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A REVIEW OF THE HISTORY OF GENDER EQUALITY IN THE UNITED STATES OF AMERICA

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Abstract: Gender inequality is one of the important challenges in all modern societies, the United States of America being no exception, despite the progress and significant advances that have been made in the past century. There still is a significant gender gap in many areas – most notable being the pay gap, social norms and practices, education, political participation and social institutions. The present article aims to analyse the legal framework and social framework that has evolved in the United States of America in order to diminish or completely abolish gender inequality and discrimination.

After the 1920 ratification of the Nineteenth Amendment to the Constitution of the United States of America, which empowered women with political rights, there was a proposed amendment to the Constitution to guarantee equal rights for women, first introduced in Congress in 1923, passed by both houses in 1972, but which failed ratification – only 35 out of the 38 states needed ratified the amendment before the deadline – 1979, which later was extended to 1982. The United States has since taken some steps in reducing the gender gap and stopping gender discrimination: in 1963 it passed the Equal Pay Act, that prohibited pay discrimination based on sex, the next year the Civil Rights Act, which outlawed discrimination, including when based on sex, and Title IX of the Educational Amendments in 1972, which provided equal federal financial assistance indiscriminate of sex.

This legislation helped shape the United States into one of the frontrunners in gender equality, even if in 2014 it ranked on the 20th place according to the Global Gender Gap Index.

Keywords: equality, gender equality, gender legislation, equal rights amendment

A large number of countries around the world have mde significant progess regarding gender equality in the past years. There have been significant advances all around the world, in all kinds of fields: "*girls today outperform boys in some areas of education and are less likely to drop out of school*", (OECD, 2012, p. 13) over 96% have closed the gap in health outcomes, 60% in economic participation and 21% of the gap in political empowerment. (Hausmann, Tyson, 2014, p. 46)

This present paper is constructed in two parts – the first is a social diagnosis of the current situation of gender equality in the USA and in a global context, followed by an legislative analysis of the current state of affairs in the United States of America at the federal leval.

Globally, we've been able to notice a positive trend regarding the evolution of gender eqality – an evolution made possible by both the development of thirld world countries and the continous improvement of the modern states. The issue of gender equality has been a core debate in a large number of societies not only for philosophical and social reasons, but also for economic ones. According to the data presented by the Global Gender Gap Index Report, an instrument design to measure gender inequality in over 130 major and emerging economies worldwide, with over 93% of the world's population, we can *"confirm a correlation between gender equality and GDP per capita, the level of competitiveness and human development. The correlation is evident despite the fact that the Global Gender Gap Index (unlike other gender indexes) explicitly eliminates any direct impact of the absolute levels of any of the variables used in the Index (e.g. life expectancy, Educational Attainment, labour force participation), as these may be impacted by the relative wealth of a country." (Hausmann, Tyson, 2014, p. 39)* The conclusion is drawn after the analysis of four critical areas of inequality between men and women: economic participation and opportunity, educational attainment, political empowerment and health and survival.

The most significant development in the recent years have been in the area of of economy and employment – but even though the advances here been major, and there has been a large number of governmental programs dedicated to the elimination of this issue, the effects have been limited and take a long time to fully propagate: "*more women have entered the workforce in recent years, but often experience more difficulty than men in finding a first job, earn less than men, and are more likely to work part-time*." (OECD, 2012, p. 15)

Women find themselves dealing with a harder challenge when faced with entering the workforce and finding a job and maybe usually choose jobs that allow them to have time for their family and children. It's clear that women are usually paid less in the United States and all over the globe, but the fundumental reason between that is debated: do women choose lower-paying jobs, because they are more risk-averse? Do they work part time more than men do? Since they are the primary caregivers for the childern, do they simply work less time then men? According to an 2015 American Association of University Women study, in 2013, "*women working full time in the United States typically were paid just 78 percent of what men were paid, a gap of 22 percent*" (The American Association of University Women, 2015, p.3), a gap that has been decreasing since 1973 when it was at 43%. Another study, found that "*after accounting for college major, occupation, economic sector, hours worked, months unemployed since graduation, GPA, type of undergraduate institution, institution selectivity, age, geographical region, and marital status, Graduating to a Pay Gap*

found that a 7 percent difference in the earnings of male and female college graduates one year after graduation was still unexplained." (Corbett, Hill, 2012). Most groups advocating gender equality in the workplace in the United States have centered their message around the issue of the pay gap, promoting the *equal pay for equal work* concept of labor rights, which states that any all individuals that are doing the same work should receive the same remuneration, no matter the sex, race or colour. Even though the legislation for this exists in the United States of America, enacting is difficult. *"Female employment participation has generally increased and gender gaps in labour force participation have narrowed. Yet occupational segregation has not improved, gender pay gaps persist, and women are still under-represented at more senior job levels, especially among managers and on company boards."* (OECD, 2012, p. 18) The gender pay gap can not be explained only by human capital factors and work patterns, the preference of part time jobs over full time jobs or that men are inherently better negotiatiors of their wage or are more proactive when asking for raises and seeking promotions. Most modern societies are still patriarchal societies, where women are expected to be the primary caretakers, while men are expected to be the hardworkers, the breadwinners.

There have also been critics to the gender pay gap reports, stating that the true topics should be if "is social work or nursing as complex and do these professions require the same depth of knowledge as an engineer or computer programmer? Should a janitor be paid more like a surgeon? If most job professions are basically equal; why are the male-dominated professions paid more than the female dominated ones?" (Zinan, 2013), claming that the differences that AAUW finds are not explained by discrimination, but through the choice that women take when becoming parents – which often brings along leaving the workforce for a significant amount of time, and with it the loss of seniority, benefits and higher pay. Soberg and Laughlin found that "occupational assignment is the primary determinant of the gender difference in compensation [...] the analysis of the index of compensation indicates that there is no gap for the most female-dominated occupation or for the most male-dominated occupation". (Solberg, Laughlin, 1995) Thus, Soberg and Laughlin attributed the pay gap to the different choice of occupation that men and women make, the gender gap being according to them of only 3.6 percent.

The United States does not have a non-discrimination clause in its Constitution, but it does guarantee equality before the law to all its citizen, including all men and women. The 14th Amendment of the United States Constitution states in it's first article that "*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*" Included in this is the last part, the *equal protection clause*, known under the term of *equal justice under law*. Even if this amendement does not specify gender protection, it does include a most likely deliberate equality between all "persons". This interpretation was upheld by the United States Supreme Court in Reed v. Reed (Reed v. Reed, 404 U.S. 71, 1971) - where it ruled that administrator of estates cannot be named in a way that discriminates between sexes and Craig v. Boren (Craig v. Boren, 429 U.S. 190, 1976) where it was decided that the

government must only use the sex-based criteria in regulation only where it can demonstrate that it is substantially relevant, adding thus another level of scrutiny, both rulings being based on the courts interpretation of the 14th Amendment.

"The Equal Protection Clause protects persons against certain forms of discriminatory state action only. In a few discrete areas, the Court has ruled that the Clause protects certain fundamental rights that the state cannot burden" (Siegel, 2004, p. 310). Thus, the 14th amendment does not protect against discrimination from private entities but only from the state, as later legislation will do. On the other hand, in the 1970s, with the development of the affirmative action movements, the Court began to interpret the amendment as a color-blind filter, discouraging any programs that might consider criteria that will favorize only formerly segragated groups.

The most major development for women's rights in the United States of America was the passage of the 19th Amendment to the United States Constitution: "*The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.*" Through this amendment, first introduced in Congress in 1878, women in the USA have gained political rights: to vote and to hold office, after fourty years of political upheavel, beginning the slow process of liberation for women. The women rights movements started popping up after 1848, but only gained significant momentum at the turn of the 20th century. Women thus gained an important public and political voice in the American society through this legislation.

An important evolution in the history of women's rights in the United States of America could have been the Equal Rights Amendment, a proposed and failed amendment to the United States Constitution which only received 35 of the necessary 38 state ratifications. The ERA was introduced in Congress in 1923, taking advantage of the political momentun of the 19th amendment, but not starting the process of state ratification until 1972. The amenendment was incredibly innovative and bold for it's time, stating that "*equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex*." thus bringing effective legal equality to men and women, no matter the provisions of other laws or deprecated Constitutional interpretations. Even though the Equal Rights Amendment failed ratification, ten states have adopted a similar constitutional provision, which enforces equal rights under the law, undeniable because of sex – Alaska, California, Colorado, Illinois, Iowa, Maryland, Montana, Oregon, Utah and Wyoming.

"A mass movement for women's rights did not coalesce again for another half century - once again arising out of a movement for racial equality." (Siegel, 2004, p. 308) It took half a century of political distress in order to reboot the women's rights movement capable of gaining the traction needed to bring social change.

Another important advancement in gender equality in the United States of America came with the adoption of the Equal Pay Act of 1963 (EPA), which prohibited sex-based wage discrimination. The law provides that "*no employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the*

opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions". Through this law the first important step in recognizing and thus balancing the gender gap in payment between men and women was taken. The EPA prohibits employers from paying lower wages to one gender then it does to another gender for the same work and under the same condition, through this allowing both men and women protection in their workplace against a discriminating employer. This law was passed as part of John F. Kennedy's New Frontier Program and was based on the Peterson Report drafted by the Presidential Commission on the Status of Women, which proposed paid maternity leave, equality for women in the workplace – both regarding wage and hiring practice, better education and counseling and affordable childcare, but at the same time opposing the Equal Rights Amendment.

Title VII of the Civil Rights Act of 1964 includes a clear prohibition of discrimination on the basis of race, color, religion, sex or national origin. Section (a) (1) of 42 U.S. Code - 2000e–2 - Unlawful employment practices, makes it unlawful for an employer to "(1) *to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.".* Thus, any person is granted protection against their employer on the matter of sex regarding hiring or firing practices, but also the rights of said individual in the workplace. Similar provisions specified in Title VII apply to employment agencies, labor organizations and training programs, while there are exceptions regarding the federal government, federally recognized Native American tribes, religious groups and non-profit private membership organizations. Title VII thus forbids gender discrimination in any aspect of employment, as defined by the federal government: hiring and firing; compensation, assignment, or classification of employees; transfer, promotion, layoff, or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay, retirement plans, and disability leave; or other terms and conditions of employment.

In 1972 another step forward was taken in the move for gender equality in the United States – the introduction of the Title IX of the Educational Amendments. Title IX prohibits discrimination on the basis of sex in all educational institutions that receive federal funding. It states, in part, that "*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance*". Thus, any federally funded educational institution - colleges, universities, and elementary and secondary schools, but also any education or training program operated by a recipient of federal funding is prohibited from discriminating on the basis of sex, bringing equal educational opportunities to both men and women. Title IX is thus a landmark in federal civil rights that promote gender equality in the United States of America. It forces educational institutions not only to stop discrimination, but also to be proactive about

stopping sex discrimination, sexual harassment and sexual violence. This policy was extended in 1976, when the Education Amendments of 1976 *"mandated the elimination of sex discrimination and sex-role stereotyping in vocational education programs receiving federal funding [and] required collection and analysis of data concerning participation by women and studies to identify methods used to eliminate sex bias and stereotyping"* (Women's Rights Task Force, 1979, p. 14)

In 1975, women in the United States of America were granted admission to all military academies through Public Law 94-106, which stated, in part: "*female individuals shall be eligible for appointment and admission to the service academy concerned [...] the academic and other relevant standards required for appointment, admission, training, graduation, and commissioning of female individuals shall be the same as those required for male individuals, except for those minimum essential adjustments in such standards required because of physiological differences between male and female individuals*". Thus, the US Army became available to women, making them eligible for voluntary military service in any branches of the army. This was an important development mostly thanks to its social symbolism, allowing women to serve in one of the last gentlemen only clubs.

The same year, the United States Supreme Court in Taylor v. Louisiana (Taylor v. Louisiana, 419 U.S. 522, 1975) decided that women could not be excluded from a jury pool in a systematic way, when the appellant made the claim that he was not granted a fair trial, as the jury that convicted him was all male. Equal protection and due process cannot be ensured without equal representation in all aspects of society, including jury duty. Prior to this, women ware excluded from jury service unless they specifically requested, through a written request, to take part in such proceedings.

The Lilly Ledbetter Fair Pay Act of 2009 has brought important developments in gender equality, by amending the Civil Rights Act of 1964 to expand the protections against unlawful employment practices, by allowing liability to accrue and extending the definition of an unlawful employment practice with respect to discrimination. Thus, in part, it occurs "*when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice".* The protection against sexual discrimination is thus extended, allowing all victims of pay discrimination to effectively challenge unequal pay. This is an important act in the issue of gender equality if we consider the large gender pay gap we have identified earlier in our paper.

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