

25 YEARS OF QUOTA LAWS IN LATIN AMERICA

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- *As assessment of the political participation of women* •

ABSTRACT

In the last two decades, the majority of Latin American countries approved quota laws with the goal of reducing gender inequalities in the political arena and guaranteeing the effective fulfilment of women's political rights. The functioning and effectiveness of these mechanisms vary according to the design of the regulations and their linkages to the electoral system. In spite of advances, important challenges remain. In light of this, the debate on the political participation of women has evolved from quotas to parity. However, the discussion must not be approached from a purely numeric perspective or restricted to the public sphere; other dimensions of women's autonomy (physical and economic) must be taken into account. It is only once the conditions necessary for women to exercise their full autonomy are in place that achieving gender parity in democracy will be possible.

KEYWORDS

Political participation | Gender equality | Quota laws | Parity

Although it continues to be a highly unequal region in terms of both socio-economic conditions and gender, Latin America has made important advances in the political participation of women. In the past decade, Argentina, Brazil, Chile and Costa Rica elected women presidents. Women represent 27.2 per cent¹ of members of national legislatures (nearly 5 per cent above the world average) and occupy 26.1 per cent of national cabinet positions.

Gender quota laws have played a fundamental role in narrowing the gap in the political participation of women. They are affirmative action² tools centred on legislative bodies whose main objective is to resolve the problem of the underrepresentation of women in the political arena and guarantee that women are able to effectively exercise their political rights. While the suffragist movement that arose in the second half of the 19th century fought for women's right to vote, the quota laws focus on the possibility of women being elected - that is, of participating as candidates in electoral processes.

In 1991, Argentina was the first country in the world to adopt a law on gender quotas. Law no. 24.012,³ which established the obligation of incorporating at least 30 per cent of women in the party lists at the national level, became a milestone for the political representation of women in legislatures. From this moment on, affirmative action measures spread not only to the rest of the region, but around the world. In Latin America, 15 countries⁴ have passed quota laws and almost half of the countries in the world have now adopted this kind of measure.

However, the process of approving quota laws has not been simple; on the contrary, it has been accompanied by intense debate. Even though various arguments have been used to contest affirmative action, available evidence allows us to consider them more as myths than as true and valid arguments.⁵ Perhaps one of the most extensively used arguments is that women get into public office because they are women and not on merit. This affirmation contains two problems. For one, it ignores the fact that the logic underpinning representative systems is that of the representation of interests and not that of merit. Basing oneself primarily on merit would lead to limited democracies, in which only the elite would be able to act as representatives. What is more, this statement creates the false dilemma between gender equality and merit, as if advancing towards greater gender equality is done at the expense of the merit of the ones who represent us. Available data refute this hypothesis. In Latin America, enrolment rates in high school is higher for women, which has generated significant progress towards gender parity in post-secondary education.⁶ Studies show that women legislators have equal or higher education credentials than their male counterparts. In the case of Argentina, 79 per cent of women legislators in congress have an advanced degree, compared to 71 per cent of the men. Thus, contrary to what the detractors of the implementation of affirmative action measures say, the data clearly show that women are required to have better educational and academic credentials in order to obtain the same positions as men.

The second myth claims that affirmative action measures violate the principle of equality. Far from it, these measures provide a way of making the principle of equality enshrined in national regulatory frameworks and international human rights law effective.⁷ Those who oppose these measures do not recognise that offering equal treatment to people who find themselves in structurally different situations (in this case, women in relation to men) does not lead to equality. On the contrary, it reproduces existing inequalities. Therefore, these actions seek to remedy these injustices by providing special treatment to the ones at a disadvantage in order to move towards substantive equality, and not only formal equality.

Finally, another common argument is that there is never a good time to raise these issues and that affirmative action measures are not necessary because there is a “natural” tendency towards equality. According to a recent report by the World Economic Forum, the gender gap is far from disappearing: it would take nearly 120 years to eliminate the wage gap. Although women represent the majority of university students in over 100 countries, the widest gap continues to be in their political empowerment, as women only hold 28% of leadership positions.⁸

25 years of implementing quotas: where are we at?

After over two decades of implementing quota laws in the region, it is necessary to do an evaluation of these measures. What are the main advances that have been made through the implementation of this type of law? What obstacles remain today?

Being a woman does not necessarily mean a commitment to the gender equality agenda, nor that women legislators only promote projects linked to women’s rights. That said, different studies have demonstrated that quota laws have had a significant impact on the diversification of the legislative agenda,⁹ as previously forgotten or invisible issues such as violence against women, sexual and reproductive rights or gender identity have been incorporated into debate.

Furthermore, one of the most obvious results has been the increase in the number of women in legislative bodies. Between 1995 and 2016, the participation of women in the congresses of Latin American countries went from 12.7 per cent to 27.2 per cent.¹⁰ This regional average, however, conceals significant disparities. The presence of women in the legislatures of the countries with quota laws varies from 53.5 per cent in Bolivia to 9.94 per cent in Brazil. How does one explain these differences?¹¹

The first element to take into consideration is that there are three main kinds of quota laws: ones that reserve seats for women (they may be constitutional or legal); legal quotas for candidates (constitutional and/or legislative); and quotas applied within political parties.¹² One of the main differences is that while the first and second modality are obligatory, quotas for political parties are generally voluntary and therefore usually are less efficient.

Moreover, the different levels of participation achieved show that quotas alone are not enough to guarantee that there is a higher number of women in legislative bodies. To fully assess the effectiveness of these measures, it is fundamental to take into account institutional variables, such as the design of the laws and the characteristics of the electoral system into which these laws have been introduced.¹³ With regards to design, one must analyse if the laws are binding or not; if they contain position mandates - that is, if they establish what places women candidates will occupy, reserve prominent positions for them or guarantee eligibility; and if they include sanctions for non-compliance. In relation to the electoral system, the combination of proportional electoral systems (ones in which seats are distributed in proportion to the number of votes obtained) with large districts (constituencies in which there are various seats at stake) and closed and blocked electoral lists (in which electors vote for the list drawn up by the party and do not have the possibility of introducing changes to the list) represent the ideal scenario for guaranteeing the effectiveness of quota systems.

To understand the different degrees of success of quota systems, one must also take into account cultural variables, especially in relation to political parties, which are the main ones responsible for implementing them. Putting these measures into place has not been an easy nor a linear process. On the contrary, due to the parties' resistance and their minimalist and bureaucratic interpretation of quota regulations,¹⁴ what was conceived to be a floor has been turned into a ceiling for women's participation. One example of this can be seen in the results of the legislative elections in Argentina in 2015. Nearly 25 years after the quota law was adopted, a survey of the lists presented throughout the country showed that 10 per cent (25 out of 234 lists) failed to comply with the law's provisions. Far from being a problem restricted to a particular place or party, noncompliance was found in all parties of the political spectrum and a third of Argentine provinces.¹⁵

To address these problems, various strategies have been developed. Among them, it is worth highlighting the introduction of changes to the quota laws in order to prevent infractions and the intervention of the highest courts of justice, which are pronouncing themselves on how these regulations should be interpreted and applied.

Nonetheless, one of the persistent challenges that the quotas have not been able to overcome is to introduce changes in the processes of selecting candidates,¹⁶ especially to increase the number of party lists headed by women.

The path from quotas to parity

The remaining obstacles and barriers to an adequate application of quota laws have motivated various countries to move beyond quotas to parity. The logic behind the parity principle is different from that of the quotas. It is no longer a question of adopting a temporary measure that defines a minimum percentage of women in the lists. Instead, it implies that men and women participate equally (as equal partners) in the electoral process.

The “parity democracy” concept was coined at the international level in the Athens Declaration (1992) during the “European Summit of Women in Power”. In Latin America, since the Tenth Regional Conference on Women in Latin America and the Caribbean organised by the Economic Commission for Latin America and the Caribbean (ECLAC), known as the Quito Consensus (2007), parity has become one of the basic principles of the regional agenda. Ecuador (2008), Bolivia (2009), Costa Rica (2009) and Mexico (2014) have advanced towards parity and discussions are currently underway on initiatives to incorporate parity in Argentina, Colombia, Panama, Peru and Uruguay.

Why is it important to go from quotas to parity in the political sphere? Two arguments stand out here: the first is linked to distributive justice. While women represent more than 50 per cent of the population and electoral rolls, on average, they hold less than 30 per cent of the seats in elected representative bodies. Secondly, parity implies overcoming problems derived from the regulatory characteristics of the different quota laws, especially in relation to the determination of the minimum percentage of women and position mandate.¹⁷

Furthermore, parity is not a temporary measure, but rather a concept that can serve as a guiding principle for democracy. As such, its potential lies in its ability to ensure that the diversity of interests that exist in our societies is reflected in congresses and to contribute to the promotion of gender equality outside the political arena as well. Until now, the call for parity has been generally limited to the demand for electoral lists to be made up of 50 per cent of men and 50 per cent of women, whose names are to be alternated sequentially on the list to ensure equal representation of both sexes. Even so, real parity will only exist when women achieve full political, economic and physical autonomy.¹⁸

How are economic autonomy and physical autonomy related to achieving gender equality in decision-making processes? Economic autonomy refers to women’s ability to generate their own income and resources through access to paid work on equal terms with men. The incorporation of women in public life was not reciprocated by men taking on responsibility for domestic and care work, which continues to fall almost exclusively on women’s shoulders. This unfair distribution of care work acts as a barrier for women, not only in the labour market, but also in the political sphere.¹⁹

In relation to physical autonomy - that is, the capacity to make decisions about their own bodies and live a life free from violence - parity cannot be achieved unless the fight against political violence against women is intensified. Women’s growing participation in decision-making has been accompanied by acts of violence and political harassment. Therefore, it is fundamental to give visibility to and systematise acts of violence and political harassment of women and to promote the development of different tools to prevent, punish and eradicate violence against women in politics.

The data presented here clearly indicates that far from being an endpoint, the adoption of laws on parity in the legislative sphere constitutes the first step in advancing towards

the full enjoyment of the political rights of women and the achievement of parity democracies. Subsequently, this opens the way to a new path, which consists of, on the one hand, ensuring effective compliance with these laws through monitoring and evaluation exercises, and, on the other, the transformation of both the dominant patriarchal culture and structural conditions to enable women to fully exercise their autonomy in the public and private sphere.

NOTES

1 • “Women in National Parliaments,” Inter-Parliamentary Union (IPU), November 1, 2016, accessed November 26, 2016, <http://www.ipu.org/wmn-e/classif.htm>.

2 • These are measures or policies that seek to strengthen the opportunities and increase the access to resources of traditionally excluded groups or collectives by providing differential treatment to remedy structural inequalities. For an analysis of these measures, see: CDHDF (2007) Acciones afirmativas en materia de no discriminación.

3 • Access to the law’s full text and the decrees adopted to regulate it can be found here: “Ley 24012 Honorable Congreso de la Nación Argentina,” InfoLEG, December 3, 1991, accessed November 26, 2016, <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=411>.

4 • Argentina (1991), Mexico (1996), Paraguay (1996), Bolivia (1997), Brazil (1997), Costa Rica (1997), Ecuador (1997), Panama (1997), Peru (1997), Dominican Republic (1997), Venezuela (1998), Colombia (1999), Honduras (2000), Uruguay (2009) and Chile (2015).

5 • Part of an analysis of these myths was published in Lucía Martelotte, “Mitos de la paridad.” Página/12, September 11, 2016, accessed November 26, 2016, <http://www.pagina12.com.ar/diario/sociedad/3-309124-2016-09-11.html>.

6 • See “Situación Educativa de América Latina y el

Caribe: Hacia la Educación de Calidad para Todos al 2015,” Oficina Regional de Educación para América Latina y el Caribe (OREALC/UNESCO Santiago), 2013, accessed November 26, 2016, <http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Santiago/images/SITIED-espanol.pdf>; Ana García de Fanelli and Claudia Jacinto, “Equidad y Educación Superior en América Latina: el Papel de las Carreras Terciarias y Universitarias,” *Revista Iberoamericana de Educación Superior 2010 I*, no. 1 (June-September, 2010): 58-75.

7 • At the national level, many of the constitutions in the region include affirmative action. In relation to the international regulatory framework, one can mention, among others: Article 4 (1) of the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women), which makes references to temporary special measures aimed at accelerating *de facto* equality between men and women; and strategic objective G1 of the Beijing Platform for Action, and measures 190.a and 192.a, in particular.

8 • For further analysis on the various components of the gender gap, see “Informe Global de la Brecha de Género 2015,” World Economic Forum, November 19, 2015, accessed November 26, 2016, <https://www.weforum.org/es/agenda/2015/11/informe-global-de-la-brecha-de-genero-2015/>.

For a more in-depth analysis of the impact of

women legislators in the broadening of the political agenda, see Nélica Archenti and Niki Johnson, "Integração da perspectiva de género na agenda legislativa, com e sem quotas: estudo comparativo entre a Argentina e o Uruguai," *Sociologia, Problemas e Práticas* [online] no. 52 (2006): 133-53; Susan Franceschet and Jennifer Piscopo, "Gender Quotas and Women's Substantive Representation: Lessons from Argentina," *Politics and Gender* no. 4 (2008): 393-425; Jutta Borner, Mariana Caminotti, Jutta Marx and Ana Laura Rodríguez Gustá, *Ideas, Presencia y Jerarquías Políticas. Claroscuros de la Igualdad de Género en el Congreso Nacional de Argentina* (Buenos Aires: PNUD-Prometeo Libros, 2009).

10 • In "Las mujeres en el parlamento en 2015. Perspectiva anual," Inter-Parliamentary Union (IPU), 2016, accessed November 26, 2016, <http://www.ipu.org/pdf/publications/WIP2015-s.pdf>.

11 • As we will see in the paragraphs that follow, these differences are related to the design of quota laws and the characteristics of the electoral system. In relation to design, in Bolivia, the percentage for women is higher than in Brazil and position mandates have also been established, which are absent in the case of Brazil. With regards to the electoral system, while Bolivia uses closed and blocked lists, Brazil functions with open lists in which the electorate can indicate preferences.

12 • For more information on quotas and types of quotas, see The Quota Project, 2016, accessed November 26, 2016, <http://www.quotaproject.org>.

13 • A brief summary follows. For a more in-depth analysis, see Nélica Archenti and María Inés Tula, "Cuotas de Género y Tipo de Lista en América Latina," *Opinião Pública* 13, no. 1 (June, 2007): 185-218; Mark P. Jones, Santiago Alles and Carolina Tchintian, "Cuotas de Género, Leyes Electorales y Elección de Legisladoras en América Latina," *Revista de Ciência Política* 32, no. 2 (2012): 331-57.

14 • Nélica Archenti and María Inés Tula, "¿Las Mujeres al Poder? Cuotas y Paridad de Género en América Latina," Seminario de Investigación 9

(February 22, 2013), accessed November 26, 2016, http://americo.usal.es/iberoame/sites/default/files/tula_PAPERseminario9_2012-2013.pdf.

15 • "Ley de Cupo Femenino: 25 años de Incumplimiento en las Listas Electorales," Equipo Latinoamericano de Justicia Y Género (ELA), August 6, 2015, accessed November 26, 2016, <https://goo.gl/IKsI92>.

16 • Niki Johnson, "Las barreras que la cuota no superó: selección de candidaturas y desigualdades de género en América Latina," in *La Representación Imperfecta. Logros y Desafíos de las Mujeres Políticas*, ed. Nélica Archenti and María Inés Tula (Buenos Aires: Eudeba, 2014): 37-61.

17 • Archenti and Tula, "¿Las Mujeres al Poder?," 2013.

18 • For an analysis of the concept of autonomy and its dimensions, see "Informe Anual 2011: el Salto de la Autonomía. De los Márgenes al Centro," Naciones Unidas, Comisión Económica para América Latina y el Caribe (CEPAL) and Observatorio de Igualdad de género de América Latina y el Caribe (OIG), 2011, accessed November 26, 2016, <http://repositorio.cepal.org/bitstream/handle/11362/3931/S2011102.pdf?sequence=1&isAllowed=y>.

19 • ELA's study (2011) shows how the unequal distribution of care work in the home creates difficulties for women in relation to the reconciliation of work and family life and affects their political careers and family structures. On average, many more women legislators are separated or divorced and have fewer children than their male peers. See "Detrás del Número. Un Estudio sobre las Trayectorias Políticas de Mujeres y Varones en las Legislaturas Argentinas," Equipo Latinoamericano de Justicia Y Género (ELA), 2011, accessed on November 26, 2016, <https://goo.gl/jDy2Vn>.

20 • For a definition of and analysis on political violence against women in Latin America, see Mona Lena Krook and Juliana Restrepo Sanín, "Género y Violencia Política en América Latina. Conceptos, Debates y Soluciones," *Política y Gobierno* 23, no. 1 (2016): 127-62.



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