

Gender Equality

DIMENSIONS OF WOMEN'S EQUAL CITIZENSHIP

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Representation, Discrimination, and Democracy: A Legal Assessment of Gender Quotas in Politics

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Introduction: Scenes of Switzerland

In Switzerland, women were not enfranchised on the federal level until 1971. Of twenty-six cantons, the last to allow women to vote in cantonal elections was Appenzell-Innerrhoden in 1990. This reform was not made through legislative processes, but only after female citizens complained to the Swiss Federal Supreme Court.¹

Despite late enfranchisement, citizens in Swiss cantons actively campaigned for delegate quotas, particularly during the 1990s. Although ultimately unsuccessful, campaigns aimed at delegate quotas for women for federal political offices² and in two cantons, Solothurn and Uri. In the Swiss system of direct democracy, cantonal initiatives are scrutinized for their compatibility with the federal constitution before they are submitted to the people for a popular vote. Regarding the two cantonal quota initiatives, the Swiss Federal Supreme Court issued decisions in 1996 and 1998.³ In its first decision, the Federal Supreme Court considered a far-reaching proposal to reserve 50 percent of the seats of all elected offices in the legislative, executive, and judicial branches in Solothurn for women. The proposal requested that all open positions be earmarked for the underrepresented sex until men and women were represented “according to their proportion in the canton’s population.” The Court found this bill manifestly unconstitutional due to its “obvious disproportionality” in curtailing active and passive voting rights.⁴

¹ Bundesgericht (BGer, Federal Court), Nov. 27, 1990, 116 Entscheidungen des Schweizerischen Bundesgerichts (BGE) Ia 359 (Switzerland).

² Three federal popular initiatives (proposals for constitutional amendments) proposing gender quotas have been launched, but unsuccessfully. Two did not receive enough signatures to be put to a vote, and the third was rejected by 82 percent of the voters and by all cantons.

³ See Swiss scholarship on this matter: Kathrin Arioli, ed., *Frauenförderung durch Quoten* (Basel, Switzerland: Helbing and Lichtenhahn, 1997); Denise Buser and Tomas Poledna, “Politische Quoten auf dem Schafott – Reflexionen zum Bundesgerichtsurteil zur ‘Solothurner Verfassungsinitiative’,” *6 Aktuelle juristische Praxis* 981 (1997).

⁴ BGer, March 19, 1997, 123 Entscheidungen des Schweizerischen Bundesgerichts (BGE) I 152 (Switzerland).

In its second judgment, the Federal Supreme Court partly upheld a more moderate initiative in Uri. The Court found unconstitutional a proposal in which “nearly half,” but “*at least one third*” of members of public boards and institutions elected by the people must be women because this would unduly infringe on voters’ rights. However, the Court upheld in part a similar proposal relating to political offices elected by the canton’s legislature. It found that a “one-third minimal quota” was a proportionate and temporary measure and was thus consistent with the anti-discrimination clause of the Swiss Constitution and Article 25 of the International Covenant on Civil and Political Rights (ICCPR).⁵ However, the proposal failed by a large majority in a popular referendum in Uri.⁶ Similar local initiatives were also defeated.⁷

These appear to be the sole instances worldwide in which the entire affected voting-age population was directly asked to decide on gender quotas in politics. The result is clear: Swiss citizens disapprove of electoral gender quotas. We suspect that people in other Western democracies would agree.

What is at stake here? Electoral gender quotas are designed to increase women’s presence in politics and, eventually, to transform the political landscape. To meet this goal, quota policies worldwide are spreading, despite the risks of discrimination and disruption of democracy.

Women in Democratic Politics: Some Facts

Although women were enfranchised in most democratic countries during the twentieth century, most recently in Samoa, in 1990,⁸ they are underrepresented in all national parliaments. In recent decades, there has been gradual but extremely slow progress. In February 2009, 18.4 percent of all members of parliaments (MPs) worldwide were women.⁹ Although this is a low figure, it constitutes an increase by more than 50 percent over the last thirty years.¹⁰

⁵ BGer, Oct. 7, 1998, 125 Entscheidungen des Schweizerischen Bundesgerichts (BGE) I 21 (Switzerland).

⁶ Rejected by 84 percent of the popular vote on June 13, 1999.

⁷ In the city of Lucerne, an initiative for enacting a 40 percent quota for municipal authorities and commissions was rejected with a 71 percent vote on March 12, 1995. In the city of Berne, an amendment of the community statute sought to introduce a 40 percent quota for the city council. This was rejected by a 68 percent vote on Sept. 10, 1995.

⁸ More recently, several Arab Gulf states introduced or expanded women’s suffrage in their popular assemblies (Bahrain in 2002, Oman in 2003, Kuwait and Qatar in 2005, and the United Arab Emirates in 2006). However, elected officials hold little or no real power in these authoritarian regimes. Despite universal suffrage, women are currently not represented in the parliaments of Belize and of various oceanic microstates because no women were elected (Federated States of Micronesia, Nauru, Palau, the Solomon Islands, Tuvalu, status as of February 2009; see “Women in National Parliaments,” Inter-Parliamentary Union, available at <http://www.ipu.org/> [accessed March 11, 2009]).

⁹ All figures are as of February 2009, if not indicated otherwise. This figure aggregates the membership of upper and lower houses. “World Average,” Inter-Parliamentary Union, available at <http://www.ipu.org/> (accessed March 11, 2009).

¹⁰ “Women in Politics: 60 Years in Retrospect,” Inter-Parliamentary Union, available at <http://www.ipu.org/> (accessed March 11, 2009).

As of this writing, the highest proportion of female delegates sits in the Rwandan Parliament (56.3 percent). Apart from this special case, Nordic countries have the most female parliamentarians (41.4 percent). In the Americas, female delegates make up 21.8 percent. In Europe, female representation in parliaments amounts to 19.3 percent, with a decisive drop in the parliaments of postsocialist/Communist countries after the political transformation and the abandonment of the Communist quota schemes. The lowest proportion of female parliamentarians is in the Arab states (9.7 percent).¹¹

Electoral gender quotas are rules or agreements aimed at changing the composition of the pool of potential candidates (notably officeholders within political parties), candidates who stand for election, or those elected. Quotas may be voluntary (prescribed by internal party regulations) or prescribed by law. Gender quotas were first introduced in the 1980s and have dramatically increased since then. The trend toward quotas has been incited by international norms and supported by the mobilization of women and the recognition by political elites that gender quotas convey strategic advantages.¹²

Electoral gender quotas exist in 100 states in one of the mentioned forms.¹³ In fifteen states, quotas are constitutionally entrenched. Quota provisions for national parliament elections are in force in forty-five states. In thirty-three states, there is regulation of quotas on the subnational level. Voluntary political party quotas exist in at least 169 political parties in sixty-nine states. Current quota types vary in different world regions.¹⁴ Parliamentary seats are reserved mainly in Africa, Asia, and the Middle East. Voluntary party quotas are most common in Western Europe, and electoral candidate quotas are found primarily in Latin America.

Quota regulation also depends on the electoral system. Quotas exist mostly in countries with a system of proportional voting in multimember constituencies. Conversely, electoral systems relying on single-member constituencies and a majoritarian (winner takes all) system (e.g., the elections to the U.S. Congress or the British House of Commons) can hardly accommodate quota schemes.

Legally imposed quotas can be divided into two subgroups: reserved seats and candidate quotas. The former scheme exists, for example, in Afghanistan, Uganda, Rwanda, and India (at the local level). In those countries, the national constitution reserves parliamentary seats for women.¹⁵ Candidate quotas, which prescribe

¹¹ For more figures, see Table 9.1 in this volume.

¹² Mona Lena Krook, "Reforming Representation: The Diffusion of Candidate Gender Quotas Worldwide," *2 Pol. and Gender* 303 (2006).

¹³ All figures on quotas are from the International Institute for Democracy and Electoral Assistance (International IDEA) (Stockholm, Sweden), "Global Database of Quotas for Women," available at <http://www.quotaproject.org/> (accessed March 11, 2009).

¹⁴ For international and transnational influences on the regional spread of quotas see Krook, "Reforming Representation," at 310–11.

¹⁵ See Constitution of Afghanistan, Article 83(6), adopted on Jan. 4, 2004; Constitution of the Republic of Uganda, Article 78(1)(b), adopted on Sept. 22, 1995; Constitution of the Republic of Rwanda, Article 76(2), adopted on May 26, 2003; and Constitution of India, Article 243T(2), adopted on Nov. 26, 1949.

a minimum number of female party candidates on the ballot, without necessarily guaranteeing the election of women, are far more widespread. The most effective form of candidate quotas with placement mandates and enforcement mechanisms exists in four European states: France,¹⁶ Belgium,¹⁷ Portugal,¹⁸ and Spain.¹⁹ In contrast, in Italy, whose parliament has the lowest number of female MPs in Europe, a delegate quota bill was defeated in 2006.²⁰

The most frequent type of political gender quota is one with voluntary internal party rules, which apply to internal processes of candidate selection, the staffing of internal decision-making bodies, or the nomination of electoral aspirants. In majoritarian election systems, internal party quotas are the only realistic gender quota option. The first gender quota in the world was a party quota introduced in Argentina in the early 1950s by the Peronist Party for congressional elections. On a large scale since the 1980s, party quotas have been adopted by leftist, socialist, green, and radical parties, which write women's empowerment on their agenda, favor interventionist policies, and often have more female party officials demanding quotas.

In the United States, the Democratic Party introduced soft gender targets and recommendations in its charter in 2005, but no hard quotas.²¹ The American Republican Party Rules state that "each state shall *endeavor to have equal representation* of men and women in its delegation to the Republican National Convention."²² In Switzerland, the Federal Social Democrat Party has had a 40 percent quota for women on party lists since 1986, and the Green Party (Grüne Partei) adopted a 50 percent quota for women in 1987. In Germany, the Green Party (now Bündnis 90/Die Grünen) started in 1986 with a 50 percent quota for all ballot lists to party-internal and parliamentary elections. The same scheme has been endorsed by the Linkspartei. The

¹⁶ Fifty percent quota, zipping mechanism, noncompliant lists result in a reduction of public subsidies for the party. Article L264 Code Électoral, as modified by the Loi no. 2007-128 of Jan. 31, 2007, Journal Officiel de la République Française (J.O.) (Official Gazette of France) of Feb. 1, 2007, at 1941 (tightening the quota regulation of 2000).

¹⁷ Fifty percent quota, the candidates on the first two list positions may not be of the same sex, non-compliant lists are rejected. Article 117^{bis} Code Électoral, as modified by the Loi portant diverses modifications en matière de législation électorale of Dec. 13, 2002, Moniteur Belge (Official Gazette of Belgium) of Jan. 10, 2003, at 809.

¹⁸ Thirty-three percent quota, no more than two successive candidates may be of the same sex, noncompliant lists result in a reduction of public subsidies for the party. Lei Orgânica 3/2006 of Aug. 21, 2006, Diário da República (Official Gazette of Portugal) of Aug. 21, 2006, at 5896.

¹⁹ Forty percent quota, each sex must be represented by at least 40 percent in each tranche of five posts on a list, noncompliant lists are rejected. Article 44^{bis} Régimen Electoral General, as modified by Ley Orgánica 3/2007 of March 22, 2007, Boletín Oficial del Estado (Official Gazette of Spain) of March 23, 2007, at 12611. See, on the constitutionality of this scheme, Spanish Constitutional Court (STC 12/2008) (Jan. 29, 2008).

²⁰ The proposed legislation was defeated in the Senate on Jan. 24, 2006, by 41 to 34 votes, with 240 lawmakers absent. Antonella Rampino, "Le votazioni in un'aula quasi deserta rendono sempre piu' difficile l'approvazione della legge," *La Stampa*, Jan. 25, 2006, at 5.

²¹ Charter and bylaws as amended by the Democratic National Committee on Dec. 3, 2005.

²² Rules of the Republican Party of Aug. 30, 2004, Rule 14, Sections (d) and (e) (emphasis added).

German Social Democrats introduced a quota for women for all party offices and ballot lists in 1988.²³

Meanwhile, these party policies have induced more conservative parties to sponsor and nominate women candidates. Liberal parties that oppose quota regulations are hard-pressed to demonstrate that equal representation can be achieved without a straightjacket. Overall, voluntary party quotas are widespread, but in many cases, the quota targets are not met.

In countries undergoing complete constitutional and legal reform, there is a greater window of opportunity for the introduction of quota laws than in established regimes. Moreover, contemporary transition processes are tightly embedded in international law. In this context, it appears that gender balance in decision making is regarded as an important component of the regime's legitimacy, particularly in transitional and postconflict states. Gender quotas are used as a means to reach this balance.²⁴

Some new state constitutions, which were framed under supervision of the international community and in cooperation with international bodies, such as in Afghanistan (Constitution of 2004) and Iraq (Constitution of 2005), foresee gender quotas for the national parliament.²⁵ In Kosovo, the United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation 39 of 2000 established a 30 percent quota for women among the first fifteen candidates on party lists for all local and national elections.²⁶ The latter rule provoked both international and local resistance. These reactions reflect the doubts about the sustainability of gender-balanced representation in previously authoritarian states that lack a liberal democratic tradition and, until recently, did not even allow women to participate in public affairs.

Despite their adoption, electoral gender quotas are still controversial. It is not coincidental that the word *quota* has been largely eliminated in our political vocabulary. International documents and countless national statutes generally avoid the word, even when advocating and endorsing measures that amount to numerical apportionments.

²³ Since 1998, under the 40 percent rule, it is required that the ballot lists should be zipped, with the option of allocating every fifth place to someone of either sex. Both quotas (for party offices and for ballot lists) shall be temporary until 2013.

²⁴ In Afghanistan, Bosnia and Herzegovina, East Timor, Kosovo, Mozambique, Rwanda, and South Africa. In a recent resolution relating to postconflict regimes, the United Nations Security Council "urge[d] Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflicts," SC Resolution S/RES/1325 (2000), at para. 1.

²⁵ Constitution of Afghanistan, Article 83(6), adopted on Jan. 4, 2004; Constitution of Iraq, Article 47(4), adopted on Oct. 15, 2005.

²⁶ Section 4.2 of UNMIK Regulation no. 2000/39 on the municipal elections in Kosovo of July 8, 2000.

Legal Bases and Legal Limits of Political Gender Quotas

Both voluntary party quotas and mandatory delegate quotas create a number of legal problems. These problems have attracted far less legal scrutiny than gender or racial quotas in business and education.²⁷ Gender quotas *in politics* have only been the subject of discrete litigation in judicial and arbitral bodies in Europe and the Americas, whose awards are in part inaccessible.²⁸ Our analysis concentrates on the specific features of the democratic process that suggest a different assessment of electoral gender quotas than of quotas in the professional sphere.

There is no hard international legal obligation to introduce quotas in domestic political systems. International conventions oblige state parties to enfranchise their female citizens. The most important provisions are Article 25 of the ICCPR of 1966,²⁹ Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979,³⁰ and Articles I to III of the Convention on the Political Rights of Women of 1953.³¹ However, none of these conventions requires gender-based numerical goals or quotas.

Several instruments allow, or even encourage, states to take temporary special measures to promote gender equality. The rationale of these clauses is that the general principle of formal gender equality must be partly and temporarily set

²⁷ For employment quotas in the EU: ECJ, ECR 1995, I-3051 – *Kalanke*; ECR 1997, I-6363 – *Marschall*; ECR 2000, I-1875 – *Badeck*; ECJ, ECR 2000, I-5539 – *Abrahamsson*. On quotas in education and procurement in the United States: *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Adarand Constructors v. Peña*, 515 U.S. 200 (1995). In scholarship, Anne Peters, *Women, Quotas, and Constitutions* (Dordrecht, Netherlands: Kluwer, 1999).

²⁸ United States: *Bachur v. Nat'l. Democratic Party*, 836 F.2d 837 (4th Cir. 1987); Italy: Racc. Uff. corte cost., decision 422 of Sept. 6, 1995, Gazz. Uff., 1a Serie speciale, 39, 1995, 15; United Kingdom: Industrial Tribunal Leeds, *Jepson v. The Labour Party*, decision of Jan. 19, 1996, IRLR 116 (1996); Switzerland: See sup. n. 4–5; Germany: Federal Arbitral Tribunal of the Political Party, *Bündnis 90/Die Grünen*, arbitral decision of Nov. 7, 1998, Neue Verwaltungsrechtszeitschrift-Rechtsprechungsreport 1999, 546; France: CC decision 98-407, Jan. 14, 1999, J.O. of Jan. 20, 1999, at 1028; CC decision 2006-533, March 16, 2006, J.O. of March 24, 2006, at 4446; Costa Rica: Supreme Election Tribunal, decision 1863 of Sept. 23, 1999; Columbia: Corte Constitucional de Colombia, decision (*sentencia*) C-371/00 of March 29, 2000; Spain: Spanish Constitutional Court (STC 12/2008) of Jan. 29, 2008.

²⁹ ICCPR, Dec. 16, 1966, 999 UNTS 171, entered into force on March 23, 1976, see the relevant text of Article 25, discussed in the section “The Gender-Neutral Right to Run for Elections.”

³⁰ CEDAW, Dec. 18, 1979, 1249 UNTS 13, entered into force on Sept. 3, 1981, Article 7: “States Parties shall take all appropriate measures to eliminate discrimination against women *in the political and public life* of the country and; in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and *to be eligible* for election to all publicly elected bodies; (b) To *participate* in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government” (emphasis added).

³¹ Convention on the Political Rights of Women, March 31, 1953, 193 UNTS 135, entered into force on July 7, 1954, Article I (entitlement to vote without any discrimination); Article II (eligibility for election without any discrimination); Article III (entitlement to hold public office without any discrimination).

aside to achieve substantive equality.³² In international practice, a consensus has emerged that gender-based quotas are, in principle, covered by these authorizations. The most important international clause on temporary special measures in favor of women is Article 4 of CEDAW.³³ The CEDAW Committee views numerical goals connected with time frames and quota systems as a "measure" in the sense of Article 4.³⁴ Both in General Recommendations and when discussing states parties' reports, the CEDAW Committee has recommended that states parties make more use of temporary special measures, including "positive action, preferential treatment or quota systems . . . to advance women's integration into . . . politics."³⁵ Numerous other international institutions, including the Human Rights Committee³⁶ and the Inter-Parliamentary Union,³⁷ have formulated similar recommendations.

The Beijing Platform for Action asked for "positive measures" to combat the low proportion of women among political decision makers, including setting "specific targets" to increase substantially the number of women "in all governmental and public administration positions."³⁸ It also endorsed a 30 percent target for women in decision-making positions.³⁹ The General Assembly's Beijing + Five Resolution asked member states to "set and encourage the use of explicit short- and long-term time-bound targets or measurable goals, including, where appropriate, quotas, to promote progress towards gender balance, . . . especially in decision- and policy-making positions, in political parties and political activities" and to encourage the nomination of more women candidates, *inter alia*, through quotas.⁴⁰

On the regional level, additional Protocol No. 12 to the European Convention of Human Rights⁴¹ (ECHR) and numerous soft documents of the Council of Europe allow for, but do not mandate, temporary special measures or positive action to

³² Cf. CEDAW Committee, General Recommendation no. 25 (2004), paras. 8 and 27.

³³ CEDAW, Article 4: "Temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved."

³⁴ CEDAW Committee, General Recommendations no. 5 (1988); no. 23 (1997), paras. 15 and 29; no. 25 (2004), at para. 22.

³⁵ CEDAW Committee, General Recommendation no. 5 (1988). See CEDAW Committee, General Recommendation no. 23 (1997), at para. 15, on "setting numerical goals and quotas."

³⁶ HR Committee, General Comment no. 28 (2000), at para. 29.

³⁷ Inter-Parliamentary Union, "Plan of Action to Correct Present Imbalances in the Participation of Men and Women in the Political Life," March 26, 1994, Section C, III.4; Inter-Parliamentary Union Assembly, "Beijing +10: An Evaluation From a Parliamentary Perspective," Resolution of Oct. 1, 2004, at para. 16.

³⁸ The United Nations Fourth World Conference on Women, Beijing, China, Sept. 1995, Platform for Action, Chapter G, "Women in Power and Decision-Making," paras. 186 and 190.

³⁹ Beijing Platform for Action, at para. 182, refers to this target as established by the United Nations Economic and Social Council (ECOSOC) in 1990.

⁴⁰ GA Resolution A/RES/S-23/3 of June 10, 2000, paras. 66a) and 81b).

⁴¹ Protocol no. 12 of Nov. 4, 2000 (entered into force on April 1, 2005), preamble: "The principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures."

enhance female participation in political life.⁴² Within the European Union (EU), the Council recommended that the EU member states “promote a balanced participation by women and men at all levels in governmental bodies and committees.”⁴³ Acting upon that recommendation, the European Commission endorsed a 40 per cent quota for its expert groups and commissions.⁴⁴ Finally, several international organizations in recent years embraced gender quotas in their staffing policies.

The introduction of domestic gender quotas has been influenced by these clauses and recommendations. It is no coincidence that the majority of Latin American countries that instituted legal quotas did so after the 1995 Fourth World Conference on Women in Beijing.

Legal problems with electoral gender quotas exist in basically two dimensions: they may be discriminatory, and they may be undemocratic. In the first dimension, gender-based electoral quotas restrict competing male candidates’ right to stand for elections on equal footing. The CEDAW Committee acknowledged this conflict when it emphasized that “States parties have an obligation to ensure that temporary special measures are clearly designed to support the principle of equality and therefore comply with constitutional principles which guarantee equality to all citizens.”⁴⁵ In the second dimension, gender-based electoral quotas may interfere with the party members’ rights to elect their officeholders in internal elections and (in general elections) with the voters’ constitutional right to elect candidates in free suffrage. Furthermore, quotas imposed by the legislature on the parties to some extent conflict with the political parties’ autonomy and may therefore be undemocratic.

Discrimination

In this section, we will demonstrate that narrowly tailored electoral gender quotas do not unfairly discriminate against men, although they are in tension with the principle of nondiscrimination.

The Explanatory Report on Protocol no. 12, at para. 16, does not mention quotas and emphasizes that the protocol does not impose any obligation to adopt special measures.

⁴² On temporary special measures for enhancing female participation in political life, see the Council of Europe (CoE) Declaration on the Equality of Women and Men of Nov. 16, 1988, at para. 11; Recommendation (2003) 3 on balanced participation of women and men in political and public decision making, adopted by the CoE Committee of Ministers on March 12, 2003, recommending that the governments of member states “consider setting targets to a time scale with a view to reaching a balanced participation of women and men in political and public decision-making” and “positive action measures, which would facilitate a more balanced participation of women and men in political and public decision-making” (recommendation V and appendix A.1, with “balanced participation of women and men” meaning “that the representation of either women or men in any decision-making body in political or public life should not fall below 40 percent,” *ibid.*, at 7; see also 22 and 24).

⁴³ 96/694/EC: Council Recommendation of Dec. 2, 1996, on the balanced participation of women and men in the decision-making process, OJ 2000 L 319, 11–15, Section I.4(a). The Council also called on the EU institutions to “design a strategy for achieving balanced participation” (Section II).

⁴⁴ 2000/407/EC: Commission decision of June 19, 2000, relating to gender balance within the committees and expert groups established by it. OJ 2000 L 154, 34–35.

⁴⁵ CEDAW Committee, General Recommendation no. 23 (1997), at para. 15.

The Gender-Neutral Right to Run for Elections

Technically speaking, different (national, international, subnational, or European) anti-discrimination, equal protection, or equal opportunity norms are applicable to different cases, depending on the jurisdiction and the type of elections at issue. Some legal systems have special provisions on electoral rights⁴⁶ or acknowledge unwritten voting rights. Male candidates' political right to stand for elections encompasses their entitlement to remain free from sex discrimination in this process. This entitlement is a *lex specialis* of the more general right not to be discriminated against on account of gender. General anti-discrimination law thus supports the claim that no political aspirant or candidate should be given preference on the basis of gender, even without a specific guarantee of equal voting rights. Article 25 of the ICCPR expresses the core idea as follows: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 [which comprises, inter alia, sex] . . . to vote and to be elected at genuine periodical elections."

Limitations and Balancing

The prohibition on gender discrimination is not absolute, however. The Human Rights Committee, for example, acknowledged that state parties may restrict the right to stand for election (as enshrined in Article 25 of the Covenant), provided that such restrictions are established by law and are justifiable by "objective and reasonable criteria."⁴⁷ Similarly, the ECHR requires positive measures in favor of women to have an "objective and reasonable justification."⁴⁸

Under U.S. constitutional equal protection analysis, gender-based distinctions must be narrowly tailored to serve an important governmental objective.⁴⁹ Although the right to be a candidate in elections is not regarded as a fundamental right,⁵⁰ gender quotas must reasonably promote important ends, without unreasonably restricting the electoral rights of men.

Thus reasonable measures of positive gender discrimination may lawfully restrict male passive electoral rights. Realizing genuine gender equality and broader female participation in politics, which is in many legal orders even constitutionally

⁴⁶ See, e.g., ICCPR, Article 25; Protocol no. 1 to the ECHR, Article 3; U.S. Constitution, Amendment XV; German Basic Law, Article 38; Swiss Constitution, Article 34.

⁴⁷ Human Rights Committee, General Comment 25 (57), UN Doc. CCPR/C/21/Rev.1/Add.7 (1996), paras. 4 and 15. See also Manfred Nowak, *U.N. Covenant on Civil and Political Rights – CCPR Commentary*, 2nd ed. (Kehl, Germany: N.P. Engel, 2005), para. 22.35.

⁴⁸ See Preamble of Additional Protocol no. 12; see also Explanatory Report, at para. 16.

⁴⁹ *Craig v. Boren*, 429 U.S. 456 (1976).

⁵⁰ The Court need not employ strict scrutiny and the "compelling interest" test to all laws restricting candidate access to the ballot. See John E. Nowak and Ronald D. Rotunda, *Constitutional Law*, 7th ed. (St. Paul, MN: Thomson, 2004), at 1019–20. The Supreme Court has so far scrutinized the regulation of elections only with a view to their compatibility with First Amendment rights of the states' citizens and the rights of parties to political association.

entrenched, is an objective and reasonable purpose. Judicial decisions have espoused that view.⁵¹ A German arbitral tribunal found that curtailment of male candidates' rights, who were prevented by a political party's zipping scheme from figuring on reserved listing slots, was justified by the German Constitution's *mandate to realize substantial equality of the sexes* (Article 3, Section 2, German Basic Law).⁵² A slightly different angle was taken by a U.S. Court of Appeals, which upheld a gender limitation on eligible candidates as a means to broaden public participation in party affairs, protected by the right of association.⁵³

Gender equality objectives must be balanced against men's fundamental right not to be discriminated against in the competition for political positions. The starting point should be the analysis of specific factors that impede the emergence of more females in the multistage political recruitment process.⁵⁴ Women must join the pool of eligibles, decide to become candidates, be nominated by their political parties, and then win elections. In all stages, women face socioeconomic, political, psychological, and ideological obstacles. Women are far less likely than men to emerge from the pool of eligible candidates and to run.⁵⁵ Although women have gained access to power through alternative structures, particularly in nongovernmental organizations, this is not a substitute for governmental and political party participation.

Overall, the political sphere, being concerned with public affairs, seems to be – more than the private sector – male coded. Political life is organized according to norms, values, and lifestyles that connote a certain type of masculinity. Politics implies competition and confrontation, winners and losers. Political action requires self-promotion, marketing, demagoguery, ruthlessness, and aggression – qualities that are culturally accepted in men but not in women.⁵⁶ Consequently, women politicians are typically relegated to education, family affairs, health, and social policy, which rank low in the hierarchy of government functions.

The overall masculine image of politics may influence voters' attitudes. In the 1990s, voters still considered female candidates less competent to handle the military,

⁵¹ See, e.g., the Columbian Constitutional Court, decision (*sentencia*) C-371/00 of March 29, 2000, paras. 20–21.

⁵² Federal Arbitral Tribunal of the Political Party, *Bündnis 90/Die Grünen* (1998) (Germany) (sup. n. 28) in a lawsuit between a local party association and a state association of the party. See sup. n. 4–5 for the case law of the Swiss Federal Court.

⁵³ *Bachur*, at 837.

⁵⁴ See for the following, besides the literature in the ensuing notes, Leonie Huddy and Nayda Terkildsen, "The Consequences of Gender Stereotypes for Women Candidates at Different Levels and Types of Office," 46 *Pol. Res. Q.* 503 (1993); Andrew Reynolds, "Women in the Legislatures and Executives of the World: Knocking at the Highest Glass Ceiling," 51 *World Pol.* 547 (1999); Pamela Paxton and Sheri Kunovich, "Women's Political Representation: The Importance of Ideology," 82 *Soc. Forces* 87 (2003); Richard L. Fox and Jennifer L. Lawless, "Entering the Arena? Gender and the Decision to Run for Office," 48 *Am. J. Pol. Sci.* 264 (2004); Joni Lovenduski, *Feminizing Politics* (Cambridge: Polity Press, 2005), at 45–82; Nadezhda Shvedova, "Obstacles to Women's Participation in Parliament," in Julie Ballington and Azza Karam, eds., *Women in Parliament: Beyond Numbers, International Institute for Democracy and Electoral Assistance* (Stockholm: IDEA, 2005), at 33–50.

⁵⁵ Fox and Lawless, "Entering the Arena," at 275.

⁵⁶ Lovenduski, *Feminizing Politics*, at 54.

war, and the economy.⁵⁷ Today, voters may have grown more accustomed to women in powerful positions, and stereotypes may be weakening. Motherhood and a focus on children may become a political asset, a method of humanizing a candidate and connecting with voters. However, even recent empirical research notes a persisting public belief that men make better political leaders.⁵⁸

In addition, there are supply-side factors. Women come forward in the political arena in smaller numbers than men, due to candidate resources (such as time, money, political connections, educational qualifications, experience, skills, and career flexibility) and motivational factors,⁵⁹ limited party support, lower self-confidence,⁶⁰ and less media attention to women's contributions.

Socioeconomic conditions also matter. Except in high offices, political engagement is a pro bono activity. Many women who already shoulder a double burden do not wish to triple it by balancing family life, a professional career, and parliamentary work with its family-unfriendly schedule. Women are found in smaller proportions in influential brokerage professions from which national politicians are drawn. The lesser wealth and income of women creates gender-typical financial constraints and constitutes at least a psychological barrier against expensive political campaigning (even if empirical analysis suggests that a candidate's gender has only a minimal effect on his or her ability to raise funds).

Finally, the electoral system has an impact on female participation in parliaments. Majority systems have a disproportionately negative impact on women, whereas systems of proportionate representation tend to produce more gender-neutral outcomes.⁶¹ Another factor is the listing system. In closed list systems, where electors vote for parties, rather than candidates, the crucial stage is nomination by the party. If a sufficient number of women are nominated as candidates and placed in electable positions on party lists, female candidates have good chances. In contrast, open list systems, where the voter can alter the composition of the list, tend to contribute to the elimination of women candidates.⁶²

⁵⁷ Huddy and Terkildsen, "The Consequences of Gender Stereotypes for Women Candidates at Different Levels of Office," at 519–20.

⁵⁸ For current societal attitudes toward women across the globe, see the World Values Survey available at <http://www.worldvaluessurvey.org/> (accessed March 11, 2009). See also Eileen McDonagh, Chapter 9.

⁵⁹ Fiona Mackay, *Love and Politics: Women Politicians and the Ethics of Care* (London: Continuum, 2001), at 28; Jessica D. Nordell, "Positions of Power – How Female Ambition Is Shaped," *Slate*, available at <http://www.slate.com/> (accessed Nov. 23, 2006); Shelley J. Correll, "Constraints into Preferences: Gender, Status, and Emerging Career Aspirations," 69 *Am. Soc. Rev.* 93 (2004).

⁶⁰ For self-fulfilling prophecies of female incapacity, see Ilan Dar-Nimrod and Steven J. Heine, "Exposure to Scientific Theories Affects Women's Math Performance," 314 *Sci.* 435 (2006).

⁶¹ Richard E. Matland, "Enhancing Women's Political Participation: Legislative Recruitment and Electoral Systems," in Ballington and Karam, *Women in Parliament*, at 93–111.

⁶² Julie Ballington and Richard Matland, "Political Parties and Special Measures: Enhancing Women's Participation in Electoral Processes," paper presented at the UN Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI) Expert Group Meeting on Enhancing Women's Participation in Electoral Processes in Post-conflict Countries, Jan. 19–22, 2004, EGM/ELEC/2004/EP.8, at 4–5.

In sum, women's political activity faces structural barriers. While all institutional, social, economic, and cultural factors are in flux, and some causes of female underrepresentation in politics are also likely changing, the barriers for women are, for the time being, arguably higher and more entrenched than in professional life.

On the other side of the balance, the nature of democratic elections limits male legitimate expectations and lessens the material burden for men. In politics, the nomination and election of a candidate as a party representative or officeholder results primarily from the personal and political choices of party comrades and citizens. Principles of fair recruitment, based on education, university diplomas, and professional qualification, are of minor importance. Being a politician is not just another kind of job. Voters are not obliged to strive for objectivity and neutrality, but instead are free to vote for candidates according to their personal preferences. Ideally, voters should decide rationally, but the voters' right to decide in secret, and even arbitrarily, is part of the democratic process. In this context, the gender factor is no more illegitimate than a candidate's personality or his or her ability to gain sympathy.

Even without gender-conscious listing, male candidates cannot count on being nominated, let alone being elected.⁶³ Therefore male candidates do not build up legitimate expectations and are thus less burdened by delegate quotas than by employment quotas. They are also less burdened for material reasons. Being excluded from a job because of one's gender may seriously affect the discarded candidate's life, his status, wealth, and eventually, the subsistence of his family. In contrast, political engagement is, in most cases, not a professional activity. Discrimination in this field has fewer material consequences.

Political Parties' Internal Quotas

Special considerations come into play for quotas that have not been introduced by law, but are entrenched only in statutes or charters of political parties. The Beijing Platform for Action specifically addressed political parties as well as governments and asked them to take measures to ensure women's equal access to and full participation in power structures and decision making.⁶⁴ Likewise, the CEDAW Committee encouraged political parties to "ensure that women have an equal opportunity in practice to serve as party officials and to be nominated as candidates for election" and mentioned "setting aside for women a certain minimum or percentage of positions on Party executive bodies."⁶⁵

Political parties are private associations. While they are an indispensable part of the political process and perform a quasi-public function, the gist of a liberal party

⁶³ The Spanish Constitutional Court (STC 12/2008), on Jan. 29, 2008, stressed that men do not have any constitutional right to be a candidate (Part B II 9).

⁶⁴ Beijing Platform for Action, sup. n. 38, at Chapter G, "Women in Power and Decision-Making," paras. 191 and 192.

⁶⁵ CEDAW Committee, General Recommendation no. 23 (1997), paras. 28, 32, and 33.

democracy is that the parties are independent from government. This independence affects the determination of whether there is unfair discrimination against male candidates.

First, political parties themselves enjoy the right of association and of free speech. By introducing an internal quota system, the party seeks to testify about its political attitude and implement a program that will lend credibility to its organization. Increasing the number of female participants in decision making is a legitimate political objective. This objective is not an arbitrary or anti-democratic element in party politics, but pertains to the exercise of the right of association. The parties' rights of autonomy and association give them the right to use quotas to select delegates.⁶⁶ Because the parties' delegate selection methods also constitute free speech, the courts may not interfere on the ground that they view a particular expression as unwise or irrational.

On the other hand, in the absence of a horizontal effect on fundamental rights, private associations are not directly bound to observe the constitutional fundamental rights of burdened male members. In most legal systems, constitutional equal protection or nondiscrimination clauses do not directly govern parties' personnel and candidate management.⁶⁷ Although the principles of equal protection and nondiscrimination normally apply indirectly to the political parties' internal structure and to their listing policy via laws and statutes,⁶⁸ the standards to be observed by the party as a private actor may be less strict than those governing state action.⁶⁹

Finally, the burden placed on men by internal party quotas can be justified by their consent. Internal party quotas are the result of democratic decision making within the party itself. Male party members are part of this process and are free to initiate a renegotiation of quotas. By joining and staying in a political party that endorses quotas, male party members explicitly or implicitly accept the party's listing system.

Formality, Temporariness, and Proportionality

Gender quotas for internal party offices and for the nomination of candidates for general elections do not invariably violate male candidates' right to be free from gender discrimination in the political nomination and election process. The greater need for political quotas and the relatively light burdens they impose distinguish

⁶⁶ *Bachur*, at 837.

⁶⁷ In the United States, it is disputed whether parties' delegate quotas constitute state action. If we qualify as state action all matters "integral to the electoral process" (*Seery v. Kings County Republican Comm.*, 459 F.2d 308 [2d Cir. 1972]), the selection of party nominees is state action. But see Lisa Schnall, "Party Parity: A Defense of the Democratic Party Equal Division Rule," 13 *J. Gender Soc. Pol'y and L.* 381, 400-04 (2005).

⁶⁸ E.g., the German Constitution requires political parties to observe a "democratic party structure" (Article 21(1) of the Basic Law). This provision obliges the parties to comply with basic democratic principles, such as the equality of members, in particular to grant equal suffrage and equal eligibility.

⁶⁹ Federal Arbitral Tribunal of the Political Party, *Bündnis 90/Die Grünen* (1998) (Germany).

electoral quotas from employment quotas. However, there is a difference between reserved parliamentary seats and electoral quotas. Because reserved seats guarantee fixed results and eclipse a male occupation of those seats, they infringe on male candidates' rights more intensely. These quotas therefore need a stronger legal basis and should be written in constitutions. The few countries that do reserve seats for women in their national parliaments have constitutionally enshrined this measure.⁷⁰

Electoral quotas constitute an admissible restriction upon formal gender neutrality and nondiscrimination if they are based in a formal law, are narrowly framed, and are temporary. Temporariness does not mean that time limits have to be established from the outset, as long as it is ensured that the measures will be lifted when their goals are reached.⁷¹ The duration of a quota scheme may be determined by its functional result in response to a concrete problem and not by a predetermined passage of time.⁷²

Ultimately, the assessment turns on the size of the quota. For instance, the Swiss Federal Supreme Court struck down a 50 percent quota for women but upheld a one-third quota.⁷³ Too high quotas appear as an excessive curtailment of male candidates' rights. We leave open the question of how high is too high, which should be answered in light of the fact that existing quota laws have nowhere led to an increase in women's presence up to the height of the quota. Overall, formally entrenched, reasonably high, temporary political quotas do not unfairly discriminate against men.

Democracy

The more interesting question is whether gender-based electoral quotas are compatible with democratic principles. Do quotas improve the democratic process because they increase the presence of women in politics, and – equally important – lead to more women-friendly policy outcomes? Numerous legal and political documents imply a positive answer. For instance, the CEDAW Committee asserted that “the concept of democracy will have real and dynamic meaning and lasting effect only when political decision-making is shared by women and men and takes equal account of the interests of both.”⁷⁴ On a regional level, the 1992 Athens Declaration, issued by a European Summit convened on the initiative of the EU Commission, proclaimed “the need to achieve a balanced distribution of public and political power between women and men” and asserted that “a democratic system

⁷⁰ See Constitution of Afghanistan, Article 83(6), adopted on Jan. 4, 2004; Constitution of the Republic of Uganda, Article 78(1)(b), adopted on Sept. 22, 1995; Constitution of the Republic of Rwanda, Article 76(2), adopted on May 26, 2003; and Constitution of India, Article 243T(2), adopted on Nov. 26, 1949.

⁷¹ BGer, Oct. 7, 1998, 125 *Entscheidungen des Schweizerischen Bundesgerichts* (BGE) I 21, at 43 (Switzerland).

⁷² CEDAW Committee, General Recommendation no. 25 (2004), at para. 20.

⁷³ See the section “Introduction: Scenes of Switzerland.”

⁷⁴ CEDAW Committee, General Recommendation no. 23 (1997), at para. 14.

should entail equal participation in public and political life;" it also asserted that "a balance between women and men" contributes "to building a meaningful and lasting democracy."⁷⁵ The 1996 Charter of Rome stated that women contribute to changing politics in terms of priorities, content, and decision-making practices; that the equal participation of women would reinvigorate democracy; and that democracy would "acquire a true and dynamic sense when women and men together define the values they wish to uphold in their political, economic, social and cultural life, and together take the relevant decisions."⁷⁶ A European Council Recommendation of 2003 considered that "the realization of balanced participation of women and men in political and public decision making would lead to better and more efficient policy making through the redefinition of political priorities and the placing of new issues on the political agenda as well as to the improvement of quality of life for all."⁷⁷

Contrary to these statements, electoral quotas might actually be undemocratic because they erroneously focus on numbers and on purely descriptive, as opposed to substantive, representation. The assessment depends on the underlying model of democracy and representation.

Voters' Choices and Political Parties' Autonomy

It has been asserted that quotas on ballot lists unduly restrict the formation of the peoples' political will and conflict with constitutional and international guarantees of free suffrage. Similarly, quotas for party offices may unduly restrict the party members' right to choose candidates freely.⁷⁸ However, the right to free suffrage only requires that the voters can elect candidates without being subject to external pressure. It does not guarantee that specific candidates (male or female) will be presented. Citizens must accept the gamut of candidates offered by the political party. If a candidate has been put on the list because of her gender, this may simply provide an additional reason for the citizen not to give his or her vote to that candidate. The process of electing is not substantially modified by the quota. As long as the voter has the right to choose between competing candidates, his or her fundamental right to freely express his or her political will is not impaired.

For the same reason, a party statute reserving certain list positions for female party members in internal elections does not infringe on the party members' internal voting rights. The members remain free to decide which man or woman will

⁷⁵ Athens Declaration, issued at the European summit of Women in Power on Nov. 3, 1992.

⁷⁶ Charter of Rome, adopted at the European summit "Women for the Renewal of Politics and Society" on May 18, 1996.

⁷⁷ Recommendation Rec (2003) 3 on balanced participation of women and men in political and public decision making, adopted by the Council of Europe Committee of Ministers on March 12, 2003, preamble. See also CoE Recommendation 1269 (1995), "Achieving Real Progress in Women's Rights as From 1995," paras. 1-2; EU Council Recommendation of Dec. 2, 1996, on the balanced participation of women and men in the decision-making process (96/694/EC), OJ L 1996, 319, 11-15, at para. 9.

⁷⁸ Cf. *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217, 222 (1986).

receive a vote. Party quotas thus do not unduly restrict the voters' (or party fellows') fundamental right to free elections. A different matter would be a legal obligation imposed on voters to prefer female candidates, which would unduly infringe popular sovereignty.⁷⁹

Quotas imposed by law on political parties *prima facie* interfere with the political party's autonomy. However, party autonomy is not unlimited. Various legal requirements for election procedures restrict the political parties' freedom to propose candidates, and these are generally considered legitimate.⁸⁰ But ballot quotas differ from those traditional limitations because quotas imply that the government takes side with a particular political agenda. Therefore quota laws could be considered an interference with the parties' program. However, this partiality is tempered by state laws that prescribe listing or ballot quotas for *all* parties. This intervention is admissible if it is endorsed by law or by the state constitution because it then forms part of the legal framework under which all political parties are bound to operate.⁸¹ To conclude, quotas endorsed by law (preferably in a formal, parliamentary statute) do not infringe the political parties' legally protected autonomy.

Quotas and Representation

Electoral gender quotas are frequently thought to improve democratic representation. The merit of this argument depends on one's understanding of political representation.⁸² Three relevant conceptions are descriptive, substantive, and symbolic representation. *Descriptive representation* is representation of one's kind, suggesting that a democratic parliament should be an exact portrait, in miniature, of the people. Descriptive representation has rarely been advocated as an end in itself, but instead rests on the assumption that the representative's characteristics are a guide to the actions he or she will take. Put differently, descriptive representation may

⁷⁹ This had been foreseen by Article 6 of the 1998 Columbian statute on adequate and effective participation of women in decision making (*proyecto de ley estatutaria* N°62/98 Senado y N°158/98 Cámara) and was struck down as unconstitutional by the Columbian Constitutional Court, decision (*sentencia*) C-371/00 of March 29, 2000, paras. 58–59.

⁸⁰ Under American constitutional law, "a State may enact laws that interfere with a party's internal affairs when necessary to ensure that elections are fair and honest." *Storer v. Brown*, 415 U.S. 724, 730 (1974). For an American litigation concerning reserved seats, see *Eu v. S.F. County Democratic Cent. Comm.*, 489 U.S. 214 (1989), on a California law requiring that the chair rotate between residents of northern and southern California. The Court held that the regulations over the internal affairs of the political parties violated the political parties' free association rights because they directly affected who would represent the parties.

⁸¹ See, e.g., Spanish Constitutional Court (STC 12/2008) of Jan. 29, 2008, Part B II 5–7. But see Columbian Constitutional Court, decision (*sentencia*) C-371/00 of March 29, 2000, at para. 69, holding as unconstitutional a legal provision prescribing a 30 percent quota for positions that may lead to popular elections because it constitutes a governmental intrusion into the internal organization of political parties and violates their autonomy.

⁸² See Andrew Reeve, "Representation, Political," in Edward Craig, ed., *Routledge Encyclopedia of Philosophy*, vol. 8 (London: Routledge, 1998), at 270–72; Hanna Fenichel Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1972); Anne Phillips, *The Politics of Presence* (Oxford: Clarendon Press, 1995), at 57–83.

matter because it enhances substantive representation. *Substantive representation* is the representation of interests. Finally, parliamentarians may represent the citizens, or a nation, in a *symbolic sense*. This concept highlights that the composition of the political elite has a social significance and affects people's self-image in politics. Symbolic representation matters because a pattern of representation that gives no recognition to the communal attachments through which people live their lives is (in psychological and cultural terms) hardly tolerable, even when changing the pattern of representation would have no discernible impact on the kind of politics. A democratically elected parliament can probably best be understood as a mix of different kinds of representation, which are all relevant for the quota debate.

Quotas and substantive representation

The principal democratic argument in favor of political gender quotas is that they enhance the substantive representation of women's interests, concerns, and needs and, in the long run, transform the entire political process and its outcomes (beyond narrow women's issues). Along these lines, the Beijing Platform for Action stated that "women in politics and decision-making positions in governments and legislative bodies contribute to redefining political priorities, placing new items on the political agenda that reflect and address women's gender-specific concerns, values and experiences, and providing new perspectives on mainstream political issues."⁸³ A European Council Recommendation claimed that women's presence in politics "is likely to give rise to different ideas, values and behavior which will result in more justice and equality in the world for both men and women."⁸⁴ The CEDAW preamble voices the states parties' conviction "that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields." Ultimately, the argument is that "taking into account gendered perspectives and involving both women and men in decision-making processes are a *sine qua non* of any democratic framework. Hence democracy, by definition, cannot afford to be gender-blind."⁸⁵ The CEDAW Committee also claimed that a female proportion of 30 to 35 percent would suffice to constitute a critical mass within political bodies, which would change the style, the procedures, and the results of the political process.⁸⁶

All these claims rest on the premise that women as a group have specific interests and needs and that female politicians have, based on their specific social experience, different views, values, and skills. Female lawmakers and women in key political positions thus might bring about a different style of leadership and debate (less competitive and adversarial; more consultative and cooperative; more caring, open, and flexible; more ready to listen) and might raise the moral tenor of politics. Women politicians are believed to be more altruistic than men, more concerned

⁸³ Beijing Platform for Action, at Chapter G, "Women in Power and Decision-Making," at para. 182.

⁸⁴ EU Council Recommendation of Dec. 2, 1996, at para. 12.

⁸⁵ Julie Ballington, Introduction to Ballington and Karam, *Women in Parliament*, at 24.

⁸⁶ CEDAW Committee, General Recommendation no. 23 (1997), at para. 16.

with human consequences of policy, and more apt to pursue a politics of care. It is also assumed that women's presence will have a civilizing effect on parliamentary culture because male parliamentarians will behave differently in the presence of women.⁸⁷ On this basis, it is postulated that female politicians will redefine political priorities, place new issues on the political agenda, and implement different politics, not only in women- and family-related social and labor issues, but in all policy areas, ranging from child care facilities to flexible working hours, education, environmental protection, disarmament, and peacekeeping.

However, these claims imply that strong gender differences and polarities exist. They carry the danger of resurrecting dormant gender stereotypes and backfiring in contemporary conditions, as long as softness is considered to be nice for the ordinary political soldier but inappropriate at the very top of the political hierarchy. Moreover, pointing to distinct, authentic women's interests means to reproach deviant women as having false consciousness. Finally, the idea of a female advantage is irreconcilable with democracy because it posits as a starting point exactly what democrats must deny, namely, that one citizen group's voice is intrinsically better, more deserving of attention, more moral, than another group's voice.⁸⁸

Therefore a more defensible claim is that even in the absence of a definable female collective angle on politics, the simple fact that women still are, as a group, relative newcomers in politics means that they do not know the codes and have not yet been socialized to the conventional art of doing politics. For this reason alone, women might import new styles and practices of decision making.⁸⁹ Overall, rather than relying on stereotypical assumptions, we should consider empirical research demonstrating that an increased presence of women in parliaments does *not* necessarily improve the substantive representation of women's interests and needs (see, on the empirical evidence, below).

However, the focus on substantive representation may be too narrow. Indeed, substantive representation cannot explain fully all meanings and functions of political representation. In a strictly antipaternalist perspective, substantive representation of interests is impossible because every autonomous individual must determine his or her own interests. From that perspective, the possibility of substantively acting for others breaks down. In any case, the constituency will, on many issues, not have an interest, or its members may have several conflicting interests. The representatives know of the voters' ignorance, apathy, and irrationality and of the diversity of their views and interests, so there is nothing (or nothing clear) for the representative to represent in substance.⁹⁰

If *the* interests of women could be objectively defined, we would not need female representatives. In fact, we would then not need chosen representatives at all. Virtual

⁸⁷ Marian Sawer et al., eds., *Representing Women in Parliament – A Comparative Study* (London: Routledge, 2006), at 17.

⁸⁸ Phillips, *Politics of Presence*, at 75.

⁸⁹ Mercedes Mateo Diaz, *Representing Women? Female Legislators in West European Parliaments* (Essex, UK: ECPR Press, 2005), at 118.

⁹⁰ Pitkin, *Concept of Representation*, at 220.

representation (even by a benevolent dictator) would suffice. However, as soon as we admit that interests and needs (even if they may be gendered) cannot be precisely delineated, the emphasis shifts from an objectively defined set of interests and needs to a more exploratory notion. Then there is little to do but turn to the people who carry the interests.⁹¹

Quotas and descriptive representation

The second argument for electoral quotas draws on descriptive representation. Virtually all political actors acknowledge the serious underrepresentation of women in political institutions as a problem and desire membership of women in parliament in proportion to their number in the citizenry to create a proper composition of the legislature. For instance, the Athens Declaration stated that “equality requires parity in the representation and administration of Nations.”⁹²

The short formula for this idea is *parity democracy*. *Parity* is “the political expression of the fact that humanity is composed of two gendered halves and, therefore, its representative bodies must be analogously composed to be democratically legitimate.”⁹³ Recently, Blanca Rodríguez Ruiz and Ruth Rubio-Marín have made a strong argument for parity democracy. Their point is that the liberal state and the social contract are based on a fiction of the independence of (male) individuals, which must be stripped away. In reality – so the argument goes – all human beings depend on at least some others, and this weight of dependency has been shifted onto women. Women are thus excluded from the social contract, conceived of as a “sexual contract,” and remain outsiders who enable it. “If democracy properly conceived must transcend the premises of the sexual contract, then parity – the equal presence of both genders in politics – is a democratic must.”⁹⁴ In order for the transition from the liberal to the democratic state “to be fully achieved, the presence of men and women in parliament must be comparable, and if this does not happen spontaneously, it can and must be enforced.”⁹⁵

However, this argument for descriptive representation is based on the premise that women stand for dependence (as opposed to male independence) and that only “a parliament composed of a similar number of men and women encompasses independence and the management of dependence in an equal manner.”⁹⁶ This premise is problematic but cannot be fully discussed here.

⁹¹ Phillips, *Politics of Presence*, at 70. This is what Anne Phillips seminally called the *politics of presence*, as opposed to the *politics of ideas*.

⁹² Athens Declaration, issued at the European summit “Women in Power” on Nov. 3, 1992. See also the CoE Recommendation 1269 (1995), “Achieving Real Progress in Women’s Rights as From 1995,” paras. 1–2; EU Council Recommendation of Dec. 2, 1996, on the balanced participation of women and men in the decision-making process (96/694/EC), OJ L 1996, 319, 11–15, at para. 9.

⁹³ Blanca Rodríguez Ruiz and Ruth Rubio-Marín, “The Gender of Representation: On Democracy, Equality, and Parity,” *6 I.Con: Int’l J. Const. L.* 287, 302 (2008).

⁹⁴ *Ibid.*, at 314.

⁹⁵ *Ibid.*, at 289.

⁹⁶ *Ibid.*, at 311.

In any case, to consider proportionate shares for the two genders in political institutions as a goal in itself (or as a vehicle for managing dependence) would be irreconcilable with individualist liberalism – even if we admit that gender differs from other societal divisions. A guarantee of proportional representation of (interest) groups is incompatible with free elections whose outcomes are, by definition, not predetermined. It is no coincidence that the nondemocratic political systems in the former socialist or Communist systems abused parliamentary quotas and policies of reserved seats to feign a fair, substantial representation of society in their parliaments, which had nothing to say anyway. Due to this undemocratic experience, the governments of postsocialist countries are reluctant to reintroduce quotas.⁹⁷ So descriptive representation, and quotas as its vehicle, must be justified in different terms, notably as a vehicle for the better representation of diverse interests. It is not the underrepresentation of women that is unjust in itself, but the (assumed) resulting neglect of women's interests and needs.

Admittedly, men are not per se precluded from representing the interests of women because one does not necessarily have to be personally affected to represent interests in the political process. But common sense and experience show that both the political ideals and actions of the representatives and the interests, needs, and beliefs of the represented are coshaped by personal and social experience, and are, to that extent, *gendered*. This claim is not refuted by the variety and contradictoriness of women's interests or by their overlap with interests of certain groups of men. Despite variations, there are still issues that affect and interest women more than men. For example, more women than men are exposed to sexual harassment and violence, and as a group, women work in less prestigious and lower-paid or unpaid positions. The fact that voters' and legislators' political value judgments, interests, and needs are – because they stem from personal experience – to some extent gendered supports the call for descriptive representation.

However, descriptive representation is in tension with the idea of democratic accountability. Generally, a woman cannot be held accountable for what she is, but for what she does. But how can elected women carry an additional responsibility to represent women? Is there a mandate of difference attached to women politicians, even in the absence of mechanisms to establish special accountability? Such a mechanism would run counter to the principle of the representatives' accountability to *all* citizens and would appear, in that sense, undemocratic.⁹⁸

Despite these important objections, descriptive representation constitutes one of several components of political representation. Descriptive representation of the genders is not entirely irrelevant because the democratic process does not only consist of realizing particular programs or ideals (or executing binding mandates). Politics consists not just of implementing the choices the electorate has made or

⁹⁷ Cécile Gréboval, "Introducing Parity Democracy: The Role of the International Community and the European Women's Lobby," in Francesca Binda and Julie Ballington, *The Implementation of Quotas: European Experiences* (Stockholm: IDEA, 2005), at 156.

⁹⁸ *Ibid.*, at 71.

of realizing a coherent package of interests and beliefs neatly embodied in party programs. Because so much independent activity is required, it (generally) matters *who* the representatives are.

Quotas and symbolic representation

Finally, electoral quotas might improve the symbolic representation of women as a group. Because the absence of women reinforces strong, albeit subconscious, assumptions about inferiority, changing the composition of the elected assemblies involves a more powerful and more visible assertion of women's equality with men than changing the composition of the professions.⁹⁹ Already the mere debate and media coverage accompanying the introduction of such a law makes gender parity in decision making and women's political leadership a national issue. By introducing quota bills in the national legislature, male legislators are forced to formulate and defend opinions about gender equality.

Moreover, the visibility of women politicians potentially has a multiplier effect for the rights and the position of all women in society. Women politicians serve as role models, and the heightened presence of women in parliament is an important form of recognition of the equal status of women. The visible presence of women in public life might raise female aspirations, induce other women to engage in politics, and contribute to the broadening of career and life choices for women.

In the context of political representation, quotas are hardly defensible as an efficient tool to increase numbers or to represent stereotypically conceived interests, but rather as a symbol. Underneath the deceptive simplicity of the arrangements for parity democracy lies the much more complex function of representation. Because politics is not only about self-interest, but also about self-image, the symbolic appeal for gender parity has a powerful political pull.

The Real Effects of Political Gender Quotas

"Female" Political Preferences and Performance?

Empirical research only partly confirms the premise that underlies the quest for substantive representation of women, namely, the assumption that women, as a group, have distinct interests, needs, and outlooks and, consequently, specific political preferences. A slight gender gap in political attitudes and voting behavior has been demonstrated.¹⁰⁰ For instance, female voters in the United States tend to hold more egalitarian attitudes.¹⁰¹ A gender-focused Swiss analysis of voting behavior in popular referendums of the last decade revealed no gender gap on most policy issues. Small but statistically significant differences were found only in select policy areas:

⁹⁹ Phillips, *Politics of Presence*, at 81.

¹⁰⁰ John D. Griffin and Brian Newman, "Does Descriptive Representation Produce Political Equality?," paper presented at the annual meeting of the Midwest Political Science Association, Chicago, April 2005.

¹⁰¹ Susan E. Howell and Christine L. Day, "Complexities of the Gender Gap," 62 *J. Pol.* 858 (2000).

women tended to be slightly more supportive of environmental protection, tended to support disadvantaged groups, and supported tax raising more readily than men.¹⁰² These findings can probably be extrapolated to other Western democracies.

A different question is whether female representatives really perform different politics. According to the critical mass theory, the mode of interaction in groups depends on their size. As long as a subgroup forms a small minority within a larger group, its members, for example, women, are only token and adapt to the rules of the game of the dominant subgroup. Only when the subgroup has reached a certain size, so the argument runs, will its members behave differently.¹⁰³ The critical mass theory is not supported by empirical research. The behavior of women in political bodies is apparently not crucially influenced by their number, but depends on institutions.¹⁰⁴ For instance, the high percentage of women in Scandinavian politics has not resulted in different politics on the federal level but seems to have changed local politics.¹⁰⁵

There is anecdotal evidence for a better accommodation of women's concerns by female politicians. Many empirical studies on American,¹⁰⁶ Argentinean,¹⁰⁷

¹⁰² Claude Longchamp and Lukas Golder, *Die Entscheidungen von Frauen schützen Umwelt, Service Public und Benachteiligte*, Bericht zur Vox-Trend-Berichterstattung für das Jahr 2006 (Bern; Switzerland: gfs.bern, 2007). Findings are based on votes from 1999 to 2006 in sixty-seven federal initiatives and referendums covering the entire policy spectrum.

¹⁰³ Seminally, Rosabeth Kanter Moss, "Some Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women," 82 *Am. J. Soc.* 965 (1977). For political life, Drude Dahlerup, "From a Small to a Large Minority: Women in Scandinavian Politics," 2 *Scandinavian Pol. Stud.* 275 (1988).

¹⁰⁴ Leading critique by Janice D. Yoder, "Rethinking Tokenism: Looking Beyond Numbers," 5 *Gender and Soc.* 178 (1991). See also Donley T. Studlar and Ian McAllister, "Does a Critical Mass Exist? A Comparative Analysis of Women's Legislative Representation Since 1950," 41 *Eur. J. Pol. Res.* 233 (2002); Kathleen A. Bratton, "Critical Mass Theory Revisited: The Behavior and Success of Token Women in State Legislatures," 1 *Pol. and Gender* 97 (2005).

¹⁰⁵ Kathleen A. Bratton and Leonard P. Ray, "Descriptive Representation, Policy Outcomes, and Municipal Day-Care Coverage in Norway," 46 *Am. J. Pol. Sci.* 428 (2002).

¹⁰⁶ See, on the impact of the sex of members of Congress on U.S. legislation, Karin L. Tamerius, "Sex, Gender, and Leadership in the Representation of Women," in Georgia Duerst-Lahti and Rita Mae Kelly, eds., *Gender, Power, Leadership, and Governance* (Ann Arbor: University of Michigan Press, 1997), at 93–112 (small gender difference with regard to the support of female agenda items). See, on gender-specific debate and leadership style in the parliament of Colorado, Lyn Kathlene, "Power and Influence in State Legislative Policymaking: The Interaction of Gender and Position in Committee Hearing Debates," 88 *Am. Pol. Sci. Rev.* 560 (1994); Lyn Kathlene, "Position Power Versus Gender Power: Who Holds the Floor," in Duerst-Lahti and Kelly, *Gender, Power*, at 167–93; Lyn Kathlene, "In a Different Voice," in Sue Thomas and Clyde Wilcox, eds., *Women and Elective Office – Past, Present, and Future* (New York: Oxford University Press, 1998), at 188–202; John M. Carey et al., "Are Women State Legislators Different?," in Thomas and Wilcox, *Women and Elective Office*, at 87–102 (finding significant gender differences); Sarah Poggione, "Exploring Gender Differences in State Legislator's Policy Preferences," 57 *Pol. Res. Q.* 305 (2004) (finding that women hold more "liberal" preferences).

¹⁰⁷ Mala N. Htun and Mark P. Jones, "Engendering the Right to Participate in Decision-Making: Electoral Quotas and Women's Leadership in Latin America," in Nikki Craske and Maxine Molyneux, eds., *Gender and the Politics of Rights and Democracy in Latin America* (Houndmills, UK: Palgrave, 2002), at 32–56 (no significant priority differences between male and female legislators for categories often identified as of traditional interest to women, i.e., health care/public health, education, welfare/social security, environment).

British,¹⁰⁸ and EU politics¹⁰⁹ conclude that male and female decision makers espouse slightly different positions and that they lead in a slightly different style. Finally, female politicians seem to promote honest government. The greater the representation of women in parliament, the lower is the level of corruption.¹¹⁰

However, the existence of female positions and styles does not yet guarantee tangibly different political outcomes. Some research even suggests that precisely the female (more cooperative, more contextual) approach has tended to *prevent* the translation of distinct political objectives into results. At the same time, when lengths of tenure and institutional positions are taken into account, the gender differences in legislative accomplishments of parliamentarians appear narrow and subtle. Legislative effectiveness is primarily a function of seniority and of the representative's specific institutional position. Membership in important parliamentary institutions, such as influential committees or the majority party, matters more than gender.¹¹¹

These findings support the hypothesis that greater participation of women in parliaments and powerful committees will modify law and politics in favor of women. However, the measurable gender-typical political attitudes and competencies are in flux. It is therefore unsurprising that the increase of female parliamentarians and members of government has led to a *convergence* of both genders' political attitudes, though the cause is unclear. Some assert that women still tend to assimilate to men,¹¹² while others report the contrary.¹¹³ The expectation of a *backlash* when female presence oversteps a certain size, with male members of institutions resisting a female discussion style and women's agendas, has been confirmed by some studies,¹¹⁴ but not by others.¹¹⁵

These empirical findings warn against an overestimation of the role of gender in policy making. Nonetheless, the current openness of the empirical question whether female parliamentarians do change political style and substance does not warrant dropping the claim for gender parity. Proponents of increased female presence in parliaments are not bound to prove that women politicians would make a difference because no argument from justice can be made in favor of the male dominance

¹⁰⁸ Pippa Norris, "Women Politicians: Transforming Westminster?," 49 *Parliamentary Aff.* 89 (1996) (small gender difference).

¹⁰⁹ Hilary Footitt, *Women, Europe, and the New Languages of Politics* (London: Continuum, 2002).

¹¹⁰ David Dollar et al., "Are Women Really the 'Fairer' Sex? Corruption and Women in Government," 46 *J. Econ. Behav. and Org.* 423 (2001).

¹¹¹ Alana Jeydel and Andrew J. Taylor, "Are Women Legislators Less Effective? Evidence From the U.S. House in the 103rd–105th Congress," 56 *Pol. Res. Q.* 19 (2003), at 26. In this sense, see also Noelle Norton, "Women, It's Not Enough to Be Elected," in Duerst-Lahti and Kelly, *Gender, Power*, at 115, 116, 124.

¹¹² Lovenduski, *Feminizing Politics*, at 174–75.

¹¹³ Marcia Lynn Whicker and Malcolm Jewell, "The Feminization of Leadership in State Legislatures," in Thomas and Wilcox, *Women and Elective Office*, at 163–74. On convergence, see also Jay Barth, "Gender and Gubernatorial Personality," 24 *Women and Pol.* 63 (2002).

¹¹⁴ Cf., e.g., Kathlene, "Position Power Versus Gender Power," at 189; Kathlene, "In a Different Voice," at 196.

¹¹⁵ Bratton and Ray, "Descriptive Representation," at 435.

in political representation. The burden of proof rests on the defenders of the status quo.¹¹⁶

Political Gender Quotas as a Means to Increase Female Presence

Having established descriptive and symbolic representation of the genders as a legitimate objective, and working on the rebuttable assumption that female politicians do make some difference (which supports the case for substantive representation), it remains to be seen whether gender quotas in fact contribute to increasing the presence of women in legislative bodies. Empirical studies have yielded contradictory results. At least some case studies revealed a positive relationship between the implementation of a quota and the achievement of higher numbers of women in parliament.¹¹⁷ To date, twelve of the fifteen democratic countries in which female representation in parliament is highest possess delegate quotas.¹¹⁸

However, while quotas apparently boosted women's presence by some percentage points, the quotas were not met. The average level of representation for women in political bodies in countries with electoral quotas is only slightly higher than the worldwide average of 18.4 percent of female parliamentarians. Notably, in France, the tangible success of the constitutionally imposed electoral gender quota was at first modest. The original parity law of 2000, a 50 percent quota without a robust placement mandate,¹¹⁹ produced little change in the first elections to the French National Assembly under the parity regime.¹²⁰

In sum, no straightforward correspondence exists between the specific quota requirements that political parties or national legislation have imposed and the sex balance in legislatures. Current quota schemes have achieved only limited success because they often lack crucial elements, to which we will turn now.

Necessary Components of Effective Quota Schemes

The modest results of gender quotas can be attributed to inadequate legislation. To be fully effective, political gender quota legislation must comprise the following

¹¹⁶ Phillips, *Politics of Presence*, at 65.

¹¹⁷ See, on Bangladesh Shvedova, Ballington and Karam, *Women in Parliament*, at 34; Medha Nani-vadekar, "Are Quotas a Good Idea? The Indian Experience With Reserved Seats for Women," 2 *Pol. and Gender* 119 (2006), at 119–20.

¹¹⁸ In five of those fifteen states, only party-internal quotas exist. Three states' constitutions mandate quotas; four have legislative quotas. Three states have no quotas of any kind (see Inter-Parliamentary Union, Home page, available at <http://www.ipu.org/> [accessed March 11, 2009]; International IDEA, "Global Database of Quotas for Women," available at <http://www.quotaproject.org/> [accessed March 11, 2009]). We leave out Cuba (third in the world, with 43.2 percent female delegates) because this state does not meet the minimum standards of an electoral democracy.

¹¹⁹ Article 2 of the Loi no. 2000-493 of June 6, 2000, J.O. of June 7, 2000, at 8560, amending Article 264 of the French Electoral Code.

¹²⁰ The number of female deputies in the French National Assembly increased from 10.9 percent (1997) to just 12.3 percent (2002).

elements. First, the size of the minimum percentage of women to be included on the list is important. Second, quotas work only if they are complemented by a placement mandate in a closed list system, prescribing that women must be placed in electable positions, not at the bottom of the ballot lists or in other purely ornamental positions. Electable positions can be created by the requirement that every third or even second ballot list position must be filled with a female candidate (zipping mechanism). A case in point is the previously discussed female representation in the French National Assembly, which, only after the introduction of a zipping mechanism, rose from 12.3 percent in 2002 to 18.5 percent in the 2007 elections.¹²¹

Third, monitoring and regulatory mechanisms must be installed to ensure party compliance. Noncompliance sanctions on political parties may include financial penalties or the denial of electoral registration of political parties that do not comply with the law. Compliance can also be fostered by incentives. Offering additional media time or additional public funding¹²² to parties that place women in high positions on party lists is a promising strategy. Narrowly tailored, these instruments are constitutionally admissible deviations from the government's obligation to treat political parties equally because they serve a legitimate purpose.

Additionally, quotas need to be accompanied by a series of other measures. Crucial complements are both capacity building, for example, through mentoring by experienced women, and the removal of structural barriers to the political representation of women. Such measures should concentrate on the root causes that prevent female candidates from standing for elections. Organizations focusing on women's issues can help increase the number of women considering entering politics. A woman who can draw on resources and support from a women's organization is more likely to run and will also be more readily accepted by the party apparatus as a viable candidate.¹²³

Beyond capacity building, the removal of structural barriers includes campaigns directed at raising awareness of the importance of equal participation of both genders in political life, targeting women for appointment to ballot lists, and the creation of infrastructure that relieves women from household and child care burdens. Specifically, financial constraints could be eliminated by financial assistance for female political aspirants.

¹²¹ Article 2 of the Loi no. 2007-128 of Jan. 31, 2007, J.O. of Feb. 1, 2007, at 1941, amended Article 2 as follows: "La liste est composée alternativement d'un candidat de chaque sexe."

¹²² The CoE Committee of Ministers Recommendation 3 (2003) urged member states to "consider action through the public funding of political parties in order to encourage them to promote gender equality" (Appendix, proposed legislative measure A.4). In France, Article 9-1 of the Act on Financial Transparency of Political Life links the allocation of public funding to the number of women candidates a party nominates for election (Loi no. 88-227 of March 11, 1988, J.O. of March 12, 1988, at 3290, as modified by Loi no. 2003-327 of April 11, 2003, J.O. of April 12, 2003, at 6488). In Costa Rica, the statute on the promotion of social equality of women (Ley no. 7142 of March 2, 1990) obliges political parties to employ a portion of governmental funding for electoral campaigns for measures to promote the political education and participation of women (see, on this obligation, Part IX of the decision of the Supreme Election Tribunal, Costa Rica: Supreme Election Tribunal, decision 1863 of Sept. 23, 1999).

¹²³ Ballington and Matland, "Political Parties and Special Measures," at 3.

Without all these supporting measures, quotas work badly and have been a relatively painless way to pay lip service to women's rights without male politicians suffering the consequences. The general perspective suggests that quotas are not the decisive factor for increasing women's access to legislatures. Other structural components may matter more.

This assessment does not render political gender quotas per se legally inadmissible. However, it gives rise to a presumption of the unconstitutionality of isolated quotas because those are doomed to be ineffective. Overall, only properly embedded quotas might – if at all – slightly improve symbolic representation, and possibly improve descriptive and substantive representation of women.

Conclusion

Electoral gender quotas have recently boomed in democratic states. This proliferation was catalyzed through international and transnational law and politics. Quotas for women in politics are, compared to employment quotas, not very problematic under the angle of discrimination. However, they crucially affect democratic representation.

The purely numerical results of quota laws, and thus their effects on descriptive representation, have been modest. Electoral quotas have barely increased the female presence in parliaments when introduced as a single measure. They only seem to work when accompanied by placement requirements, compliance incentives, strict enforcement, and complementary policies. Because in liberal parliamentary multiparty democracies, the political parties remain the most important actors to promote or impede women's empowerment, the political will of party leadership remains decisive. Governments can only regulate the internal party structure to a limited extent, but they may impose legal requirements for the parties' listing schemes.

A different question is whether women's descriptive representation, as improved by quotas, actually translates into the substantive representation of their interests. Empirical studies have demonstrated that the gender impact on political activity is small. This is unsurprising, given the fact that political actors' convictions are determined by their parties' program and that delegates are tied into party discipline and institutions. Moreover, subgroups among men and women have diverging interests and values. Changing the composition of the elected parliaments does not guarantee that women's needs or interests will be addressed. The only guarantee would be one grounded in an essential identity of women, which is not plausible. Besides, there is no institutional mechanism to secure the accountability to women organized as a separate group. In sum, quotas are not operative for improving substantive representation.

Separate from the uncertainty as to whether a more gender-balanced legislature will address a new set of concerns, the presence of women in parliaments has an important symbolic value. Because representation is, to some extent, a myth, the

pure visibility of women, and thus their place in this myth, may help to overcome gender stereotypes. On the other hand, the focus on quotas and numbers risks losing sight of the real mechanisms of political power. Women need to be in the backrooms where deals are struck. They must be opinion leaders among the party elites, where party policy programs are formulated and priorities are assigned, and hold seats on influential committees and in party caucuses.

Overall, it is not even clear whether the presence of women in greater numbers on the parliamentary floor, supported by quotas, is a necessary, far from being a sufficient, condition for women's voices to be heard. Quotas might, to some extent, even be counterproductive. There is the danger that quotas breed complacency and overshadow, and thereby stall, other necessary measures for the advancement of women. They allow political parties to make seeming concessions to women without addressing structural problems.

Ultimately, we need to shift our attention away from the quantitative aspect to the qualitative changes in our political culture and institutions. The regulatory ideal remains that laws and policies should reflect and reconcile many diverse needs and concerns, and, if necessary, eclipse some. Electoral gender quotas should mark the beginning of the road to gender equity and not the end. As temporary special measures, political gender quotas should not become permanent. They may (if at all) be an enabling tool for a transformation of the democratic culture, but only an auxiliary one.