

EQUALITY POLICY IN COMPARATIVE APPROACH

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Credit number: 2
Office hours: TBA; Nador u.11, room 317, 318
Course level: primarily M.A. but Ph.D. as well (by relying on the recommended readings and more advanced assignments)

COURSE OBJECTIVES AND OVERVIEW

The main aim of this course is to familiarize students with how the abstract legal principle of equality is turned into policy and practice in Europe and beyond. Starting from what equality means as a basic legal principle and right in modern democratic systems, the course will move on to critically analyze the policy visions, policy approaches and policy tools used to put equality into practice. The literature to which the course refers will be interdisciplinary in nature with some texts of political philosophy, and legal theory, but mainly political science and policy theory writings.

The course will look at all grounds of inequality but especially at race and ethnicity, gender and disability, and devote special attention to the intersection between different inequality axes. The course will focus primarily on policy practice in Europe and North America. Students will be encouraged to bring documents, issues and cases from the policy environments with which they are most familiar.

The structure of the course will be fourfold, with each section being tackled over several classes.

- I. In a basic conceptual overview we will discuss the theoretical foundations of concepts such as equality, equality of opportunity, equality of results and procedural equality.
- II. Readings will explore the equal treatment, the equal opportunity and preferential treatment, and finally the mainstreaming approaches, and also the relations among these approaches. Specific attention will be paid to the broadening of the concept of equality from the narrow formal equality approach characteristic for the post WWII years to an increasingly accepted notion of substantive equality. Our main purpose here will be to shed light on some of the theoretical discussions behind these approaches, but also to look at how they translate in practical policy measures and tools and what are the policy dilemmas that they generate.
- III. Readings and discussions will look at some of the specificities of the three main grounds of inequality discussed in the course: race and ethnicity; gender and disability and present some contested and specific policy issues in relation to each. We will also

specifically address the problem of intersectionality between inequality grounds and the specific policy issues brought up by it.

- IV. Topics in this section will look at the main policy-making levels on which equality policy is conceptualized and implemented, and the actors instrumental in this process: international and regional intergovernmental ones, state level and at non-governmental ones, both national and transnational. Our purpose here is to discuss specific equality related policy processes including the importance of transnational diffusion of norms, the role of intergovernmental, transnational and national actors in this process, but also the role of national enforcement, regulatory and implementation agencies specific to dealing with equality issues.

TEACHING METHOD AND LEARNING OUTCOMES

The course will meet once a week and work in a seminar format. After the discussion of the required readings in which all students are expected to take part, presentation(s) will follow that reveal the challenges that policy actions face in transnational and domestic context in regard to the problems/themes of the specific classes. Presentations thus will introduce key legislative devices, strategies, institutional mechanisms, etc. that beyond some tangible policy lessons help explain, contest, or specify the main arguments of the required readings. The assignment for presentation will be either individual or small group based depending on the size of the class.

The course will sensitize students interested in larger and specific issues of governance, politics, and public policy to challenges of social diversity, cleavages and distinctions pertinent to most developed and new democracies and societies in transformations. Due to the nature of the topic, the course will invite students to develop their skills of critical thinking by understanding major theoretical and moral debates that shape considerations on the principles of social equality and justice. The teaching method will ensure that students have to regularly synthesize different pieces of knowledge (discussion of the core readings), to critically evaluate the differences and overlaps of arguments (presentations), to do targeted small inquiries for relevant policy cases (voluntary presentations and term paper), and to develop their academic writing skills (written support to the presentation and term paper).

ASSIGNMENTS AND ASSESSMENT

(1) All enrolled students are expected to carefully consult with the required readings prior to classes, ideally by taking notes that help the participation in the discussions. Active participation in the seminar discussions is expected from all students. Diligent completion of the presentation assignment (see below) does not exempt anyone from this general assignment. Seminars will be discussion-based, and their success will largely depend on participants' contributions to the debate.

Weight to the grade: 30%

(2) Students will sign up to two seminar presentations during the semester. These presentations shall be based on independent inquiry pursued by students on concrete international or domestic policy measures (laws, green papers, strategies, institutional mechanisms, etc.). The inquiry

offers a critical reading of the selected policy measure in the light of the assigned readings to which guidance will be provided by the instructors. The presenters will be expected to sum up the results of their inquiry in 10 minutes maximum. The presentations should be supported by a maximum two-page hand-out distributed to all members of the class. An outline of the presentation/hand-out should be submitted to the course instructors (email) 3 days prior to the class so that necessary adjustments could be discussed.

Weight to the grade: 30%

(3) Students will have to take part in a *mid-term* and a *final exam* (both of them take-home). Instructors will offer 3-4 topics from which each student chooses and discusses one in writing (1,200 words per paper). Detailed instructions will be given with the exam questions. It is allowed to use all notes, readings, etc. Timing will be announced at the beginning of the semester through coordination with other instructors of the Department of Public Policy.

Those students, who are going to write their MA theses in a topic that is directly related to equality policies, may choose to write a term paper instead of the two exams. The paper (3,000 words) should follow either the genre of an academic paper or that of a policy study. Further instructions on these genres will be provided upon individual request. A two-page outline of the term paper should be submitted by February 20th. Preliminary discussion with the course instructors is encouraged.

Both take-home exams and term papers should respect the following rules:

Please note that late papers submitted after the deadline will be marked down by half of a letter grade per day. The papers should be double- or 1,5 spaced, appropriately referenced, and provide a bibliography of sources consulted. Please include the word count on the title page. All written assignments should be produced exclusively by the student who submits the work. Any text reproduction which is not clearly identified and attributed will have to be considered as plagiarism (see related provisions and guidance in the Student Handbook and other relevant University policies and regulations).

Weight to the grade: 40%

AUDIT STUDENTS

Audit students are expected to do all required readings in the class and to actively participate in the class discussions and additionally to make at least one seminar presentation.

TOPICS AND READINGS

I. Introduction

Readings and discussions will overview the theoretical foundations of the equality concept and their roots in social, legal, and political theory.

1. First Week: Introduction - Basic Concepts

The overall aim of the class will be to introduce and define basic concepts of equality theory and policy.

Readings

Sandra Fredman (2002) "Equality: Concepts and Controversies" in *Discrimination Law*. Oxford UP. Pp. 1-26

Recommended

Michel Rosenfeld (1991) "Definition of key concepts" in *Affirmative Action and Justice*: Yale University Press: 11-42.

II. Visions of Equality

This section of the class will discuss the three different general approaches to equality and the policy tools related to them. The three approaches are: equal treatment, equal opportunities and positive action for disadvantaged groups and, third, mainstreaming equality.

2. Second Week: Equal Treatment – Anti-discrimination

This week we will discuss the idea of formal, procedural equality, and the principle of non-discrimination. Legal concepts of direct and indirect discrimination will also be introduced. The discussion will be geared towards understanding how formal procedural approaches to inequality prove to be insufficient in addressing the deeply rooted social problem of inequality.

Readings

Sandra Fredman (2002) "Legal concepts: Direct, Indirect Discrimination, and Beyond" in *Discrimination Law*. Oxford UP. Pp. 92-116

Paul Brest (1976) The Supreme Court 1975 Term. Forward: In Defense of the Antidiscrimination Principle, 90 *Harvard Law Review* 1-55.

Recommended

Andrew Koppelman (1996) "Process Based Theories" in *Antidiscrimination Law and Social Equality*. Yale University Press New Haven, London. Pp. 13-57

Presentations: critical reading of domestic anti-discrimination laws

3. Third week: Equal Opportunity and Positive Action

This week we will deal with substantive approaches to equality, from substantive equality of opportunity to result-based approaches to equality and the way they relate to procedural approaches to equality, discussed during the previous week. We will introduce the distinction between individual models of justice and group models of justice.

We will explore possible policy responses that come under this approach from targeted equal opportunity programs to rigid affirmative action programs, and discuss some debates revolving around them

Readings

Sandra Fredman (2002) “Beyond Indirect Discrimination” and “Symmetry and Substance: Reverse Discrimination” in *Discrimination Law*. Oxford UP. Pp. 121-160

Colm O’Cinneide (2006) ‘Positive Action and the Limits of the Law’ in *Maastricht Journal of European and Comparative Law*. Vol. 13/3. Pp. 351-365.

Thomas Nagel (1977) “Introduction” in Cohen, Nagel, Scanlon eds. *Equality and Preferential Treatment*. Princeton UP. Princeton, New Jersey. Pp. VII-XIV.

Recommended

Andrew Koppelman (1996) “Result-based Theories” *Antidiscrimination Law and Social Equality*. Yale University Press New Haven, London. Pp. 57-115

Ronald Dworkin (2005) “Affirmative Action: Does It Work?” and “Affirmative Action: Is It Fair?” in *Sovereign Virtue. The Theory and Practice of Equality*. Harvard UP. Pp.386-427

Christopher McCrudden (1982) “Institutional Discrimination”, *Oxford Journal of Legal Studies*, Vol. 2, No. 3. Pp. 303-367.

Annette Borchorst (1999) “Gender Equality law” in Christina Bergquist et. al. eds. *Equal Democracies*. Skandinavian U.P. Pp. 190-208

Presentations: legal provisions for affirmative action; affirmative action based policy programs and impact assessments

4. Fourth Week: Transformation – Mainstreaming equality

Mainstreaming, the most novel approach to equality will be discussed, which purports to transgress both the logic of the equal treatment and of the positive action approach, by suggesting a thorough cultural transformation of the society. The discussion in the class will address the relationship and innovation of the mainstreaming approach as compared to the other visions of equality and also will discuss some of the contestation, theoretical and practical alike, around the concept and its transposition into policy.

Readings

Teresa Rees (1998) *Mainstreaming Equality in the European Union: Education, Training and Labour Market Policies*, London: Routledge, Chapter 3 “Conceptualising Equal Opportunities” (p.26-49) and Chapter 10 “Mainstreaming Equality” (p. 188-194)

Andrew Koppelman (1996) *Antidiscrimination Law and Social Equality* Yale University Press New Haven, London. Introductory chapter. Pp. 1-13.

Recommended

- Council of Europe “Gender mainstreaming. Conceptual framework, methodology and presentation of good practices.” Final report of Activities of the Group of Specialists on Mainstreaming (EG-S-MS). Strasbourg, May 1998
- Sylvia Walby (2005) “Gender Mainstreaming: Productive Tensions in Theory and Practice” *Social Politics: International Studies in Gender, State and Society*. Volume 12, Number 3, Fall, pp. 321-34
- EC Disability High Level Group Position Paper “Disability mainstreaming in the new streamlined European social protection and inclusion processes”
http://ec.europa.eu/employment_social/index/good_practis_en.pdf
- Carol Miller and Bill Albert (2005) Mainstreaming disability in development: Lessons from gender mainstreaming. http://www.disabilitykar.net/docs/gender_summary.doc

Presentations: international or domestic mainstreaming strategies, legal provisions and policy mechanisms; textbooks or instructional materials or policy makers

5. Fifth Week: Equality of what? Groups and categories

Having seen the possible theoretical and policy approaches to equality, this class will discuss a crosscutting theme: what is the scope of equality policy, what do the categories used in equality policy have in common? Is equality policy aimed at individuals or groups? What are the specific groups whose members should be protected? What criteria define such groups and their members? Can we justify protection for traditional equality grounds such as ethnicity or gender, while neglecting poverty or class?

Readings

- Sandra Fredman (2002) “The Scope of Discrimination Law: Grounds of Discrimination” in *Discrimination Law*. Oxford UP. Pp. 66-82
- Sandra Fredman, (2007) 'Recognition or Redistribution: Reconciling Inequalities' *South African Journal of Human Rights* 23: 214-234

Recommended

- Owen Fiss (1976) “Groups and the Equal Protection Clause”, *5 Philosophy and Public Affairs* 107.
- Iris Marion Young (1990) “Five faces of oppression” in *Justice and the Politics of Difference*. Pp. 39-66.
- Nancy Fraser (2003) “Rethinking Recognition: overcoming displacement and reification in cultural politics” in *Recognition Struggles and Social Movements: Contested Identities, Agency and Power*, edited by B. Hobson. Cambridge: Cambridge U.P.

Presentations: definitions of protected groups, properties, and categories in anti-discrimination and/or equal treatment acts

III. Specific grounds of equality

Having discussed the more general approaches to equality, the course will turn to discuss the specifics of the different grounds of inequality. The main question addressed in this part of the course will be: Can different inequality grounds be handled together theoretically and by policy? Are there any specifics of the different inequality grounds that merit special attention? Should the holders of multiple intersecting inequalities be treated as worth of specific consideration?

6. Sixth Week: Gender Equality

We will specifically discuss how gender inequality is different from racial inequality and what constitutes its specificity, if anything. The main issues to be discussed will revolve around the concepts of sameness and difference and how these construct the understanding of gender inequality. We will address the problem of inequality in the private – family –sphere and how it impacts on gender inequality and we will discuss the issue of sexual violence as another issue that is particularly relevant if gender inequality and discrimination is to be understood. Discussion should also touch on whether sexual harassment is specific to gender equality or whether harassment cuts across all equality grounds.

Readings

Sandra Fredman and Erika Szyszczak (1992) “The Interaction of Race and Gender” in *Discrimination and the Limits of the Law* edited by Bob Hepple and Erika Szyszczak. Mansell Publishing, London. Pp. 214-227
Judith Squires (1999) “Equality” in *Gender in Political Theory*. Polity Press. Pp. 115-139
Catherine MacKinnon “Equality Remade: Violence against Women” in *Are Women Human?* Harvard UP.2006. Pp. 105-111

Recommended

Richard J Townshend-Smith (1998) “Sexual and Racial Harassment” in *Discrimination Law*. Cavendish. Pp. 225-258
Jane Lewis and Susanna Guillari (2006) “The Adult-worker-model Family and the Gender Equality”. In: S. Razavi and S. Hassim, eds: *Gender and Social Policy in a Global Context*. NY: Palgrave MacMillan: 173-190.

Presentation: legislations and strategies to control gender based violence; regulations on sexual harassment legislation; general gender equality strategies

7. Seventh Week: Ethnicity and Race

Specifics of inequality on grounds of race or ethnicity will be discussed as structural forms of discrimination typical for this ground, such as segregation in different social fields, and the idea of multiculturalism which constructs the concept of equality along the diversity of ethnic groups. The issue of segregation will be discussed through two groundbreaking United States Supreme Court cases on segregation, pro- and contra, with references to the European case of Roma segregation. For multiculturalism we will discuss Kymlicka’s arguments on how cultural diversity is an integral part of individual freedom and autonomy.

Readings

Plessy v. Ferguson 163 US 537 (1896)

Brown v. Board of Education of Topeka 347 US 483 (1954)

Kymlicka, Will (1995) "Freedom and Culture" in *Multicultural Citizenship*. Oxford UP: 75-106

Recommended

Charles Taylor (1992) *Multiculturalism and the Politics of Recognition*, Princeton University Press.

Ch. Lawrence III, (1987) "The Id, the Ego, and Equal Protection: Reckoning With Unconscious Racism", *Stanford L. R.*, vol. 39, at 317.

Owen Fiss (1977) "School Desegregation: The Uncertain Path of the Law" in *Equality and Preferential Treatment* edited by M. Cohen, T. Nagel, T. Scanlon. P. 155-191

Lilla Farkas (2007) *Segregation of Roma Children in Education. Addressing Structural Discrimination through the Race Equality Directive*. European Commission. DG Employment, Social Affairs and Equal Opportunities.

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/seg07_en.pdf

Presentations: anti-segregation related green papers, legal measures; integration driven policy packages

8. Eighth Week: Disability

The main question to be answered this week is: how inequality on grounds of disability, a relative newcomer to equality policy, is different than classical grounds of race and gender? We will look at the process of transforming a mainly medicalized, social welfare grounded approach to disadvantage caused by disability to a human rights approach. Along this wider policy shift, we will also discuss the concept most specific to disability discrimination, namely reasonable accommodation. It will be examined if reasonable accommodation can be conducive to the right to be free from discrimination or it can rather be seen as an issue of positive action.

Readings

Sandra Fredman (2005) "Disability Equality: A Challenge to the Existing Anti-Discrimination Paradigm?" in *Disability Rights in Europe: From Theory to Practice* edited by A. Lawson and C. Hart Publishing, Oxford. Pp. 199-218

Recommended

Lisa Waddington (2001) "Evolving Disability Policies: From Social-Welfare to Human Rights. An International Trend from a European Perspective", 19/2 *NQHR*

Lisa Waddington and Aart Hendriks (2002) "The Expanding Concept of Employment Discrimination in Europe: From Direct and Indirect Discrimination to Reasonable Accommodation Discrimination", 18/3 *IJCLLIR*, p. 403

Presentations: disability laws, strategies, policy programs

9. Ninth Week: Intersectionality, Competing Inequalities

Having seen the commonalities of equality policy on different grounds and than the specifics of each ground, this week we will move on to understand what happens if inequality grounds intersect: what are the consequences of intersectionality for categories and for group boundaries and how does the concept impact on policy answers? Both structural and political intersectionality will be discussed.

Reading

Kimberle Crenshaw (1991) Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. *Stanford Law Review*, Vol. 43, No. 6: 1241-1299

Recommended

Kimberle Crenshaw (1989) "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics". University of Chicago Legal Forum: 139-67

Ange-Marie Hancock (2007) 'When Multiplication Doesn't Equal Quick Addition: Examining Intersectionality as a Research Paradigm', *Perspectives on Politics* 5 (1), 63-79.

Mieke Verloo (2006) Multiple Inequalities, Intersectionality and the European Union. *European Journal of Women Studies*. Vol. 13(3):211-228

<http://www.genet.ac.uk/workpapers/GeNet2007p25.pdf>

Presentations: re-reading of previously analyzed policy measures with an eye on intersectionality

IV. Equality policy-making

This final part of the course will look into equality policy processes investigating specifically the three main levels where equality policy is made, contested and implemented, and the way in which these three levels interact.

10. Tenth Week: International and Regional Level

A very important level for shaping and diffusing equality norms is the international level. This week we will look at international intergovernmental instruments and mechanisms influencing equality policy at national level. We will particularly look at UN legal instruments and implementation mechanisms such as the race, gender and disability rights related conventions and their enforcement mechanisms; and the EU level instruments defining equality policy and impacting on national states.

Readings

Jo Shaw (2005) 'Mainstreaming Equality and Diversity in the European Union'. *Current Legal Problems*. Vol 58: 255-312

Susanne Zwingel (2005) From intergovernmental negotiations to (sub)national change. A transnational perspective on the impact of CEDAW. *International Feminist Journal of Politics* 7:3, 400-424.

Recommended

Christopher McCrudden (2001) "International and European Norms Regarding National Legal Remedies for Racial Equality" in *Discrimination and Human Rights. The Case of Racism* edited by Sandra Fredman. Oxford UP. Pp.251-307.

Charlotte Bretherton (2001) "Gender mainstreaming and EU enlargement: swimming against the tide?" *Journal of European Public Policy* 8:1 February: 60–81

Presentations: international mechanisms, instruments on any relevant ground in which major shift or debate occurred in the last 10-15 years.

11. Eleventh Week: State Level

Our focus will be on institutions giving voice and presence to groups protected by equality policies, such as regulatory agencies and enforcement agencies. The main question will be: (a) whether traditional democratic institutions and rights enforcement institutions are sufficient and adequate to protect, implement and enforce equality rights or specialized enforcement and regulatory agencies are needed; (b) to what extent such institutions can give voice and representation to protected groups in a legitimate way. Institutions for political representation, most specifically quota and districting, providing presence for protected group will be also discussed.

Readings

Martin MacEwen ed. (1997) *Anti-Discrimination Law Enforcement. A Comparative Perspective*. Introductory chapter. Ashgate Aldershot. Pp.1-30.

Judith Squires (2008) "Intersecting Inequalities: Reflecting on the Subjects and Objects of Equality". In *The Political Quarterly*, Vol. 79, No. 1, January-March 2008

Recommended

Dorothy McBride Stetson, Amy G. Mazur eds. (1995) *Comparative State Feminism*. Introduction Pp. 1-21 and Conclusion Pp.272-310.

Carol Bacchi "Arguing for and Against Quotas" in *Women, Quotas and Politics* ed. Drude Dahlerup. Routledge 2006

Anne Phillips (1998) "From a Politics of Ideas to a Politics of Presence" in Anna Phillips *The Politics of Presence*. Clarendon Press, Oxford. Pp. 1-27

Joyce Outshoorn and Johanna Kantola eds. (2007) *Changing State Feminism*. Palgrave Macmillan.

Presentations: domestic equality mechanisms (councils, authorities, quota measures, etc.)

12. Twelfth Week: Advocacy and Social Movements Promoting Equality

In the final session we will discuss the essential role of non-governmental advocacy groups and networks (national and international alike) in shaping, implementing and enforcing equality rights and policy in interaction with state and intergovernmental organizations. We will concentrate on the role of public interest litigation, national level non-governmental organizations representing protected groups and transnational advocacy movements.

Readings

- James Goldston (2006) "Public Interest Litigation in Central and Eastern Europe: Roots, Prospects, and Challenges" *Human Rights Quarterly*. Vol 28, Number 2. pp. 492-527
- M. Keck and K. Sikkink (1998) "Transnational networks on violence against women." In *Activists Beyond Borders*. Cornell University Press. Pp.165-199

Recommended

- Alison Woodward (2004) "Building Velvet Triangles: Gender and Informal Governance." in *Informal Governance and the European Union* edited by Simona Piattoni and Thomas Christiansen, London: Edward Elgar. Pp. 76-93
- Fiona Williams (2003) 'Contesting "Race" and Gender in the European Union: A Multi-layered Recognition Struggle for Voice and Visibility', In B Hobson, ed. *Recognition Struggles and Social Movements: Contested Identities, Agency and Power*, New York: CUP. Pp. 121-144
- Mary Bernstein (2002) "Identities and Politics: Toward a Historical Understanding of the Lesbian and Gay Movement" *Social Science History*, Volume 26, Number 3, Fall 2002, pp. 531-581

Presentations: transnational and national advocacy networks; policy shaping CSO-state interfaces; major CSO actions of influence