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Women's Rights in the US: a Test for Democracy

If there is one message that echoes forth from this conference, let it be that human rights are women's rights [...] And women's rights are human's rights, once and for all.
Hillary Clinton, Beijing 1995

In June 2013, the Governor of New York State, Andrew Cuomo, presented a ten-point Bill called *Women's Equality Act (WEA)*, and sometimes referred to as the "Women's Bill of Rights," destined to move the State "closer to ensuring equality for women" (*The Huffington Post*, 06 Dec. 2013). It has been anticipated as "groundbreaking legislation" but the Bill failed. The main reason of the failure is due to one of its measures related to freedom of choice concerning abortion. The issue of abortion and its corollaries are causing an increasingly deeper gap between Republicans and Democrats. The provisions of the Bill reveal that inequalities in women's rights in the State of New York or, as a matter of fact, in many other States of the USA and Western countries in general, are beyond blatant. A few inescapable questions come to mind: Why are there still inequalities between men and women? At the turn of the 21st century, while most Western countries would see themselves as the crowning achievement of a two millennia-old civilization, why do the same rights for women and men continue to be an on-going fight? And in this particular case, why did this piece of legislature fail? This paper will attempt to analyze the intricacies of the status of women as an accepted fact of intrinsic inequality, and will focus on the web of hindrances which inescapably caused the *Women's Equality Act* in New York State aiming to achieve equal rights for women to fall through.

THE *WOMEN'S EQUALITY ACT*

The State of New York has a long history of defense of women's rights, its first historic event being the Seneca Falls Convention in 1848 which laid the foundation for a long struggle to gain the right to vote for women. Since then, the State has been at the vanguard of women's rights and equality laws in many fields. Governor Cuomo, member of the Democratic Party, introduced the Bill of the *Women's Equality Act* with the support of the Women's Equality Coalition, a strong organization which fights for equal rights. Accord-

ing to Gov. Cuomo, the legislation is “designed to address gender inequality in our communities, and to restore New York as a leader in women’s rights” (*Governor’s Press Office*, 4 June 2014).

The *WEA* covers a wide variety of issues, ranging from equal pay to all sorts of discrimination to which women are subjected. Here is a summary of its provisions.

1. **Achieve Pay Equity:** The aim of the Bill is to reduce the inequality between a man and woman’s pay. It “would finally shatter the glass ceiling by eliminating the ability of employers to point to “any other factor other than sex” to justify pay disparities...” The Bill would allow employees to have access to information about the wages policy of a company. On average, in New York, women earn 84% of the men’s wages. This would be equivalent to a loss of \$500,000 over a lifetime.

2. **Stop Sexual Harassment in All Workplaces:** Federal law bans sexual harassment in the workplace when the number of employees exceeds four. The provisions of the *WEA* would guarantee that sexual harassment be banned in any workplace, regardless of the number of employees. In 2011, women accounted for 75% of all sexual harassment complaints which were filed with the NYS Division of Human Rights and 83% of those filed with the Equal Employment Opportunity Commission. This provision is important in as much as over 60% of New York State employers have less than four employees.

3. **Remove Barriers to Remedying Discrimination:** By law, women cannot recover attorney fees from employment or credit cases based on sex, even when they are successful. 77% of the cases sent to trial are brought by women. The new legislation “will enable victims, most of whom are women, to have the opportunity to vindicate their rights and be made whole in cases where they prevail.”

4. **End Family Status Discrimination:** Currently only four States in the US prohibit “employers from denying work or promotions to workers simply because they have children.” The aim of the law is to protect women against family status discrimination. New York State law only prohibits discrimination in areas of housing and credit.

5. **Stop Housing Discrimination for Victims of Domestic Violence:** Women victims of domestic violence are very often denied housing by landlords. The Bill would prohibit landlords from discriminating against victims of domestic violence, 85% of whom are women.

6. **Stop Source-of-Income Discrimination:** 76% of those who receive housing vouchers are women, and the legislation would prohibit landlords from discriminating against tenants based on lawful source of income.

7. **Protect Victims of Domestic Violence by Strengthening Order-of-Protection Laws:** The legislation creates a pilot program to allow domestic violence victims to seek temporary orders of protection through electronic means rather than having to appear in person.

8. **Strengthen Human Trafficking Laws:** This bill seeks to address the massive underground trafficking industry by holding traffickers accountable, making prosecution and enforcement more effective, increasing the penalties and giving greater protections to victims.

9. **Stop Pregnancy Discrimination Once and For All:** The legislation aims at requiring employers to provide “reasonable accommodations” for pregnant employees.

10. **Protect a Woman's Freedom of Choice:** This bill would codify existing Supreme Court law to protect a woman's right to obtain an abortion prior to viability, or when necessary to protect her life or health. The law will ensure that New York's laws are consistent with the law of the land. Currently, New York State deems that the law protecting women's freedom of choice is outdated and does not conform to protections outlined in *Roe v. Wade* and current State practice.

This ten-point Bill illustrates how the inequality faced by women still prevails in a great number of areas in the USA. There are two types of discrimination which are perceptible here: on the one hand, those resulting from a deprivation of rights due to historical reasons, *i.e.* the slow evolution from a situation in which women were deemed inferior and thus barred from occupying their deserved positions in human affairs on par with men; and on the other hand, discrimination based on the intrinsic quality of being a woman. For instance, equal pay and recovering from attorney fees fall in the first category, while harassment (with 83.7% of the charges in 2011 filed by women in the whole country), housing, family status, and issues related to pregnancy and abortion are the second type.

The provisions about human trafficking and domestic violence show that women are still subject to age-old barbaric practices. The existing equal pay laws have failed to change companies' policies in favor of women. Title VII of the *Civil Rights Act*, enacted in 1964, already contained provisions for equal rights for men and women in terms of pay and health benefits, and the prohibition of any types of discrimination related to the specific conditions of

women, such as pregnancy. Likewise, passed in 1963, the *Equal Pay Act* prohibited “wage discrimination on the basis of sex and sought to ensure that women earn equal pay for equal work” (*CNN*, 6 Nov. 2013). The resulting paradox of such laws as the *Women’s Equality Act* is that one has to admit that some legislators are concerned enough to scrutinize the areas in which women are still and continually discriminated against and propose the appropriate legislation to remedy the situation; but, at the same time, the definitions of the *WEA* leaves no doubt as to the lasting inefficiency of existing laws and do not preclude the failure of future legislature.

THE VOTE

Governor Cuomo’s Bill was adopted on 20 June 2013 by the New York Legislative Assembly but was blocked at the Senate on 23. The NY State Assembly is led by the Democrats with 104 members, against 42 Republicans. 98 Representatives voted yea, of which 96 Democrats, and 47 voted nay, of which 41 Republicans. Four women voted against the *WEA*. The State Legislative Awareness Project, initiated at the University of Buffalo (NY), comments that the striking feature of this vote is the lack of comment on the part of the Democrat Representatives justifying their vote for the *Women’s Equality Act*. The reason might be *in fine* the controversial nature of any vote about equal rights for women resulting from ideological barriers, and more particularly when it comes to abortion and its numerous ramified implications for women in various areas of their lives affecting thereby the whole social system.

The real obstacle for Governor Cuomo was the vote of the Senate because Republicans hold a majority of seats with the help of a coalition of independent Democrats (IDC). The political configuration of the New York State Senate sheds some light on the reasons of the debacle on the *WEA*. While the leading Democrat defector, Senator Jeffrey Klein, wished one year earlier they could pass laws in line with the Democrats’ agenda (*New York Times*, 04 Dec. 2012), he explained that “[t]his legislative process is the art of negotiation...” (*State politics*, 17 June 2013). Passing legislation appears obviously to be about other things than social justice. This kind of situation informs by and large on the inefficiency and widespread incapability of modern democracies to guarantee the basic rights for half of their populations. The bipartisan system, despite its understandable rationale, always ends up with a fight between parties to maintain or gain power. The focus is not on the

content of the bills to be voted and the aimed social evolution but on the stakes between the parties.

The Senate passed the Bill but without the piece of legislation about the freedom of choice in the context of abortion. The strategy of Governor Cuomo was to present a package Bill, knowing that the legislation on abortion would meet opposition. Indeed, the members of the IDC did not support the Bill, and in addition the provision on Freedom of choice was removed from the list. In fact the vote failed by one vote, an extremely narrow margin of 32 nay to 31 yea (*Chronicle*, 21 June 2013). The Republicans won thanks to two Democratic Senators who sided with them against the package Bill.

The *Women's Equality Act* coalition believes they have a second chance and has launched an online petition and a multimedia campaign hoping to have a second vote in 2014 by the State Congress. 800 organizations have already expressed their support to the ten-point Bill with the aim of securing the legislation on abortion.

ABORTION

The major stake of the *Women's Equality Act* is inevitably abortion. This subject has been debated for many years and seems to have had some influence on voters in recent US elections. This country is going through very interesting times indeed. On the one hand, women are overall achieving great strides in social, educational and economic progress, reflecting the secular trend of on-going evolutions towards the inalienable and natural equality between men and women; on the other hand, they face some strongholds of age-old values maintaining them in a certain predetermined role. Hence, the fight over abortion rights enhances the ideological divide making the progressive trend appear ever more liberal, and the conservative ideas more radical and outdated than ever.

The U.S. Supreme Court made a landmark decision in the 1973 *Roe v. Wade* case, ruling that “a woman’s personal autonomy and reproductive rights extend to her decision to terminate her pregnancy” (*Legal Information Institute*). The decision was made following an interpretation of individual privacy rights as guaranteed by the Fourteenth Amendment. However, the Court allowed for possible regulations and established a period of three months viability of the fetus during which an abortion could be legally regulated on the State level (Graycar & Morgan 203).

According to a survey by the Pew Research Center (PRC), abortion is not so much an important issue for Americans nowadays. In 2013, 53% said it “is not that important compared to other issues,” and 18% considered it is a “critical issue facing the country” (PRC, *Roe vs. Wade*). 54% thought it should be legal in all or most cases (PRC, *Abortion*). However, the difference appears when the question is asked on a moral basis, and this is maybe what makes an impact on representatives and senators who are more sensitive to the overall moral perception of the Bill than its practicalities and the implications for women’s lives. Between 2006 and 2013 the figures have changed little: 47% of the people questioned consider having an abortion to be morally “wrong,” while only 27% think it is not a moral issue.

The issue of abortion is clearly causing a significant divide in US politics. The moral question is prompting most States held by a Republican majority, like in Texas and North Carolina, to regulate the abortion laws so as to limit access to this right, normally guaranteed by the Supreme Court, at least during the first three months (*Roe vs. Wade*). In 2013, data compiled by the Guttmacher Institute show that State legislatures, mostly in Republican-held States, have enacted more than 40 new provisions aimed at restricting access to abortion. The radicalization of the Republicans on the issue of abortion tends to make women vote less for them. On the whole, women favor the Democrats’ stance on abortion, 65% of whom think that abortion should be legal in all or most cases (PRC, *The Complicated Politics*).

A TEST FOR DEMOCRACY

Women issues have been the object of many pieces of legislation and much debated in the so-called developed countries, and yet when it comes to passing laws for equality between men and women, the recurrent failures in this respect reveal much about the state of our present mindset and corollary ideologies which preside over the prevailing perception of women as different from men, and the implicit and unconscious acceptance that equality laws are bound to fail. In fact, beyond the question whether these laws are really egalitarian or if they will constitute an advancement for women, there is the requisite understanding of the mechanisms which render the passing of laws for women’s rights either feasible or utterly impossible. Thus, we have to set the issue of the *WEA* in a broader context comprising interrelated areas of conceptualizations and decision-making.

According to Connie Schultz, writing for the Creators Syndicate, in an article entitled “We are the Women” (*Creator.com*, 4 Jan. 2012), there is a

process of “attacks on women in America”. Many political journalists are referring to this phenomenon as a “war on women”, meaning a Republican nationwide devised campaign to make abortion less and less accessible to women, among a cluster of principles and laws designed to re-center the GOP on the most conservative core values. For instance, the State of Michigan passed a law in December 2013 making it impossible for a woman who wishes an elective abortion to have recourse to public or private health insurance, thus requiring her to subscribe to special riders to cover such costs (*L.A. Times*, 12 Dec. 2013).

The so-called “war on women” was triggered, so to speak, by a radicalization of statements about abortion from Republican politicians ostentatiously influenced by the Tea Party’s ideologies. The most appalling stance came during the 2012 Presidential campaign from Republican Senator nominee Todd Atkins, who declared: “If it’s a legitimate rape, the female body has ways to try to shut that whole thing down. But let’s assume that maybe that didn’t work or something: I think there should be some punishment, but the punishment ought to be of the rapist, and not attacking the child” (*New York Times*, 19 Aug. 2012). Going even further Richard Mourdock commented thusly about the same issue: “I struggled with it myself for a long time, but I came to realize life is that gift from God. And I think even when life begins in that horrible situation of rape, that it is something that God intended to happen” (*CBS News*, 24 Oct. 2012).

The phrases “legitimate rape,” “something God intended” and similar statements went “viral” among political commentators during the campaign. There are many lessons to be learned from such mishaps. The GOP and Tea Party members do not fear to express their most conservative ideas overtly. This also means that they think these statements will attract voters rather than repel them. The status of women catalyzes the undeterred expression of conservative political opinions. As a result, the gap between conservatives and progressives is significantly determined upon women issues.

Interestingly, some Democrats may have the same line of thought and sometimes resort to the same techniques in their counter arguments. Pro-life Democratic Senator, Joe Donnelly, in his reaction to Mourdock’s comments, said the following: “The God I believe in and the God I know most Hoosiers believe in, does not intend for rape to happen – ever” (*Ibid.*). Unconsciously, Donnelly is putting forward the same typological argument based on the pretence to being cognizant of divine intention, i.e. they “know” what “God” would “intend” in the case of rape. These arguments and statements, for the least obsolete, are unfortunately way too disconnected from the women’s

concerns when dealing with the realities of an abortion. The fight that political ideologies and bipartisanship engender does not constitute any solution to the current plights of women still facing numerous appalling inequalities, or as a matter of fact, any other problems modern societies have to cope with.

Due to its lack of attention to the concerns of women during the 2012 Presidential elections and the resulting victory of Barak Obama, which commentators have largely attributed to the vote of women (Carroll and Fox, 81), in preparation for the 2014 mid-term elections, the GOP is launching an internal campaign to “teach” the Republicans how to talk to the women political opponents. The aim is to “rebrand” the party and avoid the 2012 election failures due to phrases such as “legitimate rape” (*Politico*, 5 Dec. 2013). Their purpose, however, is not so much to defend the rights of women but rather to learn to “speak” to women in an election campaign in order to not profess shocking ideas publicly.

The women vote was undeniably crucial in Obama's victory both in 2008 and 2012. The reverse analysis would mean that the GOP has driven women away and lost their votes. Their ideas have transpired into behaviors which have not appealed to women. Their radicalization with Tea Party ideas have emboldened them to harden their discourse against abortion laws, and the progress of women in general and granting them their deserved place and share in the affairs of the country. The ideological divide on abortion is gradually finding some resonance in the way women perceive the GOP and the Democratic Party, and thereby influencing their vote in favor of the latter.

That abortion is the core of the setbacks of the whole democratic process is not fortuitous. While women are doing noticeably better than men academically and economically, and as a result will hopefully have a really equitable share of political responsibility sooner or later, abortion might well be the last of these multi-faceted dimensions of women that men, or rather the traditionalists of both sexes, would want to have a certain control upon. Some categories of women constitute a rising demographic crucial for any future election and the evolution of democratic institutions.

The difficulties to pass such laws as the *Women's Equality Act* are to be balanced and contrasted with the advances women exemplify in the educational and professional spheres. The family and political or governing structures are being slowly reconfigured thanks primarily to the rise of women to higher studies. The latter fact has already altered the way women consider their career. According to Pew Research Center, more women (36%) than men (28%) achieved a bachelor's degree in 2010 (PRC, *Social*). In that same year the women (55%) outnumbered men among college graduates

(45%). These trends are prompting more women to consider their career as a major aim in their lives, and is giving birth to new types of family structures. Another survey from the same institute shows that a growing number of married mothers are better educated than their husbands. The share of families with the mother having a higher education than the father has gone from 6% in 1960 to 23% in 2011, while 61% have both parents with an equivalent level of education, and only 16% with the father having a better education (PRC, *Breadwinner*). These changes represent the axis of societal evolution which will inevitably alter the political arena once the various constellations of gender gaps are superseded by an equilibrium of rights and roles between men and women in all the spheres of human activities, and most importantly in the arena of decision-making and legislation.

The inequality between men and women is indeed one of the major paradoxes of modern societies. The overall picture depicted by the *Women's Equality Act* is undeniably very pessimistic. It shows that women are still subjected to discrimination solely because they are women. The necessity to have to fight to pass this kind of laws gives inertia to the willingness of the society and politicians to recognize the equality of rights for men and women as a natural and rational reality. While the larger society perceives this inequality as a fact, many advocates of women's rights often see their endeavors both as a necessary fight and a lost cause! In this context Governor Cuomo deemed the fight for the rights of women an absolute necessity, and declared in a press conference that “[b]ias against women is sweeping,” and “[t]he discrimination exists.” An article from *Policymic* further commented: “and it's probably always going to exist — at least for our foreseeable future. But passage of this bill could be a small victory that, combined with other small victories, could actually end up creating real progress for women, especially in oft-ignored areas of discrimination” (*Policymic*, 12 June 2013).

PROSPECTS

The United States is one of the most advanced democracies of the planet. When US nationals settle their business in foreign countries such as Japan, according to their own standards, when confronted with issues of gender inequality, they see foreign practices as more backward (Mayer & Cava 701). But societal standards are relative conceptions. Notwithstanding these contrasted perceptions of US nationals abroad, in its efforts to resolve the gender gaps still prevailing domestically, the USA is ranked 23rd by Global Gender Gap Report published by the World Economic Forum in 2013.

It would be a mistake to think that because some countries have solved some inequalities still being imposed upon women in other countries, this would mean that the former are more “advanced” and have achieved the true equality of rights for both sexes. The difficulty for enacting the *Women’s Equality Act* with all its provisions is sufficient proof that women’s rights are still not guaranteed as basic human rights. In 1995, at the first worldwide conference on the status of women, Hillary Clinton declared that “it is time for us to say here in Beijing, and for the world to hear, that it is no longer acceptable to discuss women’s rights as separate from human rights. If there is one message that echoes forth from this conference, let it be that human rights are women’s rights... And women’s rights are human’s rights, once and for all” (Albright & Clinton 345).

The question of women’s rights is intertwined within a web of intricate issues. For over a century and a half, women have achieved equality with men in many instances. In 1848, Candy Stanton stated in her declaration of Rights and Sentiments: “We hold these truths to be self-evident; that all men and women are created equal; that they are endowed by their Creator with certain inalienable rights” (Blundell 62). By equating the rights of women to the rights of men as expressed in the Declaration of Independence, Stanton indirectly raises a crucial point. If rights are to be “inalienable”, meaning they cannot be taken away nor be granted by anyone, their reality should not be a question of ideology or engender any ideological divide among politicians, intellectuals or in the population. If these rights are “inalienable” they should be atemporal and universal.

Unfortunately, the very fact that these rights have been acquired or taken by women through a never-ending struggle renders the term “inalienable” inappropriate. In fact, neither the rights of women, nor the human rights as a matter of fact, are inalienable. They are the result of struggles involving men and women, some of whom having been killed in the process, and policy making which are for the better turned into laws. Despite noticeable advances thanks to structural societal changes, the fight for equal rights for women have known more failures than successes since the right to vote was granted to women in 1920 in the USA. The enduring failures since 1923 of the *Equal Rights Amendment (ERA)*, stipulating that “equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex” (Berry 123), is yet another illustration of how the fundamental reality of equal rights for women is too unsettling for all ideologies, whether conservative or liberal.

The history of human and women's rights shows that these rights cannot be prescribed, inasmuch as laws are powerless to change adequately the persisting ideas, mental constructs and the ensuing behaviors. The woman question has always been a matter of ideologies and has thus been politicized. Science or laws have always been bent by those tenets to suit the purpose of the prevailing governing bodies or people of the time. However, as products of culture, ideologies have no natural or rational basis and are in fact mental, cultural and historical constructs which can be deconstructed. One observation we have worldwide is that numerous dimensions of equality are still being fought for. The corollary to this is that inequality broadly has come to be seen as the norm or the inescapable existing reality, and thus if another norm or operating mode founded on justice and equality is to be implemented, it is bound to be through a struggle.

CONCLUSION

In times of impending change, if the Liberals foster and receive positively the fact of upgrading the legislature in order to guarantee equal rights for women, the Conservatives, on the other hand, feel endangered by such prospects. Their fear is certainly generated by the idea of the world changing, not being as it has "always" been. This divide is perceptible on many issues crucial for the future role towards which the USA will have to evolve due to major evolutions looming on the horizon both domestically and internationally. So much so that on the broad question of women's equality, the ideological stances prove to be more and more radicalized on both sides. Similarly, the battle over abortion is gaining momentum in other countries where political ideologies are being reinforced, and some, like Spain, are more and more inclined to revoking the earned rights of women to abortion.

The fact is that the world is ever changing and societal evolution is merely the product of the human mind and experience at given times in an incremental fashion. The real challenge is to devise what kind of ideas, structures and behaviors would be the most conducive to human wellbeing collectively and individually. The answer to this prospective anticipation must be a real equality of rights between men and women, a goal which has never been achieved anywhere in the world so far. The hurdles for enacting any kind of law in order to attain equality of rights, be it for the individual, the society or global governance, will not find any viable resolution unless and until the so-called democratic institutions are equitably composed of both halves of the population. Though we might argue that women are more and more

present in politics, it is obvious that until the legislative representation is not balanced between men and women, democracy will remain an unfulfilled wish. In 2013, women accounted for only 18.5% (99 of the 535 members) of US Congress seats. Undeniably, women's issues such as abortion will not be analyzed and voted the same way if Congress were composed of 50% of women.

Women's parliamentary representation has been advocated by the United Nations for decades as a prerequisite for equal rights and social improvement. In its resolution 1325, the Security Council acknowledges that women can play an important role "in the prevention and resolution of conflicts and in peace-building" and therefore urges member States "to ensure increased representation of women at all decision-making levels in national, regional and international institutions." For the sake of comparison, the case of Rwanda is enlightening. Following the UN recommendation, in 2009, Rwanda became the first country in the world to have a majority of women in parliament. After the genocide the Rwandan Patriotic Front, led mostly by women, won the elections and enacted a constitution guaranteeing a 30% representation of women in the parliament. In 2013, 64% of the members were women. Without the hindrances encountered elsewhere, the Parliament amended "a law to legalize abortion in cases of rape, incest, or to protect the mother's health." One of those women representatives, Connie Bwiza Sekemana, explains the purport of the vote: "The issue is not the sex. It is the issue of equal opportunity, of citizen's rights, human rights, the fundamentals of any citizen" (*VOA News*, 26 Sept. 2013).

Women rights are a universal prerogative which has become determinant in the social evolution of the entire planet. Various commentators put forth the idea of a future collapse of the world's institutions due to the shifting of powers between countries and the lack of regulations and laws at a higher level of organization. I would argue that the hypothetical collapse of the world is rather due to the fragility of the current systems themselves. The inability of these institutional systems, which have prevailed in Western countries for centuries and are now being adopted by emerging countries, to guarantee equal rights to all its members is the true intrinsic flaw which will sooner or later bring them down. When women will, through education and work, gradually tip the scale to an equilibrium of political and legislative equality, then will old and obsolete ideas and behaviors irremediably collapse. Our present intellectual conceptions and structures have to be deconstructed if they have become obstacles to achieving equal rights for all. The current stagnation or regress of social progress is an obvious sign of their obsolescence. Then will

be invented new ideas, structures and behaviors, the reality of which we cannot possibly foresee because our mindset is too tangled into archaic constructs. Fight for equality of rights and status, history has proven sufficiently, in one way or another, is the most powerful engine of change and (r)evolution.

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