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978-1-107-00191-6 - Women's Rights in Democratizing States: Just Debate and Gender
Justice in the Public Sphere

Denise M. Walsh

Excerpt

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PART I

JUST DEBATE

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I

Democratization and Just Debate

“Democracy is not enough. We want gender justice.”

Banner at the Beijing Plus Five United Nations Conference, New York, 2000

INTRODUCTION

In a rare consensus, gender scholars now agree that democratization is not associated with significant advances in women's rights (e.g., Jaquette and Wolchik 1998; Tripp, Casimiro, Kwesiga, and Mungwa 2009; Waylen 2007). Why not? In this book, I argue that advances in women's rights occur when the quality of democracy is good, meaning debate conditions are open and inclusive. Under conditions of fully open and inclusive debate, everyone who wishes to exchange ideas about issues of common concern has the opportunity to do so. Those discussions shape public opinion and influence state policy making. I refer to these ideal conditions as just debate.

Although no democratizing state fulfills these ideals, debate conditions in democratizing states can vary significantly across countries and across time within countries, from quite limited to remarkably open and inclusive. Through a series of paired comparisons of select time periods in democratizing Poland, Chile, and South Africa, I find that when debate conditions are more open and inclusive, state support for gender justice is greater. The reason is simple. Better debate conditions mean a more diverse range of women have the opportunity to speak about their interests and be heard. As a result, more demands for women's rights enter public debate. Because politicians facing elections aim to demonstrate responsiveness to public

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debate they increasingly support policies and legislation advancing women's rights. This is precisely what happened in South Africa during the 1990s, when open and inclusive debate conditions were associated with impressive policy change and legislation promoting gender justice.¹ This outcome is rare because the quality of democracy is rarely good.

THE PUZZLE

Recent democratic transitions in Africa, Latin America, and Eastern Europe have afforded gender scholars the unpleasant opportunity of making careers examining the roadblocks to women's rights. Nowhere is this more evident than in Central and Eastern Europe (CEE). In this region, women's social and economic rights – such as the right to abortion, extended maternity leave benefits, and state-supported day care – eroded precipitously with the transition to democracy. This was particularly true for countries where democratization was the smoothest and most successful: Hungary, the Czech Republic, and Poland. The latter is notorious among advocates of women's rights, as it also rescinded legalized abortion and made divorce more difficult (Nowicka 2008; Siemienska 1998).

If outcomes in the CEE region were unusually limited, women's rights in most democratizing countries advanced incrementally. This was the case in Latin America. During the 1990s, several countries in the region transitioned to stable democracies, including Argentina, Brazil, and Chile.² In Chile, where the women's movement was exceptionally strong, advocates of women's rights won a gender ministry in the state that helped promote a handful of laws advancing the rights of women. Although abortion remained illegal, the new government eventually passed legislation on violence against women, adopted family law reforms, and increased maternity leave and aid to poor women (Franceschet 2005; Waylen 2000). In 1999, the government guaranteed gender equality; in 2004, it legalized divorce; and in 2005, it strengthened its legislation on violence against women. Unlike in Eastern and Central Europe, moderate advances in women's rights occurred in Latin America.

¹ This book refers to women's rights and gender justice interchangeably. I refer to *women* not to name a preconstituted group with shared interests, but to refer to people who identify as or who are identified as women, and as a result are placed into unequal relations of power. In this book, *gender* refers to how individual behaviors, institutions, and structures create, reproduce, and challenge those unequal relations of power (Beckwith 2005a; Hawkesworth 2005; Htun 2005).

² A stable democratic regime requires contested elections, full suffrage, limited fraud, and effective guarantees of civil liberties (Collier and Levitsky 1997).

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In contrast to both the CEE region and Latin America, significant advances in women's rights swept across Africa during the past fifteen years (Fallon 2008; Tripp et al. 2009). Countries like Rwanda, Uganda, and Mozambique now have some of the highest proportions of women legislators in the world, and these countries have also adopted extensive constitutional and legal reforms advancing women's rights. However, few of these post-conflict countries are "free." In short, advances in women's rights in Africa have not been associated with democratic regimes. A notable exception is one of the region's most celebrated democracies, South Africa. In addition to removing discriminatory legislation, the government approved an equality clause in the new constitution and passed the South African Citizenship Act of 1995, the Labour Relations Act of 1995, the Choice on Termination of Pregnancy Act of 1996, the Basic Conditions of Employment Act of 1997, the Maintenance Act of 1998, the Domestic Violence Act of 1998, the Recognition of Customary Marriages Act of 1998, and the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000. South Africa is a stunning exception to patterns elsewhere, suggesting that democratization and women's rights can advance in tandem.

However, advances in women's rights eventually stalled in South Africa. Although the government did not rescind recent legislation, few laws were effectively implemented. More tellingly, policy and legislative reform after 1999 slowed dramatically. For example, the South African government delayed passing the Sexual Offences Act for five years and limited the scope of that legislation. In 2004, the South African parliament unanimously passed a Communal Land Rights Bill that threatened rural women's access to land. It thus appears that democratization during the "third wave" has rarely been associated with significant, steady advances in women's rights.³ Why?

Gender scholars argue that as the space for public debate expands in democratizing states, opportunities open not only for advocates, but also for opponents of gender justice (Htun 2003; Htun and Weldon 2010; Tripp et al. 2009). Democratization means competing visions of women's proper role and status will have to be argued out in public. Moreover, even when public opinion supports women's rights, if women's movements are

³ Samuel Huntington coined the phrase *third wave* to refer to the third historical surge of democratization, the first beginning in the nineteenth century with Jacksonian democracy, the second occurring in the post-World War II era, and the third occurring from the mid-1970s to the 1990s (Huntington 1993).

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weak, or if powerful conservative groups opposed to women's rights have high institutional capacities and significant political influence, advances are unlikely (Baldez 2002; Htun 2003).⁴ Indeed, gender scholars have found that women's movements tend to fragment or get co-opted by the new government soon after elections, undermining the ability of women's rights advocates to hold political elites accountable (Baldez 2002; Friedman 1998; Tripp 2000). As democratization advances, political opportunities shift away from activists and movements in the streets, and back to formal political actors (O'Donnell 1999; Waylen 1994). Those actors are likely to be establishment elites with limited commitments to gender reform.

To be sure, some politicians interested in gender justice did enter politics during the third wave; most were women. Yet unlike the single-party states in post-conflict Africa, in most democratizing states, women's presence in politics remains disproportionately low and the work required to achieve even that low presence inordinately high (Beckwith 2005b, 587). Marginalized as politicians and with their movement dissipated, women's political influence declines, and support for gender justice dissolves (Jaquette 2001; Waylen 1994). Although these explanations for the slow advance of women's rights in democratizing states are compelling, I find they cannot explain the divergence in women's rights outcomes in several cases.

The literature on democratization offers a broader diagnosis for why outcomes in democratizing states have failed to fulfill popular expectations. Although mainstream analysts of democratization do not focus on women's rights, they do ask why outcomes in democratizing states have not been as beneficial to marginalized populations as expected. To answer this question, they target several dimensions of democratic quality, such as the rule of law, accountability, and political competition (Diamond and Morlino 2005; O'Donnell, Cullell, and Iazzetta 2004). For example, Bingham Powell Jr. proposes a causal chain that argues inequality, along with limits on the rule of law, participation, competition, vertical and horizontal accountability, and freedom, disrupts the link between citizens and their representatives, impeding state responsiveness (Powell 2005). Powell's causal chain suggests the feminization

⁴ While many groups are conservative on women's rights, gender scholars have found that those whose core principles oppose select women's rights, such as tribes in North Africa or the church in Latin America, are critical in shaping outcomes on women's rights (Charrad 2001; Htun 2003).

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of poverty and women's cultural subordination, as well as political corruption, an apathetic citizenry, oligarchic political parties, and governments that avoid state oversight, compromise judicial independence or intimidate the political opposition, can impede the democratic state's advancement of women's rights.

Although low-quality democracy may explain the limited outcomes on women's rights in democratizing states, models like the one Powell offers are complex. As Powell points out, the key concepts are difficult to define, the model involves an extended chain of causal mechanisms, comparative empirical data are lacking, and it raises contentious normative and theoretical claims about democratic values and appropriate policy outcomes (Powell 2005, 72). This list of obstacles presents gender scholars with a daunting task if they wish to evaluate the relationship between democratic quality and women's rights. I address this problem by drawing on deliberative theory, which provides a straightforward rationale for linking the quality of democracy to outcomes on women's rights.

THE JUST DEBATE CLAIM

Unlike liberal approaches that conceptualize politics as the aggregation of self-interests limited by individual civil and political rights, or republican approaches that conceptualize political agreements on the common good as derived from a shared ethos among citizens, deliberative approaches conceptualize politics as communication. According to deliberative theorists, political communication can involve anyone who shares an interest in discussing issues of common concern. These conversations occur in the public sphere that consists of "spaces," such as mass media or community meetings, where citizens deliberate. Ideally, participants in the public sphere become knowledgeable about the points of view and perspectives of others and take them into account as they formulate opinions and make judgments. Negotiation and compromise then lead to political agreements that have high levels of legitimacy because everyone has the opportunity to speak her or his mind and participate in formulating decisions.

Although deliberative theorists subscribe to this communicative form of political decision making, they do not all share the same goals. The field can be divided into two (not mutually exclusive) groups. The first, dominated by theorists like Amy Gutmann and Dennis Thompson (1996), Jane Mansbridge (1992), and Cass Sunstein (1988), hope to invigorate

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the contemporary liberal state. They aim to increase political participation without diluting the quality of decision making. Liberal deliberative theorists believe that deliberation can redress contemporary problems such as apathy, underinformed citizens, low legitimacy ratings for government, and inept decision making by producing more responsive and responsible public policy.

In contrast, critical deliberative theorists such as Seyla Benhabib (1996), Nancy Fraser (1996), and John Dryzek (2000) aim to “theorize the limits of democracy” (Fraser 1996, 109). This group directs its energies toward strengthening the capacity of the public sphere as a space for contestation. Critical deliberative theorists argue that debate conditions – who speaks about what, when, and how – shape the content of public debate in the public sphere. They endorse a wide range of ideas and participants, claiming open and inclusive deliberation will challenge established norms and values and increase support for social justice (Ackerly 2000, 34; Dryzek 2000, 20–30).

A number of liberal deliberative theorists have found that specialization, expertise, and constraints on publicity *improve* the quality of reasoned and rational debate, whereas inclusiveness (such as greater publicity, participation by nonspecialists, and greater numbers of people) can increase conflict and undermine the ability of groups to come to a consensus (Elster 1998; Page 1995). This points to serious limitations for liberal deliberative theory. Critical deliberative theorists point to additional problems with this approach, arguing that liberal deliberative norms prevent discourse from addressing power and inequality by denying status inequalities exist. Critical deliberative theorists insist that disadvantaged groups are marginalized in the public sphere, which constrains their ability to speak and be heard (Dryzek 2000; Fraser 1996; Young 2000). In short, liberal deliberation reinforces the power of elites at the expense of the marginalized. As an alternative, critical deliberative theorists argue that “the best of democratic norms” are not reasonableness, rationality, and consensus, but openness and inclusiveness that embrace contestation. They argue that debate content must be wide-ranging, should include the ideas of groups at the margins of society (Benhabib 1992; Deveaux 2005; Fraser 1991; Young 1990), as well as a variety of forms of speech and logic (Mansbridge 1999; Sanders 1997; Tully 1995; Young 1996), and must move beyond the confines of liberal individualism (Dryzek 2000; Fraser 1995; Mouffe 1995).

If debate conditions are open and inclusive, then critical theorists believe subordination will be unmasked, and “greed, naked power, or the cynical pursuit of self-interest” will be exposed (Young 2000, 35).

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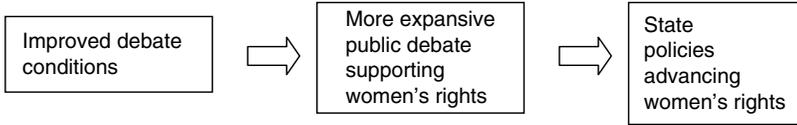


FIGURE 1.1. The just debate hypothesis.

Openness and inclusiveness mean that new arguments, styles of communication, and queries about what is right will enter the public sphere, challenging conventional assumptions. As the content of public debate broadens and new ideas are exchanged, public support for social justice will increase, putting pressure on the state to respond. As illustrated in Figure 1.1, this argument can also apply to gender justice.

I understand the public sphere to be composed of institutions, such as the legislature, political parties, social movements, trade unions, and the media. My framework, which I call the just debate approach, focuses on debate conditions in these institutions. As illustrated in Figure 1.1, I hypothesize that when debate conditions become more open and inclusive – meaning a diverse range of women are increasingly members and leaders in the institutions of the public sphere, where they can speak out, be heard, and challenge institutional norms and procedures – those institutions will increasingly advocate gender justice, altering the content of public debate. Politicians who wish to appear responsive to public opinion and want to avoid being labeled sexist will support policies and legislation advancing women's rights.

Empirical evidence in Part II and the logic of democratic politics support the causal direction of this claim. In all of my cases, changes in debate conditions preceded changes in policy reform. To be sure, legislation and political support for women's rights can facilitate changes in debate conditions – for example, by encouraging women to enter the leading institutions in the public sphere – however, the logic of democratic politics and existing research indicates this is a feedback effect (Kittilson, 2010). The first requirement is an expansion in debate conditions that increases public support for gender justice to trigger the cycle.

WHY WOMEN?

Gender decisively shapes who participates in public life and how, providing a logical basis for tracing the limits of debate conditions during democratization. Indeed, gender is constitutive of both the public and private spheres. In much of the premodern world, women were integrated

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into public life and politics through kinship ties, such as inherited monarchical structures of political rule and through dual-sex systems like those found on the African continent (Landes 1988; McDonagh 2002; Van Allen 1972). However, liberal democracy aimed to end the rule of the absolutist “father” and kinship politics that included women, and in its stead established a fraternal brotherhood of men that expelled women not only from politics, but from public life altogether (Davidoff 1998; Landes 1988; Ryan 1990). Women’s exclusion was only an ideal (slave, servant, working-class, and minority women remained on the streets; elite women continued to be important political allies). Nevertheless, women’s proper role in the public sphere became highly restricted (Arneil 2001; Landes 1988; Porter 2003; Ryan 1990).⁵ The ideological separation of public and private, coupled with a capitalist wage labor system that moved work out of the household, made liberalism’s restrictions on women’s roles in public exceptionally extensive, decisive, and visible. In short, sex marked the boundaries of the public and the private spheres. Those women who failed to attend to this binary faced intense discrimination, persecution, and even death (Arneil 2001; Porter 2003).

Liberal democrats embraced separate spheres as natural and, simultaneously, as signifiers of civilization and modernity. Europeans then spread this “social imaginary” across the globe (Comaroff and Comaroff 1992; Davidoff 1998; Stoler 2002; Taylor 2004). As Maria Mies explains in her discussion of housewifization, European colonizers avidly endorsed the expulsion of colonized women from public life to increase their dependence on local men. Europeans argued that only when the “native” woman was made the mistress of the private sphere and protected in public by European men would colonial peoples progress (Mies 1998). Although important local differences in the public-private dichotomy emerged, and precolonial values and practices persisted, the European ideal became a global phenomenon. As a result, women mark the boundaries of the public and private spheres in most democratizing states.

By focusing on women to assess debate conditions in democratizing states, I do not mean to suggest that women are the only group whose marginalization in the public sphere matters, or that only women can advance gender justice. In theory, *all* women could be fully integrated into the public sphere, yet debate conditions could still be exclusionary and

⁵ Women were not the only group excluded from the public sphere. Justifications for exclusion were made on the basis of numerous traits, including race, ethnicity, and poverty, as elite men claimed all these deviations from the ideal signaled the incapacity to reason.

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narrow if other groups remained marginalized. However, this is unlikely, because sex constitutes the public-private binary, making women the most marginalized group in public life. Women also are the majority of the population. Hence they are a significant social group not only by standards of exclusion but also by their sheer numbers. If debate conditions are going to be even modestly open and inclusive women will have to be included.

Women's inclusion in the public sphere is not the only way to shift debate content toward gender justice. Many men can and do promote gender justice. Moreover, not all women advocate women's rights, and not all women are feminists.⁶ Indeed, women have divergent interests, in part because they are situated in multiple and at times cross-cutting social locations. A range of factors – including class, race, motherhood, and ideological commitments – not only contribute toward divergent interests, but also ensure some women are marginalized in the public sphere more than others. This often leads to fragmentation and disagreement among women over gender justice, as well as over other types of justice claims.

Nonetheless, improvements in debate conditions in the leading institutions of the public sphere are likely to alter public debate over gender justice. The reason is simple. Discourse legitimizing gender *in*justice prevails in public debate in most democratizing states. An improvement in debate conditions brings women who are the most marginalized and rarely heard into the public sphere; this includes women who have ideological commitments that deviate from dominant gender norms. Increasing all women's access, voice, and capacity for contestation will ensure that women who wish to advocate for gender justice will have the opportunity to do so. This means more expansive claims for gender justice will enter public debate. As Nancy Fraser explains, “assumptions that were previously exempt from contestation will have to be publicly argued out” (Fraser 1996, 124). Those broader arguments and debates will shift the content of public debate and put pressure on the democratizing state to respond with policies and legislation advancing women's rights.⁷ The

⁶ Feminists are a diverse group with a wide range of views. I use the term to refer to those who believe that women are subordinated to men and are committed to ending this subordination.

⁷ More open and inclusive debate conditions mean greater “contestation” will occur on a wide range of issues, some of which may be in conflict with one another. This does not refute my argument that the content of public debate on gender justice will broaden, but it does suggest that multiple gender justice claims will have to compete with one another and with other compelling justice claims. Critical deliberative theorists argue that this wider range of contestation is precisely the point, and is the means through which new, deeper forms of social justice, including gender justice, can be imagined, articulated, and pursued.