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Introduction

States and Gender Justice

The state's approach to women's rights has changed dramatically over the past century. In an earlier era, many states legally classified women as the property of their male relatives, endorsed gender discrimination, ignored violence against women, and treated care work as solely a private responsibility, outside the sphere of official state action. As part of a broader transformation in gender roles, relations, and identities, many states began to uphold principles of equality and autonomy for women and men. Today, it is becoming increasingly common for women to enjoy equal legal status with men in many areas, for laws to prohibit sex discrimination and violence, and for governments to support working families through parental leave and childcare provisions.

Still, government action on women's rights varies across countries. In Norway and Sweden, parents of young children are entitled to thirteen months of paid parental leave, two months of which is typically taken by men. In the United States, federal law does not guarantee any *paid* leave, mandating only that firms of a certain size allow workers to take twelve weeks of *unpaid* leave. In Egypt and Jordan, family laws stipulate that men are in charge of the household and other family members must follow their will, while in Cuba, the family code implores men to do their share of the housework. In Catholic Ireland, abortion is a crime, while in Italy, seat of the Vatican, access to abortion is legally guaranteed and provided at state expense.

Women's rights vary not only *across* countries but also *within* them, depending on the issue. In the United States, the federal government fails to mandate public funding for maternity or parental leave, but it was relatively early to adopt policies combating violence against women and

to liberalize abortion laws. Governments in Argentina and Costa Rica were early adopters of gender quota laws establishing minimum levels for women's participation as candidates in legislative elections, as well as comprehensive legislation on violence against women, but have failed to reform restrictive abortion laws or to promote more gender-neutral legislation on parental leave.

The mobilization of transnational and domestic feminist movements, the emergence of international norms on women's rights, and the proliferation of governmental women's agencies have been more successful at inducing policy changes on some women's rights than on others. Over the past few decades, scores of countries have adopted new policies to combat violence against women, introduced candidate quotas and reserved parliamentary seats to promote women's inclusion in political decision-making, and reformed constitutions to incorporate principles of equality. Meanwhile, a significant number of countries continue to deny women equal rights to seek a divorce and make decisions about the welfare of their minor children. In some countries, women may not inherit, own property, or work on the same terms as men. Dozens of countries keep laws on the books that prevent women from exercising certain professions, and a handful have entrenched greater inequality in the law and have rolled back previous progress. These examples suggest that a state can be both progressive and regressive: It can extend greater rights and freedoms to women and men with one hand, while it takes them away with the other (see, e.g., Morgan & Orloff, 2016; O'Connor, Orloff, & Shaver, 1999).

In this book, we delineate and attempt to make sense of these patterns. Each women's rights issue is a critical area for achieving gender justice, and yet the bewildering array of government actions can prompt skepticism about the existence of a common thread linking concepts of women's rights, sex equality, or gender justice.[1] We offer an approach that takes account of the multiplicity of gender while illuminating the connections among gender issues. We argue that gender equality is not one issue but many linked issues (Htun, 2003; Mazur, 2002; Sanbonmatsu, 2002; Sen, 2001). We identify several distinct dimensions of gender, and show

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[1] When we speak of gender justice, we refer to equality and autonomy for people constructed by gender institutions, including people of all sexes, genders, sexual identities, and gender identities. Women's rights, a subcategory of gender justice, concerns questions of equality and autonomy for women and men. We explore these differences in more detail below.

how they propel different types of political dynamics in each area of women's rights. Scholars and policy makers need to disaggregate women's rights – and measures that promote gender justice in general – in order better to understand the possibilities of change and the logics of continuity.

All policies promoting gender justice seek changes to the social and political institutions that construct – often in binary ways – the categories of sex and gender, imbue them with social meaning, and embed them in our material surroundings (buildings, clothes, wages). Gender justice policies challenge prevailing patterns of cultural value and require changes to societal norms at the macro level as well as at the micro level of social practices, in the interstices of daily life.

The common project of institutional challenge does not mean, however, that all policies confront the same institutions, or that they engage them in the same ways. In this book, we show that different types of women's rights challenge different aspects of social and political relations, in different ways, and to different degrees. Not all historical legacies, institutions, background conditions, or social and political actors are equally relevant for all areas of women's rights. Identifying which ones matter for which issues, and in which ways, allows us to identify and explain patterns of continuity and change.

Some policies that promote gender equality, such as measures to combat violence against women, seek primarily to transform the power and the meaning of particular bodies. Other gender equality initiatives, such as family law and the liberalization of restrictions on abortion, touch directly upon the claim of religious and cultural communities to govern the terms of kinship and reproduction. Still other gender equality policies, such as publicly paid parental leave and public provision of childcare, alter the cultural meanings, social organization, and material consequences of care work and domestic labor. In this book, we characterize these projects as *status politics*, *doctrinal politics*, and *class politics*, respectively. Though status politics, doctrinal politics, and class politics commonly seek a transformation of gender institutions to advance equality and autonomy, they trigger different dimensions of those institutions, as we explain below.

Existing literature has not given much emphasis to variation across women's rights. Many studies of gender and public policy tend to focus on a single issue or set of issues, such as parental or family leave (see, e.g., Gornick & Meyers, 2003, 2008; Henderson & White, 2004; Kittilson, 2008; Ruhm, 1996); reproductive rights (Ferree, 2002; Githens & Stetson, 2013; Lovenduski & Outshoorn, 1986; Norgren, 2001); family law

(Charrad, 2001; Glendon, 1989; Sezgin, 2013); violence against women (Heise & Germain, 1994; Katzenstein, 1989; True, 2012; Weldon, 2002a); childcare (Bratton & Ray, 2002; Morgan, 2006); gender quotas (Dahlerup, 2006; Jones, 2009; Krook, 2009); and so forth. Fewer studies explore variation across multiple policy areas (for exceptions see Blofield & Haas, 2005; Gelb & Palley, 1982; Htun, 2003; Kang, 2015; Mazur, 2002; Tripp, Casimiro, Kwesiga, & Mungwa, 2009; Weldon, 2011). Other studies claim, at least implicitly, that matters of women's rights are a more unified set of issues, by arguing that advances in equality policy form part of a general trend toward secularization and economic modernization (Inglehart & Norris, 2003), or by claiming that women's presence in government advances all areas of women's rights to the same degree.

We propose a typology of equality-promoting policies and develop a framework to analyze patterns of variation, continuity, and change for each type of women's rights issue. The typology implies that models accounting for crossnational variation in policy patterns should vary across issue-types. In the rest of the book, we explore the utility of this framework using qualitative analysis and comparisons, as well as regression analysis of a database covering seventy countries over four decades. Our dataset on these women's rights issues is based on fieldwork (including visits to countries in Asia, Africa, North America, and Europe); analysis of primary sources such as legal codes and constitutions, policy statements, and official reports; and secondary sources.

The book shows that the logic of gender justice on one issue is not the same as the logic on another issue. The complexity of gender, combined with the diversity of the world's political and socioeconomic contexts, accounts for these different political dynamics. We begin this chapter, therefore, by disaggregating the concept itself. What is gender? What do we mean by gender equality? By women's rights? How can policies promote women's rights? Our hypotheses about change flow directly from this picture of gender as a configuration of institutions.

DIMENSIONS OF GENDER

Gender is not just an attribute of individual identity or a type of performance but a collection of institutions: a set of rules, norms, and practices, widely held and somewhat predictable – though not uncontested – that constructs what it means to be or to belong to a particular sex group (cf. Fraser, 2007; Htun, 2005; Ridgeway, 2001,

p. 637; Young, 2002).² Different gender systems construct sex categories in different ways. Historically, people in the West believed in the model of a single sex (Laqueur, 1990). In the West and many other places today, sex is constructed in the familiar binary of man/woman, masculine/feminine, but other systems create more than two sex categories and uphold multiple gender identities. Though many people assume that biology clearly defines two distinct sex groups (women and men), scholarship has shown that biology may define as many as five sex groups, or none at all (Connell, 1987; Devor, 1989; Fausto-Sterling, 1993, Hawkesworth, 2013).

Gender is the mechanism through which "woman" and "man" and "masculine" and "feminine" come to be known as legitimate conceptual categories (Butler, 2004). Institutions of gender organize social behavior, furnishing incentives for some actions (girls playing with dolls; men proposing marriage to women) and sanctions for others (bullying and harassment of boys who want to wear dresses or who speak in high voices). Conceptualizing gender as an institutional phenomenon helps account for its structural and historical character: It cannot be reduced to the actions and preferences of individuals, and derives much of its weight from its endurance over time.

The social construction of gender in most contemporary societies positions sex groups against one another and also divides them against themselves. Gender, for example, situates men and women in unequal relations of power, often intersecting (or combining) with other institutions to uphold patterns of status hierarchy and economic inequality. As Young puts it, "What we call categories of gender, race, ethnicity, etc. are [less individual identities than] a set of structures that position persons … in relations of labor and production, power and subordination, desire and sexuality, prestige and status" (2002, pp. 417, 420). Social groups do not exist by virtue of a shared identity or attributes alone, but rather because they are similarly positioned by institutions.

Gender is composed of distinct institutions that Young calls the "basic axes of gender structures" (2002, p. 422), which one might think of as dimensions of gender. They include the status hierarchy, the sexual

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² Ridgeway refers to gender as an "institutionalized system of social practices for constituting males and females as different in socially significant ways and organizing inequality in terms of those differences" (Ridgeway, 2001, p. 637). To be sure, there are a wide variety of legitimate scholarly conceptions of gender, which we do not review here for reasons of space. For an overview and further discussion, see Hawkesworth (2013).

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division of labor, and normative heterosexuality. The *status hierarchy* refers to those institutionalized patterns of cultural value that privilege men and the masculine and devalue women and the feminine (Fraser, 2003, 2007). By virtue of their low status, women are the feminine and are marginalized, rendered "other," lesser beings less worthy of rights and dignity. Patriarchal norms treat women as the sexual property of men; as objects rather than subjects; as goods to be exchanged, ignored, or belittled; or as disposable beings who may be abused or even killed – in short, as less than full persons (Brush, 2003; Williams, 1988; Young, 1990, 2005). Promoting women's rights involves the transformation of these patterns that designate some groups as normative and constitute others as inferior, different, or unworthy. The status hierarchy devaluing women and the feminine in favor of normative models of masculinity is an obstacle to the achievement of dignity and equality (Fraser, 2001, 2007; Young, 2000, 2002).

The *sexual division of labor* refers to the tendency, across most societies, for women to shoulder a disproportionate burden of reproductive and care work. This work tends to be unpaid or underpaid, less valued, and concealed in the domestic or private sphere. By contrast, most societies allocate public, paid, and valued work to men. This division of labor has tended to put women at a disadvantage in relation to men by reinforcing economic inequalities including occupational sex segregation, gender wage gaps, and the scarcity of women in upper management (Estevez-Abe, 2006; Fuchs, 1990; Iversen & Rosenbluth, 2010). Promoting parity in opportunities and chances for economic independence requires changing the way we organize work (both paid and unpaid) and allocate resources (Fraser, 1997; Okin, 1989; Orloff, 1993; Young, 2000).

Normative heterosexuality locates heterosexual coupling as the legitimate site of rights, reproduction, and romance. It assumes a natural sexual and social pairing of male and female bodies as the basis for the family and community (Butler, 1990; Rich, 1980). The regime of normative heterosexuality renders "unintelligible" – and often wrong, sinful, and abhorrent – those people, relationships, and modes of behavior that deviate from gender dimorphism and heterosexuality, including same-sex relationships, same-sex parenting, and transgender expressions, among other phenomena (Butler, 2004).

We understand gender equality as an ideal condition or social reality that gives groups constituted by gender institutions similar opportunities

to participate in politics, the economy, and social activities; that values their roles and status, and enables them to flourish; in which no gender group suffers from disadvantage or discrimination; and in which all are considered free and autonomous beings with dignity and rights. This conception of equality pertains to men and women. It also pertains to groups constituted in other ways, including by sexuality and gender identity. Gender justice, or equality and autonomy for people of all sex groups and gender identities, thus includes the emerging developments in LGBTQ law and policy that combat normative heterosexuality, such as legitimizing gay marriage and adoption, decriminalizing homosexuality, and so on.[3] It involves the widening set of laws and policies protecting transgender people from violence and forced gender identity. Gender justice also encompasses the radical notion that "women are human," and are entitled to the full range of rights and responsibilities, and the fullest degree of autonomy, consistent with the status of personhood.

No single book could explore all these questions of gender justice, and we do not try. We focus on women's rights as a subcategory of gender justice and sex equality. Women's rights are legitimate claims for greater parity in the well-being, life chances, and opportunities of women and men.[4] Advancing women's rights involves changes in many spheres of life, such as politics, the family, the market, and civil society, and requires reimagining our communities and nations as more inclusive and egalitarian. We think many of our arguments about women's rights will prove useful for those focused on LGBTQ rights or other issues of gender, and we explore these applications in our conclusion. But we do not claim to exhaust the study of gender justice in this book.

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[3] In this book, we often use the terms gender justice and gender equality as synonyms. Some people may prefer the concept of gender justice, since the equality concept often triggers confusion over whether it implies equality of treatment (formal equality) or equality of outcome (substantive equality). As we discuss in Chapter 4, formal and substantive equality have different implications for women's rights and neither, on its own, is adequate to overcome historical disadvantages.

[4] Throughout this text, we occasionally use the terms "women's rights," "gender equality policies," "sex equality policies," and "gender issues" as synonyms. Our usage is occasionally ambiguous since, as we make clear in the present discussion, the terms are not equivalent. Women's rights and sex equality issues are a subset of a larger group of "gender equality issues" and "gender issues."

DISAGGREGATING POLICIES THAT PROMOTE GENDER EQUALITY

Scholars of public policy have long argued that different types of issues involve different sorts of politics.[5] For example, in his seminal 1964 work, Ted Lowi differentiated between distributive, redistributive, and regulatory policies and showed that each involved different modes and loci of decision making (Lowi, 1964). Peter Hall distinguished between policy changes affecting the instruments of policy, the settings on those instruments, and the underlying paradigm setting the parameters of policy (Hall, 1993). Depending on the level of policy, different causal factors are at work.

Gender and politics researchers have refined this idea by introducing distinctions between women's rights policies. For example, Gelb and Palley distinguished between "role equity" and "role change" policies in their study of feminist achievements in the United States during the 1970s (Gelb & Palley, 1982). They showed that "role equity" policies (such as fair credit laws and Title IX) granting women equal access to privileges formerly held by men and minorities were easier to accomplish than policies promoting change in the social meaning of women's roles (see also Skrentny, 2002). Advocating these policies, which meant greater sexual freedom and independence, generated controversy and proved costly to politicians (Sanbonmatsu, 2002).

Gelb and Palley's typology is helpful because it focuses on the varying degrees to which policies challenge established patterns. Since they provoke more radical changes, "role change" policies have been more controversial and provoked greater opposition than "role equity" policies. Yet policies that provoke opposition in some contexts encounter less in others. Unpaid leave to care for family members was finally adopted in the United States in 1993 after two presidential vetoes and considerable controversy (Bernstein, 2001). Yet the same policy had been in place in Norway since the end of the nineteenth century and its expansion was hardly controversial. The difference owed not to the nature of the policy but to the varying contexts of class politics in the two countries (Mazur, 2002; Stetson, 1998; Weldon, 2011). As this suggests, prevailing institutions, and not just the inherent features of a policy, determine the political dynamics at work.

[5] The writing and analysis in this part builds on Htun & Weldon (2010) and Htun and Weldon's contribution to Morgan & Orloff, 2016.

In her study of family law and abortion in Latin America, Htun suggests a different way to disaggregate gender policy dynamics (Htun, 2003). Did policy change challenge the core tenets of the dominant religion (in this case, Roman Catholicism)? Or were ecclesiastical leaders agnostic about reform? Her analysis suggests that policy controversies derive from a clash of normative traditions – authoritative scripts furnishing standards of morality and the good life – and their implications for the respective roles of men, women, the state, and religion. Family law and abortion reforms have been far more controversial in contexts where they present challenges to established religious doctrine.

Building on these accounts, we focus on the degree to which gender equality policies challenge prevailing patterns of social organization. Though women's rights commonly question sexuality, work, and family life, as well as the authority of religious institutions and the reach of markets, they do so in different ways. Our typology classifies policies along two dimensions: (1) whether it touches upon state–market relations and questions of socioeconomic redistribution, or whether it promotes the social and legal position of women, or some subsector of women, as a status group (*the class–status dimension*) and (2) whether or not the policy challenges the religious doctrine, cultural traditions, or sacred discourse of a major social group (*the doctrinal–nondoctrinal dimension*) (see Table 1.1).

TABLE 1.1 *Typology of policies to promote women's rights*

		Do the policies challenge the doctrine of religious organizations or the codified tradition or sacred discourse of major cultural groups?	
		No: Nondoctrinal	**Yes: Doctrinal**
Does the policy advance women's rights primarily as a status group or as a gender-class group?	Status	Violence against women Gender parity/quotas Constitutional equality Legal equality in the workplace	Family law Abortion legality Reproductive freedom
	Class	Maternity/parental/daddy leave Public funding for childcare	Public funding for abortion and contraceptives

Source: Htun & Weldon, 2010 (modified from its original version).

Status versus Class Policies

Under the influence of intersectional approaches to social research, scholars of women's rights have come to consider "women" as a collection of categories, not a single category. Women are internally divided along the lines of class, race, ethnicity, sexual orientation, and the like. Multiple social positions intersect to shape women's opportunities, their chances for well-being, and the respect they receive from others (Crenshaw, 1993; Hancock, 2007).[6] In any particular circumstance, the effects of these distinct positions may be difficult to disentangle. Is my employer's reluctance to promote me due to the fact that I am Muslim, or because I am physically impaired, or a woman? From the perspective of lived experience, these positions are not detachable either: The experience of being female or male, for example, cannot be cleanly distinguished from the experience of being black or white (Jordan-Zachery, 2007; Moi, 2001; Spelman, 1998; Young, 2002).

From an analytical angle, however, we can identify the degree to which women suffer some injustices primarily because they are women and not as a function of their other positions, such as poor, immigrant, or dark-skinned.[7] "Institutionalized patterns of cultural value" (Fraser, 2000) that privilege masculinity and devalue behaviors and characteristics associated with femininity inflict harm on women as a status group. These patterns cast men as normative and women as subordinate, "other," and lacking in value, denying women the recognition and dignity they merit as human beings (Young, 2002). As Fraser argues:

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[6] This recognition of intersectionality implies that women do not inherently share common interests or perspectives. The forging of a common front among women is the result of politics, not the premise of politics (Htun & Ossa, 2013; Weldon, 2006, 2011). Feminist work on intersectionality has become a voluminous, multidisciplinary, and global literature in recent years: See work by Kimberlé Crenshaw, Patricia Hill Collins, Nira Yuval-Davis, Ange-Marie Hancock, Leslie McCall, Julia Zachery-Jordan, and Iris Marion Young, among others. For a nice discussion see Chepp and Collins (2013). See Hancock (2016) for a comprehensive history of the roots of intersectionality approaches.

[7] Many scholarly works, for example, attempt to disentangle the effects of gender, race, and education on pay scales and occupational segregation. In addition, although particular types of injustice may take different forms for different subgroups of women (such as poverty or violence), women are uniquely vulnerable to some of these. Women are raped because they are women, but this does not mean that women in every country are equally vulnerable to custodial rape by police or gang rape in fraternities. Women who are fired or not promoted because they are pregnant are fired or not promoted because they are women, regardless of their occupation or income.