CREATING COLLECTIVE CAPABILITIES: WOMEN, AGENCY AND THE POLITICS OF REPRESENTATION

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In her groundbreaking book, *Women and Human Development*,[1] Martha Nussbaum builds on Amartya Sen's human capabilities approach, which shifts the focus from "rights" to what people actually can be or do to realize their full human potential. The approach draws on a liberal philosophical framework that emphasizes individual capabilities. This Article explores the strengths and limitations of such an approach in countries that adopt non-liberal collective capability frameworks in relation to women's rights.

This Article argues that the capabilities approach needs to be understood not only as being limited to individual capabilities, but also as encompassing the collective capability to act. Moreover, the process of creating capabilities is intensely political and therefore requires agents and agency. This is not to say that the individual capabilities approach is not important, but that it is insufficient to address the issues surrounding women's rights. The individual capabilities frame should also include collective capability frames because they are prevalent in the world today; they highlight women's agency in creating and enhancing their own capabilities; they highlight the structural nature of gendered marginalization within institutions and the ways this impinges on individual collectivities; they emphasize the importance of political solutions to the problem of capability, since ultimately most intractable problems involving power relations can only be resolved through political struggle and accommodation; and they open up alternate ways of conceptualizing competing and conflicting rights, such as cultural versus women's rights.

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[1] *See generally* MARTHA C. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH (2000) [hereinafter NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT]; AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); AMARTYA SEN, INEQUALITY REEXAMINED (1992); AMARTYA SEN, POVERTY AND FAMINES (1983).

This paper examines these questions in light of efforts to increase female political representation in legislatures and in local and national governments around the globe through the adoption of quotas. There are three main types of quotas: 1) reserved seats, which specify the number of seats that are to be won by women in an election; 2) nomination quotas, which require all parties to nominate a certain percentage of women as electoral candidates; and 3) voluntary measures, adopted by political parties, which are intended to influence the number of female candidates. The first two types of quotas can be created and mandated by national legislation or constitutional directives.

I. NUSSBAUM'S CAPABILITIES APPROACH

In developing her capabilities approach, Martha Nussbaum points to limitations in utilitarianism, Rawlsian liberalism and human rights approaches. Drawing on Aristotle's ideas of human functioning, Nussbaum advances Sen's work to articulate precisely which capabilities are critical to human development. What matters, Nussbaum argues, is not simply an individual's preference, how resources are distributed, or whether someone lives in a country that guarantees a particular right on paper; what matters is whether the individual actually has the capability to have a good human life and fully realize their humanity.[2]

Preferences, Nussbaum suggests, are unreliable as a basis for determining what is just. While individual preferences are important to consider, those preferences are formed out of habit.[3] Thus, being accustomed to and socialized by unequal institutions, we have a tendency to justify what seems inevitable. Nussbaum believes human rights approaches rely too much on a formal approach to rights rather than focusing on the structural obstacles to equality and the capabilities that might allow women to exercise those rights.[4] However, in Nussbaum's final analysis, it is the individual's capability that becomes her central target of concern.[5]

Focus on individual capabilities is important, but insufficient. Women's rights are not conceived of as individual rights in most parts of the world, but rather are conceived through a variety of collective frames that emphasize women as social actors who experience common o

[2] NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT, *supra* note 1, at 11–15.

[3] *Id.* at 119–22.

[4] *Id.* at 96–101.

[5] *See generally id.* at 4–11.

ppressions that need to be addressed by treating women as a group. Such collective frameworks offer their own possibilities and limitations, as do the individual rights frames. Many of the collective frames that draw on "maternal welfare" or "political motherhood" create their own sets of problems by essentializing women and making assumptions about all women based on presumed innate characteristics or culturally defined roles. Nevertheless, the prevalence of such collective frames suggests that most countries regard the problem of women's representation not only as a problem of individual women and their capabilities, but also as one that needs to be thought of within the context of a collective frame.

Table 1. Closing Gender Gaps

Area	Gap Closed
Healthcare	96%
Education	93%
Economic participation	59%
Political participation	17%

Source: WORLD ECONOMIC FORUM, *supra* note 7.

Nussbaum refers to political representation as the capability to control one's environment by being able to "participate effectively in political choices that govern one's life."[6] Women's representation is an area where one finds the biggest gender gaps, and, like so many gender inequalities, it is a problem which is pervasive across the globe. Overall, according to a recent study done by the World Economic Forum, the gender gaps in healthcare and education have virtually closed.[7] However, the gender gaps in economic and political participation have closed by only fifty-nine percent and seventeen percent, respectively (Table 1).[8]

Interestingly, many of the countries with the largest gaps in political equality between genders have tended to treat women's rights through a liberal individual rights frame (Table 2). For example, the United States ranks 74th when it comes to the percentage of women in the legislature, with women holding fifteen percent of the seats in the Senate

[6] *Id.* at 80.

[7] WORLD ECONOMIC FORUM, THE GLOBAL GENDER GAP REPORT 2009, *available at* http://www.weforum.org/pdf/gendergap/report2009.pdf.

[8] The measure for political participation is based on the ratio of women to men in minister-level positions, the ratio of women to men in parliamentary positions and the ratio of women to men in terms of years in executive office (prime minister or president) in the last fifty years.

and 16.8% of the seats in the House in 2009.[9] In contrast, the countries discussed in this paper that have adopted collective quota strategies rank significantly higher in terms of female legislative representation: Finland (seventh), Argentina (tenth), Germany (seventeenth), and Uganda (twenty-first).[10]

Table 2. Gender Gap Ranking of Countries Adopting an Individual Rights Frame

Global Rank	Countries adopting individual rights frame	% of women in lower house of legislature
32	Australia	27.3
49	Canada	22.1
60	United Kingdom	19.5
72	Greece	17.3
74	United States of America	16.8
85	Ireland	13.9

Source: Inter-Parliamentary Union, *supra* note 9.

II. AGENCY AND THE POLITICS OF CREATING CAPABILITIES

One question that arises from Nussbaum's approach is how it would improve women's capabilities in the area of political representation, especially when considering that the rate of change without any intervention has been excruciatingly slow. It is difficult to imagine that significant changes in the rates of female representation would happen without some intervention by actors advocating for change. For this reason, female activists and *femocrats* the world over have pushed for gender policy change, but have done so largely on collective grounds. In light of the fast paced introduction of electoral quotas in many countries, Drude Dahlerup, Lenita Freidenvall and Hege Skjeie have argued that the incremental model

[9] Inter-Parliamentary Union, Women in National Parliaments: World Classification, http://www.ipu.org/wmn-e/classif.htm (last visited Feb. 22, 2010) (reporting information provided to the organization as of Dec. 31, 2009).

[10] *Id.*

of increasing women's representation in parliament that led to high rates of female representation in the Nordic countries in the 1970s has now been replaced by the fast track model that one finds in developing countries, where dramatic jumps in parliamentary representation are taking place almost overnight.[11] Thus, countries like Rwanda have fifty-six percent of their parliamentary seats held by women as a result, in part, of the adoption of quotas.[12]

Women have been integral to efforts to advance themselves in the political arena. Women's movements domestically and internationally have pressed for increased representation of women. They have lobbied political parties and governments in their own countries as well as international and regional bodies to adopt policies that would increase the representation of women. In various African countries such as South Africa, Namibia, Uganda, Kenya and Sierra Leone, there are 50/50 movements advocating that women claim half of all parliamentary seats. International and regional bodies, including the Inter-Parliamentary Union, the U.N. Beijing Conference on Women, the Southern African Development Community (SADC) and others have also encouraged the adoption of measures to promote women's parliamentary representation.[13] Some regional organizations, like the aforementioned SADC, set targets for their member states: for example, women representatives in SADC member states are to hold fifty percent of legislative seats by the year 2015.[14]

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[11] Drude Dahlerup & Lenita Freidenvall, Quotas as a 'Fast Track' to Equal Political Representation for Women. Why Scandinavia is No Longer the Model, 7 INT'L FEMINIST J. POL. 26 (2005); Lenita Freidenvall, Drude Dahlerup & Hege Skjeie, The Nordic Countries: An Incremental Model, in WOMEN, QUOTAS AND POLITICS (Drude Dahlerup ed., 2006).

[12] Inter-Parliamentary Union, *supra* note 9.

[13] Stella Makanya, Situation Analysis of Women in Politics in Selected SADC Countries, *in* Women in Politics and Decision Making in SADC: Beyond 30 Percent in 2005 (1999) (Paper presented at a Conference of the South African Development Community in Gaborone, Botswana); SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC), DIVISION FOR THE ADVANCEMENT OF WOMEN, THE ROLE OF NATIONAL MECHANISMS IN PROMOTING GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN: SADC EXPERIENCE (2005), *available at* http://www.un.org/womenwatch/daw/egm/nationalm2004/docs/EP.8-Warioba%20rev.pdf; Fourth World Conference on Women, Beijing. China, Sept. 4–15, 1995, *Report of the Fourth World Conference on Women* ¶ 181–195, U.N. Doc A/CONF. 177/20/Rev. 1 (Oct. 17, 1995), *available at* http://www.un.org/documents/ga/conf177/aconf177-20en.htm [hereinafter Beijing Conference].

[14] AILI TRIPP ET AL., AFRICAN WOMEN'S MOVEMENTS: TRANSFORMING POLITICAL LANDSCAPES (2009).

Over 100 countries have adopted some form of quotas to increase the numbers of female candidates running for office and another twenty have debated the institution of quotas over the past ten years.[15] These efforts include legislative or constitutional provisions for the adoption of party quotas, reserved seats, and the adoption of quotas on a voluntary basis by parties themselves. In the 1990s, new efforts to introduce quotas to improve women's legislative representation were especially common in Latin America and Africa, and, more recently, those efforts have spread to the Middle East and North Africa. In many countries, quotas are being adopted as temporary measures, designed to bring more women into positions of power.

Quotas are adopted with a variety of justifications, such as rectifying the gender imbalances that have existed historically in political representation; advancing justice and fairness; increasing gender equality; representing women and giving voice to women's special interests; ensuring that women's views on a variety of matters are adequately represented by women themselves; and encouraging more women to participate in politics. Political leaders themselves may have other motives for adopting quotas: for example, they may be more interested in improving a country's international image or in casting their party or government as modern and/or secular, perhaps in order to create a wedge between themselves and Islamists or other conservative forces. They may also be complying with international treaties like the Convention Against the Elimination of Discrimination Against Women (CEDAW), seeking to obtain women's votes, or to expand patronage networks.

As a result of collective strategies like the introduction of quotas, many of the countries that have adopted more liberal frames focusing on individual women are trailing other countries when it comes to female political representation.[16] Collective strategies make it possible to tackle structural dimensions of women's gender subordination within powerful political and economic institutions. There will always be isolated individuals who find a way to overcome institutional constraints, but to bring about significant social change that benefits most women, the change has to address structural obstacles directly and in a way that gives wide access to more than a handful of individuals. Quota policies recognize that

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[15] MONA LENA KROOK, QUOTAS FOR WOMEN IN POLITICS: GENDER AND CANDIDATE SELECTION REFORM WORLDWIDE (2009).

[16] *See* Table 2, *supra*; Inter-Parliamentary Union, *supra* note 9.

it is insufficient to rely on serendipity, luck and individual resourcefulness to bring about social change. They recognize that the sources of resistance need to be dealt with directly.

These collective strategies reveal the centrality of women's agency as well as that of party and government leaders in addressing women's capabilities to assert themselves politically. This agency may be assumed, but it is not an integral part of Nussbaum's capabilities framework. However, agency becomes vital if one asks how capabilities get created and sustained. Just as agents and agency are critical to creating collective capability, the process of creating these capabilities is intensely political. Nussbaum lays out an important framework for advancing the status of individual women and the articulation of key capabilities is a bold and important step in advancing the debate over women's rights. However, she brings us to the doorstep of the sphere of politics and to questions such as: what kind of political environment and what conditions need to be created that could best advance these capabilities; what political strategies are best adopted to create the conditions for these capabilities; and, most pertinent to this Article, *how are these strategies being implemented?*

III. CULTURAL TENSIONS WITH WOMEN'S RIGHTS

Nowhere are the political contestations over women's capabilities more acute than when women's rights conflict with cultural rights. Much of the criticism of Nussbaum's capabilities approach has focused on her advocacy of universal capabilities. Some object to the idea that there is a commonality to human experience across cultures from which one can distill basic human capabilities.[17] Others object to perceived attempts to dictate a normative view of human capabilities for other societies, given the extent to which societies have differed over time and place regarding issues such as the environment and nature.[18] The quest for universal capabilities is

[17] *See, e.g.*, Hilary Charlesworth, *Martha Nussbaum's Feminist Internationalism*, 111 ETHICS 64 (2000) (conference proceeding); Brooke Ackerly, *Women and Human Development: The Capabilities Approach*, 29 SIGNS 248, 248–54 (2003) (book review); Nancy J. Hirschmann, *Women and Human Development: The Capabilities Approach*, 96 AM. POL. SCI. REV. 809, 809–10 (2002) (book review); Rachana Kamtekar, *Women and Human Development: The Capabilities Approach*, 111 PHIL. REV. 262, 265 (2002) (book review); Ayelet Shachar, *Women and Human Development: The Capabilities Approach*, 49 POL. STUD. 134 (2001) (book review); Elliot Turiel, *Striving for Justice, Equality, and Decent Lives—Essay Review of* Women and Human Development: The Capabilities Approach *by Martha C. Nussbaum*, 46 HUM. DEV. 363, 366 (2003) (book review).

[18] Frances Stewart, *Development as Freedom*, 24 WORLD ECON. 971, 971–72 (2001) (book review).

said to overlook women who make choices that do not fit her human capabilities goals and who opt for sacrifice or suffering for various social and cultural reasons.[19] Finally, although Nussbaum argues that basic human rights of citizens and nondiscrimination may trump religious freedom, some have argued that her approach does not point to how to resolve conflicts between human capabilities, such as when religious freedom and the right to nondiscrimination based on sex or sexual orientation clash.[20]

Nussbaum sees her capabilities approach as offering a basis upon which to challenge those who claim that various cultural, religious, group and minority rights take precedence over women's rights. One way to do this, she says, is to ask whose culture is being violated and challenge the idea that certain individuals in a society have a monopoly on defining its values and culture.[21] Nussbaum argues that there exists a multiplicity of perspectives in any one culture and that people do not all share a common perception of cultural norms.[22] There are internal contestations over practices affecting women, and therefore a cultural rationale is not a sufficient justification for discriminating against women.[23] Although women should be able to choose to comply with a cultural practice that discriminates against them, she assumes that women would not willingly make such a decision.[24] She looks for the formation of an overlapping consensus between people who have different notions of what constitutes the good.[25] She sees universal norms as necessary in order to protect "diversity, pluralism, and freedom, treating each human being as an agent and an end."[26]

This Article argues that this entire debate between Nussbaum and those taking a more cultural relativist perspective needs to be seen in a broader perspective and to be situated in the historical, social and political

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[19] Monique Deveaux, *Conflicting Equalities? Cultural Group Rights and Sex Equality*, 48 POL. STUD. 515 (2000); Anne Phillips, *Women and Human Development: The Capabilities Approac*h, 112 ETHICS 398, 399 (2002).

[20] Charlesworth, *supra* note 17, at 73.

[21] WOMEN AND HUMAN DEVELOPMENT, *supra* note 1, at 42.

[22] *Id.* at 42.

[23] *Id.* at 44–47, 49, 59.

[24] *Id.* at 153–54.

[25] *Id.* at 5, 14, 76, 104, 106.

[26] *Id.* at 106.

contexts from which it has arisen. The debate itself is shaped by discussions heavily influenced by American and British controversies surrounding multiculturalism and intersectionality that focus on the tension between equality and difference. This is not to say that similar debates are not found outside of the United States and Britain, but rather that they are often framed in entirely different ways. For example, in many African contexts, especially in countries that have gone through ethnically-based conflict, one of the main preoccupations of women's movements has been how to make difference matter less, not more. This is not because difference does not matter, but because it has mattered too much with deadly and horrific consequences for both women and men in the context of civil war.[27] Women's movements and women's peace movements from countries such as Sierra Leone, Liberia, Rwanda, Burundi, Somalia, the Democratic Republic of Congo, southern Sudan, and Uganda have focused their energies on how to minimize difference and build bridges across conflicting ethnic, religious, clan, party and other lines.[28] They have focused on their common gender-related interests, which cut across differences, in order to advance a unified agenda. Political representation is one key issue that has united women in most of these countries. This has meant, for example, that countries coming out of conflict have double the rates of female legislative representation in Africa when compared with countries that have not gone through conflict, and post-conflict countries have been more inclined to adopt quotas to accomplish these goals.[29] This Article departs from the cultural relativists in that I see a fair amount of global consensus around women's rights in general. I also believe that tensions between women's and cultural rights do not exist in a vacuum, but rather are contested politically. Not all gender-related concerns animate all countries equally or in the same way.

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[27] Aili Mari Tripp, *Rethinking Difference: Comparative Perspectives From Africa*, 25 SIGNS 649, 649–75 (2000).

[28] *Id.*

[29] *See generally* TRIPP ET AL., *supra* 14.

Nevertheless, today we have more agreement globally regarding women's rights than at any other time in history. According to the latest World Public Opinion poll, carried out in 2008, an overwhelming majority of people around the world say that it is important for "women to have full equality of rights compared to men." Large majorities say that this goal is "very important" in seven countries: Indonesia (seventy-one percent), France (seventy-five percent), China (seventy-six percent), the United States (seventy-seven percent), Turkey (eighty percent), Britain (eighty nine percent), and Mexico (eighty nine percent).[30] Although the popular press is fond of singling out predominantly Muslim countries as being especially hostile to gender equality, overwhelming majorities even in largely Muslim countries such as Iran (seventy-eight percent), Azerbaijan (eighty-five percent), Egypt (ninety percent), and the Palestinian territories (ninety-three percent) say women's equality is important.[31] Moreover, men and women's opinions on this matter "differ strikingly little" across the world (eighty-eight percent of women and eighty-four percent of men agree that equal rights for women is important).[32] The same poll also found very strong support for governments to take steps to eliminate gender discrimination and for the United Nations to further the rights of women.[33] In terms of world history, the idea of women's rights is a fairly new concept, and so it

Table 3a. Representation of Women in the Lower House of Selected Muslim Countries

Predominantly Muslim Country	Seats in Lower House (%)
Tunisia	27.6
Afghanistan	27.3
Kyrgystan	25.6
Iraq	25.5
Mauritania	22.1
Senegal	22.7
United Arab Emirates	22.5
Pakistan	22.2
Eritrea	22.0

Source: Inter-Parliamentary Union, *supra* note 9.

[30] WORLD PUBLIC OPINION, INTERNATIONAL POLL FINDS LARGE MAJORITIES IN ALL COUNTRIES FAVOR EQUAL RIGHTS FOR WOMEN 1 (2009), *available at* http://www.worldpublicopinion.org/pipa/pdf/mar08/WPO_Women_Mar09_rpt.pdf.

[31] *Id.* at 2.

[32] *Id.*

[33] *Id.*

seems quite extraordinary that there is now such consensus across societies not only that women should have equal rights but also that it is the responsibility of the government to prevent discrimination.[34]

Table 3b. Representation of Women in the Upper House of Selected Muslim Countries

Predominantly Muslim Country	Seats in Upper House (%)
Senegal	40.0
Malaysia	31.3
Bahrain	25.0
Oman	19.4

Source: Inter-Parliamentary Union, *supra* note 9.

One point of commonality has been around the issue of political representation and the need to find ways to address the lack of female representation in the emerging polity. International declarations, such as the United Nations Platform of Action (which came out of the Beijing Conference on Women in 1995) and agreements by the Inter-Parliamentary Union have called on member states to adopt strategies to increase the representation of women.[35]

So while I see much more commonality in aspirations for gender equality than Nussbaum's critics allow, I also see limitations in her individualist approach. These limitations are especially apparent in countries where women have been seriously sidelined politically, and it is in these countries that it has proven necessary to adopt collective strategies to address their exclusions. Many find it untenable to wait the eternity that it would take for individual-based capabilities strategies to play themselves out.

If one takes, for example, the issue of female legislative representation in Muslim countries, where the literature suggests that Islam acts as a cultural constraint on women's political leadership,[36] one will find that Muslim countries are increasingly adopting quotas and thus increasing the rates of female representation. In this way, innovations targeting women as a collectivity can overcome various cultural constraints even in the seemingly most challenging circumstances. Thus, female representation in

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[34] *Id.*

[35] Beijing Conference, *supra* note 13, ¶¶ 181–95.

[36] RONALD INGLEHART & PIPPA NORRIS, RISING TIDE: GENDER EQUALITY AND CULTURAL CHANGE AROUND THE WORLD 7 (2003) (noting several Middle Eastern countries where women are restricted from running for office); Ronald Inglehart & Pippa Norris, *The True Clash of Civilizations*, FOREIGN POLICY, March/April 2003, at 63–70.

predominantly Muslim countries is rapidly increasing largely as a result of the adoption of quotas.[37]

Were one to wait for individual women's strategies to play themselves out without such collective interventions, the rate of change would be painfully slow. For example, prior to the introduction of quotas, Muslim countries had a slow rate of increase over thirty years between 1960 and 1990. If that rate had continued, it would have been 106 years until political equality based on gender would have been reached. With the introduction of quotas, Muslim countries are expected to reach gender parity in political institutions within sixteen years if the rate remains the same. In the United States, if we continue to increase at the rate we have been going over the past two decades, it will be another thirty-six years until women's representation in legislature reaches the fifty percent mark.

However, these changes do not occur without political contestation, and the terms on which women's rights are introduced do not always take women's interests as a starting point. The introduction of women's rights policies have sometimes been a way in which various states have sought to establish themselves as modernizers, often placing women's rights at the crucible of broader societal change. In Tunisia, Morocco, and other predominantly Muslim countries, efforts to introduce quotas have often come to symbolize a major fault line between the secularists and Muslim groups.[38] Several younger Western-educated reformist monarchs in Morocco, Jordan, and Qatar see women's advancement as critical to the economic advancement of their countries and have been gradually moving their countries to adopt reforms in women's rights.[39]

It should, nevertheless, be noted that quotas are being adopted unevenly and the increases in representation are taking place faster in Muslim countries outside the Middle East. In a cross-national statistical study of 153 countries that I conducted with Alice Kang,[40] we found that

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[37] *See* Table 3, *supra*.

[38] LAURIE A. BRAND, WOMEN, THE STATE, AND POLITICAL LIBERALIZATION: MIDDLE EASTERN AND NORTH AFRICAN EXPERIENCE (1998); Emma C. Murphy, *Women in Tunisia: Between State Feminism and Economic Reform*, *in* WOMEN AND GLOBALIZATION IN THE ARAB MIDDLE EAST: GENDER, ECONOMY, AND SOCIETY 193 (Eleanor A. Doumato & Marsha P. Posusney eds., 2002).

[39] Sylvia Maier, *Lifting the Veil in the Middle East*, INT'L HERALD TRIB., June 19, 2006, *available at* http://www.nytimes.com/2006/06/19/opinion/19iht-edmaier.2004169.html.

[40] Aili M. Tripp & Alice Kang, *The Global Impact Of Quotas—On The Fast Track To Increased Female Legislative Representation*, 41 COMP. POL. STUD. 338, 338–61 (2008).

the introduction of quotas offers the most explanatory power for increases in women's representation today. We also discovered that Islam, which had in the past has been seen to correlate with low rates of female representation, did *not* act as a constraint on women's representation when quotas and region were factored into existing models. This is due to the fact that so many predominantly Muslim countries, at this time primarily outside the Middle East, are now adopting quotas to overcome societal limitations on women.

IV. COLLECTIVE VS. INDIVIDUAL FRAMES OF CAPABILITY

In order to fully appreciate the importance of collective capabilities in advancing women's political representation, one needs to understand how they are expressed differently from individual capabilities. Drawing on the notion of frames allows us to think more systematically about how women's rights have been articulated in a variety of societies. In referring to frames, this Article draws on Erving Goffman's work on frame analysis,[41] social movement theories of framing, and Myra Marx Ferree and her collaborators' notion of discursive opportunity structures.[42] Framing is a way of linking structure and agency by connecting beliefs about social actors and social relations with a somewhat cohesive framework that establishes limits and possibilities for action within a particular context. Frames allow one to "connect the dots," so to speak, between people, their perceptions, their activities, their resources, and their attempts to create social meaning through action in ways that resonate with other people. Ferree and other scholars refer to political institutional frameworks such as constitutions, laws, treaties, and regulations as discursive opportunity structures because as texts they cannot speak for themselves, but rather they need to be interpreted, enacted and enforced.[43] They are dynamic and changing and open to reinterpretation. These opportunity structures or frames can be both enabling and limiting.

Carol Lee Bacchi has similarly thought of frames in the context of gender policy to show that what matters is how one frames, defines and

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[41] ERVING GOFFMAN, FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE (1974).

[42] *See, e.g.*, MYRA M. FERREE ET AL., SHAPING ABORTION DISCOURSE: DEMOCRACY AND THE PUBLIC SPHERE IN GERMANY AND THE UNITED STATES (2002).

[43] *See id.*

contextualizes the question in her "what is the problem" approach.[44] She asks: what assumptions underlie the particular representation of the issues in a policy debate or policy proposal? What are the competing constructions of the issue? What is the impact of the representation? Who benefits from it? How are men and women constituted in this framework? What is left unproblematic in the representation? How would policy responses differ if the problem were framed differently? Thus, Bacchi suggests that policy studies often treat policies as efforts to address problems rather than examining the way in which people frame the problem to look more deeply into the contours of policy discussions.[45]

Although Bacchi is referring to specific policies that affect women, the same kinds of questions can be asked of broader frames for understanding women's rights. This Article focuses on in individual vs. collective rights frames more generally. There are, of course, other frames, but these ones are of particular concern in this Article.

A. United States

Before examining a variety of collective frames, it is interesting to contrast a predominantly individual (liberal) rights frame with collective rights frames. Individual rights are necessary but insufficient for advancing women's rights in policy initiatives. There are tradeoffs with both types of frames, and when applied in concrete situations these tradeoffs take on a specificity that allows them to be evaluated even more carefully. The United States's frame is a distinctly liberal one. Similar individual rights based frames can be found in countries such as Canada, the United Kingdom, Australia, and New Zealand.

However, even in the United States, there have historically been collective frames that helped shape welfare policy, although these frames eventually gave way to more individualistic, liberally-oriented approaches. Linda Gordon and Nancy Fraser, for example, have described this shift by showing how the development of the welfare state was influenced by changing notions of dependency; dependency was transformed from being an accepted condition based on group status in preindustrial societies to being stigmatized and associated with deviant individual traits worthy of

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[44] *See, e.g.*, CAROL LEE BACCHI, WOMEN, POLICY AND POLITICS: THE CONSTRUCTION OF POLICY PROBLEMS (1999).

[45] *Id.* at 11, 29, 69.

moral condemnation in the contemporary context.[46] More generally, Gordon and Fraser show how in the preindustrial period most people, including wage laborers, serfs and slaves, were dependent, which meant they worked for someone else. Women's domestic labor was controlled by others, but it was nevertheless regarded as important to the sustenance of society and, as such, was valued. With the emergence of religious and secular individualism alongside capitalism, economic independence became equated with wage labor, which was valued, while economic dependence became associated with women's care work, which became devalued.

Even though the individual-based frames are dominant today, the collective maternalistic frames left their imprint on contemporary welfare policy. Maternalist ideas about social welfare were especially prominent in late nineteenth and early twentieth century United States. Theda Skocpol has shown that this was related to the lack of an established church with ties to the state; this lack allowed women's community welfare organizations, which were initially tied to religious institutions, to operate unfettered.[47] The weakness of working-class influences in shaping the welfare state left more room for maternal influences, which led to the introduced values associated with care work.[48] Exclusion from suffrage (until 1921) helped foster a collective consciousness among women, who, unlike other social actors, were able to build broad alliances and mobilize outside of political parties to influence local, state and national politics.[49] However, these early attempts to create the basis for a maternalist welfare state were cut short in the 1930s with the Great Depression and New Deal as welfare policy moved in new directions.[50]

Nevertheless, these early influences shaped the U.S. welfare state as it was to evolve. Women, because of their exclusion from formal politics, but also in spite of these limitations, were able to organize extensively around motherhood in order to shape social policy. However, as Gwendolyn Mink has shown, this gender ideology was conformist in the sense that it

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[46] Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 SIGNS 309 (1994).

[47] *See* THEDA SKOCPOL, PROTECTING SOLDIERS AND MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE UNITED STATES 529–30 (1992).

[48] *See id.* at 51, 529–30.

[49] *See id.* at 52.

[50] *Id.* at 2, 311–72.

built on women's separate and subordinate citizenship as a group.[51] Female activists transformed motherhood from what had been primarily a family matter to a social concern.[52]

In the United States, the welfare rights discourse has been strongly shaped by race, and race frames have dominated the discourse on discrimination, rights and citizenship.[53] Unlike European welfare programs, which emerged out of struggles for political and social equality within relatively racially homogenous groups, the U.S. welfare state emerged out of a struggle between racial diversity and an "idealized American citizenry."[54] Mink explores how policies like mother's pensions and maternity policy were based on maternalist ideas about poverty. Women's citizenship was built on maternal roles and values related to nurturing and caring, as well as preconceived forms of domestic motherhood.[55] These maternal roles were seen as universal, transcending culture and class.[56] Advocates of welfare policies affecting women sought the assimilation of racial and ethnic minorities and rejected all racial distinctions that might undermine the idea of universal motherhood.[57] Cultural and gender difference came to be seen as negating the American democratic order.[58]

The maternalist imprint that evolved in these early years and that reemerged during both the first and second waves of feminism, albeit in its radical feminist and essentialist variants, reflected a collective frame through which to advance women's rights. However, it was overtaken by liberal feminism and its emphasis on individual autonomy and on social

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[51] *See generally* GWENDOLYN MINK, THE WAGES OF MOTHERHOOD: INEQUALITY IN THE WELFARE STATE, 1917–1942 (1995).

[52] *Id.* at 25, 29.

[53] *See* Myra M. Ferree, *Inequality, Intersectionality and the Politics of Discourse: Framing Feminist Alliances*, *in* THE DISCURSIVE POLITICS OF GENDER EQUALITY: STRETCHING, BENDING AND POLICY-MAKING (P. M. Emanuela Lombardo & Mieke Verloo eds., 2009); MINK, *supra* note 51.

[54] MINK, *supra* note 51, at 4.

[55] *Id.* at 11.

[56] *Id.* at 12.

[57] *Id.* at 29.

[58] *Id.* at 12.

policy as a means through which women could gain economic opportunities and civil rights.[59]

Dominant liberal, gender-based claims to rights today not only have analogies to race-based claims, but also have been closely interrelated—from the abolition of slavery in the nineteenth century, to the Civil Rights Act of 1964, to the various efforts to promote underrepresented groups in employment, education, and sports. Racial or gender difference is seen as the basis for discrimination—hence the oppositional juxtaposition of difference and equality whereby equality negates difference and difference negates equality. Women and racial minorities are framed as dependents rather than as members of groups that have a basis on which to make their own claims for rights.[60]

In a liberal frame such as the one found in the United States, once we are granted the same rights as everyone else, the onus is on us as individuals to make the best of it, so that like Mary Tyler Moore, we might "just make it after all." The fact that individual women and minorities do "make it" at times provides sufficient evidence to many that we can succeed if only as individuals we try hard enough, keep our nose to the grindstone, have enough chutzpah, and do what it takes. The current liberal frame in the United States does not encompass a sense that women have experienced collective disempowerment, and subsequently there is little basis for a collective entitlement that would necessitate that women's capacities as a group need to be addressed through special state provisions. For this reason, there has been little discussion of any collective strategies in the context of dealing with women's political disempowerment.

B. Germany

Myra Marx Ferree has argued that in Germany, the problem of gender equality is situated within a discursive frame that is defined by questions of class rather than those of race, as is the case in the United States.[61] This has to do with Germany's particular history, which was shaped by the fact that it was home to the world's strongest socialist party at the end of the nineteenth century, the center of socialist internationalism in

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[59] MYRA M. FERREE, MYRA MARX, & BETH B. HESS, CONTROVERSY AND COALITION: THE NEW FEMINIST MOVEMENT ACROSS THREE DECADES OF CHANGE 50–51 (3rd ed. 2000) (defining liberal feminism and noting that it is "the most common interpretation of feminism in the United States").

[60] *See generally* Ferree, *supra* note 53.

[61] *Id.*

the early twentieth century, and the location of the world's first welfare state. In the welfare state that evolved in Germany and elsewhere in Europe, men were seen as the primary breadwinners and motherhood was regarded as service to the state, entitling women to their own set of rights, such as maternity benefits.[62] Women's rights were framed in ways that paralleled the frames used to discuss the rights of workers. Motherhood was seen in terms of social relations of reproduction (rather than of production).[63]

As Gisela Bock explains, feminists themselves drew on the maternal frame in order to get the state to recognize not only the rights of workers, but also of mothers; hence, women could make demands on the state (for example, around domestic violence) on the same grounds that workers make claims for protection.[64] The multiculturalism discourse found in the United States could not have arisen in Germany because the discourse of race was too evocative of the horrors of the Holocaust where a discourse on difference led to the Nazi extermination of the Jews.[65] Women were framed as mothers in social relations, which meant that until the 1970s, provisions for equality in the German Constitution were often interpreted as permitting unequal pay between the genders, gender specific opportunities, and division between men and women in the family based on women's reproductive functions in the family.[66] After the 1970s such interpretations were increasingly challenged with the prohibition of discrimination[67] and the implementation of a variety of affirmative action programs to advance equality between men and women, especially in the public service.[68]

This maternal frame has also paved the way for the introduction of quotas to increase female legislative representation up to one third of the

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[62] *Id.*

[63] *Id.*

[64] *See* MATERNITY & GENDER POLICIES: WOMEN AND THE RISE OF THE EUROPEAN WELFARE STATES 1880s–1950s, at 213–30 (Gisela Bock & Pat Thane eds., 1991).

[65] Giesla Bock, *Racism and Sexism in Nazi Germany: Motherhood, Compulsory Sterilization, and the State*, 8 SIGNS 400, 400–01 (1983).

[66] Ferree, *supra* note 53.

[67] Grundgesetz für die Bundesrepublik Deutschland, Art. III § 3 (federal constitution).

[68] Blanca Rodríguez Ruiz & Ute Sacksofsky, *Gender in the German Constitution*, *in* THE GENDER OF CONSTITUTIONAL JURISPRUDENCE 149-73 (Beverly Baines & Ruth Rubio-Marin eds., 2005).

legislature (thirty-three percent).[69] In terms of female representation, all the five major parties except for one (the Free Democratic Party) have adopted quotas.[70] The Green Party and Left Party have a fifty percent quota for women on party lists.[71] The Green Party introduced the quota as early as 1986.[72] Since 1996 the Christian Democratic Union has stipulated that at least one third of its candidates on the party list must be women[73] and since 1998 the Social Democratic Party has had a forty percent rule, requiring zipper lists (alternating men and women on the list), with the option of allocating every fifth place to someone of either gender.[74]

Thus, a collective gender frame emerged in Germany that situated women as mothers in the home whose demands paralleled those of workers in the workplace. As such, women's rights as a collectivity became comprehensible to a system that had been based on class-based rights.

C. Finland

In Finland, another welfare state, the communitarian framework has different historical roots than those found in Germany. Finland shares parallels with the Nordic countries, but also exhibits some important differences based on its historical subjugation to Sweden and Russia until independence in 1917. Jaana Kuusipalo argues that Finnish conceptions of citizenship were strongly influenced not only by liberal traditions, but also by Hegelian political thinking, which produced nationalist and socialist currents in Finnish political thought.[75] Women and men won universal suffrage and the right to stand for office together in 1906, making Finnish women the first to win suffrage in Europe.[76] In the first democratic elections

[69] Quota Project, Global Database of Quotas for Women: Germany, http://www.quotaproject.org/displayCountry.cfm?CountryCode=DE (last visited Feb. 1, 2010).

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*; Ruiz & Sacksofsky, *supra* note 68.

[75] Jaana Kuusipalo, How Gendered Political Representation Was Established in Finland (Jan. 2009) (working paper, on file with author).

[76] INTER-PARLIAMENTARY UNION, SERIES REPORTS AND DOCUMENTS NO. 23, WOMEN IN PARLIAMENTS: 1945–1995: WORLD STATISTICAL SURVEY (1995).

held in 1907, nineteen women were elected, representing ten percent of the legislature.[77] By contrast, the United States did not reach this level of female representation until almost a century later: the House of Representatives in 1992 and the Senate in 2000.[78]

As in Germany, the largest mass movements in Finland were labor organizations, and they were closely connected to the women's movement at the time of independence. Women became citizens on the basis of their distinct duties and contributions to the nation as mothers, and because of the values they promoted as mothers. Among their duties were to rein in their husbands from drinking and protect their children from a life of drunkenness.[79] The vitality of the early temperance movement allowed women to further pursue this "natural calling" of being the guardians of morality and societal values. Women later migrated from the gendered temperance movement into the trade unions and political parties, bringing with them their notions of the political woman. Women's participation in trade unions was among the highest in Europe from the outset; by 1919 women made up nineteen percent of the Central Organization of Trade Unions, which had been established in 1907.[80] Their involvement in the Social Democratic Party was also the highest among socialist parties in Europe: women made up twenty-five percent of the party by 1909.[81] Unlike Central European countries like Germany, women were not banned from participating in political organizations.

These early forms of mobilization, Kuusipalo argues, created the basis of the contemporary notion of egalitarian and collective partnership, in which all citizens constitute the political community and to which all should contribute equally in their own way: women in their way, men in theirs.[82]

Women easily translated these notions of collective partnership into the political sphere. Women have long comprised the majority of voters.

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[77] *Id.* at 120.

[78] *Id.* at 257.

[79] Irma Sulkunen, *Naisten järjestäytyminen ja kaksijakoinen kansalaisuus*, *in* KANSA LIIKKEESSÄ 160 (Risto Alapuro et al. eds., 1987).

[80] Maria Lähteenmäki, *"Pohjoinen mallimaa" Suomen työläisnaisliikkeen kansainvälistyminen*, *in* TUNTEMATON TYÖLÄISNAINEN 156 (Leena Laine & Pirjo Markkola eds., 1989).

[81] Kuusipalo, *supra* note 75, at 23.

[82] *Id.* at 7, 33–34.

While the political parties have not adopted official quotas, soft quotas have been implemented and the major parties have internal recommendations to place at least forty percent of women on their lists in both parliamentary and municipal elections.[83] Thus, women make up forty percent of the national legislature.[84] Similarly, soft quotas have been adopted in cabinet appointments since 1968.[85] The number of women cabinet ministers increased from six percent in 1972 to sixty percent today, one of the highest rates of women in government in the world.[86] Finland has also had a woman president since 2000. Moreover, a key amendment to the 1987 Equality Act was adopted in 1995 to provide for a forty percent quota of women in municipal select boards, municipal administration and government committees.[87]

In spite of these gains made on the political front in Finland, women still confront discrimination and unfulfilled capabilities in other arenas: women's earnings are only eighty percent of men's, and women comprise the largest portion of the workforce in the lowest paying service industry. Gendered job segregation is prevalent and women are grossly underrepresented in the upper echelons of business, in editorial positions within the media, in top academic positions, within religious institutions and in other positions of leadership in society. Violent deaths of women are on the rise as is violence against women in the home, while rates of battery and rape are higher than those found in the rest of Europe. These patterns are found in other Nordic countries as well.

The Finnish case suggests that one has to be careful in drawing correlations between various forms of capability. Capability in one arena may not easily translate into capabilities in other arenas, in spite of seemingly obvious linkages. Thus, the Finnish case shows clearly both some of the possibilities and limitations of a collective capabilities frame within one of the most successful countries in terms of advancing women's capabilities.

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[83] Anne Maria Holli, *Electoral Reform Opens Roads to Presidency for Finnish Women*, 4 POL. & GENDER 496 (2008).

[84] Inter-Parliamentary Union, *supra* note 9.

[85] Holli, *supra* note 83, at 499.

[86] *Id.* at 499–500.

[87] Paavo Nikula, *Equality Policy Legislation*, *in* WOMEN IN FINLAND 137 (1999).

D. Uganda

There were two main bases on which women were brought into political life in Uganda. One was part of a discourse of exclusion and discrimination that women had faced as a group since the time of colonialism. The other related to political motherhood, which has historic roots in the pre-colonial era. Prior to colonialism, women held political positions in Uganda as rulers in tripartite power-sharing arrangements and as female elders within acephalous political systems. In kinship-based political systems in pre-colonial Uganda, women's leadership was not always as institutionalized as it was in the kingdoms, but power was carefully balanced between the genders in many of these societies.

The coming of monotheist religions like Islam and Christianity undermined the political importance of women leaders. The British colonialists further eroded women's political authority by dealing primarily with local male authorities, as they were accustomed to doing in their home countries. The organizations and councils that represented women and defended their interests often disappeared. With independence, women's political marginalization was further entrenched as the nationalist leaders that took power introduced a new set of patriarchal policies.

During the pre-independence period, women in Uganda, as in much of Africa, formed gender-segregated organizations. This applied to social and religious organizations that promoted better homemaking skills as well as to organizations that encouraged women to become active politically and lobbied to advance women's rights. With the rise of independence movements, women entered these struggles in different ways throughout the continent, but generally in ways that situated women as a collectivity. These gendered forms of mobilization persisted after independence, through the period of the one-party state, in the form of women's wings within parties or mass women's organizations tied to the dominant political party. These organizations formed an umbrella for all women's activities up until the 1990s and served to keep women focused on developmental or domestic activities rather than political engagement. This all changed in the 1990s with political liberalization, multipartyism, and the expansion of autonomous women's organizations in Uganda and Africa more generally.

With this political opening, new nonpartisan women's organizations formed after the 1990s to improve leadership skills, encourage women's political involvement, lobby for women's political leadership, press for legislative changes, and conduct civic education. Groups mobilized around new issues like domestic violence, rape, reproductive rights, sex education in the school curriculum, female genital cutting, and the disparaging representation of women in the media.

Women sought temporary affirmative action measures to redress their political exclusion. One of the first countries to introduce quotas in Africa was Uganda. With the adoption of quotas, Uganda—which had only one woman in parliament in 1980—increased female representation overnight to eighteen percent in 1989 and thirty-one percent today.[88] Women gained key positions for the first time in the Ugandan cabinet and the country had a female vice president for ten years from 1993 to 2003. Uganda was the first country in Africa to witness a fast-paced entry of women into politics. These trends soon became evident elsewhere, and especially in post-conflict countries, where the number of women in the legislature doubled that of non-post conflict countries in Africa.[89] In 2003, Rwanda elected a new parliament with the highest percentage of women in the world (currently at a high of fifty-six percent).[90] In fact, Africa has some of the highest rates of female legislative representation in the world, with women claiming over thirty percent of the parliamentary seats in South Africa (forty-six percent), Angola and Mozambique (thirty-nine percent), Burundi (thirty-one percent), Uganda (thirty-two percent) and Tanzania (thirty percent).[91]

These changes reflect the adoption of collective strategies involving gender-based quotas. Today, about twenty-seven countries on the continent of Africa have some form of quotas.[92] In Sub-Saharan Africa, countries with quotas have an average of nineteen percent female-held seats, compared with eleven percent female-held seats in countries without quotas.[93] In countries like Uganda where quotas have been adopted, the numbers of women running for office have increased with each election, as have the numbers of women running for open seats.[94] The large number of women in office has also had the effect of encouraging women to enter into

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[88] Inter-Parliamentary Union, *supra* note 9.

[89] Tripp et al. *supra* note 14, at 195.

[90] Inter-Parliamentary Union, *supra* note 9.

[91] *Id.* Statistics for Mozambique are current through April 30, 2009, after which point data is unavailable. See Inter-Parliamentary Union, Archive of Statistical Data: Situation as of 30 April 2009, http://www.ipu.org/wmn-e/arc/classif300409.htm (last visited Feb. 1, 2010) [hereinafter Inter-Parliamentary Union, Situation as of 30 April 2009].

[92] Quota Project, Global Database of Quotas for Women, http://www.quotaproject.org/uid/search.cfm (last visited Feb. 1, 2010).

[93] Inter-Parliamentary Union, Situation as of 30 April 2009, *supra note* 91.

[94] TRIPP ET AL., *supra* note 14, at 165.

other occupations and leadership positions on the grounds that if women can enter politics, they can do almost anything.

E. Argentina

Most examples thus far, with the exception of the United States, have reflected a collective approach to women's representation. However, even countries that were heavily influenced by liberalism but that were able to blend individual and collective frames ended up adopting quotas. In Latin America, which has been more influenced by liberalism than many other parts of the world, quota legislation has been adopted in eleven out of twenty-one countries; political parties in nine countries require the adoption of gender based quotas.[95] According to Mala Htun, Latin American frames for gender policy and laws have drawn primarily from Catholicism, liberalism, feminism and socialism, while laws were influenced by the 1804 Napoleonic Code.[96] Liberal frames have been more important in Latin America than in Africa.

The Argentinean constitution, for example, recognizes women as full citizens in an egalitarian polity made up of heterogeneous subjects.[97] It accepts the differences between men and women, and seeks equality of opportunity and treatment as well as an equality of outcomes through positive action.[98] Women are not conceived of as a collective body or thought of as mothers or wives. Instead, the Constitution seeks to put them on an equal footing with men and to be seen as peers (*se equiparan*).[99] At the same time, women's movements (excluding feminists) drew on strong maternalist frames during the period of democratization in Argentina and elsewhere in Latin America.[100] This was particularly true of the iconic

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[95] Quota Project, *supra* note 92.

[96] MALA HTUN, SEX AND THE STATE: ABORTION, DIVORCE, AND THE FAMILY UNDER LATIN AMERICAN DICTATORSHIPS AND DEMOCRACIES (2003).

[97] CONST. ARG. art. 11.

[98] *Id.*

[99] María José Lubertino, *Pioneering Quotas: The Argentine Experience and Beyond*, *in* THE IMPLEMENTATION OF QUOTAS: LATIN AMERICAN EXPERIENCES (2003).

[100] *See generally* LISA BALDEZ, WHY WOMEN PROTEST: WOMEN'S MOVEMENTS IN CHILE (2002); MARGUERITE GUZMAN BOUVARD, REVOLUTIONIZING MOTHERHOOD: THE MOTHERS OF THE PLAZA DE MAYO (1994); ELSA CHANEY, SUPERMADRE: WOMEN IN POLITICS IN LATIN AMERICA (1979); SUSAN FRANCESCHET, WOMEN AND POLITICS IN CHILE (2005); Marysa Navarro, *The Personal is Political: Las Madres de Plaza de Mayo*, *in* POWER AND POPULAR PROTEST (Susan Eckstein & Manuel Antonio Garretón Merino eds., 2001).

Madres de la Plaza de Mayo, who, every week until 2006, protested the disappearance of their children during the military dictatorship in Argentina from 1976 to 1983.[101]

Argentina, nevertheless, in 1991 was the first country in Latin America to adopt a quota law, after concerted pressure from women's organizations. The law, Ley de Cupos, requires all parties to adopt party lists with a minimum of thirty percent female candidates.[102] Moreover, the women are to be placed favorably on the list so that they might be elected. The law was refined in 1993 by a decree that set a fixed number of minimum seats that were to be filled by women. By 1999, similar laws had been introduced in most provinces regarding the adoption of quotas in state legislatures and municipal councils.

Thus, even countries like Argentina—countries that have strong liberal traditions that co-exist with collective frames drawing from a discourse of maternal politics as well as a socialist influences—have adopted quotas.

F. Former Soviet Union

Not all experiences with quotas have been equally empowering for women. Much depends on the broader political environment. Until the 1990s, some of earliest relatively high rates of female representation could be found in the former Soviet Union and Eastern Europe, due to the reliance on quotas and the use of socialist collective gender frames (which have changed considerably over time).

With the 1917 Bolshevik Revolution, the Soviet regime introduced reforms to improve women's status and encourage full political and economic participation. Women won right to vote a few months prior to the revolution in 1917. Marriage, abortion and property laws were changed to improve the status of women within the context of addressing what was referred to as "The Woman Question." Initially these policies were influenced by Bolshevik feminists, although it was not long before their aspirations took a back seat to other goals of establishing a socialist state and were subsumed under the goal of bringing about full equality. The Bolsheviks drew on the Marxist rationalization that women's emancipation lay with their participation in social production. Women were to work full time both inside and outside the home, shouldering a double burden that

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[101] *See generally* BOUVARD, *supra* note 100.

[102] Ley de Cupos, Law No. 24012, Nov. 29, 1991, 1001 B.O. 3/12/91.

was not shared by men.[103] The family was a bastion of tradition and backwardness that needed to be undermined so that people's energies could be redirected towards the public domain and towards building up the economy to create a socialist state. Economically independent women were critical to this shift, but in order to bring this equality about, the functions of household needed to be shifted to the public domain.[104]

Throughout the various Soviet governments, the emphasis on women's roles as mothers and as workers alternated considerably based on the changing goals and national production needs. In general, women's rights alternated between their roles as workers and as reproducers of the labor force. Under Stalin, women's rights "served the causes of national political consolidation, economic construction, and, later, the war effort."[105] Industrialization and collectivization policies required rising birth rates, which were generated by making abortion illegal, making divorces more difficult to acquire, and by promoting traditional family values. In the post-Stalin period, abortion was legalized again, and divorce restrictions lifted. Day care centers, summer camps, and subsidies for mothers reduced some of the women's burden of juggling their domestic and employment responsibilities.

With the disintegration of the centrally planned economy and the ensuing economic crisis and loss of jobs in the late 1980s and early 1990s, the earlier notion of woman as worker-mother was replaced by the image of a stay-at-home mother in order to allow women to "rest from production work."[106] Women, who were among the first to lose their jobs and who constituted the majority of the unemployed—even among the well-

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[103] *See* VALERIE SPERLING, ORGANIZING WOMEN IN CONTEMPORARY RUSSIA:ENGENDERINGTRANSITION 67 (1999); Gail Warshofsky Lapidus, *Gender and Restructuring: The Impact of Perestroika and its Aftermath on Soviet Women*, *in* DEMOCRATIC REFORM AND THE POSITION OF WOMEN IN TRANSITIONAL ECONOMIES 138 (Valentine M. Moghadam ed., 1993); Aili Mari Tripp, *Women and Political Change in Eurasia and Africa*, *in* BEYOND STATE CRISIS?: AFRICA AND POST-SOVIET EURASIA IN COMPARATIVE PERSPECTIVE 385 (Crawford Young and Mark Beissinger eds., 2002).

[104] Lapidus, *supra* note 103.

[105] Linda Racioppi & Katherine O'Sullivan, *Organizing Women Before and After the Fall: Womens' Politics in the Soviet-Union and Post-Soviet Russia*, 20 SIGNS 818, 820 (1995).

[106] Anastasia Posadskaya, *Changes in Gender Discourses and Policies in the Former Soviet Union*, *in* DEMOCRATIC REFORM AND THE POSITION OF WOMEN IN TRANSITIONAL ECONOMIES, *supra* note 104, at 162.

educated—were to be devoted to the responsibilities of caring for the family.[107]

At the same time, women in the Soviet period were well represented in legislatures, yet were almost completely excluded from the key policy-making institutions such as the All-Union Central Committees and state Councils of Ministers.[108] Their representation was elusive, as evident in the large drop in representation that occurred following the demise of communism. Calculations based on Inter-Parliamentary Union data show that average numbers of women in legislatures in Eastern Europe and Eurasia rose from twenty-three percent in 1960 to thirty-one percent in 1980, only to decline to nine percent in 1990 after socialist policies were abandoned.[109] Similar patterns are evident in looking at the percentages of seats held by women in the individual Soviet republics, which reached all time highs of fifty percent female representation in 1985, only to fall to an average of eleven percent in 2001.[110]

Thus, women's impressively high levels of representation in the Soviet era were somewhat illusory in that they did not reflect the real nature and extent of women's political involvement. In many ways the drops in women's representation after 1989 suggest some of the limits of the collective frame and why a collective frame alone is insufficient to guarantee full and equal participation.

V. CONCLUSION

Given the extent to which non-liberal notions of gender equality prevail and have prevailed globally, it is worth considering these collective capabilities frames as complementary to individual capability frames. This Article has explored a variety of frames, ranging from maternal rights in the welfare states of Germany and Finland, to the Soviet frame of production and reproduction, to the Ugandan frames of political motherhood and historic exclusion. The adoption of these collective capabilities frames

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[107] *See* Racioppi & O'Sullivan, *supra* note 105, at 820–24.

[108] *See generally* Joel Moses, *Women in Political Roles*, *in* WOMEN IN RUSSIA 333, 334 (Dorothy Atkinson, Alexander Dallin & Gail Warshofsky Lapidus eds., 1977); GAIL WARSHOFSKY LAPIDUS, WOMEN IN SOVIET SOCIETY at 206 (1978).

[109] For complete country data, see Inter-Parliamentary Union, Paraline Database on National Parliments, http://www.ipu.org/parline-e/parlinesearch.asp (last visited Feb. 1, 2010).

[110] *Id.*

emphasizes the fact that women as a collectivity experience common oppressions; it highlights women's agency in creating and enhancing their own capabilities through common struggle; it can emphasize the importance of political solutions to structural and institutional problems of capability; and it may open up alternate ways of thinking of competing and conflicting rights (such as cultural vs. women's rights). Most importantly, it helps tackle the structural impediments to inequality, rather than leaving it up to the individual.

Martha Nussbaum has offered us a powerful alternative to conventional thinking about the issues surrounding rights and has brought us to see the importance of securing capabilities in order to lead more fulfilling lives as humans. By examining countries that adopt more collective approaches to women's rights and by looking, in particular, at issues of female political representation today, we may be pushing up against the limits of liberal individualism and may need to also consider, *in addition* to individual capabilities, the various ways in which women's rights have been framed as collective capabilities.

However, all these cases discussed above have also revealed some of the limitations of collective approaches as applied to particular cases. Collectivist strategies are by no means a panacea to women's subordination. We have seen collective strategies like quotas being used not only to advance women's interests, but also to pursue political goals that do not necessarily take women's advancement as a starting point. Quotas, for example, have been variously used to challenge political Islam, to assert modernity as a value, to obtain women's votes, to expand patronage networks, and to further other goals that have little to do with gender equality. In countries such as Rwanda, quotas have been used to buy international goodwill, allowing the international community to overlook other less palatable aspects of the regime, such as human rights abuses and restrictions on the political opposition.

At the turn of the century, collectivist strategies in the United States reified maternal roles in ways that negated cultural diversity and fostered attitudes towards the poor that equated them with undesirable social values and moralities. In Germany, where women were able to frame their demands in ways that situated women's demands as parallel to demands of workers, they also became locked into a maternal frame. This frame carried with it its own set of problems, such as a politics of difference that allowed for unequal pay between the genders. In Finland, the communitarian approach allowed women to enter politics much earlier than other countries and to gain a visibility in the public arena. However, this political visibility did not translate into equality in other arenas such as the workplace.

In Uganda, women drew on a discourse of political exclusion that they had experienced after the coming of pluralism and the spread of Islam and Christianity. They also drew on the discourse of political motherhood, which gave them a collective basis upon which to demand quotas, especially after the 1990s. However, political motherhood, in spite of the avenues it opened for women to enter into politics, simultaneously limited possibilities for those women who were single, divorced, widowed, or without children. It also sometimes fed into stereotypes that restricted women's leadership to certain spheres, such as into ministerial posts relating to health, education, community development, youth, and sports, while simultaneously leaving women excluded from ministries of foreign affairs, finance, industry, agriculture, and other such posts that were deemed heftier in importance.

And finally, in communist Soviet Union, women enjoyed high levels of representation both at the national and sub-national level. However, the emphasis on women's role as mother workers resulted in a debilitating double burden, as they shouldered household work almost entirely on their own with little relief or recognition from government of their multiple demands.

If the collectivist impulse is to have a future, its needs to be delinked from its historical connection to maternalism, political motherhood, mother-worker, and other such maternalist frames. It would also need to be delinked from many of the essentializing connotations that go along with maternalism. While it is understandable that many women have drawn on these frames because they are politically expedient, relying on a frame that associates women and women's concerns only with issues that are stereotypically associated with women in a given society (such as education, health, reproduction, children, peace, or resisting corruption) ultimately limits the ability of women to impact the polity in all its dimensions.

Quotas as a collective strategy may be a necessary temporary intervention to ensure gender justice, fairness, and equality. And while they may succeed in encouraging a political culture to become more accepting of women as political leaders, quotas cannot become a permanent institutional feature, because their very necessity is indicative of a gender inequality that needs to be eradicated. Quotas can all too easily contribute to tokenism, undemocratic practices, patronage networks, and other manipulations that work against women's rights and gender equality. Further, they can even have the effect of reinforcing women's exclusions and marginality by emphasizing women's collective marginalization.

On the other hand, collective strategies like quotas have been shown to override cultural constraints and jumpstart social change in challenging circumstances. The fact that many Muslim countries today are adopting quotas is an indication of some of the possibilities such a collective strategy can provide. Although some countries, like India, have seen women pitted against scheduled castes in calls for gender based quotas, this is a rare occurrence, and these tensions are unnecessary given that fair accommodation is not difficult to envision. Finally, the use of collective strategies allows us to break the impasse in the debate between cultural versus women's rights by forcing us adopt, negotiate and struggle for political solutions to these conflicts.

The fact that some of the poorest countries in the world—including Rwanda, Mozambique, and Uganda—are adopting quotas also speaks to the way in which institutional measures can mitigate economic constraints. The utility of an institutional intervention is that it can be modified and adapted to particular contexts, and the success of such policies has encouraged such diffusion.

Quotas can also highlight for society at large the implications of gender inequalities in social institutions. Their existence serves as a reminder of the challenges women face in entering politics, regardless of how talented, well prepared and well connected they are. Finally, collective strategies are important because they force society to think in political and structural terms about how to address the problems affecting women as a group and to encourage policy-makers not to leave women defenseless, but rather give them collective alternatives to deal with the structural exclusions that they face as individuals and as a group.