to represent the interests of both employees. However, in practice, gender conflicts overweigh this balance: works councils and unions have been criticized for not helping (female)
victims of harassment, and for supporting (male) perpetrators’ rights to stay in the workplace.

Harassed women prefer to seek out women who they expect will be more sympathetic to their complaint. In the public sector, these are women in the gender equality offices. In the Federal ministries, only 12% of complaints were filed with works councils, and 27% of cases were reported to personnel offices. The overwhelming majority (61%) of complaints were filed with women’s equality offices. Thus, the newly created women’s offices are the obvious preferred units by harassed women. In 2001, the *Gleichstellungsdurdsetzungsgesetz* (equality implementation law) for federal employees was passed, which states explicitly that gender equality offices should be involved in matters of sexual harassment and have the task to protect employees against sexual harassment; however, these offices do not resemble the EEOC, as they lack significant implementation and enforcement authority.

“Sexual favoritism” is not a German concept. The Federal ministry of women expressed explicitly that the law against sexual harassment would not prohibit flirtation or eroticisms in the workplace (BMFJ, 1993). The message was that the “puritanical” U.S. model would not be adopted in Germany. According to the interviewees, neither unions nor women’s groups advocated for the prohibition of employees’ relationships, emphasizing the positive aspects of eroticism in the workplace. On the one side, what could be interpreted as the assertion of women’s sexual self-determination to engage in relationships in the workplace reveals a surprising lack of concern with coerciveness in relationships between supervisors and employees. Although unions and courts have taken strong stances to protect young employees in training from potential abuse by supervisors, few employers have statements to discourage relationships across hierarchies. This weaker stance of employers also reflects stronger privacy rights of German employees at workplaces in general.

**Prevention**

Prevention efforts are rare in most German workplaces, despite the fact that the law explicitly demands employers to institutionalize prevention and awareness programs in the public sector. The lack of managements’ concern with prevention is reflected in these infrequent training efforts. In the early 1990s, the newly institutionalized offices for gender equality printed and publicized brochures and information on sexual harassment. A number of training seminars were held within the public sector, organized primarily by equality officers, some by unions for works council

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25Multinational corporations tend to discourage but not prohibit these relationships. In the public sector, specific workplaces such as the police prohibit the placement of couples in a workplace unit. In addition, specific regulations apply for relationships across hierarchies, yet these policies were in place before sexual harassment became an issue, and are not responses to concerns of sexual harassment.
members, and by the general educational division. The new law of 1994
gave an increased impetus to introduce or update information on the
issue. Yet, in the late 1990s, these educational and awareness efforts
dwindled.

One explanation is that participation in these training programs is not
mandatory. According to the public officials that I interviewed, the “inter-
est” in the seminars was not very high, and few participants came to the
seminars offered. The problem is obvious: unlike in the U.S., where the
employer has an interest in offering seminars to prevent being legally
liable, prevention efforts in Germany are based on voluntary participa-
tion. If the “interest” of the participants determines the frequency with
which seminars are held, it is not surprising that training and awareness
efforts have fallen short. Furthermore, those who would need the train-
ing most because of their lack of awareness or ignorance of sexual harass-
ment are unlikely to participate voluntarily.

Employers in Germany have provided little training for managers and
supervisors. The German system of civil servant training is fairly struc-
tured. Seminars on sexual harassment could become obligatory, but only
in exceptional cases have employers have required employees to attend
these seminars.26 Most often, information on the new law of 1994 has been
included in sections on other types of labor law, without specific atten-
tion paid to this issue.

Moreover, the voluntary nature of these workshops provides hurdles
for women to get information on sexual harassment. In order to sign up,
for example, women have to ask permission from their supervisors. The
ridicule and stigma attached to the issue discourages women from par-
ticipation. If women have been harassed by their supervisor, then asking
him for the approval to attend the seminar would be very difficult.
Therefore, organizers of workshops offer “women’s seminars” or “mob-
bbing seminars” instead, which are far less stigmatized (Interview with
Plogstedt, April 1999). “Antimobbing” seminars focus on group-based
processes of discrimination and exclusion of employees (Meschkutat,
2000). With the goal of changing the broader workplace culture, team-
building and cooperative leadership styles have become an integral part
of the agenda of antimobbing seminars.

The existing training programs on sexual harassment are surprisingly
feminist in their orientation and content. Provided by outside trainers,
women’s advocates, and women within works councils and unions, they
go beyond informing participants about their legal rights (Meschkutat,
1995). Structured around the feminist principle of empowerment, the
seminars use methods of consciousness-raising and include assertiveness
training. So far, it is women who are considered the experts who “own”
the issue of sexual harassment (Interview with Dr. Barbara Degen,

26For example, in the city of Cologne, seminars on sexual harassment are embedded in civil
servant training.
February 19, 1999). A specific pilot project emphasizing gender-specific, group-based training is the project of “structural mediation” initiated by Dr. Degen and the Feministisches Rechtsinstitute (Feminist Institutes of Rights) in Bonn. The project is based on the assumption that changes in the broader gender workplace culture are necessary to combat sexual harassment. Women and men employees first discuss issues separate from one another and then come together to develop group-based solutions to gender conflict. One of the most prominent issues for women was that they felt men did not respect women’s expertise and would not take them seriously.

Thus, the German approach emphasizes the group dynamics that contribute to sexual harassment as a conflict in the workplace. Because policies and measures are employer-employee negotiated, there is an orientation toward collective, group-based solutions over individual conflict solutions. Even managerial discourses are focused on modernizing organizational structures to flat hierarchies that emphasize team building and cooperative leadership styles. Thus, future developments have the potential to focus on preventing sexual harassment by affecting broader changes in workplace culture and organizational structures.

CONCLUSIONS

This article contrasts two models of dealing with sexual harassment in the workplace. Model 1 is focused on sexual harassment as a conflict among individuals, whereas model 2 is based on collective, group orientation as exemplified by the U.S. and Germany, respectively. The legislation and enforcement practices of sex equality law are embedded in Germany in labor law and in the U.S. in civil rights law, respectively.

In the U.S., the dynamics of implementation have emphasized individuals’ legal redress, individual reporting, and lawsuits that have affirmed employers’ responsibilities to prevent sexual harassment by institutionalizing policies and educational programs. Although the increased awareness and existence of policies empowers individuals to confront harassers on an individual basis, it is those who have been harassed who carry the burden of promoting changes. The emphasis on individuals’ legal rights versus the needs of those harassed is predominant in the organizational procedures used to handle complaints. The high risks associated with using complaint procedures are carried by those harassed, and can take a high emotional, psychological, and financial toll for victims of harassment.

Rather than strong incentives for employers to comply with the law, political will has been the motor of implementation in Germany. Consequently, employers have ignored the existing law and have resisted the adoption of policies. Policy efforts are often the result of mobilization of informal women’s groups, including gender equality offices and women within works councils who are pressuring employers to adopt policies.
The formulation of collective rights is more prevalent than in the U.S.,
and the policies reflect organized workers’ interests in addition to
employers’ interests. Thus, the model that is emerging is a gender-neutral
one that relies on collective rights and group-based approaches empha-
sizing broader changes in workplace culture.

For victims of sexual harassment, individual legal redress is weak in
Germany. Legal threats and sanctions for noncompliance are less serious
than in the U.S., thus, employers have had little incentive to improve
internal grievance structures. Works council structures have existed to
represent individual employee’s interests. Yet, the challenge is to reform
these, to increase awareness within works councils, and to make these
structures available for women who have been harassed.27 In the public
sector, the expectation is that women’s offices are responsible for harassed
women. Yet, beyond having an open ear for the needs of the victims, they
lack the formal powers for investigating and sanctioning harassers.

However, the most problematic aspect of having union/works coun-
cils negotiate policy approaches of “mobbing” is that concerns about
mobbing can eradicate the gender dimension of sexual harassment.
Power differentials based on unequal gender relations are invisible when
considering the group dynamics of mobbing. Although concerns with a
workplace culture of respect and dignity are prevalent, challenging sexist
language, pornographic images, etc. as part of male-dominated gender
workplace cultures are not likely to be considered “mobbing” because of
the gender-neutral definition of the term.

Neither country has developed a gender-power based model for
dealing with sexual harassment. Feminist discourses that emphasize
unequal gender power compete with workers’ representation discourses
on the one hand, and with managerial discourses on the other. Although
works councils and unions prefer nongendered, group-based discourses,
managerial discourses emphasize gender-neutral, individual behaviors
and (legal) risk minimization. Thus, the process of negotiation has led to
a predominance of group-based approaches in Germany, whereas indi-
vidualized approaches are more prevalent in the US.

The ideal third model would be a combination of both models, indi-
vidual and collective approaches that take unequal gender relations into
account. Because sexual harassment is rooted both in gender inequality in
sexuality and work, employers’ responses need to strengthen (economic)
nondiscrimination rights and the right to sexual self-determination.
A gender-sensitive strategy focuses on the needs of the harassed
persons, including having support systems for harassed employees in
place, with access to legal and psychological consultation. Furthermore,
multiple avenues for complaints, both informal and formal, and mediation

27In 2002, the law regulating works’ councils, the BetrVG, has been amended. Paragraph
15 states that the sex in the minority among employees has now to be represented (at least
proportionally) among the members in the works council.
approaches should be in place. Interventions need to be group-based and should involve teambuilding and the creation of supportive workplace relations. Training efforts should go beyond presenting information on legal rights, gender sensitivity, and assertiveness. Finally, the goal of prevention needs to be based on change in the gender workplace culture.

In conclusion, adopting the U.S. model with a focus on individual rights will be difficult in countries with legal systems not based on common law. Implementation paths based on convincing unions and the existing forms of workers’ representation that they indeed have an interest in adopting sexual harassment policy as an important tool to mobilize women workers is an important alternative, viable particularly in countries where unions are stronger than in the U.S. However, this strategy needs to be combined with strengthening structures supporting women’s interests. Future studies need to compare what changes have indeed occurred in the gender culture in workplaces in order to evaluate which of the models is more effective to empower women individually and collectively.

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