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Sabine Lang

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Contested Institutionalisation: Women's Policy Agencies and Challenges to Gender Equality in Germany

SABINE LANG

Germany has created one of the world's largest women's policy infrastructures. But the scope as well as the effect of institutionalising women's policy agencies is contested. Even committed proponents of gender equality note the agencies' limited influence in important policy arenas. Critics of institutionalisation have used the fiscal crisis of the past decade to push efforts to downsize or diversify the mission of women's policy agencies. Building on theories of new institutionalism, this article attributes recent challenges to the institutionalisation of gender politics in Germany to three sets of factors: First, to tensions between strong formal gender equality rules and weak informal equality norms; second, to powerful internal and external veto players who use their leverage to prevent gender equality legislation; and, third, to a shifting policy discourse that has reframed gender equality language in gender mainstreaming terms and might lead to significant changes in the institutional gender equality architecture.

INTRODUCTION

Over the past two decades, Germany has built one of the world's most elaborate women's policy infrastructures. It consists of about 1,900 official units to promote gender equality at the national, state and local level. These offices span governments, public institutions such as universities and hospitals, and other public organisations.¹ Varying in formal standing, competences and resources, together these offices form a substantial policy network committed to addressing gender inequalities, fighting discrimination and instilling positive measures on behalf of women.² Yet this solid infrastructure has not prevented Germany from frequently being cited as one of the most gender-unequal societies among Western democracies. The implementation of European Union directives on equality has been routinely delayed – in some cases up to 18 years.³ Germany has one of the lowest rates of women in higher business and management positions in Europe, fewer female professors in higher education than most European neighbours, as well as one of the largest wage gaps among EU member states. In fact this gap widened by 3 per cent between 1999 and 2004 and has since stabilised at 22 per cent, putting Germany together with Cyprus, Estonia and Slovakia among the four contenders for the largest wage gap among EU member states.⁴

By all accounts, a high degree of formal institutionalisation of gender infrastructure as such is not a guarantee for successful gender policies. Studies have identified a

number of factors that shape institutionalisation, among them party alignment,⁵ level of movement pressure,⁶ public perceptions of gender inequality⁷ and inner-institutional power arrangements.⁸ This article builds on these arguments in order to explain recent challenges to the institutionalised women's policy infrastructure. Taking theories of new institutionalism as a departure point, I argue that contested institutionalisation of gender politics in Germany can be attributed to three sets of factors. First, tensions between strong formal gender equality rules and weak informal equality norms erode institutionalisation and have fuelled recent attempts to downsize women's agencies. Second, powerful internal and external veto players have used their leverage to prevent central gender equality legislation. Third, a shifting policy discourse that turned from the gender equality paradigm to gender mainstreaming has altered public debates and perceptions of the importance of institutionalised women's agencies. Taken together, these factors appear to produce significant institutional change in Germany's women's policy infrastructure.

The argument will proceed in four steps. First, I will develop a set of questions to focus the inquiry on the status of women's policy agencies. In the second part, I will outline the institutionalisation process itself and the recent turn from upward to downward isomorphism, meaning that women's policy agencies now tend to converge around blueprints of Länder that provide minimal infrastructure rather than adapting to Länder that had created more elaborate and powerful women's agencies. Part three will illuminate exogenous challenges, more specifically the role of informal and formal veto players in shaping gender policies. The last part of the argument will address crucial changes in policy debates as a factor in the institutional weakness of women's policy agencies. The conclusion will present an outlook on the future of institutionalised feminism in Germany.

NEW INSTITUTIONALISM AND GENDER GOVERNANCE

Applying traditional institutional theory, German gender institutions and equality policies seem well established. Through the looking glass of 'old' institutionalist approaches the gender balance sheet looks positive. German women vote at almost as high a rate as men. German parties adopted quotas or quorums much earlier than their European counterparts. Between 1998 and 2005, the country was governed by a Red–Green coalition – two parties that traditionally had a strong commitment to gender equality.⁹ In 2008, women made up 32.1 per cent of parliament and six out of 16 cabinet posts were held by women. Since 2005, with the advent of the Grand Coalition, Germany is governed by a female chancellor. Thus, formally, the German political system in the traditional institutionalist perspective provides a sound basis for agency on behalf of gender.

Yet looking at German gender politics through the lens of traditional institutionalism does not provide an explanation for the lack in progressive gender policy output or the challenges that gender politics and its infrastructure have faced in recent years. Women's agencies are being downsized and their policy efficacy is being called into question, with major legislation of the past decade not matching standards set by the European Union. At the same time, public support for gender advocacy and its institutions in Germany is weakening. According to a representative survey of 2006,

only 46 per cent of German women saw the need for organised interest representation for women – compared with 73 per cent who still saw that need in 2000.¹⁰ Especially among younger women there appears to be declining interest in government institutions that address discrimination and support professional advancement as well as work–life balance. Formal participation rates of women in politics and historically strong institutions thus do not tell the whole story of institutionalised gender politics; in particular, they do not convey much about the forces that shape institutions from within and from without.

By contrast, a set of concepts developed within the ‘new institutionalism’ framework can shed more light on the ambivalence between historically strong institutionalisation and its fragility as well as lack of policy effectiveness.¹¹ This is not the place to reiterate the theoretical arguments between historical, rational choice and sociological new institutionalisms. Instead, the following case study draws on recent literature that identifies some synergetic potential in these approaches.¹² Already in the mid-1990s in their seminal account of the three new institutionalisms, Hall and Taylor argued that there is room for combination and integration of conceptual frameworks in all three strands of new institutionalism.¹³ Thomas Ertman and Paul Pierson are among others to provide empirical evidence that while political actors may employ instrumental thinking in their selection of institutions, they might at the same time draw from a set of options that is historically path dependent while the selection itself occurs through mechanisms that sociological institutionalism foregrounds.¹⁴ While the following case study on women’s policy agencies draws primarily on sociological institutionalism, it follows a constructivist trajectory and provides evidence of how explanatory facets of the approaches can complement each other.

A first analytically useful distinction new institutionalism makes is the difference between formal and informal procedures in shaping institutions and their cultures. Formal rules and informal norms are embedded in the routines that institutions live by as well as in the cognitive scripts attached to them. In stable institutionalisation processes, formal rules and informal norms align themselves and achieve a concise message; in contested institutionalisation processes, they tend to diverge from another, producing fields of conflict and spaces of marginalisation within the institution. Women’s policy agencies are shaped by at least two sets of tensions between rules and norms: A first tension is the result of differing gender equality norms informing the conception and creation of these policy units. The German Länder, for example, historically evinced strikingly different levels of commitment to gender equality norms, leading to differences in formal competences, infrastructures and resources for women. Generally, social democratic and centre-left coalition Länder governments were more invested in creating strong women’s policy agencies than those Länder ruled by conservative parties or centre-right coalitions. Thus, cultural gender norms informed formal institutions and produced diversity in terms of location within bureaucracies and infrastructure of the women’s units. A second field of contention between rules and norms appears within the institutional settings of women’s policy agencies. Even though all agencies are based on formal legal arrangements that spell out their rights and duties, their very existence and policy involvement is often not fully supported by the informal norms that govern institutions. In effect, informal gender norms tend to subvert legal constructions and formal endorsements, thus

challenging output and efficacy of women's policy agencies.¹⁵ Together, these two sets of tensions between rules and norms have tended historically to put women's policy agencies on the defensive.

New institutionalism also draws attention to the importance of convergence in institution building. What DiMaggio and Powell have identified as institutional 'isomorphism',¹⁶ manifests itself in alignment and convergence of structures and ideas among similar and interacting institutions over time. This convergence can be the result of several factors, such as: coercion in the form of pressures from other institutions or external societal forces; mimesis, where uncertainties within institutions lead to adaptation of institutional features of other institutions; or changing norms that legitimise increasing alignment. Again, institutional isomorphism is often not attributable to just a single one of these mechanisms. The first 20 years of building up a women's policy infrastructure in Germany offer a case in point for what we might term 'upward isomorphism'. Upward isomorphism occurs when less institutionalised, maybe resource poor or normatively less convinced institutions adapt to more institutionalised, resource rich or normatively more committed institutions. In the case of women's policy offices, cities with no or low level institutionalisation of gender politics looked towards cities such as Hamburg or Cologne with quite elaborate gender infrastructures. After the Green Party decided to establish a quota system for gender representation in 1986, the Social Democrats and, in a less strict form, the Christian Democrats followed suit. Länder created a legal basis for action on gender equality through equality laws and the establishment of ministerial units, again using as blueprints the successful gendered institutionalisations in a few Länder. Yet this phase of upward isomorphism in the 1980s and 1990s has been reversed in recent years and is threatening to transform into what can be termed downward isomorphism. Downward isomorphism challenges the continuity of gender politics by potentially initiating a race to the bottom. Länder and Federal government appear to start converging around lower standards of institutionalised gender agency. Existing units get remodelled, integrated with other 'equality or diversity' units, downsized, or altogether abolished. This downward isomorphism in the gender infrastructure, as argued below, can be attributed in part to fiscal constraints, in part to normative adjustments following changes in EU based gender politics, and to the introduction of more competitive federalist structures among the Länder.

Even though new institutionalism emphasises the path dependency of political structures and policies, it also treats actors and positions as constructed and continuously reshaped in the political process. Institutions do not simply determine outcomes; their autonomy is relative, influenced by constellations of involved actors and public discourses. One central set of such actors are veto players. Veto players are defined by Tsebelis as 'individual or collective actors that have to agree to a proposed change'.¹⁷ In the case of women's policy in Germany, such actors encompass first and foremost the governing coalition parties and their executives on the national level; and, secondly, through the Bundesrat, the governing parties or coalitions in the Länder. Beyond these formal veto players, the following case study exposes the importance of another set of potential veto players that operate informally and for the most part outside of the formal political institutions.¹⁸ These informal veto players lack overt political power, but they can have considerable social and economic

influence. One informal veto player is singled out for this study. It is German business associations and their influence on gender policies.

In keeping with this perspective, established paths of increased returns through institutionalisation can also be broken when institutions face critical junctures. Historical new institutionalism identifies the sources of such junctures generally as larger exogenous shocks that will alter an institution's course.¹⁹ More recently, Streeck and Thelen have argued that institutional change is often not 'abrupt and discontinuous', but the 'accumulation of gradual and incremental change'.²⁰ The evidence presented here suggests that in the case of the German women's policy infrastructure, both an exogenous rupture and endogenous gradual changes combine to alter the course of women's agencies. The European Union's introduction of the gender mainstreaming paradigm presents major challenges for women's policy agencies. It demands the systematic integration of the needs, interests and priorities of women and men in all policies and forces all national public and political institutions to adopt the new paradigm. At the same time, due primarily to the lack of direct enforcing power of the European Union, this exogenous rupture is being channelled in a set of national and Länder policies that exhibit a wide range of modes of institutional change. Some modes can be defined as 'conversion' in the form of attempts to redirect women's policy agencies to a new set of functions and goals.²¹ Other modes of institutional change appear more like displacement, leading to abolishing institutions, or mission drift that results in erosion and atrophy of women's policy agencies.

In sum: new institutionalism highlights several dimensions of institutional change that can help to explain recent challenges for the German women's policy infrastructure. It emphasises the tension between formal rules and informal norms, the tendency towards mimetic adaptation between institutions, and finally the role of veto players as well as exogenous and endogenous ruptures in producing institutional discontinuity and uncertainty. These dimensions of institutional change will be addressed in the following sections.

THE WOMEN'S EQUALITY OFFICE INFRASTRUCTURE

The idea that women's equality required institutional support was slow to take hold in Germany. Until the 1970s, only minimal efforts were made on the federal level to account for discrimination and inequalities. As late as 1974, three members of staff at the Ministry of Health, Family, and Youth were in charge of women's policy issues.²² And even after Minister Rita Suessmuth demanded in 1986 that 'Women' be added to her portfolio in the Ministry of Health, Family, and Youth, the Ministry's actual means to push for women's issues remained marginal. Its resources were minimal, and its administrative reach into the Länder virtually non-existent. This posed a striking contrast to other Western countries. In the United States, the mid-1960s saw the introduction of equal opportunity offices, anti-discrimination legislation and executive orders on affirmative action following the Civil Rights Act.²³ In France, the left-wing parties had achieved 'a highly institutionalised presence of women's policy offices with often a cabinet-level ministry, significant budgets, administrative subdivisions and field offices in all departments and regions' by the 1970s.²⁴ Great Britain had established a Women's National Commission by 1969 and an Equal

Opportunities Commission by 1976.²⁵ Thus, institutionalised gender politics was a late bloomer in Germany.

The push towards institutionalisation of a women's equality infrastructure had its origin in the early 1980s with the first women's equality offices being established on the local level in Cologne and Hamburg. Attempts to solidify women's agency within local institutions was paralleled by moves on the national level to increase women's presence within parties and decision-making bodies. Starting with the Greens in 1986, followed by the Social Democrats in 1988, and – in a less strict 'quorum' formulation – by the Christian Democrats also in 1988, all major parties adopted some form of positive action for women.²⁶ At the time of unification, most German states had legal frameworks in place that ensured equality offices in public institutions, in communal structures, as well as in state level offices. With the support of femocrats within parties, standards for financial support and agreements on what percentage of work time could be devoted to this specific function were established. The 1990s were a time of small, yet crucial controversies: equality officers were fighting for information, access and voice in hiring procedures, for the right to veto discriminatory personnel decisions, and for larger budgets and larger allocation of personnel resources to accommodate information and advocacy needs. At the same time, equality officers started to organise, share strategies to increase public visibility and internal influence, and to walk a tight legal line between representing state interests and advocating for women's equality.

Today, Germany still has one of the largest women's policy machineries in Europe. Its organisational base consists of more than 1,900 local Women's Equality Offices in cities and counties, and their national association BAG (*Bundesarbeitsgemeinschaft lokaler Frauenbüros*), the Federal Association of Local Government Women's Offices.²⁷ Equality officers work in city and county offices as well as in public institutions such as the courts, universities, research institutes, hospitals, and public media. A second organisational tier is made up of the Women's Ministries or Women's Departments within Ministries of the 16 German states. These units are in charge of advancing women on the Länder level by implementing state equality laws, monitoring state policies, and working with the civic women's project infrastructure as well as with state parliaments, parties, business and unions. The third organisational tier is the Federal Ministry for Family, Youth, Women and Seniors. It has a mandate to advance women through legislation and regulations, working with national level institutions and initiating model projects towards more gender equality.

Despite its late bloomer legacy, German gender equality institutions today span a wide range of issue arenas and form a dense policy network that advocates and implements gender equality. This strong infrastructure has been installed during a relatively short time period and in a cultural environment that has difficulty shedding the traditional male breadwinner model and polarised family roles. An explanation for this rather unlikely institutionalised equality sphere can be found in the concept of institutional isomorphism. According to Szelnick, 'organizations tend to model themselves after similar organizations in their field that they perceive to be more legitimate or successful'.²⁸ Organisations thus emulate and adopt structures that seem to work in other places. Motives for adoption are often mixed and range from policy effectiveness to signalling public concern or appeasing certain constituencies. The

first initiatives to establish women's policy agencies clearly spoke of such mixed motives. Women were massively underrepresented in middle and higher positions in state agencies; existing policies were identified by scholars, journalists, and by female party members as directly or indirectly discriminating; concern by female voters around issues of representation rose; and, most importantly, a visible women's movement demanded positive action and by the mid-1980s had embraced the state and the idea of creating women's agencies to address gender equality from within institutions. Networking among women's agencies in specific professional or policy arenas emboldened weaker agencies to exert leverage and demand stronger, better funded and better positioned institutions in their own realm, resulting in overall upward institutional adaptation throughout the 1990s.

Expansion to the New Länder

A particular kind of institutional isomorphism occurred with the accession of the New Länder in 1990. The five New Länder and East Berlin entered into cooperative arrangements with western Länder primarily for administrative guidance and assistance in building state bureaucratic infrastructure.²⁹ The public sector built up in the East took place under the auspices of cooperative federalism, a governance regime that is in essence consensus oriented, conservative and rather averse to individual states' experiments and innovation.³⁰ The western states delivered the blueprints; the new Länder adopted them with slight variations. By 1992, about 8,400 members of the western Länder's civil service worked in their respective eastern partner administrations in central positions and performed key functions in administrative build-up.³¹ And even though home institutions were not copied one-to-one, central features of the women's policy infrastructure can be traced to the influence of respective western partners. Eventually, all eastern states adopted versions of western states' equality laws and institutionalised equality agencies, mirroring those of their western partner. Thus, the state of Brandenburg, with its social democratic partner state North Rhine-Westphalia, devised one of the more progressive gender equality laws and a strong women's policy machinery; Saxony, on the other hand, with the conservative state of Baden-Württemberg as partner, implemented a much weaker legal equality framework that included a precarious institutionalisation of equality offices. Even though substantial differences in the scope, power allocation, and resources of these institutions were part of the adaptation mechanism, an overall viable infrastructure was established that turned out to be crucial in assisting East German women's rocky transition into the Federal Republic. Local and regional equality agencies, for example, became central actors in demanding women's equal share in Labour Creation Programmes (*Arbeitsbeschaffungsmassnahmen*) and in encouraging the establishment of similar agencies and positive action plans in universities and private businesses.

From Upward to Downward Institutional Isomorphism

Upward institutional isomorphism has started to change direction since 2005. Women's policy agencies shrink in their reach, financial stability and staff. Four states have downsized the number of equality offices or the office's structure by means of reducing costs or legal revisions. CDU/FDP-ruled Baden Württemberg amended its State Equality Law in October 2005 into an 'Equal Opportunity Law',

allowing longer periods between providing statistical equality plans as well as more flexibility to justify personnel decisions that do not correspond with women's advancement principles. Equality Officers on the local level are not, as women's organisations had demanded, required under the provisions of the reformed law.³² In the same year, in Lower Saxony, a reformed communal law allowed the majority of communal districts to opt out of the requirement for a full-time equality officer. In effect, that resulted in a reduction of equality officers from 137 to 55.³³ In Schleswig-Holstein, a grand coalition of Social Democrats and Conservatives in 2006 raised the threshold for full-time equality officers from 10,000 inhabitants to 15,000 – a step that reduced the number of equality officers by about half.³⁴ In Saxony, the conservative government is contemplating changing the name and tasks of the women's equality officers into 'family officers'. In the eastern state of Brandenburg a grand coalition recently downsized equality offices while at the same time extending their mission towards other 'diversity' constituencies, namely seniors, the disabled, and migrants.

In 2004, 10 of the 16 German states had established women's ministries. In four states there was an ombudswoman for gender equality assigned to the Governor's Office and in two states there was a department within the Ministry for Social Affairs handling women's issues.³⁵ But the trend is towards downsizing. Brandenburg's grand coalition and conservatively ruled Hesse have abolished first their Women's Ministries, then, in a next step, their department for women's issues within the Social Ministry. Instead of a full ministry with its personnel and budgetary resources, there is now one woman in charge of women's issues, situated in the Governor's Office. The rationale for both states' steps was gender mainstreaming. Hesse has also cut means for women's shelters by one-third, abolished women's qualification and training projects and stopped affirmative action measures introduced in 1993 in the most advanced state women's equality law.³⁶ With this deregulation of legal frameworks for gender equality, implementation on the local level suffers.

Another setback for institutionalised women's policy agencies was the publicly almost unnoticed abolition of regular meetings of the states' women's ministries in 2005, historically a driving force in federal policy-making.³⁷ At their last conference in June 2005, the joint Conference of the Women's and Equality State Ministers (GFMK – Gemeinsame Frauenministerinnenkonferenz) decided by a majority vote of the conservative states to dissolve itself and further address women's issues only in the context of the joint meetings of the states' youth and family ministers. Even though the states with left-leaning governments protested against this 'backlash to the sixties',³⁸ that recognised women only as mothers or wives, the conservative representatives prevailed and insisted that the institutionalisation of women's ministries in the German Länder had always been considered a 'temporary' measure.³⁹ Only a procedural miscalculation of the conservatives saved the GFMK in 2006: the youth ministers could not muster the necessary two-thirds majority vote for incorporating women's issues into their agenda. This now leaves the GFMK in limbo. The effects of losing the coordination potential of the Länder ministries through the GFMK would be substantial. First, the upward isomorphism or adaptation effect between the Länder would decrease; and, second, their internal bargaining power in regard to other ministerial coordination bodies, the national government as well as EU institutions would suffer from lack of a joint political voice. Trying to abandon this

instrument in times of heightened Länder influence on the EU level⁴⁰ is a severe setback for the women's equality offices as well as for gender policies.

Aside from downward isomorphism in institutionalisation that is fuelled by a conservative imprint on the level of both the central state and the Länder, women's policy agencies are contested by internal and external veto players who assert influence against stricter equality legislation. The following section will specifically examine the impact of business associations on two gender politics initiatives that were first initiated under gender favourable conditions of the Red–Green coalition but have resulted in rather ineffective legislation.

BUSINESS ASSOCIATIONS AS VETO PLAYERS

The two capstone projects of the Red–Green women's agenda were the passage of an Affirmative Action Law for the private business sector and an Antidiscrimination Law in accordance with European Union requirements. The Affirmative Action Law had been part of the Red–Green coalition agreement since 1998 and was considered central by feminist advocates of both parties. It was aimed at the German business sector and intended to address a legacy of inequalities such as the massive underrepresentation of women in higher management positions or the lack of commitment by business to address work–family balance issues. An initial draft of the law, produced by a group of feminist legal scholars in 2001, envisioned for the most part procedural regulation. Companies would be asked to choose a number of activities from a catalogue and thus engage with a self-selected set of gender equality measures. While the law that women activists of the Red–Green coalition envisioned would hold businesses accountable for increasing the number of women in underrepresented sectors, it provided much flexibility for the kind of measures that could be selected. Demands did not include quotas, but commitments such as yearly drafted affirmative action plans that businesses would agree to implement. In case of non-compliance, effective sanctions were to be put in place, such as exclusion from bidding on government contracts and class action suits.⁴¹

Business associations reacted to these legal demands by activating their close ties with business friendly factions in government and, specifically, Chancellor Schröder's office. As a result, economically liberal Social Democrats, including the Chancellor, publicly toned down expectations regarding the law's scope and impact. The Women's Ministry received signals that an expert evaluation it had commissioned from a feminist legal scholar and ex-state minister advocating forceful compliance incentives for companies was unacceptable.⁴² Instead of specifying incentives, the Ministry's first draft of the law relied on voluntary compliance by businesses to write yearly company-wide affirmative action plans and show results in advancing women in ways to be determined by businesses themselves. But it also included measures in case of non-compliance with this 'voluntary obligation', ranging from prohibition against competing for state contracts to group action suits that associations could file in lieu of an individual plaintiff.

Yet even this weaker draft did not meet with approval from business associations. The four major German business associations BDA (Bundesverband der Deutschen Arbeitgeberverbände – Confederation of German Employers' Associations), BDI

(Bundesverband der Deutscher Industrie – Federation of German Industries) DIHK (Deutscher Industrie- und Handelskammertag – German Chambers of Industry and Commerce) and ZDH (Zentralverband des Deutschen Handwerks – German Confederation of Skilled Crafts) at that point met with Chancellor Schröder officially to prevent a legal solution and instead advocated for an agreement in which business would enter a voluntary agreement with the government.⁴³ The compromise that took effect in 2001 signalled a significant defeat for the Women's Ministry, for feminist advocates in the parties and for women's organisations that had supported a strong legal framework. Instead of a law, business associations and government signed a non-binding agreement in which business promised to take all necessary steps to foster gender equality in hiring and promotion. Progress would be monitored through bi-yearly reports by the associations. The Women's Minister, in a last attempt to insert some accountability, left the door open to pursuing a legal framework in case of non-compliance.⁴⁴ The first of these reports, published in 2003, presented a rhetorical firework of 'best practices', but lacked any systematic effort to devise coherent strategies to advance women. Nevertheless, government and business concluded that the path of voluntary compliance had proven to be effective and would be continued.⁴⁵ The second accountability report was completed in February of 2006, and emphasised 'women in higher management positions' with a similar optimism unsupported by statistical data.⁴⁶ In fact, among the 100 largest companies in Germany in 2004, four women sat alongside 685 men. Overall, the percentage of women in management of companies with more than 200 employees increased by just 3.4 per cent between 1995 and 2004, from 4.8 to 8.2 per cent.⁴⁷ Yet the report reiterated that the existent strategies were successful and did not need revision.⁴⁸

The passage of what many women's policy advocates consider a 'toothless' agreement instead of a substantive law was a major defeat for the women's policy machinery and women's advocates within the two governing parties. It exemplifies the strength of German business as a powerful veto player which, amidst debates about high unemployment and high labour costs, was able to frame a stricter affirmative action law as expensive and bureaucratic. Business was encouraged by internal support from business friendly parliamentarians, cabinet ministers and the Chancellor himself.

Failure to pass this capstone gender law was followed by other setbacks, most notably the attempt to pass a comprehensive Anti-discrimination Law. The need for such a law had long been evident. Germany did not have an effective legal structure to combat discrimination based on gender, ethnicity, race or religion. Four European Union directives on equal treatment had not been implemented nationally.⁴⁹ Only after the EU had already started infringement procedures against the German government for non-implementation did the Red-Green coalition in autumn 2004 present a draft of the proposed law. In a hearing organised by the Ministry of Family, Seniors, Women and Youth in March 2005, business associations derided the law as a 'job killer' and again pronounced that its bureaucratic costs would augment Germany's fiscal crisis.⁵⁰ The most contentious passages included a provision that would have extended legal protection against discrimination based on race, ethnicity or gender beyond public and employment law into private contracts and services, such as rentals and insurance.⁵¹ Business associations

also mobilised against the introduction of limited group action suits and the establishment of a federal anti-discrimination office that would be in charge of information and facilitation. Even though the Red–Green coalition parties passed the law in the Bundestag, the conservative majority in the Bundesrat (Federal Council) rejected it. In 2006, the Grand Coalition of Conservatives and Social Democrats passed a ‘light’ version of the law, but again the Second Chamber held off a vote and the conservative majority of states used their leverage to enter another round of bargaining that pitted changes in the now renamed General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz – AGG*) against changes that the Social Democrats wanted in reforming federalism. The outcome, proclaimed in June 2006, presented a sour victory for gender politics: The conservative *Länder* succeeded in changing the AGG so that (1) unions and work councils could not represent individual plaintiffs in discrimination cases; (2) the time frame in which discrimination had to be brought to court was downsized to two months; and (3) employers could only be sued if the plaintiff could prove ‘intent’ in the employer’s action. The latter provision actually presented a backlash for the fight against gender discrimination in the German legal tradition since ‘intent’ is not part of the legal framework for equality based on gender in German Civil Law.⁵²

Not surprisingly, the EU Commission is critical of Germany’s implementation of antidiscrimination law. On 31 January 2008, the federal government received an official letter by the EU reprimanding Germany for non-compliance with EU law in, among others, the abovementioned areas.⁵³ The requirement to bring the German *Gleichbehandlungsgesetz* in line with EU law is now back in federal and *Länder* institutions.

The network of institutionalised women’s agencies was not able to mobilise feminist publics in both debates. A case in point is the public hearing organised by the Federal Ministry of Family, Seniors, Women and Youth in March 2005.⁵⁴ Feminist stakeholders should have had a vested interest in this issue. Thirty-seven relevant social groups and 19 scientists were invited to comment on the proposed law. Yet of the 37 groups only two were women’s organisations, the Women’s Council and the Association of Women Lawyers. All in all, the participation of the women’s advocacy sector in this crucial deliberation process on a central piece of legislation was 5.4 per cent. Business interest groups, on the other hand, constituted 29.7 per cent of invited groups and representatives of ethnic and racial minority NGOs constituted 21.6 per cent.⁵⁵

Differently incorporated groups of women’s policy advocates – that is, femocrats *working within* institutions, professional women’s organisations *lobbying* institutions and women’s projects *being funded* by institutions – together could not stem the turning tide towards a downward isomorphism and the influence of veto players in German gender governance. Institutionalised gender advocacy has been weakened additionally by a significant reversal in gender equality strategies induced by the European Commission during the past decade, marking a shift in discourse and in policy orientation away from gender equality and towards gender mainstreaming. This discursive and strategic rupture results in policies that might additionally destabilise institutional gender infrastructures.

EFFECTS OF GENDER MAINSTREAMING: CONVERSION OR DRIFT?

Precarious institutionalisation of gender governance, I have argued, is the result of a turn towards downward isomorphism, and it is heightened by the central role of internal and external veto players in the German political process. In addition, institutionalised women's policy agencies are challenged by a shifting policy discourse that has turned from the gender equality paradigm of the 1990s to a gender mainstreaming paradigm. Gender mainstreaming, originally a concept launched within the United Nations 1995 Beijing conference and adopted by the European Union, demands the full integration of gender perspectives in all politics and policies of an institution. Considered the third leg of equality policy in addition to anti-discrimination and affirmative action policies, it aims at integrating gender in 'the (re)organization, improvement, development and evaluation of policy processes so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making'.⁵⁶ Gender mainstreaming has thus shifted public and institutional focus from special programmes that advance the status of women towards demanding gender sensitivity across all policy arenas within the European Union.

The German Red–Green coalition introduced gender mainstreaming in 1999, with the goal to make it a formal component of all policies of the federal government by 2008. By now, it should have become a principle to be addressed in all policies of the federal government, leading to what Thelen and Streeck identify as institutional conversion. Conversion would imply that the Federal Ministry as well as other women's policy agencies reorient their mission and tasks towards implementing the mainstreaming strategy. Yet the present Women's Minister Ursula von der Leyen has made it clear that her priorities are in family policies. Within her bureaucracy, personnel resources working on mainstreaming issues have been downsized. In the 2006 CEDAW report to the UN, her Ministry distanced itself from the gender mainstreaming paradigm and claims that it will reassess its strategic value.⁵⁷ Yet, in effect, the promised reassessment has stalled implementation and sidelined progressive policies such as gender budgeting. The present array of federal 'model projects' reflects mainstreaming mostly in governance sectors such as statistics or development aid policy, where gender awareness had already been a priority before the advent of gender mainstreaming. The central implementation and steering committee for gender mainstreaming on the federal level was abolished in 2007.⁵⁸ Eventually, this neglect might result in institutional drift. Not only might it weaken the ministry itself, but also gender agency across institutional levels.

Länder initiatives to implement gender mainstreaming vary in scope and goals. A few women's policy agencies, such as in the state of Berlin, have used the strategy as leverage to successfully press for more resources to create mainstreaming units while redirecting the State Women's Department in its goals and functions, thus maybe best exemplifying institutional change as conversion. Other states have started implementation with the more or less explicit goal of replacing women's policies and its organisational units with gender mainstreaming, forcing a mode of institutional change that might erode gender agency. As previously mentioned, Brandenburg and Hesse have abolished women's policy agencies with the explicit rationale of mainstreaming. Two lines of argument have emerged on the Länder

level that are basically interchangeable: Either it is claimed that the financial crisis of a state makes spending cuts necessary and that with gender mainstreaming, institutionalised women's policy infrastructure becomes superfluous; or it is claimed that the European Union forces the states to mainstream gender and therefore the women's infrastructure can be downsized.⁵⁹ In effect, the gender mainstreaming paradigm hollows out 'traditional' women's policy infrastructure while at the same time producing an undefined 'mainstreaming' message. Overall, the successful conversion of women's policy agencies into institutions that embrace and promote gender mainstreaming as well as traditional gender equality agendas seems tenuous.

CONCLUSION

This study has analysed recent challenges to the institutionalisation of German women's policy agencies. Evidence suggests that strong formal institutionalisation of a women's policy infrastructure has not been matched by an equally strong progressive policy output. Moreover, this infrastructure has recently started to erode. Both developments are, I have argued, related and point to several levels of contestation that women's policy agencies face. They operate in a climate of tension between formal commitment and informal negligence or subversion: a formalised legal set of rules is not adequately sustained by informal norms within institutions and in German society at large. By all accounts, traditional German gender roles embodied in the male breadwinner model have been somewhat eroding in the past two decades. Yet they remain a powerful normative force in the political structuring of gender relations, a case in point being the recent welfare reforms.⁶⁰ These male centred norms also appear sedimented in institutional settings. They tend to produce negligence towards or subversion of formal gender equality rules. Additionally, strong veto players such as business associations play a decisive role in minimising effects of EU gender directives and their implementation in Germany. Finally, the turn towards the gender mainstreaming paradigm can put women's policy agencies on the defensive. Some Länder employ mainstreaming strategies to diversify or downsize women oriented equality institutions. While an overall displacement of the women's policy infrastructure is not to be expected, erosion starts with abolishing central key elements of this infrastructure. While agencies will persist, they might be realigned to also serve other constituencies besides women or serve larger geographic areas. Other women's policy agencies will be likely to experience drift as their mission changes to gender mainstreaming without clear competencies attached.

What Kathleen Thelen has argued for German vocational training institutions therefore rings just as true for women's equality institutions: their institutional survival is 'not just a matter of inertia or even (more dynamically) increasing returns effects; rather, institutional survival require(s) active political sponsorship, including assembling new coalitions to sustain these institutions as political and economic conditions change'.⁶¹ Margaret Weir asserts that new institutionalism should include a 'multidimensional perspective on actors that considers internal organisation politics, as well as the multiple external networks in which actors are embedded'.⁶² With general public support for women's policy agencies decreasing, the active external networks and political sponsorship to which Thelen and Weir refer could only come from institutionalised

and non-institutional women's movement actors. Yet German women's advocacy coalitions tend to be weakly organised and only temporarily active for single issues.⁶³ As challenges to the institutionalised women's policy sphere increase, these coalitions will become pivotal actors in defining its future.

NOTES

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1. Many large private organisations and businesses also have equality officers. This article will focus on public women's offices that are located within institutions of government.
2. See Myra Marx Ferree, 'Making Equality: The Women's Affairs Offices in the Federal Republic of Germany', in Dorothy McBride Stetson and Amy Mazur (eds.), *Comparative State Feminism* (London: Sage, 1995), pp.95–113; also Clarissa Rudolph and Uta Schirmer, *Gestalten oder verwalten? Kommunale Frauenpolitik zwischen Verrechtlichung, Modernisierung und Frauenbewegung* (Wiesbaden: VS, 2004).
3. See Petra Kodre and Henrike Mueller, 'Shifting Policy Frames: EU Equal Treatment Norms and Domestic Discourses in Germany', in Ulrike Liebert (ed.), *Gendering Europeanisation* (Bruxelles: Peter Lang, 2003), p.93. Also Angelika von Wahl, 'Liberal, Conservative, Social Democratic, or ... European? The European Union as Equal Employment Regime', *Social Politics*, 12/1 (2005), pp.67–95.
4. European Commission, *Report on Equality between Women and Men 2006* (Brussels: EC, 2008), p.20, available at http://ec.europa.eu/employment_social/publications/2006/keaj06001_en.pdf (accessed 15 August 2008).
5. Joyce Outshoorn and Johanna Kantola (eds.), *Changing State Feminism* (Houndmills: Palgrave MacMillan, 2008), pp.274–6.
6. Ferree, 'Making Equality'.
7. Rudolph and Schirmer, *Gestalten oder verwalten?*, p.225.
8. Birgit Sauer, *Die Asche des Souveräns. Staat und Demokratie in der Geschlechterdebatte* (Frankfurt a.M.: Campus Verlag, 2001), p.265.
9. See Joyce Mushaben, 'Girl Power, Mainstreaming and Critical Mass: Women's Leadership and Policy Paradigm Shift in Germany's Red–Green Coalition, 1998–2002', *Women, Politics and Policy* 27/1 (2005), pp.135–62. Also Sabine Lang and Birgit Sauer, 'Doris ihr'n Mann seine Partei. Die Reduktion von Frauen- auf Familienpolitik im bundesdeutschen Wahlkampf', *Österreichische Zeitschrift für Politikwissenschaft* 4 (2003), pp.329–442.
10. Renate Koecher, 'Survey of the Allensbach Institute for the women's magazine *Emma*', *Emma* 1 (2007), available at http://www.emma.de/allensbach_umfrage.html (accessed 23 August 2008).
11. The argument presented here draws on three basic common parameters of new institutionalism, most prominently articulated by Paul Pierson and Guy Peters. See Paul Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics', *American Political Science Review* 94/2 (1990), pp.251–67; also Guy B. Peters, *Institutional Theory in Political Science. The 'New Institutionalism'* (London/New York: Pinter, 1999).
12. See e.g. Vivien A. Schmidt, 'Give Peace a Chance: Reconciling Four (not Three) "New Institutionalisms"', in Daniel Beland and Robert H. Cox (eds.), *Ideas and Politics in Social Science Research* (forthcoming 2009).
13. Peter A. Hall and Rosemary C.R. Taylor, 'Political Science and the Three New Institutionalisms', *Political Studies* 44/4 (1996), pp.936–57, here p.957.
14. See Paul Pierson, *Politics in Time. History, Institutions, and Social Analysis* (Princeton, NJ: Princeton University Press, 2004); and Thomas Ertman, *Birth of the Leviathan: Building States and Regimes in Medieval and Early Modern Europe* (Cambridge: Cambridge University Press, 1997).
15. Rudolph and Schirmer, *Gestalten oder verwalten?*
16. Paul J. DiMaggio and Walter Powell, 'The Iron Cave Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields', in Paul J. DiMaggio and Walter Powell (eds.), *The New Institutionalism in Organizational Analysis* (Chicago: University of Chicago Press, 1991), pp.63–82.
17. George Tsebelis, *Veto Players. How Political Institutions Work* (Princeton, NJ: Princeton University Press, 2002).

18. Following Boerzel and Heritier, I distinguish between formal and informal veto players. See Tanja Boerzel and Adrienne Heritier, *Fostering Regulation? Corporate Social Responsibility in Countries with Weak Regulatory Capacity*, Sonderforschungsbereich Governance der DFG, Project design, 2004.
19. Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics'.
20. Wolfgang Streeck and Kathleen Thelen, 'Introduction: Institutional Change in Advanced Political Economies', in Wolfgang Streeck and Kathleen Thelen (eds.), *Beyond Continuity. Institutional Change in Advanced Political Economies* (Oxford: Oxford University Press, 2005), pp.1–39, here p.18.
21. Streeck and Thelen, 'Introduction', p.26.
22. Ferree, 'Making Equality', p.98.
23. Deborah Rhode, *Speaking of Sex: The Denial of Gender Inequality* (Cambridge/London: Harvard University Press, 1997).
24. Amy Mazur, 'Drawing Comparative Lessons from France and Germany', *Review of Policy Research* 20/3 (2003), pp. 493–523.
25. Joni Lovenduski, 'Unfinished Business: Equality Policy and the Changing Context of State Feminism in Great Britain', in Outshoorn and Kantola (eds.), *Changing State Feminism*, pp.144–63.
26. See Lynn Kamenitsa and Brigitte Geissel, 'WPAs and Political Representation in Germany', in Joni Lovenduski (ed.), *State Feminism and Political Representation* (Cambridge: Cambridge University Press, 2005), pp.106–29; also Christiane Lemke, 'Changing the Rules of the Game: The Role of Law and the Effects of Party Reforms on Gender Parity in Germany', in Jyette Klausen and Charles S. Maier (eds.), *Has Liberalism failed Women? Assuring Equal Representation in Europe and the United States* (New York: Palgrave, 2001), pp.123–42.
27. BMFSFJ, *Frauen in Deutschland* (Bonn: BMFSFJ, 2004).
28. Philip Szeznick, 'Institutionalism "Old" and "New"', *Administrative Science Quarterly* 41/2 (1996), pp.270–78; also DiMaggio and Powell, *The New Institutionalism in Organizational Analysis*, p.70.
29. Mecklenburg-West Pomerania established ties primarily to Schleswig-Holstein, Hamburg, and Bremen; Brandenburg to North Rhine-Westphalia and Berlin; Saxony-Anhalt to Lower Saxony; Thuringia to Rhineland-Palatinate, and Saxony to Baden-Wuerttemberg and Bavaria. See Klaus H. Goetz, 'Administrative Reconstruction in the Neue Länder. The Federal Dimension', in Charlie Jeffery (ed.), *Recasting German Federalism* (London: Continuum, 1999), pp.85–117, here p.111 n.19.
30. Helmut Wiesenthal, 'German Unification and "Model Germany": An Adventure in Institutional Conservatism', in Herbert Kitschelt and Wolfgang Streeck (eds.), *Germany: Beyond the Stable State* (London: Frank Cass, 2004), pp.37–58.
31. Goetz, 'Administrative Reconstruction in the Neue Länder', p.92.
32. DGB (Deutscher Gewerkschaftsbund), *Stellungnahme zum Entwurf des Chancengleichheitsgesetzes* (Stuttgart: DGB, 2005).
33. *Abendblatt Hannover*, 21 May 2005.
34. Vorschaltgesetz Verwaltungsstrukturreform – Reform of Public Management Law Schleswig Holstein from 24 March 2006.
35. BMFSFJ, *Frauen in Deutschland*, p.191.
36. Gabriele Wenner, speaker of BAG, at <http://www.frauenbeauftragte.de/bag/schlechte%20zeiten.htm> (accessed 20 April 2008).
37. Interview with Helga Hentschel, Berlin Senate, Director of Department for Women's Issues, August (Berlin, 2005). See also GFMK (Konferenz der Gleichstellungs- und Frauenministerinnen, -minister, -senatorinnen, -senatoren der Länder). Main Conference 2/3 June 2005 in Schwerin. Beschluss, Zusammenlegung der GFMK mit der JMK', Protokoll, p.2.
38. Berlin's State Secretary for Women Harald Wolf, press release Department of Business, Labour, and Women, 3 June 2005.
39. GFMK, Beschluss 'Zusammenlegung der GFMK mit der JMK', p.2.
40. Tanja A. Börzel, *States and Regions in the European Union. Institutional Adaptation in Germany and Spain* (Cambridge: Cambridge University Press, 2002).
41. Heide Pfarr, 'Voraussetzungen fuer ein effektives Gleichstellungsgesetz fuer die Privatwirtschaft', *Arbeit und Recht*, No.10 (2001), available at www.boeckler.de/pdf/wsi_texte_pfarr_gleichstellungsgesetz_2001.pdf (accessed 23 November 2008).
42. Ibid.
43. VSU press release, 14 Nov. 2001, available at <http://www.vsu.de> (accessed 9 August 2008).
44. BMFSFJ, *Vereinbarung zwischen der Bundesregierung und den Spitzenverbänden der deutschen Wirtschaft zur Förderung der Chancengleichheit von Frauen und Männern in der Privatwirtschaft* (Berlin: BMFSFJ, 2001). <http://www.bmfsfj.de/Politikbereiche/gleichstellung.did=6408.html> (accessed 24 April 2008).

45. BMFSFJ, *Bilanz 2003 der Vereinbarung zwischen der Bundesregierung und den Spitzenverbänden der deutschen Wirtschaft zur Förderung der Chancengleichheit von Frauen und Männern in der Privatwirtschaft* (Berlin: BMFSFJ, 2003), p.4.
46. BMFSFJ, *Zweite Bilanz Chancengleichheit – Frauen in Führungspositionen* (Berlin: BMFSFJ, 2008).
47. *Ibid.*, p.12.
48. 'The Federal Government and business agree in regard to the second assessment that beyond implementing the EU antidiscrimination directive in national law no other legal instruments are necessary for equal treatment of women and men in the labour force. The strategy of voluntary agreements between the German business associations and the Federal Government is successful' (BMFSFJ, *Zweite Bilanz Chancengleichheit*, p.67).
49. Directives 2000/43/EG (Equal treatment irrespective of race and ethnic origin); 2000/78/EG (Equal treatment in employment and occupation); 2002/73/EU (Equal treatment regarding access to employment, vocational training, promotion, and working conditions) and 2004/113/EU (Equal treatment regarding access to and provision of goods and services).
50. The hearing is documented at the Bundestag website under <http://webarchiv.bundestag.de/cgi/show.php?fileToLoad=159&id=1040> (accessed 8 September 2008).
51. Anti-discrimination law in Germany until 2006 did not extend into private contract law. This resulted in a number of blatantly discriminatory practices, such as higher health insurance tariffs for women than for men. See Maria Wersig, 'Sieg der Freiheit? Zum Scheitern des deutschen Antidiskriminierungsgesetzes', *femina politica* 14/2 (2005), pp.100–104.
52. §611a Abs. 2 BGB.
53. EUC 2008, *Aufforderungsschreiben Vertragsverletzung* Nr. 2007/2362.
54. See note 50.
55. Figures compiled from public hearing on 7 March 2005.
56. Council of Europe, *Gender Mainstreaming: Conceptual Framework, Methodology and Presentation of Good Practices*, Final Report of Activities of the Group of Specialists on Mainstreaming (Strasbourg: Council of Europe, 1998), p.15.
57. Public Letter of Gender Mainstreaming Experts International (GMEI) to Minister von der Leyen 2007, available at http://www.gmei.de/GMEI_offener_Brief_Ministerin_vdLeyen_CEDAW.pdf (accessed 6 August 2008).
58. *Ibid.*
59. Hentschel Interview, Berlin 2005.
60. See Angelika von Wahl, 'Gender Equality in Germany: Comparing Policy Change Across Domains', *West European Politics* 29/3 (2006), pp.461–88, here p.464. Also Stefanie Woehl, 'The Open Method of Coordination and Gender Mainstreaming. Implications for Governing Gender Equality in Germany', Conference paper for International Studies Association Meetings San Francisco, 2008.
61. Kathleen Thelen, 'Institutions and Social Change: The Evolution of Vocational Training in Germany', in Ian Shapiro, Stephen Skowronek and Daniel Galvin (eds.), *Rethinking Political Institutions. The Art of the State* (New York: New York University Press, 2006), pp.135–70.
62. Margaret Weir, 'When Does Politics Change Policy? The Organizational Politics of Change', in Shapiro *et al.* (eds.), *Rethinking Political Institutions. The Art of the State*, pp.171–86.
63. See Sabine Lang, 'Gender Governance in Post-Unification Germany: Between Institutionalization, Deregulation, and Privatization', in Outshoorn and Kantola (eds.), *Changing State Feminism*, pp.124–43.