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A Defence of Gender-based Affirmative Action Grounded on a Comparison of the United States and of the European Union Models

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Abstract

This article presents a defence of gender-based affirmative action programmes against its critiques. It starts from an overview of the history and main criticisms addressing affirmative action programmes, and then proposes several arguments against these criticisms. Several rationales are to be found at the core of this article: first, women still face discrimination in regard to access to education and employment. This position relies on the statistical data referring to both the U.S. and the E.U. Second, gender-based affirmative action should be treated differently than race-based affirmative action since women's discrimination on the labour market stems mainly from traditional gender norms largely exerted within the family and exercised through state's family policies (e.g. childcare policies). Third, despite the fact that the article defends gender-based affirmative action against the main critiques, it also argues that this measure alone is an inefficient method to tackle gender inequality. The article concludes that gender-based affirmative action programmes are not effective methods to tackle gender inequality because they address only one part of the problem, namely gender inequality encountered in the public sphere (education and employment), while completely ignoring family and caring responsibilities.

Keywords: affirmative action, equality of opportunities, gender equality, gender quotas, gender mainstreaming.

Introduction

This paper presents a defence against the main criticisms addressing affirmative action programmes, with a focus on gender-based affirmative action. The reader should note that the theoretical approach relies on both works from feminist political philosophy (e.g. Nancy Fraser, Martha Nussbaum, Susan Moller Okin, Iris Marion Young), as well as on empirical data measuring

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various aspects of gender inequality in the European Union and the United States of America. Another specificity and limitation of this paper is that relies mostly on literature on affirmative action written in the U.S.A. The article starts from an overview of the critiques addressing affirmative action programmes and then proceeds into formulating arguments in favour of gender-based affirmative action. As such, this paper aims to contribute to the large literature on affirmative action by pointing out that gender-based affirmative action should be treated differently than race-based affirmative action.

This defence is based on Iris Marion Young's work, who advocated in favour of affirmative action measures in order to minimize the ongoing white male bias of institutions and decision makers.¹ I will also take into account Nancy Fraser's point of view, who considers that affirmative action policies are soft measures that address only the symptoms and not the disease.² Both Young and Fraser present complex analyses in what regards gender inequality and affirmative action. However, while I largely accept Young's diagnosis and her critique of the myth of merit, I consider that Fraser's advocated solution, namely transformative policies, is more efficient for achieving gender equality.

The article is split into five sections, as follows: the first section of the paper will outline the brief history of affirmative action policies and their scope as corrective measures. The second section will present the main criticisms directed against affirmative action and will construct a defence against them, applicable for both race-based and gender-based affirmative action policies. The third section focuses on the distinction between equal treatment and equality of opportunities, the former being often invoked by affirmative action opponents while the latter by its supporters. The fourth section presents the relationship between affirmative action and the labour market, with a focus on gender inequality as derived from traditional gender roles. Finally, the fifth section briefly outlines the difference between U.S. affirmative action and E.U. positive action: the former issues hard quota constrains, while the latter prefers only to issue recommendations and implicitly confers a more important role to meritocracy. While the article pleads in favour of affirmative action policies, it will also conclude that these are not sufficient in order to address current gender inequalities.

A Brief Overview of Affirmative Action Programmes

Affirmative action was firstly adopted in the United States through the Executive Order 10925 issued by President John F. Kennedy in 1961. This Executive Order demanded that government contractors "take affirmative action

¹ Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990).

² Nancy Fraser, "From Redistribution to Recognition? Dilemmas of Justice in a 'Post-Socialist' Age," *New Left Review*, 212 (1997): 68-93.

to ensure that applicants to be employed, and employees to be treated during employment without taking into account race, colour, religion, or national origin.”³ This initial form of the document did not provide quotas or methods, but stressed that those who have been discriminated in the past should not undergo the same treatment in the future. Women were included in the target group of affirmative action policies only in 1967 through the Executive Order 11375 issued by the then President Lyndon B. Johnson, through the prohibition on discrimination based on sex.

According to Shaw, affirmative action is a “public or private programme designed to equalize the opportunities for employment or admission for historically disadvantaged groups by considering even those characteristics that have been used to deny them an equal treatment.”⁴ The main goal of affirmative action programmes is to remedy the irrational discrimination (meaning discrimination which is irrelevant – e.g. based on race or gender) in assessing an individual’s capability or value and to reconfigure the distribution of income and opportunities as it should have been if society was fair from a competitive point of view.⁵

Affirmative action programmes consist of two main components: a corrective one (remediation, equalization as result), and a compensatory one. Both components are heavily rejected by critics. The corrective argument “supports the elimination of the existing biases in the hiring process” whereas the compensatory argument takes into account the effects of the acts of discrimination made in the past (negative consequences for those discriminated, positive outcomes for the descendants of the discriminators).⁶ I agree with Mosley’s highlight that compensation is justified because it is aimed at reinstating the opportunities which those disadvantaged were deprived from through long periods of discrimination and bringing them to the level where they could have already been in the absence of historical oppression.⁷

Moreover, affirmative action supports the redress of prevailing exclusionary practices that still exist in contemporary society through specific actions such as affirmative and inclusive practices. The latter, inclusive, practices aim to: (a.)

³ Office of Equal opportunity and Diversity, “A Brief History of Affirmative Action,” OECD website, accessed August 2, 2018, <http://www.oecd.org/policies/aa/history.php>.

⁴ Bill Shaw, “Affirmative Action: An Ethical Evaluation,” *Journal of Business Ethics* 7 (1988): 763-770.

⁵ Shaw, “Affirmative Action,” 764; Richard F. America, “Affirmative Action and Redistributive Ethics,” *Journal of Business Ethics* 5 (1986): 73-77.

⁶ Celia Wolf-Devine, “Preferential Policies Have Become Toxic,” in *Contemporary Debates in Applied Ethics*, ed. Andrew I. Cohen and Christopher Heath Wellman (Oxford: Blackwell Publishing, 2005): 59-74.

⁷ Albert Mosley, “A Defense of Affirmative Action,” in *Contemporary Debates in Applied Ethics*, ed. Andrew I. Cohen and Christopher Heath Wellman (Oxford: Blackwell Publishing, 2005): 43-58.

extend justice towards certain target groups; (b.) redistribute society's resources (jobs, higher education positions etc); (c.) justify the social sacrifices resulting from the redistribution of society's resources.⁸ The first two points address distributive justice issues, whereas the third regards procedural justice. Susan Opotow considers that the rejection of affirmative action measures is generated by the manner in which its opponents position themselves to these three elements of inclusive practices. As such, critics start by invoking the argument that women and racial minorities are *no longer* excluded from the scope of justice. As a result, goes their claim, society does not need to be reconfigured.

Opotow adds other three reasons underlying this argument of the opponents of affirmative action: firstly, affirmative action target groups are seen as harmful or in conflict with the majority group.⁹ Accepting the inclusion of some target groups in compensatory measures occurs after appointing responsible delegates for taking decisions in regards to that respective group— hence the need for representation quotas in decision making bodies.¹⁰ Opotow underlines that in cases of economic instability, there is a high chance that affirmative action programmes will be rejected on the basis of being unjust. Secondly, opponents reject affirmative action because they consider that it represents either an unjust, either an inefficient distribution of resources. Sabbagh, for example, considers that by following the compensatory direction we can expect that in the future new policies will emerge in order to redress the inequalities generated by affirmative programmes.¹¹ As such, opponents of affirmative action measures build their argument based on two possible sources: they either exclude the target groups from the scope of justice, or they consider that the targeted groups have already achieved social parity.¹² For example, Wolf-Devine relies her rejection of affirmative action for women based on this second argument: women have already achieved social parity.¹³ Thirdly, those who reject affirmative action programmes based on procedural reasons (see Sowell below) consider that these programmes will never succeed in achieving parity or that they are not ethical (for example the conflict between beneficiaries and payers presented in detail below).

The Critiques of Affirmative Action

The criticisms against affirmative action policies have been mostly built in relation to the reduction of race discrimination and have expanded also on

⁸ Susan Opotow, "Affirmative Action, Fairness and the Scope of Justice," *Journal of Social Issues* 52, no. 4 (1996): 19-24.

⁹ Opotow, "Affirmative Action," 21.

¹⁰ Opotow, "Affirmative Action," 21.

¹¹ Daniel Sabbagh, "Judicial Uses of Subterfuge: Affirmative Action Reconsidered," *Political Science Quarterly* 118, no. 3 (2003): 411-436.

¹² Opotow, "Affirmative Action," 22.

¹³ Wolf-Devine, "Preferential Policies," 59-74.

programmes that seek to reduce gender inequalities. However, as I will later show, most of these criticisms lose their validity when applied to gender-based affirmative action.

The most frequent critique against affirmative action is based on its temporary aspect. This critique claims that lengthy past discriminations cannot be solved in the short present time. Thomas Sowell, one of the most known advocates of this aspect, considers that “a temporary program designed to eliminate a centuries-old condition is almost a contradiction in terms.”¹⁴ In fact, despite its well-defined targets in terms of time for meeting certain quantitative objectives, affirmative action should be defined as eternal. Sowell suggests that in order to prevent their “permanent” effect, affirmative action programmes should be limited not only in time, but also in their goals.

The second major critique states that the beneficiaries of affirmative action policies are rarely the ones that have been discriminated and/or oppressed in the past. Dworkin opposes this argument because in his view affirmative action programmes should not be limited to past generations since these programmes are part of a “forward looking process, not a backward looking one.”¹⁵ Given its limitation in time, we can say that affirmative action is “preoccupied by the present and by eliminating any form of castes that exist in the present.”¹⁶ In correlation with this aspect, Goldman claims that if the purpose of affirmative action programmes is not to compensate for past injustice, but to reach impartiality and having no discrimination in the present, then the numerical objectives and their achievement in a given time are not only inconsistent as concept, but also inconsistent in practice.¹⁷ We can easily defend gender-based affirmative action both on the ground of compensating for past discrimination, as well as for tackling biases and discrimination encountered in the present, because gender discrimination is one of the oldest and most pervasive unjust practices encountered in the world. Social norms and societies have always been constructed by men in their own advantages in the form of traditional gender roles.

The third important critique against affirmative action states that, even if women and racial minorities might deserve compensatory measures, it is unjust that these acts of compensation are made on the expense of white men guilty only of being their ancestors’ descendants. Those who raise this third criticism

¹⁴ Thomas Sowell, *Affirmative Action Around the World. An Empirical Study* (New York: Yale University Press, 2004), 6.

¹⁵ Ronald Dworkin, “Affirmative Action: Is It Fair?,” *The Journal of Blacks in Higher Education*, no. 28 (2000): 79-88.

¹⁶ Owen Fiss, “Affirmative Action as a Strategy of Justice,” *Philosophy & Public Policy* 17, no. 37 (1997): 38.

¹⁷ Alan H. Goldman, “Affirmative Action,” *Philosophy & Public Affairs* 5, no. 2 (1976): 178-195,

claim that affirmative action resembles an “institutionalized discrimination against white men than a program against discrimination.”¹⁸ Goldman adds that, although they have not participated in the blatant discrimination which occurred in the past, white men who suffer most from affirmative action programmes are those who pay the most: the compensatory measures translate into the loss of jobs or higher education places as they are redistributed to racial minorities or women. Goldman, supporting this criticism against affirmative action, portrays this idea as follows: the witness should not be found as guilty of a murder as the killer, even if he could have prevented the act by risking his own life.¹⁹ However, this argument does not hold in the case of gender-based affirmative action: if in the case of racial minorities slavery existed and was at least formally abolished, we cannot say the same about the traditional family and traditional gender roles.²⁰

Women’s lack of opportunity to gain the same training or experience as men largely rests on the state’s endorsement of traditional gender roles where women pertain to the household and family sphere. For example, at EU level, in 2016, only 18% of children under the age of 3 years old were enrolled in full time kindergartens, and 15.1% in kindergartens with part-time programme. The rest of 66.9% of children under the age of 3 were being raised exclusively in the family.²¹ The lack of equal work experience between men and women contributes to disparities in earnings, as mentioned above in regard to the gender pay gap and the pension gender gap. In 2016, the gender pay gap at EU level was of 16.2%.²² The salary pay gap contributes to the gender gap in pensions: in 2012, at EU level, women’s pensions were 38% smaller than

¹⁸ Jonathan S. Leonard, “Women and Affirmative Action,” *Journal of Economic Perspectives* 3, no. 1 (1989): 61.

¹⁹ Goldman, “Affirmative Action,” 192.

²⁰ This regards only explicit discrimination and oppression in the form of slavery, and it acknowledges that the aftermath of slavery is still present. I take into account the critical race theorists’ account (see Angela Y. Davis, “Deepening the Debate over Mass Incarceration,” *Socialism and Democracy* 28, no. 3 (2014): 15-23) who claim that slavery was abolished only formally in the United States of America, and that shortly after the abolition, slavery was re-instated through the policies of mass incarceration. I find Davis’ view extremely relevant as it points out to the complexity of structural racism endemic to the United States of America. As such, I do not claim that race-based affirmative action is outdated or irrelevant today just because slavery was abolished. However, this article has a limited purpose and aims to present a defence against criticism addressing gender-based affirmative action, beyond the limits of a state and its specific policies.

²¹ “Children in formal childcare or education by age group and duration - % over the population of each age group,” Eurostat Database, accessed December 17, 2018, <https://ec.europa.eu/eurostat/data/database>.

²² “Gender pay gap in unadjusted form - % of average gross hourly earnings of men,” Eurostat Database, accessed December 17, 2018, <https://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=sdg0520&plugin=1>.

men's.²³ Data shows similar patterns also in the United States: in 2017, the gender pay gap within the U.S. was of 18.2%, while the pension gender gap was of 34.9% in 2014.²⁴

Richard America rightly highlights one of the most important arguments against this third critique: he states that rejecting affirmative action by appealing to the “innocent payers” justification hides in fact another reason – that some individuals do not want to give up their benefits and privileges obtained in an unjust manner, received collectively as a result of past discrimination that was made in their name.²⁵ The question thus moves from believing that it is unjust that today's individuals pay for the acts of their predecessors to calling into question whether it is ethical for individuals to accept the benefits of the practices which they disapprove now but which have already been committed by their forerunners in their name as a group. Richard America is right to suggest that the third argument against affirmative action is a very strong one as it defends the status quo.

These three major critiques against affirmative action are based on the fact that identities of the victims of discrimination and the identities of those who benefit from affirmative action measures do not overlap. The same holds for those who perpetuated discriminatory treatments in the past: they are not the ones who currently have to pay to remedy them.²⁶ These criticisms seem to particularly address race-based affirmative action, which seeks to remedy the shortcomings of slavery for Afro-Americans in the U.S.A. In the case of gender discrimination, it is difficult to sustain the views expressed by these critiques.²⁷ If an accurate, in detail assessment of the responsibility of each “white, innocent man” for his ancestors in regards to slavery is impossible to carry out without violating privacy, we cannot say the same about arguments favouring gender-based affirmative action. We can use research (such as the statistical data presented above) concerning income dynamics and role-sharing within family, as family life influences women's earning capabilities.

Thus, it is hard to argue that those who pay the costs or those who are negatively affected by the new distribution have not helped to perpetuate the discrimination against women. Furthermore, by strictly applying Richard

²³ European Institute for Gender Equality, “Gender gap in pensions in the EU. Research note to the Latvian Presidency,” (Vilnius, 2015), 21.

²⁴ Gender wage gap - Employees, Percentage points, 2017 or latest available,” (2018), OECD database, accessed December 17, 2018, <https://data.oecd.org/earnwage/gender-wage-gap.htm>.-OECD, “Preventing Ageing Inequality,” (Paris, OECD Publishing, 2017), 125-126.

²⁵ America, “Affirmative Action,” 73-74.

²⁶ Fiss, “Affirmative Action,” 37.

²⁷ My main argument relies on the fact that we still encounter large scale gender discrimination in the present, a fact supported by the data briefly presented throughout the paper.

America's opinion that an ethical programme should penalize only those that have received benefits from the discriminatory actions pursued by their predecessors, we can say that affirmative action for women has all the reasons to act against the heirs of the benefits of discrimination – even if assuming that this discrimination it is not on-going.²⁸

Race-based affirmative action policies addressed the injustice suffered explicitly by past generations and their current descendants who have to face the aftermath of slavery. In the case of gender-based affirmative action the beneficiaries are not always the descendants of the most oppressed women – on the contrary. One important critique, which raises concerns, is that the beneficiaries of gender-based affirmative action are very likely to be the least oppressed women: educated, middle class women.

A second range of critics argue that affirmative action programmes promote incompetence and that this conflicts with the principle of meritocracy and with the principle of colour blindness. Under the principle of meritocracy, critics reject affirmative programmes because they exclude better prepared candidates and that these programmes should guarantee the “right to compete, not entitlement to success.”²⁹ However, this claim is based on the false assumption that discrimination is absent and that the hiring and promotion practices are fair in general.³⁰ For example, Sabbagh claims that in order to block the emergence of negative stereotypes, affirmative action programmes should be reconfigured so that the “measures involved and their anti-meritocratic component go unnoticed.”³¹ Iris Marion Young and Albert Mosely contradict this over-sizing of merit, arguing that affirmative action is justified by the fact that “the selection and evaluation procedures are not necessarily lacking additional and irrelevant qualifications and unconscious biases.”³² If we add the fact that seniority offers a priority place in the selection procedure during employment, we thus have another argument in favour of affirmative action policies because they balance the fact that women do not have the same chances accumulating previous work experience due to factors such as maternity leaves or gaps in employment generated by traditional and unjust family obligations.

Young considers that the main goal of affirmative action is not that of compensating for past discriminations, but rather of minimizing the current biases of institutions and of decision makers or what she calls the “the white male

²⁸ America, “Affirmative Action,” 74.

²⁹ Mosley, “A Defense,” 48.

³⁰ Barbara Bergmann, “Does the Market for Women's Labour Need Fixing?,” *The Journal of Economic Perspectives* 3, no. 1 (1989): 53.

³¹ Sabbagh, “Judicial Uses,” 420.

³² Young, *Justice*, and Mosley, “A Defense,” 44.

bias.”³³ She argues that meritocracy is a myth because most of the times superiors are not competent to assess individual performance, especially when the results are measured in companies at a team level.³⁴ Moreover, the evaluation criteria are “normative and cultural rather than scientific and neutral.”³⁵ The evaluation criteria most of the times rely less on objective work-related competences and more on character, behaviour, and other traits considered desirable by the evaluator. This stems from the fact that organizations wish to replicate their social and power relations. Young rejects meritocracy precisely because it leads to the perpetuation of relations of domination.³⁶

Nancy Fraser, on the other hand, considers that affirmative remedies for gender injustice as soft measures. She contrasts them with “transformative” remedies, which she supports.³⁷ For Fraser, affirmative remedies and thus, affirmative action programmes, are “remedies aimed at correcting inequitable outcomes of social arrangements without disturbing the underlying framework that generates them.”³⁸ The view she endorses supports transformative remedies because they aim “at correcting inequitable outcomes precisely by restructuring the underlying generative framework.”³⁹ Another reason why Fraser rejects affirmative remedies in favour of transformative ones is the fact that the former have been traditionally associated with the liberal welfare state. Fraser did not support such adaptation to the status quo. For her, affirmative remedies “seek to redress end-state maldistribution, while leaving intact much of the underlying political-economic structure.”⁴⁰ Trying to redress effects is an unsatisfactory goal, according to Fraser. As such, she supports transformative remedies, traditionally associated with socialism, which would “redress unjust distribution by transforming the underlying political-economic structure. By restructuring the relations of production, these remedies would [...] change the social division of labour” and, implicitly, the gendered division of labour.⁴¹

Leonard recalls that the meritocratic principle supports the rule of seniority: those with more years of experience and education are those who are fired last and promoted first. Affirmative action is rejected for violating this rule, and for supporting the employment of a larger number of under-qualified employees.⁴² However, this plea for meritocracy completely ignores the fact that, statistically, women and men do not have the same conditions for gaining

³³ Young, *Justice*, 198.

³⁴ Young, *Justice*, 202-203.

³⁵ Young, *Justice*, 204.

³⁶ Young, *Justice*, 212.

³⁷ Fraser, “From Redistribution,” 68-93.

³⁸ Fraser, “From Redistribution,” 82.

³⁹ Fraser, “From Redistribution,” 82.

⁴⁰ Fraser, “From Redistribution,” 84.

⁴¹ Fraser, “From Redistribution,” 84.

⁴² Leonard, “Women,” 72.

experience - for example raising children or being the exclusive responsible for household chores limits the accumulation of experience or education that are considered relevant on the labour market.

The colour blindness principle is an ideal one, projected into the future, because the roles that persons of colour or women receive are generated by society. While opponents of affirmative programmes invoke that discrimination is an attribute of the past, affirmative action proponents believe that discrimination must not be obvious, it can also be implicitly embedded in traditions and social norms, even without the intent to cause negative effects on the subjects in question. As Winn notes, discrimination takes place both within and outside the work place, and the two areas are not static, but they influence each other.⁴³ Moreover, the principle of colour blindness does not lead to justice and equal consideration of people because it ignores the history and capabilities of people, when in fact they are not equal in their lived experiences.⁴⁴

Despite these criticisms built around affirmative action for persons of colour, affirmative action programmes in the U.S.A. were more effective for minorities than for women, according to Leonard.⁴⁵ This suggests that remedying past discriminations, although the beneficiaries are not the same as those subjected to slavery in the past is more acceptable than a redistribution focused on the present and on the future. Although she mentions differences between gender-based and race-based discrimination, Wolf-Devine positions herself at the opposite side, arguing that affirmative policies for women emerge because they want to eliminate traditional gender roles. Wolf-Devine considers that precisely such changes should not be imposed through gender-based affirmative action programmes: any intervention or change in how couples organize their private life should be strictly up to them, in her view.⁴⁶ Nevertheless, the statistics mentioned above regarding the percentage of EU children enrolled in kindergartens can be used to point out that the state is already intervening in how couples organise their private life, at least in what regards family policies and childcare.

However, affirmative action programmes have less desirable effects even on their main target groups. First, as shown by Conrad Winn, such programmes rather tend to favour middle-class women, thus affecting working-class families and women with traditional roles within them. Second, affirmative action programmes can affect the self-image of beneficiaries, either because of the mechanism itself (prioritizing the access of the target group to the labour market and in higher education), or due to discrimination arising from such reactionary

⁴³ Conrad Winn, "Affirmative action for women: more than a case of simple justice," *Canadian Public Administration* 28, no. 1 (1985): 24-46.

⁴⁴ Mosley, "A Defense," 53.

⁴⁵ Leonard, "Women," 74.

⁴⁶ Wolf-Devine, "Preferential Policies," 62.

programmes.⁴⁷ Moreover, affirmative action programmes could lead to a greater discrimination against the target group because it can be perceived, by those outside the target groups, as a threat in the distribution of benefits.

The criticism of affirmative action for women should focus on limiting it to the public sphere, on partial interventionism and on the gap between ideal goals and their methods of implementation, namely through the redistribution of equal opportunities vs. equal redistribution or welfare. Income inequalities between women and men are the effect of unequal opportunities, and this is a structural form of injustice. Gender based affirmative action programmes can only ensure a few entries in domains traditionally over-represented by men. Nevertheless, how gender-based affirmative action policies are implemented is just one method among many: they address the effects first, and not the causes of gender inequality. For example, instead of tackling traditional gender roles and instead of drafting more equalitarian family policies, policy makers prefer to offer several entry tickets to universities of jobs where women are underrepresented.

Equal Treatment versus Preferential Treatment

Affirmative action programmes “do not create new jobs but address how existing jobs should be distributed.”⁴⁸ This means transferring benefits from one group to another - hence the redistribution problem. While opponents of affirmative action such as Thomas Sowell believe that the damage done by previous generations cannot be changed, no matter what current generations will do, Bill Shaw argues that ignoring the harm done is a moral collective injustice.⁴⁹ Shaw points out that in order to treat some people equally we must first treat them differently.⁵⁰ This inclusion under the same umbrella of two sets of opposing concepts (equality/difference, positive discrimination/elimination of discrimination) has made affirmative action to be seen as an inconsistent and ambiguous concept (maybe even intentionally).⁵¹

Affirmative action was often presented as the opposite of equal treatment (or formal equality). Equal treatment “focuses exclusively on formal rights of

⁴⁷ Mary Anne Taylor-Carter, Dennis Doverspike and Ralph Alexander, “Message Effects on the Perceptions of the Fairness of Gender-Based Affirmative Action: A Cognitive Response Theory-Based Analysis,” *Social Justice Research* 8, no. 3 (1995): 286-289.

⁴⁸ Albert Mosley and Nicholas Capaldi, *Affirmative Action: Social Justice or Unfair Preference?* (Lanham MD: Rowman & Littlefield, 1996), in Wolf-Devine, “Preferential Policies,” 69.

⁴⁹ Sowell, *Affirmative Action*, 167, and Shaw, “Affirmative Action,” 763.

⁵⁰ Shaw, “Affirmative Action,” 763.

⁵¹ Goldman, “Affirmative Action,” 179-191.

women in paid work, and thus fails to address the root causes of gender inequality in informal contracts between women and men.”⁵² In Sen’s terms, equal treatment derives from formal equality, which does not take into account the differences between individuals.⁵³ The purpose of affirmative action is not formal equality, but rather substantial equality, which allows preferential treatment. Substantial equality includes two forms: in results and in opportunity.

Taking into consideration the criticism addressing affirmative action policies, we can say that these policies prioritize equality of outcomes though the imposed numerical quotas. According to Teresa Rees, affirmative action programmes emphasize equality of outcomes.⁵⁴ Equality of opportunities focuses on the distribution of equal chances to achieve opportunities, thus allowing forms of preferential treatment for those in need. As Albert Mosley notes, contrary to the intentions of equality, identical treatment rather “perpetuates social disparities than eliminating social determined ones.”⁵⁵ Thus, equal treatment is different from equality of opportunities and, conversely, the former may result in undermining the latter. This difference maintains the conflicting aspect between difference feminism and equality feminism.⁵⁶

Moreover, political intervention “is important not only to meet the needs, but especially to formulate these needs.”⁵⁷ Focusing the discourse on equality in public sphere / work place determines the following effect, noted by Sen: claims of equality in a domain lead to anti-egalitarianism in another domain.⁵⁸ We cannot ignore the fact that women are the main care-taker for dependants (children, elderly, people with handicaps or those with illness, and so on). Their care-giving work is not taken into account by society as a whole as it is made without pay.⁵⁹ Moreover, argues Nussbaum, a just society must provide “care for those in a state of dependency without exploiting women” and without denying women the right to education or paid work.⁶⁰ Susan Moller Okin, who criticises economists’ lack of interest on the internal distributions within the

⁵² Teresa Rees, *Mainstreaming Equality in the European Union: Education, Training, and Labor Market Policies* (New York: Routledge, 1998), in Mark A. Pollack and Emilie Hafner-Burton, “Mainstreaming gender in the European Union,” *Journal of European Public Policy* 7, no. 3 (2000): 432-456.

⁵³ Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009), 234.

⁵⁴ Rees, *Mainstreaming Equality*, in Pollack and Hafner-Burton, “Mainstreaming gender,” 433.

⁵⁵ Mosley, “A Defense,” 56.

⁵⁶ Nancy Hirschmann, “Feminist Political Philosophy,” in *The Blackwell Guide to Feminist Philosophy*, ed. Linda Martin Alcoff and Eva Feder Kittay (Oxford: Blackwell Publishing, 2007), 149-150.

⁵⁷ Martha Nussbaum, “Capabilities and Social Justice,” *International Studies Review* 4, no. 2 (2002): 237.

⁵⁸ Amartya Sen, *Inequality Reexamined* (New York: Russel Sage Foundation, 1992), 16.

⁵⁹ Nussbaum, “Capabilities,” 125.

⁶⁰ Nussbaum, “Capabilities,” 134.

family, also stresses the fact that most policies which aim to reach equality between men and women are focused solely on education and employment, the main areas of the public sphere, while completely ignoring aspects pertaining to the *private sphere*.⁶¹

Gender-based Affirmative Action and the Labour Market

As Goldman argues, affirmative action policies tend to “move the burden of (non) discrimination on employers rather than to correct statistical imbalances.”⁶² For Winn and others this is an insufficient measure because it does not address the factors determining the targeted inequalities.

Labour market discrimination is not limited to women’s lack of employment, but it also includes the occupational segregation by gender (where professions generally occupied by women tend to be less paid than those occupied mostly by men) as well as the gender pay gap, where women have lower wages than men who have the same position or experience. The discrepancy between the incomes of men and women is most often explained by different levels of qualification and partly by discrimination in the workplace but the comparison of earnings between men and women with the same training and the same position shows noticeable differences.⁶³ Thus, discrimination is not a minor element in the labour market. Employment discrimination is often justified by its perpetrators by appealing to the assumption that “women have a lower human capital.”⁶⁴ Bergmann argues that companies prefer to hire women precisely for this reason, as companies practice discrimination in payment, not in employment. The developments of the legislation on equal treatment fuelled the number of lawsuits initiated by women for the pay gap and, as a result, companies engaged in occupational segregation, meaning that women started to be accepted only in certain areas of the labour market, where the wages of these markets are much lower than typical male work domains or industries.⁶⁵ If in a family the earnings of the man are noticeably much higher than those of the his spouse, then she will receive a double constraint to abandon paid work in favour of unpaid work within the household, which subsequently reduces her chances of succeeding in the labour market.

Returning to the definition given by Richard F. America, if the purpose of affirmative action programmes is the redistribution of income and opportunities,

⁶¹ Susan Moller Okin, “Poverty, Well-being, and Gender: What Counts, Who’s Heard?,” *Philosophy and Public Affairs*, Princeton University Press 31, no. 3 (2003): 286.

⁶² Goldman, “Affirmative Action,” 185.

⁶³ Bergmann, “Does the Market,” 45-49.

⁶⁴ Bergmann, “Does the Market,” 46.

⁶⁵ Bergman, “Does the Market,” 49.

this triggers two problems. In the first place, if income equality and equal opportunities are two distinct purposes, then the manner in which affirmative action was implemented focuses only on one of two matters - income equality. Opportunities are either neglected or are simplified to opportunities in the labour market and in access to higher education. Secondly, affirmative action has also been called equal employment opportunity (EEO), which suggests that income and opportunities are not separate, but rather converge in a single purpose, namely wage equal opportunities. If limiting opportunities to the labour market could be accepted in the original form of affirmative action (as specified in the Executive Order 10925 from 1961), which did not include women among the target groups, in order to overcome gender discrimination, the project should be reconfigured and separately developed because reducing the meaning of opportunities leads to a fundamental contradiction. Women do not encounter the same discriminatory treatment as people of colour. If in the case of the latter discrimination comes from outside their own community such as employers, institutions etc, in contrast, women are raised and educated in a discriminatory environment, namely within the family.

Conrad Winn stresses that the family influences the women's degree of involvement in the labour market (e.g. women who do not have the responsibility for raising children are professionally successful, women in the labour market have fewer children), and he argues that "the family life is a sufficiently important factor so as to deserve separate consideration."⁶⁶ He rejects the approach that focuses exclusively on employment discrimination and considers that the main determinants of income inequality are the educational segregation and the unequal burdens and responsibilities resulting from raising children.⁶⁷ As Ferber and Birnbaum note, the division within the household is determined by tradition. The weak point noticed by the two authors is the circularity of the explanation: "women specialize in household because they earn less on the labour market and they earn less on the labour market because they have specialized in the household."⁶⁸

Winn proposes that the government should reduce both inequalities of payment between men and women as well as inequalities between women active on the labour market and women handling unpaid work within the household. Ignoring the latter, affirmative action contributes to improving the situation of middle class women and thus creates an unfavourable environment for the working class – for example a man from a the lower class and traditional family, the only earner, may lose his job on the basis of affirmative action programmes for women, while his partner, lacking experience or training cannot

⁶⁶ Winn, "Affirmative action for women," 38.

⁶⁷ Winn, "Affirmative action for women," 28.

⁶⁸ Marianne A. Ferber and Bonnie G. Birnbaum, "The 'New Home Economics: Retrospects and Prospects'," *Journal of Consumer Research* 4, no. 1 (1977): 20.

compensate for the family's economic unbalance, because she does not meet the minimum qualifications needed to enter the labour market.⁶⁹

In the long run, women who deal exclusively with child rearing and household duties will be even more disadvantaged, because their activity is not paid nor recognized as work experience. This can already be seen in the form of the pension gender gap: the EU pension gender gap was of 38% in 2012, while in the U.S. was of 34.9% in 2014, as mentioned above. At EU level, women work on average 5 years less than men, which also contributes to their lower pension: in 2015, men worked on average 37.9 years, while women only 32.8 years.⁷⁰ Moreover, according to OECD data for 2017, women's participation on the labour market is lower than men's: only 62.4% of women compared to 72.9% of men of the working age population are active on the E.U. labour market. In the United States, same OECD data shows a similar pattern, with only 64.9% of women and 75.4% of men of the working age population in employment.⁷¹

Winn supports recognizing labour within the family, and believes that it is unjust that women who dedicate themselves to child rearing receive less consideration in retirement plans, when they are the ones who "produce and raise the payers of taxes and pensions."⁷² Moreover, the lack of part-time jobs polarizes women: those from the middle class voluntarily choose to be either full-time mothers or in full-time employment because they have the option of outsourcing the responsibilities of childcare by paying other women or service providers, while working class women often choose employment only when they do not have children, and when they have children are forced to become full-time, unpaid, housewives.

Pascall and Lewis highlight that care work is an essential element for any policy model aiming to achieve gender equality.⁷³ The authors advocate for an equal division of incomes and responsibilities of the private sphere. Although the state's intervention within the family is often rejected on the basis of infringing the right of privacy, Richard Arneson mentions that among the reasons that could justify such an activity we count the fact that "the structure of the marriage is already set by state regulation not individual choice", as well as the fact that social norms influence the course

⁶⁹ Winn, "Affirmative action for women," 42.

⁷⁰ "Duration of working life (years, +15 population)," (2015), European Institute for Gender Equality, accessed December 17, 2018, https://eige.europa.eu/gender-statistics/dgs/indicator/gei_core_work_part_office_gei_work_part_dwl. As for the U.S., data was unavailable regarding the working years for men and women.

⁷¹ "Employment rate - Women, % of working age population, 2017 or latest available," (2017), OECD database, accessed December 17, 2018, <https://data.oecd.org/emp/employment-rate.htm#indicator-chart>.

⁷² Winn, "Affirmative action for women," 43.

⁷³ Gillian Pascall and Jane Lewis, "Emerging Gender Regimes and Policies for Gender Equality in a Wider Europe," *Journal of Social Policy* 33, no. 3 (2004): 373-394.

of the family life and these norms can be biased at the expense of women.⁷⁴ Moreover, as interventions for the protection of children are justified, the state has the same interest to regulate the family life in order to protect the interests of children, but this must be made without neglecting the fact that children are predominantly raised by women, which can lead to unfavourable consequences for the latter.⁷⁵

The European Union Framework: Positive Action and Gender Mainstreaming

There are two ways in which affirmative action programmes can be implemented: fixed quotas and employment goals. The latter lacks numerical targets and asks employers to make minimum efforts to hire minorities and women without, however, evaluating or sanctioning them.⁷⁶ According to Bill Shaw, employment goals are less controversial, but it is likely that their results are less efficient. Wolf-Devine calls the two versions of affirmative action programmes “preferential affirmative action” and, namely, “procedural affirmative action.”⁷⁷ She favours the latter as she considers that the preferential form with fixed quotas violates the principle of meritocracy by offering jobs to less prepared candidates that belong to a group that was discriminated in the past, and that the inclusion of a person implies the exclusion of another. This section of the paper focuses on the similarity between employment goals and EU’s gender mainstreaming policy.

Gender mainstreaming first emerged as an official programme in 1995, when it was presented during the 4th Women's International Conference in Beijing. It was then adopted by the United Nations and the European Union.⁷⁸ In 1996, the European Commission defined gender mainstreaming as consisting of “the systematic integration of situations and priorities of women and men in all policies in order to promote equality between women and men.”⁷⁹ As Woodward rightly stresses, gender equality in the EU framework refers mainly to equal opportunities in *employment*.⁸⁰ Thus, gender mainstreaming leaves out other areas which are interrelated to employment inequalities between men and

⁷⁴ Richard J. Arneson, “Feminism and Family Justice,” *Public Affairs Quarterly* 11, no. 4 (1997): 311-330.

⁷⁵ Arneson, “Feminism,” 315.

⁷⁶ Shaw, “Affirmative Action,” 764.

⁷⁷ Wolf-Devine, “Preferential Policies,” 59-60.

⁷⁸ Pollack and Hafner-Burton, “Mainstreaming gender,” 435.

⁷⁹ European Commission in Pollack and Hafner-Burton, “Mainstreaming gender,” 434.

⁸⁰ Alison Woodward, “European Gender Mainstreaming: Promises and Pitfalls of Transformative Policy,” *Review of Policy Research* 20, no. 1 (2003): 65-88.

women, such as the private area and the organisation of family, traditional gender roles enforced through education and culture, and so on.

Gender mainstreaming and affirmative action can be subjected to the same criticism: both address solely inequalities between men and women encountered in the public sphere, without paying too much interest in the origin of these inequalities. Gender mainstreaming relies on “incorporating the gender perspective into all economic problems,” sharing the same interest with affirmative action in discrimination on the labour market.⁸¹ Although it is a newer concept, gender mainstreaming does not correct nor surpass the limits of affirmative action. It rather covers the same issue (economic participation), and furthermore facilitate that women benefit from the same conditions as men in the workplace. Gender mainstreaming, as well as gender-based affirmative action, do not question whether helping women achieve the same conditions as men is the best approach. This defect undermines both policies because they represent a Sisyphean effort. Since gender discrimination is a deeply rooted phenomenon, trying to tackle it solely in a field is rather inefficient. Moreover, both policies use as a standard template the male-defined labour market.

A key difference between the two policies is given by the fact that affirmative action is meant to be a short-term process, gender mainstreaming does not have time constraints for implementation or delivered results. This happens because, in theory, gender mainstreaming aims at policy transformation.⁸² The downfall is that without a clear agenda established in a timeframe, with resources and fixed goals, gender mainstreaming fails to be effective. While affirmative action has often clear numerical goals, gender mainstreaming is a flexible term without exact targets. The flexibility of the term allows confusion and the likelihood that gender mainstreaming could “become a container concept” that each user fills it with a different meaning.⁸³ The fact that the legitimacy of gender mainstreaming has not yet been challenged can derive from not being a binding legislative tool and, thus, not truly affecting the distributive status quo, unlike affirmative programmes.

Regarding the differences discussed between formal and substantial equality, the European Union adopts both approaches. But there is an essential difference between them in the sense that formal equality - in the form of equal treatment - is implemented stronger, being supported by directives, while affirmative action measures are supported by recommendations that do not have a legally binding character.

⁸¹ Sylvia Walby, *The Future of Feminism* (Cambridge: Polity Press, 2011), 57.

⁸² Alison Woodward, “Too late for gender mainstreaming? Taking stock in Brussels,” *Journal of European Social Policy* 18, no. 289 (2008): 289-302.

⁸³ Woodward, “Too late,” 295.

In this sense, Daniela Caruso highlights the difference between the United States' specific *affirmative* action and the *positive* action promoted by the European Union. According to Caruso, the EU considers:

“affirmative action as a pejorative label that refers to a broad set of practices, including ‘hard’ methods of intervention designed to achieve fixed quotas of representation of minorities in education and employment, while positive action does not go that far because it is built on soft measures avoiding explicit quotas and it promotes meritocracy.”⁸⁴

The European Union appeals to positive action to help groups participate in higher education and employment but does not guarantee success as it lacks any numerical parameters.

In regards to advancing gender equality between men and women, we can identify within the EU three approaches, namely: “the equal treatment perspective”, “the women's perspective”, and “the gender perspective.”⁸⁵ They were first mentioned in 1975, in the Council Directive 75/117/EEC which emphasized the principle of equal pay for equal work between men and women.⁸⁶ On February 6, 1976, the Council Directive 76/207/EEC was adopted, which emphasized the principle of equal treatment between women and men, referring to the process of hiring, training, promotion and working conditions.⁸⁷ This directive prohibited discrimination based on grounds of sex or marital status and required member states to ensure the legal framework for complying with the new rules either by amending laws that contradicted the principle of equal treatment, or by creating new laws to ensure compliance with the 76/207/EEC, Art.3.2. The Directive also stated that there are allowed measures that promote equality of opportunities by removing existing inequalities which affect women's opportunities in the work environment (Art. 2.4.).

Besides the Article 2.4. of the Council's Directive 76/207/EEC, which allowed but did not require preferential measures, positive action for women appeared in 1984 in the Council Recommendation 84/635/EEC - but without having a binding character. The preamble of this recommendation stated that “existing legal provisions on equal treatment [...] are inadequate for removing

⁸⁴ Daniela Caruso, “Limits of the Classic Method: Positive Action in the European Union after the New Equality Directives,” *Harvard International Law Journal* 4, no. 331 (2003): 2.

⁸⁵ Walby, *The Future*, 85.

⁸⁶ Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, EUR-Lex, accessed August 2, 2018, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A31975L0117>.

⁸⁷ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, EUR-Lex, accessed August 2, 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31976L0207>.

existing inequalities if there are no parallel measures taken by governments, together with the industry and other bodies concerned, to counteract the adverse effects on women in employment which arise from social attitudes, behaviour and structures.”⁸⁸ Article 1 argued in favour of implementing specific measures to eliminate or counteract the effects of prejudice against women in employment and encouraged the participation of women in various occupations, especially in sectors where they are under-represented. However, the recommendation did not include numerical targets.

In 1997, the Treaty of Amsterdam, Art.141.4., stated that:

“the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.”⁸⁹

This is a reformulation of the old Article 2.4. of the 84/635/EEC. In general, the Treaty has focused on the elimination of discrimination based on sex and the promotion of equality between women and men in the labour market - defending “the principle of formal equality.”⁹⁰ In 2004, the Council Directive 2004/113/EC, Art. 6 mentioned positive action in the sense described above: preferential treatment is not discrimination in favour of women.⁹¹ However, positive action remains an optional measure, with no binding force or quotas to be measured and met.

The Council Communication of 1996 introduced the concept of “gender mainstreaming.”⁹² The fact that gender mainstreaming has been frequently used interchangeably with equality of opportunities applied to all areas, policies, activities unlike the initial approach which was limited to the labour market suggests that it was an extension of the directives of 1975 and 1976. The directives mention equal treatment and equality of opportunities in the same

⁸⁸ 84/635/EEC: Council recommendation of 13 December 1984 on the promotion of positive action for women, EUR-Lex, accessed August 2, 2018, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31984H0635:EN:HTML>.

⁸⁹ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Consolidated version of the Treaty establishing the European Community, EUR-Lex, accessed August 2, 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:11997D/AFI/C>.

⁹⁰ Caruso, “Limits,” 6.

⁹¹ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, EUR-Lex, accessed August 2, 2018, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:373:0037:0043:en:PDF>.

⁹² Communication from the Commission of 21 February 1996 “Incorporating equal opportunities for women and men into all Community policies and activities,” EUR-Lex, August 2, 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:c10921&from=EN>.

context, but the legislative texts seem to ignore the fact that the two forms of equality are not identical, but rather in conflict, and that only the latter emphasizes the equality of outcomes.

Thus, the European Union allows positive action but does not demand it. The main approaches remain the prohibiting of discrimination based on sex and the support of the principle of equal treatment. The newer approach, gender mainstreaming, although present in directives, does not specify methods for this purpose nor does it provide penalties for the member states that do not take the necessary measures. As such, it is hard to assess whether gender mainstreaming is an effective policy.

Conclusions

This article has sought to defend gender-based affirmative action against its main critiques. The arguments presented in favour of gender-based affirmative action rely on both political philosophy arguments, as well as on statistical data, which confirm that gender inequality is still ongoing, both in the E.U. and in the U.S. As such, the article underlines that one of the core criticism against affirmative action programmes does not hold: in what regards gender inequality, the source of inequality does not belong to the past. The difference between race-based and gender-based affirmative action programmes is that the first search to compensate and to redress the aftermath of slavery of Afro-Americans and of racial segregation (Jim Crow Laws). Gender-based affirmative action programmes, on the other hand, seek to address mainly biases and discrimination against women encountered in the present, with no reference to a particular past context or country. As such, while the main critique against race-based affirmative action stresses that the slave owners from the past are not the ones paying for present compensation, the critique against gender-based affirmative action is that it undermines meritocracy. I endorsed throughout the paper Iris Marion Young's position on the myth of merit, as well as her view that affirmative action programmes in general, both for women and Afro-Americans, seek to tackle the *ongoing white male bias*.⁹³ Moreover, one of the main arguments the paper endorses is Richard F. America's view that opponents of affirmative action programmes are in fact supporters of the status quo which is designed to favour white men.⁹⁴

This study also argues in favour of treating gender-based affirmative action differently than race-based affirmative action. While both can be defended against opponents of affirmative action in general, these programmes

⁹³ Young, *Justice*.

⁹⁴ America, "Affirmative Action."

try to address inequalities that stem from different sources: women do not face the same discriminatory treatment as people of colour. While for African-Americans discrimination comes mostly from outside of their community (e.g. employers, institutions), for women discrimination is first of all encountered in the private sphere: traditional gender norms exercised within the family. Further on, the article supports Conrad Winn's proposal of offering separate consideration to the family as a triggering factor for women's lower involvement on the labour market.⁹⁵ Relevant in this regard are the data that show that in 2016, at E.U. level, 82% of children under the age of 3 years were not enrolled in full time nurseries and were cared for at home.⁹⁶ As women continue to be the main caretaker for children, this leads them to work 5 years less than men.⁹⁷ In time, this converts into a pension 38% smaller than men's (data referring to the E.U.).⁹⁸ Moreover, the gender pay gap in the E.U. was of 16.2% in 2016 and of 18.2% in the U.S. in 2017.⁹⁹ Another factor that reflects gender inequality is the lower employment rate of women: in 2017, both in the U.S. and the E.U., the participation rate in employment is 10.5% lower than men's.¹⁰⁰

The paper also shows that gender inequality cannot be reduced solely through affirmative action policies.¹⁰¹ Affirmative action measures *alone* are inefficient methods to combat gender inequality because they only address discrimination on the labour market and in higher education. Here I construct my argument taking into account Nancy Fraser's proposal for transformative remedies, Susan Moller Okin's and Conrad Winn's claims family and internal distributions within it are key factors to be considered when drafting measures aimed at gender equality.

One of the core arguments I have advocated for throughout the article is that family policies that dismantle traditional gender roles in children's rearing are equally important. Affirmative action programmes for women are just one policy among many that address gender inequalities. The reason why affirmative action cannot be considered an effective strategy for advancing gender equality is that it addresses the effects (discrimination), and ignores the causes (traditional gender roles). To some extent, Fraser's critique on affirmative measures echoes here since policy makers prefer to offer several

⁹⁵ Winn, "Affirmative action for women."

⁹⁶ Eurostat Database, "Children in formal childcare."

⁹⁷ European Institute for Gender Equality, "Duration of working life."

⁹⁸ European Institute for Gender Equality, "Gender gap in pensions," 21.

⁹⁹ Eurostat Database, "Gender pay gap," and OECD database, "Gender wage gap."

¹⁰⁰ OECD database, "Employment rate – Women."

¹⁰¹ The same could be argued also regarding race-based affirmative action. However, this paper focuses only on the connection between gender inequality and gender-based affirmative action programmes.

entry tickets to universities or jobs where women are underrepresented, instead of tackling traditional gender roles also through equalitarian family policies.

Lastly, the paper argues that affirmative action for women should be criticised by the gender equality advocates on the basis of its limitation to the public sphere, as it fails to take into account the connection between employment and education, on the one hand, and unequal burdens and responsibilities within the family, on the other hand. E.U. gender mainstreaming and U.S. affirmative action can be subjected to the same criticism: both address solely inequalities between men and women encountered in employment, without paying too much interest in the origin of these inequalities. Moreover, both policies use as a standard template the male-defined labour market.