

Gender and the State: Accommodating Difference and Equality

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Most would concur that the American state, from its very founding and still today, builds upon liberal principles asserting the fundamental equality of all individuals. What is more, social movements have been successful in demanding that the state treat all individuals the same “in spite of” their group differences, thereby promoting the inclusion of people initially discriminated against on the basis of their group difference. This is no small task, as history tells us. For example, we have recently celebrated the 50th anniversary of the March on Washington and the Civil Rights Movement, which exemplify the demand for equal treatment of individuals “in spite of” their race. John Lewis, an African-American civil rights activist, testifies, for example, as to how difficult this was, based on his experience fifty years ago. When he traveled during those times, he ran into racial segregation everywhere, including housing, hotels, restaurants, and public restrooms. His goal was desegregation — that is, to integrate public facilities so that all individuals would have access on equal bases with everyone else (Stolberg 2013).

When we turn to gender, however, we see a different problem. On the one hand, it is more difficult to achieve social policy goals based on the principle that the state will treat all individuals the same “in spite of” their sex group difference. This is evident by the fact that we have not yet been able to celebrate the addition of the Equal Rights Amendment (ERA), which was passed by Congress in 1972 but failed to be ratified. This amendment to the Constitution would have prohibited the government from using sex as a criterion for public policies. On the other hand, the goals of some social movements oriented toward women’s equality are the accommodation of their group difference, not the denial of it. An example is Muriel Siebert, who was the first woman to purchase a seat on the New York stock exchange. When she describes her earliest experiences while trying to operate in this all-male environment 50 years ago, she also talks about bathrooms, as did John Lewis, but the issue for her was different in two ways (Nemy 2013). First, the problem was not that there were sex-segregated bathrooms, but rather that there were no bathrooms at all for women. Second, what she wanted was sex-segregated bathrooms, not desegregated ones. That is,

her view — and that of many women, including virtually all of the women students in my women and politics courses — is that what benefits women's equality in some policy contexts is accommodation to sex difference, not its denial.

It is important, of course, to recognize that there are numerous ways individuals differ on the basis of race, sex, class, sexual orientation, religion, language, etc., and it is the intersection of these differences, as Hancock illuminates, that most accurately defines identity (see Hancock, this volume). Nevertheless, to advance the “unfinished business of women's social movements” (see Goss, this volume), I think it is crucial to address the two principles exemplified by the experiences of John Lewis and Muriel Siebert. First, the American state's liberal heritage privileges the principle of individual equality rather than group difference, as is evident by the Civil Rights Movement. Second, when it comes to group differences, sex/gender difference are not only particularly intractable, they also are laden with normative presumptions and empirical experiences that both limit the application of a principle of individual equality and that suggest a need to accommodate in some contexts rather than to erase recognition of sex/gender group difference. The normative presumptions have to do with the social construction of women as oriented toward nurturing and an ethic of care. And the empirical experiences have to do with women's disproportionate performance of care work in the home and in the service sector of society compared to men (Iversen and Rosenbluth 2010; O'Brien 2005; see also Schreiber, this volume, and Corrigan, this volume).

Given the normative and performative differences that characterize women compared to men, the critical question for women's movements in the past and in the future is how to use individual equality principles as well as how to accommodate women's group difference when advancing policies that promote women's social, economic, and political inclusion. The former is rather straightforward because it maps onto the very heritage of the American state. The latter, however, is orthogonal to liberal principles, and to implement it requires careful attention not only to the recognition of women's group difference, but also to the political meaning of that difference (see Montoya, this volume). We can see three ways the political meaning of women's group difference can be defined: (1) recognition and exclusion, (2) denial and inclusion, (3) accommodation and inclusion.

Recognition and Exclusion

In the period of the Civil Rights Movement, the 1961 *Hoyt v. Florida* Supreme Court decision stands out. This case dealt with the constitutionality of omitting women from jury duty. Eight years earlier the Warren court had ruled in *Brown v. Board of Education* (1954) that it was unconstitutional to treat individuals differently on the basis of race in the context of access to schools. Yet in *Hoyt*, it was ruled constitutional to treat individuals differently on the basis of sex in the context of jury duty. Why? Because women need to be at home to take care of children. The Court noted that some women were not married and/or did not have children and/or at least did not have young children, and that the policy in question in the state of Florida nevertheless omitted all women from jury duty. Yet the Court ruled that the policy was not overbroad because in general women are associated with child care. Thus, this policy exemplifies not only the recognition of sex group difference, but that the political meaning of that difference is women's exclusion.

Denial and Inclusion

Another route, however is to deny the relevance of sex group difference. A policy that did so three years after *Hoyt* was Title 7 of the 1964 Civil Rights Act. It prohibited the use of sex as a criterion for employment, promotion, and other employment-related activities unless there is a bona fide occupational qualification that requires the employee to be male or female. Similarly, by 1975, the Supreme Court adopted this model in *Taylor v. Louisiana*, which overturned *Hoyt*. Thus, sex became an unconstitutional criterion of selection for jury duty, and women were finally included in the pool of those eligible for that service.

Accommodation and Inclusion

Certainly, all would agree from a women's movement perspective that *Taylor* is an improvement over *Hoyt* and that Title 7 is a landmark accomplishment for women. Nevertheless, what about the normative and performative experiences of women that denote the existence of their all but intractable difference from men? When we ask that question, we see that denial is necessary but not sufficient because it alone does not result in women's equal inclusion compared to men. This is because it is still the case that women as a group do perform more care work than men.

As starters, perhaps all would agree with the basic observation that more women become pregnant and give birth than do men. Thus, the Warren Court in *Hoyt* was correct to note that women are associated with childbearing roles, if not also with child care roles. Where the Court was wrong, however, was in the political meaning of that group difference. Rather than excluding women from jury duty, the better solution would be publicly funded insurance policies to secure health care for pregnant women and publicly funded day care for children after they are born. Similarly, as terrific as it is that Title 7 included sex in the prohibited list of criteria relevant to employment, that is scarcely enough. Also crucial are family-leave policies that fund childbirth, child care, and other types of care work that women disproportionately perform compared to men. That is, the political meaning of women's maternal group difference from men must be not only declaration or denial, but also accommodation if women are to achieve inclusion on a more equal basis with men.

The Political Meaning of Difference

The accommodation model has additional payoffs when it comes to women's political representation, which remains a central goal of women's social movements (see Shames, this volume). This is because when the state accommodates women's group difference by providing social services such as day care, family-leave benefits in addition to more general benefits to people, such as health care, education, and protections for the working class, it is as if the care work associated with women in the family as an institution is transferred to the state as an institution. When this happens, the state not only becomes designated as a welfare state, but it also becomes gendered as a maternal institution by virtue of assuming the care-work tasks most often provided by women in the family. The association of the welfare state with maternalism is evident by such terms as the "Nanny state" (Sawer 1996) and by women's activism that often is responsible for the development of a welfare state (Goss 2013; Skocpol 1992; see also Banaszak, this volume).

When the state itself becomes a care-giving institution, not only are there accommodations for women's group difference, but there are also feedback effects on public attitudes about the political meaning of women's social construction as maternalists. Specifically, when the government engages and performs care-work roles and activities associated with women, those policies teach people that the political meaning of maternalism signifies

a location not only in the home, but also in the public sphere of the government (McDonagh 2009). The result is that the public then views women as more suitable for political office than when the state does not take on care-work roles.

When we look at the Western European democracies, for example, that allocate few resources to public policies oriented toward care work, we see that the attitudes of people in those democracies are much less favorable toward women as political leaders than in Western European democracies that have a more robust welfare state. Thus, when people are asked if they think women are suitable as political leaders, using a ten-point scale where “1” is “no” and “10” is “yes,” the average response in weak welfare states compared to strong welfare states is 1.4 and 8.3, respectively. This, of course, translates into women’s political representation where the average percent of women elected to the national legislature in 2009 in weak welfare states is 10.1% compared to 32.3% in strong welfare states (McDonagh 2013).

Conclusion

The lesson of the past, therefore, is that the goal for women’s movements in the future is to combine arguments for women’s individual equality as well as to argue for accommodation to women’s group difference (Goss and Heaney 2010). It is this hybrid combination of individual equality and group difference as constituted by policies based on accommodation and inclusion that women’s social movements must continue to advance if women’s participation in society, the economy, and politics is to progress.

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Understanding the Future of Feminism Requires Understanding Conservative Women

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The question of whether or not we still need a women’s movement is legitimate and important, but it usually presumes a conflation of women with feminist. Certainly, significant gains in women’s rights and status are due to decades of feminist activism, but feminists have not been the only ones advocating on behalf of women. Indeed, as long as there have been feminist women’s movements, there have been conservative women contesting them. The increase in the number of conservative women running for office and the growth of a conservative women’s movement prompts further questions about identity and representation, women’s interests, and the future of feminism itself.

Asking the question about the need for a women’s movement thus compels us to delve more deeply into the intersection of gender and ideology and its implications for understanding women’s political activism broadly. There are myriad reasons to study and understand conservative women’s activism in this context; this essay highlights three. First, it requires that we distinguish between feminist and women’s interests and representation as well as find any potential for collaboration among ideologically diverse women. In so doing, we clarify and shape prospective feminist movement goals. Second, in considering the future of feminism, we must recognize the efforts of conservative women and why conservatism might appeal to women. Such exploration highlights where feminism may fall short and/or not speak to all women. Finally,