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0521847168 - The Politics of Sexual Harassment: A Comparative Study of the United States, the European Union, and Germany

Kathrin S. Zippel

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The Politics of Sexual Harassment

Sexual harassment, in particular in the workplace, is a controversial topic which often makes headline news. What accounts for the cross-national variation in laws, employer policies, and implementation of policies dealing with sexual harassment in the workplace? Why was the United States at the forefront of policy and legal solutions, and how did this affect politicization of sexual harassment in the European Union and its member states? Exploring the way sexual harassment has become a global issue, Kathrin Zippel draws on theories of comparative feminist policy, gender and welfare state regimes, and social movements to explore the distinct paths that the United States, the European Union, and its member states, specifically Germany, have embarked on to address the issue. This comparison provides invaluable insights into the role of transnational movements against sexual harassment as well as into future efforts to implement the European Union Directive of 2002. It also illustrates what policy-makers and employers in the United States can learn from the European Union and its member states' alternative paths to gender equality.

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Preface

When I interviewed a German employee in the Human Resources department of a US – German corporation about workplace policies against sexual harassment, she said that her company did not have one: “Sexual harassment is a cultural problem in the United States, but we don’t have that here . . . We are in Germany, and the Americans are in America.” She expressed a belief shared by many in Germany and Europe: *Europeans do not have a problem with “sexual harassment” – it’s an American problem.* Are Americans simply more puritanical and litigious than Europeans, who are more relaxed and sophisticated in sexual matters, as they would like to think? Have feminists gone too far in the United States, or are employers in Europe fifteen years behind?

The European perspective is surprisingly similar to the accounts found in some mainstream US news magazines, which have blamed feminists for exaggerating an insignificant problem and for bringing *political* and then *sexual correctness* to campuses and workplaces in the United States. Yet, no one today will dismiss the potential political significance of allegations of sexual harassment. In 1998, the Supreme Court called President Bill Clinton into court over allegations of sexual harassment made by a former public employee. Clinton explains in his autobiography that when he considered hunting down Osama Bin Laden, advisors suggested it could be interpreted as deflection from the Paula Jones lawsuit and the Monica Lewinsky affair (Clinton 2004: 799).

When we try to explain differences in European and American approaches to sexual harassment, it is tempting to look for individual and cultural explanations. Are US women just oversensitive to sexual harassment, while women in Europe do not mind sexual jokes or remarks about them, and instead enjoy physical contact or pornographic images in the workplace? Are East German women just more self-confident, more accustomed to working with men, and capable of telling a man off, so sexual harassment is not so great a problem for them? Although these are intriguing questions, this book is not about how individuals

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experience sexual harassment in different national contexts. Though I have heard and read hundreds of accounts of sexual harassment on both sides of the Atlantic, I did not compare individual victims' or perpetrators' stories. Rather, the book explores the *politics* of sexual harassment, focusing on the institutional responses of courts and state agencies to this problem through policy and legal measures. In addition, the book examines the politics of sexual harassment at the workplace level by looking at the introduction of employers' policies, as well as challenges to their practices, including sexual harassment prevention efforts. Specifically, I ask whether feminists can take credit or be blamed for the transformation in workplace cultures and employer practices that we have witnessed in the United States and are beginning to see in Europe.

I take a political sociological approach, asking how governments, state agencies, and employers have responded to sexual harassment by comparing the emergence and implementation of laws and policies. As a German who has spent significant time in the United States, Germany, Great Britain, Italy, and Greece, I am aware of striking differences between sexual cultures in the United States and Europe. But my study, which uses an institutional political approach, is about the processes by which activists, workers, employers, (civil rights) attorneys, state bureaucrats, and judges have redefined these workplace cultures and norms because of the heightened awareness of the problem of sexual harassment, by which I mean unwanted attention of a sexual nature or the involuntary eroticization of working relationships.

The politics of sexual harassment in the United States or Europe cannot be sufficiently explained by individuals' attitudes or national, cultural norms toward sexuality in the workplace which are not uniform. Instead, over time on both continents there have been changes in awareness along with contention around what constitutes sexual harassment. In the United States, definitions of sexual harassment remain controversial and are debated in the workplace and in courts. Hence, any assertion about an "American" culture also disregards diversity and change within the United States. Europeans will argue that there is no "homogeneous" European sexual culture; in fact, opponents of the European Union law used the cultural diversity argument for several years in an attempt to keep sexual harassment beyond the reach of the European Union.

Certainly, there are differences in national gender, sexual, and cultural norms about what is and is not appropriate in displaying nudity, pornography, and sexuality in the media and in public spaces in general. Cultural practices vary too – for example, how people greet each other with hugs, kisses, or handshakes. These cultural differences, however, do

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not explain different laws and policies against sexual harassment. Focusing on these differences in socio-sexual culture in fact obscures how much consensus there is about sexual harassment and how dramatic the changes in awareness about the problem have been. For example, Americans and Europeans agree that, in principle, supervisors should not be allowed to demand sexual favors from their subordinates. No one on either side of the Atlantic thinks coworkers or supervisors should feel free to physically approach anyone, for example, by grabbing a breast or buttock.

Less consensus exists about the idea of a “hostile work environment.” What if a supervisor does not attach threats or offer favors to his sexual requests, but just keeps asking a subordinate for a date, telling her sexual jokes, and complimenting her hair, body, and clothes? What if the perpetrator is not someone in an organizational position of power? Are colleagues who make sexual jokes and remarks or distribute emails with pornographic jokes sexually harassing an individual woman even if she is not a “target”? These discussions focus, however, on “borderline” scenarios, without taking the context into account and frequently without considering the harm done to victims.

Surprisingly there is vast common ground in thinking about victims of sexual harassment. Europeans and Americans have shared the attitudes that victims are either innocent victims of men’s sexual advances or (morally) loose women who “ask for it” by the way they dress or talk. There is also a modern, cross-culturally consistent version which sees women as hypersensitive, not cool enough to laugh about jokes and remarks, or not confident enough to “just say no” if a man makes a move. These strategies, which attempt to explain why an incident might be unfortunate but is not really sexual harassment, have been identified by feminists as “victim-blaming strategies.”

Legal concepts of sexual harassment in both the European Union and the United States begin with the victims’ perspective and focus on the harm caused by harassment rather than on the intentions of the perpetrators. They thus question common cultural assumptions that women always enjoy heterosexual “flirtation” or seduction. They draw attention to the fact that sexual harassment can be intimidating, hostile, degrading, humiliating, offensive, and, not incidentally, even discriminatory. These definitions allow for “cultural” standards to determine what constitutes, for example, an intimidating environment. They also allow for individual variation of perceptions; while some women might feel flattered if a man like Arnold Schwarzenegger puts his arms around them and grabs them, others will not. The perspective of victims might also depend on their job security. For example, in Eastern European

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countries, under state socialism unemployment officially did not exist because work was guaranteed as a citizen's right. East German women could feel more empowered to respond to jokes than US Latina workers who risk not being able to continue their job the next day if they do not comply with the sexual demands of their bosses. Depending on a woman's status in the workplace, sexual harassment might be perceived as more or less threatening. A woman's status can be different depending on her race/ethnicity, age, years of seniority, immigration status, protection under collective bargaining agreements, gender conformity, sexual identity, and, perhaps, how easily she could be replaced by a more compliant worker.

This study is about social movements that have challenged these cultures of everyday behavior and employer practices. Feminists have argued that sexual harassment is an expression of male abuse of power over women and have questioned workplace cultures where eroticism is a taken-for-granted part of the workplace. They have argued that these workplace cultures hierarchically construct jobs, gender, and (hetero) sexuality simultaneously without regard to the consent of those involved. Underlying the struggles over the power to define what does and does not constitute sexual harassment in the workplace are feminists' demands for equal recognition, sexual self-determination, and economic rights for women. Lawmakers have been deciding how exactly sexual harassment should be addressed: as a women's rights issue, an issue of violence and/or sexuality, an issue of workplace discrimination, or other workers' rights protections involving health and safety. The grounds upon which sexual harassment is considered to cause harm are important because, as sociologists of law have pointed out, laws and (employer) policies themselves shape the meanings, shared beliefs, and interpretations of a controversial subject such as sexual harassment.

This book tells the stories of those actors who have tried to politicize sexual harassment and to demand that employers, unions, courts, and legislatures should address the issue. These stories are linked in interesting ways, and tell us about how transnational movements have the potential to reshape politics in national contexts. Because all twenty-five European Union member states have to adopt or reform laws against sexual and gender harassment by October 2005, this book addresses questions facing feminists, policy-makers, and other advocates of sexual harassment policies. How can we use laws to achieve change? The European Union has also required its member states to adopt laws against harassment based on race, ethnicity, sexual orientation, disability, religion or belief, and age. Simultaneously, discussions about bullying, "mobbing," and moral harassment target a wide range of demeaning

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and abusive behaviors at work. By broadening harassment to all workers, independent of their gender, these countries have “mainstreamed” concerns about sexual harassment. Hence, an important question is the relationship between these constructions and sexual harassment.

This research also highlights the challenges facing the movement against sexual harassment in the United States. Professor Anita Hill’s testimony did not hinder the Senate from confirming Clarence Thomas as a Supreme Court judge. However, the hearings did widen awareness of sexual harassment and did mobilize a broad movement. While the legal revolution has been celebrated as a feminist success story, there have been several indicators that the pendulum is swinging back in recent years. Those who enter workplaces in the United States today do not remember Anita Hill and most likely associate sexual harassment with Paula Jones’s allegations against Clinton and the testimony by Monica Lewinsky. Political backlash delegitimizes victims of sexual harassment and discredits allegations against high-profile public officials; Arnold Schwarzenegger was elected governor of California in 2003 despite the allegations of sixteen women. Complaints to the Equal Employment Opportunity Commission have dropped since 1998. Legal scholars agree that the 1998 Supreme Court decisions have made it more difficult for victims to win sexual harassment cases in the court because they are now obliged to use internal workplace procedures first. Though the Supreme Court expanded the scope of employer liability for sexual harassment by supervisors in *Faragher v. City of Boca Raton* and *Burlington Industries Inc. v. Ellerth*, the court ruled that employers can limit their liability with antisexual harassment policies. In this situation, the European policy approaches – to define sexual harassment as a violation of dignity, as well as to combine sexual and gender harassment with “mobbing,” moral harassment, and bullying of all workers – can prompt US advocates to reexamine their approaches.

If I had photographed this research process, I would have an album many times thicker than this book with the pictures of the many people who were willing to be interviewed, who shared their stories with me, who confronted me, who engaged me in discussions about this complex issue, and who helped me conduct this research and write this book. I am in debt to these many women and some men who have dedicated themselves to standing up against, resisting, and challenging various abuses of power.

The album would also be filled with the many places that I worked on the book. My friends and family made my travels in Europe possible and enjoyable. I wish especially to thank Bärbel Zippel, Sonja, Katharina, Moritz, and Hans-Jörg Seidenspinner, Jeanette Oellers and Manfred

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Zippel, and Dagmar Jung. In addition, Dr. Barbara Degen opened her house to a stranger, let me sleep on her couch, and graciously let me use her personal archive in Bonn, for which I am deeply grateful. This project has moved me – along with boxes upon boxes of material – several times across the Atlantic. In fact, the issue of sexual harassment insinuated itself in the very application process that first brought me to the United States. In an interview for a study-abroad fellowship, a committee asked me about the phenomenon of political and sexual correctness in the aftermath of the Senate hearings of Anita Hill and Clarence Thomas. Their interest was likely not purely academic; one of the members of the committee was himself a sexual harasser. Upon my arrival in the United States in the fall of 1992, I was surprised to find a high level of mobilization around sexual harassment among feminists in US universities; they were already pushing for revisions of existing policies, while German university campuses seemed to lack awareness of the issue entirely. Because of the complexity of the issue it has not ceased to interest me.

I want to thank the Scholarship Development Fund of the Provost of Northeastern University, which provided generous support for my finishing this project by offering faculty release time and funding for editorial and research assistance. In addition, I want to thank Professor Panos Kazakos at the University of Athens in the newly founded European Integration and Politics project, where I was a visiting fellow in 2003. The DAAD fellowship at the American Institute for Contemporary German Studies in Washington D.C. generously provided me summer funding in 2001. The post-doctoral fellowship at the European Union Center of New York at Columbia University allowed me to learn and teach about the European Union, while a dissertation student fellowship from the European Union Center at the University of Wisconsin-Madison supported the very early phases of this research project. Finally, the exchange program fellowship of the University of Wisconsin-Madison and the European University Institute provided me with the necessary European-wide exchange of ideas in Florence, Italy.

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Gordana Rabrenovic, Silke Roth, Abigail Saguy, Virginia Sapiro, Brian Steensland, Maria Stratigaki, Verta Taylor, Polymeris Voglis, Erik Wright, and Jonathan Zeitlin. I want to extend special thanks to Kimberly Morgan, who has read many versions of this manuscript and provided me with critical and crucial feedback. I also am eternally grateful for the careful editorial help of Alison Anderson, Vivienne Church, Michael Kaufman, and Deborah Howell-Ardila. Many thanks to Dirk Ahlgrim, designer and photographer, for his unfailing support, humor, and for the exceptional book cover that he both envisioned and created.

Thanks also to two anonymous reviewers for their timely and very insightful, constructive criticism. Sarah Caro at Cambridge University Press was the best editor a first-time author could ever hope for.

I dedicate this book to my mother, Bärbel Zippel, for her continuous support of all my endeavors.

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Abbreviations

9 to 5	National Association of Working Women
AASC	Alliance Against Sexual Coercion
ACLU	American Civil Liberties Union
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AFSCME	American Federation of State, County, and Municipal Employees
ArbG	Arbeitsgericht (Labor Court)
ASF	Arbeitsgemeinschaft Sozialdemokratischer Frauen (Association of Social Democratic Women)
AVFT	Association Européenne Contre les Violences Faites aux Femmes au Travail (European Organization against Violence against Women at Work), Paris
AZO	Arbeitszeitordnung (Regulation of Hours of Work)
BAG	Bundesarbeitsgericht (Highest Federal Labor Court)
BBG	Bundesbeamtenengesetz (Federal Law for Civil Servants)
BDA	Bundesvereinigung der Deutschen Arbeitgeberverbände (Federal German Employers' Association)
BetrVG	Betriebsverfassungsgesetz (Works Council Constitution Act)
BGB	Bürgerliches Gesetzbuch (Civil Code)
BpersVG	Bundespersonalvertretungsgesetz (Federal Law on Employees' Representation)
BT-Ds	Bundestags-Drucksache (Document of the Federal Parliament)
BverfG	Bundesverfassungsgericht (Constitutional Court)
BverwG	Bundesverwaltungsgericht (Highest Court of Administration)
CDU	Christlich Demokratische Union (Christian Democratic Union)

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CEEP	European Centre for Enterprise with Public Participation
CLUW	Coalition of Labor Union Women
CSU	Christliche Soziale Union (Christian Social Union)
DAG	Deutsche Angestellten-Gewerkschaft (Union of German Employees)
DBB	Deutscher Beamtenbund (German Association of Civil Servants)
DFR	Deutscher Frauenring (German Ring of Women's Organizations)
DG	Directorate General
DGB	Deutscher Gewerkschaftsbund (German Confederation of Trade Unions)
EC	European Community
ECJ	European Court of Justice
EEC	European Economic Community
EEOC	Equal Employment Opportunity Commission
EP	European Parliament
ERA	Equal Rights Amendment
ETUC	European Trade Union Confederation
EU	European Union
EWL	European Women's Lobby
FDP	Freie Demokratische Partei (Free Democratic Party)
FR	Frankfurter Rundschau
GewO	Gewerbeordnung (Regulations for Commerce)
GleiBG	Gleichberechtigungsgesetz (Equality Law)
IG Metall	Industrie Gewerkschaft Metall (Union of Automobile Workers and Machinists)
ILO	International Labor Organization
JarbSchG	Jugendarbeitsschutzgesetz (Law on the Labor Protection of Youth)
KSchG	Kündigungsschutzgesetz (Law on the Protection against Dismissals)
LAG	Landesarbeitsgericht (Higher Labor Court)
MdB	Mitglied des Bundestags (Member of the Bundestag)
NLRB	National Labor Relations Board
NOW-LDF	National Organization for Women's Educational and Legal Defense Fund
NOW	National Organization for Women
NWLC	National Women's Law Center
OECD	Organization for Economic Co-operation and Development

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ÖTV	Gewerkschaft Öffentliche Dienste, Transport und Verkehr (Union for Public Services, Transportation and Traffic)
OJ	Official Journal of the European Communities
PPE	Peoples Party of Europe
RNGS	Research Network on Gender Politics and the State
SPD	Sozialdemokratische Partei Deutschlands (Social Democratic Party of Germany)
StGB	Strafgesetzbuch (Penal Code)
TAN	transnational advocacy network
TEU	Treaty of European Union (Maastricht Treaty)
UAW	United Auto Workers
UNICE	Union of Industrial and Employers' Confederation of Europe
U.S.M.S.P.B.	US Merit Systems Protection Board
VAWA	Violence Against Women Act
VG	Verwaltungsgericht (Administrative Court)
WLDF	Women's Legal Defense Fund
WOW	Women Office Workers
WWU	Working Women United