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Sexual Harassment: The Global and the Local

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Citation	Dobbin, Frank. 2006. Sexual Harassment: The Global and the Local. Sociological Forum 21, no. 4: 709–713.
Published Version	doi:10.1007/s11206-006-9044-0
Accessed	February 16, 2015 2:42:37 PM EST
Citable Link	http://nrs.harvard.edu/urn-3:HUL.InstRepos:12701497
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Sexual Harassment: The Global and the Local

Saguy, Abigail. 2003. What is Sexual Harassment: From Capitol Hill to the Sorbonne. Berkeley, CA: University of California Press.

Zippel, Kathrin S. 2006. The Politics of Sexual Harassment: A Comparative Study of the United States, the European Union, and Germany. Cambridge: Cambridge University Press.

Both of these books are concerned with how global social movements are refracted through national cultural and legal systems. Both find that new norms spread across countries, in this case originating in the United States and then spreading through feminists to Europe. But both find diffusion models wanting.

The wider importance of these studies is hard to overestimate. In recent decades sociologists, political scientists, and economists have studied the diffusion of cultural and legal norms around the world. Democratization; women's rights; labor rights; cultural, racial religious rights -- a whole host of things going by the name of political liberalization. But also privatization, trade liberalization, antitrust, "good" corporate governance, stock markets, central bank independence -- a whole host of things going by the name of economic liberalization. Sexual harassment is an instance of a wider trend that has swept the globe. And this period of globalization is not the first. Before this, there was colonization, decolonization, mercantilism, the gold standard, Keynesianism, emancipation.

The many studies of this new wave show the spread of nominally similar policies, but don't show what happens within countries. Many use quantitative analysis to track legislation, or U.N. resolution signings, across countries. Yet nominal convergence often conceals dramatic variation across nations. Paul Starr (1989) has argued that privatization meant as many different things as there were privatization programs around the world. In some places it meant rebuffing a labor party past. In others it was a way to raise quick cash. In others it was a way to get rid of a bureaucratic headache. Starr had a sort of garbage can theory -- Cohen, March, and Olsen's (1972) theory of how organizations respond to new fads -- of diffusion, in which politicians around the world championed privatization for whatever problem it could solve for them. Rather than being part of a coherent neoliberal agenda, it became a sort of Swiss Army knife.

Zippel and Saguy show us how variable the embrace of sexual harassment provisions has been. They show how feminists have used political and cultural resources to push for anti-harassment policies, national and organizational. And how they have been hemmed in by political and cultural constraints. What is going on might be called translation by micro-organizational theorists such as Barbara Czarniawska and Guje Sevón (2005) -- national context shapes how global organizational prescriptions are implemented -- or it might be called decoupling by macro-institutionalists like Meyer and Rowan (1977) -- organizations formally embrace a new policy but don't really carry it out. Certainly by American standards, Germany and France are not carrying out the policy of forbidding harassment. And maybe American firms aren't either.

Both projects highlight a paradox. The United States, laggard in many labor protections, had an earlier, and much stronger, public policy regime against sexual harassment, and also a much

more elaborate workplace response. In the United States there have been tens of thousands of sexual harassment charges brought before the federal government resulting in millions of dollars of transfers. In Germany and France, nothing to speak of. In the U.S., employers have created elaborate training systems and grievance procedures. In Germany and France, employers have done almost nothing.

Zippel argues that different political and industrial relations structures led to different outcomes. In the U.S. and U.K., the common law system and the existence of anti-discrimination legislation left an opening for the construction of harassment as an issue of employment discrimination, and for the courts to define it as on par with other forms of employment discrimination. In the EU generally and particularly in Germany and France, the civil law system left the definition to legislatures and bureaucrats rather than to the courts, and the emergent definition around the issue of dignity, rather than around the issue of employment discrimination, meant that the sanctions and incentives for employers were much different. It is difficult to imagine a \$40 million payout by a major French or Germany corporation, but transplant Mitsubishi Motors faced exactly that in the United States.

One of the things mitigating the workplace approach to harassment in Germany was the structure of labor relations. There the industrial relations system was collaborative rather than top-down (as in the United States), which meant that directives have to be worked out at the level of the workplace Works Council. Corporate HR departments there couldn't have implemented centralized strategies even if they had wanted to. But the legal system provided little in the way of a stick in Germany, in part because penalties were small, in part because Germany lacks the elaborate tort system that American plaintiffs have sometimes resorted to.

America's legal system has led to an employer over-reaction of sorts. Corporations ban flirting and office romance because of worries that the courts will ban them. For Zippel, as for Vicki Schultz (2003), this tends to undermine the central concern of feminists. It happens when managers, uncertain of what the courts might do, become overzealous in their efforts to prevent future liability.

This of course was only possible because the Common Law system created an opening for the courts to define harassment as a form of sex discrimination, and because employers know the law to be a moving target. There would be no reason for employer over-reaction in Germany or France because the courts can't redefine the meaning of harassment. Indeed in both Germany and France there is under-reaction by any reasonable metric, and that is central to both of these stories. There is no real threat to employers, because sanctions are weak and apply to the individual offender rather than the employer, and so employers don't do anything.

The pattern that Saguy and Zippel describe is an instance of a wider pattern across Common Law and Civil Law systems. In employment, Common Law systems leave great discretion to the courts. Where legislation is ambiguous, employers tend to overreact by trying to predict the trajectory of the law and to build in protections against all imagined forms of liability (Dobbin and Sutton 1998). That sounds like a bad thing, and Shultz (2003) is certainly right that some employers have gone too far. But it can be a good thing. American employers think they are

guilty until proven innocent of sexual harassment, and that has made them much more vigilant than their European counterparts.

Saguy, in comparing France to the U.S., highlights culture as much as institutional structure. Part of her argument is about how the French Republican tradition, since the Third Republic at least, has opposed categorizations and laws based on status groups. The great French project has always been to make all subjects and citizens French, rather than to divide them -- hence French officials are prohibited from collecting data on race, even in the census. This is not merely a legal constraint, but a cultural constraint that is legally embedded. By contrast, the United States has claimed to be color blind, in legislation and in the constitution, but as John Skrentny demonstrated in *The Ironies of Affirmative Action* (1996), the implementation of affirmative action made employers particularly race- and gender- conscious. The result is that in the law and in the firm, race and ethnicity and sex have become more, not less, salient. The French solution was to fight efforts to make gender (or race or ethnicity) salient -- to treat these characteristics as part of the private, not public, sphere.

For Saguy, globalization has been a mixed blessing in France. It doubtless caused the EU, and then France, to move. But the French saw excessive Puritanism in the American approach, and so French feminists first won a law with a limited definition of harassment as abuse of power by someone in an official capacity. France's 2002 revision of the law dropped the power differential, and equated sexual harassment with moral harassment and violence more generally. French feminists thus won something akin to an American-style hostile environment definition of harassment, but not by invoking American ideals. Instead they distanced harassment from Puritanism and linked it to other forms of psychological violence. That definition looks a lot like the definition we see in Germany now, of mobbing.

What we have in these two arguments is a small set of explanatory tools, used to explain the outcomes a process of globalization in a succinct manner. Globalization makes countries aware, in short order, of emergent norms. Of course, those norms don't always come from the United States -- Margaret Thatcher invented privatization. Social movements draw on cultural and political resources, but they are also constrained by culture and political structures. What that means is that in the United States, Civil Rights Law, a litigation system facilitating massive damage awards, and a common law system that allowed for the expanding definition of discrimination, made a broad definition legally possible and potentially harmful to employers. But in the U.S., an industrial relations system that was top-down facilitated unilateral employer solutions (grievance procedures and training programs) that haven't, apparently, reduced harassment. In Germany and France, the Civil Law tradition meant that the courts could not simply add harassment to a list of forms of discrimination. A legal system that was not organized around sanction via lawsuit, but around positive regulation, meant that employers did not face unknown sanctions. And in Germany, workplace labor regulation through Works Councils meant that employers would not be able to invent their own remedies.

In both stories, structure and culture provide constraints on social movement actors. Saguy's and Zippel's stories are much more nuanced, and more theoretically synthetic, than the stories we saw emanating from political sociologists a generation ago. Then the theoretical instruments were broad and blunt. What is exciting in reading these two books together is that they show

that we have come a long way in the last generation toward developing cogent explanations of variation in policy that reflect reality well. These subtle, but lucid and theoretically coherent, explanations of the spread of harassment policy show political sociology to be a dynamic and rigorous enterprise these days.

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