

ABUSIVE FEMINISM

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ROSALIND DIXON*

Abstract: The language of gender equality is increasingly popular worldwide. Yet, it is used both to advance women's rights and justify the rollback of commitments to equality and democracy. This kind of "abusive feminism" is also arguably on the rise: would-be authoritarian actors today often attempt simultaneously to appeal both to conservative anti-feminist *and* feminist voters. In one breath, authoritarian actors condemn feminist ideas, and in the other, they selectively and opportunistically advance the language, if not substance, of women's rights and ideas about women's descriptive representation. This Article explores this phenomenon, and its prevalence in democracies under strain today—including in the United States, Europe, and Africa—as well as its logic and preconditions. In addition, it explores potential responses on the part of feminists and those committed to electoral democracy. Ultimately, the Article suggests, the safest defense against abusive feminism lies in a general shift toward greater human rights realism over formalism, together with a more careful, anti-essentialist approach on the part of feminist scholars and practitioners. But achieving this shift is likely to involve a range of real-world challenges.

INTRODUCTION

We live in an age of growing feminist and anti-feminist consciousness.¹ More young women today identify as feminists or as having feminist ideas and aspirations than in recent decades.² Women of all ages have also taken to the streets and gone online, across the world, to defend women's rights—through the #MeToo movement, marches for reproductive rights, and women's freedoms in Iran. At the same time, there is growing public support in certain

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¹ See Karen Knop & Annelise Riles, *My Own Pink World: Feminist Diplomacy After Culture*, 74 U. TORONTO L.J. 7, 23–24 (2024).

² *More Young Women Than Ever Now Call Themselves Feminists*, YOUNG WOMEN'S TR. (Nov. 19, 2019), <https://www.youngwomenstrust.org/media-centre/more-young-women-than-ever-now-call-themselves-feminists> [<https://perma.cc/6QNB-XHM5>]. See generally Pamela Aronson, *Feminists or 'Postfeminists'?* *Young Women's Attitudes Toward Feminism and Gender Relations*, 17 GENDER & SOC'Y 903 (2003) (highlighting historical change in women's opinions of the feminist movement and the idea of feminism as a whole).

countries for movements that are explicitly anti-feminist in aspiration.³ Many of those opposed to feminist politics are also themselves women—or self-styled “women against feminism” or “anti-feminists.”⁴

Likewise, recent decades have seen the rise of women as promoters *and* antagonists of *democracy*. Women were core to the movement for democracy that marked the Arab Spring.⁵ Women (cis and trans) were at the forefront of opposition to early efforts by President Trump to erode democracy in the United States, including through large-scale public protests, such as the “Women’s March” demonstrations held worldwide in January 2017.⁶ Yet in the United States, India, Brazil, and Eastern Europe, women have voted in record numbers for authoritarian and would-be authoritarian governments.⁷ There has also been an increase in women as leaders of far-right, anti-constitutional populist parties.⁸

This is far from a coincidence. Indeed, in many countries, these trends are the product of a *deliberate* attempt by would-be authoritarian and illiberal leaders to win over both anti-feminist *and* feminist voters—by simultaneously condemning feminist ideas, and selectively and opportunistically advancing the language, if not substance, of commitments to gender equality and ideas about women’s descriptive representation.⁹ This is the product of increasing

³ See, e.g., Serena Smith, *Young People and the Rise of Antifeminism*, DAZED (Mar. 16, 2023), <https://www.dazeddigital.com/life-culture/article/58452/1/young-people-and-the-rise-of-antifeminism-gender-equality> [<https://perma.cc/W9D2-4M5P>].

⁴ See generally Méliissa Blais, *Anti-Feminist Movement (United States)*, in WILEY-BLACKWELL ENCYCLOPEDIA OF SOCIAL AND POLITICAL MOVEMENTS (2022) (defining the rise and concept of anti-feminism); see also Janet Saltzman Chafetz & Anthony Gary Dworkin, *In the Face of Threat: Organized Antifeminism in Comparative Perspective*, 1 GENDER & SOC’Y 33, 34, 52 (1987) (cataloguing anti-feminist backlash movements in the United States and New Zealand).

⁵ Tawakkol Karman, *Women and the Arab Spring*, U.N. CHRON. (Dec. 31, 2016), <https://www.un.org/en/chronicle/article/women-and-arab-spring#:~:text=The%20broad%20participation%20of%20women,serious%20risks%20to%20their%20lives> [<https://perma.cc/U763-9UHT>].

⁶ Anemona Hartocollis & Yamiche Alcindor, *Women’s March Highlights as Huge Crowds Protest Trump: ‘We’re Not Going Away,’* N.Y. TIMES (Jan. 21, 2017), <https://www.nytimes.com/2017/01/21/us/womens-march.html> [<https://perma.cc/YE4W-62DP>]. This Article will often reference “women” or “all women.” Unless otherwise noted, this should be read to include both cis and trans women.

⁷ See, e.g., Rukmini S, *How India Votes: Has the BJP Gained Enough Women Voters Under Narendra Modi to Seal 2019?*, SCROLL.IN (Sept. 17, 2018), <https://scroll.in/article/893869/how-india-votes-has-the-bjp-gained-enough-women-voters-under-narendra-modi-to-seal-2019> [<https://perma.cc/X8FB-6MX5>] (finding that a record number of women voted in an election that Prime Minister Modi won); *Gender Differences in Voter Turnout*, CTR. FOR AM. WOMEN & POL., <https://cawp.rutgers.edu/facts/voters/gender-differences-voter-turnout> [<https://perma.cc/U67S-NSXH>] (finding that more women than men in the United States have voted in presidential elections every year since 1964).

⁸ See *infra* notes 198 (noting Le Pen’s rise to power in France), 206 (noting Meloni’s rise to power in Italy), and 227 (noting Szydło’s rise to power in Poland).

⁹ Descriptive representation describes how closely elected officials match the demographics of their constituents. Bridgett King, *Descriptive Representation in the Election Administration*, MIT ELECTION DATA & SCI. LAB (May 17, 2018), <https://electionlab.mit.edu/articles/descriptive-representation-election-administration> [<https://perma.cc/6MM6-JYE5>].

waves of both anti-feminism and pseudo or “abusive” feminism.¹⁰ Although anti-feminism has attracted broad popular notice, abusive feminism has largely escaped this same attention.¹¹ This is especially true for uses that erode commitments to democracy, not just broader commitments to freedom and equality. The aim of this Article is to address this gap in scholarly and popular attention by identifying the logic and variants of abusive feminism, as well as beginning a conversation on potential responses to it.

To begin, the Article seeks to define and conceptualize abusive feminism, and its relationship to commitments to democracy, freedom, and equality. It notes that abusive feminism can take narrower or broader forms, which involves illiberal, anti-democratic actors invoking the language of women’s rights and descriptive representation to undermine *either* core commitments to democracy *or* broader commitments to liberalism and equality, or rights to sexual, racial, and religious equality. One narrow form of abusive feminism involves the use of feminist ideas and discourses to undermine the “minimum core” requirements of constitutional democracy—or a form of *pseudo-feminist* “abusive constitutionalism.”¹² Broader forms of abusive feminism are linked to the broader abuse of human rights discourse, by illiberal populist leaders¹³ and

¹⁰ See Rosalind Dixon, *Abusive Feminism*, INT’L J. CONST. L. BLOG (Apr. 6, 2022), <https://www.iconnectblog.com/abusive-feminism/> [<https://perma.cc/FX5U-S2A9>] (explaining how descriptive representation can be used to dismantle democratic policies and governments); Rosalind Dixon & Surbhi Karwa, *Democratic Versus Abusive Feminism in India*, INT’L J. CONST. L. BLOG (Oct. 18, 2023), <https://www.iconnectblog.com/democratic-versus-abusive-feminism-in-india/> [<https://perma.cc/Y8ZT-2ULE>] (explaining the concept of abusive feminism using an example of a gender quota law in India).

¹¹ For an important exception, see Ruth Rubio-Marín, *Anti-Gender Constitutionalism*, EUR. CONST. L. REV. (forthcoming 2025). See Gráinne de Búrca & Katharine G. Young, *The (Mis)appropriation of Human Rights by the New Global Right: An Introduction to the Symposium*, 21 INT’L J. CONST. L. 205, 220–21 (2023) (explaining the abusive use of human rights discourse); Katharine G. Young, *Human Rights in the Constitutional Era of Dobbs*, 56 COLUM. HUM. RTS. L. REV. (forthcoming 2025) (manuscript at 18–19), <https://www.law.columbia.edu/sites/default/files/2024-02/Young%20CLS%20Dobbs%20and%20Human%20Rights.pdf> [perma.cc/K8EX-9EA8] (identifying the misappropriation of human rights discourse in the *Dobbs* decision).

¹² Rosalind Dixon & David Landau, *Competitive Democracy and the Constitutional Minimum Core*, in ASSESSING CONSTITUTIONAL PERFORMANCE 268, 268–69 (Tom Ginsburg & Aziz Z. Huq eds., 2016). See generally Rosalind Dixon & David Landau, *Transnational Constitutionalism and a Limited Doctrine of Unconstitutional Constitutional Amendment*, 13 INT’L J. CONST. L. 606 (2015) [hereinafter Dixon & Landau, *Transnational Constitutionalism*]; David Landau & Rosalind Dixon, *Abusive Judicial Review: Courts Against Democracy*, 53 U.C. DAVIS L. REV. 1313 (2020) [hereinafter Landau & Dixon, *Abusive Judicial Review*]; ROSALIND DIXON & DAVID LANDAU, ABUSIVE CONSTITUTIONAL BORROWING: LEGAL GLOBALIZATION AND THE SUBVERSION OF LIBERAL DEMOCRACY (2021) [hereinafter DIXON & LANDAU, ABUSIVE CONSTITUTIONAL BORROWING] (explaining the notion of abusive borrowing as involving the knowing or de facto use of liberal democratic norms in ways that erode the democratic minimum core); ROSALIND DIXON, RESPONSIVE JUDICIAL REVIEW (2023) [hereinafter DIXON, RESPONSIVE JUDICIAL REVIEW].

¹³ See generally de Búrca & Young, *supra* note 11; Young, *supra* note 11.

recent waves of “femonationalism,” “femocracy,” “gendered culturalism,” “sexualized racism,” or “state feminism.”¹⁴

Both versions of the phenomenon make use of popular feminist discourses *and* more specific ideas about “feminist constitutionalism.”¹⁵ Popular feminist ideas can be effective in adding popular support for abusive constitutional actions, whereas feminist constitutional ideas may point to constitutional rights or structures that can be co-opted or repurposed for abusive ends.

Both narrower and broader forms of abusive feminism can also have a variety of targets, and be adopted by a wide range of actors—including women *and* men seeking to promote the language of women’s rights and descriptive representation for their own anti-democratic or illiberal ends.

Abusive feminism, in other words, is not the same thing as conservatism on the part of women, or disagreement about the best path for advancing the rights and interests of women. As feminists we may not like the formalist view of freedom or equality (or the United States Constitution) adopted by (say) Margaret Thatcher or Justice Amy Coney Barrett, but we can still recognize the good faith of these beliefs.¹⁶ Abusive feminism, in contrast, generally involves the knowing

¹⁴ See generally SARA R. FARRIS, IN THE NAME OF WOMEN’S RIGHTS: THE RISE OF FEMONATIONALISM (2017); Maria Elena Indelicato & Maira Magalhães Lopes, *Understanding Populist Far-Right Anti-Immigration and Anti-Gender Stances Beyond the Paradigm of Gender as ‘a Symbolic Glue’: Giorgia Meloni’s Motherhood, Neo-Catholicism, and Reproductive Racism*, 31 EUR. J. WOMEN’S STUDS. 6, 10 (2024).

¹⁵ On feminist constitutionalism, see, for example, Shreya Atrey, *Feminist Constitutionalism: Mapping a Discourse in Contestation*, 20 INT’L J. CONST. L. 611, 611 (2022); Beverly Baines & Ruth Rubio-Marín, *Feminist Constitutionalism in Canada*, in OXFORD HANDBOOK OF THE CANADIAN CONSTITUTION 965, 968 (Peter Oliver, Patrick Macklem & Nathalie Des Rosiers eds., 2017); *Feminist Constitutionalism: Global Perspectives* (Beverly Baines, Daphne Barak-Erez & Tsvi Kahana eds., 2012); Ruth Houghton & Aoife O’Donoghue, “Ourworld”: A Feminist Approach to Global Constitutionalism, 9 GLOB. CONSTITUTIONALISM 38 (2020); Jennifer Nedelsky, *Reconceiving Rights and Constitutionalism*, 7 J. HUM. RTS. 139, 143 (2008); CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 399 (1989); Catharine A. MacKinnon, *Gender in Constitutions*, in OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW 397 (Michel Rosenfeld & András Sajó eds., 2012); Julie Suk, *Gender Equality and the Protection of Motherhood in Global Constitutionalism*, 12 LAW & ETHICS HUM. RTS. 151, 152 (2018); Kathleen Sullivan, *Constitutionalizing Women’s Equality*, 90 CALIF. L. REV. 735, 747 (2002); HELEN IRVING, GENDER AND THE CONSTITUTION: EQUITY AND AGENCY IN COMPARATIVE CONSTITUTIONAL DESIGN 32 (2008); WOMEN MAKING CONSTITUTIONS: NEW POLITICS AND COMPARATIVE PERSPECTIVES (Alexandra Dobrowolsky & Vivien Hart eds., 2003); Dixon & Karwa, *supra* note 10; Rubio-Marín, *supra* note 11, at 7–9.

¹⁶ See, e.g., Susan M. Sterett, *Amy Coney Barrett May Be the Next Woman on the Supreme Court—But Does a Nominee’s Gender Matter?*, THE CONVERSATION (Oct. 15, 2020), <https://theconversation.com/amy-coney-barrett-may-be-the-next-woman-on-the-supreme-court-but-does-a-nominees-gender-matter-147407> [<https://perma.cc/6NVS-5W5R>] (arguing that there is value in appointing a woman to the Supreme Court no matter her political belief); Erin Vilardi & Pakou Hang, *A ‘Woman for a Woman’s Sake’ Doesn’t Sit with Us*, MS. MAG. (Oct. 23, 2020), <https://msmagazine.com/2020/10/23/amy-coney-barrett-a-woman-for-a-womans-sake-doesnt-sit-with-us/> [<https://perma.cc/Z7MT-V9PS>] (arguing that conservatives are using Amy Coney Barrett as a “shield to roll back gender-based progress”); Jenni Murray, *What Did Margaret Thatcher Do for Women?*, THE GUARDI-

use of ideas about gender and gender equality as a means of undermining democracy, freedom, and equality, even as understood by those involved in the practice, and hence a form of *bad faith* on the part of relevant actors.¹⁷

How and when does “abusive feminism” of this kind succeed? For women’s legal rights, the phenomenon is the product of a degree of “formalism” or superficiality on the part of both domestic and international audiences. “Formalism” focuses on the nominal gains for women’s rights, rather than the substance of their likely interpretation and implementation.¹⁸ For women’s role as individual representatives, a variety of socio-cultural tropes or assumptions are arguably at play: the idea of women as mothers, or caring and collaborative, as political “outsiders” and thus more principled, or as “sexy” or appealing, compared to male leaders. And although these tropes are deliberately manipulated by opponents of equality and democracy, they have origins in feminist ideas and practice.

Of course, even in conceptualizing abusive feminism, there are inevitably a range of definitional challenges: a key part of contemporary, third-wave feminism is a commitment to recognizing differences among women and their experience, and the *intersectional* nature of discrimination and subordination. It is also possible that this definitional disagreement is one reason that abusive feminism succeeds, in certain contexts. Abuse of this kind trades on indeterminacy and ambiguity in feminism’s core content and meaning, and hence benefits from the necessary and legitimate insistence by feminists on the recognition of difference, pluralism, and intersectionality. It trades, in other words, on disagreements between—and among—second-, third-, and possibly now, fourth-wave feminists.¹⁹

The Article, however, offers one highly tentative and provisional account of a “feminist minimum core” that helps answer this difficulty: namely the idea that, at minimum, feminism involves: (1) a commitment to equal freedom and dignity for all women, and (2) interrogation of the degree to which current le-

AN (Apr. 9, 2013), <https://www.theguardian.com/politics/2013/apr/09/margaret-thatcher-women> [<https://perma.cc/7ZDZ-ZCZZ>] (arguing that Margaret Thatcher did little to help women during her time as Prime Minister in the United Kingdom).

¹⁷ See David E. Pozen, *Constitutional Bad Faith*, 120 HARV. L. REV. 885, 888 (2016) (explaining bad faith in constitutional law).

¹⁸ See generally Katharine G. Young, *Introduction*, in THE PUBLIC LAW OF GENDER: FROM THE LOCAL TO THE GLOBAL (Kim Rubenstein & Katharine G. Young eds., 2016) (questioning whether a public law of gender has led to substantive gender equality or change across the world); Vicki C. Jackson, *Feminisms and Constitutions*, in THE PUBLIC LAW OF GENDER, *supra*, at 1.

¹⁹ See, e.g., Rosalind Dixon, *Feminist Disagreement (Comparatively) Recast*, 31 HARV. J.L. & GENDER 277, 286 (2008) [hereinafter Dixon, *Feminist Disagreement*]; Rosalind Dixon & Amelia Loughland, *Gender Disruption, Amelioration, and Transformation: A Comparative Perspective*, in THE OXFORD HANDBOOK OF FEMINISM AND LAW IN THE UNITED STATES 132 (Deborah Brake, Martha Chamallas & Verna L. Williams eds., 2021).

gal, political, economic, and social structures advance, or impede, access to freedom and dignity of this kind. How this plays out in practice will, of course, depend on context, and intersecting sources of disadvantage or diversity. But it could be understood to mean that (at least most) “trans-exclusionary” feminist practices are inherently abusive in nature,²⁰ and that feminism requires at least some degree of direct political representation for women, and legally guaranteed access to reproductive rights, economic security, and freedom from family and sexual violence.²¹

In seeking to counter abusive feminism, the Article therefore argues, *as feminists* we need to be willing both to call out the abuse of feminist ideas, and to be more attentive to reliance within feminism on tropes and stereotypes that are especially susceptible to abuse of this kind. We may also need, at least provisionally and strategically, to be willing to invoke the idea of a “feminist minimum core.” If we fail to do so, it is not just women’s rights and democracy that may suffer. It is broader sociological support, among women and men, for feminism as a legal and political project. Many feminist scholars are already alive to this danger, but it bears emphasis, especially for our sisters in feminist social movements. The aim of this Article is also to speak to feminist scholars and practitioners, including those involved in the international gender equality, development, and human rights movement.

The remainder of the Article is divided into five Parts. Part I outlines the broad contours of the relationship between democracy, women’s rights, and women’s increasing political representation.²² Part II provides a conceptual framework for understanding the idea of “abusive feminism” as an under-appreciated part of the current wave of democratic erosion or abusive constitutional change.²³ Part III focuses on the logic of how abusive feminism works, or succeeds, and ways in which these patterns trade on the abuse of human right and feminist ideas.²⁴ Part IV offers examples of the phenomenon, as an under-appreciated part of past and recent waves of democratic erosion or abusive constitutional change in Latin America, the United States, Europe, and South Asia.²⁵ Part V focuses on potential responses to the problem of abusive feminism and what it means for feminist scholars and activists, as well as hu-

²⁰ See, e.g., Thomas J. Billard, “Gender-Critical” Discourse as Disinformation: Unpacking TERF Strategies of Political Communication, 46 WOMEN’S STUDS. COMM’N 235, 235–36 (2023); Ruth Pearce, Sonja Erikainen & Ben Vincent, *TERF Wars: An Introduction*, 68 SOCIO. REV. MONOGRAPHS 677, 677–78 (2020).

²¹ See Knop & Riles, *supra* note 1, at 13–14 (noting attempts to construct a similar core set of ideas around feminist diplomacy, as involving “rights,” “representation,” and “reallocating”).

²² See *infra* notes 27–52 and accompanying text.

²³ See *infra* notes 53–94 and accompanying text.

²⁴ See *infra* notes 95–123 and accompanying text.

²⁵ See *infra* notes 124–299 and accompanying text.

man rights practitioners and advocates more generally.²⁶ Finally, it concludes with a brief note as to what is needed for responses of this kind to succeed.

I. WOMEN FOR (AND AGAINST) EQUALITY AND DEMOCRACY

A lot has changed since the women's suffrage movement sought to give women access to the franchise. Women can now vote (in at least some form) in every country worldwide, other than the Vatican.²⁷ Formal commitments to gender equality are also now more the norm than exception.²⁸ Almost all countries, for instance, have ratified the Convention on the Elimination of Discrimination against Women (CEDAW).²⁹ And women are now more than a quarter of the world's elected representatives.³⁰

Women today are thus central players in democratic politics—as voters, activists, candidates, and officeholders. And women's rights—including political rights—are a core part of modern democratic discourse. What, however, has been the impact of women's political participation in recent democratic politics?

Women have been at the forefront of recent waves of gender-based activism. Much of that activism has also been explicitly feminist in nature—that is, aimed at problematizing existing gender norms and structures and calling for them to be changed. Feminists admittedly often disagree as to what gender-based change should look like in this context, or as to how it should be achieved. But they generally agree that attention to gender is critical, and that there is a need for *contestation* around and *change* to existing social, economic and political arrangements.³¹

Take, for example, the #MeToo movement, and its calls to address systemic patterns of sexual violence and harassment in many industries, or recent protests by women and girls in the United States against the roll-back of reproductive rights. Or, consider the street protests by thousands of Iranian women

²⁶ See *infra* notes 300–301 and accompanying text.

²⁷ *Countries Where Women Cannot Vote 2024*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/countries-where-women-cant-vote> [<https://perma.cc/VU9M-AJFN>].

²⁸ See THE RIGHTS OF WOMEN IN COMPARATIVE CONSTITUTIONAL LAW 1, 2, 11 (Irene Spigno, Valentina Rita Scotti & Janaina Lima Penalva da Silva eds., 2023).

²⁹ Ellinore Ahlgren, *Ratification, Reservations, and Review: Exploring the Role of the CEDAW Compliance Mechanisms in Women's Rights*, J. PUB. & INT'L AFFS. (May 5, 2021), <https://jpia.princeton.edu/news/ratification-reservations-and-review-exploring-role-cedaw-compliance-mechanisms-womens-rights> [<https://perma.cc/4KJ2-TSRJ>].

³⁰ *Facts and Figures: Women's Leadership and Political Participation*, U.N. WOMEN, <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures> [<https://perma.cc/96UJ-H7A4>] (Oct. 2, 2024).

³¹ Shreya Atrey, *Women's Human Rights: From Progress to Transformation, an Intersectional Response to Martha Nussbaum*, 40 HUM. RTS. Q. 859, 876 (2018) (highlighting CEDAW General Recommendation Number Twenty-Five).

(and men) in 2022 in defense of women's rights, in the aftermath of the death of Mahsa Amini in the custody of Tehran's religious morality police.³²

Some women voters and leaders, however, explicitly oppose change of this kind. Instead, they argue for the protection and preservation of the status quo on gender including traditional family structures and norms. And often, they are willing to use explicitly *anti-feminist* language and rhetoric to do so. Perhaps the most famous example of this in the United States was Phyllis Schlafly, who led the political campaign to defeat the Equal Rights Amendment (ERA), an amendment to the United States Constitution that would have added sex as an explicitly prohibited ground of discrimination under the Equal Protection Clause.³³ Schlafly famously campaigned against the ERA as a threat to the traditional family, and women's role and economic security as housewives or homemakers. She also explicitly rejected the desirability of feminist change.³⁴

But there are numerous other examples of this same form of "anti-feminist" politics on the part of women or "women against feminism." In 2014, a blog with that name appeared and immediately gained a wide following—40,000 endorsements on Facebook, and a presence on X (formerly Twitter) and Wikipedia.³⁵ The movement also received significant media coverage in the United States and the United Kingdom, and had prominent female defenders.

Some self-styled "women against feminism" argued that feminist goals were now so mainstream that feminism itself was unnecessary and feminists were largely pre-occupied with marginal issues.³⁶ Others suggested that feminism had gone too far or given women "special privileges."³⁷ Another theme

³² Fariba Parsa, *Mahsa Amini's Legacy: A New Movement for Iranian Women*, SADA (Sept. 19, 2023), <https://carnegieendowment.org/sada/90583> [<https://perma.cc/K9XN-JPAQ>]; see also Nazanin Boniadi, *Iranian Women Are Still Fighting*, TIME (Sept. 14, 2023), <https://time.com/6313431/iran-women-defiant-amini-anniversary/> [<https://perma.cc/6WBX-DKH3>].

³³ See *Phyllis Schlafly Still Championing the Anti-Feminist Fight*, NPR (Mar. 30, 2011), <https://www.npr.org/2011/03/30/134981902/phyllis-schlafly-still-championing-the-anti-feminist-fight> [<https://perma.cc/UDD9-9JSG>]. See generally JANE MANSBRIDGE, *WHY WE LOST THE ERA* (1986) (discussing the broader history of the ERA); JULIE C. SUK, *WE THE WOMEN: THE UNSTOPPABLE MOTHERS OF THE EQUAL RIGHTS AMENDMENT* (2020) (same).

³⁴ See *Phyllis Schlafly Still Championing the Anti-Feminist Fight*, *supra* note 33.

³⁵ Oana Crusmac, *The Social Representation of Feminism Within the On-line Movement "Women Against Feminism"*, 19 ROM. J. COMM'C'N & PUB. RELS. 5, 13 (2017); see also Charlotte Alter, *#WomenAgainstFeminism Is Happening Now*, TIME, <https://time.com/3018760/womenagainstfeminism-is-happening-now/> [<https://perma.cc/G7EB-AXG5>] (July 30, 2014) (explaining the origin of the viral hashtag "womenagainstfeminism").

³⁶ See, e.g., Angela Epstein, *Why Are Feminists So Unpleasant to Women?*, THE TELEGRAPH (Oct. 12, 2015), <https://www.telegraph.co.uk/news/politics/11928533/Why-are-feminists-so-unpleasant-to-women.html> [<https://perma.cc/TQ38-TFN8>] (arguing that modern feminists pick "petty" fights and are unpleasant to talk to because they have run out of valid gender causes to stand behind).

³⁷ Crusmac, *supra* note 35, at 19–20.

was the belief that feminists were uncivil, intolerant, and largely focused on justifying their own ongoing relevance.³⁸

Women's expanding role in democratic politics has likewise seen the simultaneous rise of women as both defenders, and antagonists, of democracy. During the Arab Spring, women played a notable role in public protests calling for democratic reform in Bahrain, Egypt, Libya, Tunisia, and Yemen.³⁹ They were crucial to democratic constitutional reform efforts in Tunisia, representing more than a quarter of delegates at the 2011 Constituent Assembly to draft a new democratic constitution for Tunisia.⁴⁰ Women led—and were equally represented under parity requirements—in recent efforts to adopt a more democratic constitution in Chile.⁴¹ And when President Trump was elected in 2016, millions of American women took to the streets to defend women's rights and American democracy against the threats posed by the first Trump administration.⁴²

At the same time, as voters, women have also played a central role in the erosion of democracy by supporting illiberal populist parties and leaders willing to attack democratic constitutional norms.⁴³ In the United States, in 2016, 39% of American women voted for President Trump; and in 2024, 45% of women.⁴⁴ In Hungary, by 2021, 60% of Fidesz supporters were women, and the majority of first time female voters supported Fidesz.⁴⁵ In Poland, the Law and Justice Party (PiS) drew more support from women than men in 2015, and

³⁸ See, e.g., Epstein, *supra* note 36.

³⁹ KENDRA HEIDEMAN & MONA YOUSSEF, WILSON CTR., REFLECTION ON WOMEN IN THE ARAB SPRING 1 (2012), https://www.wilsoncenter.org/sites/default/files/media/documents/publication/International%20Women%27s%20Day%202012_4.pdf [<https://perma.cc/2FDE-EKCK>].

⁴⁰ *Id.*; NANAKO TAMARU, OLIVIA HOLT-IVRY & MARIE O'REILLY, BEYOND REVOLUTION: HOW WOMEN INFLUENCED CONSTITUTION MAKING IN TUNISIA: CASE STUDY 1 (2018), https://www.inclusivesecurity.org/wp-content/uploads/2018/03/Beyond-Revolution_Constitution-Making-in-Tunisia.pdf [<https://perma.cc/4RLJ-U366>].

⁴¹ Rosalind Dixon & Marcela Prieto Rudolphy, *Parity Constitutionalism*, 13 GLOB. CONSTITUTIONALISM 210, 210, 215 (2024).

⁴² Susan Chira & Yamiche Alcindor, *Defiant Voices Flood U.S. Cities as Women Rally for Rights*, N.Y. TIMES (Jan. 21, 2017), <https://www.nytimes.com/2017/01/21/us/women-march-protest-president-trump.html> [<https://perma.cc/7T3F-TNRY>].

⁴³ See PAOLA BACCHETTA & MARGARET POWER, RIGHT-WING WOMEN: FROM CONSERVATIVES TO EXTREMISTS AROUND THE WORLD 1–13 (2002) (examining a broader history of the phenomenon of women supporting the erosion of democracy through supporting illiberal populist leaders and agendas).

⁴⁴ *An Examination of the 2016 Electorate, Based on Validated Voters*, PEW RSCH. CTR. (Aug. 9, 2018), <https://www.pewresearch.org/politics/2018/08/09/an-examination-of-the-2016-electorate-based-on-validated-voters/> [<https://perma.cc/U7UQ-KEFZ>]; Meredith Conroy, Tia Yang & Katie Marriner, *What the Gender Gap Tells Us About Trump's Win*, ABC NEWS (Nov. 19, 2024), <https://abcnews.go.com/538/gender-gap-tells-us-trumps-win/story?id=115996226> [<https://perma.cc/H4JA-NMAA>].

⁴⁵ REPUBLIKON INTÉZET, 20 YEARS OF FIDESZ CORE VOTERS 5–6 (2023), https://en.republikon.hu/media/123302/Fidesz_magstavazok_final_v2_angol.pdf [<https://perma.cc/WUB2-CEGP>].

by 2019 maintained a 43% female voter base.⁴⁶ Similarly, in India, in 2019, 46% of women voted for the Bharatiya Janata Party (BJP) and its allies, compared to 44% of men.⁴⁷ All these leaders and parties have also ignored longstanding democratic norms and conventions, and adopted policies eroding political rights and freedom, and institutional checks and balances.⁴⁸ And although this may not be why women voted for these candidates, the degree to which support from female voters underpinned their political success is still notable.

Women have also served as presidents and prime ministers in a range of illiberal, competitive authoritarian regimes. Indeed, their role in this context underscores the many historical antecedents for the current wave of women as agents or tools of democratic erosion. Take female heads of government in South Asia: In India, from 1975 to 1977, Prime Minister Indira Gandhi famously imposed an “emergency” regime involving broad restrictions on civil liberties, and political rights and freedoms.⁴⁹ In Bangladesh, Prime Minister Sheikh Hasina was the longest-serving prime minister in the country’s history, but at the expense of true multi-party electoral competition.⁵⁰ And as Part IV explores in more detail, women are now at the helm of several illiberal, far-right parties, and have been heads of state in a range of modern hybrid regimes.

Women’s rights—especially women’s rights to descriptive representation—have played a similar role in enhancing democracy, and its support

⁴⁶ Shaun Walker, *Poland’s Drift to Right Divides Young Male and Female Voters*, THE GUARDIAN (Oct. 8, 2019), <https://www.theguardian.com/world/2019/oct/08/Poland-election-drift-to-right-divides-young-male-and-female-voters> [https://perma.cc/949N-S2GM].

⁴⁷ Ashish Ranjan, *How ‘Naari Shakti’ Propelled PM Narendra Modi to Power*, INDIA TODAY (May 24, 2019), <https://www.indiatoday.in/elections/lok-sabha-2019/story/election-results-2019-narendra-modi-1533350-2019-05-23> [https://perma.cc/FX2P-MRZT].

⁴⁸ See generally DIXON & LANDAU, *supra* note 12; TOM GINSBURG & AZIZ Z. HUQ, *HOW TO SAVE A CONSTITUTIONAL DEMOCRACY* (2018).

⁴⁹ Jhumur Ghosh, *Indira Gandhi’s Call of Emergency and Press Censorship in India: The Ethical Parameters Revisited*, 7 GLOB. MEDIA J. (INDIAN ED.) 1, 2 (2017); Prajakta R. Gupte, *India: “The Emergency” and the Politics of Mass Sterilization*, 22 ED. ABOUT ASIA 40, 40 (2017).

⁵⁰ Meghna Bali, Tanbirul Miraj Ripon & Som Patidar, *Bangladesh’s Election Sees the Nation’s Iron Lady Sheikh Hasina Tighten Her Grip on Power*, ABC NEWS (Jan. 8, 2024), <https://www.abc.net.au/news/2024-01-09/sheikh-hasina-wins-fifth-term-as-bangladesh-pm/103293042> [https://perma.cc/HC4Y-3WFF] (reporting that Sheikh Hasina’s regime was violent against dissenters, including using excessive force, mass arrests, killings, and that many Bangladeshis do not believe the elections were fair); *Bangladesh’s Hasina Tightens Grip as ‘Dream of Multiparty Democracy Shattered’*, BENAR NEWS (Aug. 1, 2024), <https://www.benarnews.org/english/news/bengali/election-follow-01082024123337.html> [https://perma.cc/K7KY-AZRS] (explaining that Bangladesh was “on the brink” of one-party government after the opposition party boycotted the 2024 election out of a belief that it was rigged). In August 2024, Sheikh Hasina resigned after weeks of widespread protests calling for her ouster. Ashok Sharma & Krutika Pathi, *Ouster of Bangladesh’s Prime Minister Will Test India’s Regional Power, with Beijing’s on the Rise*, AP NEWS (Aug. 7, 2024), <https://apnews.com/article/india-bangladesh-sheikh-hasina-china-ouster-08598a74d25cde8cb71e7549640dfaa2#> [https://perma.cc/E975-VHBS].

among voters, and eroding commitments to multi-party democracy. In Chile, for example, the commitment to gender parity in recent constitution-making processes undoubtedly increased public trust in and support for the attempt at democratic constitutional change.⁵¹ But in India, the promise to expand women's representation in the Lok Sabha and state assemblies may ultimately contribute to efforts by Modi to erode norms of free and fair, multi-party elections.⁵²

II. ABUSIVE FEMINISM: DEFINITIONS AND VARIANTS

How should we understand these patterns, or this complex relationship, between women's political empowerment and the advancement *and* erosion of at least certain understandings of gender equality and democracy? On one level, they may simply reflect the diversity of women's perspectives and the degree to which women, like men, support a range of different political projects. Women may be feminists or anti-feminists, democrats or authoritarians. Knowing this, one would expect political leaders to appeal to women voters through a range of discourses or strategies.

Section A of this Part explains the foundation for what I call "abusive feminism."⁵³ It also explores the relationship between abusive feminism and democracy, and abusive forms of constitutionalism that erode the "democratic minimum core". Part B focuses on the connection between abusive feminism and the erosion of broader commitments to rights to freedom and equality, including the notion of a "feminist minimum core."⁵⁴ Part C outlines the forms of abusive feminism.⁵⁵

A. The Makeup of Abusive Feminism: Abusive Constitutionalism and the Democratic Minimum Core

There are clear tensions in this kind of multi-pronged appeal to women voters: the language of feminism and anti-feminism does not often coincide. And it is difficult simultaneously to defend democracy and openly attack its foundations. One way to resolve this tension, however, is for political leaders to embrace the *language* of political equality and democracy—and especially the importance of women's descriptive representation—but take a highly variable approach to the implementation of these ideals.

In some cases, political leaders may genuinely seek to advance commitments to equality and democracy including through the promotion of women's

⁵¹ See Dixon & Rudolphy, *supra* note 41, at 215.

⁵² See Dixon & Karwa, *supra* note 10.

⁵³ See *infra* notes 56–68.

⁵⁴ See *infra* notes 68–72.

⁵⁵ See *infra* notes 74–94.

rights and descriptive representation. And in doing so, they can hope and expect to win support from feminist and pro-democratic voters. But in other cases, they may attempt something quite different. Political leaders may attempt to keep these voters on their side, and at the same time, send subtle messages to voters with more illiberal or authoritarian mindsets that they are willing to advance their policy positions and preferences. To accomplish this, leaders simply need to use the language of political equality and democracy, but deprive that language of all meaningful substance or effect. That is, they must use the language of feminism and women's rights, but in an "abusive" way—that effectively undermines, rather than advances, substantive commitments to democracy and gender equality.

"Abusive feminism," of this kind, is a close relative of what is often described as a form of "gender," "pink," or "purple" washing.⁵⁶ Abusive feminism is the superficial invocation of the language of gender equality, without any accompanying commitment to substantive equality or representation, especially for poor, marginalized, and minority women. It also involves a broader range of potential mechanisms—including the selective and acontextual use of ideas about gender equality.

In this sense, abusive feminism follows a similar logic to "abusive constitutional borrowing," a phenomenon David Landau and I define as involving a willingness on the part of would-be authoritarian actors to use the language of constitutional democracy, but then to implement it in a manner that is highly superficial, selective, acontextual, or anti-purposive in nature.⁵⁷ But it is also broader—in that it may involve the invocation of feminist ideals in ways that serve *either* to erode core democratic norms *or* broader commitments to substantive gender equality. In this latter context, abusive feminism closely re-

⁵⁶ See, e.g., Jacqueline Maley, *Barbie's Oscars Snub Shows Why We Can't Settle for Pink-Washing*, SYDNEY MORNING HERALD (Jan. 26, 2024), <https://www.smh.com.au/culture/movies/barbie-s-oscars-snub-shows-why-we-can-t-settle-for-pink-washing-20240125-p5f066.html> [<https://perma.cc/6PWR-BUTH>] (explaining the implications of the Oscars not considering *Barbie*'s director, Greta Gerwig, and lead actor, Margot Robbie, for an award while giving an award to a supporting male actor, Ryan Gosling); Jacqueline Maley, *Italy's First Female PM Says Being a Woman Has Helped. Is She Right?*, SYDNEY MORNING HERALD (Oct. 1, 2022), <https://www.smh.com.au/politics/federal/italy-s-first-female-pm-says-being-a-woman-has-helped-is-she-right-20220929-p5bm4i.html> [<https://perma.cc/P75Z-79AZ>] (describing how the policies of far-right Italian Prime Minister Giorgia Meloni will harm women despite much of her campaign focusing on her identity as a woman); Taís Penteadó, *The Political Economy of the Brazilian Gender Equality Doctrine: Toward an Antisubordination-Based Jurisprudence of Care*, *Journal of Law and Political Economy* (forthcoming, 2025) (critically examining the impact of two Brazilian Supreme Court decisions affecting women's labour rights).

⁵⁷ See DIXON & LANDAU, *supra* note 12, at 36–55.

sembles the kind of *misappropriation* of human rights discourse that often targets the rights of women and sexual minorities.⁵⁸

In conceptualizing abusive constitutionalism, Landau and I focus on the impact of certain anti-democratic tactics on what we call the “democratic minimum core.”⁵⁹ That is, we suggest that abusive constitutionalism involves practice that adversely impacts a fairly thin or minimal conception of democracy, which depends on a commitment to: (1) regular, free, and fair multi-party elections; (2) political rights and freedoms, and (3) a set of institutional checks and balances necessary to uphold (1) and (2). The narrowest version of abusive feminism could also be viewed as simply a sub-species of this kind of abusive constitutionalism—albeit one focused on women’s political rights and freedoms. That is, it could be viewed as involving the invocation of discourses of gender equality in ways that serve to erode the democratic minimum core.

A broader conception would include attention to practices that undermine “thicker,” more substantive commitments to democracy, including a broader range of civil and social rights protections either for women or more generally. The basic logic of abusive feminism, in this context, is the same. It involves the superficial, selective, acontextual, or anti-purposive use of liberal democratic ideas and language in ways that serve in practice to erode liberal democratic ideals. The same logic underpins human rights misappropriation: radical superficiality and selectivity are key hallmarks of this practice.⁶⁰

Even within this broader variant of abusive feminism, there may be different conceptions of the relevant yardstick for abuse. For some, the focus may be on the weaponization of women’s descriptive representation as a tool for undermining women’s substantive rights to health, safety, and equality. There is also a close connection between women’s social and political equality, and hence the erosion of commitments to liberalism and democracy in this context. Indeed, although conceptually distinct, in practice liberalism and democracy often strengthen or erode together.⁶¹

⁵⁸ See de Búrca & Young, *supra* note 11, at 205–07; Young, *supra* note 11, at 2; Katharine G. Young, *Human Rights Originalism*, 110 GEO. L.J. 1097, 1159 (2022); Marta R. de Assis Machado, *Antiabortion Legal Mobilization in Brazil: Human Rights as a Field of Contention*, 21 INT’L J. CONST. L. 308, 308–15 (2023) (analyzing the legal strategies of the Brazilian anti-abortion movement and its appropriation of human rights discourse).

⁵⁹ See DIXON & LANDAU, ABUSIVE CONSTITUTIONAL BORROWING, *supra* note 12, at 23; Dixon & Landau, *Transnational Constitutionalism*, *supra* note 11; Landau & Dixon, *Abusive Judicial Review*, *supra* note 12.

⁶⁰ See de Búrca & Young, *supra* note 12, at 211, 216; Young, *supra* note 58; Young, *supra* note 11, at 4.

⁶¹ DIXON & LANDAU, ABUSIVE CONSTITUTIONAL BORROWING, *supra* note 12, at 23; Rosalind Dixon & David Landau, 1989–2019: *From Democratic to Abusive Constitutional Borrowing*, 17 INT’L J. CONST. L. 489, 490 (2019).

Another yardstick would involve a broader range of civil rights, including rights to racial equality and religious freedom. Some historians and critical legal theorists, for instance, have explored the ways in which women played a role in maintaining systems of colonialism and racial hierarchy, including formalized race-based segregation in the United States, and certain pro-feminist discourses of maternal authority or concern.⁶² And although some feminists point to a genuine concern about the need to balance competing rights to religious and personal freedom for women,⁶³ others have criticized the use of feminist discourse—and women’s voices—to target Islamic religious freedoms and practices, labeling this a form of “femonationalism”⁶⁴ or “femocratic” in nature.⁶⁵

Other approaches still might focus on the use of feminist discourses as part of a broader neo-liberal project of “girlboss feminism”⁶⁶ in ways that mean that commitments to women’s descriptive representation serve to reinforce rather than challenge the capitalist structures that underpin current class and race hierarchies, and the subordination of poor women and women of color. Indeed, abusive feminist dynamics of this kind could be analogized to the ways in which commitments to the representation of racial minorities can be commodified, and appropriated, to legitimize and advance the interests of white social and economic institutions—or the dynamics of “racial capitalism.”⁶⁷

The key difference is that, for these broader yardsticks, there is often legitimate scope for disagreement as to what constitutes an abusive versus genuinely egalitarian usage of feminist discourse. One of the defining features of the “democratic minimum core,” is that at least conceptually, it is *not* susceptible to reasonable disagreement. Of course, that is not true at the margins, or in the concrete implementation of the idea. But in its basic formulation, the whole idea of the democratic minimum core is that it reflects an overlapping consensus among all reasonable democratic theories as to what at minimum democra-

⁶² See generally ELIZABETH GILLESPIE McRAE, *MOTHERS OF MASSIVE RESISTANCE: WHITE WOMEN AND THE POLITICS OF WHITE SUPREMACY* (2018) (explaining the significant role of white segregationist women in sustaining racial segregation).

⁶³ See generally AYAAN HIRSI ALI, *HERETIC: WHY ISLAM NEEDS A REFORMATION NOW* (2015).

⁶⁴ See, e.g., FARRIS, *supra* note 14; see also CHRISTINE DELPHY, *SEPARATE AND DOMINATE: FEMINISM AND RACISM AFTER THE WAR ON TERROR* 107–24 (David Broder trans., 2015).

⁶⁵ See Sophie Boulter, *When Fascism Is Female*, PUB. SEMINAR (Aug. 31, 2022), <https://publicseminar.org/essays/publicseminar-org-2022-08-when-fascism-is-female/> [<https://perma.cc/Z9T7-3BTN>] (describing how female far-right leaders use women’s rights language to push xenophobic and Islamophobic policies).

⁶⁶ See Muskaan Arshad, *Girlboss, Gaslight, Gatekeep: Feminism in a Capitalist World*, HARV. POL. REV. (Mar. 26, 2022), <https://harvardpolitics.com/girlboss-gaslight-gatekeep/> [<https://perma.cc/3VEL-NKGX>] (explaining how “girlboss feminism” is problematic because it utilizes choice feminism and does not address racialized misogyny). See generally SERENE KHADER, *FAUX FEMINISM: WHY WE FALL FOR WHITE FEMINISM AND HOW WE CAN STOP* (2024) (examining the problematic nature and limitations of girlboss feminism).

⁶⁷ Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2153 (2013).

cy is, or requires, and a similar overlap in the actual practices and institutions of real-world democracies.⁶⁸

B. The Feminist Minimum Core

For liberal rights and norms, in contrast, there is broader potential scope for disagreement about the scope of and balance to be struck between competing rights to freedom, dignity, and equality, and often this disagreement is reasonable—for countries and democratic citizens.⁶⁹ The same is true for feminism and notions of gender equality. It *may* be possible to identify a “feminist minimum core,” with which no reasonable feminist theorist could disagree. For example, the idea that feminism entails a commitment to equal freedom and dignity for all women and to interrogating the degree to which current legal, political, economic, and social structures advance (or impede) access to freedom and dignity of this kind. This could also be understood to entail at least some minimum form of direct representation, legally guaranteed access to reproductive rights, economic security (including via entitlements to parental leave and affordable child care), and freedom from family and sexual violence.⁷⁰

But this “feminist minimum core” is likely to be relatively thin, in part because of wide-ranging disagreements among feminists about the relative scope and priority to be given to different rights. Consider, for example, sexual agency versus freedom from violence (agency versus dominance feminism), and equality of opportunity versus equal treatment for the provision of care work (liberal versus cultural feminism).⁷¹ The different life experiences of women mean that it is also inherently reasonable for women to have different conceptions of what gender equality, or women’s equal dignity means within

⁶⁸ DIXON & LANDAU, ABUSIVE CONSTITUTIONAL BORROWING, *supra* note 12, at 23; DIXON, RESPONSIVE JUDICIAL REVIEW, *supra* note 12, at 61.

⁶⁹ DIXON, RESPONSIVE JUDICIAL REVIEW, *supra* note 12, at 23. See generally JEREMY WALDRON, LAW AND DISAGREEMENT (1999) (explaining the role of and methods to resolve reasonable disagreement about justice and individual rights).

⁷⁰ See Knop & Riles, *supra* note 1, at 13–14 (noting attempts to construct a similar core set of ideas around feminist diplomacy, as involving “rights,” “representation,” and “reallocating”).

⁷¹ Dixon, *Feminist Disagreement*, *supra* note 19, at 286; Dixon & Loughland, *supra* note 19, at 132. To the liberal feminist position, one might even add here the potential disagreement from what Richard Posner (provocatively) labels “conservative feminism.” See Richard A. Posner, *Conservative Feminism*, 1989 U. CHI. LEGAL F. 191, 191 (1989).

certain broader parameters.⁷² This is, in part, what is underscored by intersectional or anti-essentialist feminist ideas.⁷³

It will often be difficult to identify the precise boundaries of abusive feminism in its broadest forms. But it clearly exists—even with this challenge of precise boundary drawing.

C. Narrower & Broader Forms of Abusive Feminism

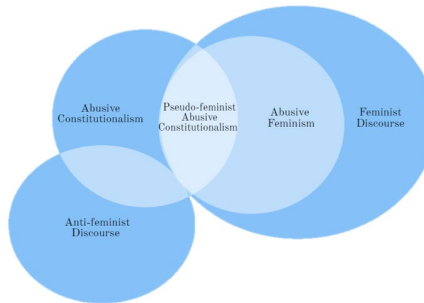


Figure 1: Narrower v. Broader Versions of Abusive Feminism

Narrower and broader forms of abusive feminism may also work together as complements, or as substitute tactics on the part of would-be authoritarians. In some cases, would-be authoritarian actors may seek to advance women's descriptive representation as a form of bribe to female voters to support their efforts to undermine the democratic minimum core.⁷⁴ If they succeed, their increasing political dominance may mean that, over the long run, they largely ignore their earlier promises of greater substantive gender equality.⁷⁵ But their immediate focus is on advancing their own power, not attacking women's rights.

In other cases, would-be authoritarians may see immediate electoral benefits to attacking women's civil and political rights: they may perceive voters as supporting a broad suite of illiberal, anti-democratic measures, and hence seek to advance measures that undermine both the democratic minimum core and women's substantive representation and equality. If women are nominated as candidates, or officeholders, in this context it is also for abusive feminist motives in both the narrow and broad sense.

⁷² See, e.g., Rosalind Dixon & Martha Nussbaum, *Abortion, Dignity and a Capabilities Approach* 6–9 (U. Chi. Pub. L. & Legal Theory, Working Paper No. 345, 2011) (discussing potential limits on the scope for reasonable disagreement in the abortion context); DIXON, *RESPONSIVE JUDICIAL REVIEW*, *supra* note 12, at 23.

⁷³ ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* 94 (1990).

⁷⁴ Rosalind Dixon, *Constitutional Rights as Bribes*, 50 *CONN. L. REV.* 767, 784 (2018).

⁷⁵ *Id.*

Abusive feminism can likewise take stronger and weaker forms. The strong form of abusive constitutionalism, or borrowing, involves the *knowing* or *intentional* misuse of liberal democratic norms or ideas for anti-democratic ends.⁷⁶ This aligns with the common usage of “abuse,” which involves doing something for the wrong purpose,⁷⁷ or the notion of an “abuse of right” in the civil law tradition, which involves the knowing over-enforcement of a formal legal right for an illegitimate purpose.⁷⁸ And it helps distinguish truly abusive actions from adjacent forms of political or constitutional “hardball,” which may be legitimate in many democratic settings.⁷⁹ But it can sometimes be hard to identify the motives or mental state of would-be authoritarian or illiberal actors. And hence, the adverse effects of a measure can be an important indicator or source of evidence that they were in fact intended to be abusive.⁸⁰

Adverse effects alone could also be treated as evidence of abusive constitutionalism, or feminism, in some cases—or at least a weaker form of abusive practice. The language of abuse may not carry the same normative weight, or content, in this context as in the case of stronger forms of abusive feminism because the actors involved are not necessarily knowingly or intentionally seeking to undermine equality and democracy. But if their actions have this effect, there is still value to identifying and calling out those effects as problematic. One way to do so is through the language of abusive feminism.

The same is true in anti-discrimination law. Often, a focus on intent alone obscures the experiences of the perpetrator and the harms they experience. Hence it is too narrow to capture the full range of practices that undermine commitments to equality.⁸¹ What is needed, therefore, is a dual focus on intent and effects in any equality-based project.

It is still important to distinguish abusive feminism from the related—but distinct—phenomenon of feminist efforts having unintended, or even perverse, consequences. Sometimes policies and programs are designed with feminist aims in mind, but actually serve to reinforce existing gender norms, expectations, and binaries. They may also disadvantage rather than advance women’s

⁷⁶ DIXON & LANDAU, ABUSIVE CONSTITUTIONAL BORROWING, *supra* note 12, at 71; Landau & Dixon, *Abusive Judicial Review*, *supra* note 12, at 1325–26.

⁷⁷ *Abuse*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/abuse> [<https://perma.cc/DE8R-2Y8D>].

⁷⁸ JULIE C. SUK, AFTER MISOGYNY: HOW THE LAW FAILS WOMEN AND WHAT TO DO ABOUT IT 74–86 (2023).

⁷⁹ Mark Tushnet, *Constitutional Hardball*, 37 MARSHALL L. REV. 523, 531 (2004).

⁸⁰ Landau & Dixon, *Abusive Judicial Review*, *supra* note 12, at 1325. *Compare* Gomillion v. Lightfoot, 364 U.S. 339, 340 (1960) (holding that boundaries of an electoral district drawn in order to disenfranchise Black voters violated the Fifteenth Amendment), *with* Yick Wo v. Hopkins, 118 U.S. 356, 364–65 (1886) (finding that a prima facie neutral law prejudicially impacted Chinese citizens in violation of the Fourteenth Amendment).

⁸¹ TARUNABH KHAITAN, A THEORY OF DISCRIMINATION LAW 45–89 (2015).

social and economic security. Maternity leave requirements, for example, can make women more expensive to hire than male colleagues, and hence perpetuate forms of gender-based discrimination in hiring.⁸² This is one reason to insist that such leave requirements be gender-neutral, even though this can have other adverse effects on the achievement of gender equality.⁸³ Breast-feeding spaces are likewise often driven by a feminist concern to promote women’s economic inclusion, and capacity to return to paid work, but can have the effect of perpetuating a view that breast-feeding is only appropriate in private rather than public spaces.⁸⁴ These effects are deeply concerning, and important for feminists to pay attention to in the design and redesign of programs and policies. But unless they are foreseen by relevant actors, they are best viewed as related but distinct from the kind of *knowing misuse* of feminist ideas that underpins the concept of abusive feminism.

Table 1: Variants of Abusive Feminism

Impacts	Yardstick	Degree of intent
Narrow/strong	Erosion of democratic minimum core	Intent standard
Broad/weak	Erosion of broader equality rights	Impact standard

There are a wide range of potential targets for abusive feminist tactics. Abusive tactics may focus on women’s *descriptive* representation,⁸⁵ or the election or appointment of individual women, or else, the adoption of formal guarantees of women’s rights and representation in the form of electoral or legislative lists or quotas, or specialist gender equality bodies.

Both individual appointments and formal rights to representation can also involve the presidency or executive branch, legislatures, courts, and fourth branch institutions, among others. But for strong forms of abusive feminism, there is the further question of *whose* intent counts for this purpose.

In some cases, women themselves may be the relevant actors seeking to deploy gender as a means of advancing anti-democratic or anti-egalitarian

⁸² Christine Jolls, *Antidiscrimination and Accommodation*, 115 HARV. L. REV. 642, 695 (2001).
⁸³ See, e.g., Justin Wolfers, *A Family-Friendly Policy That’s Friendliest to Male Professors*, N.Y. TIMES (June 24, 2016), <https://www.nytimes.com/2016/06/26/business/tenure-extension-policies-that-put-women-at-a-disadvantage.html> [<https://perma.cc/7KAR-T4AA>] (finding that a gender-neutral tenure-extension policy, implemented at universities to help women of child-bearing age, inadvertently led to more male professors being tenured over their female colleagues).
⁸⁴ Mathilde Cohen, *The Right to Express Milk*, 33 YALE J.L. & FEMINISM 47, 85 (2021).
⁸⁵ See *Political Representation*, STAN. ENCYC. OF PHIL., <https://plato.stanford.edu/entries/political-representation/> [<https://perma.cc/WMB3-WCZA>] (Aug. 29, 2018) (defining “descriptive representation” as “the extent to which a representative resembles those being represented”).

ends. But in others, women may be the instruments of efforts by male leaders to advance those ends—or the objects rather than agents of abusive feminism. Noting this difference can be extremely important. If women are simply the instruments, not agents, of abusive feminism, there is arguably a double feminist harm. Not only does this pose a risk to general commitments to gender equality, it fundamentally undermines the equal dignity of those women as (Kantian) subjects, rather than objects.⁸⁶

Overlaid with this question of agency and intent are questions of timing. Sometimes practices may begin as abusive feminist in aim but become more genuinely feminist in aim or effect. In other cases, feminist actors may be co-opted or constrained with time, so that their role becomes progressively abusive rather than genuinely feminist in nature. The timing of abusive feminism may also arise early in the process of illiberal or anti-democratic change, as a means of reducing opposition to this change. Or, it may arise later in the process as a means of reducing backlash against an illiberal, authoritarian regime, or electoral pressure for democratic restoration. The more women that are instruments, rather than agents, of abuse, the more susceptible they may also be to this kind of fluctuating political dynamic.

Abusive feminism can also involve the abuse of either popular or general feminist theoretical ideas or more specific forms of feminist *constitutional* norms and discourses.⁸⁷ “Feminist constitutionalism” involves a commitment to feminism, but also “transformation” of law and state power, and hence constitutional design, to advance the goal of gender equality, or gender-based change.⁸⁸ This involves rethinking our baseline for what counts as a “neutral” legal or constitutional baseline, and highlighting the degree to which existing legal and constitutional institutions reflect male experience and “the male point of view.”⁸⁹ It also involves an affirmative commitment to empowering women to play a role in social, political, and economic life, through measures such as those designed to ensure the effective protection against pornography, gendered hate speech, and gendered forms of violence and harassment, support or

⁸⁶ See IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* (Allen W. Wood ed., Yale Univ. Press 1998) (1795) (discussing Kantian dignity and the categorial imperative); see also Dixon & Nussbaum, *supra* note 72, at 3; Rosalind Dixon & Martha Nussbaum, *Children's Rights and a Capabilities Approach: The Question of Special Priority*, 97 CORNELL L. REV. 549, 579 (2012).

⁸⁷ See *supra* note 15 and accompanying text (discussing feminist constitutionalism generally).

⁸⁸ See generally RUTH RUBIO-MARÍN, *GLOBAL GENDER CONSTITUTIONALISM AND WOMEN'S CITIZENSHIP: A STRUGGLE FOR TRANSFORMATIVE INCLUSION* (2022); GENDER, SEXUALITY AND CONSTITUTIONALISM IN ASIA (Wen-Chen Chang, Kelley Loper, Mara Malagodi & Ruth Rubio-Marín eds., 2024); WOMEN, GENDER, AND CONSTITUTIONALISM IN LATIN AMERICA (Francisca Pou Giménez, Ruth Rubio Marín & Verónica Undurraga Valdés eds., 2024).

⁸⁹ See MACKINNON, *supra* note 15, at 161–63.

women's political representation, and state support for child care and women's economic equality.⁹⁰

Some of these commitments are also especially susceptible to abuse. Policies to support parental leave and child care, for example, are essential to the economic equality of women.⁹¹ But, they are also potential tools for populist governments and leaders to win increased electoral support. These policies often benefit middle-class as well as low-income voters and contribute to building political support for illiberal populist parties and governments.⁹² Without very careful design, gender quotas in politics can likewise be powerful tools for would-be authoritarian leaders to shore up political support and control. Often, they give disproportionate power to incumbent parties and governments to appoint or nominate women to roles in ways that then further consolidate the electoral and legislative dominance of incumbents.⁹³ This kind of abusive constitutional dynamic is also especially difficult to counter, given the strong support for quotas and measures of this kind in feminist *constitutional* thinking.⁹⁴

III. THE HOW AND WHY OF ABUSIVE FEMINISM

How and why does abusive feminism succeed as a tactic of illiberal, anti-constitutional change? One explanation lies in the tendency of many domestic and international actors to treat *formal* legal guarantees of gender equality, or women's rights, as by themselves evidence of a commitment to substantive gender equality—or to engage in a form of gender equality “formalism.”

Constitutional or human rights formalism of this kind is understandable, especially for voters with limited legal knowledge or time to assess government's implementation of rights. But it also comes at a clear cost. For one, it allows governments to make superficial promises to protect and promote women's rights, without any meaningful plan for their implementation. It also lays the foundations for abusive feminism. Namely, it allows would-be au-

⁹⁰ This is the essence of what Ruth Rubio-Marín labels a form of “gender transformative” constitutionalism. RUBIO-MARÍN, *supra* note 88, at 19.

⁹¹ Ruth Rubio-Marín, *The (Dis)establishment of Gender: Care and Gender Roles in the Family as a Constitutional Matter*, 13 INT'L J. CONST. L. 787, 787 (2015); SUK, *supra* note 78, at 180–210; Jaclyn L. Neo, *Constitutionalizing Care: How Can We Expand Our Constitutional Imaginary After Covid-19?*, 20 INT'L J. CONST. L. 1307, 1320 (2022).

⁹² See MARK TUSHNET & BOJAN BUGARIC, *POWER TO THE PEOPLE: CONSTITUTIONALISM IN THE AGE OF POPULISM* 81–104 (2021) (explaining populist rise to power in Hungary and Poland); see also WOJCIECH SADURSKI, *A PANDEMIC OF POPULISTS* 175–77 (2022) (fearing that the COVID-19 pandemic would strengthen authoritarian regimes).

⁹³ DIXON & LANDAU, *ABUSIVE CONSTITUTIONAL BORROWING*, *supra* note 12.

⁹⁴ See, e.g., Aili Mari Tripp & Alice Kang, *The Global Impact of Quotas: On the Fast Track to Increased Female Legislative Representation*, 41 COMPAR. POL. STUDS. 338, 338 (2008) (discussing gender quotas as a feminist constitutional measure).

thoritarian actors to make promises to women voters and rights groups, in exchange for broader political support, but without any real requirement that these promises be implemented.

For the international community, these trade-offs should be especially troubling and arguably easier to identify in advance. International governmental and non-governmental organizations (NGOs) have the time, resources, and expertise to study the implementation, as well as formal adoption of women's rights. They are also committed to their substantive, not just formal, protection. Yet many international actors, including women's rights organizations, seem prone to similar forms of rights formalism.⁹⁵ For instance, they celebrate the achievement of gender parity, or high levels of female representation in courts and parliaments, without attention to what it actually means for women's day-to-day lives, or the political interests and position of illiberal, authoritarian leaders.⁹⁶

Why? In some cases, international actors' basic mission may be tied to the promulgation and dissemination of formal gender equality guarantees. They therefore may be motivated to push for formal advances in women's rights, even where there is reason to think that those guarantees may not be honored, or worse, act as a form of cover for efforts to erode basic commitments to constitutional democracy. But for most international NGOs and activists, this is not the case. Their concern truly is with substantive as well as formal equality. And this has only increased as more feminists have entered positions of power and influence within governments, international governmental organizations, and NGOs.⁹⁷ The danger, therefore, seems to be one of mistaking form for substance, or becoming so embedded in formal structures aimed at promoting women's rights and representation that they lose sight of the ultimate substantive goal.⁹⁸

For women's descriptive representation, the abusive potential of their political or institutional role arguably stems from a range of pre-conceptions about women and women's leadership. Traditionally, women leaders often faced a range of negative attitudes and stereotypes about their competence or suitability for high political or legal office.⁹⁹ This has made it more difficult for

⁹⁵ Sarah Sunn Bush & Pär Zetterberg, *Gender Quotas and International Reputation*, 65 AM. J. POL. SCI. 326, 330 (2021).

⁹⁶ See, e.g., Timothy Longman, *Rwanda: Achieving Equality or Serving an Authoritarian State?* (discussing the response of the international community to high levels of female representation in Rwanda), in WOMEN IN AFRICAN PARLIAMENTS 133, 134 (Gretchen Bauer & Hannah E. Britton eds., 2006); Jennie E. Burnet, *Gender Balance and the Meanings of Women in Governance in Post-Genocide Rwanda*, 107 AFR. AFFS. 361, 378 (2008). See generally DIXON & LANDAU, ABUSIVE CONSTITUTIONAL BORROWING, *supra* note 12.

⁹⁷ See generally JANET HALLEY, PRABHA KOTISWARAN, RACHEL REBOUCHÉ & HILA SHAMIR, GOVERNANCE FEMINISM: AN INTRODUCTION (2018).

⁹⁸ *Id.*

⁹⁹ RAMONA VIJEYARASA, THE WOMAN PRESIDENT: LEADERSHIP, LAW AND LEGACY FOR WOMEN BASED ON EXPERIENCES FROM SOUTH AND SOUTHEAST ASIA 93 (2022).

women to gain access to high office and succeed once there. Because of this, some female leaders have also sought to downplay their gender as a dimension of their political identity.¹⁰⁰ In many countries, however, there has been a marked shift in general societal attitudes toward female leadership—toward the recognition of women as qualified and suitable for high office. Indeed, women leaders now sometimes benefit from a perception that they are likely to adopt a “better” kind of politics or leadership.¹⁰¹

First, as modern leaders, women often benefit from a perception that they are likely to approach their role in a caring way. This perception has some empirical basis. Women have historically performed the overwhelming majority of care work in our society as mothers, daughters, and as paid care workers. In most economies today, women continue to perform the majority of paid and unpaid care work. And there are several studies showing that women leaders are more likely to prioritize certain policy areas, such as healthcare and child care, relative to male colleagues.¹⁰²

Second, women may benefit from a perception that they are political or legal outsiders. This is a discourse often used by populist authoritarian leaders.¹⁰³ Yet it has special resonance in case of female political candidates because women have traditionally had limited access to political and other forms of high office, or are relative newcomers to legal and political powers. In some cases, it also reflects the ways in which current political and legal networks remain closed to women and people of color, or how women remain outsiders to informal sites of power. In either case, the perception can make it more difficult for women to win electoral office or gain appointment to high institutional office. When women do gain office, it can mean that they were perceived by voters as more likely to act in a principled or reformist way.

How true this is depends somewhat on how women leaders come to power. Historically, many women leaders have come to power in part because of their ties to male relatives—including their husbands or fathers.¹⁰⁴ In Asia, for

¹⁰⁰ *Id.* at 95.

¹⁰¹ *Id.* at 95, 98.

¹⁰² MINNA COWPER-COLES, GLOB. INST. FOR WOMEN'S LEADERSHIP, WOMEN POLITICAL LEADERS: THE IMPACT OF GENDER ON DEMOCRACY 8, 50–55 (2022), <https://www.kcl.ac.uk/giwl/assets/women-political-leaders.pdf> [<https://perma.cc/A78E-SCA3>].

¹⁰³ Jan-Werner Mueller, *How Populists Win When They Lose*, PROJECT SYNDICATE (June 15, 2017), <https://www.project-syndicate.org/commentary/populism-conservative-collaborators-by-jan-werner-mueller-2017-06> [<https://perma.cc/8SL6-X2UD>]; Pauline Jones, Anil Menon & Katherine Pearson, *Toward a Typology of Populists*, U. MICH. CTR. FOR POL. STUD. (Sept. 1, 2019), <https://cpsblog.isr.umich.edu/?p=2550> [<https://perma.cc/7493-WBQA>].

¹⁰⁴ Elisabetta De Giorgi, Alice Cavalieri & Francesca Feo, *From Opposition Leader to Prime Minister: Giorgia Meloni and Women's Issues in the Italian Radical Right*, 11 POL. & GOVERNANCE 108, 110 (2023); Kerry Baker & Sonia Palmieri, *Can Women Dynasty Politicians Disrupt Social*

instance, most early female leaders were the daughters or wives of male leaders who died or were assassinated in office.¹⁰⁵ These familial connections may have increased public trust in these female leaders, and at the same time, reduced the perception that they were true political outsiders.

Many newer generations of female leaders, however, lack these same family ties, and are hence perceived by the public as having greater potential to act as “reformers.”¹⁰⁶ There are also studies that show some support for this public perception.¹⁰⁷ United Nations Development Programme (UNDP) research, for example, suggests that women judges are less likely than male peers to engage in corrupt or unethical behavior.¹⁰⁸

International governmental organizations, NGOs, and women’s rights groups also often rely on these arguments as a means of promoting the case for women’s descriptive representation. For example, the London-based Global Institute for Women’s Leadership, a leading think tank in this area, calls for gender parity in politics in part by pointing towards evidence that indicates women leaders tend toward a style of leadership that is more inclusive, cooperative, less hierarchical, and likely to lead to “lower levels of corruption.”¹⁰⁹

Moreover, some of these ideas correspond to ideas within feminist theory, as well as feminist activism and practice. Cultural feminism, for instance, emphasizes the value of care and connection, as well as the degree to which women disproportionately perform this form of work. Hence, some cultural feminists also suggest that women leaders—including political representatives and judges—may be more likely than male counterparts to exhibit an “ethic of care.”¹¹⁰

The danger of these arguments, however, is that they may reinforce stereotypical views of female leaders’ behavior that can directly play into abusive feminist dynamics. For instance, it can mean that women are perceived as necessarily advancing more caring policies, when the effect of their appointment is to legitimate efforts to erode women’s rights, including access to reproduc-

Norms of Political Leadership? A Proposed Typology of Normative Change, 44 INT’L POL. SCI. REV. 122, 123 (2023).

¹⁰⁵ VIJEYARASA, *supra* note 99, at 98.

¹⁰⁶ Tiffany D. Barnes & Emily Beaulieu, *Women Politicians, Institutions, and Perceptions of Corruption*, 42 COMPAR. POL. STUD. 134, 136 (2019).

¹⁰⁷ See, e.g., *Why Women Are Less Likely to Be Corrupt Than Men*, THE ECONOMIST (Feb. 18, 2022), <https://www.economist.com/the-economist-explains/2022/02/18/why-women-are-less-likely-to-be-corrupt-than-men> [<https://perma.cc/BJ8Q-JMH7>].

¹⁰⁸ *In Africa, Women Judges Improve Trust in Courts, Bring Justice to the Less Privileged and Empower Women and Girls*, U.N. DEV. PROGRAMME (June 6, 2023), <https://www.undp.org/news/africa-women-judges-improve-trust-courts-bring-justice-less-privileged-and-empower-women-and-girls> [<https://perma.cc/UC3R-YCYD>].

¹⁰⁹ COWPER-COLES, *supra* note 102, at 8.

¹¹⁰ See, e.g., Suzanna Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 VA. L. REV. 543, 582 (1986).

tive healthcare. Or it can mean that women are more likely to be perceived as promoting principled decision-making and change, when in fact the impact of their candidature or appointment is to distract from a project of political self-entrenchment or democratic retrogression.

Another potential factor in the rise of abusive feminism, in some contexts, is the portrayal and self-portrayal of women leaders as “sexy” or physically attractive. These ideas are in some tension with the idea of women as caring or maternal in nature (except perhaps in a Freudian sense).¹¹¹ They are also potentially deeply gendered,¹¹² and in tension with (dominance) feminist critiques of the treatment of women, as objects of male desire.¹¹³ But younger female leaders, especially, are often described in these terms. There is also disturbing evidence that female candidates’ chances of electoral success may be tied to their perceived physical attractiveness.¹¹⁴

And not all feminist theory rejects these portrayals as inherently sexist or gendered. Agency feminists, for example, argue for the importance of women’s legal, political, and sexual agency as objects of male desire. Others have argued for a more complex understanding of the relationship between women’s oppression, desire, and agency. Critical legal studies scholars have relied on similar arguments in favor of “sexy dressing” by women as a means of reclaiming space for agency, pleasure, and experimentation for women, even in a world of power imbalances and abuse.¹¹⁵

Arguments of this kind can also play to the advantage of certain women—or those that appoint them, including those with abusive motives. Put simply, it can mean that, even if political leaders are involving in implementing fundamentally regressive—or illiberal, anti-democratic—change, they are still perceived by some voters as palatable, or even attractive figures. Or at the very least, it can mean that voters are slower to identify a particular political or institutional leader as an agent of regressive change.

A final contributor to abusive feminist dynamics may be the diversity and disagreement within contemporary feminist thought.¹¹⁶ Diversity of this kind is critically important to a feminist project that is inclusive and capable of speaking to the experiences, perspectives, and needs of all women. It underpins the

¹¹¹ Brandon Zang, *Is the Oedipus Complex Real?*, BRITANNICA (Sept. 20, 2020), <https://www.britannica.com/story/is-the-oedipus-complex-real> [https://perma.cc/8NP9-UMRF].

¹¹² See generally JULIA BAIRD, *MEDIA TARTS* (rev. & updated ed. 2021).

¹¹³ See generally CATHARINE A. MACKINNON, *ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES* (2006).

¹¹⁴ Jay Newton-Small, *Prettier Women Get Elected, Ugly Study Finds*, TIME (May 15, 2014), <https://time.com/99981/prettier-women-get-elected-ugly-study-finds/> [https://perma.cc/Z9HJ-TQWJ].

¹¹⁵ DUNCAN KENNEDY, *SEXY DRESSING ETC.* 195–96 (1995).

¹¹⁶ See, e.g., Shreya Atrey, *supra* note 15, at 616–17; Dixon, *Feminist Disagreement*, *supra* note 19, at 286 (same); Dixon & Loughland, *supra* note 19, at 132 (same).

idea of intersectional or “anti-essentialist” feminism. Diversity is also linked to deep-seated philosophical disagreements among feminists, especially second- and third-wave feminists, about the relative priority of agency versus security (agency versus dominance feminism), focus on the individual versus collective (liberal versus dominance feminism), notions of sameness versus difference (liberal versus cultural feminism), and difference versus domination (cultural versus dominance feminism).¹¹⁷ Indeed, disagreements of this kind reflect—as well as cross-cut—divisions between second- and third-wave feminists.

Feminists also disagree about the best way of connecting feminism to the rights of trans women.¹¹⁸ Specifically, they disagree whether trans women should be included in a commitment to eradicating gender-based subordination (dominance feminism), or else seen along with inter-sex and non-binary individuals as calling on us to rethink the whole notion of sex and gender, and the conceptual binaries on which these notions and notions of heterosexuality and homosexuality are constructed (post-structural feminism).¹¹⁹

But diversity and disagreement of this kind also makes it extremely difficult to determine the line between what is, or is not, a genuinely feminist approach. This is one reason I suggest the value of at least a provisional, tentative notion of a “feminist minimum core,” but there is far from any consensus around that idea to date. Would-be authoritarian and illiberal populist leaders are also surely aware of this, and the inherent malleability that diversity and disagreement of this kind gives to feminist ideas and discourse. They are often willing deliberately to exploit it for their own ends.¹²⁰

For feminist *constitutionalism* and human rights discourse, there is the additional challenge of interpretive disagreement within constitutional and international human rights law about what specific norms mean in practice. This disagreement is again a potential resource for abusive feminists. It means that there is even greater scope selectively and superficially to apply existing feminist constitutional or human rights norms, without the fear of being “called

¹¹⁷ See generally Ruth Bader Ginsburg, *Sex Equality and the Constitution*, 52 TUL. L. REV. 451 (1978) (explaining liberal feminism); CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT (1982) (explaining cultural feminism); Catharine MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS: J. WOMEN CULTURE & SOC’Y 515 (1983) (explaining dominance feminism); Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304 (1995) (explaining agency feminism).

¹¹⁸ As I note above, my definition of the feminism minimum core would suggest that the exclusion of trans women from the feminist movement should not be viewed as truly feminist in nature. See *supra* notes 20–21 and accompanying text.

¹¹⁹ See generally JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (2006) (explaining the post-structural feminist approach).

¹²⁰ Young, *supra* note 11, at 34.

out” for engaging in clearly illegitimate forms of interpretive practice.¹²¹ Indeed, Ruth Rubio-Marín suggests it is now one of the important bases for “regressive constitutional erosion” in the domain of gender rights. One of the two key bases for this erosion, Rubio-Marín argues, is a form of “constitutional-co-optation,” which involves “constitutional interpretations which amount to a subversion of the very logic of fundamental rights.”¹²² Co-optation of this kind is also far easier when there is wide acceptance of a range of different interpretive positions.¹²³

IV. ABUSIVE FEMINISM IN PRACTICE

Abusive feminism is arguably on the rise, along with the language of equality and democracy, simultaneous with the rollback of women’s rights and democracy in many countries worldwide. The basic logic of abusive feminism is that it offers a discourse that potentially can win the support of at least some female voters and activists, and at the same time, advance the interests of more traditional female voters and anti-constitutional populist actors. It therefore can serve as a bridge—or form of gender “glue”—between these two contradictory developments.¹²⁴

The practice of abusive feminism is therefore likely to wax or wane, along with these parallel political impulses. Recent years have seen it notably on the rise—including in the United States, Europe, Africa, and across Asia and Latin America.¹²⁵ The focus of this Part is on select recent developments in different regions of the world.¹²⁶ Section A focuses on the United States.¹²⁷ Section B discusses Europe.¹²⁸ Section C pertains to Africa.¹²⁹

¹²¹ This is one reason Katharine Young argues against the acceptance of an originalist turn in human rights law. See Young, *supra* note 58, at 1169.

¹²² Rubio-Marín, *supra* note 11, at 2.

¹²³ *Id.* at 4.

¹²⁴ Daria Colella, *Femonationalism and Anti-Gender Backlash: The Instrumental Use of Gender Equality in the Nationalist Discourse of the Fratelli d’Italia Party*, 29 GENDER & DEV. 269, 272, 284 (2021); Weronika Grzebalska, Eszter Kováts & Andrea Pető, *Gender as Symbolic Glue: How “Gender” Became an Umbrella Term for the Rejection of the (Neo)liberal Order*, POLITICAL CRITIQUE. ORG (Jan. 13, 2017), <https://politicalcritique.org/long-read/2017/gender-as-symbolic-glue-how-gender-became-an-umbrella-term-for-the-rejection-of-the-neoliberal-order/> [<https://perma.cc/6AMY-YMLJ>].

¹²⁵ For a useful beginning of the collective effort of documenting the intersection of abusive feminism and constitutional co-optation, see for example Dixon & Rudolph, *supra* note 41; Dixon & Karwa, *supra* note 10.

¹²⁶ See *infra* notes 130–299.

¹²⁷ See *infra* notes 130–191.

¹²⁸ See *infra* notes 192–267.

¹²⁹ See *infra* notes 268–299.

A. The United States

In the 2022 Supreme Court decision of *Dobbs v. Jackson Women's Health Organization*, the United States saw a major setback for women's reproductive rights.¹³⁰ By a six to three vote, the Court in *Dobbs* overruled its prior decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, which held that the Due Process Clause of the Fourteenth Amendment protects women from "undue burdens" on access to abortion prior to viability, and burdens that threaten their life and health thereafter.¹³¹ The Court also overruled the reasoning in *Roe v. Wade*, which linked the right of access to abortion to women's liberty and privacy.¹³² Instead, the Court held that the Due Process Clause protects only those liberty interests that have a long "history and tradition" of protection.¹³³ In doing so, the Court explicitly held that access to abortion was a matter to be decided by state legislatures, and the democratic process.¹³⁴

This reliance on democratic reasoning could itself be viewed as proto-abusive in nature. It is certainly difficult to square the Court's decision in *Dobbs* with its repeated refusal to scrutinize state processes of electoral redistricting that have led to manifest distortions in representation in state legislatures, or the fact that there are obvious "burdens of inertia" in the repeal of historical prohibitions on abortion in many states.¹³⁵ And to the extent this was clear to the Court in advance, the use of democratic language to justify results that were patently anti-democratic could even be viewed as a strong—if broad—form of abusive borrowing.

The decision could also be viewed as *abusive feminist* in at least the weak and broad sense. Although *Dobbs* purported to interpret a guarantee of liberty, it fundamentally undermined women's freedom to make (constitutionally protected) choices about the shape of their lives and future. It claimed simply to return the issue of access to abortion to the democratic process, but in ways that fundamentally ignored the electoral distortions and democratic burdens of inertia affecting abortion law in many states.¹³⁶ It did so in absolutist terms—without any attempt to balance the competing claims or rights of women and unborn life

¹³⁰ See 597 U.S. 215, 231–32 (2022) (holding there is no constitutional right to an abortion).

¹³¹ *Id.* at 231; 505 U.S. 833, 876 (1992), overruled by *Dobbs*, 597 U.S. at 231.

¹³² *Dobbs*, 597 U.S. at 231; *Roe v. Wade*, 410 U.S. 113, 153 (1973), overruled by *Dobbs*, 597 U.S. at 231.

¹³³ *Dobbs*, 597 U.S. at 231.

¹³⁴ *Id.* at 232.

¹³⁵ David Landau & Rosalind Dixon, *Dobbs, Democracy and Dysfunction*, 2023 WIS. L. REV. 1569, 1569.

¹³⁶ *Id.*; Melissa Murray & Katherine Shaw, *Dobbs and Democracy*, 137 HARV. L. REV. 728, 779 (2024).

in revisiting the *Roe/Casey* framework.¹³⁷ Similarly, Justice Alito's opinion for the Court selectively referenced the right to life as a basic human right, without putting that argument in the context of broader human rights commitments to women's health, autonomy, dignity, and security of the person.¹³⁸

Various briefs in the case likewise sought to make potentially abusive feminist arguments, in the form of "women protective" arguments against abortion.¹³⁹ Arguments of this kind now have a long history in the United States, and were originally designed to make the arguments of the pro-life movement seem more palatable to political moderates.¹⁴⁰ From the outset, they were arguments designed to protect fetal life, but disguised as arguments about women and women's rights. This is a quintessential feature of any abusive tactic: knowing misappropriation or bad faith.¹⁴¹

Feminist language was also arguably the target of abuse in the lead up to *Dobbs* and the nomination of Justice Amy Coney Barrett to replace Justice Ruth Bader Ginsburg on the Supreme Court.¹⁴² The two justices hold very different beliefs on a range of issues including gender.¹⁴³ Where Justice Ginsburg was a strong advocate for women's substantive representation, including through heightened constitutional scrutiny of gender-based classifications,¹⁴⁴ a

¹³⁷ See, e.g., Young, *supra* note 11, at 7–8. Some form of balance is also something Nussbaum and I suggest is necessary for respect for basic human dignity. See Dixon & Nussbaum, *supra* note 72, at 7; Dixon & Nussbaum, *supra* note 86, at 579. It also follows the approach of the Constitutional Court of Germany and is something Chief Justice Roberts could be seen as implicitly attempting to do (to at least some degree) in his narrower concurring opinion.

¹³⁸ Young, *supra* note 11, at 11–13.

¹³⁹ *Id.* at 51 n.286; Robert L. Tsai & Mary Ziegler, *Abortion Politics and the Rise of Movement Jurists*, 57 U.C. DAVIS L. REV. 2149, 2200–02 (2024). On "women protective" anti-abortion arguments, see Dixon & Nussbaum, *supra* note 72, at 12.

¹⁴⁰ Dixon & Nussbaum, *supra* note 86.

¹⁴¹ See de Búrca & Young, *supra* note 11, at 220; Young, *supra* note 11, at 40; DIXON & LANDAU, ABUSIVE CONSTITUTIONAL BORROWING, *supra* note 12, at 27; Landau & Dixon, *Abusive Judicial Review*, *supra* note 12, at 1326.

¹⁴² On one view, the use of abusive feminist tactics in this context was unnecessary: President Trump was largely guaranteed support from the Senate for any nominee he selected to replace Justice Ginsburg. But the political costs of achieving this could have varied, depending on the nominee, and hence his reliance on abusive feminist tactics could be seen as an attempt to reduce the political costs or capital associated with nominating a committed conservative, Catholic, and originalist to the Court. I am indebted to Vicki Jackson for pressing me on this point.

¹⁴³ Peter Baker & Maggie Haberman, *Trump Selects Amy Coney Barrett to Fill Ginsburg's Seat on the Supreme Court*, N.Y. TIMES, <https://www.nytimes.com/2020/09/25/us/politics/amy-coney-barrett-supreme-court.html> [https://perma.cc/F4AY-MQCY] (Oct. 15, 2020); Sterett, *supra* note 16.

¹⁴⁴ See, e.g., *United States v. Virginia*, 518 U.S. 515, 531 (1996) (holding gender-based discrimination will be held to intermediate scrutiny); Amanda L. Tyler, *Lessons Learned from Justice Ruth Bader Ginsburg*, 121 COLUM. L. REV. 741, 752, 755 (2021) (elaborating on Justice Ginsburg's earlier advocacy and work on this position).

broad reading of civil rights statutes (such as the Equal Pay Act),¹⁴⁵ and the constitutional guarantee of access to reproductive rights,¹⁴⁶ Justice Coney Barrett is a practicing Catholic who opposes any constitutional right of access to abortion.¹⁴⁷ And where Justice Ginsburg was an proponent of a dynamic approach to constitutional construction, Justice Coney Barrett is a professed constitutional “originalist.”¹⁴⁸ Justice Coney Barrett was also unapologetic in joining the majority decision in *Dobbs*.

Yet President Trump sought to emphasize the continuity between the two justices—in terms of women’s descriptive representation. Prior to nominating Justice Coney Barrett, President Trump committed to nominating a woman—indeed a “very brilliant woman” to the Court.¹⁴⁹ In his speech nominating Justice Coney Barrett, President Trump noted that Justice Ginsburg was “a legal giant and a pioneer for women” and suggested that the nomination of Justice Coney Barrett was an effort to advance equal justice, noting that she was “a woman of unparalleled achievement, towering intellect, sterling credentials, and unyielding loyalty to the Constitution.”¹⁵⁰ Despite vigorous opposition from women’s rights groups, Justice Coney Barrett was also ultimately confirmed by a vote of 52 to 48 in the Senate, compared to votes of 50 to 48 and 54 to 45 in favor President Trump’s other nominees, Justices Brett Kavanaugh and Neil Gorsuch.¹⁵¹ All these Justices also joined the majority opinion of the

¹⁴⁵ *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618, 646 (2007) (Ginsburg, J., dissenting), *overturned by* Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5.; Adam Liptak, *Dissents Were Ginsburg’s Most Memorable Work on the Supreme Court*, N.Y. TIMES (Sept. 18, 2020), <https://www.nytimes.com/2020/09/18/us/elections/dissents-were-ginsburgs-most-memorable-work-on-the-supreme-court.html> [<https://perma.cc/Z9LQ-GQ9H>].

¹⁴⁶ *See, e.g.*, *Stenberg v. Carhart*, 530 U.S. 914, 952 (2000) (Ginsburg, J., concurring).

¹⁴⁷ *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231–32 (2022); *see also* Stephanie Kirchgaessner, *Amy Coney Barrett: Spotlight Falls on Secretive Catholic Group People of Praise*, THE GUARDIAN (Sept. 26, 2020), <https://www.theguardian.com/us-news/2020/sep/26/amy-coney-barrett-supreme-court-donald-trump-people-of-praise#:~:text=The%2048%2Dyear%2Dold%20appellate,my%20duties%20as%20a%20judge%E2%80%9D> [<https://perma.cc/B73V-8FGD>] (expanding on Justice Coney Barrett’s religious beliefs).

¹⁴⁸ Erwin Chemerinsky, *The Philosophy That Makes Amy Coney Barrett So Dangerous*, N.Y. TIMES (Oct. 21, 2020), <https://www.nytimes.com/2020/10/21/opinion/supreme-court-amy-coney-barrett.html> [<https://perma.cc/4EVW-YEDJ>].

¹⁴⁹ *Donald Trump Pledges to Nominate a ‘Very Brilliant’ Woman to the Supreme Court*, THE GUARDIAN (Sept. 20, 2020), <https://www.theguardian.com/us-news/video/2020/sep/20/donald-trump-pledges-nominate-woman-supreme-court-video> [<https://perma.cc/8K2T-5B8F>].

¹⁵⁰ *Remarks by President Trump Announcing His Nominee for Associate Justice of the Supreme Court of the United States*, TRUMP WHITE HOUSE NAT’L ARCHIVES (Sept. 26, 2020), <https://trump.whitehouse.archives.gov/briefings-statements/remarks-president-trump-announcing-nominee-associate-justice-supreme-court-united-states/#:~:text=Today%2C%20it%20is%20my%20honor> [<https://perma.cc/D9Z6-528P>] [hereinafter *President Trump Remarks*].

¹⁵¹ Nicholas Fandos, *Senate Confirms Barrett, Delivering for Trump and Reshaping the Court*, N.Y. TIMES (Oct. 26, 2020), <https://www.nytimes.com/2020/10/26/us/politics/senate-confirms-barrett.html> [<https://perma.cc/5ZQK-6LMQ>]; Sheryl Gay Stolberg, *Kavanaugh Is Sworn in After Close Confir-*

Court, in *Dobbs*, overturning *Roe* and *Casey*, and holding that the Constitution does not protect a right of access to abortion.¹⁵² Note, however, that it was President Trump rather than Justice Coney Barrett who engaged in abusive feminism in this context, at least in the strong sense.¹⁵³

Justice Coney Barrett made no secret prior to her appointment of her religious beliefs.¹⁵⁴ In her confirmation hearing, she also refused to suggest that she would treat *Roe* differently from any other precedent, whereas Justice Alito and Kavanaugh made statements emphasizing *Roe* and *Casey* as “important” and “settled” precedents of the Court.¹⁵⁵ There is also little evidence that she knowingly or intentionally relied on her gender or professed commitment to gender equality, as a means of furthering her ability to erode access to reproductive healthcare. Rather, her decision in *Dobbs* seems to have been a good faith—and largely predictable—application of her commitment to or adherence to “history and tradition” in the interpretation of the Due Process Clause¹⁵⁶ or else, a form of religiously informed “common-good” constitutionalism.¹⁵⁷

Her appointment, however, could readily be viewed as abusive feminism in the strong sense—a knowing and deliberate attempt by President Trump to weaponize the value of women’s descriptive representation in the service of a longstanding campaign to undermine women’s reproductive rights, as a means of winning political support from Christian evangelical voters.¹⁵⁸

mation Vote in Senate, N.Y. TIMES (Oct. 6, 2018), <https://www.nytimes.com/2018/10/06/us/politics/brett-kavanaugh-supreme-court.html> [https://perma.cc/JH2F-5UFN]; Audrey Carlsen & Wilson Andrews, *How Senators Voted on the Gorsuch Confirmation*, N.Y. TIMES (Apr. 7, 2017), <https://www.nytimes.com/interactive/2017/04/07/us/politics/gorsuch-confirmation-vote.html> [https://perma.cc/36XR-XPPJ].

¹⁵² *Dobbs*, 597 U.S. at 231–32.

¹⁵³ President Trump also falsely claimed that the attempt to overturn *Roe* reflected broad scholarly consensus, again abusing the idea of expert knowledge and scholarly consensus. Daniel Dale, *Fact Check: Trump Makes Wildly Inaccurate Claim That ‘All Legal Scholars’ on ‘Both Sides’ Wanted Roe Overturned*, CNN (Apr. 8, 2024), <https://edition.cnn.com/2024/04/08/politics/fact-check-trump-abortion-ro-e-overturned-legal-scholars/index.html> [https://perma.cc/KJ8K-RYVB].

¹⁵⁴ Sarah McCammon, *A Look at Amy Coney Barrett’s Record on Abortion Rights*, NPR (Sept. 28, 2020), <https://www.npr.org/2020/09/28/917827735/a-look-at-amy-coney-barretts-record-on-abortion-rights> [https://perma.cc/J6WU-H5BK].

¹⁵⁵ Becky Sullivan, *What Conservative Justices Said—and Didn’t Say—About Roe at Their Confirmations*, NPR, <https://www.npr.org/2022/05/03/1096108319/roe-v-wade-alito-conservative-justices-confirmation-hearings> [https://perma.cc/YR3G-ABRY] (June 24, 2022). Neither Justice Alito nor Justice Kavanaugh, however, called *Roe v. Wade* “settled law” in their confirmation hearings. *Id.*

¹⁵⁶ See, e.g., Reva B. Siegel, *The History of History and Tradition: The Roots of Dobbs’s Method (and Originalism) in the Defense of Segregation*, 133 YALE L.J.F. 99, 100 (2023) (examining the interpretive method deployed by the Court in *Dobbs* and whether it constitutes a form of segregation).

¹⁵⁷ Adrian Vermeule, *Beyond Originalism*, THE ATLANTIC (Mar. 31, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/common-good-constitutionalism/609037/> [https://perma.cc/4784-AZJF].

¹⁵⁸ See Neil Vigdor, *In Pitch to Evangelicals, Trump Casts Himself as Christian Crusader Who Helped End Roe v. Wade*, N.Y. TIMES (June 24 2023), <https://www.nytimes.com/2023/06/24/us/politics/>

It also arguably traded on a form of maternalist discourse that relied on a mix of liberal and cultural abusive feminism. For instance, in nominating Justice Coney Barrett to the Supreme Court, President Trump emphasized her identity as both a woman and *mother*—noting that she was a “profoundly devoted mother,” including of two adopted children, a child with Down Syndrome, and the first “mother of school-aged children ever to serve on the U.S. Supreme Court.”¹⁵⁹ He even thanked her children for “sharing” their mom with the country.¹⁶⁰ Senate Republicans also constantly repeated this rhetoric about the Justice as a “tireless” and “superstar” mother—with the clear suggestion being that Justice Coney Barrett was to be trusted (to fulfill her constitutional duty) as a result.¹⁶¹ Implicitly, this included the duty to uphold the Constitution, and Supreme Court precedent, when one of Justice Coney Barrett’s most significant decisions as a Justice has been to join the majority of the Court in overruling the constitutional right of access to abortion recognized in *Roe* and *Casey*.

Some Republican female candidates have also supported President Trump in ways that verge on abusive feminist in the most troubling sense—relying on their own status as a female leader to help legitimate actions by President Trump that pose a clear threat to the minimum core of American democracy, or that are abusive feminist in the strong and narrow sense.

One of the most important norms in a constitutional democracy is that all parties to an election should respect the results, at least after exhausting legitimate legal avenues for challenge.¹⁶² For incumbents, this entails a willingness to leave office at the constitutionally appointed time, and to help guarantee a peaceful transition in power. For both candidates and those in elected office, it means actively condemning the use of violence as a political tool or tactic.¹⁶³

President Trump, however, has violated this norm in numerous ways. He has repeatedly questioned the results of the 2020 presidential election, even after exhausting all legal avenues for challenge, including in the Supreme Court.¹⁶⁴ Indeed, he made this “stop the steal” rhetoric a central part of his

trump-abortion-evangelicals.html [https://perma.cc/EKK6-NXGQ] (reporting Trump’s statement that he did more for Christians than any other president).

¹⁵⁹ See *President Trump Remarks*, *supra* note 150.

¹⁶⁰ *Id.*

¹⁶¹ Lyz Lenz, *The Power—and Threat—of Mothers Like Amy Coney Barrett*, GLAMOUR (Oct. 14, 2020), <https://www.glamour.com/story/threat-of-mothers-like-amy-coney-barrett> [https://perma.cc/6EFS-PH6P]; Claire Cain Miller & Alisha Haridasani Gupta, *Why ‘Supermom’ Gets Star Billing on Résumés for Public Office*, N.Y. TIMES (Oct. 14, 2020), <https://www.nytimes.com/2020/10/14/upshot/barrett-harris-motherhood-politics.html> [https://perma.cc/78L8-28SL].

¹⁶² Katherine Clayton et al., *Elite Rhetoric Can Undermine Democratic Norms*, PNAS, 2021, at 1.

¹⁶³ See generally STEVEN LEVITSKY & DANIEL ZIBLATT, *TYRANNY OF THE MINORITY: HOW TO REVERSE AN AUTHORITARIAN TURN AND FORGE A DEMOCRACY FOR ALL* (2023).

¹⁶⁴ Tal Axelrod, *A Timeline of Donald Trump’s Election Denial Claims, Which Republican Politicians Increasingly Embrace*, ABC NEWS (Sept. 8, 2022), <https://abcnews.go.com/Politics/timeline->

campaign for re-election in 2024.¹⁶⁵ He has praised those who engaged in violence in the Capitol Hill riots on January 6, aimed at disrupting the certification of the 2020 presidential election.¹⁶⁶ There is strong evidence suggesting that he actively encouraged these riots, both through language inciting the use of violence and by delaying the deployment of the national guard in response.¹⁶⁷ And he recently pardoned almost all of those involved in the attacks, including those convicted of offences involving serious violence.¹⁶⁸

Representative Marjorie Taylor Greene, and Arizona gubernatorial candidate Kari Lake have also been prominent defenders of President Trump's "stop the steal" rhetoric and actions on January 6, as well as broader violence against political opponents.¹⁶⁹ For instance, in text messages between Greene and President Trump's staff in January 2020, Greene called the election "stolen" and called on President Trump to resist the transfer of power by imposing martial law.¹⁷⁰ Greene publicly repeated this "stop the steal" language, including immediately after the Capitol Hill riots.¹⁷¹ She has implicitly endorsed the use of violence against prominent Democrats, including by attempting to bring a fire-arm onto the floor of the House of Representatives, releasing a political advertisement in which she holds an assault weapon alongside an image of progressive female members of Congress, and suggesting that the former Speaker of the

donald-trumps-election-denial-claims-republican-politicians/story?id=89168408 [https://perma.cc/QW9H-B5EC].

¹⁶⁵ *Id.*

¹⁶⁶ Kathryn Watson, *Trump Says Jan. 6 Was a "Day of Love," Glossing Over His Supporters' Assault on Officers*, CBS NEWS (Oct. 17, 2024), <https://www.cbsnews.com/news/trump-january-6-univision-town-hall/> [https://perma.cc/D7AJ-3WEQ].

¹⁶⁷ See *id.* (reporting that Trump tweeted, "Big protest in D.C. on January 6th. Be there, will be wild!" two weeks prior); Mark Mazzetti & Maggie Haberman, *A Jan. 6 Mystery: Why Did It Take So Long to Deploy the National Guard?*, N.Y. TIMES (July 21, 2022), <https://www.nytimes.com/2022/07/21/us/politics/national-guard-january-6-riot.html> [https://perma.cc/9FYA-RPG5] (explaining that it was Vice President Pence and not President Trump that eventually called in the National Guard to defend the capitol from rioters).

¹⁶⁸ Alan Feuer, *Trump Grants Sweeping Clemency to All Jan. 6 Rioters*, N.Y. TIMES (Jan. 20, 2025), <https://www.nytimes.com/2025/01/20/us/politics/trump-pardons-jan-6.html> [https://perma.cc/8WZX-8NRL].

¹⁶⁹ Davey Alba & Jack Gillum, *Candidates Keep Pushing Election Denial Online—Because It Works*, BLOOMBERG (Nov. 3, 2022), <https://www.bloomberg.com/graphics/2022-election-denier-republican-social-media/?embedded-checkout=true> [https://perma.cc/YJZ5-DKKT].

¹⁷⁰ Hugo Lowell, *Marjorie Taylor Greene Texted Trump Chief of Staff Urging Martial Law to Overturn Election*, THE GUARDIAN (Apr. 26, 2022), <https://www.theguardian.com/us-news/2022/apr/26/marjorie-taylor-greene-texts-mark-meadows-martial-law-2020-election> [https://perma.cc/R5DQ-YY79].

¹⁷¹ Robert Draper, *The Problem of Marjorie Taylor Greene*, N.Y. TIMES MAG., <https://www.nytimes.com/2022/10/17/magazine/marjorie-taylor-greene.html> [https://perma.cc/S76W-ZEND] (Oct. 24, 2022); Bess Levin, *Is Marjorie Taylor Greene the Worst Person in Congress? An Investigation*, VANITY FAIR (Jan. 27, 2021), <https://www.vanityfair.com/news/2021/01/marjorie-taylor-greene-david-hogg> [https://perma.cc/7EG7-Q3V5].

House, Nancy Pelosi, was “guilty of treason . . . a crime punishable by death.”¹⁷² At the same time, even while attacking female Democratic leaders, Greene has emphasized her own claim to represent women, noting that she is “a woman,” “female business owner,” and “proud . . . American woman.”¹⁷³

Kari Lake has likewise suggested that the Capitol Hill riot that led to the death of seven people¹⁷⁴ was a “huge protest rally” for “election integrity” and an instance of “patriotic Americans from across the country travel[ing] to Washington, D.C., to petition their representatives to examine the shady [presidential] election with necessary scrutiny before certifying a winner.”¹⁷⁵ She has also suggested that the violence was caused by “the federal intelligence community.” In doing so, she has also described herself in overtly gendered terms, as both a “proud MAGA Republican” loyal to President Trump, and even “Trump in Heels.”¹⁷⁶

Another important element of the democratic minimum core involves norms of restraint, or cooperation, among political candidates and parties—or the use of political power in ways that involve recognition of the legitimacy, and importance, of opposition candidates and parties to a system of free and fair, *multi-party* elections.¹⁷⁷ Yet President Trump and Greene have been at the forefront of attacks on Democrats, and even some non-MAGA Republicans, aimed at undermining the legitimacy of their role.

President Trump, for instance, repeatedly called for the criminal investigation and imprisonment of Hillary Clinton, his opponent in the 2020 presidential election.¹⁷⁸ After President Trump himself faced impeachment charges, linked to alleged criminal conduct, Greene also repeatedly called for the impeachment of his opponents, including President Biden and senior members of

¹⁷² Levin, *supra* note 171; Jennifer Senior, *The Women Who Paved the Way for Marjorie Taylor Greene*, N.Y. TIMES (Feb. 7, 2021), <https://www.nytimes.com/2021/02/07/opinion/marjorie-taylor-greene-republican-women.html> [<https://perma.cc/7SR6-BXJX>]; Veronica Stracqualursi, *Marjorie Taylor Greene Posts Image of Herself with Gun Alongside ‘Squad’ Congresswomen, Encourages Going on the ‘Offense Against These Socialists,’* CNN (Sept. 4, 2020), <https://edition.cnn.com/2020/09/04/politics/marjorie-taylor-greene-gun-post-squad/index.html> [<https://perma.cc/G7MD-2U9M>].

¹⁷³ Monica Hesse, *Marjorie Taylor Greene’s Vapid Gender Politics*, WASH. POST (May 15, 2021), https://www.washingtonpost.com/lifestyle/style/marjorie-taylor-greene-aoc-gender-politics/2021/05/14/c4c8d032-b405-11eb-a980-a60af976ed44_story.html [<https://perma.cc/UMD2-L7F5>].

¹⁷⁴ Chris Cameron, *These Are the People Who Died in Connection with the Capitol Riot*, N.Y. TIMES, <https://www.nytimes.com/2022/01/05/us/politics/jan-6-capitol-deaths.html> [<https://perma.cc/D6MF-WR2Q>] (Oct. 13, 2022).

¹⁷⁵ KARI LAKE, UNAFAID: JUST GETTING STARTED 124, 136 (2023).

¹⁷⁶ *Id.* at 125, 136.

¹⁷⁷ See generally STEVEN LEVITSKY & DANIEL ZIBLATT, *HOW DEMOCRACIES DIE* (2018).

¹⁷⁸ Jeremy Diamond, *Trump Calls for Clinton to Be Jailed*, CNN (June 4, 2016), <https://www.cnn.com/2016/06/02/politics/donald-trump-hillary-clinton-imprisoned/index.html> [<https://perma.cc/N5KM-5LZP>].

his administration.¹⁷⁹ She has also sought to oust Republican colleagues willing to work with Democrats as legitimate partners in government.¹⁸⁰

These tactics pose a clear threat to American democracy now and in the future. They have already undermined the capacity of Congress to function and undermined trust in government among some voters.¹⁸¹ They also point to longer-term risks to *norms* of healthy democratic competition, and co-operation. And recent events suggest, since President Trump returned to the White House for a second term, that these risks are only becoming greater.¹⁸²

The same is true for the role of the press and reliable information in a democracy. One of the reasons to protect political rights and freedoms in a democracy stems from a commitment to the dignity of citizens as self-governing and capable of making up their own minds on political questions. But another reason is more instrumental. It is about promoting the *accountability* of elected officials to voters through debate and criticism of their policies and performance.¹⁸³ Indeed, many scholars suggest that freedom of political communication, and especially a free press, is critical to political democracy.¹⁸⁴

Debate of this kind, however, requires that citizens have access to reliable information, including reliable news that they can and do trust. Without this,

¹⁷⁹ Rebecca Shabad, *Rep. Marjorie Taylor Greene Introduces Articles of Impeachment Against Biden*, NBC NEWS (May 18, 2023), <https://www.nbcnews.com/politics/congress/marjorie-taylor-greene-introduces-biden-impeachment-articles-rcna85098> [<https://perma.cc/FXW4-G5HQ>]; see also Press Release, Office of Congresswoman Marjorie Taylor Greene, Congresswoman Majorie Taylor Greene Introduces Articles of Impeachment Against President Joe Biden (Jan. 21, 2021), <https://greene.house.gov/news/documentsingle.aspx?DocumentID=113> [<https://perma.cc/ML59-PJDT>].

¹⁸⁰ See, e.g., Catie Edmondson, Carl Hulse & Kayla Guo, *Johnson Survives Greene's Ouster Attempt as Democrats Join G.O.P. to Kill It*, N.Y. TIMES (May 8, 2024), <https://www.nytimes.com/2024/05/08/us/politics/greene-johnson-vacate.html> [<https://perma.cc/P3Z7-7AEC>] (describing Greene's failed ouster of House Speaker Mike Johnson who she claims, "regularly chooses to ally himself with Democrats").

¹⁸¹ Alan C. Miller, *How Conspiratorial Thinking Is Undermining Democracy, and What We Can Do About It*, BULL. OF THE ATOMIC SCIENTISTS (Dec. 12, 2022), <https://thebulletin.org/2022/12/how-conspiratorial-thinking-is-undermining-democracy-and-what-we-can-do-about-it/> [<https://perma.cc/7W5M-FH6G>].

¹⁸² Jonathan Katz & Eric Urby, *Dangerous Cracks in US Democracy Pillars*, BROOKINGS (Feb. 13, 2025), <https://www.brookings.edu/articles/dangerous-cracks-in-us-democracy-pillars/> [<https://perma.cc/4B3V-3666>].

¹⁸³ See generally, e.g., JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY (3d ed. 1962) (providing an accountability-based or competitive view, as compared to more deliberative or participatory view of democracy); Samuel Issacharoff, *Weaponizing the Electoral System*, 74 STAN. L. REV. ONLINE 28, 32–34 (2022), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2022/04/74-Stan.-L.-Rev.-Online-28-Issacharoff.pdf> [<https://perma.cc/NK4X-63FB>] (same); RICHARD POSNER, LAW, PRAGMATISM, AND DEMOCRACY (2005) (same).

¹⁸⁴ See, e.g., Robert J. Cordy, *The Interdependent Relationship of a Free Press and an Independent Judiciary in a Constitutional Democracy*, 60 B.C. L. REV. E-SUPPLEMENT I-1, I-1–I-2 (2019) (asserting that free press is "essential" to the ability for citizens to participate in democracy, and therefore for a constitutional democracy to survive).

political debate is likely to be dismissed by citizens as both unreliable and uninformative, and thus, do little to promote true democratic accountability. An important part of a functioning democracy is the capacity to distinguish reliable from unreliable information, or genuine from “fake” news.

The concept of fake news is itself clearly susceptible to abusive use or borrowing.¹⁸⁵ And this is exactly what candidates such as President Trump and Lake have perfected. Both candidates have repeatedly called out legitimate criticism as “fake news” and developed a general critique of the mainstream media that seeks to discredit its methods and motives. As a prominent former journalist, Lake has also had special credibility in this attack on the media—mixing former professional knowledge and experience with a willingness to engage in personalized and baseless forms of attack.¹⁸⁶ For example, she has appeared at rallies and recorded a political ad wielding a sledge hammer against a television, as stand in for the mainstream media, while also embracing a far more feminine image as “Trump in a dress.”¹⁸⁷

Both Greene and Lake have also made consistent appeals to their status as mothers and political outsiders, across these various contexts. Both women, for instance, have emphasized their role as women and *mothers* in their campaigns for electoral office.¹⁸⁸ Greene refers to her experience as a mother to criticize American COVID-19 and gun control policy. She criticized the impact of school shut-downs on “our children” and called for children to be armed against classmates or school shooters.¹⁸⁹ Lake describes and presents herself, like Sarah Palin, as a “mama bear.”¹⁹⁰

Both women have portrayed themselves as “non-politicians” or political outsiders.¹⁹¹ For at least some voters, this rhetoric has also clearly increased

¹⁸⁵ DIXON & LANDAU, ABUSIVE CONSTITUTIONAL BORROWING, *supra* note 11, at 64.

¹⁸⁶ See generally LAKE, *supra* note 175 (providing an autobiographical recount of Lake’s time in media and politics).

¹⁸⁷ Rozina Sabur, ‘Call Me Trump in a Dress’: Rising Star of Republican Right Woos Voters in Key State, THE TELEGRAPH (Nov. 5, 2022), <https://www.telegraph.co.uk/world-news/2022/11/05/kari-lake-republicans-rising-star-who-thinks-donald-trump-won/> [https://perma.cc/3E6G-NFFH].

¹⁸⁸ See Senior, *supra* note 172.

¹⁸⁹ Aila Slisco, Marjorie Taylor Greene Suggests Uvalde Students Needed JR-15s for Defense, NEWSWEEK (July 29, 2022), <https://www.newsweek.com/marjorie-taylor-greene-suggests-uvalde-students-needed-jr-15s-defense-1729317> [https://perma.cc/NF7J-892F].

¹⁹⁰ See *Unafraid: Just Getting Started*, BARNES & NOBLE, <https://www.barnesandnoble.com/w/unafraid-kari-lake/1143443413> [https://perma.cc/VE6N-P6US]; Senior, *supra* note 172.

¹⁹¹ Ashley Parker & Michael Scherer, *From Outside Agitator to Inside Player: The Remaking of Marjorie Taylor Greene*, WASH. POST (Jan. 14, 2023), <https://www.washingtonpost.com/politics/2023/01/14/marjorie-taylor-greene-mccarthy-republicans/> [https://perma.cc/X2W2-PSEV]; Tia Mitchell, *Marjorie Taylor Green Returns to Outsider Roots*, AJC POL. (Nov. 30, 2023), <https://www.ajc.com/politics/marjorie-taylor-greene-returns-to-outsider-roots/HIDQ3KGWRZFLDME4I6PTI3FZ5Q/> [https://perma.cc/KB2Z-N348]; LAKE, *supra* note 175, at 125.

the sense that they can be trusted to improve, rather than destroy, democratic politics in the United States.

B. Europe

Europe in recent decades has likewise witnessed a large-scale rollback in commitments to gender equality and democracy. At the same time, it has seen the rise of a new generation of female political leaders, whose election has helped increase or consolidate support for illiberal populist parties and governments.¹⁹² In some cases, there is also good evidence that this has been the aim of those nominating or supporting female leaders, or those leaders themselves—or that a distinctly strong form of abusive feminism has been in play.¹⁹³

In France, the Rassemblement National (or National Rally, “RN,” which until 2018 was known as the National Front, “NF”) was for several decades the most prominent far-right party, led by Jean-Marie Le Pen. The party adopted a range of illiberal policies: it strongly opposed immigration, global free trade, and French membership in the European Union.¹⁹⁴ And it influenced the ideas of other far-right parties in Europe, as well as more mainstream conservative parties in France.¹⁹⁵

But it was also a party with limited electoral success in national legislative and presidential elections—consistently polling below 20%.¹⁹⁶ One reason for this was its relative lack of appeal among female voters. The party itself was 82% percent male in 1990, and there was a persistent gap in male versus female support at presidential and legislative elections.¹⁹⁷

¹⁹² See Julia Elad-Strenger, Lihi Ben-Shitrit & Sivan Hirsch-Hoefler, *Mainstreaming Democratic Backsliding: The Role of Gender Stereotypes*, 63 EUR. J. POL. RSCH. 1397–99 (2024) (finding that women’s descriptive representation in government can contribute to “democratic backsliding”); Susi Meret & Birte Siim, *A Janus-Faced Feminism: Gender in Women-Led Right-Wing Populist Parties* 1, 19 (June 8–10, 2017) (conference paper presented at European Conference on Gender & Politics), https://www.researchgate.net/publication/332703804_A_Janus-faced_feminism_Gender_in_women-led_right-wing_populist_parties [<https://perma.cc/9EH4-BYRN>] (studying the impact of gender of right-wing populist leaders).

¹⁹³ Other examples often given in this context include the Netherlands and Denmark. See De Giorgi et al., *supra* note 104, at 108–11.

¹⁹⁴ Katarina Pettersson, Sofia Payotte & Inari Sakki, *Harsh Punisher or Loving Mother? A Critical Discursive Psychological Analysis of Marine Le Pen’s Presidential Twitter Campaign*, 23 ETHNICITIES 905, 908, 918–23 (2023); Claudie Lesselier, *Far-Right Women in France: The Case of the National Front*, in *RIGHT WING WOMEN: FROM CONSERVATIVES TO EXTREMISTS AROUND THE WORLD* 127–40 (Paola Bachetta & Margaret Power eds., 2002).

¹⁹⁵ Cas Mudde, *The Far-Right Threat to Liberal Democracy in Europe, Explained*, VOX (Dec. 21, 2022), <https://www.vox.com/world/23516807/europe-right-wing-parties-Orbán-meloni> [<https://perma.cc/A3X7-ELW4>].

¹⁹⁶ Lesselier, *supra* note 194, at 128.

¹⁹⁷ *Id.* at 128–29.

In 2011, however, the party took a new approach. It replaced Le Pen with his daughter, Marine Le Pen, as leader, and she began a “de-demonization” campaign aimed at increasing the electoral appeal of the party, generally and especially with female voters.¹⁹⁸ To do so, she renamed the party the National Rally, softened some of its most illiberal policies (on abortion and gay rights), and expelled Jean-Marie Le Pen from membership based on his repeated Islamophobic statements and Holocaust denial.¹⁹⁹ In 2022, she even supported the constitutionalization of the right to abortion, and a shift away from criminalization, toward incentives for women to continue their pregnancy, and limits on state funding for abortion.²⁰⁰

At the same time, she continued to maintain a “tough” or (what for many was perceived as a masculine-coded) stance on issues such as crime and immigration.²⁰¹ And she did little to promote women’s rights in other policy contexts.²⁰² In 2022, the party won 15% of seats in the National Assembly and access to public electoral funding,²⁰³ but Le Pen herself won more than 40% of the vote in the presidential election.²⁰⁴ Between 1988 and 2017, the party also increased its support among female voters from 8% to 22%, and among young female voters from 8% to 31%.²⁰⁵

In Italy, the far-right has had even greater success in recent years, under the leadership of Prime Minister Giorgia Meloni. Italy has several far-right parties, including the (Northern) League and Brothers of Italy.²⁰⁶ This is in addition to the more traditional conservative party, Forza Italia (Forward Italy), and the Five

¹⁹⁸ Mudde, *supra* note 195.

¹⁹⁹ Pettersson et al., *supra* note 194, at 905–06, 909.

²⁰⁰ Clément Guillou, *In a Shift in Views, Marine Le Pen Supports Constitutional Protection for Abortion Access*, LE MONDE (Nov. 24, 2022), https://www.lemonde.fr/en/politics/article/2022/11/24/in-a-shift-marine-le-pen-supports-making-abortion-access-constitutionally-protected_6005417_5.html [https://perma.cc/D48G-PRAN].

²⁰¹ Pettersson et al., *supra* note 194, at 908–09, 918–19.

²⁰² Agnes Poirier, *France’s Marine Le Pen: The Illusion of Feminism*, AL JAZEERA (Apr. 30, 2017), <https://www.aljazeera.com/opinions/2017/4/30/frances-marine-le-pen-the-illusion-of-feminism> [https://perma.cc/XL79-8YEH]; Nicholas Vinocur & Sofia Melo, *Marine Le Pen’s Feminist Front*, POLITICO (Jan. 15, 2016), <https://www.politico.eu/article/marine-le-pen-feminist-front-national-gender-equality-migration-cologne/> [https://perma.cc/NUU3-FWHR].

²⁰³ Jules Darmanin, *Le Pen’s National Rally Wins Seats, Airtime and Money in French Vote*, POLITICO (June 20, 2022), <https://www.politico.eu/article/marine-le-pen-national-rally-win-seat-airtime-money-france-legislative-election/> [https://perma.cc/4UWQ-UH3J].

²⁰⁴ Benjamin Dodman, *‘Victory’ in Defeat? Le Pen Raises the Far Right’s Glass Ceiling, Fails to Crack It*, FRANCE 24 (Apr. 25, 2022), <https://www.france24.com/en/france/20220425-victory-in-defeat-le-pen-raises-far-right-s-glass-ceiling-fails-to-crack-it> [https://perma.cc/MUR8-LE9E].

²⁰⁵ Abdelkarim Amengay, Anja Durovic & Nonna Mayer, *L’Impact Du Genre Sur Le Vote*, 67 REVUE FRANCAISE DE SCIENCE POLITIQUE 1067, 1079 (2017).

²⁰⁶ Andrea Dessì & Vassilis Ntousas, *Italy’s Election and the Rise of Hard Right Conservatism*, INT’L SPECTATOR (Sept. 21, 2022), <https://www.iai.it/en/pubblicazioni/italys-election-and-rise-hard-right-conservatism> [https://perma.cc/UD4H-S3BA].

Star Movement, a populist party that has campaigned on an anti-corruption platform. All these parties have strong anti-immigrant, anti-globalist policies, but somewhat different histories. Forza Italia was part of a coalition party, Il Popolo della Libertà, led by former Prime Minister Silvio Berlusconi, who served as Prime Minister in 1994 and again from 2001–2006 and 2008–2011.²⁰⁷ The party, however, was soon overtaken by the Five Star Movement, founded in 2009, that promised a radically more direct model of democracy and even stronger form of Euro-skepticism and anti-migration policy.²⁰⁸ Five Star also won the largest vote share at the 2018 national legislative elections, forming a coalition government with the far-right League, until 2019, and then with the center-left Democratic party in a “unity government” until 2021.²⁰⁹ The only far-right party that was not part of the coalition was the Brothers of Italy, or Fratelli d’Italia (FdI), led by Giorgia Meloni. The FdI, however, won the largest share of seats in the 2022 legislative elections, making Meloni the first female Prime Minister of Italy, and the most right-wing Prime Minister for several decades.²¹⁰

As both a candidate and Prime Minister, Meloni has taken a range of anti-feminist positions, including opposing (broad) access to abortion, LGBTQI+ rights, and the rights of migrant women.²¹¹ As a candidate, she repeatedly spoke against rights for trans women and same-sex couples, abortion (citing her own mother’s consideration of an abortion, before giving birth to her), and gender quotas or parity norms.²¹² She strongly opposed illegal immigration and migrant rights.²¹³ As Prime Minister, she has supported a range of new measures allowing anti-abortion counsellors access to public clinics.²¹⁴ She has also proposed a range of constitutional changes potentially undermining the minimum core of Italian democracy.

²⁰⁷ *Silvio Berlusconi*, BRITANNICA, <https://www.britannica.com/biography/Silvio-Berlusconi> [https://perma.cc/49C8-Z849].

²⁰⁸ Dessì & Ntousas, *supra* note 206.

²⁰⁹ *Id.*

²¹⁰ *Id.* It remains to be seen how far-right Meloni’s government will be. For example, she has somewhat softened her earlier stance on Europe and rolled back her support for Putin by opposing the war in Ukraine. Paul Kirby, *Giorgia Meloni: Italy’s Far-Right Wins Election and Vows to Govern for All*, BBC (Sept. 26, 2022), <https://www.bbc.com/news/world-europe-63029909> [https://perma.cc/D2YF-BCZ2]. At the same time, she has also continued to use strongly illiberal, populist rhetoric. *See id.* (reporting Meloni’s campaign speech, which she spoke forcefully against the “LGBT lobby,” “gender ideology,” and “Islamist violence”).

²¹¹ Indelicato & Lopes, *supra* note 14, at 11–13.

²¹² *Id.* at 10, 12; De Giorgi et al., *supra* note 104, at 111.

²¹³ Indelicato & Lopes, *supra* note 14, at 11, 14.

²¹⁴ Hannah Roberts, *Italy Moves to Allow Anti-Abortion Activists Inside Clinics*, POLITICO (Apr. 18, 2024), <https://www.politico.eu/article/italy-giorgia-meloni-moves-allow-anti-abortion-activists-inside-clinics/> [https://perma.cc/R335-U3XK].

Italy has a system of proportional representation and parliamentary government, which has produced many quite unstable coalition governments.²¹⁵ Meloni has also framed her proposed changes to the Constitution as a response to this problem. For instance, she has proposed changes to the Constitution that would automatically give the largest party in parliament fifty-five percent of legislative seats and make the leader of this party prime minister.²¹⁶

The likely effect of these changes, however, would be powerfully anti-democratic. They would create a highly majoritarian electoral system, more skewed toward a “winner takes all” model (or seats-vote curve) than even the Hungarian system, which underpinned the re-election of the Orbán government by a minority of Hungarian voters.²¹⁷ They would also increase the personal power of the prime minister compared to the legislature, thereby weakening Italy’s system of constitutional checks and balances. Indeed, they are reminiscent of some of the constitutional measures passed by Mussolini.²¹⁸

Yet both Le Pen and Meloni have sought to depict themselves as “caring” female leaders. Le Pen, for instance, has repeatedly referred to her own role as a mother, and linked it to her concern to promote public safety and security.²¹⁹ She has also connected the language of mothers and children to notions of French nationhood and her role as a guardian of the nation.²²⁰ And especially early in her career, she was portrayed by the media and some supporters in highly sexualized ways, which focused on her “blond, feminine appearance.”²²¹

Meloni has presented herself as a woman, Italian, and Christian, and emphasized her role as a mother, with photos and images of herself and her daughter.²²² Like Le Pen, she also sought to connect her status as a mother to the idea of her caring for the Italian nation²²³ and sought to appeal to women voters by emphasizing a concern for Italian nationhood, women’s rights to safety and se-

²¹⁵ Michael Meyer-Resende & Nino Tsireli, *Meloni’s Dangerous Constitutional Change in Italy*, POLITICO (Dec. 21, 2023), <https://www.politico.eu/article/melonis-dangerous-constitutional-change-in-italy/#:~:text=would%20rule%20supreme> [https://perma.cc/KET4-9JKD].

²¹⁶ *Id.*

²¹⁷ Balint Magyar & Balint Madlovics, *Manipulated Election Entrenches Hungary’s Autocracy*, AUSTL. STRATEGIC POL’Y INST. (Apr. 5, 2022), <https://www.aspistrategist.org.au/manipulated-election-entrenches-hungarys-autocracy/> [https://perma.cc/VNT5-ZNQW].

²¹⁸ Meyer-Resende & Tsireli, *supra* note 215.

²¹⁹ Pettersson et al., *supra* note 194, at 915–16.

²²⁰ *Id.*; see also Dorit Geva, *Daughter, Mother, Captain: Marine Le Pen, Gender, and Populism in the French National Front*, 27 SOC. POL.: INT’L STUD. GENDER ST. & SOC’Y 1, 7 (2020).

²²¹ Pettersson et al., *supra* note 194, at 908–09; Susi Meret, *Charismatic Female Leadership and Gender: Pia Kjaersgaard and the Danish People’s Party*, 49 PATTERNS PREJUDICE 81, 83–84 (2015); Julie Boudillon, *Une Femme D’Extreme Droite Dans Les Medias. Le Cas de Marine Le Pen*, 78 MOTS. LES LANGAGES DU POLITIQUE 79, 80–81 (2005).

²²² De Giorgi et al., *supra* note 104, at 108; Colella, *supra* note 124, at 277.

²²³ Colella, *supra* note 124, at 276.

curity, and policies that seek to make it easier to combine work and parenting.²²⁴ Often, she has done so by emphasizing a concern for women's safety from sexual and family violence as a reason to oppose immigration.²²⁵ She is also often seen as embodying traditional far-right images of beauty.²²⁶

In Hungary and Poland, female leaders have played a less central role in driving the rise of far-right parties and government. Instead, they have arguably been nominated or appointed by male prime ministers and presidents to help further their own agendas. But female presidents, prime ministers, and judges have still arguably played an important—if more limited—role in increasing public support for these illiberal, anti-constitutional populist governments.

In Poland, for example, the early period of rule by the Law and Justice Party (PiS) saw the election of Beata Szydło as Prime Minister. Szydło was also seen as adding a “fresh, moderate face” to the image of PiS and its leader, Jarosław Kaczyński.²²⁷ She was younger than Kaczyński, more moderate on certain social issues, and more of a political outsider: while she had held senior positions within PiS, she had never previously served in government.²²⁸ Yet she was also extremely loyal to Kaczyński and PiS, publicly suggesting that “the chairman is always right.”²²⁹ Indeed, some political scientists have suggested that she was effectively the nominal or “surrogate” head of government, with Kaczyński as the actual decision-maker on almost all key issues.²³⁰

During her relatively short term as Prime Minister, the PiS-controlled legislature also enacted a range of distinctly illiberal, anti-democratic measures. During its time in office, the PiS government adopted measures undermining the independence of the judiciary, limiting press and opposition freedom, and the role of an independent civil society.²³¹ Many of these changes were also adopted during Szydło's term as Prime Minister. For example, a 2015 law in-

²²⁴ De Giorgi et al., *supra* note 104, at 114–15.

²²⁵ Indelicato & Lopes, *supra* note 14, at 13–14; Collela, *supra* note 124, at 278–80.

²²⁶ Luciano Cheles, *Giorgia Meloni's Cleverly Constructed Image Helps Make Her Radical Ideas More Digestible*, LE MONDE (Sept. 24, 2022), https://www.lemonde.fr/en/international/article/2022/09/24/giorgia-meloni-s-cleverly-constructed-image-helps-make-her-radical-ideas-more-digestible_5998098_4.html [<https://perma.cc/Z85A-M4KL>]; see also Collela, *supra* note 124, at 277.

²²⁷ Adam Easton, *Beata Szydlo: Polish Miner's Daughter Set to Be PM*, BBC NEWS (Oct. 26, 2015), <https://www.bbc.com/news/world-europe-34619037> [<https://perma.cc/F4CU-Y5K4>].

²²⁸ Krzysztof Zuba, *Leaders Without Leadership: Surrogate Governments in Poland*, 72 EUR.-ASIA STUDS. 33, 42 (2020).

²²⁹ Easton, *supra* note 227.

²³⁰ Zuba, *supra* note 228, 34–35, 50–52; Lea Radke & Gila Rolofs, *Gender and Right-Wing Populism: Analysing the Role of Women at the Ministerial Level*, 15 ACTA POLITOLOGICA 33, 44 (2023).

²³¹ See generally WOJCIECH SADURSKI, POLAND'S CONSTITUTIONAL BREAKDOWN (2019); Landau & Dixon, *Abusive Judicial Review*, *supra* note 12, at 1338, 1348 (explaining how Polish courts have upheld laws that clearly violate the country's constitution); DIXON & LANDAU, ABUSIVE CONSTITUTIONAL BORROWING, *supra* note 12, at 64, 161 (explaining abusive constitutional borrowing deployed by the PiS).

creased the size of the constitutional court, thereby allowing PiS to appoint new (party-loyalist rather than independent) judges. A 2016 law allowed the parliament, President, or Minister of Justice to dismiss members of the court.²³² A 2015 law allowed the government to replace the management of public service media and a 2016 law established a national media council to supervise public broadcasters.²³³ These limited public protests and assembly²³⁴ and increased political control over the allocation of funding to civil society.²³⁵

The PiS government also attempted to impose new limits on a range of other civil rights during the same period, including rights of access to asylum, abortion, and LGBTQI+ equality.²³⁶ Access to abortion was also already extremely limited in Poland, even prior to 2015.²³⁷ In 2016, the PiS government attempted to adopt a near-total ban on abortion.²³⁸ And although the bill failed, in 2017, the government successfully adopted measures limiting access to the “morning after pill.”²³⁹

Female *judicial* leaders in Poland also played an important role in promoting restrictions on access to abortion.²⁴⁰ In 2020, for example, the Constitutional Court of Poland held that existing laws permitting access to abortion in cases of fetal abnormality were unconstitutional because they failed to give

²³² The Constitutional Tribunal Act of 25 June 2015 (Dz. U. poz. 1064); The Act of 22 December 2015 amending the Constitutional Tribunal Act (Dz. U. poz. 2217); Constitutional Tribunal Act of 1 August 2016 (Dz. U. poz. 1157); Lydia Gall, *Eroding Checks and Balances: Rule of Law and Human Rights Under Attack in Poland*, HUM. RTS. WATCH (Oct. 24, 2017), <https://www.hrw.org/report/2017/10/24/eroding-checks-and-balances/rule-law-and-human-rights-under-attack-poland> [<https://perma.cc/V44V-45JE>].

²³³ Act of 30 December 2015 amending the Broadcasting Act (Dz. U. poz. 25, 929 & 1531); Act of 22 June 2016 on the National Media Council (Dz. U. poz. 929); Gall, *supra* note 232; *Polish President Signs Bill Putting State Media Under Government Control*, THE GUARDIAN (Jan. 7, 2016), <https://www.theguardian.com/world/2016/jan/07/poland-president-signs-bill-putting-state-media-under-government-control> [<https://perma.cc/A6CP-E4CJ>].

²³⁴ Act of 13 December 2016 amending the Law on Assemblies (Dz. U. poz. 579); Gall, *supra* note 232.

²³⁵ Act on the National Institute of Freedom—Centre for the Development of Civil Society of 15 October 2017 (Dz. U. poz. 1909); Gall, *supra* note 232; *see Freedom in the World 2017: Poland*, FREEDOM HOUSE, <https://freedomhouse.org/country/poland/freedom-world/2017> [<https://perma.cc/7KUC-KG67>] (downgrading Poland’s global freedom score).

²³⁶ SADURKSI, *supra* note 231, at 58, 150; Gall, *supra* note 232.

²³⁷ Gall, *supra* note 232.

²³⁸ *Id.*

²³⁹ *Id.*; Daniel Boffey, *Polish Government Widely Condemned Over Morning-After Pill Law*, THE GUARDIAN (June 26, 2017), <https://www.theguardian.com/world/2017/jun/26/polish-president-signs-off-widely-condemned-morning-after-pill-law> [<https://perma.cc/BXD2-B2UA>]. *See generally* Julia Hussein, Jane Cottingham, Wanda Nowicka & Eszter Kismodi, *Abortion in Poland: Politics, Progression and Regression*, 26 REPROD. HEALTH MATTERS 11, 12 (2018) (discussing Poland’s restrictive abortion laws).

²⁴⁰ *See* Rubio-Marín, *supra* note 11, at 3.

adequate protection to the right to life of the fetus.²⁴¹ This means that (medical) abortions are now only legally permitted in cases of rape and incest, or threats to a woman's health or life. These exceptions for abortion are often interpreted narrowly by doctors refusing to perform the procedure, or requiring that abortions in cases of rape be supported by a report from the police.²⁴² This has meant that increasing numbers of Polish women have been forced to consider traveling to other countries or utilizing non-legal options in order to access an abortion.²⁴³ The Court's opinion was an eleven to two majority, including female Court president Julia Przyłębska—an ally and appointee of Kaczynski.²⁴⁴

Notably, these constitutional limits have also made it more difficult for the new Polish government, in power after PiS lost national legislative elections in 2023,²⁴⁵ to reverse the previous PiS government's illiberal policies on gender and access to abortion.²⁴⁶

In Hungary, abusive feminist tactics arguably played out later in the Orbán government. Orbán and his party, Fidesz, came to power in 2011, on a platform that was explicitly “illiberal democratic” in nature.²⁴⁷ Once in office, the government passed a range of illiberal and anti-democratic measures. In 2011, it adopted a new constitution with few institutional checks and balances,²⁴⁸ and thereafter proceeded to attack the role and independence of the judiciary, the media, civil society, and the political opposition.²⁴⁹ It also adopted

²⁴¹ Wojciech Kosc, *Polish Court Outlaws Almost All Abortions*, POLITICO (Oct. 22, 2020), <https://www.politico.eu/article/poland-court-outlaws-almost-all-abortion/> [<https://perma.cc/3ZPD-6UJW>]; Marta Kasztelan, *Will Poland's New Government Legalize Abortion?*, FOREIGN POL'Y (Feb. 12, 2024), <https://foreignpolicy.com/2024/02/12/poland-abortion-rights-pro-choice-election-coalition-pis-law-ban/> [<https://perma.cc/9T2S-8EQM>].

²⁴² Letta Tayler, *Two Years On, Poland's Abortion Crackdowns and the Rule of Law*, HUM. RTS. WATCH (Oct. 22, 2022), <https://www.hrw.org/news/2022/10/22/two-years-polands-abortion-crackdowns-and-rule-law> [<https://perma.cc/XPD9-TJ3F>].

²⁴³ Kosc, *supra* note 241.

²⁴⁴ *Id.*; Anna Gwiazda, *Feminist Protests, Abortion Rights and Polish Democracy*, 1 FEMINA POLITICA 129, 131 (2021).

²⁴⁵ Jan Cieski, *Poland Election Results: Opposition Secures Win, Final Count Shows*, POLITICO (Oct. 17, 2023), <https://www.politico.eu/article/poland-election-results-opposition-donald-tusk-wins-final-count-civic-platform-pis/> [<https://perma.cc/M4LR-L6S7>].

²⁴⁶ Wojciech Kosc, *Tusk Faces a Big Fight Overturning Poland's Abortion Ban*, POLITICO (Feb. 9, 2024), <https://www.politico.eu/article/poland-tusk-faces-big-fight-overturning-abortion-ban/> [<https://perma.cc/7S6B-DB56>]; Kasztelan, *supra* note 241.

²⁴⁷ Dixon & Landau, *supra* note 61, at 492.

²⁴⁸ *FACTBOX—What Has Changed in Hungary During Orbán's 12-Year Rule*, REUTERS (Mar. 31, 2022), <https://www.reuters.com/world/europe/factbox-what-has-changed-hungary-during-orbans-12-year-rule-2022-03-31/> [<https://perma.cc/YZ8K-WUEN>].

²⁴⁹ Zack Beauchamp, *It Happened There: How Democracy Died in Hungary*, VOX (Sept. 13, 2018), <https://www.vox.com/policy-and-politics/2018/9/13/17823488/hungary-democracy-authoritarianism-trump> [<https://perma.cc/ANU2-TSYW>].

new electoral laws gerrymandering or skewing the distribution of parliamentary seats to favor the incumbent government.²⁵⁰

In addition, the government adopted a range of illiberal policies targeting the rights of women, LGBTQI+ citizens, migrants, asylum-seekers, and Roma people. This included a range of measures attacking “gender mainstreaming” and replacing it with “family mainstreaming”²⁵¹ and restrictions on access to abortion, including mandating two counselling sessions and requiring women to listen to a fetal heartbeat before seeking a termination.²⁵²

These measures attracted sustained criticism from the European Union and the Council of Europe. Domestic support for Fidesz also declined steadily between 2011 and 2017.²⁵³ In 2017, that trend began to reverse, with voter support rebounding to a high of forty percent, and Fidesz again winning a large electoral majority at parliamentary elections in 2018.²⁵⁴ But again, in 2022, there were doubts about whether Fidesz would retain its majority in parliamentary elections.²⁵⁵ This was also the context for the appointment of Hungary’s first female president, Katalin Novák, in March 2022.

Initially, Novák’s appointment was met with praise. Commentators suggested that the “symbolism of having a female president” in Hungary was “not to be underestimated.”²⁵⁶ Novák certainly spoke about her own appointment in ways that emphasized her position as female leader, suggesting that it showed that “every option [was] open to women” in Hungary.²⁵⁷ As Minister for Fami-

²⁵⁰ *FACTBOX—What Has Changed in Hungary During Orbán’s 12-Year Rule*, *supra* note 248; Kim Lane Scheppele, *How Viktor Orbán Wins*, 33 J. DEMOCRACY 45, 52–53 (2022).

²⁵¹ Weronika Grzebalska & Andrea Pető, *The Gendered Modus Operandi of the Illiberal Transformation in Hungary and Poland*, 68 WOMEN’S STUD. INT’L F. 164, 168 (2018); Dorottya Szikra, *Democracy and Welfare in Hard Times: The Social Policy of the Orbán Government in Hungary Between 2010 and 2014*, J. EUROPEAN SOC. POL’Y 1, 3 (2014); Scheppele, *supra* note 250, at 49.

²⁵² Malu Cursino, *Hungary Decreases Tighter Abortion Rules*, BBC NEWS (Sept. 13, 2022), <https://www.bbc.com/news/world-europe-62892596> [<https://perma.cc/2BJT-LG8R>]; Lili Rutai, *Dozens of Hungarian Women Travel to Austria for Abortions Every Week, Amid Tightening Laws*, EURO NEWS (Aug. 16, 2023), <https://www.euronews.com/my-europe/2023/08/16/dozens-of-hungarian-women-travel-to-austria-for-abortions-every-week-amid-tightening-laws> [<https://perma.cc/EA6V-6HKJ>]; Bianka Vida, *New Waves of Anti-Sexual and Reproductive Health and Rights Strategies in the European Union: The Anti-Gender Discourse in Hungary*, 27 SEXUAL & REPROD. HEALTH MATTERS 13, 14 (2019).

²⁵³ *Support for Hungary’s Ruling Fidesz Highest in Six Years in Oct—Pollster*, REUTERS (Nov. 2, 2017), <https://www.reuters.com/article/us-hungary-politics-fidesz/support-for-hungarys-ruling-fidesz-highest-in-six-years-in-october-pollster-idUSKBN1D21DE/> [<https://perma.cc/P2CT-BJEF>]; Scheppele, *supra* note 251, at 46, 48.

²⁵⁴ Scheppele, *supra* note 251, at 46, 48.

²⁵⁵ *See id.* at 45–46 (describing Hungary’s 2022 primary election as “too close to call”).

²⁵⁶ Edit Inotai, *Orbán Stuns Hungary Nominating Woman as President*, REPORTING DEMOCRACY (Dec. 27, 2021), <https://balkaninsight.com/2021/12/27/orban-stuns-hungary-nominating-woman-as-president/> [<https://perma.cc/DM6B-ZRV4>]. Others suggest her appointment may be a form of gender-based “window-dressing.” *See* Radke & Rolofs, *supra* note 230, at 35.

²⁵⁷ Inotai, *supra* note 256.

ly, she also highlighted her own role as a women and mother.²⁵⁸ She further advanced a range of family subsidies and policies with strong pro-natalist objectives, couched as efforts to advance women's personal and economic interests, but which many feminists criticized as clearly femo-nationalist in intent, and adding to the "double shift" facing women performing paid and unpaid care work.²⁵⁹

Her tenure as president also coincided with the successful re-election of the Orbán government at national legislative elections in 2022.²⁶⁰ And Novák embarked on a global campaign to promote Hungary to the world—promoting Hungary as a model global citizen opposing the war in the Ukraine, supporting global humanitarian and rehabilitation programs, and "teach[ing] our children how to look after their own environment."²⁶¹

Novák herself rejected any suggestion that she was a mere agent of Orbán, calling the suggestion itself sexist or anti-feminist in nature.²⁶² At times, she also demonstrated her independence by supporting continued access to IVF in the face of broader limits on abortion and reproductive rights, and vetoing a bill limiting the whistleblower protections of LGBTQI+ Hungarians.²⁶³

There were, however, several indications that her appointment had potentially abusive feminist motives, as well as effects. Orbán had a long history of publicly opposing the role of women in high public office in Hungary and downplaying the significance of women's rights.²⁶⁴ Novák served as president during a period in which Hungary had some of the lowest levels of female *legis-*

²⁵⁸ Corinne Deloy, *Katalin Novak, New President of the Republic of Hungary*, FOUND. ROBERT SCHUMAN (Mar. 15, 2022), <https://www.robert-schuman.eu/en/monitor/1930-katalin-novak-new-president-of-the-republic-of-hungary> [<https://perma.cc/6KF4-ZC54>].

²⁵⁹ Júlia Bakó, *Hungary's First Female President Is Hardly a Win for Women*, OPEN DEMOCRACY (Mar. 24, 2022), <https://www.opendemocracy.net/en/5050/hungary-first-female-president-hardly-a-win-for-women/> [<https://perma.cc/5BZ6-KFHU>]; Radke & Rolofs, *supra* note 230, at 46–47; *see also* Deloy, *supra* note 258 (discussing Novák's language in this context).

²⁶⁰ Scheppele, *supra* note 251, at 46; Krisztina Than, *Orban's Dream of Two Decades in Power Hangs in the Balance in Hungarian Ballot*, REUTERS (Mar. 31, 2022), <https://www.reuters.com/world/europe/orbans-dream-two-decades-power-hangs-balance-hungarian-ballot-2022-03-31/> [<https://perma.cc/46NV-G83E>].

²⁶¹ *President Novák Delivers UN Speech About the Next Generation*, HUNGARY TODAY (May 19, 2023), <https://hungarytoday.hu/president-novak-talks-about-the-next-generation-in-un-speech/> [<https://perma.cc/PT2B-JAAG>]; *see also* Katalin Novák, *Speech at the Reception of the DC—Museum of Fine Arts* (Jan. 10, 2024), <https://bogota.mfa.gov.hu/asset/view/180422/HEKatalinNovaksspeechatthereceptionoftheDC2024.01.10.pdf> [<https://perma.cc/7KEQ-7GU3>].

²⁶² *See* Bakó, *supra* note 259 (reporting Novák's statement that it is degrading to all women to call her Orbán's "puppet").

²⁶³ Inotai, *supra* note 256; *Hungarian President Vetoes Law That Many Decried as Homophobic*, RADIO FREE EUR. (Apr. 22, 2023), <https://www.rferl.org/a/hungary-novak-homophobic-veto/32375052.html> [<https://perma.cc/7W7U-VNA3>].

²⁶⁴ *See* Bakó, *supra* note 259.

lative representation in Central and Eastern Europe.²⁶⁵ She was the youngest ever president of the country, with limited political experience and yet extensive ties to Fidesz as a senior party official.²⁶⁶ Orbán was also extremely quick to distance himself from Novák, after she helped him win re-election in 2022, and was exposed for pardoning someone accused of covering up child sexual abuse.²⁶⁷

C. Africa

Africa has long been a continent dominated by strong-man politics—both male political leadership and leadership that tends toward authoritarian over competitive democratic rule.²⁶⁸ But this has begun to change. There are increasing pressures on authoritarian leaders to democratize or maintain at least some formal, outward commitment to constitutional democracy. And there are increasing numbers of women running for and holding high office in both the political and legal branches of government in Africa.²⁶⁹

This has led to some major improvements in constitutional democratic governance and helped advance women's rights. Ellen Johnson Sirleaf, for example, was the president of Liberia and Africa's first female head of state.²⁷⁰ She was also widely seen as promoting both democracy and women's rights including women's safety, economic security, and political participation while in government.²⁷¹ The same is true for female chief justices in Africa, such as Martha Koome of Kenya and Meaza Ashenafi of Ethiopia.²⁷² And there are

²⁶⁵ Radke & Rolofs, *supra* note 230, at 41–42.

²⁶⁶ See Inotai, *supra* note 263; Deloy, *supra* note 258.

²⁶⁷ See Iván László Nagy, *Hungarian President Katalin Novák Resigns—The Full Story Behind the Pardon Scandal*, VISEGRAD/INSIGHT (Feb. 11, 2024), <https://visegradinsight.eu/hungarian-president-katalin-novak-resigns-the-full-story-behind-the-pardon-scandal/> [<https://perma.cc/7W7U-VNA3>]; Nick Thorpe, *Hungarian President Katalin Novák Resigns Over Child-Abuse Pardon Scandal*, BBC (Feb. 10, 2024), <https://www.bbc.com/news/world-middle-east-68264363> [<https://perma.cc/6Z3R-8WW5>].

²⁶⁸ Jason Burke, *Has Africa Had Its Fill of 'Strongmen'?*, THE GUARDIAN (Dec. 10, 2016), <https://www.theguardian.com/world/2016/dec/11/africa-strongmen-angola-dos-santos-zimbabwe-mugabe-uganda-sudan> [<https://perma.cc/L29X-QJGU>].

²⁶⁹ See, e.g., Victor H. Mlambo, Sphephelo Zubane, Andiswa Mkhwanazi & Daniel N. Mlambo, *The Entrenchment of Women Within African Politics: A Case of Senegal, South Africa, and Rwanda*, 18 INT'L J. INTERDISC. CIVIC & POL. STUDS. 33, 49 (2023) (reviewing case studies of the governments in Rwanda, South Africa, and Senegal, where women have increased their political leadership); Burnet, *supra* note 96, at 361–62 (reporting the increase of women representation in governments across Africa including in Rwanda, Namibia, and South Africa).

²⁷⁰ Burnet, *supra* note 96, at 370.

²⁷¹ VIEYARASA, *supra* note 99, at 6; see also Gwendolyn Mikell, *A Woman You Can Trust: Ellen Johnson-Sirleaf and Political Leadership in Sub-Saharan Africa*, 10 GEO. J. INT'L AFFS. 17, 21 (2009).

²⁷² Victoria Miyandazi & Duncan Okubasu, *Judiciary Chiefs in Hybrid Regimes: Kenya*, INT'L J. CONST. L. (forthcoming).

more and more women candidates and office-holders available to promote and appoint than ever before.

But the rise of women leaders in Africa has also created fertile conditions for abusive feminism. The promotion of women's rights can be a useful tool in deflecting international criticism of a regime that is otherwise highly undemocratic in nature.

There is also evidence that abusive feminist tactics have worked as a tool for diffusing domestic and international scrutiny of anti-democratic changes in leading African constitutional systems—such as South Africa, and even more notably, Rwanda.²⁷³

South Africa is yet to see a female head of state or chief justice. And there remains a genuine connection between commitments to constitutional democracy, transformation, and gender and racial equality within South Africa. But there are also early signs of a shift toward abusive feminism. South Africa in recent years has seen rising levels of corruption, and concerns about government integrity.²⁷⁴ Corruption of this kind also poses both direct and indirect threats to South African democracy. It can contribute to a form of patronage politics and clientelism that directly reduces electoral competition in the country. And it can undermine public faith and confidence in electoral democracy, in ways that indirectly threaten its long-term survival.

Hence, one of the highest priorities for the Judicial Services Commission (JSC) in nominating candidates for appointment to the Constitutional Court of South Africa is the identification of candidates with a strong commitment to anti-corruption efforts.²⁷⁵ Yet there is compelling evidence that members of the African National Congress (ANC) have sought to rely on commitments to gender equality—and women's descriptive representation on the Court—as a means of encouraging the JSC to support candidates with a weak track record on anti-corruption efforts.²⁷⁶

In Rwanda, both the judiciary and parliament have arguably been the target of even more concerted—and successful—forms of abusive feminism.

²⁷³ Gretchen Bauer & Jennie E. Burnet, *Gender Quotas, Democracy and Women's Representation in Africa: Some Insights from Democratic Botswana and Autocratic Rwanda*, 41 WOMEN'S STUD. INT'L F. 103, 115 (2013); Elin Bjarnegård & Pär Zetterberg, *How Autocrats Weaponize Women's Rights*, 33 J. DEMOCRACY 60, 61 (2022); Aili Tripp, *The Instrumentalization of Women Opposition Leaders for Authoritarian Regime Entrenchment: The Case of Uganda*, 11 POL. & GOVERNANCE 152, 156 (2023).

²⁷⁴ *Corruption in Africa: 75 Million People Pay Bribes*, TRANSPARENCY INT'L (Nov. 30, 2015), <https://www.transparency.org/en/news/corruption-in-africa-75-million-people-pay-bribes> [<https://perma.cc/LHG5-F69X>].

²⁷⁵ Cathi Albertyn & Elsje Bonthuys, *Becoming Chief Justice? Gendered Faultlines in Judicial Leadership in South Africa*, in ERIN DELANEY & ROSALIND DIXON, JUDICIAL HEROINES? FEMALE CHIEF JUSTICES IN COMPARATIVE PERSPECTIVE (forthcoming 2025).

²⁷⁶ *Id.*

Rwandan President Paul Kagame has sought to consolidate his more than twenty-three-year hold on power through a range of abusive tactics.²⁷⁷ This has included tactics that focus on the environment, disability, and gender rights.²⁷⁸ His promotion of women's descriptive representation has been especially notable across a range of different institutions. For example, Article 10 of the Rwandan Constitution provides that women must be granted at least "30% of positions in decision-making organs."²⁷⁹ And Rwanda now has one of the highest rates of female legislative representation in the world, and fifty percent membership on the Supreme Court, including a female Chief Justice.²⁸⁰

Yet it is not clear that this has led to major advancements in substantive gender equality.²⁸¹ The Rwandan Parliament has rejected proposals for change in a range of areas, including women's rights of access to rural land, and the practice of men paying a "bride price" upon marriage.²⁸² When proposals for change have been made by some lawmakers (for example, in relation to "bride price" payments), female members of Kagame's cabinet have also stepped in to justify the status quo.²⁸³

What is clear, however, is that women's descriptive representation has coincided with the progressive erosion of multi-party democracy and the independence of various oversight institutions, including the Senate and Supreme

²⁷⁷ See Wycliffe Muia, *Rwanda's President Paul Kagame Confirms Fourth-Term Bid*, BBC (Sept. 20, 2023), <https://www.bbc.com/news/world-africa-66865681> [<https://perma.cc/J8WM-YE55>]; Elin Bjarnegård & Pär Zetterberg, *How Autocrats Use Women's Rights to Boost Themselves*, FOREIGN POL'Y (June 3, 2022), <https://foreignpolicy.com/2022/06/03/autocrats-gender-equality-women-rights-rwanda/> [<https://perma.cc/8JBH-YMRM>] (explaining that even though there are a record number of women in Kagame's parliament, the government is still an autocracy that uses electoral fraud and other oppressive tactics to stay in power).

²⁷⁸ Bjarnegård, *supra* note 270, at 61.

²⁷⁹ CONSTITUTION DE LA RÉPUBLIQUE DE RWANDA, art. 10; Jane Dudman, *Lessons from Rwanda's Female-Run Institutions*, THE GUARDIAN (July 1, 2014), <https://www.theguardian.com/society/2014/jul/01/lessons-rwanda-female-run-institutions-mps> [<https://perma.cc/RHZ7-SW6W>].

²⁸⁰ Dudman, *supra* note 276; *Women Chief Justices Across Africa*, AFR. WOMEN IN L., <https://www.africanwomeninlaw.com/women-chief-justices/aloysie-cyanzayire> [<https://perma.cc/7M88-3N2R>]; see also *To Achieve Justice, We Need More Women in Justice*, U.N. (Mar. 10, 2024), <https://www.un.org/en/observances/women-judges-day> [<https://perma.cc/53JP-BMWF>] (explaining how women judges can bring a fresh perspective to judiciaries and be effective in fighting against judicial corruption).

²⁸¹ See Burnet, *supra* note 96, at 363 (explaining the "paradox" of increased female participation in the Rwandan government that led to less female control over policy-making). For a somewhat more positive assessment, but one that focuses on gender and ethnicity as important, see also Andrea Guariso, Bert Ingelaere & Marijke Verpoorten, *When Ethnicity Beats Gender: Quotas and Political Representation in Rwanda and Burundi*, 49 DEV. & CHANGE 1361, 1382 (2018).

²⁸² Pamela Abbott & Dixon Malunda, *The Promise and the Reality: Women's Rights in Rwanda*, 24 AFR. J. INT'L & COMPAR. L. 561, 568–69 (2016).

²⁸³ See Alfred Olufemi, *Bride Price Scrapping on the Table*, AFR. LEGAL (Nov. 22, 2022), <https://www.africa-legal.com/news-detail/bride-price-scrapping-on-the-table/> [<https://perma.cc/G24V-UL8R>] (reporting Rwanda Minister of Gender & Family Promotion Jeannette Bayisenge's statement that bride prices are not themselves problematic).

Court. The Constitution of Rwanda provided for a two-term limit for the presidency. In 2015, however, the Constitution was amended to allow Kagame to run for an additional two terms, effectively allowing him to stay in office until 2034. The changes were ostensibly proposed by popular initiative but approved by the majority-female Senate.²⁸⁴ The majority-female Supreme Court also rejected a challenge to the legality of the changes, declining to apply any form of substantive limits on the power of constitutional amendment.²⁸⁵

The majority-female Parliament and Court have also been active participants in the suppression of the political opposition in Rwanda. One important way this has occurred is through the passage by Parliament of sweeping criminal prohibitions on genocide promotion and “ideology,” including “conduct, speeches, documents, and other acts” that were “degrading or defamatory,” propounded “wickedness or incited hatred,” or “created confusion aim[ed] at negating the genocide.”²⁸⁶ The Court has also interpreted these laws very broadly, even in the context of electoral speech. For instance, in 2010, in the lead up to the presidential election, Victoire Ingabire returned to Rwanda to run against Kagame, but was found guilty of violating this law. She publicly suggested that there was “no shame in saying I am Hutu or Tutsi” and called for greater accountability for both Tutsi and Hutu officials involved in war crimes.²⁸⁷ The Supreme Court upheld the validity of the law, her conviction, and in fact increased her sentence from eight to seventeen years in prison.²⁸⁸ The Court also upheld convictions against a range of journalists for the offences of “endangering public order,” “minimizing the genocide,” and “divisionism” for comments critical of the government.²⁸⁹

²⁸⁴ *Rwandans Vote on Allowing Third Kagame Presidential Term*, BBC NEWS (Dec. 18, 2015), <http://www.bbc.com/news/world-africa-35125690> [https://perma.cc/CB2N-DMGB].

²⁸⁵ Clement Uwiringiyimana, *Rwanda's Top Court Clears Way for Kagame Third Term*, REUTERS (Oct. 8, 2015), <http://www.reuters.com/article/us-rwanda-president-idUSKCN0S21A120151008> [https://perma.cc/KEV6-BTL7].

²⁸⁶ Law No. 18/2008 Relating to the Punishment of the Crime of Genocide Ideology, arts. 2–3; Yakaré-Oulé (Nani) Jansen, *Denying Genocide or Denying Free Speech? A Case Study of the Application of Rwanda's Genocide Denial Laws*, 12 NW. J. INT'L HUM. RTS., 191, 197–99 (2014) (analyzing the impact of Rwanda's genocide denial laws on free speech). See generally Lynne Tirrell, “Listen to What You Say”: *Rwanda's Postgenocide Language Policies*, NEW ENG. J. PUB. POL'Y, June 2025, at 1, 2; Dominique Emmanuel Uwizeyimana, *Aspects and Consequences of the Rwandan Law of Genocide Ideology: A Comparative Analysis*, 5 MEDITERRANEAN J. SOC. SCI. 2370, 2372 (2014).

²⁸⁷ STEPHEN KINZER, *A THOUSAND HILLS: RWANDA'S REBIRTH AND THE MAN WHO DREAMED IT* 127 (2008); Jansen, *supra* note 286, at 198; David Barouski, *Rwandan Constitutional Law and the Oppression of Political Opposition and Dissidents*, DISSIDENT VOICE (Oct. 30, 2010), <http://dissidentvoice.org/2010/10/rwanda-constitutional-law-and-the-oppression-of-political-opposition-and-dissidents/> [https://perma.cc/S5QX-HBPD].

²⁸⁸ Jansen, *supra* note 286, at 212–13.

²⁸⁹ *Id.* For a fuller account of the treatment of these journalists, and in particular Agnes Uwimana, see also ANJAN SUNDARAM, *BAD NEWS: LAST JOURNALISTS IN A DICTATORSHIP* 74–75 (2016).

There are also a range of reasons for this pattern. One important factor is that both the Parliament and the Court are dominated by members loyal to the President and his party, the Rwandan Patriotic Front (RPF).²⁹⁰ Article 75 of the Constitution provides that twenty-four out of eighty seats in the Rwandan Chamber of Deputies must be women, and these female members are indirectly elected by local councils, which have been dominated by the RPF.²⁹¹ Similarly, Article 80 provides that twelve out of twenty-six Senators are appointed by the President or National Consultative Forum of Political Organizations, of which at least thirty percent must be women.²⁹² In effect, the Constitution thus imposes strong norms of gender representation, but within a context of broad power over appointment by the President.

Article 154 of the Constitution also provides for the appointment of Supreme Court judges by the President, after consultation with the Cabinet and High Council of the Judiciary and approval by the Senate.²⁹³ Once again, members of the Court are thus closely vetted by, and likely to be loyal to, the President and his party.

The high levels of descriptive female representation in Rwanda have also played an important role in persuading the international community to overlook Kagame's record of eroding free and fair, multi-party elections. In part, this has also been because of a high degree of rights formalism on the part of the international community. International government actors have consistently praised Rwanda for its record on female representation in government and parliament. In 2007, for example, the Rwandan parliamentary women's caucus hosted an international conference on the subject of "Gender, National Building and the Role of Parliaments" attended by a range of international leaders.²⁹⁴ The conference also led to a "Kigali Declaration" on the representation of women in parliament, calling for greater female representation in politics globally, and "welcom[ing] the *clear and unequivocal commitment of Rwanda's leadership* towards women empowerment, which has led to sustained achievements in Gender Equality."²⁹⁵ The same year Kagame was awarded the African Gender Award, and in 2013, Rwanda won the International "Women in

²⁹⁰ DIXON & LANDAU, ABUSIVE CONSTITUTIONAL BORROWING, *supra* note 12, at 61–62.

²⁹¹ CONSTITUTION DE LA REPUBLIQUE DE RWANDA, art. 75.

²⁹² *Id.* art. 80.

²⁹³ *Id.* art. 154.

²⁹⁴ *Kigali Declaration on Gender, Nation Building and the Role of Parliament*, U.N. DEV. PROGRAMME (Jan. 21, 2022), <https://www.undp.org/rwanda/news/kigali-declaration-gender-nation-building-and-role-parliament> [https://perma.cc/JQ49-T3HL].

²⁹⁵ *Global Forum on Women in Parliaments in Rwanda*, U.N. WOMEN (July 10, 2014), <https://www.unwomen.org/en/news/stories/2014/7/global-forum-on-women-in-parliaments-in-rwanda> [https://perma.cc/A3KK-YJFU]; *Women in Parliaments Global Forum*, KIGALI DECLARATION (July 3, 2014), <https://web.archive.org/web/20190828092508/https://www.womeninparliaments.org/wp-content/uploads/2014/03/WIP-Kigali-Declaration-04072014.pdf> (emphasis added).

Parliament” award.²⁹⁶ Kagame’s biography for the World Economic Forum emphasizes the “recognition [of] his leadership in peace building and reconciliation, development, good governance, promotion of human rights and *women’s empowerment*.”²⁹⁷ Foreign diplomats have also defended the Kagame government at various times, based on its success in advancing women’s descriptive representation.²⁹⁸ This is despite clear evidence of other human rights abuses by the government, and a worsening in general democratic norms and freedoms.²⁹⁹

V. LIMITS & POTENTIAL RESPONSES

To some degree, abusive feminism will have in-built limits. The more that women occupy high public office, the more that perceptions of female leadership will be shaped by the performance of those specific women leaders, rather than simply general notions of how female leaders behave. Hence, if those women leaders are seen as promoting norms such as democracy and good government, later female leaders are likely to be seen as “good leaders.” But if they are seen as “bad leaders”—for instance, because they are illiberal, authoritarian, corrupt, or ineffective—subsequent female leaders are likely to be viewed by the public with far greater skepticism.³⁰⁰

Over the long run, this can also make abusive feminism potentially self-defeating. The more it serves to legitimate the election or appointment of illiberal, authoritarian (female) leaders, the more the language of gender equality loses its power in future attempts at abusive constitutional change. Or the fewer women may be willing to serve in high office.

But politics is also unpredictable. “Bad” female leaders may be followed by good ones, in ways that maintain the public’s faith in women’s leadership capacities. And public knowledge of, and engagement with, politics in many constitutional systems has steadily declined. And with this, so too has the likelihood that bad female leadership will disrupt the dynamics of abusive feminism. If voters do not know or care about what female leaders do, they are far likelier to rely on *generalized* notions of female behavior—notions that often underpin abusive feminist dynamics.

²⁹⁶ SJ Cooper-Knock, *Rwanda: Liberation by Numbers?*, DEMOCRACY IN AFR. (Apr. 5, 2016), <http://democracyinafrica.org/rwanda-liberation-by-numbers/> [<https://perma.cc/Q5ZN-6Q94>].

²⁹⁷ Paul Kagame, WORLD ECON. F., <https://www.weforum.org/people/paul-kagame/> [<https://perma.cc/X3ME-DFMB>] (emphasis added).

²⁹⁸ See Burnet, *supra* note 96, at 363–64 (explaining how Rwanda is widely seen as a country that is undergoing “democratization”).

²⁹⁹ *Id.*

³⁰⁰ In Malawi, for instance, this is one explanation for the decline in female representation following the corruption scandal surrounding former President Joyce Banda. Tiyesere Mercy Chikapa, *The ‘Joyce Banda Effect’: Public Opinion and Voting Behaviour in Malawi*, CMI BRIEF, Apr. 2016, at 1, 3.

Abusive feminism, therefore, may well survive even many years or decades of abusive feminist discourse and leadership. Indeed, in many contexts it is likely to be a repeated phenomenon, and hence, one that calls for a decisive response. What, however, can be done to address the risk of abusive feminism? This Part explores the answer to this question—both for the international community as a whole, and specifically for feminist scholars and practitioners.

Section A of this Part discusses a realist approach to human rights norms and women's rights.³⁰¹ Section B offers some potential responses to abusive feminism for feminist scholars and practitioners to follow while acknowledging that the problem is multi-faceted and complex.³⁰²

A. Human Rights (or Constitutional) Realism

For the international community, perhaps the most important response lies in a move toward greater “realism” in respect of human rights norms. This includes attention to the democratic institutions and power structures likely to influence human rights implementation in practice, or the likely or actual implementation of rights on the ground.³⁰³ Realism of this kind would require greater attention to at least three interrelated questions.³⁰⁴

The first would involve attention to the prior track record of those announcing new formal rights guarantees. The more they had done in the past to promote gender equality, the more credible it would be that they would in fact implement any new formal commitment to equality. But conversely, the less they had done to promote human rights, the greater skepticism we should have of any new promise to do so, absent a compelling explanation for why circumstances or a leader's approach to the issue has changed.

Second, a realist approach would ask: what is the proposed timeframe and process for implementation of these rights guarantees? There are a range of reasons why democratic decision-makers might legitimately decide to delay the implementation of constitutional decision or legislative or policy change: doing so may reduce political opposition to a change, help defuse backlash, increase the time available for planning a smooth transition or process of im-

³⁰¹ See *infra* notes 303–313.

³⁰² See *infra* notes 314–331.

³⁰³ See de Búrca & Young, *supra* note 11, at 209; Christian Reus-Smit, *Being a Realist About Human Rights*, in *THE LIMITS OF HUMAN RIGHTS* 121 (Bardo Fassbender & Knut Traisbach eds., 2020) (discussing political limits to human rights). For related ideas about human rights realism, which are closer to a version of human rights pragmatism, see also Natalie R. Davidson, *Human Rights Realism*, 54 *VAND. J. TRANSNAT'L L.* 31, 31 (2021), explaining how human rights realism is a compromise between sovereigntism and human rights absolutism.

³⁰⁴ Similar questions are useful in distinguishing between abusive versus legitimate forms of constitutional borrowing. DIXON & LANDAU, *ABUSIVE CONSTITUTIONAL BORROWING*, *supra* note 12, at 490.

plementation, promote fairness and trust in government, or honor settled policy expectations.³⁰⁵ But delay can also be a means by which governments can promise change without actually taking the steps, or incurring the political costs necessary to make change. The more immediate and concrete the plans are for rights implementation, therefore, the more we should expect substantive implementation to follow. The more delayed, long-term, and unspecified the path is to implementation, the more skepticism we should have of formal rights-based promises or commitments.

Third, a realist approach would interrogate the context for, and apparent motives of, those making arguments in favor of women's rights.³⁰⁶ Men, as well as women, can be important advocates for gender-based change. Indeed, some activists argue that true change necessarily requires enlisting men as partners in or even "champions" of change.³⁰⁷ Political conservatives, as well as progressives, can also play a genuine role in such change. But not everyone who invokes women's rights has a sincere commitment to their realization. When we assess human rights, or gender equality arguments, it is therefore important to scrutinize the motives of those making these arguments.

It can, of course, be difficult to determine those motives. And the problem is even greater for changes adopted by multi-member bodies, such as the legislature. But at least some insights can often be gained from an actor's prior track record, and the context in which the arguments are made. For instance, their timing relative to advocacy by women's rights groups or engagement with those groups, and broader proposed changes to democratic constitutional structures. Another factor may be the degree to which they are consistent in holding a particular substantive or philosophical position, including a particular interpretive approach to human rights or constitutional norms.

Take recent proposals by the Modi government for reserved seats for women in state and national parliaments in India.³⁰⁸ India has a long history of

³⁰⁵ Rosalind Dixon & Samuel Issacharoff, *Living to Fight Another Day: Judicial Deferral in Defense of Democracy*, 2016 WIS. L. REV. 683, 700, 722.

³⁰⁶ For an extremely insightful analysis of this kind applied to the *Dobbs* decision, see generally Young, *supra* note 12; see also Tsai & Ziegler, *supra* note 139.

³⁰⁷ Arya Gautam, *Why Feminism Needs to Include Men*, THE GAZELLE (Apr. 19, 2020) <https://www.thegazelle.org/issue/178/feminism-needs-to-include-men> [<https://perma.cc/6E2P-A22N>]; 7 *Switches: A Guide for Inclusive Gender Equality by Design*, CHAMPIONS OF CHANGE COAL., <https://championsofchangecoalition.org/resource/7-switches-a-guide-for-inclusive-gender-equality-by-design/> [<https://perma.cc/9VBH-8RDU>].

³⁰⁸ This analysis draws heavily on joint work in Dixon & Karwa, *supra* note 10; Annie Banerji, *How Will a Gender Quota in Parliament Help India's Women?*, REUTERS (Sept. 22, 2023), <https://www.reuters.com/article/world/asia-pacific/how-will-a-gender-quota-in-parliament-help-indias-women-idUSL8N3AY38A/> [<https://perma.cc/B45E-DACT>].

reserved seats for women in local government or “panchayats.”³⁰⁹ These seats have also encouraged meaningful substantive and descriptive representation for women. It is not surprising, therefore, that Indian feminists have repeatedly called for the expansion of these gender-based quotas to the state and national level.³¹⁰ The Women’s Reservation Bill also responds to these calls.

At the same time, there are several factors that point to the Bill having a potentially abusive feminist character. First, the scope of the Bill has a number of key gaps. For example, it does not include any measures aimed at promoting the representation of Muslim women, one of the most under-represented groups in Indian politics.³¹¹ And while purporting to increase the representation of women from Scheduled Castes and Tribes, it does so from within existing reservations for these groups, rather than as an additional measure. Second, the context for its passage is also problematic: the Modi government has a distinctly mixed track record on women’s rights.³¹² There is an extremely long lag-time between the adoption of the Bill and its likely implementation. It requires a new census and redistricting process that would occur in 2029, at the earliest. The Bill is adopted in the context of efforts by the Modi government to shore up the support of female voters for what is an increasingly authoritarian regime and efforts further to marginalize Muslim as opposed to Hindu voters.³¹³

Hence, a realist approach to the Bill would suggest immediate skepticism about the degree to which the Bill is in fact truly feminist and pro-democratic, rather than abusive feminist in nature.

B. Gender Tropes, Anti-Essentialism & Women’s Descriptive Representation

For feminist scholars and practitioners, the responses to abusive feminism are likely to be more complex. But, at a minimum, they should involve a great-

³⁰⁹ PIB Delhi, *Participation of Women in Panchayats*, PIB.GOV (Feb. 6, 2024), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2003196#:~:text=Article%20243D%20of%20the%20Constitution,reservation%20for%20women%20in%20Panchyats> [<https://perma.cc/CV5H-UNWG>].

³¹⁰ See Banerji, *supra* note 308 (explaining how some women are confident that this law will give them an increased role in national decision-making).

³¹¹ Saba Yunus & Manorama Gupta, *Role of Indian Muslim Women in Politics*, INT’L CONF. L., EDUC., BUS. & CORP. SOCIAL RESPS. 73, 73 (2017).

³¹² See Ajaz Ahsraf, *Narendra Modi: A False Crusader for Women’s Rights*, AL JAZEERA (Jan. 25, 2018), <https://www.aljazeera.com/opinions/2018/1/25/narendra-modi-a-false-crusader-for-womens-rights> [<https://perma.cc/CY3L-XWV7>] (discussing how Modi’s regime banned “triple talaq” divorce, but refused to criminalize marital rape).

³¹³ See Geeta Pandey, *Why Women Vote for Indian PM Narendra Modi’s BJP*, BBC (Apr. 19, 2022), <https://www.bbc.com/news/world-asia-india-61077736> [<https://perma.cc/5J6K-SPN6>] (discussing the rise of female voter support for Modi and the Bharatiya Janata Party in Uttar Pradesh).

er awareness of the risk of abusive borrowing in the development of feminist ideas.³¹⁴ Why should feminists or women's rights activists orient their practices around concerns about abuse?

One reason is the close connection between commitments to democracy and equality. Although liberalism and democracy are distinct ideals, in practice, they often grow or erode together.³¹⁵ Another reason is the risk to feminism itself that comes from its abuse. When ideas are abused, in the short-run, the main flow-on effect is often an increase in support for the political projects of those that abuse them, including projects of democratic erosion. In the long run, however, at least some voters and outside observers may come to see the project for what it is, namely, one of abusive constitutionalism. The ensuing disenchantment with the project can often redound against the autocratic leader and the ideas themselves.

"Abuse proofing," therefore, is not just about protecting ideas against misuse.³¹⁶ It is about protecting the foundations of their ongoing sociological relevance and support, which for feminists means protecting feminism from its critics. And often, this will mean developing those feminist ideas in a more careful, *contingent* way designed to avoid generalizations about women's interests, attributes or approaches to leadership.

Cultural feminism, for example, highlights the importance of connection, care, and care work to individual and collective wellbeing.³¹⁷ It also highlights the ways in which liberal societies often undervalue these various forms of relationship and labor, and the gendered origins and consequences of those practices. One reason care and care work may be under-valued, for instance, is that they are disproportionately performed by women. Women's work and contributions have been historically downplayed as a result of gendered norms and power structures.³¹⁸ The undervaluation of this work also contributes to women's ongoing economic disadvantage and poverty.³¹⁹ Drawing attention to these issues is thus extremely important to achieve full gender equality for women and a society capable of promoting human flourishing.

Cultural feminism, however, also comes in different variants. Some versions of cultural feminism highlight the importance of care as a feminine-coded value, but without suggesting that it is necessarily tied to women or the

³¹⁴ DIXON & LANDAU, ABUSIVE CONSTITUTIONAL BORROWING, *supra* note 12, at 71.

³¹⁵ *Id.*; see also Grzebalska & Pető, *supra* note 251.

³¹⁶ See generally DIXON & LANDAU, ABUSIVE CONSTITUTIONAL BORROWING, *supra* note 12.

³¹⁷ CINZIA ARRUZA, TITHI BHATTACHARYA & NANCY FRASER, FEMINISM FOR THE 99%: A MANIFESTO 8–10, 14–15, 24–25 (2019); Neo, *supra* note 91, at 1310–14. See generally NANCY FRASER, FORTUNES OF FEMINISM: FROM STATE-MANAGED CAPITALISM TO NEOLIBERAL CRISIS (2013).

³¹⁸ See generally FRASER, *supra* note 317.

³¹⁹ *Id.*

female experience.³²⁰ Others draw a much closer connection between the experience of childbirth, breastfeeding, and care, or care and the female experience.³²¹ These particular variants also increase both the risk of gender essentialism (or downplaying in the diversity of women's experience) and abusive borrowing. They make it far easier for would-be authoritarians to portray women as "caring" about other women, or existing democratic institutions, when the reality may in fact be the opposite.

Increased attention to the risk of abusive feminism, therefore, would point to the importance of developing cultural feminist arguments in a more contingent way—one that focuses on the importance of care and care work by women, men, and people of any and no gender, and the benefits to all of giving it greater social space and significance.³²²

As noted at the outset, another important debate within feminism involves the "intersectional" nature of discrimination.³²³ Intersectional feminist theory highlights the diverse ways in which women experience discrimination, based on their race, class, sexuality, and able-bodied status. It also shows how different sites of discrimination can intersect and overlap in complex ways, beyond simply the "multiplication" of disadvantage. Many women of color, for example, will experience intersecting forms of race and gender discrimination not experienced by either white women or Black men.³²⁴ And it highlights how women of color may experience unique psychological harms, associated with a simultaneous sense of solidarity with other women subject to sexual violence, and with Black men wrongly accused of such violence for racialized reasons.³²⁵ Because of this, it calls for extreme caution around the idea that feminists speak "for [all] women," when calling out perceived gender injustices. This may reduce the power of the feminist movement to speak, as one, on certain issues.³²⁶ But intersectional feminism does far better in capturing the di-

³²⁰ SUK, *supra* note 78, at 206; Neo, *supra* note 91, at 1320.

³²¹ Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 2–3 (1988).

³²² See, e.g., JAMIE HAKIM, ANDREAS CHATZIDAKIS, JOE LITTLER & CATHERINE ROTTENBERG, *THE CARE MANIFESTO: THE POLITICS OF INTERDEPENDENCE* 19–20 (2020) (imagining an ideal world where "universal care" is prioritized); JENNIFER NEDELSKY & TOM MALLESON, *PART-TIME FOR ALL: A CARE MANIFESTO* 65–81 (2023) (explaining the benefits of increased importance on care work, especially for men); Rubio-Marín, *supra* note 91, at 253–59; SUK, *supra* note 78, at 180, 206.

³²³ See, e.g., Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990).

³²⁴ See Jamillah Bowman Williams, *Maximizing #MeToo: Intersectionality & the Movement*, 62 B.C. L. REV. 1797, 1802 (2021) (describing how women of color experience sexual harassment and workplace bullying at higher rates than their white counterparts).

³²⁵ See Crenshaw, *supra* note 323, at 1273; Harris, *supra* note 323, at 606.

³²⁶ Knop & Riles, *supra* note 1, at 8, 14.

verse nature of women's lived experiences, and potential divergence as well as convergence in women's needs and interests.

It is, therefore, also arguably less susceptible to abuse. Femo-nationalist-style arguments, for example, logically depend on a dichotomy being drawn between women's rights and the rights of racial and religious minorities. Yet when feminism insists on giving space to the voices and experiences of minority women, this dichotomy collapses. It becomes much harder to argue that limitations on rights can be justified as in the interests of (all) "women." Instead, feminism becomes linked to a practice of challenging existing gendered and racialized practices and power structures or a process of gender-based contestation.³²⁷

This does not mean intersectional feminist concerns cannot themselves be abused: they can. Think of the "women protective" anti-abortion arguments focused on Black women in a case such as *Dobbs*.³²⁸ This could clearly be viewed as using the language of intersectional feminism, while ignoring its substantive commitments to voice, choice, and agency.³²⁹ But the misuse of feminist ideas and ideas of racial equality in this case—or indeed what some scholars suggest was a form of "misogynoir"³³⁰—was arguably easier to identify than in cases where the experiences of women of color are treated as an add-on to the feminist project.

A related lesson for women's rights advocates is about the arguments we make in support of the entry of more women into elected office or other forms of high office.³³¹ The temptation in this context is often to rely on arguments about a link between female representation and "good" government or "better" decision-making in democracy. But as Part B notes, these are arguments that are highly susceptible to abuse. A better approach, therefore, will generally be for feminists to stress the benefits to democracy of allowing those with *diverse* experiences and backgrounds to hold high office.

³²⁷ Shreya Atrei, *Women's Human Rights: From Progress to Transformation, An Intersectional Response to Martha Nussbaum*, 40 HUM. RTS. Q. 859, 876 (2018).

³²⁸ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 255 n. 41 (2022) (noting that a disproportionate percentage of aborted fetuses are Black and suggesting that liberal abortion policies are used to "suppress the size of the African American population").

³²⁹ Rolanda Donelson, "A Highly Disproportionate Percentage of Aborted Fetuses Are Black": The Subtle Misogynoir in *Dobbs v. Jackson Women's Health*, AM. U. J. GENDER SOC. POL'Y & L. (Sept. 15, 2022), <https://jgspl.org/a-highly-disproportionate-percentage-of-aborted-fetuses-are-black-the-subtle-misogynoir-in-dobbs-v-jackson-womens-health/> [https://perma.cc/PQ6C-Z4RY].

³³⁰ Donelson, *supra* note 329; Eliza Anyangwe, *Misogynoir: Where Racism and Sexism Meet*, THE GUARDIAN (Oct. 5, 2015), <https://www.theguardian.com/lifeandstyle/2015/oct/05/what-is-misogynoir> [https://perma.cc/78FP-NX2Y].

³³¹ I say "we" here because one of my roles is as Co-Director of the Pathways to Politics for Women Program of New South Wales. See *Pathways to Politics for Women*, <https://pathwaystopolitics.org.au/> [https://perma.cc/C4G7-HR5M].

There are a range of arguments supporting women in high office that depend on a logic of this kind including the idea that: (1) fairness demands that high office should be open to all on terms of substantive equality of opportunity; (2) diverse representation is necessary for fair law-making and judging that reflects the full range of experiences of those subject to the law; and (3) public confidence in the fairness of a democratic constitutional system. All these arguments can be used to advance the representation of women, as well as a wide range of other, intersecting historically marginalized groups. But none of these arguments involves a claim about how women will behave in office. Instead, they focus on access to public office as a democratic right and on the benefits of allowing those with *diverse* experiences to hold high office.

The anti-essentialist quality of these arguments also makes them quite difficult to co-opt or abusively borrow in the service of illiberal or anti-democratic ends. There is simply no claim made about what kind of government is likely to follow from the election or appointment of women; only that is a matter of right, fairness, and public trust that diverse women should have access to high office. And for this reason alone, they provide a far safer basis for justifying efforts to promote women's increased role in political life. As I note earlier, this does not mean that we should avoid any attempt at defining what feminist is or requires. Indeed, I argue that working towards greater feminist consensus on a "feminist minimum core" could be extremely helpful to resisting the dynamics of abusive feminism even if that core is by necessity relatively thin, tentative, and provisional. But the existence of such a core does not detract from the need to see its implementation and broadening out into broader feminist projects, through an appropriate intersectional and contestation-based lens.

CONCLUSION

Abusive feminism is far from a new phenomenon. Women have long been supporters and participants in authoritarian regimes and opponents as well as supporters of feminist movements for change.³³² Some of these women have also used the language of women's rights—as well as language opposed to feminism and feminist change.

But abusive feminism is also a phenomenon on the rise. In part, this reflects the increasing representation of women in high office across a range of institutional settings. It also parallels the rise of discourses of gender equality as a near universal formal commitment on the part of governments and many voters. These trends often mean that those seeking to roll back gains in gender

³³² See *supra* note 7 (explaining how women voted for authoritarian regimes in record numbers around the world).

equality will seek to frame their efforts in “women protective” terms.³³³ They also make appeals to gender equality an especially powerful tool in attempts to win support for measures aimed at undermining commitments to democracy. And increasingly male authoritarian leaders are becoming live to this possibility—thereby increasing the frequency with which pseudo-feminist discourse coincide with anti-democratic and illiberal ones.

Indeed, one can view the simultaneous rise of abusive feminism and abusive constitutionalism as co-constitutive or linked at even deeper level. Both arguably trade off a certain formalism or shallowness in the current liberal, democratic tradition, and reveal the ease with which the more egalitarian dimension to liberal constitutionalism can be “hollowed out.”³³⁴

While abusive feminism is not new, or an isolated phenomenon, there is increased urgency to scholarly efforts to identify and call it out as a phenomenon—as well as respond to the flaws it reveals within the liberal constitutional tradition itself. Others have made important contributions to this effort including by calling out “pink/purple washing,” “femo-nationalism,” and its relatives.³³⁵ But there is still a need to highlight its full extent including its more anti-democratic as well as racist, colonial, or “othering” elements, its more passive as well as intentional variants, and the interconnection between the two.

This Article attempts to do this by drawing on existing ideas about abusive constitutionalism, recent examples of female political leadership, and expansions in women’s formal rights to descriptive representation. In doing so, the Article aims to speak to a range of audiences, including feminist scholars and those at the front lines of feminist political organizing and activism around women’s rights and political participation.

For scholars, the argument is two-fold. First, feminist scholars should be more attentive to the potential for their ideas to be misused for both anti-egalitarian and anti-democratic ends *and* willing to call out such uses for what they are—that is, an abuse of the logic of feminism as a theory of substantive gender equality and representation. Second, feminist scholars should be aware of this danger both in their scholarly practice and development of their theoretical ideas.

All ideas may ultimately be susceptible to abuse or abusive borrowing. With sufficient creativity and bad faith, almost any idea can be bent to serve

³³³ See *supra* notes 139–141 (discussing “women protective” anti-abortion arguments).

³³⁴ Cf. Rubio-Marín, *supra* note 11, at 14. I am indebted to David Pozen for pressing me on this point. For a broader exploration of the promise but also limits of the liberal tradition as one committed to substantive equality, see RICHARD HOLDEN & ROSALIND DIXON, *FROM FREE TO FAIR MARKETS: LIBERALISM AFTER COVID-19*, at 39–64 (2022); SAMUEL MOYN, *HUMAN RIGHTS IN AN UNEQUAL WORLD* 1–11, 173–211 (2018).

³³⁵ See *supra* notes 62–66, 325.

the ends of an illiberal, anti-constitutional populist actor. But there are still important differences in the degree to which ideas lend themselves to this kind of process or are likely to be successfully co-opted by such actors. Some ideas will have unspoken assumptions or rely on generalizations about institutions or individuals that make them especially susceptible to superficial, selective, and acontextual uses. This is also a hallmark of the abusive borrowing of liberal democratic ideas. Other ideas, in contrast, may be more *explicit and contingent* in the assumptions they made, in ways that make it far more difficult for would-be authoritarian actors to bend those ideas to their own ends. Landau and I also suggest that those developing constitutional norms and ideas should be attentive to this difference. And the same goes for feminist theory. In developing feminist ideas, feminist scholars should be careful to avoid ideas that rest on assumptions and generalizations that are essentialist but also especially susceptible to abuse. This, I argue in Part IV, has special relevance for cultural feminists seeking to promote the re-valuation of care and care work. But it is a general lesson for all feminist theorists and one that is grounded by a concern to maintain support for feminist ideas as well as democratic ideals.

For feminist activists, the lessons of the Article are equally clear. There are always *potential* gains from having women in positions of power. Women's descriptive representation sends a message of inclusion to other women and girls in ways that promote future generations of women to seek high political or legal office. And women's presence alone can sometimes help reshape perceptions around gender including implicit forms of gender bias.³³⁶ But now more than ever, it is important for gender equality advocates to adopt a *realist* as opposed to formalist approach to women's rights and representation, which avoids giving complete priority to these gains or benefits.

Although these benefits are real, they will often be outweighed by the costs to women's rights that arise from abusive feminism. And to guard against this danger, feminist scholars and activists must pay close attention to questions of substance and implementation, as well as the context for the adoption of new formal guarantees of women's rights, including the track record and motives of governments proposing change and the timing of proposed changes.

The onus is also on us—as scholars—to make sure that this message reaches our activist colleagues. Few feminist activists have reason to read or engage with scholarly arguments of this kind. And this makes it imperative that, as scholars, we actively engage in dialogue with those in the field.

³³⁶ See, e.g., Nilanjana Dasgupta & Shaki Asgari, *Seeing Is Believing: Exposure to Counterstereotypic Women Leaders and Its Effect on the Malleability of Automatic Gender Stereotyping*, 40 J. EXPERIMENTAL SOC. PSYCH. 642, 642 (2004).

This is an increasing imperative in almost all academic work. But it is especially important when the scholarly message is one of warning to civil society. This Article, therefore, is simply the beginning of what is necessarily a broader and collaborative scholarly project—that aims to call out abusive feminism, in theory, but also in practice, in its many different variants and permutations across the world.

