Gendered Federal Systems:
Informal Institutions, Intersectionality and Change[1]

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Abstract

To understand gender in the study of contemporary federalist structures, we distinguish the formal and informal institutions of federalism. We argue that the effect of formal federal institutions on gender policy is mediated by informal institutions. Drawing examples from various federal systems, including the United States and Canada, we seek to offer new insights about how and why federal systems have varied relationships with different social groups, and to illuminate additional possibilities for progressive change. A focus on informal institutions suggests new ways of thinking about change in federal systems, helps understand the intersectional effects of these institutions and illuminates the circumstances in social movements can play the greatest role in furthering gender equality.

Introduction

A growing body of research reveals the many ways that gender undergirds federal systems, suggesting that, the connection between social structures of gender and institutional structures of federalism runs deep and reveals additional features both of federalism and of gender.[2] In this paper we argue that informal norms about gender (especially about the meaning of sex, family and nation) structure federalism. This analysis draws on recent scholarship that elaborates how informal institutions (or norms) always suffuse formal institutions. Using insights from this literature, we identify potential avenues for changing problematic aspects of federalism- specifically, the division of powers and other jurisdictional issues decided by the courts. Although many have focused on how social movements affect legislative change through fairly observable processes such as lobbying, we suggest that the process of judicial review, of particular importance for federalism, represents a process that is particularly amenable to this avenue of change, though not often recognized as such. Informal rules about the meaning of terms central to federalism and its relationship with gender, such as family, nation, sex and community, shape the relationship between formal structures of federalism and the lived experiences of various groups of women. Through broad processes of social change, social movements may change these meanings. Activists may also pursue legal strategies that demonstrate the applicability of these ideas to contexts and issues subject to judicial review. These new understandins are expressed in new interpretations of the relative status and authority of government bodies. Social movements' efforts to influence legislative and judicial processes to advance gender equality will be particularly fruitful when formal and informal institutions diverge. We illustrate this argument with respect to some developments in family law and laws affecting violence against women in the United States and Canada. We point to some problems of intersectionally marginalized women in seeking to reform federalism, and suggest that perhaps a similar avenue of change is open for these groups.

[2] See, for example, the special issue of Publius: The Journal of Federalism, winter 2013, 43(1); Hausman, Sawer and Vickers,eds. 2010. *Federalism, Feminism, and Multilayer Governance*, Ashgate; Mettler, 1998.

What is Federalism?

What are the core institutions of federalism? Philosophically, federalism is constituted by institutional structures that define relations among groups of people defined by territory. At its base federalism recognizes communities and social groups alongside individuals as political units of value (Hueglin and Fenna 2006). This focus on territoriality outlines a specific type of division of power that sometimes overlaps with linguistic and ethno-national communities. For example, while Ethiopian federalism developed along ethnic community lines (Mengisteab 1997), Australian federalism does not reflect distinct linguistic or religious communities but rather communities historically delineated by territory (Hueglin and Fenna 2006).

The relationship between governments with concurrent powers requires some mediating body to settle jurisdictional disputes, which suggests that the horizontal division of power between branches of government (for example, judicial review) is as central to federalism as vertical divisions of power. Others definitions include bicameral legislatures representing different levels of government (Amoretti and Bermeo 2004; Beramundi 2007; Hueglin and Fenna 2006; Riker 1987:30-34). Some have even argued that nations with multiple legal systems (for example, in personal or family law) should also be considered federal systems, while others argue that the concept of federalism refers specifically to communities designated by territoriality (Hueglin and Fenna 2006). Here we take the latter approach. Practically, this means we take a narrower, conventional approach to the study of federal institutions, focusing on the division of power between national governments and governments of smaller territories within the boundaries of the national state (Irving 2008: 65-66; Jackson and Jackson 2006; Wheare 1964). This necessisarily includes a focus on the process of judicial review that inevitably decides issues of jurisdictional authority.

This narrow definition still groups together countries that encompass a wide range of variation in formal institutional structures. Regardless of whether one categorizes federalism in categories (such as concurrent powers) or continua (such as the centralization-decentralization scale of Lijphart 1999), the different forms of federalism are multiplied by the fact that the division of powers differs across issue areas; two countries may have the same measure of centralization but look entirely different depending on which policy areas are centralized. With such variation, it may seem impossible to theorize a common relationship with social structures of gender. Indeed, federalism seems to have widely varying impacts on women's status (Gray 2010; Vickers 2010), and policies on abortion and violence against women, and women's representation varies significantly within each type of federal system (Banaszak and Weldon 2011), so any explanation relying on a relatively static feature of the whole nation provides little insight (Htun and Weldon 2010; Blofield and Haas 2005).[3] In order to understand the relationship between federalism and gender, we must first define "gender". We turn now to this question.

What is Gender?

Some scholars see gender as an analytic category, while others focus on gender as an identity (Hawkesworth 2003; Beckwith 2005). Here, we define gender as a configuration of institutions (Young 1990; 2005; Htun and Weldon 2010) -- a form of organization that socially constructs sex and imbues categories of sex and sexuality with meaning. Gender describes the way these sexual categories organize society into hierarchies of power, definitions of heterosexual normativity, sexual divisions of labor and categories of nationality and citizenship (Young 2005; Weldon 2007).

As this definition suggests, gender operates at multiple levels, and intersects with other institutionalized social divisions (such as race, sexuality and class) (Crenshaw 1991; Collins 1998). Most

[3] In any case, this variation remains relatively unexplored, even with the growth of federalism studies employing a gender lens, since few scholars have taken on *variation* in the relationship between federalism and gender as their problematic (but see Haussman et al. 2010; Vickers 1994, 2010; Special issue of Publius). Some argue we lack an adequate empirical base upon which to theorize the context and time specific impact of federalism (Gray 2010), especially as it varies across national and temporal contexts (Banaszak and Weldon 2011). While we agree, we hope that this article helps to develop the theoretical framework on which to base such work.

generally, institutions – formal or informal -- "are the rules that structure social and political life" (Lovenduski 2011). Gender institutions include formal rules, as in the U.S. tax regulations' refusal to recognize childcare as a legitimate business expense, and informal rules, such as the norm that women do most childcare and domestic work. These institutional systems are entwined with institutions delineating societal relations among class, religious, ethnic or racial groups.

Distinguishing Formal and Informal Institutions

Most political science definitions of institutions include both formal and informal institutions; for example, Ostrom (2005, 3) defines institutions as "the prescriptions that humans use to organize all forms of repetitive and structured interactions including those within families, neighborhoods, markets, firms, sports leagues, churches, private associations and governments at all scales." We distinguish formal from informal institutions because doing so illuminates both the mechanisms of and opportunities for institutional change.

Informal institutions are "socially shared rules, usually unwritten, that are created, communicated, and enforced outside officially sanctioned channels. By contrast, formal institutions are rules and procedures that are created, communicated and enforced by channels that are widely accepted as official" such as written constitutions, gender quotas, and marriage contracts (Helmke and Levitsky 2006, 4; See also Krook and MacKay 2011; Peters 1999). Formal institutions are authoritative articulations around which expectations converge.[4] Informal institutions are special kinds of norms[5] -- those sanctioned through informal channels (social ostracism, harassment, etc). Informal institutions are not enforced using formal sanctions, like prison sentences. Although informal institutions are usually enforced by informal

[4] This notion of convergent expectations as part of norms comes from Krasner originally, and is amended by Keck and Sikkink (as in note 3 below) to include the elements pertaining to identity. Thanks to the RCGS group for help in settling upon this particular version of a definition of formal institutions.

[5] Norms are defined as standards of appropriate behavior for a given identity around which expectations converge (Finnemore and Sikkink 1998)

third party punishment, compliance is experienced as intrinsic, or internally motivated (Sripada and Stich 2005; Raymond et al 2013).

Informal practices and norms are critical to the operation of institutions, as March and Olsen (1989) noted in their discussion of the "logic of appropriateness" (cf. Chappell 2006; Krook and MacKay 2011). Informal institutions overlap with, but are not equivalent to, culture. Some informal institutions are culturally embedded, and some are not (Helmke and Levitsky 2006). Yet, comparative politics scholars outside of gender politics have largely studied formal institutions, with only a few attempts to examine informal institutions (see among others Helmke and Levitsky 2004; Mershon 1994; MacKay and Krook 2011), and these scholars focus on machine politics, corruption or larger cultural practices at the national level with little attention to federalism or gender (except Rubin and Feeley 2006; Publius special issue, etc). Formal institutions need to be distinguished from informal because the promulgation and enforcement processes are different, making the process of institutional change different for these two types of institutions as well. As North (1990) notes: "formal rules may change overnight as the result of political or judicial decisions, [but] informal constraints embodied in customs, traditions, and codes of conduct are much more impervious to deliberate policies" (cited in Krook and McKay 2011, 11).

All formal institutions are embedded in, and have elements of, informal institutions in, their operation: They cannot operate without these underlying meanings or context (Habermas 1987). [6] Although formal institutions always have informal elements, but the reverse is not true. Informal institutions need not have any formal elements.

Federalism and Gender

The relation between gender and federalism cannot be adequately theorized, we argue, without taking into account the distinction between formal and informal institutions. The literature on gender

[6] If one thinks of formal institutions as being "system", in Habermasian terms, and informal institutions or norms as being "lifeworld," formal institutions are embedded in norms in the way thst system is embedded in lifeworld.

and federalism identifies several mechanisms through which federalism affects gender policies[7] (Mettler 1998; Vickers 2010; Gray 2010), focusing mainly on formal institutions. Rather than canvas what is a burgeoning literature, we want to show the value of examining informal institutions by focusing on one particular aspect of federalism, and the feminist analysis of that phenomenon, namely division of powers. We aim to show how informal institutions structure this phenomenon, especially through processes of judicial review and informal discussions and negotiations about the status and relationship between governments. Recognizing this role of informal institutions points to possibilities of change, and accounts for some of the variability in relationship between federalism and women's rights.[8]

Many gender scholars critique the division of powers between national and subnational governments –part of the formal institutions of federalism. Resnick (2001) argues that federalism influences gender issues through the granting of categories of policies to different levels of government (which she labels categorical federalism). Others focus on how the public-private distinction undergirds the division of power, structuring different types of citizenship for women and men (Mettler 1998). Irving (2008:68) notes, for example, that some changes in how federalism operates develop as the private domain narrows and more areas fall within the purview of the state. Some scholars even suggest that federal institutions reflect the public-private split with public functions being overwhelmingly relegated to the national government while the private sphere is regulated by local governments if at all (Irving 2008). In all these analyses, gender issues are delegated to subnational units by formal (often constitutional) rules

[7] Gender policies are governmental policies related to the way sexual categories organize society.

[8] Several scholars note that federalism benefits women by providing multiple points of access to the polity (Elman 1996; Bashevkin, 1998; Chappell 2002; Chappell and Curtin 2014 Piscopo and Franceshchet, Celis, MacKay and Meier 2013; ; Macdonald and Mills 2010). However, multiple points of access may also create more veto points (Huber et al 2004; Tsebelis 2002). Similarly, women's movements must spread crucial resources across multiple sites (Haussmann 2005) and this means poorly resourced women are especially disadvantaged (Vickers 1994; Katzenstein 2003; Miller 2009). We do not determine whether multiple points of access have positive or negative effects but merely note that these arguments focus on the *formal* structure of federal institutions. Here we mainly put these arguments to one side in order to focus on the specific questions arising from division of powers and concomitant processes of judicial review.

about the vertical division of power.

We wish to build on these analyses, pointing out the degree to which this problem stems from informal institutions of federalism, and therefore is amenable to change through discursive politics (Katzenstein 1998). In other words, the male-bias in the operation of federalism can be traced to informal institutions as much as (or in some cases, more than) the expression of male biase in formal institutions. This uggests that it is not federalism itself but rather its operation in a context of male domination that creates the problems that feminist scholars identify. This points to possible avenues of change for feminists.

Informal Institutions and the Division of Power

Changing norms about what is considered private and beyond state authority alter formal decisions about state enforcement of gender policy (Irving 2008). While the public-private dichotomy is useful and important for gender research, the specific, gendered understanding of the public-private dichotomy is problematic, not just the notion of publicity or privacy (Young 1997). After all, this version of privacy may place less severity within the nuclear family on murdering one's wife than one's brother. Moreover, understandings of the public/private "line," and the ways they map onto gender, differ across contexts, and over time. For example, in some cultural contexts, trading and marketing (economic matters) are considered women's work, as is governing (See, for example, the discussion in Lamphere 2001). So these ideas about public and private, and their relation to gender, are informal institutions that are quite variable across contexts (Weldon 2015).

For example, changing notions of privacy in the U.S. altered the distribution of inheritance, an issue central to family law. In *Reed v. Reed* (1971), the U.S. Supreme Court voided for the first time a state statute -- an Idaho law preferring men as estate administrators -- on the basis of sex (Hoff 1991, 247-248), and thereafter defined how much states could vary in their treatment of female spouses. It is worth noting that this is a change in the Court's view of the status of women and the importance of their

family role: Only a decade earlier, the Supreme Court had held that states may exempt women from service on juries because " a woman is still regarded as the center of home and family life."[9]

State Laws continued to challenge the new standard of sex equality set by the Supreme Court in the area of family law. For example "In 1970, for example, the Ohio Supreme Court held that a wife was 'at most a superior servant to her husband. . . only chattel with no personality, no property, and no legally recognized feelings or rights." (Hoff 1991, 281). Similarly, a 1974 Georgia statute defined the wife as subject to the husband (head of the family) and merged in him, and a Louisiana statute gave husbands exclusive control over jointly owned property (Hoff 1991). But by the 1980s such state laws failed to survive challenges on equal protection grounds.[10] In *Orr v. Orr (1979)*, the U.S. Supreme Court stated: "No longer is the female destined solely for the home and the rearing of the family." Family law still varies across states (see American Bar Association 2010), and family law remains a state responsibility, but certain types of variation are constitutionally prohibited, namely, those which treat women and men unequally. In formal terms, nothing in the constitutional division of power changed over this period. What changed was the understanding of the range of legitimate actions states may take in the area of family law. Some state laws were viewed as out of bounds because of an expanded understanding of the range of legitimate gender roles in the family, and rights of women to make choices about those roles.[11]

What happened to change the Court's view on the status of women? Over this period, the feminist movement developed legal arguments and public protests to advance a new view about women's role in the family (see, for example, Stetson 1999; Mazur 2002). This changed the acceptable range of state action. Even if the public-private distinction determines how federalism influences gender policy, this

[9] Hoyt v. Florida, 368 US 57, 62 (1961) cited in Ann Dailey (1995) "Federalism and Families" *University of Pennsylvania Law Review* 143 (6).

[10] Indeed Mansbridge notes that in some ways, the failure to adopt the ERA was less critical by the 1980s because by then Court decisions had accomplished most of what the ERA had promised to do.

[11] Field 1992. "The Differing Federalisms of Canada and the United States" *Law and Contemporary Problems*; see also Dailey 1995.

example shows that this line shifts over time. Understanding the causes of such shifts illuminates the relationship between gender issues and federalism.

This suggests that gender effects of a specific federal system are contingent on the interaction between formal provisions and other social practices and conditions (Chappell 2002; Vickers 2010). The variation across issue areas and within and across federal systems suggests that formal institutions of federalism themselves are not necessarily gendered in the same way or to the same degree (Banaczak and Weldon 2011), but the specific interpretations and applications of these formal rules *are* gendered. To examine gender in federalism, to find "the man in the state" as Wendy Brown (1992) puts it, we must analyze informal institutions and norms alongside formal institutions. This may suggest a reassessment of the possibilities of and avenues for achieving gender equality within federalism.

Federalism scholars have long noted that some aspects of federal systems are ensconced in written legal structures like constitutions while others – particularly intergovernmental relations– are reoccurring practices engaged in by federal institutions. However, these aspects of federal systems are not usually conceptualized as distinct formal and informal dimensions. Similarly, scholars of federalism and gender do not focus on the distinction between formal written rules and the informal practices that undergird their gendered interpretation. But informally institutionalized gender roles are vital to understanding federalism's role in gender policy outcomes, since they affect the operation of federal systems. For example, the body of family law rests heavily on norms about what counts as a legitimate family. Similarly, ethnic or religious identities are also influenced by informal gender institutions. For example, the ethnicity of Malaysian children descended from so-called "mixed" marriages between ethnic Indians and ethnic Chinese is determined by their father's ethnicity (Daniels 2005: 172). In short, systems of social norms, specifically informal institutions, determine much of the nature of federalism.

Extensive informal institutions shape gender relations in every country. For example, many countries have informal institutions relegating women to the homemaker role, enforcing normative heterosexuality, or privileging men in the leadership process. These are not just patterns of behavior: they

are communicated, enforced and sanctioned through non-official channels. For example that women are homemakers is communicated by the media, through educational materials, in informal interactions within communities, and even in the child-leave policies of many countries and corporations. These institutions are sanctioned by many religious doctrines and by the ridiculing of men and women who try to break out of such roles. They are also enforced through physical punishment by individualized violence against women and men violating these gender scripts, and, sometimes, by differential enforcement of assault laws. Yet, there are few formal laws[12] stating women must fold the laundry and men should mow the lawn, drive the car or run for elective office.

Formal institutions intersect with informal institutions (Armstrong and Bernstein 2008:82)[13]. In the case of federalism, the classification of policies, the definition of citizens in subnational units, and the normative view of subnational units as providing self-rule opportunities all are influenced by informal institutions structuring who makes claims. Informal institutions even influence new federal systems , explaining why they are not blank slates, fully determined by formal rules. New institutions are "nested" in extant social expectations that shape their operation (MacKay 2010). Thus, the strength of informal institutions can be very powerful, even where federal systems are relatively new (Chappell 2010).

Consider the process of change relating to same-sex marriage in Canada, another case in which reforming family law challenged inegalitairan gender norms. These norms assumed a heterosexual coupling (heternormativity), thereby creating inequalities between families based only upon the sex and sexual orientation of those seeking recognition of their marriage. As an issue that raises a primary axis of gender (Young 2005; Weldon 2015; Htun and Weldon 2010), this is an important issue of gender equality.

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[12] One recent study from the Women, Business and the Law project of the World Bank, however, finds that there are still laws that designate some occupations as being inappropriate for women simply because thet are women in many countries, and 79 economies have laws that formally restrict the work that women can do (World Bank, 2014).

[13] Armstrong and Bernstein define institutions as "mutually constituted by classificatory systems and practices that concretize these systems" (2008:83).

Similarly, the case of same-sex marriage in Canada may be seen as a case of how activism by a disadvantaged minority changed meanings and ultimately law through the mechanism of judicial review, a federal process triggered by Canada's system of shared jurisdiction and equality guarantees. Although the "solemnization" of marriage is an area of "exclusive" provincial authority (92-12) and "Generally all Matters of a merely local or private Nature in the Province" (92-16) are reserved to the Province, the federal Parliament does have the exclusive power to make rules about marriage and divorce (91-26) (British North America Act of 1867; See also discussion in White 2014).

In 1992, in the case of *Haig* v. *Canada*, a ruling by the provincial Court of Appeal for Ontario, found that omitting sexual orientation as a prohibited ground of discrimination in the *Canadian Human Rights Act* (CHRA) was violation of section 15 of the Charter.[14] The Court ordered that sexual orientation be "read into" the act as a prohibited basis of discrimination, on analogy with named grounds (White 2014; Hurley 2005**)**. Note that this "reading into" involved a new interpretation of formal provisions. A year later, however, in *Layland* v. *Ontario (Minister of Consumer and Commercial Relations),* an Ontario Divisional Court found that the common law restriction of marriage to opposite sex partners did not violate section 15.

In 1995, the Supreme Court of Canada found sexual orientation to be a ground of discrimination for section 15 purposes, seeing it as "analogous" or comparable to listed grounds, and a majority ruled that the opposite-sex definition of spouse in the *Old Age Security Act* violated section 15 in *Egan* v. *Canada*.[15] This decision is seen as a landmark decision for this reason. Going further, in *M v H*[16], The Supreme Court held in favor of a lesbian couple in Ontario who argued that the definition of a common-law spouse violated the equality provisions in section 15 of the Charter. This violation could not be justified by section 1 of the Charter. Several other cases affirmed this line of thinking, for example, ruling

[14] *Haig* v. *Canada* (1992), 94 D.L.R. (4th) 1; *Canadian Human Rights Act* (CHRA) R.S. 1985, c. H-6.
[15] Note that a (different) majority also found the violation justified under section 1 of the Charter. *Egan* v. *Canada* ([1995] 2 S.C.R. 513. Also, the Supreme Court actually did not rule in favor of the original (same sex) couple.
[16] *M. v. H. [1999] 2 S.C.R. 3*

that discrimination on the basis of sexual orientation in the provision of CPP survivor benefits violates section 15 of the Charter. [17]

This series of decisions produced changes in provincial laws and likely in public opinion on these matters as well. Advocates for the rights of same-sex couples, and for LGBTQ people in general, continued to push for these changes and to use the Courts to make their arguments (White 2014). For example, Ontario became the first jurisdiction in Canada, and the third in the World, to recognize same sex marriage with the first legal same-sex marriages performed in Ontario in 2001. These marriages were embroiled in controversy, but were finally registered after the Court of Appeal decision in 2003.[18] In 2005, Bill 171, the *Spousal Relationships Statute Law Amendment Act*, was passed in the Ontario legislature, bringing provincial law into line with these court rulings. There may also be evidence that public opinion changed from minority to majority support over the period from 1997 and 2004. This may be another case where courts have been agents of "culture moves" (Rochon 1998; White 2014; Raymond et al 2013; Clawson and Waltenburg 2010). Public opinion and activism by civil society groups pressed a new understanding of the meaning of marriage equality, one which was taken up by the Courts and which influenced law through a process of judicial review by several Courts, a process which is an integral part of the federal system in Canada. The combination of formal processes with the discursive nature of judicial review provides a particularly ripe opportunity for changing social norms to shape the law. Activists in civils society representing disadvantaged groups may use these processes to advance their struggle for equality and justice.

Federalism and Intersectionality

Gender is never a single experience or identity that applies to all women or men. In any society, multiple gender categories result from the intersection of gender with race/ethnicity, class, sexuality and

[17] *Canada (Attorney General)* v. *Hislop* 2007 SCC 10 1 March 2007

[18] *Halpern v. Canada (Attorney General)* upheld a ruling declaring that defining marriage in heterosexual-only terms violated the Charter.

other important social groups (Harris 1989; Crenshaw 1991; Hancock 2007; Simien 2006). For example race, class and sexuality influence the experiences of motherhood and fatherhood. In the United States, for example, African American women's experiences will differ considerably from those of white women. Moreover, gender differs across contemporary societies and changes over the centuries. Indeed, feminist scholars have constructed typologies of gender relations, documenting the many different societal and family forms over the centuries (e.g. Collins 1998; Walby 2007; Duncan 1996). These qualitative variations across gender groups go beyond discourses of "double" or "triple" burdens or oppressions. The concept of intersectionality seeks to highlight the distinctive character and experiences of social groups defined by the combination of multiple social structures, dimensions or identities (for a review see Chepp and Hill Collins 2013). These distinctive experiences are often invisible unless the analysis takes a disaggregative approach, examining each specific group in turn (Hancock 2007).

Both informal institutions and the sanctions that enforce them vary across social groups and other axes of identity. This accounts for some variation in policies under a single federal system. For example, informal sanctions applied to a middle class woman with Swiss citizenship will differ from those applied to a poor immigrant woman in the same city. Similarly, as Mettler (1998) notes, federalism's effect on minimum wages and collective bargaining in the United States differed for professional women and women who worked as domestic help as the latter were excluded from the 1938 Fair Labor Standards Act. Thus, informal and formal institutions establish different standards for different groups of women (and men). Hence, it is important to examine institutions with an eye to the intersectionality of race/ethnicity, class, and sexuality, and with a focus on specific policies in particular periods and contexts.

State making involves making nations as well, that is, forging political coalitions and supporting institutions across groups (often defined by race, class, religion and gender) to build a national identity (Marx 1998; Htun and Weldon 2011). This is especially true of federal states: Federal arrangements often stem from external threats that create a collective security logic, or from efforts to accommodate ethnic,

linguistic and religious diversity (or conflict) in a single country (Amoretti and Bermeo 2004; Hueglin and Fenna 2006). A particular understanding of the lines and content of nation or community often undergirds federal arrangements and their interpretations, as well.

In many (but not all) federal states, diversity and historical conflict along ethnic lines is part of the reason for adopting a federal structure. When federal compromises are seen to hold the nation-state together, ethnic accommodation or preserving the division of power will seem paramount (Amoretti and Bermeo 2004; Htun and Weldon 2011). In these cases, the concerns of women, especially minority women, are likely to conflict with the prevailing interpretation of the division of powers when they involve challenges to authority and are seen to unsettle the division of power and the status of federal units.

The interpretation of women's rights as challenges to the division of powers and the status of the units of government, rather than a claim about women's status, is often one that accepts male-dominated traditional structures as legitimate expressions of "the nation," while simultaneously dismissing complaints of secondary minorities, such as women or sexual minorities, as extraneous to the matter at hand, or as an internal matter for the "nation" in question. Sub-national gender, class or ethnic elites often respond to the perceived challenges to their authority represented by gender equality measures by reasserting their authority, reasserting the importance of maintaining gender inequality and defying any limits on their authority to make laws or other authoritative decisions affecting women's rights.

Constitutional divisions of power rarely explicitly relegate women's concerns as such to a national or sub-national level. Nor do most modern constitutions explicitly disempower women. Formal provisions that appear gender neutral produce inequality because of informal institutions, that is, social norms and conventions concerning federal divisions of powers. In Nigeria, for instance, the constitution is interpreted as saying that national legislation pertaining to women and children must be re-adopted by every state, even though this is not written explicitly in the constitution. Consequently, the informal norms about the vertical division of power significantly increase gender hierarchy. The Nigerian

government, which ratified the UN Convention on the Rights of the Child in 1991[19], only "domesticated" it, or adopted it as the Child Rights Act (CRA) in 2003, but for this act to take effect outside of the Federal Capital Territory of Abuja, it must also be adopted by individual states. Thus, the Constitution is interpreted as reserving policy issues concerning women and children to the states, although this is not stated explicitly, and despite constitutional guarantees of women's rights (Toyo 2006; NGO Comment to CEDAW; Obiora and Toomy 2009). Thus despite the neutrality (or even equality-guaranteeing) character of the written constitution, informal institutions protecting ethnic harmony through local autonomy take precedence over formal institutions inculcating gender equality.

The understanding of national identities and relationships that undergirds such federal arrangements has ramifications for women's rights. For example, in the United States, the development of a colonial understanding of the status and sovereignty of Native AmericanTribes has contributed to problems in addressing the human rights of Native American women. Native American women face heavy institutional barriers to addressing violence against women on Indian Land, because of the complicated way that legal systems combine. Jurisdictional issues mean that Native American women sexually assaulted by non-Native American men have little recourse, despite legal reform to improve government responsiveness to violence against women (Amnesty International 2008; Duthu 2008). Even though reservations are seen as sovereign nations with their own police departments and courts in charge of prosecuting crimes on tribal land, Indian police in most places do not have the legal authority to arrest non-Native people on Indian Land, and Tribal Courts do not have the authority to prosecute them (Horwitz 2014). As a consequence, women assaulted by non-Native men who call the Tribal Police are told that the police (and the Tribal Courts) can do nothing about men who are "not enrolled" as Native Americans. If they then turn to State authorities, they are told that these police do not have jurisdiction on Indian Land. And the federal authorities who may have jurisdiction are remote, under-resourced and

[19] Toyo, N. 2006. This UN Convention defines children's rights that should be protected by governments including freedom from sexual abuse and trafficking.

generally ill-equipped and unresponsive to these cases. These are not unusual or exceptional situations: As the AI report notes, the government's own statistics find that "Native American and Alaska Native women are more than two and a half times more likely to be raped or sexually assaulted than women in the USA in general and that 86% of the reported crimes are committed by non-Native men."[20]

In spite of the shocking prevalence of these crimes, and the seeming lack of any mechanism for procuring justice for these women, only recently have these institutional barriers been addressed by legislative reforms.[21] In 2013, an amendment to VAWA, *The Violence Against Women Reauthorization Act of 2013*, provided for the prosecution of certain crimes of domestic violence committed by non-Indians in Indian country by Indian prosecutors. However, the law, which takes effect this year, does not address the problem of sexual violence more generally, leaving those women subject to random violence by non-Native men (e.g. stranger assault), for example, in jurisdictional vaccum. It also does not extend to Alaska. It is only a "sliver of the full moon" that Native American women need (Brunner in Horwitz 2014).

What explains the delayed and inadequate nature of government response to this problem? In spite of the pressure brought by civils society and human rights groups such as Amnesty International and having the support of Eric Holder, then attorney general, legislators were unable to get the holistic response that the situation required. An important part of the answer lies not in any formal delineation of jurisdictions but rather in the application of a colonial understanding of the nationhood of Native American tribes in the course of a process of Judicial Review. This idea persists in the present and continues to bedevil attempts to achieve justice for Native American women.

The jurisdictional problem can be traced to the understanding of Native American tribes as dependent and conquered nations who cannot be relied upon to behave in a "civilized" manner and to

[20] Note that this is not a case of "protecting brown women from brown men," in Spivak's pithy terms. This is about protecting women on Indian Land from perpetrators of violence, the vast majority of whom are non-Indigenous.
[21] Amnesty International. *Maze of Injustice*. 2008. http://www.amnestyusa.org/pdfs/MazeOfInjustice_1yr.pdf

adequately safeguard the interests and safety of the white population. The *Oliphant* decision is based on a review of Congress longstanding policy of limiting Native American self-governance in such a way as to ensure the "safety of the white population." The decision also cited the intention "to encourage them as far as possible in raising themselves to our standard of civilization." This policy, CJ Rehnquist writes, was reaffirmed in the 1960 Senate report that " Indian tribal courts are without inherent jurisdiction to try non-Indians, and must depend on the Federal Government for protection from intruders." The historical inadequacy of Indian systems of justice, and the incompetence of Indian authorities in interpreting and applying federal law, is repeatedly invoked as a the rationale for this policy, and although there are places where these systems of justice are seen as having been "improved," the decision portrays it as the job of Congress to assess whether these tribes have improved to such a degree that they can be entrusted with the safety of the non-Native population. It is fine, it seems, following the logic of the decision, that the Native population be governed by these allegedly inadequate systems of rule - as long as they do not endanger (white, Non-Native) others. Throughout, the Tribes are described as conquered and dependent, and yet retaining some aspect of sovereignty. They are denied these powers because the powers are "inconsistent with their status" as domestic dependent nations (Frickey 1999).

Frickey (1999) describes the ideology behind the decision as follows:

> Under this vision, the United States involuntarily incorporated the tribes and achieved dominant sovereignty over them by an assertion of colonial prerogatives that eventually reached contemporary contextual fruition. The colonial process did not end at some point in the distant past. Instead, it is an ongoing process that is not even limited to new congressional exercises of its plenary power over Indian affairs. The ongoing colonization of the continent now includes a judicial role as well, adjudicating the depreciated status of tribal authority on a case-by-case basis.

This ideology, and the concomitant decision, was not based on formal agreements or decisions, but rather on an understanding of the status of Indian nations in contemporary United States. [22]

[22] The respondents in the case had argued that Tribal jurisdiction over non-Natives on reserve "flows automatically from the "Tribe's retained inherent powers of government over the Port Madison Indian Reservation."" In his dissent, Justice Thurgood Marshall agreed: "I agree with the court below that the "power to preserve order on the reservation . . . is a *sine qua non* of the sovereignty that the Suquamish originally possessed." *Oliphant v. Schlie,* 544 F.2d 1007, 1009 (CA9 1976). In the absence of affirmative withdrawal by treaty or statute, I am of the view that

This decision has been extensively criticized, yet the decision has even been extended in other decisions and remains accepted as precedent. " In short, Oliphant is controversial because it signaled that the project of imperialism is alive and well in Indian Country and that the courts can now get into the action"(Duthu and Calloway 2009, 21) Burger (2006) similarly argues that the authority of tribal officials has been eroded over the past few decades.

Echoes of this view can be heard in the debates surrounding efforts to craft a legislative solution tio the situation of Native American women. One Senator, Sen. Charles E. Grassley (R-Iowa) said that "under the laws of our land, you've got to have a jury that is a reflection of society as a whole." Adding that: "On an Indian reservation, it's going to be made up of Indians, right?" Grassley said. "So the non-Indian doesn't get a fair trial." (cited in Horwitz 2014). Other members of Congress raised concerns about "retribution" for a long "history of white mistreatment" being exacted against non-Natives by Native authorities. (Horwitz 2014) (It is worth noting that these questions have been empirically investigated, and there is no evidence for bias against non_natives in Native judicial proceedings (see discussion in Berger 2004)). And Alaska was excluded because of what was viewed as overly complicated jurisdictional issues (Horwitz 2014). Although the amendment to the VAW law finally passed, the narrowly drawn nature of the solution owes in part to these concerns raised by opponents, and the persistent situation of limited sovereignty of Tribal authorities on Tribal lands reflects the persistence of the colonial understanding of nationhood for Native peoples, lurking in the background and undermining attempts to craft more just arrangements for Native American women.

Note that changing formal rules may not be adequate to address this problem either. In Canada, section 35 of the Constitution Act of 1982 provides a sounder basis for for Aboriginal governments, a change that some have seen as transformative for First Nations governments in Canada. Moreover, the guarantees of aboriginal rights are expressly guaranteed equally to men and women. Some read this

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Indian tribes enjoy, as a necessary aspect of their retained sovereignty, the right to try and punish all persons who commit offenses against tribal law within the reservation. Accordingly, I dissent."

provision of the Act as guaranteeing an aboriginal right to self-government; Others see it as guaranteeing only a narrower set of rights, such as rights to use natural resources for traditional purposes (hunting and fishing, etc); Last, some First Nations people reject the authority of the federal government to delineate the rights of self-governing aboriginal nations. Successive government documents have recommended the transformation of Canada's approach from a colonial stance to one that is more focused on self-government (Eg Royal Commission on Aboriginal Peoples 1996, final Report). [23] While the federal government has failed to act on these recommendations in a holistic way in a constitutional setting, several developments have contributed to growing autonomy for aboriginal governments, including 1986 SBSG Policy (Community Based Aboriginal Self Government) and the 1995 (Liberal) Inhereny Right of Self-Government Policy which provided that Bands may negotiate new treaties with federal and provincial govenrments to be removed from the Indian Act. Tens of aboriginal governments have availed themselves of this process, while some have unilaterallu asserted their independence.

Yet Native Women in Canada still fall into a jurisprudential vaccum, for example, in the area of matrimonial property, that is surprisingly reminiscent of the situation in the United States discussed above. Federal law pertaining to property rights appeared not to apply on reserve.[24] It appears that First nations women who become victims of domestic violence often have no place to go on reserve, resulting in having to leave their communities to find safety and jeopardizing their rights to the family property on reserve. The Harper government proposed to address this problem in 2007, but this issue was also recognized as a problem by the Assembly of First Nations (AFN) and the National Women's Association of Canada as well (NWAC ; AFN 2007). By 2011, however, no solution had been crafted, and the Harper government sponsored and passed Bill S-2: Family homes on reserves and Matrimonial Interests and

[23] http://www.aadnc-aandc.gc.ca/eng/1100100014597/1100100014637
[24] 27 years ago SC ruled that property rights do not apply on reserve

Rights, [25] in the context of much criticism. This Act provided that matrimonial property be provided equally to men and women on Reserve, and gave Native Bands one year to develop their own laws on matrimonial property on reserve. The Act was denounced as colonial interference by the AFN. The NWAC also criticized the Act as doing very little to assist women victims of domestic violence on reserve because it failed to provide the resources and support needed for women to access the legal system and to escape violence. Although it was presented as an act motivated by concern for Native women, the NWAC argued, the Act actually made little difference for women victims of violence or other women living on reserve.

Thus, in spite of any formal legal difference the act may have made, Native Women on reserve in Canada end up disproportionately victim to violence and find little help in the laws of either their self-governing Native communities or the federal government. Efforts to craft a solution fall between the inaction of the local government, which sees the issue as one primarily of colonially-inspired interference, and the federal government, who take up an overly narrow and ineffective solution to the problem that exacerbates intercommunity problems and does little to help the women in question. It is a surprisingly similar situation to the jurisdictional situation of Native women victims of violence in the United States, surprisingly similar given the formal differences in official policy on aboriginal self-government.

Issues of gender equality have bedeviled Canadian constitutional negotiations aimed at better integrating French Canadians in Quebec as well as aboriginal demands for self-government. In both cases, the "rest of Canada" expressed concern that measures intended to provide the flexibility to address cultural distinctiveness and traditions of self-governance would threaten the rights guaranteed in the Charter, including the sex equality guarantees. This has been true even though the sex equality guarantees in the Quebec Charter of Rights pre-dates those in the Constitution Act of 1982, and even though the main supporters of the sex equality guarantees in the Charter have been feminists outside of Quebec. For

[25] Wingrove, "New Law Sets out Rules for Divorces on Reserve" Globe and Mail, June 11 2013.; See AFN 2007; AFN Position Paper on Matrimonial Law on Reserve http://www.afn.ca/uploads/files/mrp/mrp-law-handbook.pdf

,many Quebecoise feminists, Charter guarantees of equality are too problematic to invoke, as they are part of a process viewed by many in the Province as illegitimate. [26]

During the Canadian constitutional negotiation aimed at forging a nation that included Quebec, women's groups outside Quebec as well as the Native Women's Association demanded assurances that a distinct society clause or a Notwithstanding clause would not overrule sex equality guarantees. The Native Women's Association vocally opposed the Mulroney governments's proposed constitutional reforms (The Charlottetown Accord) in spite of the measures it included in relation to aboriginal self-governance, because of concerns about protections for First Nations women's rights and representation in the process. NWAC later (unsuccessfully) argued that the process fully included only male-dominated organizations in a case that came before the Supreme Court of Canada.[27] The National Action Committee under Judy Rebick opposed the Charlottetown Accord in solidarity with First Nations women. This was quite controversial, as some activists for First Nations' self-determination argued that women's rights would be secure under self-government. NWAC also intervened in a later case (Lovelace v. Ontario) again to argue that when governments undertook to empower or consult with First Nations groups, they were obligated to consult with and include organizations of First Nations women.

For these constituencies, then, issues of autonomy were entwined with battles over women's rights. The negative impact of a colonial view of particular cultural groups is not just a problem for women in the context of federalism. Uma Narayan (1998) convincingly shows how taking the colonial stance towards Third World Women relegates them to "death by culture," when courts and public opinion draw the conclusion that violence against women is just an inevitable part of the cultural background for that particular group. Sarah Song (2007) has similarly criticized the use of the "cultural defense" in

[26] Micheline de Sève, "The Perspective of Quebec Feminists" Backhouse and Flaherty, Challenging Times.
[27] See Native Women's Assn. of Canada *v.* Canada, [1994] 3 S.C.R. 627; For a First Nations legal scholar offering a different view (and who was herself involved in the constitutional negotiations as a part fo the team representing the AFN) see Turpel 1989/90.

multicultural policies, arguing that institutional arrangements of multiculturalism undermine gender equality in minority communities.

Thus, conjoining of autonomy and issues of women's rights was central to colonial discourses and resistance to colonialism in many places (Narayan 1998; Jayawardena 1986). This legacy of using women's rights as a pretext for colonial domination is seen as continuous with current efforts to "save brown women from brown men" by many postcolonial feminist scholars (e.g Spivak 1994; Jayawardena 1986; Mohanty 1984). Efforts to reform federalism to ensure women's rights become complicated, as demands for uniform guarantees of women's rights become conflated with the imposition of alien values and legal systems, obscuring the gender equality at stake (Htun and Weldon 2011; Song 2007).

When women mobilize, informal norms that value ethnic accommodation over gender equality are less likely to prevail by default. Still, when the division of power overlaps with religious or ethnic minority autonomy, efforts to change institutional patterns become entangled in majority-minority power struggles, often placing minority women in the position of defending either centralization of power that diminishes subgroup autonomy or patriarchal minority elites who are unlikely to recognize their rights. Thus, transforming informal federalist institutions is particularly challenging when they pertain primarily to women of ethnic or religious minority groups. Informal understandings of nation and community and women's role in these communities undergird the current obstacles to institutional reform. Thus, the impact of federalism on women of majority race and ethnicity is not the same as the impact of federalism on women of disadvantaged and oppressed racial and ethnic groups. Informal institutions are part of the reason for this cross-group variation.

Similar issues arise with respect to gender, class and federalism. Mettler argues that federalism in the United States has resulted in two-tier citizenship that leaves women out of the (limited) social citizenship offered through policies such as old age pensions. When funding is left to subnational units, the realization of some working class women's rights will depend on geographic location. If funding for or access to abortions, for example, varies by state or province (as in Canada), then working class women

have less reproductive freedom than middle class women: They are less able to utilize legal guarantees of reproductive rights. On the other hand, women advantaged by class, will have their status dramatically transformed by such legal guarantees (Htun and Weldon 2010).[28]

Informal assumptions about the meaning of the term "women" means that some women (privileged women) are seen as normatively standard while others are seen as "exceptions." These more privileged women benefit most from equality guarantees, unless there is something specific to indicate that other axes of equality are relevant and ought to be taken into account. Even then, informal understandings about the meaning and salience of class, racial, ethnic and sexual divisions among women and men may undermine formal gender equality guarantees.

The relationship between federalism and gender policy thus varies according to type of policy and the specific group of women in question. Informal institutions are part of the reason for this variation, for this intersectional effect. Recall that feminist scholars see gender as fundamentally intersectional, that is, inextricably intertwined with social axes of class, race, ethnicity and sexuality. This suggests that the relationship between gender and federalism must be disaggregated not only by issue (Htun and Weldon 2010; Strolovitch 2005) but also by the group of women whose rights or status is at issue (Hancock 2007; Weldon 2008). As we discuss below, however, women may be able to organize to alter the federal calculus when they have formal institutions that support an active, substantive approach to equality.

When formal and informal norms "diverge," prospects for change are improved (Banaszak and Weldon 2011). As Raymond et al (2013) note: "wherever institutional practices are in conflict with strong social norms, there is the greater potential for the application of the strategies {[or change] … For example, in the United States, formal laws on marriage and sexuality in many places still restrict same-sex marriage and sexuality, while social norms on these matters have changed dramatically. This divergence explains why there has been so much policy change and even constitutional reform in these

[28] In the United States, Court decisions bifurcated guarantees of abortion rights from funding for abortions. See discussion in Mackinnon (1989), chapter on abortion..

areas over the past twenty years." Institutional reform may proceed by changing meanings and interpretations, especially in Federal systems where courts and judicial interpretation is so important. Indeed, such efforts at discursive change may be more effective than attempts to entrench specific protections in the constitution (Mansbridge .

Movements, Change and Intersectionality

Are the legal strategies that seem to have worked for women and sexual minorities equally available to all members of these groups? Can intersectionally marginalized women employ strategies of discursive contestation, sparking processes of judicial review, with the same expectation of effectiveness enjoyed by more privileged segments of these groups? Women's groups in Canada have famously used the Charter (which they were influential in drafting) to advance a specific, substantive version of sex equality as well in various areas including reproductive rights (Sheppard 2010). For example, advocates using the Charter successfully challenged the Manitoba government, demanding that it pay for abortion services performed in private clinics. Examining this question in context, the court agreed that long wait times for access to services in Manitoba hospitals made this necessary. Employing an understanding of equality that focused on the *effects* of legal provisions, and their examination *in context*, in 2005 a lower court ruled favor of the plaintiffs and found the government nonpayment to be a violation of several sections of the Charter including section 15. Although that decision was overturned on appeal, the Manitoba government had already agreed to pay for abortions performed in private clinics. This process, though not the final decision, was one that produced benefits for women intersectionally disadvantaged by gender and class. The final decision, and recent developments (especially the decision in Lovelace v. Ontario) raise questions about the promise of this strategy for intersectionally marginalized groups.

.The relationship between the state and society varies across social groups. Christian Davenport, for example, shows that while the police are most likely to repress white activists challenging property rights, police repress Black activists regardless of the issue they espouse (Davenport et al 2011). First

Nations women in Canada have organized on their own behalf, and have sought recognition for their 'secondary marginalization' in indigenous communities in Canada (Cohen 1999). For example in *Lovelace versus Ontario*, the Native Women's Association, which intervened in the case, advanced an interpretation of section 15 (2) that stressed its importance for disadvantaged groups (Stirling 2005). The second part of section 15, they contended, was intended to protect measures designed to advance equality for disadvantaged groups from challenges from advantaged groups, and so should not be used to protect advantaged from disadvantaged groups.

Neither the Supreme Court nor the Court of Appeals accepted this line of argument. The Supreme Court argued that "Governments have no constitutional obligation to remedy all conditions of disadvantage in our society. If government affirmative action programs can be too readily challenged because, for example, they do not go far enough in remedying disadvantage, governments will be discouraged from initiating such programs. Governments should be able to establish special programs under section 15(2) that distinguish between or even within groups protected under section 15(1)." (cited in Sterling). If the standard discouraged programs to assist disadvantaged groups, that would indeed run counter to the whole point of section 15 (2).

The *Lovelace* decision, though, does raise questions about how to think about secondary marginalization, or internal minorities (Cohen 1999, Green 1995) Reading section 15 (2) as the Court did in Lovelace, as permitting "imperfection" or internal discrimination when the case advances the status of a disadvantaged group, may present obstacles to women of color, poor women and other groups subject to secondary marginalization, as their exclusion may be seen as justified. This may be particularly worrying in light of some Courts' propensity to attribute secondary status for minority women and women of color to their "culture," and to see it as allowable on that basis (Song 2013). In order for First Nations women, women of color and other intersectionally marginalized groups to reap the potential benefits of 15(2), it may be that a more nuanced interpretation of the section is needed, one that moves away from "understanding problems in terms of distinct, homogenous social groups" towards a "recognition of

overlapping inequalities linked to complex, intersecting and multiple identities." (Sheppard, 2010, 18). Doing so in contexts where the concept of substantive equality itself is under attack presents a greater challenge (Sheppard 2010).

Social Movements and Institutional Change

Social movements can change federal systems. Social movements are important but overlooked mechanisms for changing informal and formal institutions (Raymond et al 2013; Banczak and Weldon 2011). Definitions of social movements usually note that they are "engaged in a political or cultural conflict" (Diani 1992: 13). Scholars have noted the impact of social movements on institutional change in general (McAdam and Costain 1998; Rochon and Mazmanian 1993; Stetson and Mazur 1995; Weldon 2011), and on the institutions of federalism in particular (Celis, MacKay and Meier 2013). Fewer scholars examine the ways that social movements achieve institutional change through discursive strategies aimed at changing norms (Raymond et al 2013; Katzenstein 1997). But considering the role of changing meanings in the operation of federal structures suggests avenues for change that are different than the formal lobbying and formal (eg. Constitutional) changes that are often the focus of analysts and activists alike (Bashevkin 1998; Dobrowolsky 2000; Manbridge). Movements may influence informal institutions through attempts to alter the social norms and by contesting dominant meanings. As we have suggested, judicial review may provide a particularly ripe opportunity for such discursive politics.

To understand the relationship between federalism and gender, scholars must focus on informal institutions and how women's movements and their opponents work to change these institutions. It is particularly when formal institutions conflict with informal institutions, and when social movements exploit these incongruities, that we can expect significant change in the character of federalism. Though we focus on feminist movements taking advantage of these incongruities, it is important to note that feminist movements have no special privileges. Conservative or anti-feminist movements are equally able to mobilize against differences between formal and informal institutions to eliminate feminist

policies. For example, U.S. religious movements have made small changes in formal institutions that have altered public perceptions on abortion and contraception (Banaszak 2003).

Conclusion

Federalism is not necessarily biased against women, but neither does it offer uniformly positive opportunities for change. In this paper, we develop an account of gender and federalism that helps explain the varied impacts of federalism on gender policies both across nations and across groups of women and men (Gray 2010; Vickers 2010; Banaszak and Weldon 2011). In so doing, we offer a conceptual refinement that illuminates the reasons for variation and opportunities for change – the relationship between formal and informal institutions within federalism. In most cases, formal federal institutions are facially gender and race neutral. However, these rules often end up producing substantively different outcomes for different social groups. Informal institutions—especially norms creating gender, class and race hierarchies -- structure the interpretation of formal rules resulting in dramatically different substantive effects from the same formal rules over time, across countries and across groups. Societal inequalities along race/ethnicity, class and/or sexuality lines, mediate the impact of formal institutions, producing substantively different effects for different groups of women (and men).

Social movements, both feminist and anti-feminist, generate changes in gender (and other) norms (Rochon 2000; Raymond et al 2013). As acceptance of gender equality increases, male-biased institutions become more problematic. Dissonance between formal and informal institutions of federalism creates opportunities for change (in any direction). Social movements may also demand formal institutional changes, which, even when they do not concern the institutions of federalism *per se*, may influence the operation of federal systems.

Formal institutions are therefore a critical resource for women's movements, even as they are not equally available to all, and do not have the same influence on every issue and for every group of women and men. Any gender policy coming from federal institutions will affect women of different

races/ethnicities, classes, and sexual categories differentially. Rarely do all women profit from a single policy; mostly some women are disadvantaged while others advantaged. Second, anti-feminist movements are equally able to take advantage of incongruities between formal and informal institutions, indicating that we must focus more on movement mobilization to understand changes in the gendering of federal institutions (Vickers 2010).

When patriarchal norms become associated with formal federal institutions, they appear enduring and unalterable, giving them greater power than mere social convention. In some cases, they become almost invisible as they are assumed to be part of the formal institutions. However, interpretations are amenable to change, and exploring how and when informal institutions can be changed is as critical as understanding change in formal institutions such as constitutional amendments defining the divisions of powers or electoral systems. For this reason, federalism must be analyzed as both formal and informal institutions, and embedded in a broader institutional context. Changes in informal institutions, even those not considered core to federalism, such as notions of sex, family and nation, shape institutions of federalism. This is not to suggest that formal institutions are infinitely malleable, but to suggest that a key change mechanism, for both formal and informal institutions, is women's mobilization to advance gender equality (Costain and McFarland 1998, Stetson and Mazur 1995, Weldon 2011; Raymond et al 2013).

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