

# **Gender Equality in the Swedish Welfare State**

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## **1. Introduction**

The aim of this article is to present a framework for understanding the distinct Swedish model of gender equality that is both comprehensive and progressive. The gender equality policy of the Swedish state, closely intertwined with social democratic welfare state ideology, has developed over the last 40 years based on a structural understanding of equality and has covered most policy fields. The model obviously has been successful, as measured in global gender gap indices and the like (World Economic Forum, The global gender gap index 2006-2011). Today, women in Sweden have a high level of labour market participation and education, and Sweden has instituted policies for the reconciliation of work and family life, for public support for families with small children, for women's bodily and physical integrity, and for the fight against domestic violence and prostitution.

Here we will give an overview of gender equality as an area of special interest for state policy, first formulated in the 1970s, and try to show how this area of policy has been reflected in explicit and extensive regulations promoting gender equality. We will show how law has been used both as a means of guaranteeing non-discrimination and as a means of introducing active measures. And we will also provide an analysis of how gender equality regulation, produced in dialogue with the welfare state ideology, has developed a strong and comprehensive structural base for achieving gender equality. In addition however, this article will critically review Sweden's self-image of "a good and equality-producing state". It will argue that in fact, the Swedish state has shown a lack of ambition to fully challenge the gendered segregation of the labour market, to change the uneven distribution of economic and political power in many sectors of society, and to fulfil the political goal of shared parental responsibilities. We will critically examine those gender-biased discriminatory practices embedded in the Swedish model, particularly in the case of specific social groups such as single mothers and migrant women.

Finally, we will explore the changes to gender equality policy brought about by our membership of the European Union; for example, the increasing focus on individual rights and anti-discrimination strategies coupled with the decreasing concern about the structural patterns of gender inequalities.

## **2. Gender equality policy and welfare state ideology**

The representation of the Swedish state as a form of state feminism, or at least as a women-friendly welfare state, has its roots in how it has actively advanced women's interests. Empirical evidence reinforces this image, an image encouraged not least by feminist scholars who have valued and supported extensive programs providing: welfare for women, families and children; measures to increase female participation in the labour market; and, gender mainstreaming in policy making. A prominent characteristic of the Swedish model is truly the fact that gender equality policy is closely intertwined with the Swedish welfare state ideology. In the formation of the welfare state gender equality has been a major concern in many welfare reforms, and has been particularly important in those reforms oriented at to the labour market (Hernes 1987, Sainsbury 1996, Bradley 1996, Bergquist et. al. 1999). By promoting a socially egalitarian citizenship based on notions of solidarity and redistributive social justice the Swedish social democratic welfare state has had a comparatively high degree of universalism regarding social benefits (Kautto et al 2001 and SOU 2000:83; Gunnarsson et al 2004). General services and benefits available for eligible residents are the most inclusive part of Swedish social citizenship, in contrast to earnings-related social insurance benefits (Sainsbury 1996, 1999; Gunnarsson 2007). Flat-rate benefits for households with children, such as the child allowance, health and childcare services and means-tested benefits, such as the housing allowance, have had a significant redistributive effect in favour of women (Skatteverket 2007:2, Prop. 2009/10:1). However, although gender equality has been a major concern in many welfare reforms, it has been particularly so in those oriented at the labour market (Hernes 1987, Sainsbury 1996, Bradley 1996, Bergquist et. al. 1999). Employment strategies have acknowledged the significance of work in achieving economic independence and in earning the right to social security.

## **2.1. Workfare-oriented gender equality**

The idea of 'workfare' is at the core of the Swedish welfare state model that is based on an egalitarian ideology of social citizenship, and so also central to the policy of promoting gender equality. In contrast to a 'bread-winner' ideology, under the notion of 'workfare' men and women alike have been regarded as self-supporting individuals within a labour market in line with the ideal of a dual income-earner family ideology (Gunnarsson et al 2004; Mannelqvist 2007; Pylkkänen 2009).

At an early stage of the welfare state project a combination strategy was developed to enable women to fulfil the responsibilities of care whilst pursuing their wish to be self-supporting. Radical reforms in the 1960s and 1970s addressed gender equality based on the narrow egalitarian idea of promoting married women's labour market participation (Gunnarsson and Stattin 2001; Gunnarsson et al 2004; Pylkkänen 2009; 123-149). The combination strategy aimed to further encourage women to participate in the labour market, whilst facilitating married women to combine paid work with family life. It thereby became a driving force in the active integration of women into the public sphere of social citizenship. The abolition of joint taxation, together with progressive social reforms such as the introduction of publicly financed day care for children and sex neutral parental leave, also proved to be valuable additional incentives. Similarly, the sex neutral parental leave reform, coupled with generous parental leave insurance, was designed to stimulate fathers and mothers to share responsibility for their children on equal terms (Gunnarsson and Svensson 2009, 50).

This emphasis on the labour market was closely linked to an acknowledgement of the importance of the educational system in achieving gender equality. Education is generally seen as a means of changing gendered stereotypical choices, both within education itself, and in the pursuit of professional careers and possibilities within the job market. Indeed, the democratic values that permeate much of educational theory and practice thoroughly embrace gender equality, so that schools as well as higher education institutions have long had an obligation to promote gender equality (Gunnarsson and Svensson 2009, 49).

## **2.2. From *jämställdhet* to gender mainstreaming**

The social differences between men and women came under increasing scrutiny in the 1960s and in response to political debate, much of it driven by the women's movement. A specific concept, *jämställdhet*, was introduced in politics to capture to describe sex/gender equality. Its purpose was to visualize and focus on the lack of equality between the sexes. The then prime minister and chair of the Social Democratic party, Olof Palme launched this concept in two famous speeches at the national party conventions during the fall of 1972, and *jämställdhet* subsequently became institutionalised as an official area of governmental policy. Palme managed to thereby incorporate women's fight for equal opportunities as an integral part of the welfare objectives for the working class (Gunnarsson and Svensson 2009, 45).

*Jämställdhet* should be translated as either sex or gender equality, but has different connotations depending on context. In essence it embraces the specific equality between men and women, and no other form of equality such as that between social classes. Political rhetoric reserved the term equality (*jämlikhet*) to refer to the aim of achieving social justice for the working class. In this way the notion of *jämställdhet* avoided an association with unequal power and conflicts between work and capital with which the specific notion of *jämlikhet* was permeated. In fact the difference between *jämlikhet* and *jämställdhet* lies in the middle syllables, *lik* and *ställd*. The first signifies 'sameness' while the latter signifies position, i.e. 'side by side'. So by situating men and women as equals, side by side, *jämställdhet* paradoxically, at least at first, managed to 'iron out' the dimension of power in gender relations within the official, social democratic political agenda (Svensson 2001; Gunnarsson and Svensson 2009, 46).

The workfare oriented view of gender equality, which constructed gender inequalities as merely a problem suffered by females, was further expanded in 1990 when a Government Commission Report about democracy and power accepted a gender system analysis of the relationship between power and the social constructions of gender. During the following decade gender equality policy underwent a paradigmatic change, when the focus of the analysis of the power relations between genders switched from individuals to structures (Prop. 1993/94: 147; Gunnarsson and Svensson 2009, 53-60). The historian Yvonne Hirdman introduced gender

system theory into the Commission Report (SOU 1990:44), explaining the relationship between men and women as a social system reflecting the division of power and responsibilities and how they had been structured over time within the Swedish welfare state. At the same time, empirical observations, identified the subordination of women as underpinning an organisational pattern in society long accepted as stable and as resting upon two principles: the separation of the male and the female; and, the use of the male as the benchmark. This pattern was recognised as feeding a public/private division of male and female spheres of power and responsibility (SOU 1990:44; Gunnarsson and Svensson 2009, 137).

Hirdman's system analysis described changes in gender relations over time as renegotiations of gendered "contracts". Hence the 'housewife contract', established after the Second World War, was replaced in the 1960s by a 'gender equality' contract whereby the idea of equality was built upon the notion of self-supporting individuals operating within the welfare state. As a consequence, although the social security system was constructed on the ideal of a dual earner family, the principle of segregation between male and female in public life was barely affected. According to Hirdman, by defining gender equality on the basis of economic independence the Swedish welfare state turned the remaining unequal power relations between men and women into a social problem. The lower social and economic status of women came to be defined as a matter of women's lack of resources, i.e. as a matter of substantive inequality, though this tended to exclude questions concerning agency and participation (Hirdman in SOU 1990:44, Chapter 3; Svensson 2001; Wennberg 2008, 336-344).

The power dimensions in social citizenship and gender equality that Hirdman revealed had an important impact on the gender policies which emerged at the beginning of the 1990s. Thus the Government Bill on gender equality policy identified the need to address unequal power relations between men and women at both the individual and structural levels. Now, instead of regarding a lack of social resources as the only cause of women's subordination, democracy and the need for proactive measures to be incorporated into law and policies also became a part of the political project. Not only equal rights, but responsibilities and opportunities for men and women in all areas of life came to represent the ideal norm for gender policies.

Gender equality became a matter of substantive equality or equality of outcome both in the labour market and in domestic care work (Prop. 1993/94: 147; Wennberg 2008, 338; Gunnarsson and Svensson 2009, 52-53).

Gender mainstreaming, the strategy for integrating gender equality into every area of government policies, and which was adopted in Sweden 1994, internationally in 1995 through the Beijing Action Plan, and in the EU in 1999, has proven to be a powerful force, at least at the policy level. Gender mainstreaming in policy making is legally manifested in an ordinance<sup>1</sup> for all Government commissions and inquiries to consider the consequences for gender equality in their proposals, and in an ordinance for all public statistics to be sex-segregated.<sup>2</sup> There are also documents of a soft law character that guide the work of public authorities in the mainstreaming of gender equality.<sup>3</sup>

The most recent parliamentary reform of gender equality policy in 2006 changed the expression of the overall objective from one of equal rights, responsibilities and opportunities for men and women, to a statement that women and men should have the same power to shape society and their own lives. The same rights, opportunities and responsibilities are now seen as preconditions for achieving this objective (Prop. 2005/06:155). The new formulation embodies the recognition of the need to see differences between individuals and groups, and is supposed to be implemented in all policy areas. To this end four sub-objectives were launched, and although in 2008 they were largely abandoned by the government, they still give a good indication of the direction of government policy (skr. 2011/12:3).

The first concerned the equal distribution of power and influence. It expressed the view that men and women should have equal opportunities to become active citizens and participate in decision making. The second concerned economic equality. Central to this was the idea of having equal opportunities to access education and paid work as a means of attaining economic independence. The third was about equal responsibility and the sharing of unpaid domestic and care work, whilst the final

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<sup>1</sup> 15§ Kommittéförordningen (SFS 1998:1474).

<sup>2</sup> 14§ Förordning (SFS 2001:100) om den officiella statistiken.

<sup>3</sup> Ds 2001:64 and PM 2005-06-20 Näringsdepartementet.

objective 'declares' an end to men's violence against women and the right to physical integrity for both young and old. All four sub-objectives entailed both formal rights and substantive rights, with the latter implying the state's responsibility to be active in achieving equality of outcome (Prop. 2005/06:155; Wennberg 2008, 339-343; Gunnarsson and Svensson 2009, 57-59).

### **3. Gender equality regulation in law**

The Swedish model of comprehensive gender equality policy is reflected in extensive regulations covering many aspects of social life - though not all these regulations are the result of national policies. There are several layers of gender equality principles, codified in human rights instruments, in the Treaty on European Union (TEU) and in the Swedish constitution. Gender equality regulations have reflected this multitude of influences from different legal cultures and legislative powers. Some are constructed as legal rules within liberal state-oriented anti-discrimination legislation. Others are rooted in the welfare state ideology with the aim of changing structural patterns of sex and gender discrimination. Here the law provides regulations about positive discrimination and 'active measures', that is, regulations with the explicit purpose of promoting gender equality (Svensson 2005, Gunnarsson and Svensson 2009, 63, 76).

One should also bear in mind that the term 'gender equality regulation' covers sex neutrality, gender neutrality and sex or gender-sensitive regulation. Sex neutrality remains the main objective behind all gender equality regulation, with anti-discrimination regulation being based very much on this view. Gender-neutral legislation holds various kinds of behaviour in equal position, no matter who performs the act in question. And a rule can be understood as sex or gender sensitive when its starting-point is the relevance of sex or gender, as for example, with the prohibition of the purchase of sex.

The first Sex Equality Act with anti-discrimination rules was enacted in 1980, partly influenced by a focus on anti-discrimination in EU, and has been since strengthened. On the other hand, the dual-earner workfare ideology introduced in Sweden much earlier is now an important part of the target for full employment in the Lisbon Strategy, an EU policy that reflects the challenges faced by European welfare economies in finding a future solution for the care of children and the elderly.

### **3.1. Constitutional principles**

The regulations emerging from gender equality policy were initially based on a formal equality principle that the law should be sex neutral. This principle was codified in the constitution in 1976, together with the recognition of possible exceptions for specific rules aimed at improving equality (Svensson 2001). The sex-neutral, formal equality rule formed the general rule, with exceptions being used in rare cases. Over time, additional rules were adopted with the aim at achieving equality. In Sweden these rules followed the European Union anti-discrimination provisions and some proactive measures. On some issues however, Sweden took a different path, for example in regards to understanding the purchase of sex and the importance of shared parental leave (Gunnarsson and Svensson 2009, 64-69).

In Sweden, the formal sex equality principle in the Swedish constitution has still not fully been adjusted to the equality regulation of the TEU (SOU 2007:67). Since the late 1990s the formal sex equality principle has, as in the rest of the EU, been replaced by a substantive, or *de facto*, gender equality principle. Sweden is bound to the substantive principle expressed in TEU and it has other regulations explicitly based on a substantive principle. Its gender equality regulation therefore covers both formal (sex) neutrality and substantive (gender) equality principles – embodying a mixture of anti-discriminatory and equal opportunity sex equality regulations, plus others aimed at promoting structural gender equality. But when formal equality clashes with active structural measures the legal system seems to prefer formality (Gunnarsson and Svensson 2009, 64-69).

### **3.2. Equal opportunities and anti-discrimination**

Gender equality was initially understood as a question of equal opportunities, which according to the Swedish model is supposed to be achieved through economic independence and individuals supporting themselves. The first regulation regarding equal opportunities was the Sex Equality Act, adopted in 1980, and which only applied to working life. Additionally, access to education was also seen as an important issue and regulation about gender equality in education was added in the 1980s (Gunnarsson and Svensson 2009, 70-71).



The Sex Equality Act, which introduced a new authority, the Gender Equality Ombudsman, contained two sets of provisions. The one, concerned with the prohibition of sex discrimination, targeted discrimination at the individual level. The other, was directed at active measures to promote sex equality in the workplace and addressed structural discriminatory practices. Both have been subsequently strengthened over time following changes in EU anti-discrimination legislation. The Sex Equality Act was incorporated into a new general Discrimination Act from 2009, encompassing discrimination on the grounds of sex, transgender identity or expression, ethnicity, disability, sexual orientation and age. Although one purpose was to reinforce the protection against discrimination and the active measures, there has been some weakening of the law in regard to sex (SOU 2006:22, 692). Yet at the same time, the objective of the Action Plan for a Gender Equal Working Life (skr. 2008/09:198) has been to discourage gender stereotypical choices in education and professional careers in order to promote a less gender segregated working life, and to encourage men and women alike to start businesses.

The prohibition of discrimination and the implementation of active measures to achieve gender equality do not always sit comfortably with each other and when in conflict within the legal system it seems easier to hold to the former than the latter. This is well illustrated in the case in which an ordinance which obliged the use of affirmative action to improve the rate of employment for the under-represented sex among Swedish university professors was considered by the European Court of Justice (C-407/98). The Court regarded the ordinance as discriminatory because it judged it to be coercive to the advantage of women; this outcome following the practice elaborated in several previous cases (C-450/93, C-409/95, C-158/97). This tension between radical active measures and conservative passive guarantees of equal treatment operates at both a national and international level, and is a huge challenge to be overcome if gender equality is ever to be obtained.

On the surface, Sweden lives up to the standards of the Convention of Elimination of All Forms of Discrimination Against Women (CEDAW) articulated in Article 2. The anti-discrimination main sub-objectives, along with the obligation for states to include the principle of the equality between the sexes in their constitutions or other legislation, have counterparts in the Swedish constitution. However, in contrast to

the CEDAW, the Swedish main constitutional principle, is still formally sex neutral. Moreover, in 2002 this principle (incorporated since 1976 in Chapter 1 Article 2 Regeringsformen) was absorbed into a general principle against discrimination on the grounds of sex, colour, national or ethnic origin, language or religious inheritance, disability, sexual orientation, age or any other personal characteristics. The result is that currently the only sex-specific constitutional principle is the prohibition of discrimination against men and women in Chapter 2 Article 16 Regeringsformen, with a linked principle legitimising active measures in order to promote gender equality. The latter is formulated as an exception from the general, formal, principle against the discrimination of women or men (Gunnarsson and Svensson 2009, 67-68).

The Committee on the Elimination of All Forms of Discrimination Against Women expressed its concern about the Article 16 principle and called for an inquiry into Swedish constitutional law with the commitment to introduce a substantive gender equality principle.<sup>4</sup> The issue also has been discussed in a government report analysing the constitution from a sex/gender perspective (SOU 2007:67), which became a section of a comprehensive government report on the constitution (SOU 2008:125, prop. 2009/10:80). Among several issues, it highlighted the need for an explicit substantive gender equality principle to be included in the constitution, and called for a discussion as to what a constitution built on gender equality would actually mean. Unfortunately, the only action taken in response to the 2008 report was to change the language of the constitution to one that is sex neutral. The other questions were not even discussed (SOU 2008:125, prop. 2009/10:80).

The criticism raised by The Committee on the Elimination of All Forms of Discrimination Against Women may suggest a problem with the Swedish constitution, but the absence of an explicit constitutional legal principle of substantive gender equality in accordance with the principle in TEU can also be seen as representing a tension between two different legal traditions. These traditions are: the liberal rights tradition focusing on anti-discrimination (visible in the first section of the Sex Equality Act), and the social democratic or communal tradition of the Nordic welfare state model, which focuses on structural inequalities (visible in the

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<sup>4</sup> [Hhttp://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.SWE.CO.7.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.SWE.CO.7.pdf)

second section of the Sex Equality Act) (Pylkkänen 2007, 2009, Svensson 2006). In the context of human rights the emphasis on personal autonomy and self-determination has constructed the notion of discrimination as an obstacle to equal opportunities. However, even though Sweden also recognises anti-discrimination as one method for achieving equal opportunities, its tradition of egalitarian social citizenship focuses more on social institutions and structures than on individual rights. In other words, the Swedish welfare state model demands equality of *outcome* rather than equality of opportunity. In the Nordic welfare context, equality between men and women has, according to Pylkkänen, been understood as a redistribution issue, whereas the 1990s' shift towards a framework of increasing human rights signifies an emphasis on recognition (Pylkkänen 2007). Liberal tendencies are growing in importance, partly at the cost of Nordic communal ideologies. However, it is also true that CEDAW promotes some substantive equality, which opens the way for pro-active positive measures, sanctions and monitoring (Pylkkänen 2009, 201-212).

The tensions between the two ideologies, the liberal and the communal, are even more obvious in the EU law framework, designed for welfare economies influenced by neo-liberalism (Pylkkänen 2009). Changes in the Nordic arena are related to both the global strengthening of the discourse of human rights and to the membership of the EU with its individual anti-discrimination law. The general gender-equality objective of the European Union and the mainstreaming principle (Article 8 TEU) are adjusted to the preambles of the internal market and constitute a formal approach to equal opportunities for individuals on the labour market (Carlson 2007).

EU law is implemented in Swedish law in a context in which redistributive policies, rather than anti-discrimination regulation, have probably had more effect on gender equality. European Union anti-discrimination laws<sup>5</sup> have been incorporated into the Discrimination Act (SFS 2008:567). Originally conceived of as a sex issue in the 1970s, discrimination now covers many more grounds. In total, six forms of discrimination are protected in the 2009 Discrimination Act, which consolidated seven former acts dealing with discrimination.

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<sup>5</sup> TEU (*Official Journal C 115 of 9 May 2008*) and the "Recast Directive" 2006/54/EC.

### **3.3. Active measures**

Active measures i.e. regulations with the explicit purpose of promoting gender equality, are known as ‘affirmative action’ in the US, and in a EU context are referred to as ‘preferential treatment’, ‘positive action’ or ‘positive discrimination’ (Svensson 2005, Gunnarsson and Svensson 2009, 63, 76). They are often understood as restricted to a situation where a less or equally qualified individual who belongs to an under-represented or otherwise disadvantaged group is given precedence over another individual who does not belong to this group. In Sweden, active measures cover preferential treatment (affirmative action and quotas), as well as parental leave insurance, joint custody, prohibition of purchase of sexual services, gross violations of a woman’s integrity, and quotas. Together they demonstrate how the law might be used as a tool to achieve gender equality in areas which are crucial in changing society in accordance with the structural understanding of gender equality as expressed through gender system theory. Specific measures can relate to almost all aspects of life, including employment, education, child-care, violence, sexuality, and the division of power in the spheres of politics and business.

#### *3.3.1. Affirmative action and quotas*

Affirmative action in an EU context means giving priority or advantages to a person in order to change an unequal situation, and so can be used only for as long as the situation is judged to be unequal (Lerwall 2001, 342). As such it provides an exception to the general, formal constitutional prohibition of discrimination. Already under the Sex Equality Act of 1980 provisions on affirmative action allowed employers to choose a person of the less represented sex with equal or almost equal merits over a person of the over-represented sex. This was seen as an objective criterion provided that it was in line with the overarching plan to achieve gender equality in the workplace (Bondestam 1999, Gunnarsson and Svensson 2009, 81).

Over the last few years affirmative action has been widely criticised in relation to employment contracts as well as in regards to educational admissions procedures, both in EU and in Sweden. Its use in employment contracts based on former Swedish legislation in the 1990s was restricted through the decision of the European Court of Justice, as mentioned previously (C-407/98). The aim of the progressive legislation in question was to increase the percentage of female professors in the universities,

though just one professor (out of 31) was appointed with the help of affirmative action (Jordansson 1999). Even though the ECJ established the legality of the possibility of using affirmative action, it rejected the *obligation* to do so. In the EU as well as in Sweden there is a seeming reluctance to use this means (Gunnarsson and Svensson 2009, 198).

In the Swedish context, quotas for equal representation in institutions, such as corporate boards and public authorities, have mostly been used in political rhetoric and not as a legislative measure. The political parties have been very keen to propose (almost) as many women as men for election, and the level of representation of women in Swedish politics is high compared to other countries. In other areas, it has been more controversial. For example, quotas have been used in the education system, but the possibility of using quotas or affirmative action in the admissions process for higher education has been closed since 1<sup>st</sup> of August 2010.<sup>6</sup> The most controversial issue today however, is the use of quotas in the context of the gender composition of corporate boards. Norway has enacted such legislation, but Sweden has not. A proposition to this effect was put forward in 2006 but it was not processed further (Ds 2006:11). However, the issue is still being debated.

### *3.3.2. Individualisation of parental leave insurance*

Equal sharing of parental responsibility was one of the four sub-objectives of gender equality policy. Parental leave insurance gives both parents the same legal right to paid parental leave. When the sex neutral reform was introduced in the 1970s, the goal was to improve gender equality, based on the belief that both parents should wish to combine work and care of small children. Furthermore, the ideology of self-supporting individuals and benefits tied to earned income also requires parents to work (SOU 1947:46). This conception of parents as free agents, equal both in regards to the obligation to contribute support, care and money to the family and in regards their activity on the labour market turned out to be at odds with reality. Women have been claiming the right to parental leave much more often than men (TemaNord 2010:595). So in order to encourage fathers to take more responsibility for the care of their small children a new regulation was introduced in 1995. This reform gave, in a sex neutral fashion, mothers and fathers 30 days each of parental leave, which could

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<sup>6</sup> Higher Education Ordinance SFS 1993:100 chapter 7 section 12.

not be transferred to the other parent. By increasing fathers' responsibilities for caring for their children, the reform was expected to reduce the "family obstacles" to women's participation in the labour market, whilst measures to increase father's involvement in the upbringing and care of their children were declared to be a state responsibility (Prop. 1993/94:147, pp. 17 and 66-70). Furthermore, since 2002 the number of non-transferable parental leave days for each parent has been increased to 60 (Prop. 2001/02:44). This individualisation has resulted in men taking up a greater part of the total amount, however not much more than the non-transferable part. Men took 12,4 % of the total parental leave days in 2000, and 22,3 % of the days in 2009 (Official statistics from Försäkringskassan, 2009).

### *3.3.3. Joint custody*

Even if fathers take more part in the care of children today than they have previously, women still bear the major responsibility. Yet, despite this fact, the recognition of shared legal responsibility in the form of joint custody is considered a matter of course. Joint custody of a child in the circumstance of parental separation was introduced as the main rule in 1998, even if one of the parents objected. The explicit reason is that it is in the best interest of the child, but some argue that it is rather in the interest of the parent who does not live with the child, who most often is the father. There is therefore a tension between the gender equality ideology, according to which the parents are supposed to share responsibility for the child, and the actual reality according to which children live with their mothers more than with their fathers. The official statistics from 2010, record single mothers as living with their children are at least as twice as often as single fathers; and the more children, the bigger this difference (official statistics, [www.scb.se](http://www.scb.se)). In addition, the wish to promote the father's concern and responsibility for the children in line with gender equality policy has sometimes resulted in children being forced to live with their fathers, regardless of whether they have been or continue to be violent towards them and/or the mother. This tendency of the courts to grant joint custody in cases where it was not obviously in the best interests of the child, led to a change in the Parents Act in 2006, whereby the parent's willingness to cooperate was supposed to be considered and it became possible not to grant joint custody. However, the child's right to access to the parent not living with her/him, legally formulated as a right for

the parent not living with the child, was also made conditional at the same time (Gunnarsson and Svensson 2009, 86-89).

#### *3.3.4. Prohibition of purchase of sexual services*

The purchasing of sexual services does not occur as frequently in Sweden as in many other countries in the world. According to the preparatory works for the prohibition of the purchase of sexual services, this is due to several factors, notably the general welfare system, the progressive gender equality policy, and social measures directed at the sex market (Prop. 1997/98:55, 100-104).

The criminalisation of the purchaser of sexual services was unique to Sweden in 1999, and comprised a truly representative reform for the Swedish model. The underlying aim of the legislation was normative, namely that it should be socially unacceptable to buy sex, so that prohibiting such purchases would lead to the elimination, or at least, a significant reduction, in prostitution. With prostitution defined as an expression of an unequal relationship between men and women, as Åsa Yttergren (in this collection) shows, the reasoning was influenced both by gender equality and welfare policies. Furthermore, this reform in Sweden had an influence over the debate in the other Nordic countries, with reforms criminalizing the purchaser being subsequently enacted in Finland in 2006, and in Norway and Iceland in 2009 (Gunnarsson and Svensson 2009, 83). The effects of the legislation from 1999-2008 were evaluated in 2010 (SOU 2010:49) and it was found to have had effects in line with its purpose.

#### *3.3.5. Gross violations of a woman's integrity*

In Sweden the self-supporting 'ideology' embodied in the workfare model has been important for the independence of women, even if the question of male partner violence became an issue relatively late on. With several research projects in the 1980s having revealed the special character of violence within relationships, a government report was commissioned, which resulted in the enacting of a new crime, *Gross Violations of a Woman's Integrity*, in 1999. The crime is radical in two ways. First, the focus is not on separate, detached actions, but on the process, which in gender violence research is called the 'process of normalisation of violence'. Second, the crime is sex specific and so quite unusual and, not surprisingly, this was widely questioned (Gunnarsson and Svensson 2009, 84). Since the mid-1980s several

attempts had been made to adjust the crime of assault to better fit the pattern of male partner violence. Yet the judiciary system seems to have been reluctant to pursue these changes.

Social policies and welfare-state structures in Nordic states have supported women's efforts to gain control over their physical well-being and have enabled some women to leave violent partners (Niemi-Kiesiläinen 2001). However, violence against women and children has not been defined as an important integrity issue in the Swedish welfare discourse. It has been suggested that this 'hiding' of the integrity aspect might be a result of a collectivism that manages rather well to promote wide overall distribution of resources, but lacks the ability to acknowledge and deal with social differences such as gender, age and ethnicity (Pringle 2007). The Nordic welfare state has also been described on the one hand as promoting women's rights as workers and mothers, while on the other hand being slow to react to rights and violations that concern women's human dignity and personal and bodily integrity (Elman 1996; Lister 2009; Pylkkänen 2009).

#### **4. Reflections on recent measures and tendencies**

Gender-equality policies have been criticised in recent years for being inefficient and not radical enough. With some areas of society not even close to achieving gender equality, the main tool employed to this end, the gender mainstreaming strategy, has been condemned as inadequate. The latest government report on gender equality policies up to 2005 described this policy field to be high ambitions but poorly implemented (SOU 2005:66). The stereotypes persisting in the education system, ongoing wage discrimination, men's violence against women, and the situation of single mothers, were all highlighted as being of special concern. This situation was confirmed in an evaluation of the 2010 budget by the non-government organisation Sveriges Kvinnolobby (Swedish Women's Lobby Group, 2010). Despite economic instruments designed to enforce gender equality policies being introduced the results were found to be un-impressive. The main criticism was that the focus had been on temporary and often small projects and not on the long-term structural conditions capable of changing the balance of power in society. What is more, the projects had been mainly directed at girls and women, and as such have implicitly posited these groups as the *locus* of the problem.



In reflecting upon the Swedish welfare state's goals for gender policy, we can observe that in 2011 they continue to be based on the objective formulated in the 1990s, namely that women and men should have the same power to form society and direct their own lives. Yet it can also be said that when it comes to the specific measures taken by the Government, the question of shared power has in many ways been transformed into individual behaviour, attitudes and preferences. So although the primary objective remains, the four sub-objectives, those concerning active citizenship, economic independence, domestic and care work, and men's violence against women, have been changed to less obliging focus issues.

Our second reflection concerns the legal changes in discrimination law. It seems to us that there is a risk that gender equality will disappear in the process of being mainstreamed. The new Discrimination Act for instance, gathers together all grounds for discrimination, and some might say that this is an example of gender mainstreaming. However, because here sex is just one ground for discrimination, one clearly separated from the others, it is in danger of becoming less important when the other grounds are focused on, and thereby potentially side-lined rather than mainstreamed. Gathering the different grounds for discrimination under one act could offer a good opportunity to deal with the question of intersectionality. Yet, this issue was not discussed in the preparatory works for the Discrimination Act, even though it was suggested by another government commission dealing with structural discrimination of ethnicity and religion (SOU 2006:22, 138).

The main purpose of gathering all grounds under one Discrimination Act was to achieve the same protection and the same active measures for all forms of discrimination. The way to equalize across these grounds with the greatest positive impact was to bring the protection and active measures in line with whichever was the most comprehensive. However, in this process there was some reduction of the ambition to promote gender equality through active measures. For example, the obligation for employers with more than 10 employees to make an annual plan for systematic, goal-oriented gender mainstreaming work at the workplace, which includes a wage survey to facilitate planning for non-discriminatory wages, has, since 2009, been reduced to once every three years and is now only applicable for

employers with more than 25 employees (13 §). Yet one reason for this relaxation given by the Minister for Gender Equality was the widespread failure of the employers to meet the previous obligations. Somewhat ironically, although the measures have been watered down, a 2010 government report about active measures for working life and education (SOU 2010:7) stated that they should be retained and even strengthened, despite it being difficult to find evidence of positive effects.

A third reflection concerns the general reluctance to take legal measures in relation to the unequal distribution of power and influence, whether this be political power or power in the market. The Global Gender Gap Index, published by The World Economic Forum since 2006, revealed that Sweden had gradually slipped from the top position it held in 2006 and 2007 to be ranked 4<sup>th</sup> by 2011.<sup>7</sup> It is actually the political empowerment factor which is responsible for Sweden's high ranking; the rate at which women rise to enterprise leadership, is rather less impressive.<sup>8</sup> Among the seven highest ranked countries in total, Sweden is the second *worst* when it comes to the rate at which women rise to enterprise leadership (after South Africa). And despite intense debate about this issue the government continues to understand the problem as one to be solved by 'begging' enterprises to act differently. Similarly, the governmental report regarding gender composition of corporate boards (Ds 2006:11), which proposed a legal regulation such as the quota system adopted in 2003 in Norway (Teigen 2011), was rejected despite the fact that the changes in Norway following the new regulation have been described as remarkable (Corporate Gender Gap Report 2010, 5 and 118).

Our forth point is that although there appears to have been a growing focus on gender equality at work in recent years, a closer look reveals the measures taken in practice to have been rather modest. The earlier engagement with structural discriminatory practises has been largely replaced by individual choices and strategies aimed at promoting a less gender-divided working life (skr. 2008/09:198). This individual focus also prevailed in the 1970s, but was left to one side at the beginning of the

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<sup>7</sup> The main competitors are the other Nordic countries and together they hold the 4 top-positions (in 2011 Iceland, Finland, Norway, Sweden with Denmark as the 7<sup>th</sup>. New Zealand and South Africa are ranked between Sweden and Denmark.

<sup>8</sup> This factor is not included in the overall ranking but is an additional factor.

1990s when gender system theory was adopted as the basis for gender-equality policies (Prop. 1993/94:147). Now once again, girls and boys, women and men, are being discouraged from making gender stereotypical choices regarding their own education and their professional trajectories. Similarly, this individual focus can be seen in a reform enforced in 2007, where a tax credit for the purchase of so-called household-related services was partly aimed at facilitating women's participation in paid work (Prop. 2009/10:1, Appendix 5). The reform was not driven by a political ambition for structural change, i.e. by making men take a greater responsibility for the unpaid work, but rather, was more about a normative shift designed to help individual women achieve a good work-life balance.

The fifth example concerns parental leave, which could perhaps provide a powerful means for changing the uneven distribution of care work between the parents. However, this is highly controversial, for any suggestion to individualise parental leave is understood by many to be a violation of the free will of the families to decide what is best for them. And even the rhetoric surrounding the existing scheme is interesting in its representation. Thus, the two months that cannot be transferred from one parent to the other, were called 'father's months' when the change was introduced, despite the law itself being sex neutral. The fact is that the term 'father's months' is actually quite accurate, for fathers tend to take 'their' two months and the mothers, the rest. This suggests that the only way to effectively address the unequal division of care-work would be to increase the father's contribution by making more months non-transferable.

Although fathers do not seem to be keen to share childcare, when it comes to the issue of custody, a contrasting picture emerges. Since 1998 shared custody has been the main rule in most cases after a separation, and seems to include the idea that the child is supposed to live with both parents, or at least stay with them as equally as possible. The situation existing before a separation is very often deemed to be of no relevance to the decision. Father's groups have successfully influenced the legislation process in order to be able to share formal custody of the children after a separation. So the question of sharing practical custody or care during the relationship is obviously not as important or relevant, either in the political debate or in the law reform. And in the application of the law, the norm of shared access is so strong that

the situation before the separation is not recognised except in exceptional cases. Considering the data Lena Wennberg presents in her article in this collection, which points out that most single parents with the everyday responsibility for the children are mothers, one can see how the political discourse renders mother's care work invisible and of no legal relevance.

Our final observation concerns men's violence against women, and prostitution. This is probably the gender equality policy issue that has been most on the agenda in recent years. According to the Swedish National Council for Crime Prevention the political ambitions are high when it comes to putting an end to men's violence against women (BRÅ Nr 4/2010). As well as the Action Plan for Eliminating Men's Violence (skr. 2007/08:39), there has also been the Action Plan for Eliminating Prostitution and Trafficking for Sexual Purposes (skr. 2007/08:167), with the latter having a very distinct focus on individuals involved in prostitution and trafficking. The demand for prostitution and trafficking for sexual purposes is mentioned in one sentence, and even though it is recognised as the main reason for both (skr. 2007/08:167, 8), the measures in the action plan focus solely on the protection and support of the vulnerable individual (skr. 2007/08:167, 1). Clearly, this approach contradicts the preceding policies directed at the criminalisation of the purchase of sexual services, where a strong policy was expected to severely reduce demand as an important progression for both the individual and the society. Here, Swedish policy discourses differ from the standpoints of both radical and liberal feminism. Jenny Westerstrand has described the Swedish position as a contextual approach (Westerstrand 2008), where the question of free will and the distinction between forced prostitution and non-forced prostitution have no relevance to the criminalisation of the purchase. Instead, the focus is on the demand and the view that it is unacceptable to both society and individuals that men can buy sexual services from women and children (Westerstrand 2008, SOU 2010:49, 59).

In an international setting, the contextual approach seems to be made invisible in favour of the dichotomy between the radical 'victim-focused' approach and the liberal 'sex-worker' approach. The 'sex-worker' approach, represented in the UN by the special rapporteur Radhika Coomaraswamy, distinguishes between forced prostitution and sex work. In the Swedish context, there is no such distinction

because the contextual approach focuses on the demand and the buyer and not on whether or not the 'seller' is forced. The Swedish legislation has been widely questioned, but the recent evaluation of the law found that it does have an effect on reducing the level of demand (SOU 2010:49).

We also find it interesting to notice that some recent measures and tendencies in EU, such as focus on the need for women to work outside the home and the need for childcare, are political questions that were raised in Sweden years ago. Today, considerable attention is paid to women's relatively poor health, the possible connection between this and the double work burden they still bear, and the decreasing quality of childcare in groups that are growing significantly in size. Yet there remains a powerful desire amongst many young women to enter motherhood and create the 'perfect home'. The question therefore arises as to whether these concerns can be best addressed through legal regulations that aim to achieve gender equality based on individual responsibility.

Gender stereotypes are discussed in different contexts. Sometimes they are based directly on article 5 in CEDAW, according to which in which all states parties shall take all appropriate measures to modify the social and cultural patterns of the conduct of men and women, and do so with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Gender stereotypes in advertising have been raised in EU Parliament<sup>9</sup> as well as in Sweden in Sweden since the 1970s. However it remains a controversial issue. Several law reforms have been proposed, the latest in 2008 (SOU 2008:5), but none has been adopted.

At the outset we mentioned the self-image of the Swedish state as "a good and equality producing state". Unfortunately this self-image has been partially eroded in recent years, whilst several areas of society, such as private corporate boards, remain devoid of gender equality norms. What is worse, to obtain full access to gender equality one has to fit into the standards of workfare, yet this leaves certain social categories of women, partly or fully, outside the general concept of gender equality.

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If one contrasts the type of normative model for gender equality that Swedish policies for gender mainstreaming have been implementing in both soft law instruments and law, with the problems expressed in the other articles in this volume, a pattern of exclusive practices becomes visible.

## References

### Cases

C-450/93 Kalanke v. Freie Hansestadt Bremen

C-409/95 Marschall v. Land Nordrhein-Westfalen

C-158/97 Badeck and others

C-407/98 Abrahamsson and Anderson v. Fogelqvist

### Official Documents

BRÅ Rapport nr 4/2010, *Mäns våld mot kvinnor, hedersrelaterat våld och förtryck samt våld i samkönade relationer*.

Ds 2001:64 *Ändrad ordning – Strategisk utveckling för jämställdhet*.

Näringsdepartementet.

Ds 2006:11 *Könsfördelningen i bolagsstyrelser* (Gender composition of corporate boards).

Official statistics from Försäkringskassan, 2009.

Prop. 1993/94: 147 *Jämställdhetspolitiken: Delad makt, delat ansvar* (Shared power shared responsibility).

Prop. 2009/10:1 *Regeringens budget för 2010, bilaga om ekonomisk jämställdhet* (Government's Budget Proposal 2010. Appendix about economic gender equality).

Prop. 2005/06:155 *Jämställdhetspolitiska målet – samma makt att forma samhället och sina egna liv* (The goals of gender equality politics).

Prop. 2009/10:80 *En reformerad grundlag* (A reformed constitution).

Skatteverket (Rapport 2007:2), *Enklare skatter för ökad jämställdhet?*

*Beskattningen och de jämställdhetspolitiska målen*. (Report from Inland Revenue about whether simplifications of tax regulations would increase gender equality).

Skr. 2007/08:39 Action plan for combating men's violence against women, violence and oppression in the name of honour and violence in same-sex relationships.

Skr. 2007/08:167 Action plan for combating prostitution and trafficking for sexual purposes

Skr. 2008/09:198 Action Plan for a Gender Equal Working Life

Skr. 2011/12:3 *Jämställdhetspolitikens inriktning* (Direction for Gender Equality Policy)

SOU 1947:46 *Betänkande angående familjeliv och hemarbete. Avgiven av utredningen för hem- och familjefrågor* (Governments Commission on family life and domestic work).

SOU 1990:44 *Demokrati och makt i Sverige* (Democracy and Power in Sweden).

SOU 2000:83 *Two of a Kind?* (Report from the Governments Commission on the Balance Sheet for Welfare of the 1990s).

SOU 2005:66 *Makt att forma samhället och sitt eget liv – jämställdhetspolitiken mot nya mål. Slutbetänkande från jämställdhetspolitiska utredningen* (Governments Commission on Gender Equality).

SOU 2006:22 *En sammanhållen diskrimineringslagstiftning. Slutbetänkande av Diskrimineringskommittén* (Report from the Governments Commission on Discrimination Law).

SOU 2007:67 *Regeringsformen ur ett könsperspektiv* (An analysis of the constitution out of a sex/gender perspective?).

SOU 2008:5 *Könsdiskriminerande reklam – kränkande utformning av kommersiella meddelanden. Slutbetänkande från Utredningen om könsdiskriminerande reklam* (The Governments Commission on sex discrimination in commercial advertising).

SOU 2008:125 *En reformerad grundlag* (A reformed constitution).

SOU 2010:7 *Utredningen om aktiva åtgärder inom diskrimineringsområden* (Government report on active measures in the areas of discrimination).

SOU 2010:49 *Förbud mot köp av sexuell tjänst. En utvärdering 1999-2008* (Prohibition of the purchase of sexual services – An inquiry 1999-2008).

World Economic Forum, Corporate Gender Gap Report 2010

World Economic Forum, The global gender gap index 2006-2011

## Literature

Bergquist, C., Borchorst, A., Christensen, A-D., Ramstedt-Silén, V., Raaum, N. C. and Styrkardóttir, A. (eds.) (1999), *Equal Democracies? Gender and politics in the Nordic countries*, Scandinavian University Press, Oslo.

Bondestam, Fredrik, (1999), *Färre tjänster, fler kvinnor? En undersökning av*

*Uppsala universitets försöksverksamhet med positiv särbehandling.*

Jämställdhetskommittén, Uppsala universitet.

Bradley, D. (1996), Family Law and Political Culture. *Scandinavian laws in comparative perspective*, Sweet & Maxwell, London.

Carlson, Laura (2007), *Searching for Equality. Sex discrimination, Parental Leave and the Swedish Model with Comparisons to EU, UK and US Law*. Iustus Förlag AB, Uppsala.

Elman, Amy (1996), *Sexual Subordination and State Intervention. Comparing Sweden and the United States*. Providence: Berghahn Books.

Gunnarsson, Åsa, Stattin, Chris, (2001), 'Jämställdhetsnormen i skatte- och socialrätten'. In Monica Burman and Åsa Gunnarsson (eds), *Familjeföreställningar. Om familjens betydelse inom juridik, ekonomi och forskning*, Iustus, Uppsala.

Gunnarsson, Åsa, Burman, Monica, Wennberg, Lena (2004), 'Economic Dependence and Self-Support in Family, Tax and Social Law'. In Svensson, Eva-Maria, Pylkkänen, Anu and Niemi-Kiesiläinen, Johanna. (eds) *Nordic Equality at a Crossroads. Feminist legal studies coping with difference* (Aldershot: Ashgate).

Gunnarsson, Åsa (2007), Gender Equality and the Diversity of Rights and Obligations. In Gunnarsson, Åsa, Svensson, Eva-Maria and Davies, Margaret (eds.) *Exploring the Limits of Law. Swedish Feminisms and the Challenge to Pessimism*. (Aldershot: Ashgate).

Gunnarsson, Åsa, Svensson, Eva-Maria (2009), *Genusrättsvetenskap* (Lund: Studentlitteratur).

Hernes, Helga (1987), The Welfare State Citizenship of Scandinavian Women. In Hernes, Helga (ed.), *Welfare State and Women Power. Essays in state Feminism*. Oslo.

Jordansson, Birgitta (1999), *Jämställdhetspolitikens villkor : politiska intentioners möten med den akademiska världen : exemplet "Thamprofessorerna"*. Nationella sekretariatet för genusforskning, Rapport 1/99.

Kautto, M., Fritzell, J., Hvinden, Björn, Kvist, J., Uusitalo, H. (2001) (eds), *Nordic Welfare States in the European Context* (London: Routledge).

Lerwall, Lotta (2001), *Könsdiskriminering. En analys av nationell och internationell rätt*, Uppsala, Iustus förlag.

Lister, Ruth (2009), "A Nordic Nirvana? Gender, citizenship, and social justice in the Nordic Welfare State". In: Social Politics: International Studies in Gender, State &



Society Online, Oxford University Press.

Mannelqvist, Ruth (2007), Social Insurance Law – The Core of Swedish Welfare Law. In Gunnarsson, Åsa, Svensson, Eva-Maria and Davies, Margaret (eds.) *Exploring the Limits of Law. Swedish Feminisms and the Challenge to Pessimism*. (Aldershot: Ashgate).

Niemi- Kiesiläinen, Johanna, (2001), "Criminal Law or Social Policy as Protection Against Violence". In Nousiainen, Kevät, Gunnarsson, Åsa, Lundström, Karin, Niemi- Kiesiläinen, Johanna, (Eds.), *Responsible Selves. Women in the Nordic legal culture*. Aldershot: Ashgate Publishing Company.

Pringle, Keith. (2007) 'Försummade frågor – etnicitet, kön och ålder' [Neglected issues – ethnicity, gender and age]. In Eriksson, Maria. (Ed.) *Barn som upplever våld*. Nordisk forskning och praktik. Stockholm: Gothia Förlag, pp. 236-253.

Pylkkänen, Anu (2007), Transformation of the Nordic model: From welfare politics to Gendered Rights, CJWL/RFD, Vol. 19, p. 335-354.

Pylkkänen, Anu (2009), *Trapped in Equality. Women as Legal Persons in the Modernisation of Finnish Law*. Jyväskylä.

Sainsbury Diane (1996), *Gender, Equality, and Welfare States* (Cambridge: Cambridge University Press).

Sainsbury, Diane (1999) (ed), *Gender and Welfare State Regimes* (Oxford: Oxford University Press).

Svensson, Eva-Maria (2001), 'Sex Equality: Changes in Politics, Jurisprudence and Feminist Legal Studies' in Nousiainen, Kevät, Gunnarsson, Åsa, Lundström, Karin and Niemi-Kiesiläinen, Johanna. (eds), *Responsible Selves. Women in the Nordic Legal Culture* (Aldershot: Ashgate Publishing).

Svensson, Eva-Maria (2005), 'Ökad målstyrning och ny kunskap inom jämställdhetsområdet' in Rothstein, Bo, Vahlne Westerhäll, Lotta (eds.), *Bortom den starka statens politik*, (Stockholm: SNS Förlag).

Svensson, Eva-Maria (2006), *Contemporary challenges in Nordic gender equality policy and law*, Equality and Diversity in Europe, International Interdisciplinary Conference, Helsinki 12 – 13 January 2006,

<http://www.helsinki.fi/oik/tdk/rpol/naisoikeus/tulevat%20tapahtumat/Programme.htm>.

Swedish Women's Lobby Group, 2010 Sveriges Kvinnolobby, *På scenen. En feministisk genomgång av budgetpropositionen 2010*.

Teigen, Mari, Gender Quotas on Corporate Boards (2011). In Kirsti Niskanen (ed.), *Gender and Power in the Nordic Countries – with focus on politics and business*, NIKK 2011:1.

TemaNord 2010:595, *Föräldraledighet, omsorgspolitik och jämställdhet i Norden*, Ingólfur V. Gíslason och Guðný Björk Eydal (Eds.). Nordiska ministerrådet, Kailow Express ApS, Copenhagen.

Wennberg, Lena (2008), *Social Security for Solo Mothers in Swedish and EU law. On the constructions of normality and the boundaries of social citizenship* (Uppsala: Iustus förlag).

Westerstrand, Jenny (2008), *Mellan mäns händer Kvinnors rättssubjektivitet, internationell rätt och diskurser om prostitution och trafficking* (Uppsala: Uppsala universitet).