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Gender Equality in Eastern Europe (and beyond) – laws and practices

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Redaktion: Justyna Stypińska
jstypinska@zedat.fu-berlin.de
Lektorat/Layout: Nadja Sieffert
n.sieffert@fu-berlin.de

Contents

Introduction to the Special Issue of Working Papers of Sociology of East European Societies

The reflections and contributions from a research workshop "Gender Equality in Eastern Europe (and beyond) – laws and practices" at the Free University Berlin, January 2016.

Justyna Stypińska

Gender equality is a broad socially and politically recognized principle, enshrined in international treaties and conventions, as well as in national legislations and policies in most of the modern countries throughout the globe. The CEDAW Convention, an international bill of rights for women, was signed and ratified by 189 countries. The last decades have seen a proliferation of efforts to bring gender equality principles into practice in a variety of areas from the economy, to employment, to health and education. Many countries around the world have seen radical improvements in basis women's rights. However, gender equality is only a "work in progress" as there is still a considerable lack of de facto implementation and enforcement of the legal provisions.

In several countries of Eastern Europe, but also in traditional western liberal democracies, the last years have also been a playground for multiple attacks on the already relatively well established and protected rights of women, what Agnieszka Graff calls "war on gender"(Graff 2016). Although the progress in the advancement of women's social and political position has been significant, a substantive gender equality has never been fully reached. Existing gender pay gaps, strong traditional family models restricting women's career choices, meek political representation, few women in top leading position in economics, science, and politics, and ever continuing violence against women are just few examples that the road to equality between genders is paved with numerous challenges. Against this backdrop, the recent backslash in the progress of women's rights and the radicalization of the discourses on gender issues seems like a feminists' bad dream come true. The gradual disempowerment of attained position of women seems to be taking on a new pace and new face, depending on the sociocultural context and the legal regimes of a country. Nevertheless, the diverse anti-gender movements and discourses have common threads and identifiable similarities across the globe (Köttig et al. 2017) and here a brief presentation follows.

One of the most recent and radical example of the anti-gender movement is the new ruling national conservative political party PiS (Law and Justice) in Poland. It has been effectively dismantling the existing women's rights regime by far reaching amendments of already existing laws, introduction of new conservative legislation or withdrawing from the established formats of protection. Among multiple cases of radical changes in legislative landscape of women's rights, few are worth mentioning. The abortion compromise of 1997 law has been brought into question and restriction on the already very restrictive[1]. The proposition of government was met with the biggest protests in the streets of Poland since 1989, the so called Black Protest[2], where hundreds of thousands of men and women expressed their deep discontent with the proposed bills. In the result, the government withdrew the bill in its primary form. Another brutal attack on the already established rights of women was the proposition to withdraw from the already ratified by Poland in 2015 the Council of Europe *Convention on preventing and combating violence against women and domestic violence*, so called Istanbul Convention. The voices of politicians supporting the withdrawal revealed deeply seated convictions about the potential harms which this convention can bring to the role of traditional family model in Poland saying that it "forces to blindly attack (Polish) tradition, religion and culture" or that "gender equality is heresy"[3]. The war on women is taking place not only in legislative space, where the power is executed through Parliamentary orders, but also in the realm of symbolic power. The wish of the ruling party and its supporters, inspired strongly by the position of the Polish catholic church, is not only to limit the legislative possibilities of women to improve their social and political position, but also to revive the old models of traditional and conservative gender roles. The role of women in society should be based on traditional family values, roman catholic visions of the role of marriage with its firm gender specific roles, but also on the strict segregation of public and private sphere, where women partake predominantly in tasks in the private sphere and give up their role in public and economic life. The foundations for such models are being implemented through school curricula for the public education system, in the changing guidelines for maternal care in public hospitals with less freedom for women's choice, in media and culture, in guidelines for academic teaching, and in recommendations for

[1] The abortion in Poland is generally prohibited and is only allowed under three exemptions, i.e. In the case of rape, when the woman's life is in jeopardy, or if the foetus is irreparably damaged.

[2] https://www.theguardian.com/world/2016/oct/24/polish-abortion-law-protesters-march-against-proposed-restrictions (accessed 15 July 2017)

[3] http://www.newsweek.pl/polska/pis-wypowie-konwencje-o-zapobieganiu-przemocy-wobec-kobiet-,artykuly,401687,1.html (accessed 15 July 2017)

financing of third sector organizations. The change will thus not only be of legal technocratic nature, but will include the soft tissue of Polish society.

In several other East European countries, a re-entering of traditional gender roles in discourse and practice can also be observed. The Hungarian ruling party Fidesz is expressing similar viewpoints on the position of women in society as the PiS party in Poland with the central role of women as mother. Gender equality, open society and minority rights are portrayed as an existential threat to the survival and security of the Hungarian nation. Both Fidesz and PiS have been introducing the concept of "family mainstreaming" as central to their policy making with the intention to strengthen the power and functions of family (Peto and Grzebalska 2016). The rights of women are also suffering in Russia, where recent developments in legal protection against domestic violence were brought to the attention of international organizations. As Human Rights Watch reports the new law "would be a huge step backward for Russia, where victims of domestic violence already face enormous obstacles to getting help or justice" and "The domestic violence bill would reduce penalties for abusers and put victims' lives at even greater risk." Despite stringent critique in February 2017 President Putin signed the bill into law[4]. Also in most former East Bloc countries, the rights of the LGBT groups are being curbed as not coherent with the traditional value systems and a sign of decay of morals coming from the West.

One of the most worrying factors is that more and more increasingly negative attitudes and laws are being heavily influenced by religion under the guise of traditional family values fueling homophobic and transphobic beliefs and discriminatory practices (Buhuceanu 2014). The thesis of re-traditionalization in East European societies after the political and economic transformations of 1989 has never been more true than today.

These processes are clearly not only restricted to the post-transformation societies, where the democratic and liberal political systems had a shorter history, but it also applies to mature liberal democracies with long tradition of women's emancipation movements. In the USA, the new presidential figure of Donald Trump has proved repeatedly that the position of woman in modern society should be of ornamental and entertaining rather than of a participatory character. Behind the misogynist convictions and sexist remarks openly expressed on multiple occasions however stands also a very strong political program of reducing the freedoms and rights of women in American society. Through new legislative tools, Trump tries to slowly

[4] https://www.hrw.org/news/2017/01/23/russia-bill-decriminalize-domestic-violence (accessed 15 July 2017)

dismantle the existing system of protection of women's reproductive rights with the long term aim of overturning the *Roe v Wade*, the landmark Supreme Court decision which legalised abortion nationwide in 1973 [5]. Already, thanks to recent legislation, US states are now allowed to withhold federal money from organisations that provide abortion services by large restricting the access to it. These and hundreds of other actions aiming at the rights of women met with radical protests from feminist and progressive environments (as those in January 2017), but the sturdy and steady process of Trump's anti-women agenda can hardly be expected to stop (Frothingham et al. 2017).

Last, but not least, it needs to be noted that not only the countries with right wing conservative and nationalistic rulers are observing negative turns on women's position. The worsening of the position of women is not only an effect of most recent regulatory changes and parliamentary conflicts. It has also roots in the long-term state polices in areas such as labour rights, retirement benefits or maternal/paternal leaves. The effects of social policies take longer to kick in, but they can be equally or even more harmful due to their deep structured and institutionalized character. Long term negligence of the problem of equal statuses of men and women becomes apparent in the light of demographic processes and ageing of the population. Only recently has the appalling situation been brought to public and political attention that women above age 65 present a substantially higher risk of poverty or social exclusion than their male counterparts. The poverty among older women, although not a new phenomenon, can be expected to increase in the upcoming decades, and the already existing pension gaps are most striking in countries such as Germany and Luxemburg (45%), the Netherlands (42%), Ireland (39%), United Kingdom (40%), and Austria (39%) (Burkevica et al. 2015). The explanation for this can be found in strongly gendered life course regimes, which place women in disadvantaged positions, where the disadvantages of lower incomes throughout the lifecourse, frequent practices of part time employment among women, cumulate at later stages of life and exacerbate the already existing inequalities.

This Special Issue of the Working Papers of East European Institute at the Free University of Berlin is an intellectual result of a teaching seminar and international workshop **"Gender Equality in Eastern Europe (and beyond) – laws and practices"** organized in the Institute of East European Studies in 2016 with the participation of international expert in the field of gender and law: Prof. **Irina Catrinel Crăciun from Germany/Romania, Dr. Majda**

[5] http://www.independent.co.uk/news/world/americas/donald-trump-abortion-illegal-dr-willie-parker-planned-parenthood-roe-v-wade-pro-life-choice-neil-a7670496.html (accessed 15 July 2017)

Hrženjak from Slovenia, Dr. Marc Gärtner from Berlin, dr. Katarzyna Wojnicka from Sweden/Poland and Alexander Kondakov from Russia. Its aim was to bring together the theoretical and practical dimension of the socio-political issue of gender equality in contemporary European societies, with a special emphasis on comparison between the Western and Central and Eastern European countries. The workshop integrated different topics including i.e.: the political participation of women, gender pay gap and segmentation of the labour markets, antidiscrimination legislation of the EU, human trafficking and prostitution, domestic violence or the role of men in gender equality. The aim was to discuss the mechanisms which underpin the gender inequality in different areas of social and political life, as well as to evaluate the existing legal and policy solutions to tackle these problems. The students were expected to develop their own research questions, work on them throughout the semester, and finally present the results of their research during the workshop, where they received commentary and feedback from the experts. This Special Issue includes outstanding contributions of five students of political science at Free University of Berlin, which combine interesting and ambitious research questions with excellent analytical and methodological skills.

The contribution of Pia van Ackern and Janine Uhlmannsiek, titled *"Reproducing Domination? The European Union discourse on abortion in development policy",* takes on a critical approach to analysing the policies of the European Union on the nexus of gender equality and development aid programmes. Using qualitative frame analysis, this paper casts light on the positions of the different civil society actors involved in the process of defining the abortion regimes ('pro-life' and 'pro-choice') and of the European Commission. Throughout the meticulous analysis the authors identified the main frames in the discourses on abortion, such as: women's health frame, rights of the foetus vs rights of the women, representation frame, international responsibility and national sovereignty frames. In conclusions, the analysis confirms the postcolonial feminist assumption that the voices of women from the Global South are generally locked out of dominant discourses on development, even when their reproductive concerns are debated.

The paper of Esther Hochhäuser, "*Trivialization of Cyber Gender Harassment*", shows a careful analysis of the phenomenon of online harassment, which is one of the most challenging issues in the gender equality legislation and research schemes due to the lack of practical possibilities to restrict or control those activities in the cyber space. In contrast to the harassment in working place, the online harassment is difficult to track down, and the existing laws suffer from vagueness and imprecision. With a qualitative content analysis of two cases of online discussions about cyber gender harassment, this paper aims to find recurring argumentative

practices of trivialization, which can explain its inner dynamics and possible connection to the insufficient legal situation. The paper contributes largely to the still nascent category of research on gender equality in cyber space.

The paper of Valentina Jost, titled "*The sense and sensibility of granting compensation to survivors of conflict-related sexual violence in the aftermath of the Yugoslav wars*", deals with a delicate and complex issue of reparations of gendered war crimes, with a special focus on sexual violence. Building on the theoretical and legal framework of the phenomenon of conflict-related sexual violence (CRSV), the case studies of Croatia and Bosnia and Herzegovina are compared. It is argued that the latter country's stronger endorsement of the UN Security Council Resolution 1325 and the wider Women, Peace and Security agenda contributed to Bosnia and Herzegovina's stronger drive towards introducing reparation measures. The paper shows also that it is partially thanks to feminist international relations theory and feminist security studies, that we today can benefit from a general acknowledgment in international politics of the prolificacy of CRSV in present-day conflicts zones.

The paper of Isabella Rogner, titled *"From 'Golden Suits' to 'Golden Skirts': An Evaluation of the Norwegian Gender Quota for Corporate Boards",* aims to explain the myriad of arguments for and against the quota systems in private sector as a tool for increasing the participation of women on corporate boards. Rogner presents well documented body of research based on the Norwegian experiences with introduction of the gender quotas, which highlights both the positive, as well as negative aspects of such solutions. The paper concludes in identifying challenges and issues, which need to be addressed in order for the law to have more tangible impact. Among these Roger discusses: long-term approach instead of jumping to conclusions, far-reaching scope instead of symbol politics, multi-level design instead of promoting elites, transparency in appointment instead of the "old boys' club", and awareness of limitations instead of simple solutions.

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Reproducing domination? The European Union discourse on abortion in development policy

Pia van Ackern

Janine Uhlmannsiek

Abstract:

The European Citizens' Initiative 'One of us', which called for an end to abortion-related development funding from the European Union, triggered a heated debate on abortion in development policy. Using qualitative frame analysis, this paper sheds light on the positions of the different civil society actors involved ('pro-life' and 'pro-choice') and of the European Commission. Further, it reveals how power structures are reproduced in discursive practices. Our analysis confirms the postcolonial feminist assumption that the voices of women from the Global South are generally locked out of dominant discourses on development, even when their reproductive concerns are debated. All parties to the discourse, despite their opposing stances on abortion, used certain frames to legitimate their arguments for intervening in the lives of women from the Global South. The discourse on abortion-related EU development funding thus played a role in preserving existing inequalities both across genders and between the Global South and North.

Keywords: postcolonial feminism, abortion, development policy, frame analysis, discourse, European Union

Zusammenfassung:

Mit ihrer Forderung an die EU, keine abtreibungsbezogenen Entwicklungsprojekte mehr zu finanzieren, löste die Europäische Bürgerinitiative 'Einer von uns' eine hitzige Debatte zum Thema Abtreibung in der Entwicklungspolitik aus. Mithilfe einer qualitativen Frameanalyse beleuchtet diese Arbeit die Positionen der verschiedenen zivilgesellschaftlichen Akteure sowie der Europäischen Kommission. Die Arbeit zeigt, wie Machtstrukturen in diskursiven Praktiken reproduziert werden. Die Analyse bestätigt die postkoloniale feministische Erkenntnis, dass Frauen aus dem Globalen Süden von dominanten Entwicklungsdiskursen ausgeschlossen sind – selbst wenn es dabei um ihre reproduktiven Belange geht. Alle Akteure, die am Diskurs teilnahmen, nutzen gezieltes framing, um Argumente für ein Eingreifen in das Leben von Frauen aus dem Globalen Süden zu legitimieren. Der Diskurs um die Finanzierung von abtreibungsbezogenen Entwicklungsprojekten trägt also dazu bei, vorhandene vergeschlechtlichte und globale Ungleichheiten zu erhalten.

Schlagwörter: postkolonialer Feminismus, Abtreibung, Entwicklungspolitik, Diskurs, Frameanalyse, Europäische Union

1. ‘Beating around the bush’

The issue of abortion regularly sparks emotionally charged and divisive debates, not only among individuals but also at national and international level. There is no international consensus on the legality of abortion, and as such international development cooperation adds another layer of complexity to these debates. For development organizations, health, including reproductive health, is a primary concern. According to the World Health Organization, reproductive health implies that people have “the capability to reproduce and the freedom to decide if, when and how often to do so” (WHO 2016). However, the question of what role abortion services should play in this context is highly controversial. Given the delicacy of the issue, international organizations often ‘beat around the bush’ to accommodate various positions.

The explosiveness of the issue was particularly evident in the heated debate that opened up in the European Union (EU) and within the European civil society in reaction to a citizens’ initiative calling for an end to abortion-related development funding. The ‘One of us’[6] initiative collected over 1.7 million signatures (EC 2016) – further proof that the issue of abortion frequently causes a stir. The debate that arose as a result of this initiative provides the focus of our research.

To study how the EU and the different civil society actors present and justify their positions in the discourse, we conducted a frame analysis for the case at hand. However, we are not only interested in the arguments but also in the underlying power structures that are reflected and reproduced in these discursive practices. Two closely intertwined power dimensions emerge in this context: the power imbalance between Global South[7] and North and, in light of the impact of abortion rights specifically on women, the struggle for gender equality. This leads us to the following research question:

> Which frames are used and by whom in the discourse on abortion-related development policies in the European Union, and how are gendered and global power structures manifested through discursive practices?

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[6] Chapter 2 provides more details about the initiative.

[7] In line with Murphy, we use the term Global South “to signify what are commonly known as ‘developing’, ‘Third World’, or ‘peripheral’ regions of Central and South America, South and Southeast Asia, the Middle East, and Africa” (2008: 868). Many of these regions have a colonial past. The term ‘Global North’ refers to what is commonly understood as the ‘developed’ world where the colonizers were mostly located. “[T]he dichotomy works as long as no one assumes a high degree of homogeneity in the two zones” (Reuveny and Thompson 2007: 557).

Approaching the debate surrounding 'One of us' from a postcolonial feminist standpoint can therefore offer valuable insights into the mechanisms of power and domination shaping this discourse.

The next chapter provides some information on abortion-related development services and the 'One of us' initiative. Subsequently, we outline our theoretical foundation based on postcolonial feminism, followed by our methodological concept. After having clarified our theoretical and methodological approach, we present the empirical findings and interpretations of our frame analysis. The last chapter provides concluding remarks.

2. Abortion in the context of international development and the European Citizens' Initiative 'One of us'

In the context of international development, abortions and abortion-related services[8] have often been considered a reaction to the perceived problem of accelerating population growth. Over-population has been a dominant feature of international development discourse since the mid-1960s (Schultz 2006: 81). Whereas global discourses on population and development have traditionally emphasised the issues of population growth and control, recent decades have seen a rhetorical shift towards approaches that stress the needs and rights of the individual (UNFPA 2012). The International Conference on Population and Development held in Cairo in 1994 was an important event in this context. The Programme of Action agreed on in Cairo (and adopted by all EU member states) contains carefully negotiated compromise language on the role of abortion in family planning. States agreed that abortion should not be promoted as a method of family planning and that preference should be given to the prevention of abortions through improved access to family planning services (UNFPA 2014: 89f.). However, the Cairo Programme of Action also recognizes that unsafe abortions pose a threat to maternal health. Therefore, in countries where abortion is legal, it should be provided under safe conditions (ibid.). Moreover, in all cases women should have access to quality services to deal with any abortion-related complications (ibid.). The careful wording on abortion highlights the controversial nature of the issue and the lack of a common position among states.

Within the EU, abortion is legal in most member states. Nonetheless, there are a few countries[9] that prohibit abortions or only allow for them under closely circumscribed conditions. Due to

[8] This may include development services and programmes such as post-abortion care, information programmes, the training of abortion providers or the provision of necessary equipment.
[9] EU member states with restrictive abortion laws are Ireland, Northern Ireland, Malta and Poland.

this lack of consensus among member states and the delicacy of the issue, EU institutions have shied away from taking a clear stance on the question of whether abortions should be part of EU development projects. Development regulations and conclusions therefore often refer to goals such as promoting "sexual and reproductive health and rights" or "maternal health" but avoid explicitly touching upon the issue of abortion-related services (cf. for example EU 2006, 2013, 2014). In 2014 EU development spending on population programmes and reproductive health amounted to almost 90 million euros (EC 2015: 27). The basis for EU development cooperation in this field is the Cairo Programme of Action. This means that EU development funding can be used to improve access to safe abortions if this is in accordance with national legislation and health programmes in partner countries. Legal provisions on abortion are considered subject to the sovereign decisions of each state.

It was the European Citizens' Initiative 'One of us' that forced the EU in 2014 to clearly define its position on abortion-related development funding. The European Citizens' Initiative (ECI) is a relatively new instrument, and was created in 2011 with the aim of promoting participatory democracy and making the EU more accessible to its citizens (EC 2014a). Once an ECI has been backed by at least one million EU citizens, the organizers can present their initiative at a public hearing in the European Parliament (ibid.). The European Commission examines the initiative and has to clearly state what action, if any, it proposes in response to the citizens' initiative, and the reasons for this course of action (ibid.).

The ECI 'One of us' was registered in May 2012 and submitted to the Commission in 2014, after having gathered over 1.7 million signatures (EC 2016). 'One of us' was the second ECI to pass the threshold of one million signatures. The initiative calls on the EU "not to allow and not to fund actions that assume or carry out the destruction of human embryos" (One of us 2012), particularly in the areas of research funding and development cooperation. The latter will be the focus of our analysis. The Commission rejected the initiative's demand in its official reply (EC 2014b).

The head of the 'One of us' initiative is Grégor Puppinck, who is also director of the "Christian-inspired" European Center for Law and Justice (ECLJ 2016). Many representatives of the Catholic Church, including Pope Benedict XVI, expressed their support for the initiative (One of us 2013). The majority of the funding for the initiative came from the Italian anti-abortion foun-

dation Vita Nova (EC 2016; Fondazione Vita Nova [no date]). After the Commission's rejection, 'One of us' continued its political 'pro-life'[10] activism through activities such as press work, conferences and the launch of a petition calling on the EU institutions to address the proposals it initially made in the ECI.

3. Theoretical framework: looking through the postcolonial feminist lens

Our study is situated within the context of international development, and thus takes into consideration the power imbalance that characterizes relations between donor countries (generally countries of the Global North) and aid-receiving countries (generally countries of the Global South). Postcolonial scholars often portray development cooperation as a neo-colonial form of domination of the Global South by the Global North (McEwan 2001: 95). Treating development as discourse plays a crucial role here, since "the production of discourses by Western countries about the Third World [is] a means of effecting domination over it" (Escobar 1984: 377). Due to its heterogeneous use by different theorists, the term discourse cannot be pinned down to one clear definition. Foucault refers to the "rather fluctuating meaning of the word 'discourse'" and treats it "sometimes as the general domain of all statements, sometimes as an individualizable group of statements, and sometimes as a regulated practice that accounts for a number of statements" (Foucault 1972: 80). Postcolonial and feminist theory draws intensively on Foucault's poststructuralist concept of discourse and his understanding of power and knowledge.

The assumption is that discursive structures illustrate underlying power relations. Postcolonial scholars therefore draw attention to those who have no voice in the dominant development discourse and ask who has the power to produce knowledge (Said 1978). They point out how dominant discourses construct and reproduce social, cultural and historical models of the Global South and its people, and demonstrate how powerful actors in the discourse speak on behalf of people from the Global South (Said 1978; Mudimbe 1988; Escobar 1995). These underlying assumptions and regimes of representation that prevent the people concerned from speaking up for themselves have to be exposed and challenged – not least because "development discourse promotes and justifies very real interventions with very real consequences" (McEwan 2001: 103).

These neo-colonial discourses follow a binary logic, which defines the Global South as the other or the periphery. Consequently, the Global North can represent itself as the norm or the

[10] For explanations on our choice of terminology, see footnote 6.

centre (Ganguly 1992: 71-72; Mohanty 1991b: 73). This logic of othering justifies and preserves domination of the Global North over the Global South and paves the way for "attempts to 'modernize' postcolonial nations through technological and economic solutions devised by the West" (Luthra 1995: 198).

Bringing in a postcolonial feminist perspective, Mohanty (1991a, 1991b) adds that women in the Global South are particularly often portrayed as passive victims who cannot take their own decisions. Power relations and "questions over access to discourse" are at the core of feminist theory "since it is clear that women frequently do not have the same access as men to speaking rights" (Mills 1997: 97). This is especially true for women from the Global South who are generally excluded from the dominant discourses on development.

Abortion-related development services have often been linked to questions of population control and poverty, thus producing a "nesting of problem representations" (Bacchi 1999: 153). Debates on abortion – its legality, accessibility and morality – have direct consequences for women and their bodies. Universal abortion services have therefore been a central demand put forward by many feminists. Often, the claim is based on the argument that, in order to reach equality, women need to gain control over their body and reproduction (Bacchi 1999: 159).

However, feminist perspectives on abortion from the Global South as well as from Women of Colour and Black women in the US stress their "ambivalent relation to the 'abortion rights' platform" (Mohanty 1991a: 12). Due to experiences of coercive population control measures such as sterilization abuse and forced or sex-selective abortions, they demand that the impact of race and class be integrated into discussions on reproductive issues (Alexander 1990: 53f.; Davis 2003: 354; Johnson-Odim 1991: 323; Roberts 1999: 101). Abortion, in this context, is not intended to expand the options of women to decide freely on their body and childbearing. Rather it becomes a neo-colonial way of exerting power over the reproductive behaviour of women in the Global South in the context of population control (Kuumba 1993: 79). These regulative measures are based on the neo-Malthusian[11] assumption that overpopulation is a problem. Proponents of this approach assume that poverty arises when the population grows at a faster rate than the resources it needs to survive. Taking a critical perspective, it becomes apparent that the focus on overpopulation indirectly shifts the responsibility for poverty to the people in the Global South because they refuse to limit their 'unruly' fertility. This way, the

[11] Neo-Malthusianism refers to a school of ideas informed by Thomas Malthus' "principle of population" developed at the end of the 18th century. It assumes that the population grows at a faster rate than the food supply and that, in order to avoid resource scarcity and poverty, population control measures are necessary (Fletcher et al. 2014: 1195f.).

"overpopulation scapegoat" (Fletcher, Breitling and Puelo 2014: 1195) deflects attention from root causes of poverty such as colonial legacy or the structural inequalities inherent in the economic system (Luthra 1995).

The discourse on abortion in the development context oscillates between two poles. On the one hand, enabling women from the Global South to gain control over their bodies and reproduction may result in actual empowerment; on the other hand, some criticise that women's rights are only invoked as a pretext to justify patronizing behaviour and interventions in the Global South in the interest of population control. By consequence, "[p]ostcolonial people's, and especially postcolonial women's, own concerns and needs are lost in the tug-of-war among various powerful interests, including the international population establishment" (Luthra 1995: 198). Although the ECI 'One of us' was rejected by the EC, the debate remains an important subject for analysis as it provides a striking example of how European policies affect the lives of women from the Global South and of the "role of public discourse in this hegemonic process" (Luthra 1995: 200).

4. Methodological concept: on discourse, standing and framing

To identify patterns of power and domination within the discourse on abortion-related development funding, we conducted a frame analysis drawing on the ideas of various scholars. Escobar suggests that "[t]hinking of development in terms of discourse makes it possible to maintain the focus on domination [...] and at the same time to explore more fruitfully the conditions of possibility and the most pervasive effects of development" (1995: 5-6). As the discourse around 'One of us' was initiated by a civil society organization, we derived two important tools from social movement theory, namely standing and framing.

4.1 Standing and framing

As elaborated above, from a postcolonial point of view it is crucial to ask: Who has access to the discourse and who is able to articulate views on her or his own behalf? Ferree et al. define this as the *standing* of an actor (2003: 86). They underline that "[s]tanding refers to a group being treated as an agent, not merely as an object being discussed by others" (Ferree et al. 2003: 86). We transfer their concept from the media discourse to the broader public discourse on abortion-related development funding and examine who has a voice in the discourse. A particular focus will be whether and how people from the Global South and women in general take an active role in the discourse.

We understand *framing* as the process of

> *"select[ing] some aspects of a perceived reality and mak[ing] them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation" (Entman 1993: 52).*

Frames are used by actors to highlight certain elements of an issue while leaving out others. Identifying and analysing the frames applied in the debate on abortion in development practices helps us to unravel the meanings and structure of the discourse. Moreover, since frames are shaped by existing power relations, our focus on framing allows us to expose "power relations institutionalized in the hegemonic framing of issues" (Ferree 2003: 305).

Frames do not occur in a vacuum but are created in a dynamic process in reaction to opposing frames and the actors who define them. In this competitive process, the different actors negotiate their positions and try to gain supremacy over meanings. In his early research on social movement organizations, Benford refers to this phenomenon as counterframing: efforts "to rebut, undermine, or neutralize a person's or group's myths, versions of reality, or interpretive framework" (Benford 1987: 75).

McCaffrey and Keys (2000) derive four types of counterframing from the literature: polarization, vilification, frame debunking and frame saving. Polarization means that actors establish a clear dichotomy between 'us' on the one side and 'them' on the other. Vilification goes one step further, not only creating an 'us versus them' situation but also discrediting the opponents as malign and untrustworthy. Frame debunking is a similar strategy but focuses on the opposing frame, rather than the group, to discredit competing thoughts or ideologies. Frame saving is the reaction to frame debunking by the opposing group, and describes how further arguments may be presented to strengthen a frame that has been challenged. Although these phenomena are usually the subject of research on the success strategies of social movements, we expect that these patterns will also generate fruitful insights for analysing the framing structures in our discourse, with a focus on underlying power dimensions.

4.2 Text selection and stages of analysis

"Discourse is made up of the interaction of 'voices' [speakers]. One of the first steps therefore consists of defining what voices will be considered as a relevant part of the discourse" (Donati 1992: 144-145). According to Donati, voices produce acts of language that are interpreted as texts. Such texts are not only written documents, but can also be produced verbally (1992: 145).

Based on online research using relevant search engines, we identified a number of key texts, including written documents and non-written material. The texts can be grouped according to

the two main positions on abortion: the 'pro-life' position that opposes abortion in general and the 'pro-choice' position that is on the whole in favour of abortion rights.[12] We also determined a third group of texts, namely those produced by the European Commission. The number of analysed texts is relatively small. We therefore do not claim to have covered the EU discourse on abortion-related development policy in its entirety in our analysis. Nonetheless, we selected primary texts that were of major relevance to the debate so that our analysis, despite the small number of texts, would provide valuable insights regarding the discourse as a whole. We focused on texts produced directly by actors belonging to one of the three groups, and left out media coverage.

For the present case, the 'One of us' initiative is the key actor in the 'pro-life' camp. This group opposes all abortion-related development policies, as well as abortion rights in general. We analysed a speech given by the head of the 'One of us' initiative. In addition, we examined a paper by the 'pro-life' non-governmental organization (NGO) European Dignity Watch (European Dignity Watch 2012) which 'One of us' has claimed provided the scientific analysis for their initiative (One of us 2014).

At the other end of the spectrum is the 'pro-choice' camp, which consists of NGOs and networks from the abortion rights movement. This group is in favour of increasing access to safe abortions and generally considers abortions to be integral to a woman's right make decisions about her own body. In particular, we examined a joint press release by a coalition of 'pro-choice' NGOs from the Global North (IPPF et al. 2014) and a short publication by the parliamentarians' network European Parliamentary Forum on Population and Development (EPF 2013). Both statements were published as a response to the 'One of us' initiative and therefore form an important part of the discourse on this initiative.

For the third group of texts, namely texts by the European Commission, we analysed the Commission's official reply to the 'One of us' initiative. In addition, we examined the video stream[13] from the public hearing in the European Parliament on the ECI 'One of us', held in April 2014. Since this parliamentary session allowed for direct exchange between many of the key actors in the debate, it allows for an analysis of the dynamics of interaction and framing processes. The debate provides insights into all three positions because there were European Commission

[12] We use the expressions 'pro-life' and 'pro-choice' to characterize the opposing stances on abortion. Although these terms have strong political and moral connotations, we have stuck with them for reasons of clarity. The respective camps usually refer to themselves with these expressions.

[13] Video available at http://www.europarl.europa.eu/ep-live/en/committees/video?event=20140410-0900-COMMITTEE-DEVE-ITRE-JURI-PETI (accessed 27 May 2016).

and ‘One of us’ representatives, and Members of the European Parliament (MEPs) who often clearly marked their position as either opponents or proponents of the initiative.[14] Their statements will, thus, be considered as falling into either the ‘pro-choice’ or ‘pro-life’ groups.

Table 1 Overview of the texts analysed

‘Pro-life’ position	‘Pro-choice’ position	European Commission
Speech by Patrick Grégor Puppinck, head of the ECI, at the public hearing in the European Parliament, 10 April 2014	Joint press release by a coalition of international ‘pro-choice’ NGOs: “MEPs and NGOs sound the alarm on ‘anti-choice’ threat to maternal health”, 9 April 2014	Communication from the EC on the European Citizens' Initiative ‘One of us’, 28 April 2014
Paper by European Dignity Watch: “The Funding of Abortion through EU Development Aid. An Analysis of EU’s Sexual and Reproductive Health Policy”, March 2012	Written statement by the European Parliamentary Forum on Population and Development: Behind the European Citizen’s Initiative 'One of us', Fall 2013	
Public hearing on the ECI ‘One of us’ in the European Parliament on 10 April 2014		

The actual process of analysing the texts “centers on the reconstruction of the frames which are used in talking and reasoning about [...] [the] issue. The core substance of the method concerns this ‘reconstructive’ work“ (Donati 1992: 143). Following the approach of ‘circular deconstruction’ by Jaeggi, Faas and Mruck (1998), we analysed the selected texts by confirming, readjusting, complementing and replacing frames against the backdrop of the literature on abortion discourses, especially taking into account feminist and postcolonial perspectives. This resulted in a mix of concept-driven and data-driven frames. Consequently, the analytical process was well-grounded in the existing literature, but not fully formalized as we did not predefine an extensive coding scheme (Jaeggi, Faas and Mruck. 1998: 7). We therefore used an interpretative approach, which allows for new insights but avoids premature conclusions (ibid.).

[14] Since many parliamentarians spoke in their mother tongue, we had to rely on the simultaneous interpretation offered by the European Parliament. This may at times have affected our ability to understand tone, style or subtle nuances.

5. Frame analysis: interpreting frames, exposing power structures

Building on the theoretical and methodological framework outlined above, this chapter sheds light on the empirical findings from our frame analysis, including what we discovered when examining the EU debate on abortion-related development funding in terms of standing and framing, and how these findings illustrate discursive patterns of domination.

5.1 Standing: who has a voice?

Regarding the standing dimension of our frame analysis, it was striking that people, and in particular women, from the Global South were locked out of the discourse and only played a role as objects, not as agents. This became especially obvious in the public hearing in the European Parliament. While it is, of course, difficult to define who should be part of the discourse, it nonetheless became clear that those who would eventually be affected by the development policy being discussed, namely women from the Global South, were not present in the plenary hall. This impression was confirmed by the other texts that we analysed. For example, all the 'pro-choice' organizations that published the joint press release are headquartered in the Global North.

Another important aspect when looking at the standing dimension of the debate on 'One of us' is the role of women in the discourse. Again, the public hearing in the European Parliament provides key insights. Only a third of all the speakers in the debate were women – and this on an issue that has important consequences for women's reproductive health and rights. Also noteworthy was the fact that almost all the MEPs who spoke out to oppose EU funding for abortion-related development services and support the initiative were male. This shows that men "remain in the vast majority the producers of the analysis" (Bacchi 1999: 158) and have a superior standing.

We can conclude that women, and especially women from the Global South, were discursively marginalized. This observation has also been made by Luthra (1995) in her study on US foreign population policy:

> *"Postcolonial voices, particularly postcolonial women's voices, were barely audible in this debate. Postcolonial women were spoken about, but they never spoke. As we shall see, this is because the debate was neither about nor initiated by them [...]. They were merely the terrain on which the debate was waged, the 'ground' for the contestation of conflicting political views" (Luthra 1995: 201).*

Before analysing the actual frames and framing dynamics, it is worth briefly considering the atmosphere in the plenary hall during the public hearing. The event met with such great interest,

especially from the 'pro-life' camp, that some visitors were turned away (Kanter 2014). Those who were able to attend the hearing "gave standing ovations to their advocates ['One of us'] and loudly booed their adversaries [abortion rights proponents]" (ibid.). This led to a "rare outbreak of raucous exchanges in the European Parliament" (ibid.) and created an intimidating atmosphere for those who opposed the initiative's goals.

The following paragraphs focus on the framing dimension of our empirical findings. We concentrate on the most prevalent frames in the discourse.

5.2 'Pro-life' position

5.2.1 Women's health frame: abortion harms mothers

A frame that is widely used by the 'pro-life' camp is the *women's health* frame. It relies on the central argument that abortion has strong negative implications for the physical and mental health of women and should therefore be abolished. In this context, the 'pro-life' camp places the emphasis on the "healthy mother" (European Dignity Watch 2012: 5), thus "tighten[ing] the link between womanhood and motherhood and bound[ing] women even more strongly to their 'natural vocation' of mothering" (Dudová 2010: 959). To reinforce their reasoning that abortion harms mothers, abortion rights opponents describe an abortion as a horrible, violent procedure. A female representative of the 'One of us' initiative declared during the public hearing that "abortion is about sticks and hangers being introduced into women's bodies; it is very cruel".

With this frame, the 'pro-life' camp co-opts the classic 'pro-choice' frame of women's health, albeit with alternative reasoning and a completely different outcome. While abortion rights proponents generally state that access to safe abortions is necessary to prevent deaths from unsafe abortions, the 'pro-life' camp claims that any kind of abortion – no matter whether safe or unsafe – is a risk to women and that there is no causality between restrictions on abortion and high maternal mortality. As Grégor Puppinck, the head of the initiative, claimed at the public hearing: "The problem of maternal mortality cannot be equated to the abortion problem." This demonstrates the dynamic process of frame debunking, where the common frame of the 'pro-choice' movement was discredited as factually wrong. In addition, the phenomenon of co-opting could be considered a further frame dynamic.

The latter process has also been identified by Saurette and Gordon (2013) in their study on anti-abortion activism in Canada. While the anti-abortion discourse has usually been associated with conservative, anti-feminist standpoints, Saurette and Gordon (2013) find that the 'pro-life'

camp increasingly depicts itself as 'pro-women' and more progressive, for example by using medical vocabulary to argue that abortion harms women. Anti-abortion discourse thus uses arguments and narratives that have traditionally been associated with feminist and pro-choice perspectives.

5.2.2 Foetal rights frame: "the embryo is a bearer of natural rights"

The central frame in the 'pro-life' camp is the *foetal rights* frame. Starting from the assumption that life begins at conception, abortion rights opponents stress that the foetus[15] is entitled to the right to life. This frame presents the foetus as an equal moral agent or an "unborn citizen"[16] – an understanding that is also clear in the initiative's name, which proclaims that the foetus is 'one of us'. The foetus is considered a separate being that is not part of the mother's body and consequently the mother has no right to decide over its life or death. Mother and foetus are thus considered opponents with equal status, leading to a situation where the rights of the mother have to be weighed up against the rights of the foetus (McCallum 1989: 310). Seen from a feminist perspective, this frame, with its depiction of the foetus as a bearer of rights independent from the mother, reduces women to their reproductive functions. Women are primarily perceived as mothers and "assigned a passive role – that of a vessel carrying a child that is perfect and almost independent from the very beginning" (Dudová 2010: 966).

The *foetal rights* frame is a traditional anti-abortion frame, which has also been identified by many other studies on abortion discourses (Bacchi 1999: 157; Dudová 2010: 958ff.; Ferree et al. 2003: 107). In their extensive study on abortion discourses in Germany and the US, Ferree et al. (2003: 107) identify the use of the *foetal rights* frame, which stresses the "sacredness of human life" and conceives of the foetus as an unborn human being who will be killed by an abortion.

5.2.3 Vulnerable foetus frame: contrasting expressions of horror and sympathy for the defenseless

With the *vulnerable foetus* frame, the 'pro-life' camp depicts the foetus as weak, defenceless and in need of protection. It builds on the foetal rights frame, as although the foetus is recognized as a subject and a bearer of rights, its survival depends on the goodwill of others. Part of

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[15] We use the term 'foetus' to describe the prenatal human being irrespective of its stage of development. We will not differentiate between embryonic and foetal stages of development since this distinction is not relevant to our argument.

[16] Statement by a male Austrian MEP at the public hearing

this frame is also the detailed and vivid description of abortions as violent, cruel procedures. The "horror of [abortion] practices"[17] is presented in stark contrast to the vulnerable, "soft" (European Dignity Watch 2012: 15) foetus, which is depicted as "the most defenceless of all beings in our world."[18] This frame is further supported with photos of aborted foetuses in the publication by European Dignity Watch (2012: 33ff.). By portraying abortion as a horrendous practice, abortion rights opponents depict the funding of abortion-related practices as equally awful.

5.2.4 Representation frame: "fighting the poor"

The 'pro-life' camp employs another frame, which we label the *representation* frame, both in reference to how the interests of people from the Global South are represented and by whom. We identify two threads in this frame: First, the 'pro-life' camp claims that abortion-related development funding pursues the underlying objective of reducing the populations of countries in the Global South, with health promotion and poverty reduction serving only as a pretext. A 'pro-life' actor stated provocatively: "The EU development policy is 'fighting the poor' rather than fighting poverty" (European Dignity Watch 2012: 19).

The second strand of argumentation in the *representation* frame refers to the accusation that the EU wants to impose its lifestyle and values on the Global South through the promotion of abortion. Abortion-rights opponents claim that by funding abortion-related development projects the EU weakens the social fabric of these countries and therefore perpetuates Europe's colonial domination. The *representation* frame can be interpreted as part of a vilification strategy that discredits the practices of the EU.

In this respect, the 'pro-life' movement once more co-opts positions that were initially associated with more progressive ideas (Saurette and Gordon 2013), namely postcolonial feminism. The abortion rights opponents also portray themselves as advocates for people in the Global South in order to reinforce their argument. In light of the theoretical considerations outlined above, this illustrates how people from the Global North speak on behalf of people from the Global South, while the latter have no standing in the discourse.

[17] Statement by a male Polish MEP at the public hearing
[18] Statement by a male Spanish MEP at the public hearing

5.2.5 Morality frame: of dignity and barbarism

The *morality* frame argues that abortion is ethically wrong, and calls for the prohibition of this practice and for "the inclusion of an ethical clause"[19] into EU regulations. A key term used in this regard is "dignity", which is proclaimed as the "basis on which we live together in society."[20] Abortion is framed as a moral problem that has no place in politics since the question of when life starts is not a political one. 'Pro-life' actors conjure up a vision of a "barbaric"[21] society, should the ethical principle of respecting life be disregarded.

The *morality* frame is a classic 'pro-life' argument, which is cited in many studies on abortion discourses and often occurs in conjunction with religious concerns (Ferree et al. 2003: 100, 107; Saurette and Gordon 2013: 165). Saurette and Gordon (2013: 174) find that recent anti-abortion discourse in Canada avoids appealing to religious and moral motives. While their observation on morality does not hold true for our case, we noticed that 'One of us' largely tries to avoid religious arguments. However, this strategy begins to falter when 'One of us' is confronted with the 'pro-choice' accusation that their initiative is founded on Christian fundamentalist beliefs. In reaction to this vilification dynamic, the 'pro-life' actors frame the rejection of abortion as an ethical position that upholds general values and morals, rather than religious beliefs. Moreover, they portray themselves as victims by claiming that Christians are not "second-class citizens in the EU"[22], that their opinions are important and, therefore, that they should not be marginalized.

5.3 'Pro-choice' position

5.3.1 Women's health frame: unsafe abortions harm women

As stated above, the *women's health* frame is very dominant in the 'pro-choice' movement. While the 'pro-life' camp holds that abortions harm women under any conditions, the 'pro-choice' argument focuses on the health risks of unsafe abortions for women. Proponents point out the high numbers of women dying from unsafe abortions every day and depict these abortions as "dirty."[23] Unlike the 'pro-life' movement, they do not argue that abortion should therefore be banned, but rather that it should be provided under safe conditions. Abortions are implicitly portrayed as part of the services necessary to promote maternal health.

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[19] Statement by the head of the 'One of us' initiative at the public hearing
[20] Statement by a male Italian MEP at the public hearing
[21] Statement by a male Polish MEP at the public hearing
[22] Statement by a female Slovakian MEP at the public hearing
[23] Statement by a female Dutch MEP at the public hearing

Framing abortion as a medical issue gives the impression that the pro-choice argument is an entirely objective position based on fact rather than moral considerations – this strategy therefore allows the 'pro-choice' groups to present their arguments as more convincing. However, as mentioned above, this strategy is also prone to co-optation by the 'pro-life' camp.

5.3.2 Women's rights frame: of choices and restrictions

This frame stresses "women's right to decide on their own body" (IPPF et al. 2014) and thus frames abortion as a question of choice – hence the name of the 'pro-choice' movement. The *women's rights* frame is frequently used by abortion rights supporters, based on the assumption that "the most fundamental right of a woman [is] to control her own body to determine whether or when she will have a child" (Ferree et al. 2003: 107). Some authors point out that the language of rights leaves the pro-choice camp open to counterclaims in favour of foetus rights (Kingdom 1991). This concern proves to be well-founded if we consider the afore-mentioned *foetus rights* frame utilized by the 'pro-life' camp.

This choice framing is also problematic from a postcolonial feminist perspective. By emphasizing the decision-making competence of women, this frame neglects the structural factors that shape and restrict women's choices, especially the situation of "women who do not feel that they have a choice to bear a child and who may feel instead compelled and coerced into sterilization, adoption, or abortion" (Ferree 2003: 336). As discussed above, this is particularly true for women from the Global South who have experienced coercive population control programmes. Moreover, if women internalize such choice-related arguments, they may feel guilty for seeking a 'selfish' abortion because they too overlook the social circumstances that shape and restrict their options (Currie 1988: 248).

5.3.3 Representation frame: of people thousands of kilometres away

Similar to the 'pro-life' movement, the 'pro-choice' camp employs a *representation* frame with two main aspects. First, analogous to the 'pro-life' camp, we identify the claim that 'One of us' pursues the goal of forcing its values on the Global South: "'One of us' want[s] to impose their ideology upon health systems […] in countries thousands of kilometers away from them" (EPF 2014: 1). This accusation, and especially the term ideology, supports the claim that the 'One of us' initiative is founded on fundamentalist religious beliefs. The 'pro-life' camp also often refers to the alleged religious, political and economic entanglements of the 'One of us' initiative. These vilification dynamics aim to discredit and delegitimize the initiative and its goals.

Second, the emphasis on people who are "thousands of kilometers away" (EPF 2014: 2) reveals underlying othering processes that shape the 'pro-choice' position. This also finds expression in the portrayal of women from the Global South as vulnerable, weak and in need of "our help": "[T]o advance their anti-choice cause, […] ['One of us' identifies] a new battleground in the lives of the world's poorest, most vulnerable and most voiceless women." (EPF 2014: 4). Thus, the 'pro-choice' camp patronizes women by portraying them as passive and weak victims.

Both camps accuse the opposing side of neo-colonial practices, while they themselves speak on behalf of the Global South and using othering practices. To use Luthra's words:

> *"The irony is that the accusations of both sides ring true. Even within the rhetoric itself, it becomes apparent that both sides are using narratives about postcolonial people's misery and postcolonial women's misery to justify intervention [...] in the postcolonial world" (Luthra 1995: 206).*

5.3.4 International responsibility frame: fulfilling international commitments

Another important frame for this camp is the *international responsibility* frame. The 'pro-choice' actors stress the EU's competence in international development, and call for it to meet its international commitments to improve maternal health and thus access to safe abortions. Most importantly, this frame refers to the Millennium Development Goals and to the 1994 Cairo Programme of Action. By contrast, 'One of us' is depicted as "totally at odds"[24] with these obligations and, consequently, as illegitimate. The frame has a polarizing dynamic as it clearly distances the 'pro-choice' camp from the opinion of 'One of us'.

5.4 European Commission

Compared to the two actor groups examined above, the European Commission responded to the issue in a strikingly different style. Its official reply to the ECI was carefully worded and its language far less emotionally charged. This fits with the Commission's role in the debate as a supposedly neutral entity examining the ECI's demands. Moreover, such an approach allows the Commission to present its arguments as facts, and therefore contributes to its credibility while at the same time shielding it from criticism. This impression is further supported by the avoidance of value-laden or emotional frames – a clear contrast with the two other actor groups. The Commission's framing choices correspond with its standing. As the actor that eventually decides on the outcome of the ECI, the European Commission has the prerogative to interpret the entire discourse. For the Commission, the goal of its framing activities seemed to be to

[24] Statement by a male British MEP at the public hearing

discursively legitimize its intervention in the Global South via abortion-related development funding (Luthra 1995: 211).

5.4.1 Health frame: preventing maternal deaths

Like the 'pro-life' and 'pro-choice' camp, the European Commission often framed abortion-related development funding primarily as an issue of public and women's health. This frame is prevalent in the Commission's argument that unsafe abortions are a major health concern resulting in maternal deaths. According to the Commission, maternal deaths can be reduced by improving abortion safety: "[A] substantial number of mothers still die […] as a result of [unsafe] abortions […]. According to the WHO, maternal deaths and illness can be dramatically reduced by improving the safety of such health services." (EC 2014b: 17).

By framing abortion-related development funding predominantly as a health issue that is independent of moral considerations on when human life begins (Dudová 2010: 968), the Commission conveys the idea that its position is completely objective and fact-based. Moreover, the Commission references other international organizations, such as the WHO, to support its health-related arguments and normalize its point of view. All these strategies allow the Commission to present its arguments as facts and to protect itself against criticism.

Furthermore, this health framing produces a certain form of knowledge on the abortion issue, making the medical aspect more salient than others and putting the EU in the position to produce knowledge and create meanings (Dudová 2010: 970). One element of this is the creation and reproduction of the concept of safe abortions, as opposed to unsafe abortions carried out by unskilled providers.

From a feminist standpoint, the Commission's framing of abortion as a mostly medical issue means it assigns less priority to defining abortion as a right that should be granted to all women. This framing decision is probably also due to there being no common position on abortion rights among EU member states. Nevertheless, it illustrates that the Commission's framing, in downgrading the women's rights dimension, makes it difficult to open up space to use the abortion discussion as an opportunity to substantially improve gender equality.

5.4.2 International responsibility frame: "the EU must live up to its international commitment"

Another important frame applied by the European Commission is the *international responsibility* frame. Like the 'pro-choice' camp, the Commission emphasises its international respon-

sibility to improve maternal health stemming from international agreements such as the Millennium Development Goals or the 1994 Cairo Programme of Action. This frame is another means of fending off criticism of the Commission's position as it allows it to redirect responsibility towards seemingly neutral international agreements. In addition, framing abortion-related development funding as being in keeping with international responsibilities enables the Commission to portray it as something that just 'has to be done' given the European Union's international legal obligations: "[t]he Commission considers that the EU must live up to its international commitment to the achievement of MDG 5" (EC 2014b: 17).

5.4.3 National sovereignty frame: respecting domestic abortion laws

Furthermore, the European Commission utilizes a *national sovereignty* frame that stresses that the EU supports abortion-related projects only in countries where abortion is legal. In doing so, the EC assigns itself a merely supporting role, and demonstrates that the actual responsibility lies with the states to decide on their domestic abortion laws. This framing recalls debates at the domestic level, where abortion is often framed as a private matter that should not be the state or public authorities' concern (Ferree et al. 2003: 107). However, it is noteworthy that, given the absence of people from the Global South in the discourse, "the defense of postcolonial nations' sovereign rights is ironic, to say the least" (Luthra 1995: 297).

5.4.4 Family planning frame: the "prevention of unwanted pregnancies"

A new frame that was not employed by the other actors is the *family planning* frame. Within this frame, the European Commission emphasises that its development programmes prioritise preventing abortions in the first place by improving access to family-planning services such as contraception. Abortion is described as an option for when contraception fails, and this allows it to play down abortion-related development funding. At the same time, this framing implies a dichotomy between legitimate abortions if contraception is not successful and illegitimate, 'selfish' abortions taken by choice.

Table 2: Overview of frames and central arguments used by the different actors

Frame	'Pro-life' position	'Pro-choice' position	European Commission
Women's health	Abortions harm the mother's health, therefore abortions should not be carried out	Unsafe abortions harm women's health, therefore abortions should be safe	Unsafe abortions harm women's health, therefore, where legal, abortions should be safe

Rights (foetal / women's)	Human life begins at conception, therefore the foetus is entitled to rights	Women have the right to choose whether or not to have a child	/
Vulnerable foetus	The foetus is vulnerable and in need of protection	/	/
Representation	The EU wants to impose its values on the Global South and control the population of countries in the Global South	Abortion rights opponents impose their values on the vulnerable women of the Global South	/
Morality	Abortion is against the moral values of our society	/	/
International responsibility	/	The EU has a responsibility to improve maternal health and thus access to safe abortions	The EU has a responsibility to improve maternal health
National sovereignty	/	/	The EU supports abortion-related projects only in countries where abortion is legal
Family planning	/	/	Abortions are an option when contraception fails

6. Summary and conclusion: reproducing domination

To conclude, we would like to return to our research question:

> Which frames are used and by whom in the discourse on abortion-related development policies in the European Union, and how are gendered and global power structures manifested through discursive practices?

Our analysis showed that, despite their opposing stances on abortion, all parties to the discourse around 'One of us' have in common that they employ frames related to the Global South to justify their involvement with the reproductive concerns of women in these regions (Luthra 1995: 211).

The *women's health* frame was used by all three parties, that is the 'pro-life' and 'pro-choice' positions and the European Commission. While the different camps drew different conclusions,

this illustrates the popularity of framing abortion in medical terms. The *women's health* frame was especially dominant in the 'pro-choice' camp and in the Commission's response. Seen through a feminist lens, the medical framing of abortion appears to carry the risk of deprioritising the argument that abortion rights are part of a greater struggle for women's empowerment.

Another prevalent frame is the *rights* frame, used by both 'pro-life' and 'pro-choice' groups, although to opposite ends by stressing either the foetal or the women's rights dimension. When analysing the *foetal rights* frame from a feminist perspective, it becomes clear that this framing reduces women to their reproductive capacities and depicts them as natural nurturers. At the same time, the *women's rights* frame marginalizes the experience of women from the Global South whose reproductive decisions have been mediated by coercive population control measures. In the European Commission's response, the framing of abortion in terms of women's rights was less significant.

A second frame employed by both 'pro-life' and 'pro-choice' groups is the representation frame. Within this frame, we observed how opponents and supporters of abortion rights both referred to the alleged misery of 'the poor' as a justification for exerting influence on people in the Global South.

The *vulnerable foetus* and the *morality* frame were only used by the 'pro-life' camp. Both of these frames are characterized by value-laden arguments and emotional imagery. In contrast, the 'pro-choice' actors and the European Commission refer to the supposedly neutral *international responsibility* frame – a very dominant frame especially for the European Commission. Lastly, the Commission makes use of the *national sovereignty* and the *family planning* frames, which do not play a major role for the other two positions. Between the different positions, we detected framing dynamics such as vilification, polarization, frame debunking and co-optation. This made clear that frames are constructed in a dynamic process in reaction to rival frames and actors.

Our frame analysis confirmed the postcolonial feminist assumption that the voices of women from the Global South are generally locked out of dominant discourses on development. In the discourse on abortion-related EU development funding, they were "merely the terrain on which the debate was waged" (Luthra 1995: 201) but did not have a standing in the discourse. The analysis of the debate that emerged over 'One of us' allows us to comprehend how development discourses in the Global North legitimise intervention in the lives of women from the Global South, thereby reproducing patterns of domination. The discourse around abortion-related EU

development funding thus contributed to the preservation of existing inequalities both across genders and between Global South and North.

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Trivialization of Cyber Gender Harassment

Esther Hochhäuser

Abstract:

Online harassment is a widespread and global phenomenon. While a multitude of forms exist and many different individuals and groups are targeted, this paper is interested in online harassment against women. Research indicates that online harassment has a gendered nature with women experiencing its more severe forms like stalking or *revenge porn*, which is captured in Danielle Keats Citron's concept of *Cyber Gender Harassment*. In spite of severe consequences for its victims, online harassment rarely leads to criminal prosecution, let alone conviction. Using the example of the United States of America, this paper identifies an underenforcement of law and the continuous trivialization of Women's Rights violations as major causes for this paradox. With a Qualitative Content Analysis of two cases of online discussions about *Cyber Gender Harassment*, this paper aims to find recurring argumentative practices of trivialization, which can explain its inner dynamics and possible connection to the insufficient legal situation.

Zusammenfassung:

Online-Harassment ist ein weitverbreitetes und globales Phänomen, das in vielfältigen Formen existiert und gegen verschiedene Individuen und Gruppen gerichtet sein kann. Diese Arbeit nimmt speziell Online-Harassment von Frauen in den Blick. Verschiedene Studien weisen auf eine geschlechtsspezifische Dimension von Online-Harassment hin, da Frauen dessen schwerere Formen wie „Stalking" oder „Rachepornos" erfahren. Dies wird in Danielle Keats Citrons Konzept *Cyber Gender Harassment* eingefangen. Trotz dramatischer Konsequenzen für dessen Opfer wird Online-Harassment selten strafrechtlich verfolgt oder gar verurteilt. Am Beispiel der Vereinigten Staaten von Amerika identifiziert diese Arbeit eine mangelnde Anwendung geltenden Rechts sowie die kontinuierliche Trivialisierung von Frauenrechten als wesentliche Gründe für dieses Paradox. In einer qualitativen Inhaltsanalyse zweier Online-Diskussionen über *Cyber Gender Harassment* werden wiederkehrende argumentative Praxen dieser Trivialisierung identifiziert, die dessen innere Dynamik und seine Verbindung zu der unzureichenden rechtlichen Situation erklären können.

Keywords: online harassment, gender, women's rights, cyber gender harassment

1. Introduction

Online harassment is a widespread and global phenomenon. A recent study by the Pew Research Center found that 40% of adult internet users have experienced harassment online (cf. Pew Research Center 2014: 3). This can include anything from insults, defamation to threats of violence or posting sensitive information online. Since most of the data and research currently available focusses on the situation in the United States of America (USA), this paper concentrates on the USA as well, although many countries face similar problems with regard to online harassment.

In spite of severe consequences for victims of online harassment (see: Taube et al. 2014), it rarely leads to criminal prosecution, let alone conviction. The failure of law enforcement and internet providers to hinder and combat online harassment has even turned it into a business opportunity: "online reputation defense services" have proliferated, which make profit out of people victimized by online harassment by managing and manipulating the information about them on the internet (cf. Bartow 2009: 102).

Research further shows that online harassment has a gendered nature. According to the United Nations Broadband Commission for Digital Development, 57% of American victims of online harassment are women (cf. United Nations 2015). A study by the Non-Governmental Organization Working to Halt Online Abuse arrives at the conclusion that even 73, 5% of the victims are female (cf. WHOA 2011). Although the exact figures of the distribution of online harassment are a matter of debate, research clearly indicates that men and women do get harassed differently online (cf. Women in the World Summit Conference Talk 2015). While men get harassed for their actions and ideas; women, especially young women, are disproportionally affected by sexual harassment, stalking or shaming by cyber mobs (cf. Citron 2009: 15). Women who disobey prescriptive gender roles in public are disproportionately targeted (cf. Megarry 2014: 49). Additional evidence suggests that minorities like people of color, homosexuals or transsexuals are more vulnerable to online harassment. In the case of *revenge porn* (posting photographs or films showing the victim in sexual activities or naked, sometimes alongside their personal details like address or employer) there is a huge gender gap with 90% of the victims being women (cf. Cyber Civil Rights Initiative 2016; Citron 2014: 17).

While there are a variety of studies on the prevalence and frequency of online harassment and many newspaper articles about the topic, not much scientific research focusing on the phenomenon itself and its meaning exist. An exception is the work of US-American scholar Danielle

Keats Citron, who is a professor of law at the University of Maryland. She mainly discusses legal issues surrounding online harassment and also concentrates on its gendered aspects.

This paper is interested in the specificity of online harassment against women and uses thus Citron's concept of *Cyber Gender Harassment*, which will be explained and discussed further in the next chapter (2.). During the research of scientific papers and popular cases of online harassment against women one phenomenon kept appearing: the massive amount of trivialization of this form of harassment with which the victims are confronted. This is very similar to cases of sexual harassment or domestic violence, both also harms that disproportionately affect women. Therefore this paper aims to shed light on the phenomenon of trivialization of Women's Rights violations using the example of online harassment and asks the following research question:

In what ways, and with what consequences is *Cyber Gender Harassment* trivialized?

To further develop and ultimately answer the research question, the next chapter will introduce the theoretical background and methodology of this research (2.). Afterwards the phenomenon of trivialization and its relationship to (US) law will be explained (3.). In chapter 4 two cases of trivialization of *Cyber Gender Harassment* will be analyzed exemplarily, before the insights will be summarized and applied to the research question (5.).

2. Theoretical Background and Methodology

2.1 Theoretical Background

Feminist and Gender Theory and its primary assumption that *gender* marks one the main structuring principles of society (cf. Sauer 2006: 50), are the theoretical foundation of this research. The paper follows the social constructivist standpoint that *gender* is the product of social construction processes, which everyone needs to perform constantly in order to meet society's expectations of normality (cf. Lorber 2008: 533). Therefore, *gender* matters in each and every human interaction, including those in the World Wide Web.

As shown in the introduction, online harassment can take many forms and faces, in part explaining the existence of so different, at times even contradicting data about its extent and primary target groups. Although their results are diverse, all research hints at a gendered dimension of online harassment. In this paper, the topic of online harassment will be tackled as a Women's Rights issue and therefore the harassment of women will be the sole focus of analysis.

This *gendered* understanding of online harassment in this paper is expressed through the use of the concept of *Cyber Gender Harassment* by Danielle Keats Citron (see Citron 2009 and 2014). With this term Citron captures harassment which has female victims and invokes the victim's gender in sexually threatening and degrading ways (cf. Citron 2009: 378). *Cyber Gender Harassment* (*CGH*) can take different forms reaching from:

- sending of (sexually) offensive content like messages, photos or videos
- threats of (sexual) violence
- spreading lies as facts
- *doxing* (posting of private information like phone number, address, social security number or employer) up to
- *revenge porn* (posting of photographs or films showing the victim in sexual activities or naked, often times in combination with doxing and the spreading of lies as facts).

Research also indicates that women of sexual and racial minorities are more vulnerable to *CGH* and receive more severe forms of it (see Citron 2009, 2014; Gunda-Werner-Institut 2015).

While the victims of *CGH* are clearly defined, not much is known about its perpetrators. Several studies suggest that online harassers are predominantly white men (cf. WHOA 2011), but since user anonymity is a major issue, more research is needed to better understand who is harassing online.

CGH is further characterized by its serious consequences for the victims, especially in cases of *revenge porn* and stalking. The harms of victims encompass the loss of professional and educational opportunities (as employers do background checks during hiring processes or harassers directly send explicit content or lies about the victim to their employers), mental health problems like anxiety, panic attacks or depression up to cases of suicide and a withdrawal from online and offline activities altogether (cf. Citron and Franks 2014: 347, 351f.; Citron 2014: 10).

2.2 Methodology: Qualitative Content Analysis

This paper is a qualitative case study about the trivialization of *CGH*. In order to answer the research question about the ways and consequences of this trivialization, I tried to identify recurring argumentative patterns trivializing *CGH* in online discussions. In order to identify those patterns, a Qualitative Content Analysis in the style of Philipp Mayring's Content Structuring/ Theme Analysis (cf. Mayring 2008: 89) is used to analyze the comments in two cases of online discussions. Mayring's method is a systemic and rule-based approach, which can analyze any

documented form of communication on the basis of a theoretically founded research question (cf. ibid: 2f.).

The Content Structuring/ Theme Analysis has the aim of extracting and summarizing certain topics from the material in form of a system of categories (cf. ibid: 82). For this paper, the aim was to extract and summarize all content with the topic of trivialization of *CGH*. Since the different patterns of trivialization make up the categories, the term pattern is used instead of category.

The definition of the relevant patterns was achieved in a circular process. Some patterns were pre-identified from the literature and theoretical considerations and then applied to the analysis of the material. The analysis of the material in turn led to a modification of existing and development of new patterns.

Reading through the selected data, all text passages which trivialized *CGH* were extracted and documented, then paraphrased and its content generalized to identify the pattern of trivialization. During this process, an exact definition of each pattern could be achieved and anchor samples were selected, which are concrete passages cited as typical examples to illustrate the character of those patterns (cf. ibid). The concrete findings are summarized and discussed in chapter 5.

2.3 Case selection

To identify and analyze the patterns of trivialization of *CGH*, two cases of online discussions in the US-context were picked out. The first case is a Twitter discussion initiated by media critic and YouTube-blogger Anita Sarkeesian, who runs a blog about sexism in gaming for which she is receiving a massive amount of *CGH* every day. Sarkeesian is one of the leading figures publicly speaking about the phenomenon and educating people about it in countless events. On 17th July 2015, she once more called out *CGH* in a tweet complaining about how countless men are sending her photos and videos of themselves ejaculating on her image (Sarkeesian 2015a). In October of 2015, she collected and republished some of the reactions to her tweet on her blog (Sarkeesian 2015b). In her post she started to reflect upon discussions about online harassment and pointed out the variety of forms of its trivialization. She already subsumed the comments under different headlines, wherefrom I could pre-identify some of the patterns.

The second case is a discussion on YouTube about an episode of the US Late Night Show "Last Week Tonight with John Oliver" on the topic of online harassment, with a special focus on its

gendered aspects, from June 2015 (Oliver 2015). I picked this case because the video has almost 6 million views on YouTube alone and generated close to 30.000 comments.

While both cases share being online discussions about *CGH* on websites with no real-name obligation and happened just one month apart, they also have some crucial differences. The Twitter discussion revolves around a single case and was initiated by the victim, while the YouTube discussion deals with several different cases and centers around the topic in general. Furthermore, Twitter allows its users the use only 140-character per message, whereas YouTube comments are not restricted in their length. Hence, comments on Twitter are much more to the point while YouTube comments can contain more information.

Due to the size of this paper, the top 250 comments[25] of the YouTube discussion and 200 comments of the Twitter discussion were analyzed (on Twitter the comments are ordered by time, on YouTube they are ordered by most liked/ discussed and time).

Before the presentation of the case analysis (4.), the next chapter sheds light on the interrelation between the trivialization of CGH and Law.

3. Trivialization of CGH and Law

A look at the history of the fight for Women's Rights reveals that the trivialization of issues and harms primarily concerning women has a long tradition (see: Bacchi 1999; Citron 2009). The fight for Women's Rights was first and foremost one for recognition of women's unprivileged position in law. Issues like domestic violence or sexual harassment had to be revealed as problematic crimes and put on the agenda for legal change.

Law was and still is one of the most prominent arenas in the struggle for emancipation, because it plays a major role in the creation and shaping of social mores (cf. ibid: 407). It educates people about what is socially harmful, thereby allowing the harmed party to see themselves as harmed (cf. ibid.). In that sense, law or the abstinence of law criminalizing *CGH* can become a tool for its trivialization: if it is not punishable to insult someone on the internet, it cannot be morally wrong.

[25] top comments: "show comments in a ranked view that highlights comments such as those from the video creator, comments generating discussion from the viewers, and comments that have been voted up by the community" (Google 2016), this is the standard setting for comments to appear.

So we can see that law and trivialization of *CGH* have an intertwined and important relationship. To unwind this relationship I will describe the legal situation in the US first, before shedding light on the phenomenon of trivialization. Overall, the legal situation concerning *CGH* is dominated by two separate problems: an underenforcement of existing law as well as lack of problem-specific law.

3.1 Underenforcement of existing law

In the US, like in most of the world, a variety of options in law exist to theoretically punish *CGH,* yet they are rarely exploited. Therefore Danielle Keats Citron, among others, speaks about an "underenforcement of criminal law" (Citron 2009: 402).

Currently, victims of *CGH* in the US have several possibilities to seek justice:

- Tort law: redresses victims damaged reputations (false accusations), privacy invasions and intentionally inflicted emotional distress
- Criminal law: punishes stalking, harassment, threats, extortion, solicitation, harmful impersonation and computer crimes
- Civil rights law: redresses and punishes the economic, social and psychic costs inflicted when individuals are denied the right to pursue life's crucial opportunities because of their membership in a protected group (cf. Citron 2014: 120f.)

A recent development is the proliferation of laws criminalizing *revenge porn*. This may in part be due to massive lobbying for legal change by non-profit organizations, like the Cyber Civil Rights Initiative with their campaign *End Revenge Porn* or the change.org petition *Protect Victims: #End Revenge Porn Now*, and the high media coverage of the topic. So far, 27 states in the US have criminalized *revenge porn* (cf. Cyber Civil Rights Initiative 2016) and in Europe, the United Kingdom has joined in the end of 2015.

3.2 Lack of problem-specific law

With the exception of revenge porn, the laws which are currently applied in cases of *CGH* are not problem-specific. This is problematic due to several reasons:

1. Failure to cover all dimensions of *CGH:* e.g. when a victim's intimate photos are distributed on the internet, copyright law can only be applied when the victim also took the photograph, since only the person taking a photo is considered its owner and therefore possesses a copyright (cf. Citron 2014: 122; Goldberg 2014: 19). It does not matter, if the person displayed on the photo has consented to its proliferation.

2. Not suited for internet: in cases of *CGH* it is often difficult to identify the perpetrators, since they operate anonymously. Also, a variety of actors like internet providers or hosts of websites are currently protected by law from being held responsible for the content on their websites. This means that creating a website with the sole purpose of spreading revenge porn is still not punishable (cf. ibid: 167f.).
3. High costs for victims: most options for victims are civil suits which are very costly and therefore no actual option for many victims (cf. ibid: 122; Sweeney 2014).
4. Real name obligation: civil suits also require victims to sue in their real names, which is highly deterrent since most victims do not wish to unleash more unwanted publicity to their cases (cf. Citron and Franks 2014: 358). Especially since talking publicly about *CGH* can lead to more harassment.

3.3 Trivialization of CGH

As stated in the beginning of this chapter, the trivialization of *CGH* and law have an intertwined and complex relationship. Citron considers the underenforcement of law a consequence of the trivialization of *CGH* (Citron 2009: 402). The recent United Nations Report on "Cyber Violence Against Women and Girls" found that only 26% of law enforcement agencies worldwide take appropriate action and one in five victims lives in a country where any punishment for online harassment is extremely unlikely (cf. United Nations 2015: 39).

To me, the trivialization of *CGH* is not only a consequence of an underenforcement of (criminal) law, but itself also reinforces such an underenforcement, turning the relationship into a vicious cycle. For perpetrators of *CGH*, the knowledge that their behavior never gets persecuted, let alone convicted, normalizes their behavior and could even function as an encouragement to continue. On part of the victims the trivialization of *CGH* causes them to understand their experience not as a crime, but something they have to deal with on their own, which leads to them not reporting such instances. According to the 2009 National Crime Victimization survey the majority of victims did not report because they did not consider the abuse to be important enough, believed the police would not help them because they would not take it seriously or because they would blame them for the harassment, or they thought the police lacked legal authority or sufficient tools to address the problem (cf. Baum et al. 2009: 8f.) For law enforcement agencies, the trivialization of *CGH* leads to them not taking such complaints seriously (cf. Women in the World Conference Talk 2015). This, in part, is accounted for by their lack of training concerning *CGH* (cf. Citron 2009: 402).

What becomes undoubtedly clear is that the trivialization of *CGH* plays a major role in the underenforcement of law as well as the social perception of the problem. Therefore, this paper addresses the question of how the trivialization of *GCH* actually works and tries to identify its patterns through a short analysis of online discussions about *CGH*, which will be presented and discussed in the following chapter.

4. Patterns of Trivialization in online discussions of CGH

In the analysis of the two selected online discussions seven different patterns of trivialization could be identified. In the following, I will discuss each single pattern, going from the most frequent to the least frequent pattern. With the exception of one pattern, all patterns appeared in both cases, although to varying degrees. Since one comment could contain several patterns at the same time, the percentages of all patterns frequencies in total extend 100%.

4.1 Victim-Blaming

Victim-Blaming is the notion that the victim is partially or entirely responsible for their harassment and therefore deserves it. The problem is placed upon the behavior of the victim and not on the perpetrator. If the victim would have acted differently, the harm would not have occurred. Victim-Blaming is especially used when women's harms are concerned, like sexual assault or domestic violence (cf. Citron 2009: 393). In the two cases, 29% of all trivializing comments included Victim-Blaming, making it the most frequent pattern in total. It was especially prominent and vicious when *revenge porn* was discussed. Underlying this argument are idiosyncratic views about a woman's consent with regard to sex (cf. Citron and Franks 2014: 348).

Anchor Examples:[26]

- *that happens to you cus people hate the way you complain about everything that includes the word "male".*
- *Don't give people nude pictures of yourself, its really simple.*
- *yeah you just have to put up with it. None of my personal stuff is public so I don't have these people who follow me around threatening me. Should really change privacy settings if people are in fear of this.*
- *you know, you can stop all that harassment relatively easily.*

[26] All examples are exact quotes. Since most of them contain spelling or grammatical mistakes, they are not marked with [sic].

4.2 "It's a lie"

The second most frequent pattern (20%) was the doubt up to sheer disbelief in the existence of the mentioned incidents of *CGH*. The commentators stated that sharing a personal experience is not proof of the actual occurrence and demanded further evidence. While the pattern was the most prominent one in the Twitter discussion (36%), it was the least prominent (4%) in the YouTube case. I attribute this disparity to the fact that the Twitter discussion revolved around one singular case while the YouTube video discussed multiple cases, which made it harder to downplay the phenomenon in general. Like Victim-Blaming, doubting the truthfulness of victim's accusations is commonplace in the history of the fight for Women's Rights. This especially happens in cases of sexual assault and seems to be related to Victim-Blaming. Underlying the argumentation is the claim that women as such are prone to lying and deceiving men.

Anchor examples:

- *Lol didn't happen. Got anymore lies you wanna tell us, liar?* [lol= laughing out loud]
- *proof or it didn't happen.*
- *It's important to acknowledge how much women lie about this kind of stuff, and how bad THAT can get. #gamergate*

4.3 "What about men?"

In any talk about Women's Rights and vulnerabilities, the argument that men are just as affected as much as women, and a focus on "women's issues" is therefore one-sided and wrong, turns up. 18% of the comments complain about talking of *CGH* and state that men are either just as much or even more victimized by online harassment. Often the notion of some kind of a "feminist conspiracy" influencing discussions and politics to favor women's needs is brought up.

Anchor examples:

- *Nobody cares, its not just women but I don't think that your closed "feminist" mind would have comprehend that #WomenAreNotSpecial*
- *Stop acting like this is an issue that happens only to women by men. It happens to men too, and women are just as capable of being despicable assholes.*
- *Maybe, just maybe men and women get harassed equally, but just that women bitch and moan about it to the news more often then men?*

4.4 “You’re Overreacting”

This pattern, which appeared in 17% of the comments, argues that *CGH* is actually meaningless since the internet is not the real world and therefore “mean words on the internet” have no real impact in the real world and cannot cause real harm. Thus, victims have no right to be offended by *CGH* and if they are, it means they are weak and oversensitive. This is often informed by stereotypes of women being hysterical, oversensitive or irrational.

Anchor examples:

- *Have you tried not being so easily offended?*
- *Here's a solution: Harden the fuck up.*
- *This video exemplified how today's feminist influenced women whine and cry like over-grown children. It discredits women as potential leaders, and it negate real problems real victims face in the real world.*

4.5 “Wild West Internet”

14% of the comments trivialize *CGH* due to the fact that they consider the internet to be a lawless, raw environment, where rough language and threats are normal behavior which internet users simply have to deal with. If people cannot deal with the nature of the internet, it is considered to be their problem and they should just leave the internet. This nature of the internet is either celebrated or ridiculed, but always normalized and thereby legitimized.

Anchor examples:

- *Oh fuck off. Everyone gets the occasional dick pic sent their way.*
- *The Internet, where a bunch of pussies hide behind an alias and make empty threats to other people because of how insecure and shitty their lives are.*
- *People who can't take some harsh words online should stay away from the internet.*

4.6 “It’s a Compliment”

Some comments (12%) declare *CGH* to actually be a compliment since it is a proclamation of sexual desire. This pattern was only present in the Twitter discussion. There, however, it was the second most prominent pattern with 24%. I attribute this disparity to the fact that the Twitter discussion revolved around one singular case where men had sent pictures and videos ejaculating on Anita Sarkeesian’s image to her, while the YouTube video mentioned different cases and also more severe forms of harassment like revenge porn. This pattern can be seen in cases

of sexual harassment as well, when women are told to understand unwanted sexual attention or remarks about their appearance as compliments.
Underlying this pattern are again sexist stereotypes of men being sexually aggressive and active and women being passive. According to this stereotype, men are somehow entitled to express their sexual desires about women in any way they please, while women have to passively await men's sexual advances and even be grateful for them.

Anchor examples:

- *That's like the highest honor a Twitter user can receive*
- *Umm, this bitch doesn't know how to take a compliment*
- *I'd be flattered if that happened to me tbh.*[tbh = to be honest]

4.7 Free Speech

The least frequent (6%) trivializing pattern that could be identified holds the assumption that online harassment is a form of free speech and therefore a human right protected by law. Thus, any attempt to restrict, let alone punish, hateful speech is understood as censorship and a dangerous attack on the right to free speech.

Anchor examples:

- *There will be no online censorship. Freedom of speech is more important than some precious hurt feelings.*
- *Enforce mandatory internet etiquette and censorship = decrease civil rights, increase oppression*

5. Conclusion

The analysis in this paper leads to a variety of conclusions. First, *CGH* was shown to be a global phenomenon of severe degree. Although it resembles offline forms of gendered harassment, the locality of the crime adds new dimensions to the problem. The internet makes harassment easier and faster, its interactivity allows for multiplication of aggressors and its interconnectivity increases the reach of the harassment (see: Fox and Tang 2014, Fox et al. 2015). Hence, *CGH* can lead to devastating consequences for its victims. In spite of its severity, *CGH* is rarely prosecuted, let alone convicted. At the moment, US law is neither fully equipped nor sufficiently applied to combat the proliferation of *CGH*. The trivialization of *CGH* could be identified as a major obstacle in this regard as it is reinforcing the underenforcement of law as well as being reinforced by this underenforcement itself.

Trivialization of *CGH* was found to occur in specific patterns, which may vary in degree from case to case, but are overall stable. In the two selected cases, seven recurring patterns could be identified. Due to the limited scope of the paper and the inclusion of only two cases, the list of relevant patterns may not be exhaustive. More research and the analysis of more cases could further deepen and complete the understanding of trivialization of *CGH*.

Concerning the research question, the analysis of the patterns itself was able to reveal the ways in which the trivialization of *CGH* occurs as well as its consequences and thus provides an answer to the research question. Firstly, at its core lies the denial of women's experiences and vulnerabilities, which once more underlines the fact that Women's Rights are still not unquestioningly accepted in the modern age. Secondly, the trivialization, like the harassment itself, works in gendered ways. Sexist stereotypes about women as being unreliable, overly emotional, attention-seeking or seductive are informing the discussions about *CGH*. The patterns of trivialization reinforce the notions of gender binary and gender polarity with the masculine characterized as dominant and rational and the feminine as passive and irrational and hence seek to stabilize a patriarchic gender regime. What can also be seen in both the harassment and its trivialization is the use of sex and sexuality to exercise power over women. Furthermore, the harassment as well as its trivialization work to re-stabilize the internet as a male-dominated space and drive women offline. In many comments the internet is portrayed as some sort of last resort of masculinity, where sexist behavior can and should still go unpunished or even celebrated. This also hints to one hopeful prospect – the harsh trivialization of *CGH* reveals that its perpetrators realize and fear the change of internet culture, which is evidence that they take this change seriously.

All in all, my research highlighted the necessity of a Cyber Civil Rights Agenda which includes the absolute enforcement of existing law as well as the enacting of law suitable for the specific challenges *CGH* confronts us with. So that ultimately a change of the social meaning of *Cyber Gender Harassment* from a triviality to a harmful crime with serious consequences can be achieved. Only then, the internet can become a true space of equality, opportunity and progress.

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The Sense and Sensibility of Granting Compensation to Survivors of Conflict-Related Sexual Violence in the Aftermath of the Yugoslav Wars

Valentina Jost

Abstract:

This short paper, based on a presentation given as part of a workshop on gender (in)equality in Europe, addresses the question of granting compensation to survivors of conflict-related sexual violence (CRSV) in the aftermath of the Yugoslav wars. To this end, the theoretical framework for my analysis comprises a discussion of feminist IR and feminist security studies to consider the development of the framing of CRSV over the past decades; furthermore, the concept of transitional justice, of which compensation is one approach, is discussed. The legal framework outlines the international legal standards on which CRSV and compensation for survivors of such crimes are prosecuted and based, respectively. Building on the theoretical and legal framework, the case studies of Croatia and Bosnia and Herzegovina are compared. It is argued that the latter country's stronger endorsement of the UN Security Council Resolution 1325 and the wider Women, Peace and Security agenda contributed to Bosnia and Herzegovina's stronger drive towards introducing reparation measures, including compensation for survivors of CRSV.

Zusammenfassung

Dieser kurze Artikel, der auf einer Workshop-Präsentation zu Geschlechter(un-)gleichheit in Europa basiert, befasst sich mit Fragen (monetärer) Kompensation für Überlebende von sexueller Gewalt während der Jugoslawienkonflikte. Als theoretischer Rahmen werden hierzu Ansätze der feministischen Internationalen Beziehungen und feministischen *Security Studies* herangezogen, um die Entwicklung des Framings von sexueller Gewalt in bewaffneten Konflikten abzubilden. Des Weiteren wird das Konzept der *Transitional Justice* behandelt, zu dem der Ansatz der Kompensation gezählt wird. In einem weiteren Schritt werden die international rechtlichen Grundlagen der Strafverfolgung solcher Verbrechen sowie einer möglichen Kompensation dargelegt. Auf Basis der vorangehenden theoretischen und rechtlichen Diskussion werden die Fallstudien Kroatien und Bosnien und Herzegowina verglichen. Es wird argumentiert, dass Bosnien und Herzegowinas weitreichendere Auseinandersetzung mit der UN Sicherheitsratsresolution 1325 und der Frauen, Frieden und Sicherheitsagenda dazu beigetragen hat, dass im Vergleich mehr für die Entschädigung von und Wiedergutmachung für Überlebende von sexueller Gewalt getan wurde.

Keywords: conflict-related sexual violence; compensation; Women, Peace and Security agenda; Bosnia and Herzegovina; Croatia

Abbreviations

CRSV	Conflict-related sexual violence
ICC	International Criminal Court
NAP	National Action Plan for the Implementation of United Nations Security Council Resolution 1325 on Women, Peace and Security
Rome Statute	Rome Statute of the International Criminal Court (adopted 1998, came into force 2002)
SFRY	Socialist Federal Republic of Yugoslavia
UNSCR 1325	United Nations Security Council Resolution 1325 on Women, Peace and Security (2000)

1. Introduction

An ever-increasing amount of academic literature as well as media attention is dedicated to highlighting women's more vulnerable position in times of war and violent conflict; at the same time, a growing recognition by academics and practitioners alike of the importance of women's role and potential in building lasting peace can be observed. However, the hitherto insufficient translation of these insights into action must be acknowledged. This paper – based on a presentation delivered as part of a one-day workshop on different aspects of gender (in)equality and law in Europe – aims to link conflict-related sexual violence[27] as one aspect of the aforementioned vulnerability with a way of placing women[28] and 'women's issues' closer to the centre of post-conflict politics. To narrow down the research focus, the struggle for the right to compensation[29] in the post-conflict political landscapes of Croatia and Bosnia and Herzegovina will be considered.

The question over measures addressing the needs of survivors of CRSV and their effectiveness seems of particular timeliness. At the inception of this research project, the United Nations (UN) Security Council Resolution 1325 on Women, Peace and Security (adopted in 2000; hereafter UNSCR 1325), which among many other issues also addressed CRSV, was nearing its 15th anniversary; just the previous year *The UN Secretary-General's Guidance Note*

[27] Conflict-related sexual violence here primarily refers to war-time rape but encompasses all acts of violence that are sexual and/or gender-based in nature and committed during times of conflict. For a more elaborate discussion, see for example St Germain and Dewey (eds.) (2012).

[28] It is important to recognize that not only women are affected by CRSV but also men and children. With the use of the term 'women' I in no way seek to perpetuate gender essentialism. However, historical and structural gender inequalities contribute to women and girls being disproportionally targeted. (The United Kingdom's Foreign & Commonwealth Office 2014) On the prevalence of CRSV against men and boys, see for example Dolan (2014).

[29] Compensation being only one facet of a broader right to reparation.

on Reparations for Conflict-Related Sexual Violence (2014) had been adopted; Croatia had recently passed a law promising compensation to survivors[30] of sexual violence during the Croatian Independence War (Reuters 29 May 2015); and just months earlier, a Bosnian court had in a landmark ruling convicted a perpetrator of war-time rape to pay compensation to a woman he had attacked during the Bosnian War. (Reuters 24 June 2015; The Guardian 30 June 2015)

The paper will thus proceed as follows: In the first part, two theoretical approaches will be outlined on firstly, the understanding and framing of CRSV over the course of the past decades, and secondly, transitional justice approaches such as compensation aimed at rebuilding society in the aftermath of mass violence, will be deliberated. This will be followed by a discussion on the legal framework of CRSV and compensation claims. It is hoped these sections will build well on each other and that the presented information will provide a necessarily limited, but nevertheless sound introduction to the topic, which will serve as the basis for the subsequent analysis of the case studies of Bosnia and Herzegovina and Croatia.

2. Theoretical Approaches

Whilst there are numerous theoretical debates one could draw upon in the discussion of compensation for survivors of CRSV, in the scope of this paper feminist international relations theory and feminist security studies on the one hand, and transitional justice approaches on the other hand, appear most insightful in introducing this complex topic.

For a very long time, if sexual violence during war was talked about at all, it was considered an inevitable by-product of war at best, and 'spoils of war' at worst – the victors' justified consolation and vengeance to take, deservedly so after months and years of heinous conditions under which soldiers had to live and serve (Bourke 2007). Canning (2011) argues such a "historically nonchalant attitude" (p. 39) to CRSV can largely be attributed to rape being marginalized as a woman's problem while war is considered man's terrain. Similarly, Henry (2016) describes the understanding of war-time rape as constituting merely a by-product of war to be based on a "warped (yet normalized) militarized hegemonic masculinity, which arguably is structurally embedded in pre-conflict gender inequality and unequal power relations." (p. 44) It is this utter exclusion in traditional international relations schools of thought of considerations of women's lived experiences in times of conflict – including the disregard of structural gender inequalities (and other dimensions of discriminations) during peacetime and their impact on

[30] In recognition of the power of language used, the text will not be speaking of victims but refer to affected persons as survivors of CRSV.

conflict – which was perhaps the biggest common thread taken up by the fledgling feminist security studies of the late 1980s and 1990s. (See for example Enloe 1990)

While feminist work on issues of "war, peace, security, […] has a long and rich history" (Stern and Wibben 2005: 1) to build on, it was the establishing of feminist security studies as a distinct field of study which paved the way for much of the academic work on CRSV. Therein attention was brought to the existence and prolificacy of this long-ignored violation and the very understanding of CRSV as an unavoidable by-product or the spoils of war was heavily challenged. This analytical work has been a critical step towards the much more nuanced understanding of CRSV which exists today. This is not only the case in theoretical security studies, but can to some extent also be found in the practice of international politics, as for example the important work on UNSCR 1325, discussed below, shows.

Transitional justice is a strand of post-conflict scholarship concerned with questions over how a society or community can best move forward in the aftermath of violent conflict, a crucial component of this being a focus on how to prevent the resurgence of violence. Seeing those guilty of the most horrendous of crimes being punished is considered by many a necessary step to moving on. Yet as Judge Goldstone of the South African Constitutional Court, who was heavily involved in South Africa's transition after the Apartheid regime, comments: "It should be recognized that in a perfect society victims are entitled to full justice, namely trial of the perpetrator and, if found guilty, adequate punishment. That ideal is not possible in the aftermath of mass violence." (Goldstone in Minow 1998: ix) The reasons for this constraint are manifold and include the large financial means necessary which in post-conflict situations could arguably be better utilized elsewhere; a lack of political will at the national and international level; and the difficult attribution of blame up and down the chain of command in the face of typically scant evidence (Snyder and Vinjamuri 2006). In its stead, transitional justice propagates finding a middle way between justice, truth-seeking and reconciliation to break cycles of violence. Measures of reparation – compensation being one of those – form an integral part of this.[31]

3. Legal Framework

In the discussion over the right of survivors of CRSV to meaningful compensation, a basic appreciation of the relevant legal framework seems indispensable. This is not least because making reference to a state's duties arising from an international treaty it is signatory to and

[31] For a detailed explanation and assessment of different measures of transitional justice, see for example Minow (1998).

other pertinent sources of law, is a most potent tool for advocacy. The approach hereafter will be three-pronged: how CRSV constitutes a crime under international law;[32] the right to reparation; and how the issue was addressed and elevated to the forefront of the international arena through the adoption of UNSCR 1325 on Women, Peace and Security.

Concomitant to the increase of attention paid in academia and the media to women's more vulnerable position in times of conflict in general, and CRSV in particular, important developments in the international legal landscape have also taken place. The push towards seeking greater accountability for the most atrocious of crimes that could be observed in international criminal jurisprudence over the past two decades also extended to CRSV. Following recognition of the prevalence of the issue during the Yugoslav Wars of the 1990s and the genocide in Rwanda in 1994, the respective ad hoc International Criminal Tribunals[33] established relevant case law. CRSV was further codified in the Rome Statute of 1998,[34] which constitutes the legal basis for the proceedings at the International Criminal Tribunal. Under these legal provisions, rape and other forms of sexual violence are being investigated and prosecuted:

> "as war crimes when committed in the context of and associated with an armed conflict;
>
> as crimes against humanity when committed in the context of a widespread or systematic attack on a civilian population;
>
> and/or as an act of genocide when committed with the intent to destroy an ethnic, religious, national or racial group in whole or in part."
>
> The International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, by The United Kingdom's Foreign & Commonwealth Office (2014: 17)

Although the value of international criminal law as a deterrent to future violations of this kind can be debated (Grono 2012), the aforementioned legal provisions do provide grounds on which to prosecute alleged perpetrators of CRSV.[35] This is particularly important considering that there is often no such legal basis to draw upon on the national level.

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[32] In light of the limited scope of this paper, the analysis is confined to the right to reparation and compensation for crimes of CRSV in international law. This is not to say that national legal provisions – where they exist – could not be equally potent tools in bringing both individual perpetrators and organisers of violence to justice.

[33] The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

[34] For CRSV as a war crime, see article 8.2(c)-(e) of the Rome Statute; as a crime against humanity, article 7; as an act of genocide, article 6.

[35] Note that CRSV can also constitute a crime under customary international law when it is framed as an act of torture or inhumane treatment, two areas for which there exist far-reaching and longer-standing legal provisions.

Although conviction may in certain legal contexts be required for the claim to reparation to arise (see for example the Bosnian court case mentioned in the introduction), the right to reparation following violations of human rights and/or international humanitarian law is an inherently survivor-focused concept (van Boven 2009). Whilst the legal concept of reparation builds on the aim of restoring a victim's situation as closely as possible to what it would have been had the violation not been committed, the gravest of violations of human rights and humanitarian law are by their very nature irreparable. Here, then, reparation does not seek to undo but attempts to alleviate the consequences of the harm done on the survivor's mind, body and living situation through compensation (usually monetary) and other rehabilitation measures, including access to medical, psychological, social and legal services. So-called 'measures of satisfaction,' such as public acknowledgment of the violation suffered and guarantees of non-repetition, can also form part of a reparation regime.[36] This right to reparation is explicitly extended to survivors of CRSV in the 2013 *General Recommendation on Women in Conflict Prevention, Conflict and Post-Conflict Situations* issued by the Committee on the Elimination of Discrimination against Women and reiterated in the *Guidance Note of the UN Secretary-General on Reparations for Conflict-Related Sexual Violence* of 2014.

With the adoption of UNSCR 1325 on Women, Peace and Security in 2000, the situation of women in war and violent conflict was brought to international attention in a manner and to an extent as never before. The resolution covers a number of issue areas, including as part of its work on *Protection & Relief*, a focus on CRSV which addresses both the need for future prevention thereof and that past crimes of CRSV be addressed. (See the text box to the right for relevant excerpts of UNSCR 1325; emphasis added.) A UN Security Council resolution of course does not carry the same weight in terms of legal obligations on states as international treaties such as the aforementioned Rome Statute do. Nevertheless, in its capacity in bringing attention to the issue, guiding policy at the international and national level,

UNSCR 1325 – relevant excerpts

"Calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse"

- paragraph 10

"Emphasizes the responsibility of all States to *put an end to impunity and to prosecute those responsible* for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard stresses the need to *exclude these crimes, where feasible, from amnesty provisions*"

[36] This is most prominently summarized in the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation*. For an accessible, practice-oriented description see Redress (undated).

informing decision-making on resource allocation and instigating action of relevant actors, UN-SCR 1325 was an important stepping stone for the work on CRSV. The Women, Peace and Security agenda was later furthered in a number of follow-up UN Security Council Resolutions, two of which specifically address CRSV.[37]

In anticipation of weak to non-existent implementation oversight mechanisms, many women's rights advocates pushed for the incorporation of a request of states to provide National Action Plans (NAPs) on their respective progress in the implementation of the resolution. At the behest of then UN Secretary-General Kofi Annan, this regime has been in place since 2004. To date, 64 states[38] have partaken and both Croatia and Bosnia and Herzegovina are among these. (Peace Women 1 April 2017) These NAPs will be of concern in the subsequent analysis of the case studies.

4. Case Studies

Within the geographical scope of the seminar this paper was prepared for (Europe), Croatia and Bosnia and Herzegovina lent itself as case studies. It should be acknowledged that comparing conflicts in all their complexity, historical and otherwise, is always a contentious endeavour. This paper does attempt no such thing but conscribes the area of research to looking at how Croatia and Bosnia and Herzegovina have differently addressed past atrocities of CRSV, following cessation of the respective conflict, with a focus on compensation. In this, the analysis is inherently survivor-focused; the paper does therefore also refrain from discussing prosecution and where to place the blame for crimes of CRSV among the warring parties.[39]

Bosnia and Herzegovina

Amidst the economic and political breakdown of the Socialist Federal Republic of Yugoslavia (SFRY), its constituent Socialist Republic of Bosnia and Herzegovina declared independence in 1992, which was followed by three years of war at immense human cost. The numbers alone of women raped during the conflict is estimated to have been between 14,000 and 50,000[40] (Bastick et al. 2001). This traumatic experience was often exacerbated by repeated violations,

[37] UN Security Council Resolutions 1820 (2008) and 1888 (2008).
[38] At the time of writing in February 2016, 57 states had adopted National Action Plans.
[39] Accounts of crimes of CRSV exist for all parties to the conflicts – albeit to different degrees. (Bastick et. al 2001)
[40] Numbers on casualties and victims during times of conflict are notoriously difficult to establish, CRSV being no exception to this (Andreas and Greenhill 2011). The range of figures cited here is thus intentionally left broad.

enforced pregnancies and the to some extent institutionalisation of the abuse in so-called 'rape camps' (Hansen 2000).

For the many survivors, the road towards receiving compensation has since been difficult, if not impossible. Compensation has long been left at the discretion of the three constituent regions of Bosnia and Herzegovina[41] which has led to differing results in terms of possibility for successful claims to compensation for the survivors. For example, in the largest of the three regions, the Federation of Bosnia and Herzegovina, compensation could until recently only be achieved through civil proceedings. Asserting compensation claims was even more difficult in the other regions (Amnesty International 2009).

One potent way for civil society organisations to leverage greater engagement by the government with the question of compensation was the focus on CRSV in the UNSCR 1325; more specifically, the requirement of the Bosnian and Herzegovinian (hereafter Bosnian) government to submit regular National Action Plans (NAP, see above *Legal Framework*). The first Bosnian NAP was prepared in 2010 (*Action Plan for the Implementation of UNSCR 1325 in Bosnia and Herzegovina* by the Gender Equality Agency of the Ministry of Human Rights and Refugees), thereby being the first NAP in all of South Eastern Europe. The 69-page document, covering the time period of 2010 - 2013, does touch on sexual violence in war as well as state the rather broad goal of "support[ing] women and girls victims of conflict." (p. 63) However, as an implementation review of 20 European states' NAPs by the European Peace Liaison Office (2013) comments on Bosnia and Herzegovina's 2010 NAP, the state had in fact "done little to support women victims of sexual violence in war." (p. 13)

Considerable progress in terms of aiding compensation for survivors of CRSV was made in Bosnia and Herzegovina's second NAP, written in 2013 for the years of 2014 - 2017. A specific objective is dedicated to the "[i]mproved support and help for women and girls who survived sexual violence during and after the war." (p. 35) One of this objective's 'expected results' explicitly names the availability of compensation (as well as other reparation measures) and goes on to describe specific activities expected to facilitate this process, designates the stakeholders responsible for implementation and sets a deadline to achieve the result. Arguably most importantly, the NAP also assigns sources of funding for each of the NAP's objectives. Figure 1 below shows the relevant NAP excerpt:

[41] Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District.

Midterm objective 2.2: Improved support and help for women and girls who survived sexual violence during and after the war				
Expected result	**Activity**	**Stakeholder**	**Deadline**	**Source of funding**
2.2.2 **Compensation and benefits/rehabilitation available to women and girls victims of sexual violence during and after the war**	Establishing a model for comprehensive support and care for women who have survived sexual violence during and after the war, with the aim of a balanced approach to legal services, psychosocial and financial aid, regardless of residence	MHRR BH/ ARS BH, GC FBH, GCRS **Partners:** NGOs and international organizations	2014-2015	Budgets of relevant institutions, donor funds

Figure 1: Excerpt of the *Action Plan for Implementation of UNSCR 1325 in Bosnia and Herzegovina for the Period of 2014 - 2017* (p. 35) by the Gender Equality Agency of the Bosnian Ministry for Human Rights and Refugees (December 2013)

The NAP additionally includes a chapter on lessons learned during the implementation of the country's previous NAP (pp. 20f) which identifies both implementation successes and room for improvement. It was for example deemed a strength of the earlier NAP that "goals and activities of the plan [were connected] with existing mandates of relevant institutions" (p. 20); meanwhile, the need for a more effective monitoring and evaluation system was noted. The fact that the second Bosnian NAP includes improved monitoring and evaluation provisions against the set objectives engenders further trust in the success of the measures set out in said NAP.

Such detail-oriented and wholesome approach led the UN Special Representative for Sexual Violence in Conflict to name Bosnia and Herzegovina's second NAP an example of "positive development that lays the foundations for enhanced service delivery to survivors." (23 March 2015)

Croatia

The former Socialist Republic of Croatia's declaration of independence from the SFRY in 1991 was followed by a four-year war of independence. Though the numbers of casualties would never rise to those of the Bosnian war of independence discussed above, the devastation suffered by the war's victims was nevertheless great. By any accounts, the number of women affected by CRSV during the war is also smaller and estimated to have been between 1,500 and 2,200 (UN Development Programme 2013).

Those survivors' right to compensation was codified by the Croatian parliament in May 2015 in a law that promised a one-off payment of roughly 13,500 Euros plus monthly allowances of around 320 Euros, as well as a guarantee of access to psychological counselling and medical as well as legal services (Reuters 29 May 2015). While receiving compensation for the harm done during the war had been nigh impossible for two decades, it remains to be seen how

the translation of the aforementioned law into practice will unfold, and whether all Croatian survivors will indeed be able to access the entirety of the benefits that were promised to them.

One fact possibly contributing to this weaker response by Croatia (weaker at least up until the adoption of the aforementioned law) to past crimes of CRSV is Croatia's lesser endorsement of UNSCR 1325 and the NAP regime. In contrast to Bosnia and Herzegovina's 69-page NAP of 2010, Croatia's first and so far, only NAP (*National Action Plan for the Implementation of UN Security Council Resolution 1325* by the Government of Croatia, 2011) comes to solely 18 pages in length, many of which contain a descriptive elaboration of UNSCR 1325 and other aspects of the women, peace and security regime. Although one objective on past instances of CRSV is included, with the very elaborate headline of "[i]mplementation of the protection of the rights of women and girls – war victims in the Republic of Croatia with a view to their post-conflict recovery," (p. 10) its attached measures are neither set against an exact deadline nor are they worded in way specific enough to hold much promise for considerable implementation results. Moreover, the NAP was to cover the period of 2011 - 2014; though expired for three years now, it has still not been succeeded by an updated NAP.

5. Discussion

As the earlier discussion of theoretical approaches to CRSV sought to highlight, it is in no small part thanks to feminist international relations theory and feminist security studies, that we today benefit from a general acknowledgment in international politics of the prolificacy of CRSV in (contemporary) conflicts; moreover, we can draw on a much more nuanced understanding of CRSV and an appreciation for its causes and manifold consequences. With the aim of breaking cycles of violence in the aftermath of war, transitional justice approaches seek to mitigate the repercussions of violent conflict. In view of the growing acknowledgment of the large number of people affected by sexual violence in armed conflict, and of the harrowing long-term effects the abuse has on their lives and communities, measures of reparation, such as compensation, have been advocated as one step towards alleviating some of these consequences. This paper set out to discuss how Croatia and Bosnia and Herzegovina have differently addressed past atrocities of CRSV in the aftermath of the Yugoslav Wars, considering in particular compensation measures.

While Croatia's recent adoption of a law on the right to compensation must be acknowledged as a step in the right direction, the lack of significant reparation measures for the thousands of survivors of CRSV in previous decades should nevertheless be bemoaned. It furthermore remains to be seen whether the abovementioned law does indeed translate into tangible

improvements in survivors' lives. One factor potentially contributing to the delay of an institutional response to the needs of Croatian survivors of CRSV would be the Croatian government's lacklustre engagement with UNSCR 1325 and the NAP regime. This stands in stark contrast to Bosnia and Herzegovina's increasing incorporation of provisions from UNSCR 1325 and the wider Women, Peace and Security agenda, particularly in the country's work on addressing the needs of survivors of CRSV. The detail-oriented elaboration of Bosnia and Herzegovina's planned measures in this field, with the designation of funds and the assignation of stakeholders responsible for their implementation, a translation of the stated objectives into practice seems more attainable and promises positive change to survivors' lives.

Reading through comments by survivors of CRSV in the Yugoslav Wars to measures of reparation such as those discussed above, the overarching response seems to be that in isolation, these measures are not enough and more needs to be done. As one Croatian survivor remarked upon the adoption of the 2015 law promising monetary compensation, "[i]t will come in handy […] but if I got billions, it could not pay for what we went through." (Ruzica Barbaric in Reuters 29 May 2015) Such comments are testament to the need for a holistic, sustainable and survivor-focused approach to addressing past atrocities of CRSV with a catalogue of complementary reparation measures, where compensation must be one of many services made accessible to survivors of CRSV.

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From ‘Golden Suits’ to ‘Golden Skirts’: An Evaluation of the Norwegian Gender Quota for Corporate Boards

Isabella Rogner

Abstract:

Norway has been the first country to implement a compulsory gender quota for corporate boards. Since 2003, the Norwegian Companies Act (NCA) requires a minimum 40 percent representation of women and men. The implementation of the gender quota has been considered an important step towards gender equality within the Norwegian labor market, which is characterized by relatively high gender segregation in employment. A recent study by Bertrand et al. (2014) reveals that the quota's impact on vertical segregation might be less than expected. After discussing some theoretical assumptions about gender quotas, this paper gives an overview of the Norwegian quota's background and effects. By reviewing selected studies on stock market value, board performance, and gender equality, missing links in previous research are identified. While the quota is an important symbol in the struggle for gender equality, actual effects on the Norwegian labor market are limited by legal scope and direction of the NCA. Drawing from the Norwegian experience, this paper argues for a long-term multilevel approach to gender quotas for political and economic bodies.

Zusammenfassung:

Norwegen war der erste Staat, der eine verbindliche Geschlechterquote in Führungsgremien eingeführt hat. Der Norwegian Companies Act (NCA) von 2003 fordert einen Anteil an Frauen von mindestens 40 Prozent. Die Implementierung der Geschlechterquote wird als wichtiger Schritt für die Geschlechtergleichheit am norwegischen Arbeitsmarkt gesehen, welcher sich durch eine relativ hohe Geschlechtersegregation auszeichnet. Eine kürzlich veröffentlichte Studie von Bertrand et al. (2014) zeigt, dass die Auswirkungen der Quote auf die vertikale Segregation möglicherweise geringer ausfallen als erwartet. In dieser Arbeit werden zunächst einige theoretische Annahmen über Geschlechterquoten diskutiert, dann folgt ein Überblick über die Hintergründe und Effekte der norwegischen Quotenregelung. Indem ausgewählte Studien über Börsenwerte, über die Leistungen von Vorständen und Geschlechtergleichheit besprochen werden, können fehlende Verknüpfungen vorheriger Forschung identifiziert werden. Obwohl die Quote ein wichtiges Symbol für das Streben nach Geschlechtergleichheit darstellt, sind die Auswirkungen auf den norwegischen Arbeitsmarkt durch den rechtlichen Rahmen und die Regelungen des NCA begrenzt. Ausgehend von den Erfahrungen in Norwegen plädiert diese Arbeit für einen langfristigen Mehrebenen-Ansatz bei Geschlechterquoten für Organisationen in Politik und Wirtschaft.

Keywords: gender quotas; Norway; corporate boards; labor market segregation; legal reform

1. Introduction

In 2011, English media started picking up on a term coined by the Norwegian press (Lewis 2011). Norwegian journalists had begun to write about the so-called *guldkjolar*, or 'golden skirts', shortly after the binding implementation of a gender quota for corporate boards in Norwegian public limited companies in 2008. The term refers to newcomer women board directors who got appointed to numerous corporate boards in the process of companies redistributing their board seats to comply with the quota. These women were called 'golden skirts', a nickname reflecting on the high wages they received from their board memberships. Media actors and opponents of the quota claimed that the new law did not increase gender equality in leadership. Instead, they noticed the creation of a small group of women making a fortune out of their board seats by having the right connections and putting themselves on multiple payrolls. The 'golden skirts' were accused of taking advantage of the quota, effectively blocking other women from entering the board room and hindering progress in gender equality. The existence of this new elite was taken as a ground for opposing the quota since it allowed for new imbalances instead of reducing them and "trade[d] one set of elites for another" (Cameron 2010).

A Norwegian dispute at first, the 'golden skirts' have now reached academic and political debates in other countries. Especially in those countries where a gender quota for corporate boards is being considered or has recently been introduced, opponents point out the Norwegian experience to weaken arguments for gender equality. The 'golden skirts' are seen as proof that a gender quota is asking 'too much too soon' from companies and is not the right concept to tackle unequal proportions of female and male board members. Proponents of a non-compulsory approach argue that firms will voluntarily comply if given enough time to appoint (allegedly scarce) suitable female board directors and to avoid sudden disruption.

The assumption of gradual voluntary compliance, however, has not yet turned out to be true. In Norway, public debates about equal gender representation on corporate boards gathered substantial attention at the end of the 1990s. Between 1999 and 2004, the number of companies reaching a proportion of 40 percent of each gender only rose by 8.5 percent (Nygaard 2011: 26). In 2005, when the bill for a compulsory quota was passed (with sanctions coming into effect in 2008), 79.9 percent of the affected companies had yet to comply (ibd.). Similar numbers can be found in other countries. In January 2016, the German Institute for Economic Research stated that, deduced from the progress made in the last ten years, women will be equally represented on C-level suites and corporate boards 86 years from now (Öchsner 2016). This is not necessarily the preferred pace of progress for an urgent political issue like gender equality. And it underlines the fact that considerable advances have been accomplished since the quota

was introduced: Between 2005 and 2017, the proportion of women board directors in Norwegian companies rose from 16.9 percent to 42.1 percent (Statistics Norway 2017a). All concerned companies complied after April 2008 (Nygaard 2011: 4f.). Even if multiple memberships had the alleged effect of blocking some women, there still are a significant number of women who did enter the boardroom thanks to the quota.

This paper will therefore evaluate mandatory legal regulations as an institutional tool for gender equality. Drawing from the Norwegian experience, the following question will be answered: How should a corporate gender balance law be designed in order to increase economic gender equality? With regard to the law's limited sphere of action, the paper will apply a narrow concept of economic gender equality, looking for a quantifiable increase in women's partaking in positions of power in Norwegian businesses. Other effects such as changes in board performance and stock market value will be briefly assessed against the background of the political debate leading up to the quota. The paper is divided into six sections. The next two sections will give an overview of the Norwegian labor market and the theoretical background of quota laws. In the third section, the political and legal process of the Norwegian Companies Act will be traced. Following this, previous empirical results regarding the effects of the Norwegian quota will be reviewed. In the fifth section, the gained insights will be discussed, followed by concluding recommendations on scope, direction, timeline, and a conducive framework for a corporate gender balance law.

2. The Norwegian Labor Market

To shed some light on the economic conditions in which the quota was implemented, this section deals with the current status of the Norwegian labor market with a special focus on gender segregation.

In the last quarter of 2016, 66.7 percent of the Norwegian population between 15 and 74 years old were employed (Statistics Norway 2017b). Numbers were slightly higher for men (68.8 percent) compared to women (64.6 percent), parallel to registered unemployment also being a little higher among men (see figure 1). Although this suggests mild segregation as more men than women are employed, women's employment in Norway conforms to average numbers across the EU (EU-28 in 2015: 64.3 percent; Eurostat 2016). As far as part-time work is concerned, the Norwegian labor market shows notably stronger segregation (see figure 2). The share of women working part-time (36.9 percent) is significantly higher than that of men (14.8

percent), albeit the gender gap in part-time work being a little lower than the EU average (22.1 vs. 23.3 percent in the EU-28; Statistics Norway 2017c, Eurostat 2016).[42]

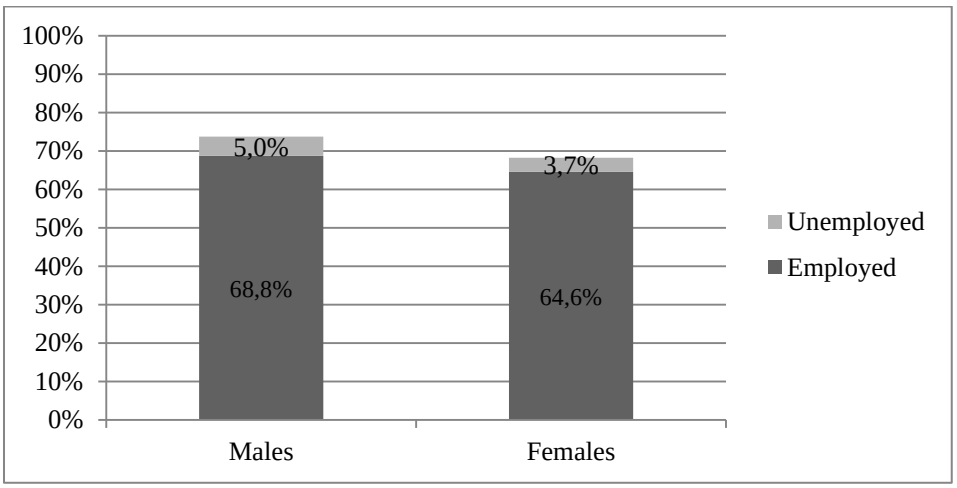

Figure 1: Population aged 15-74, by labor force status and sex. Own compilation based on Statistics Norway 2017b

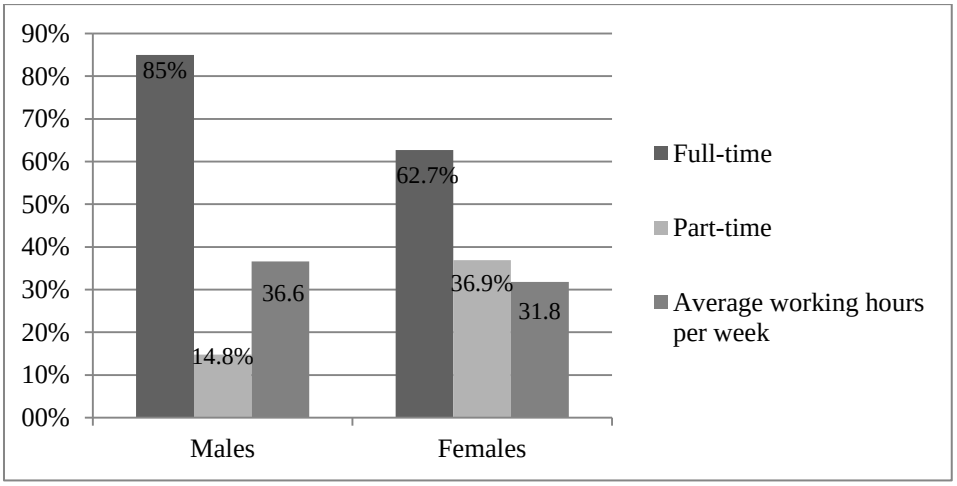

Figure 2: Employed persons 15-74 years, by sex, full-time, part-time, and usual working hours per week. Own compilation based on Statistics Norway 2017c

The same applies to the gender pay gap: There is a 14.9 percent gap in monthly earnings between women and men, compared to 16.3 percent across the EU-28 (Eurostat 2017). When it comes to horizontal (sectoral or occupational) segregation, however, Norwegian numbers lie above EU average (European Commission 2013). Sectoral segregation in Norway stands at 9.1 percent in 2012 (EU-27: 5.3 percent), while occupational segregation reached 5.8 percent in 2010 (EU-27: 4.6 percent). With regard to distribution across sectors, 72.1 percent of women in Norway work in the five most popular sectors; the same holds true for only 56.7 percent of men (ibid.). Women are highly concentrated in administration, health, education, social work

[42] Numbers for part-time workers in Norway include all employees working less than 30 hours. Eurostat does not predefine part-time work but rather collects data based on self-report from the participating countries. Statistical comparability is thus limited.

and retail; these sectors were part of a government program promoting women's entry into the labor market during the 1970s. In the meantime, efforts have been made to reduce horizontal segregation and Norway recently moved "from the group of highly to moderately gender segregated labour markets" (Ellingsæter 2013: 514). Hence in most labor market domains, Norway has made above-average progress towards gender equality. There is, however, one area in which the country can claim exceptional success: According to the latest survey of March 2017, 42.1 percent of corporate board members of the largest Norwegian companies are women, compared to 24 percent across the EU-28 in 2016 (Statistics Norway 2017a; European Commission 2017). This high proportion of women board members can be attributed to the Norwegian Companies Act (NCA) determining a minimum of 40 percent representation of both genders on corporate boards. Norway was the first country to implement a gender quota for corporate boards in 2003 and has since seen substantial change in board composition. Before the NCA will be explained in detail, the following section illustrates the theoretical background and political arguments for gender quotas in economic and political bodies.

3. Quotas? What Quotas?

Quotas as an instrument of representative regulation have been present in politics for quite a while, e.g. in the displaying of certain social classes or the representation of minorities, but only in the 1950s did quotas become a tool for gender equality (Holli 2011: 143). The first and still most common type of gender quotas are "[quoted] electoral candidate lists or legislative seats reserved specifically for women" (ibid.). This "first generation of gender quotas" (ibid.) has spread through all continents over the last couple of decades and can be found in two forms: either as a legal provision or voluntarily adopted by political parties as part of their programs. A second generation of quota rules, evolving shortly after the surge of quoted electoral lists and seats, is identified by Holli as "quota rules […] applied to appointed or indirectly elected bodies and institutions, such as committees, public boards, advisory bodies or executive organs" (ibid.). Both generations are fairly similar as they lie in the public realm of politics. The third generation, however, moved on to the private sphere: In the early 2000s, quotas for economic bodies were put into action, more precisely for corporate boards (Holli 2011: 144). Though increasingly common across the globe, quotas for corporate boards are still primarily used in European countries. They can be seen as evolutionary in the sense of stepping out of the public sphere. Apart from this, however, Meier (2013) does not find any evidence of evolution when applying Holli's model to the case of Belgium, where all three generations can be found. The statutory numbers varied between 30 and 50 percent and did not increase in time; arguments in

favor of and against the use of quotas are also similar in all generations (Meier 2013: 460ff.). How are these arguments to be conceptualized?

The underlying idea of gender quotas is an unequal distribution of power among men and women that needs to be adjusted. Although they are supposed to "change the structural properties of power and its distribution among groups" (Kogut et al. 2014: 892), they usually address rather small elites, not broad social structures. Quotas thus are most feasible in limited social spaces and are associated with positions of power. In these limited spaces, they function as "a mechanism to break the structures that endogenously favor the inequality in the first place" (ibid.), hence as a tool for achieving equality. Kogut et al. identify two main elements constituting the structures of gender inequality in corporate boards: "dominant male homophily" (ibid.: 894), preferred affiliation with similar others; and "tokenism" (ibid.), individual women being turned into a justifying 'token' for corporate boards. Homophily leads to male board directors selecting other males, while tokenism prevents selection of female directors beyond symbolic representation. A quota is able to interrupt both of these dynamics: Women board directors achieve significant representation and, once they have done so, have the capacity to select other women.

Whether quotas are adequate for different contexts, however, is the subject of political debates. According to Bjørkhaug and Øyslebø Sørensen (2012), the arguments shaping these debates can be divided into three categories, which are embedded in two dimensions. Political debates thus include arguments of justice, complimentary resources and interest groups (ibid.: 189). The first category contains arguments of "democratic inclusion and equal rights to political participation" (ibid.) for women and men. Second, arguments of 'complimentary resources' assume that attitudes, talents, and skills are equally distributed among genders and that both women and men supply indispensable resources for political and economic bodies. The last category covers arguments of interest, meaning that women and men have different interests as part of their gender identity. As the categories are not mutually exclusive, many arguments fall into more than one category. The model is similar to categories suggested by other authors (see for example Meier 2013, Storvik and Teigen 2010) but it proves to be more comprehensive as it considers the mindset behind the arguments by assigning two possible dimensions: normative and pragmatic arguing (Bjørkhaug and Øyslebø Sørensen 2012: 189). Participants of a debate point to the morality or the utility of gender equality, or may even use both for the same argument. Both proponents and opponents of gender quotas have referred to the three categories from a normative as well as from a pragmatic standpoint. In the case of corporate board quotas,

advocates often mention gender equality as a core principle of just democratic societies in business as well as in politics. They also talk about human capital and the benefits businesses are missing out on if they do not make use of women's skills and resources; and they call for women's involvement in decision-making boards to ensure their specific interests are equally represented. Adversaries, on the other hand, frequently reject quotas on the basis of liberal democratic ideas of justice and a lean state that should not interfere with private business. Limiting shareholders' rights to freely elect board members is deemed unjust. They also claim that there are not enough qualified female candidates for corporate boards and that valuable resources will be left unused if businesses are forced to favor gender over qualification. As for interest groups, they often note that the most relevant interest group is shareholders, regardless of their gender; that there is no guarantee for a female director to represent women's interests; and that it is questionable "whether 'women' is a sufficiently unified category to generate an interest of its own" (Phillips 1998: 67). All of these arguments could be made in a normative or a pragmatic mindset. Proponents of gender equality for social justice, for example, might believe in a moral obligation to establish equal rights; or they might hope for democratic legitimization for decision-making bodies through equal representation. The same applies to opponents who may hold a strong belief in liberalism and the public/private separation or rather think of potential investors being scared off by strict business regulations. The model therefore presents discursive frames that are recurrently used in public debates rather than discriminatory classification of arguments. As will be shown in the next section, these categories are fully applicable to the debate on the Norwegian Companies Act.

4. The Norwegian Companies Act

Norway, along with other Scandinavian countries, has a long-standing reputation as a society striving for gender equality. Terjesen et al. (2015: 245) identify certain signs of path dependency when it comes to the efforts made before the introduction of a board quota: Norway was among the first states to establish women's universal suffrage and banned any form of gender discrimination through the Gender Equality Act of 1978. With regard to quota generations, Norway was the pioneering country for the first and second generation (Holli 2011: 144f.). It was not surprising, then, that the country also founded the third generation. After several years of public and parliamentary debate, a broad coalition passed the Norwegian Companies Act in 2003. The bill was jointly proposed by the Ministry of Trade and Industry (at the time chaired by the Conservative Party) and the Ministry of Children, Equality and Social Inclusion (then

Christian Democratic Party) and passed by all but the right-wing populist Progress Party (Terjesen et al. 2015: 243). The law concerns all *allmennaksjeselskap* (ASA) companies, which are comparable to British *Public Limited Companies* and German *Aktiengesellschaften*, and requires a minimum 40 percent representation on the company's board of directors for both women and men (Bøhren and Staubo 2014: 155). ASA companies are relatively large businesses with a minimum capital of one million Norwegian crowns (NOK); all companies listed on the Oslo Stock Exchange must be registered as ASA (but not all ASA are listed). They face strict regulations in terms of financial reporting, transparency on remuneration and board composition (a minimum 50 percent of shared capital must be granted voting rights and the company's CEO cannot serve as chair[43]). Firms registered as ASA comprise public limited companies, cooperatives, and state-owned businesses (Bjørkhaug and Øyslebø Sørensen 2012: 186). Since they are the most prestigious companies, closely monitored and often at least partly owned by the state, they proved to be fit for a board quota (Storvik and Teigen 2010: 12). The parliament first chose a non-mandatory approach, giving firms two years to comply voluntarily. If the ASA companies had reached the proposed gender proportions during this time, the law would have been withdrawn (Nygaard 2011: 6). However, "a full 79.9 percent of firms were not in compliance with the law at the end of 2005, and […] [the] average [public limited company] board had 15.5 percent female directors in 2005" (ibid.). This led to the implementation of a binding version in 2006, granting firms a two-year grace period to comply until January 1st, 2008. After this date, companies risked being dissolved. Although the Norwegian Business Register issued a couple of warnings in early 2008, by April all companies had complied and there were no actual cases of liquidation (Nygaard 2011: 4f.).

In their analysis of parliamentary and media documents, Bjørkhaug and Øyslebø Sørensen (2012: 197f.) find the public debate to be dominated by two notions on the proponents' side: Norway as a gender equal nation and increased profitability for businesses. Norway's leading role in gender equality on the international level and the need to stay on track for further progress was emphasized in particular. Companies were encouraged to make use of women's skills and resources to gain a competitive advantage. Proponents primarily referred to arguments of justice and complimentary resources, while interest group arguments were not as prominent. Most of the arguments fit into pragmatic arguing as this was considered to resonate best with business lobbies. Opponents, on the other side, stressed the importance of shareholders' right

[43] Norway applies a single-tier system, meaning that companies are not required to have an official executive board. The general shareholders assembly appoints a board of directors, which in turn appoints the CEO. The CEO can also be a board member.

to vote without restrictions as a question of democracy. They also deemed radical board recomposition unmanageable due to a lack of qualified female candidates. Here, too, arguments were centered on justice and complimentary resources rather than interest groups. In light of these arguments, the next section deals with empirical results regarding effects of the quota up to date and how they were obtained.

5. Effects of the Quota: Empirical Results

One of the first measurable effects of the introduction of the compulsory quota was, of course, the change in women's share on corporate boards. Starting with 16.9 percent female directors on July 1, 2005, women now make up 42.1 percent of all board directors in ASA companies in 2017 (Statistics Norway 2017a). So-called *aksjeselskap* (AS), private limited companies (similar to German *GmbHs*), which are most comparable to ASA firms, only employ 18.4 percent female directors. Second, the actual number of firms subject to the quota changed substantially. Starting with 519 companies in 2005, there were only 189 ASA companies in 2015 (Statistics Norway 2016). This means a decline of 64 percent. According to Bøhren and Staubo (2014: 153), 51 percent of ASA companies switched to the AS status between 2003 and 2008 and became private limited companies, excluding failing or merging companies. Compared to Danish and Swedish firms with similar legal status, this radical change is "a unique Norwegian phenomenon" (ibid.: 160) and can be largely traced back to the quota law. When analyzing firms shifting to private limited companies, Bøhren and Staubo observed that they were younger and/or smaller, not listed, not family-owned, showed highly concentrated ownership and had fewer female directors compared to companies keeping the ASA status (ibid.: 159). Listed firms did not tend to switch, presumably because the process of de-listing would have been too expensive. Following the sharp decline of firms, the total number of board seats on ASA companies has decreased by 1945 between 2005 and 2017, 778 of which would have been filled by women (Statistics Norway 2005; 2017a). In 2017, there are 518 board seats occupied by women (Statistics Norway 2017a). Previous research on the impact these women have had on their respective companies and beyond can be divided into two categories: effects on stock market value and board performance, and effects on gender equality and diversity.

1.1 Effects on Stock Market Value and Board Performance

In one of the most cited studies on performance of Norwegian boards, Ahern and Dittmar (2012: 149) use data of 247 listed companies between 2001 and 2009 and collect business information and personal information of board members and CEOs. They find that firms subject to the quota

experienced a drop in stock market prices on the day the quota was first publicly announced in February 2002 as well as over time (ibid.: 168). Effects were strongest for companies whose boards exclusively consisted of male directors. Their analysis of board member characteristics shows that women were on average younger, more likely to be outsiders[44], and had less CEO experience than men (ibid.: 169). Lastly, they check for changes in board performance. Companies which fall under the quota law carried out more acquisitions, accumulated more debt and cut down cash holdings (ibid.: 180). While the authors acknowledge some limitations, such as not being able to separate experience, gender, and age as causal factors, they conclude that "that imposing a severe constraint on the choice of directors leads to economically large declines in [firm] value" (ibid.: 188).

Their findings are supported by Bøhren and Staubo (2016). They, too, focus on the ratio of outsider versus insider board directors and firm value. With a sample containing all ASA companies between 2003 and 2008, they find evidence for a higher probability for women directors being outsiders, thus an overall increased board independence after board recomposition (ibid.: 14f.). Subsequently, loss in firm values proves to be highest for companies undergoing the strongest rise in board independence (ibid.: 22). The authors suggest that their results indicate a lack of qualification in female board members due to women's comparatively limited experience in executive management (ibid.: 5).

There also is, however, research pointing in a different direction. Matsa and Miller (2013) base their analysis on a sample of 500 ASA companies appointing 122 new women directors between 2003 and 2009. They investigate ways in which gendered recomposition influences board decisions on human resources management and budget planning by comparing them to similar companies in other Nordic countries. Looking at profit development, they do not find any effect on personnel costs and revenue (ibid.: 138). Yet, firms subject to the quota experience a decline in short-term profits due to lower workforce reduction (ibid.). These effects were stronger the more women were added to the board. By controlling for age, education and professional experience, which do not differ for new female directors, the authors trace their findings directly back to gender. They consider this change in orientation a "distinctive female leadership style" (ibid.); women directors seem to value stable employment relations as a beneficial long-term business strategy. They "conclude that gender quotas for directors can translate into meaningful

[44] Outsider board members did not work for the respective company beforehand and have neither family nor business relations to it.

differences in corporate strategy" (ibid.: 153), whereas effects on corporate profit were not statistically significant.

Nygaard (2011) suggests that there are different effects for companies with high and low information asymmetry. Information asymmetry determines how accessible information is for insiders and outsiders of a company. In his sample of "all board members in all PLCs (listed and non-listed) registered each year from 1999 to 2009" (ibid.: 10), firms are sorted into two groups depending on their specific degree of information asymmetry. Since women directors are often outsiders, he hypothesizes that their entrance into the boardroom will be most beneficial in terms of stock market value for companies with low information asymmetry. Indeed, while measuring stock market reactions, he finds "that among firms that had to increase the share of female directors to comply with the quota, the firms with low information asymmetry […] benefited more from the change than high information asymmetry firms did" (ibid.: 15). Any negative effects on stock prices, on the other hand, were statistically insignificant (ibid.: 19). This contradicts findings by Ahern and Dittmar (2012); in fact, Nygaard explicitly criticizes their sampling method for creating a bias towards younger companies (starting in 2007). He concludes that "[o]verall, the results support the conjecture that the forced increase in gender diversity added value to firms with low information asymmetry" (Nygaard 2011: 12).

1.2 Effects on Gender Equality and Diversity

Considering how much emphasis was put on gender equality in the political debate preceding the quota law, research on the actual effects and possible progress in equality has remained rather limited. Nevertheless, there are a few notable studies offering insights into issues of gender equality and diversity with regard to the quota.

The biggest study on the quota's effect on gender equality to date has been conducted by Bertrand et al. (2014). By looking at demographic information obtained from Statistics Norway as well as company data from the Norwegian Business Register between 1986 and 2010, the authors search for a variety of effects that could be indicative of an increase in gender equality (ibid.: 9ff.). They specifically investigate changes in female employment, the family situation of board members, the gender pay gap, highly qualified women's career outside of corporate boards, female enrollment in business education programs, female representation in top management and young women's career expectations. Among the positive effects are a rising number of women directors with children (from 75 to 83 percent), a declining gender wage gap in the boardroom (from 38 to 32 percent), a higher number of women CEOs (about twice as high, though still well under 1 percent), and positive feedback from young women regarding the

quota and their future career opportunities (collected in qualitative interviews). They do not, however, establish any changes in women's enrollment in business study programs, women's employment or female wages, and no impact on the career progression or wages of women who did not get appointed (ibid.: 19ff.). While the authors suspect possible long-term effects and strongly support further research, they caution against high expectations of rising equality beyond the target group (ibid.: 27f.).

In a more compact study, Wang and Kelan (2013) focus on the quota's effect on women board chairs and CEOs in non-state owned listed companies that voluntarily applied a two-tier system (separation of board and top management). By examining 87 companies, which had announced "31 appointments of female chairs, 100 appointments of male chairs, 8 appointments of female CEOs and 69 appointments of male CEOs" (ibid.: 454) between 2001 and 2010, they determine more chairwomen to be foreign and/or outsiders than their male counterparts but they do not differ in education, age or experience. Probability of a female CEO significantly increases if a women is appointed as chair (ibid.: 460); the authors do not find any female CEO before 2005 and about 5 percent after 2007 (ibid.: 458). This indicates improvements in gender equality beyond the quota's direct target. The authors conclude that "[a]lthough the number of women on Norwegian boards is fairly small, the experience these women gain from serving on corporate boards will qualify them for executive jobs in the future and they might also function as mentors and role models for other women" (ibid.: 463), recognizing valid grounds to hope for a snowball effect.

The latest study on board diversity, published by Gregorič et al. in 2017, contains data from four Nordic countries, including Norway. The authors do not distinguish between the countries' different legal provisions. Their sample incorporates listed Finnish, Danish, Norwegian, and Swedish companies from 2001 until 2008. Their findings should be treated with caution as they do not exclusively reflect on the Norwegian quota law but they nevertheless provide some interesting insights into board composition. They consider a wide range of possible factors that might come into play in determining the share of women directors on corporate boards. Women's share appears to be higher for companies in capital cities; for firms that experience 'peer pressure', i.e. peer companies which have also appointed female directors; and for companies with bigger boards. The authors also find a positive correlation "with firm size, firm value, and the share of employee-elected board members" (ibid.: 278). Non-favorable conditions are higher business age, debt, and a CEO appointed to the board. Another interesting correlation exists between female and diverse male directors (e.g. young or foreign men or men of

color): The higher women's share, the lower the percentage of diverse males. The authors suspect that this might be caused by dominant male directors perceiving the board as "already challenged" (ibid.: 269) by a higher female proportion. Lastly, and contrarily to Wang and Kelan (2013), they do not find any significant correlation between female CEOs and female board chairs. Since the margins for board composition are rather narrow, some of these factors might not be as influential in the Norwegian case. However, the results point at certain dynamics that might not have been considered at the time the quota law was passed, for example the promotion of women at the possible expense of other minorities in the boardroom.

In summary, empirical findings on the quota's effect on stock market value, board performance, gender equality, and diversity are mixed. So far, researchers have established a change in board demographics beyond gender, especially in directors' age, experience, and independence, and a change in board behavior. Exact details of these changes and their consequences, however, remain obscure. Some results indicate deteriorating financial management; others show re-orientation from short-term to long-term management. Effects on firm value appear to be either negative or statistically insignificant. The same holds true for the second goal mentioned in the political debate, board equality: There seem to be positive effects for those women who did gain a board seat. Outside of the boardroom, on the other hand, the results are not as clear. Research either points to spill-over effects from corporate boards to top management, or no correlation at all. There is little evidence for progress beyond the very top of companies, and even these small improvements are contested. Finally, there could even be detrimental effects for other board minorities arising from the quota. Even though all researchers state that they obtained their data from a dysfunctional transition period and that future research is much needed, the overall picture appears discouraging. Before concluding recommendations will be derived from this review, the next section will discuss what factors are worth considering that have been ignored in previous research.

6. Discussion: What are we missing?

Thinking of which questions need to be asked before making a judgment call whether or not the quota has led to substantial progress, it is worth going back to the very beginning of the political process. In an interview with Bjørkhaug and Øyslebø Sørensen (2012), Ansgar Gabrielsen, Minister of Trade and Industry at the time, stated the following:

> "The [ASA] reform was not that radical, if you think of it. The number of companies was limited. We knew that there would be women to fill the positions. And then of course the idea was that the reform would have consequences also outside the [ASA] … We were hoping for a contagion effect; that more companies would become aware of

> the gender balance on their boards of directors." (Bjørkhaug and Øyslebø Sørensen 2012: 201)

There are several implications coming from this short quote. First, the Norwegian government knew the law's character to be rather tame to begin with. This should strongly shape any expectations towards the outcomes. Second, even on the proponents' side, there were apparently some doubts regarding the recruitment of qualified women on a wide scale, and these doubts have influenced the legal drafting process. Third, policy makers were betting on ASA companies to function as a role model, thus hoping for economy-wide progress, but not daring to legally demand it.

The companies closest to ASA firms, which could be reasonably expected to show a 'contagion effect', are a*ksjeselskap* (AS), private limited companies. They require less seed capital than ASA; yet, many of them are large businesses and employ corporate boards. In 2017, AS offer 569,487 board seats, 18.4 percent of which are occupied by women directors (Statistics Norway 2017a). As mentioned above, women fill 518 seats by making up 42.1 percent of all directors in ASA companies (ibid.). The number of positions accessible through the quota is a mere fraction of the total number of seats on Norwegian corporate boards. If AS companies were subject to the quota, there would be a potential 227,795 positions to be filled by female directors. Signs of a spill-over effect in this direction are marginal; since 2008, when the quota became mandatory and sanctioned for ASA firms, women's share in AS boards only increased by 1.6 percent. Another 'contagion' might happen in top management. Here, AS firms actually score better: 16.2 percent of AS CEOs in 2017 are women, compared to only 7 percent in ASA companies (ibid.). A plausible reason for this could be a side effect on promotion processes, i.e. highly qualified women rather being promoted to the board than to top executive positions (Milne 2014). In any way, not much progress has been made on the C-suite level, which is commonly supposed to be just as, if not more important than the board in everyday business.

A last point worth considering goes back to the beginning of this paper and the phenomenon inspiring its title. The so-called 'golden skirts' have been taken up for investigation by several scholars. Among them, Nygaard notes that "the average number of [public limited companies] directorships per female director remains stable over the [study] period at around 1.2" (2011: 5), hence negating the development of a women quota elite. Looking at multiple memberships in 2017, Statistics Norway (2017a) provides absolute numbers of men and women directors in AS and ASA companies combined. Assuming any person with more than five board memberships qualifies as a 'golden skirt' or 'golden suit', there are 12,356 'golden suits' and 1,071 'golden skirts', meaning the number of men profiting from multiple memberships (without any

quota) is almost twelve times higher. This proportion is usually generously overlooked (Treanor 2013). So far, numbers indicate that there is no growing elite of women who benefit disproportionately, and the small group that does so is almost negligible compared to men.

However, that does not make certain improvements to the quota's design less necessary. As seen above, most studies do not find substantial evidence for progress in equality. Results regarding business development are mixed, but in any case do not show radical amendments. Based on the research review as well as on the additional aspects presented above, the last section will give concluding recommendations for a legal reform. In light of the quota heavily framed as an issue of gender equality during the political debate, propositions will be prevailingly directed towards a revision in terms of equality. Aspects of economic efficiency will, however, be taken into consideration.

7. Conclusion

As the first country in the world to establish a gender quota for corporate boards, Norway has proven to be a useful case study to evaluate economic gender balance law. Norway initiated the third generation of gender quotas after a lively political debate centered on arguments of justice and complimentary resources. The largest Norwegian companies, ASA firms, were called upon to take on social responsibility and obligated to rearrange their board seats towards a balance of 40 percent each for women and men. Since 2008, women's share on ASA boards has consistently been between 40 and 42.1 percent, making Norway Europe's leader in female board representation by far. By means of harsh sanctions, Norwegian policy makers achieved sustained redistribution of economic power in just a couple of years.

Yet, it remains an open question just how much power is at stake here. While 40 percent create an imposing image, the absolute number of women directors is limited. Research investigating different directions of change that might have been stimulated by the quota often leads to statistically insignificant effects. There certainly are skills and resources that would have been left unused otherwise; and there was some justice done to some women on some boards. But compared to the great leap forward the quota was made to be in the political debate, the actual impact appears somewhat disillusioning.

One answer to this could be the abandonment of a legal approach to gender balance. However, this seems premature in view of the fact that the quota did realize what it was legally set out to—just not more than that. Since the Norwegian quota was a first attempt in a world full of

unbalanced economic power, it does not seem too surprising that some reforms could be necessary. There are two kinds of adjustments to make: objectives and expectations. Both will be addressed in the following suggestions.

Long-term approach instead of jumping to conclusions

As all researchers reviewed above pointed out, Norway is barely past the jumbling transition period of companies replacing on average one quarter of their corporate boards. For large businesses such as the ASA firms, corporate structures have often grown over decades. Replacing individuals does not automatically change these structures in only a couple of years. Researchers as well as policy makers therefore should be wary of drawing conclusions about the quota's effects too early, even on company level. The rebalancing of economic power requires a long-term approach.

Far-reaching scope instead of symbol politics

If the quota's objective is to increase gender equality in economic relations, it should not address only a couple of prestigious companies. 518 women in a society of 5 million people cannot be expected to revolutionize a national economy. What needs to be changed is the economic culture, not a few companies. The quota law needs to be extended at least to AS firms: All arguments for gender balance reviewed above apply to private companies as well and they should not be excluded based on their legal ownership status. The most important reason to expand the law though, as was seen earlier, is that opponents will use every loophole they can find. The legal transition to the AS status of more than half of the affected companies drastically reduced the number of seats available through the quota. This option needs to be closed.

Multi-level design instead of promoting elites

Everyday business management is just as powerful as supervisory strategic planning. As far as previous research goes, spill-over effects into top management remain dubious and female proportions in the C-level suite are even lower for companies under quota law. Many far-reaching decisions are made by the company's management, not in the boardroom. The economic power distributed across different management levels, not only the very top, needs to be legally addressed to ensure that women get access to executive positions. Companies should be obliged to set minimum proportion targets and to establish balance measures such as young talents tracks and mentoring programs.

Transparency in appointment instead of the old boys' club

Transparency is completely absent in board appointments—there is no tendering, one cannot apply for membership, and the selection process is based on connections, not qualification. It

is not surprising, then, that successful women will naturally assimilate into board structures, not turn them upside down. Selection procedures and appointments should be disclosed and regulated by mandatory justification; to complement this, companies should "release information on retention, recruitment, and the promotion of women" (Carroll 2014: 77). Transparency in appointment also has the potential of turning companies away from nepotism and enhancing board performance. As Corkery and Taylor (2012: 2) put it: "In other words, since when has merit been the criterion applied in boardroom appointments? […] It's a myth that quotas undermine merit. Quotas are in fact one way of turning our current flawed advancement and promotional systems into meritocracies."

Awareness of limitations instead of simple solutions

The question of power distribution along gender is tremendously important, and so is tackling it through the means of a quota. Nevertheless, the number of problems to be solved by a gender quota is limited. As Wang and Kelan (2013) note, women are by far not the only minority in the boardroom. There are other questions to be asked about economic and political power, including but not confined to a binary understanding of gender, race, class, age, religion and ableism. The same applies to the quality of board representation. Women could get appointed to the board but still put into a position in which they would not be able to exercise power due to formal or informal restrictions, and not all of these restrictions can be removed by legal means. These are limitations that proponents just as opponents of quotas should bear in mind when setting their expectations.

Finally, evaluation is always based on what was aspired to beforehand. As was shown above, the public debate in Norway was deeply divided in terms of expectations and concerns, and so are standards the quota has been measured against. Without disapproving of different political and economic interests, it is important to remember that "[if] the objective is power balance in society, then the initiative should not only be evaluated based on individual career possibilities and firm performance" (Huse 2012: 12). In this sense, an economic gender balance law is a great first step of many more to take.

8. References

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