Gendering Federalism: Decentralization, Power-Sharing and Multi-Level Governance

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Feminist political science pays little attention to how democratic states are structured, and the impact of de/centralization, and multi-level governance. The literature about federalism and women’s politics is country-specific and largely invisible. The impact of de/centralization and power sharing should be of increasing interest, however, since multi-level government increasingly is the context of women’s politics; and ‘uploading’, ‘downloading’ and ‘offloading’ of government activities are increasingly common. In this paper, I argue that how state institution are structured, and the extent to which state power is shared shape women’s citizenship and politics in significant ways. I conceptualize federalism but as one among multiple forms of governance involving power sharing. Federations can be located first on a vertical power-sharing continuum from highly centralized, unitary states to confederations, with decentralized federations somewhere between them; and second on a horizontal power-sharing continuum ranging from majoritarian, parliamentary systems to congressional systems with power divided among competing institutions. Federations are distinctive because power-sharing agreements are embedded in institutions, legalized in written constitutions and policed by judicial review. Federal polities are complex systems of interlocking state, government and civil society institutions and present both barriers and opportunities to women. While not static, federal institutions deliberately are hard to change, frustrating activists because it slows the rate of change making federations welfare-state laggards, for example. Federal power-
sharing also slows negative change, checking the ambitions of one level of government with competitors to whom the voters often turn in the dynamics of federal politics.

Federal power-sharing, especially decentralized forms with multiple decision-making sites affects women’s citizenship, and shapes feminist strategies, most of which are theorized for unitary democracies and rarely make use of ‘the federalism advantage’—multiple power / decision sites women can access and play competing governments off against each other. Context-specific strategizing requires that feminists understand federal institutions and processes. For example, where a ‘national minority’ has its own constituent state, alliances with nationalist movements have changed sex/gender regimes, with feminists playing central and constituent governments off against each other. In Catalonia, Quebec and Hawaii, feminists pursue difference strategies with the central government, but adopt equality strategies vis a vis ‘their own’ constituent government. A similar strategy is evident in devolved nations such as Scotland.

Federalism is the political context for about 40% of the world’s women (Watts 1996); and the federalization of unitary democracies is increasing. This makes it important to understand how federal power sharing affects state structures and political organizations, including parties, interest groups and movements. Comparing federations involves a complex mixture of similarities and differences. While only some federations share power horizontally among government institutions; all share power vertically. Federations differ in their electoral system’s proportionality, and whether representation valorizes territory, ideology or non-territorial cleavages such as class. But in all federations, constituent state or regions are represented in central-government institution(s); and with judicial review by powerful courts as the bulwark against governments overstepping their
jurisdictions. My goal is to identify how federal institutions, designed to share power, and represent the interests and identities of territory, affect the ability of women—who are dispersed throughout every unit—organize, participate and advocate on their own behalf.

The paper has two main sections. In the first, I outline how four institutionalist approaches conceptualize institutions and institutional change; and show how scholars using them incorporate ‘gender’. iii I construct a feminist institutional approach suitable for studying gender and federalism drawing from these approaches. In the second section, I use these institutionalist ideas to explore ‘gender’ and ‘federalism’, focusing on how the core characteristics of federations shape women’s citizenship and politics. I limit my study to democratic federations ¹ and rely on the Handbook of Federal Countries (2002) for my understanding of each federation’s institutional configuration and history. While arguing that women’s politics differ because of federal institutions and operating rules, I also note key differences among federations. I conclude by assessing ‘the federalism advantage’—a feminist argument that federalism’s characteristics provide women with different political opportunities and require different strategies than unitary states.

1. Institutionalist Approaches

There are at least seven forms of institutionalism sharing the message: “that institutions...explain most of political life, and...are also the factors that require explanation’ (Ma 2007:63) iv Most emerged during the 1980’s rebirth of ‘new institutionalism’, displacing the ‘old institutionalism’ which defined institutions in static terms as formal structures. v Most ‘new institutionalist’ approaches, widen the concept to include informal procedures, norms, legitimizing ideas and conventions making it more dynamic. Feminists

¹ Federations associated with communism—Yugoslavia for example—have been less stable; but also didn’t really constitute states based on power-sharing.
following the discipline’s ‘institutionalist turn’ relate to four approaches but with no apparent strategy. While I work within historical institutionalism I also borrow concepts from the three other approaches. My conceptions of institutions, systems of institutions and change reflect my experience within a federal state. I draw from the four institutionalist approaches feminist political scientists employ those institutionalist ideas that can best help us explain how federalism affects women’s citizenship, representation, participation and organization. Because three approaches have different epistemologies, I begin with a brief discussion of the issues this raises. Is it appropriate to combine ideas from approaches with different epistemological norms?

a) Epistemological Underpinnings

The gendered rational choice and sociological approaches are based on the Newtonian science model; historical institutionalism on ‘complexity science’ drawn from the biological sciences, chemistry, astronomy etc. (Ma 2007); whereas most post-structuralists consider generalizations impossible, and knowledge context-specific. Existing typologies of institutionalist approaches ignore epistemological issues. I first categorize approaches based on whether they display strong institutionalism—accord institutions and institutional change some autonomous impact on outcomes—or weak institutionalism—relegate institutions to background contexts with little independent ability to affect outcomes. This difference in part reflects different epistemological underpinnings. My commitment to ‘complexity science’ (discussed below) is based on my view that many aspects of institutional behaviour are too complex to reduce to Newtonian-type laws. However, because other, simpler aspects—e.g. electoral systems—can be so reduced, I consider it acceptable to draw concepts from Newtonian-type approaches for some uses.
Institutionalists using Newtonian rules—eager for both explanation and prediction—use the ‘retroductive reasoning’ (Ma 2007:71), familiar from physics, classical economics, and political science’s foundational texts—Hobbes, Locke, Marx. Its rules assume: scientific truth applies everywhere; the world involves complex, mechanical systems of homogenous units operating without human intervention (Smith’s invisible hand); systems’ operations are explicable through scientific ‘laws’ which simplify complex processes ultimately to matter in motion through mathematical simulation; and scientific knowledge exists in an eternal present, with no need to distinguish between past and future (Ma 2007:60). These ideas disallow institutional embeddedness or path dependence. ‘Complexity science’, is also based on observations, and can be presented in the form of mathematical equations (Ma, 2007:70). But it assumes ‘the world is so complex that it is highly unpredictable’ (Ma: 2007:67); and rejects the classical mechanics assumptions that initial conditions are irrelevant and all processes are reversible.

Modeled on sciences other than physics, complexity science approaches explain change differently. Newtonians understand equilibrium as a single, fixed point to which ‘systems’ must return or fail.: complexity scientists conceptualize institutions (and systems) moving through a series of equilibria as they adapt to changing environments. Complex networks of institution result from individuals’ acts, but once constructed- are entities which constrain those who operate within them. Political institutions are discursively created but incorporate both symbolic and material aspects, including coercion. Complexity science offers feminist political scientists a rigorous institutionalist approach without the problematic assumptions of Newtonian rationalism.

b) Historical Institutionalism
Mainstream political scientists have shown this approach’s value for studying a broad range of institutions in state politics and civil society. The approach is strongly institutionalist with well-developed conceptions of institutions and institutional change, path dependence and increasing returns. Some feminists use some of its concepts (Chappell 2002). It conceptualizes institutions broadly as including ‘formal and informal procedures, norms and conventions’; it stresses ‘historical processes, legacies and contingencies through the idea of path dependence’; combines ‘utility-maximizing and ‘cultural factors’; ‘highlights power asymmetries among actors’; examines interactions between institutions and ‘other factors including socioeconomic changes, ideological flows and actors’ interests and strategies’; ‘considers how preferences are formed and structured’; and focuses on ‘big’, ‘real-world’ questions including the evolution of social systems’ (Ma, 2007:63). That said, can it admit gender as a central variable?

The key theoretical ideas of historical institutionalism are the path dependence of institutions and the law of increasing returns. Path dependence means that ‘[o]utcomes at a critical juncture trigger feedback mechanisms that reinforce the recurrence of a particular pattern into the future’ (Pierson and Skocpol 2002: 699). But initiating conditions don’t determine future outcomes, because intermediate events also can affect them (Goldstone 1998). When institutions meet barriers or experience shocks, they try to regain their path by returning to the previous equilibrium point or finding a new one. Institutions, and especially complex, interlocking sets of institutions, can experience ‘lock-in’ when they lose their ability to adapt. Douglas North, 1993 Nobel laureate in economics, showed that societies don’t always adopt the most rational choice e.g. regarding development because they are locked into a matrix of inherited, institutions. Hence institutions varies in how path
dependent they are. I theorize that because federations involve power sharing established in interlocking matrices of institutions, embedded in written constitutions, change will be more difficult than in unitary systems, especially those which centralize power vi.

These insights are of considerable importance when we consider women’s citizenship in specific polities. I distinguish between ‘old’ democracies in which manhood suffrage was established long before women gained full citizenship, and ‘new’ democracies in which women and men became citizens together at or soon after the polity’s institutions were formed. In the new democracies, women were more easily and quickly integrated into democratic institutions—women could ‘get in on the ground floor’ because new institutions are more open, and less ‘hidebound’ in their operating norms. But in the ‘old democracies’ political institutions, developed by and for men, excluded women for many decades, even centuries, and developed many justifications for that exclusion, which were naturalized and embedded in operating procedures, norms and rules. Consequently, women can’t really ever be equal members, even if rules/ laws change to admit them, remaining marginalized.

Path dependence results from the law of increasing returns: that is, ‘once a social process has started, it...produce[s] its own laws of inertia [so] ...the cost of adhering to the original direction of change will decline, whereas the cost of switching away will rise, resulting in path dependence’ (Ma, 2007:64). Politics and especially political institutions are especially subject to increasing returns because: 1. politics is largely collective in nature, so people’s decisions are influenced by their expectations about what others will do; 2. political power is self-reinforcing since powerful groups can impose their preferences on others, and convert original small power differences into significant political inequality by manipulating ideology; 3. political authorities can exercise power covertly and power begets power; and 4. in most
states, citizens are subject to the same rules and power, so people don’t ‘rock the boat.

Once established, then, political institutions are somewhat hard to change, some harder than others. Once established, institutional power relations become diffused with everyone participating in the institution perpetuating it. Complex institutional systems involve very high costs to restructure; more than involved in establishing them. Consequently, where women were excluded for long periods from institutions they can’t change them significantly, but have greater opportunities by getting in on the ground floor of new institutions.

Louise Chappell’s comparison of how Canadian and Australian women’s movements relate to the institutions of their respective federal states draws on ‘historical neo-institutionalism’ (Keman 1997; Peters 1999; Thelen and Steinmo 1992; Skocpol 1985). Chappell (2002:16) wants to explain ‘why feminist within similar institutional settings—parliamentary and federal—vary in their strategic approaches to the state’. Historical institutionalism provides a framework for comparing across time and space how interactions among institutions shape the relations between states and social actors. Chappell (2002:8) conceptualizes path dependence as: ‘initial choices about policy or institutional forms, [which] shape subsequent decisions’; so ‘once launched, political actors follow a particular path’ unless a sufficiently strong force makes them change it. Chappell identifies four characteristics of historical neo-institutionalism, it: (1) disaggregate states into ‘separate institutional arenas’; (2) uses a broad conception of political institutions; (3) emphasizes the role of interactions among institutions in shaping state/social actors relations; and (4) employs an ‘embedded and dynamic’ view of the state. But it ignores gender.

Chappell (2002:4) theorizes that ‘the relationships between feminists and political institutions are co-constitutive’, with agents and structures continuously informing one
another’ along a ‘two-way street’. This rules out purely structural and purely agential explanations. Chappell (2002: 11) inserts a ‘gendered view of institutions’; which ‘does not imply that one should conceive of the state as being inherently patriarchal’. Inserting a ‘gendered’ understanding of institutions differs from defining institutions as inherently ‘gendered’. It also theorizes that ‘the institutionalization of gender values is not ‘fixed’; [since] gender norms ...fluctuate across time and between states’. This leaves us to identify empirically how and to what degree specific institutions are ‘gendered’, and how this shapes opportunities in each case. Chappell adds a dynamic, feminist conceptualization of political opportunity structures (POS) linking ‘gender’ to the law of increasing returns. While Chappell believes institutions have a‘logic of appropriateness’ which shapes people’s behaviour; and that political opportunity structures incorporate gender norms and ideologies which promote openings or establish barriers. The different strategies Australian and Canadian feminists chose, therefore, reflect different opportunities from their country’s institutional configurations; gender/power relations; and the strength and cohesion of feminist movements. Chappell rejects theories and strategies which assume similar opportunities are produced from similar structures because political institutions of the same type nonetheless develop differently in different contexts. Moreover, federalism makes political institutions more path dependent and more interlocking giving contexts more effect.

c) Post-Structuralist Institutionalism

In this approach, ‘gender’ is ubiquitous and discursively constructed; and power is understood as ‘dynamic, fluid and constantly negotiated’ (Kenny 2007:95). vii I use Franzway, Court and Connell’s work for my examples. In their gender regime concept viii, they theorize
a weak institutionalism. Their focus on process, informed by Australian feminism’s innovative ‘femocrat’ strategy. The international ‘women’s machineries’ strategy was initiated to compensate for the paucity of women legislators in the post world-war two democracies in competition with much higher proportions of women elected—using quotas—to socialist legislatures. But the Australian ‘femocrat’ model involved bureaucratic entrism as feminists developed an interlocking system of similar machineries to compensate for women’s absence from all parts of the central state. Femocrats conveyed ‘women’s ‘ claims into the heart of government decision-making, although state structures remained ‘culturally marked as masculine and ...an institutionalization of the power of...heterosexual men’ (Franzway, Court and Connell, 1989: 41 ). They exploited the contradictions uneven institutional gendering produced, and the frequent ‘paradoxical reversals’.

‘[T]he administrative maze’ of a federation’s multiple sites’ (Franzway, Court and Connell 1989: 42) is clarified by auditing the gender regime of each structure. ‘[C]lear [gender] division’ is observed between ‘(a) parts of the state with a high concentration of men—the coercive apparatus,...and the central directorate, the policy-making levels of the bureaucracy and the political leadership; and (b) sectors with much higher levels of women...comprising the welfare apparatuses’ (IBID.) Connell (1987; 1990) defines gender regimes as the ‘state of play’ in gender/power relations in specific structures, but his idea of institutions is minimalist. ‘Gender’ signifies multiple, discursively-constructed genders. The state is central in struggles among the ‘social interests constituted within gender relations’ (Connell 1990: 509).

Franzway, Court, and Connell (1989:43) theorize multiple levels of state institutions—including the international state—but disaggregate the state’ into functional configurations: the central directorate, the machinery of coercion and social order, welfare instrumentalities—
including the ‘non-governmental state’ of state-subsidized, voluntary agencies. While institutions are considered infrastructural, ‘[i]t is likely... different parts of the state structure construct gender through different mechanisms and on different patterns’, because each is a specific ‘precipitate of social struggle’ ‘linked to – [but]... not a simple reflection of - the wider gender order’(1990: 523). Each gender regime has three (sub) structures: a gender division of labour; a gender division of power; and a gender pattern of emotions or cathaxis. Gender auditing each structure reveals the internal conflicts and contradictions which promote and enable change. While all state institutions are arenas for gender struggle, most elected, appointed and state-employed women work in structures farthest from the masculinized, powerful, core institutions. Connell (1990:523/24) theorizes women as concentrated in the ‘non-governmental state’ and in ‘the ‘least masculinized peripheral structures’. But this theoretical map ignores over-all state structuring: the effects of federal power divisions, and de/centralization.

Connell’s concept of gender regimes is useful for institutionalist analyses of federalism’s impact on gender politics. He conceptualizes gender/power relations as fluid, and responding easily to gender/power struggles, without even a weak sense of path-dependence. Connell attributes different patterns of conflict and contradiction to the fluidity of power relations creating different ‘precipitates’ in different structures. But this ignores the impact of: written constitutions, judicial review, power-sharing among structures, de/centralization, and the impact of multiple levels of government on gender/power relations. The close analysis of the Australian femocrat model, however, reveals these impacts clearly.

d. Sociological Institutionalism

Several sociological approaches influence feminist political science. I focus on two approaches: Sylvia Walby’s framework of society-wide gender regimes; and Nitza Berkovitch’s
account of how institutions of international governance and civil society shape nation-state and activists’ discourses and actions regarding women. Walby theorizes how sets of institutions—domains—change; and how institutional arrangements, women’s activism, and global forces interact. Berkovitch offers a constructivist conception of institutions, and how institutionalized ‘world models’ affect state actions regarding gender. Both insert gender as a key variable, seek to explain convergence in public policy, and the spread of structural and discursive innovations, on the one hand, and the many differences in institutions and women’s level of activism among nation-states, on the other. Each treads a line between structuralist theories which discount nation-state’s differences in institutions and levels of activism; and structural/functionalist ‘discounting of transnational forces. To insert gender requires a sense of institutional change encompassing all three as potential factors.

Walby theorizes a modernist (universalist) leftist account in which socio-economic forces are the main agenda. She theorizes societal gender regimes with six domains—paid and unpaid work, the state, sexuality (including reproduction & fertility), male violence, and culture (Walby 1997; 2001:17). She offers no special concept of institutions, but portrays each ‘domain’ as a set of institutions, with ‘regimes’ seen as systems of domains. Change in gender regime and domains is seen as driven by universal, socio-economic forces, but with some agency reserved for women, whose activism may modify how such forces are manifested. Walby also suggests different institutional starting points may interact with universal forces to modify outcomes. country by country. Her understanding of socio-economic processes, reflects Newtonian assumptions: for instance she assumed women’s political emancipation, marking the transition to public patriarchy, is irreversible. Her conception of change indicates a weak version of path dependence in her claim that gender/power relations don’t ‘evolve’ ‘in slow increments; but increase dramatically when ‘rounds of restructuring’ create openings.
Walby theorizes two gender regime types: ‘private patriarchy’ – which limits women to domestic roles and dependency on individual men, and ‘public patriarchy’ which ‘liberates’ women from individual men by making them dependent on states. These types are presented as progressive with the vote ‘the watershed’ between them. Given how many democracies reverted to authoritarian or fascist regimes, which removed women’s right to vote and returned them to private patriarchal norms, however, it seems important to recognize the reversibility of ‘liberation’. Walby’s framework can’t incorporate institutional restructuring, such as devolution in the U.K, federalization in Belgium and Spain; and multilevel governance in the E.U.

Nitza Berkovitch focuses on how changes in institutionalized discourses in the international system affect nation-state politics, activism and social research. Especially valuable is her conception of how discourses are institutionalized; and how ‘world models’ promote change within nation-states. Berkovitch (1999:6) genders an existing framework which theorizes the emergence of an emerging world polity -- a cultural political system, with nation-states as sub-units. Its main thesis is that many features of contemporary nation-state politics ‘derive from worldwide models’ constructed and propagated by ‘global cultural and associational processes’ (IBID.) Because the world is an increasingly integrated social system with subunits responding to institutionalized cultural rules, discursive and policy convergence result. Berkovitch believes the logic of this normative, institutionalist framework can be gendered to explain how individuals, and structure think about gender. Institutions are sets of cultural rules. ‘Institutionalization is the process by which a given set of units and a pattern of activities comes to be normatively and cognitively held in place... taken for granted as lawful.... as...custom or knowledge...’ (Berkovitch, 1999:7). Actors and their ways of thinking are constructed by institutionalized, cultural rules. Each level of analysis –
individual, organization and state—interests and identities are equally abstract and reified. ‘Institutionalization’ is the constructing and embedding of normative systems and cognitive frames.

Berkovitch inserts ‘gender’ into the emergence of a ‘world culture’—a time-bound process which began in the mid 19th century. Since then, world ideas emerged which supported women’s incorporation into the public sphere (albeit on a different basis in different periods); and legitimized this incorporation by the citizenship and rights human discourses developed and promoted by international actors. Berkovitch (1999:11) claims nation-states undertook similar actions regarding women—which she argues can’t be explained by ‘domestic’ factors--because ‘world models...[mandated] appropriate ways...societies should organize and define their inhabitants’ so women’s exclusion and discrimination against them became unacceptable by the ‘world community’. While states don’t simply conform to the new world models, they become a focus for activists and scholars. Women’s movements use such models to embarrass their governments into conformity. World models promote change in how women are seen and to be treated because, in a consolidated world polity, international actors have clout: hence, each new world model diffuses a new set of institutionalized norms and cognitive frames which uncover new contradictions, especially regarding women’s private/family roles and public norms. Women’s movements can exploit these contradictions to promote change. Especially problematic, Berkovitch believes, are models which combine global discourses on development with women’s rights discourses. While the fusion produces powerful neo-liberal arguments for gender equality in the public sphere, it also represses women’s legitimate claims for ‘rights’ to personal autonomy and bodily integrity in ‘private’ relationships.

e. Rational Choice Institutionalism

Rational choice practitioners assume individual actions as the basis of institutions and adopt Newtonian goals including a ‘body of formal theory, internally logical and consistent, capable of
explaining political reality with a relatively small number of axioms and propositions’ (Almond 1996: 86). Nonetheless, Anna L. Harvey (1998) inserts sex into the rational choice framework, making it part of the ‘political reality’ to be explained. She explores the impact of U.S. women’s exclusion from citizenship decades after (white) manhood suffrage and uses rational-choice institutionalist concepts to theorize their subsequent inability to influence public policy. The puzzle Harvey (1998:1) addresses is how (white) U.S. women, who won the right to vote in 1920, ‘endure[d] fifty more years of the consequences of not having had ...[it] in the first place’. Other scholars assumed that when men and women gained equal rights to vote in 1920, they then had equal opportunity to influence political outcomes. Harvey uses rational choice concepts of electoral ‘markets’ and im/perfect electoral competition to explain why women’s long exclusion resulted in former suffrage organizations being ‘driven from the market in women’s electoral mobilization’. ‘Unable to mobilize women’s votes’, they couldn’t ‘effectively lobby vote-minded legislators for policies ...[which] represented women’s policy preferences’ (Harvey, 1998:14).

Considering how pre and post-suffrage feminist strategies interacted with the logic of the electoral system, Harvey (1998:15) concludes: ‘if electoral laws treated men and women differently at any given...time, then we would expect...women as political actors to make strategic choices that differed from those of their male counterparts’ The whole story ‘is that exclusionary suffrage laws have significant downstream effects on the efforts of previously excluded groups to take advantage of the opportunities presented by suffrage’ (Harvey, 1998:13). Focusing on institutionalized ‘rules of the game’ lets Harvey inserts sex into the analysis, opening up the question of when sex is relevant for understanding specific political institutions; and when it is relevant instead of gender. If women’s disenfranchisement produces identifiable ‘downstream effects’ we have a way to explain why levels of incorporation of women into electoral systems varies widely across western democracies
in ways which correlate with when they got the right to vote and run for office. Consider that where women and men were enfranchised together in new state institutions, as in Finland and Norway (Vickers 2006; 2007), the logic of electoral systems apparently poses no barriers to women’s electoral incorporation. While other gender institutions—e.g. laws governing marriage—did slow women’s incorporation as legislators, despite equal starting conditions, electoral systems may not be sex/gendered in their rules of operation. This would contest definitions of political institutions as inherently gendered. Rational choice institutionalist analyses may help us distinguish between institutions in which ‘the rules of the game’ are not sex/gendered from those which are. The approach also can help us distinguish between gendered consequences which result from men’s and women’s lives being different; and institutions in which gender asymmetries are inherent or essential.

f.) Framework for this Paper

My analysis of how state forms—especially federalism—affect genders politics, is informed by ideas and concepts drawn from these approaches. I define an institution as a pattern of action which persists over time in symbiosis with ideas which legitimize and naturalize that pattern.* I see each institution containing legitimizing ideas as part of its feedback processes. Hence, political institutions which excluded women as a normal operating procedure have justifications for exclusion incorporated within such procedures. I conceptualize complex sets of institutions as ‘systems’; but I see social systems more like organic systems than abstract systems as in physics.

I don’t define institutions as inherently ‘gendered’, instead, I identify the mechanisms institutions use to establish and sustain gender-power asymmetries. I understand institutions as devices to reduce the complexity and uncertainty in social interactions. Institutions take many different forms, but can be characterized with ten sets of characteristics, each set representing poles in a continuum not categorical differences. Institutions are: simple/complex; new/old;
original/restructured; indigenous/ imported; permeable (easily entered) /closed ; fluid (easily changed) /rigid; centralized/decentralized; layered/unlayered; the work of a single interest/of multiple interests; flat (little power asymmetry) and hierarchical (significant power asymmetry). These characteristics aren’t all of equal importance. For example, an institution’s age is more important regarding women’s exclusion than most other characteristics. States are differentiated sets of interlocking institutions and discourses, distinctively including institutions which use force legitimately. (See Kantola 2006:163.)

I understand institutions as structures and legitimizing ideas interacting and in symbiosis; and use Berkovitch’s concept of the institutionalization of ideas and values seeing cognitive frames and ‘world models’ as mechanisms used to re/structure institutions/systems. But I see the international process of developing such templates as competitive, contradictory and coercive, with powerful neo-imperial actors dominating international organizations to shape ‘world’ models’ Imitation and transnational learning also playing a role in spreading such templates.

I use the concept of sex/gender regimes adapting Connell and Walby concepts. I retain sex as a variable, and understand sex/ gender as a varying dialectical interactions with the relative effect of each shaped by the society’s level of technology. I define sex/gender regimes as the institutionalized arrangements between sexes and among genders, interacting with the cognitive gender scripts which shape and legitimize them. This resembles Diaz’s (2005: 8) idea that ‘gender structure means that certain social, or institutional, positions are ascribed on the basis of sex’. I retain Connell’s gender regime to conceptualize gender/power relations and gender scripts in political institutions.

My understanding of institutional change includes path dependence, the logic of increasing returns, and the idea of adaptive, moving equilibria. Unlike Diaz’s idea (2005:
that ‘parliament’ is an institutional package with a strong regulating capacity, its own logic, a strong inertia, very little room for innovation, and many ways to assimilate ‘dissidents’; I understand political institutions are more varied despite common names and rules. Complex sets of institutions—parliament—vary in how path dependent they are; how much scope there is for agency/innovation; and how they are modified by the company they keep—i.e. the institutions with which they interact. The balance between path dependence and adaptability varies according to institutions’ age, and permeability: some are easily changed, with fluid power relations; others are hard to change. Borrowed institutions work differently in new settings. New, simple, indigenous institutions are less path-dependent. Moreover, institutional innovations occur first in small, less powerful democracies, then becoming subjects for mobilization and diffusion (Vickers 2006). Some theorists, especially analysts of welfare-state models, emphasize ‘institutional lock-in’ when sets of political institutions constrain change. I conceptualize political actors choosing among competing institutional ‘packages. I also understand change using Walby’s idea of rounds of restructuring which create the openings feminists use, and distinguish between reconfigurations of power which in federations can occur without institutional restructuring; and processes of institutional restructuring.
2. Gender and Federalism

In this section, I discuss links between the characteristics of federations and women’s politics, taking into account the nature and role of institutions. First, I outline features of federalism as a system of institutionalized power-sharing. I then explore how power-sharing and the degree of de/centralization in each federation affect women’s citizenship, and politics, focusing on three strategies used to change sex/gender regimes—electoral quotas and ‘women’s machineries’; and constitutional change. In federations, strategies to achieve sex/gender regime change must take into account the effects of power-sharing on institutions both vertically and horizontally. I outline the general characteristics of federalism, and note the characteristics of specific federations which also play a role. Is it old or new; relatively centralized or decentralized; symmetrical or asymmetrical? These complex, interlocking sets of institutions, each with its legitimizing ideas, are moving targets as central governments download activities to constituent governments; offload them to non-elected bodies; and upload them to transnational bodies and forces with frequent power reconfigurations. Since in federations most institutional restructurings require constitutional change, Sawer and Vickers (2002) argue that feminists have been able to take advantage of the openings they create, making constitutional strategies the most characteristic. Arguably, these frequent openings for change are part of ‘the federalism advantage’, an idea I assess in my conclusions. I argue that feminist strategies must be appropriate to their context, if we are to take institutions into account more fully. This means taking the constraints and opportunities of federalism seriously.

a) Characteristics of Federalism

Although democratic federations differ in the extent of their ‘constitutionalized decentralization’ (Watts, 2000:159) and in other important characteristics; they also share some core structural
characteristics. Perhaps the most important commonality is that changes in the institutions which express the ‘federal bargain’ and in the basic power-sharing arrangements are deliberately made difficult to achieve usually by entrenching them in written constitutions, and empowering a senior court to arbitrate unlawful attempts at change.

Federations vary from centralized (Austria, Germany) to decentralized (Switzerland, Canada). De/centralization is the extent to which fiscal, policy, administrative and political powers are shared among governmental institutions among levels or among institutions on each level. Decentralization exists if constituent governments can exercise autonomy in these areas. Centralization exists if the central government can act in any area in constituent state’s jurisdictions without constituent states consenting. In federations, governments at each level directly govern the same citizens, within agree-to jurisdictions. The classic federal idea of water-tight jurisdictions in which constituent governments undertake all but general activities is largely a thing of the past in practical terms, because new communications and transportation technologies have transformed previous collections physically-separate colonies or communities into increasingly-integrated societies. But it remains part of the belief systems about federations, especially among constitutional fundamentalists eager to limit increases in central government power, or in government power generally.

The structural characteristics of modern democratic federations are these.

1) *State power* is divided between (at least) two levels of government, each with its own institutions, personnel, and jurisdictions; with each directly governing the same citizens. How power is shared varies but they key are specified, as is the method of changing them and how disputes are to be handled.
2) Political and policy agendas are divided constitutionally and responsibility for government activities divided between constituent and central governments. Local government may be a constitutional third level or have delegated power. Powers may be divided by legislative subject; fiscal power separated from policy authority; or policy-making separated from implementation. Shared power makes holding governments accountable more difficult, and often results in buck-passing, false claims of credit, and jurisdictional excuses for inaction. Power sharing creates multiple access points for political participation.

3) Political organizations—parties, interest groups and movements—and civil society institutions are federalized; i.e. function at several levels, but often in different guises. Political agendas also are divided. Fewer and weaker polity-wide political parties result; wealthy, well-informed interests are best able to influence all levels. Poorer interests and movements are fragmented: coordination is difficult.

4.) Federations have one or more political institutions at the centre representing the interests of the constituent governments. Central government interests may be represented in constituent governments. Territorial interests dominate representation and representing spatially-diffuse interests (sex/gender) is more difficult. Most federal electoral systems represent territorial interests over non-territorial.

5) Power sharing is expressed through central government jurisdictions and institutional arrangements usually entrenched in a written constitution. Change may require some super majority of constituent units and/or citizens in referenda.
6) The judiciary is more powerful, because of its role in adjudicating power sharing through judicial review. Most federations are rule of law rather than majoritarian democracies.

7) Federations involve more government overall including more elected decision-makers, more administrators and judges. This offers more opportunities for women’s state-focused politics; it also requires more feminists mobilized to participate in state politics, and enter state activities professionally.

b) Federalism and Women’s Citizenship

Women’s citizenship is more complexly affected by federalisms’ characteristics, in part because ‘jurisdiction[s]...have particular saliency to women because the legal concept of jurisdiction has served as a vehicle...to preserve male control” (Resnick, 2001:625). In old federations—the U.S., Switzerland, and Canada—women were denied citizenship and most civil rights, with long-term consequences. But this was true older unitary democracies—e.g. the U.K. and France. Wherever women were denied these rights for long periods, political institutions developed as men-only bastions. Nor did women gain citizenship at both levels of government simultaneously. Quebec women gained the right to vote and hold office in central-government elections when women did elsewhere in Canada, but political rights were withheld by Quebec governments for three more decades. In the U.S., (white) women gained citizenship in western territories/states, but struggled for decades more in older states, necessitating a constitutional amendment. Non-white women (and men) were denied basic citizenship rights, and since states controlled the rules and procedures for federal elections, they often couldn’t exercise federal rights when they won them. Women’s relations with different governments, then, varied under different citizenship regimes. Harvey demonstrated one set of negative ‘down stream’ consequences. Are there others?
To the extent that *federations permit constituent units to have different sex/gender regimes*, aspects of women’s citizenship can differ among constituent units, and in women’s relations with central governments. So Berkovitch’s idea of governments responding to ‘world models’ and impose their values uniformly through their territories, doesn’t work in federations. Some jurisdictions may resist, while others comply. Sex/gender regime change in federations involves multiple levels of government. Women experiencing contradictions promotes change. So, while the Equal Rights Amendment (ERA) project failed, feminists persuaded some state governments to insert ERAs in their state constitution, creating more ‘women friendly’ sex/gender regimes in those states, and considerable variance across states.

*i Swiss Federalism and Direct Democracy*

Swiss women’s long struggle for citizenship shows how institutions create and foreclose opportunities for changing sex/gender regimes. Swiss direct democracy and decentralized federalism denied women citizenship longer than in other ‘western’ democracy. Switzerland is a very decentralized federation. Not until 1990 did the Supreme Court ever restrict a canton’s authority. It did so then ruled for a woman claiming her civil right to vote in Appenzell where the (all) male citizens still denied women citizenship. The Swiss central government has a bicameral Federal Assembly with a National Council directly elected within canton-wide constituencies in a proportionate system; and a Council of State composed of two members elected in single-member contests from each canton. Each chamber has identical powers. A Federal Council with executive power operates as a multi-party collective, based on collegial agreement -- unless everyone agrees, nothing happens. Power sharing and cantonal autonomy produce decentralized parties, little party discipline; and ‘federalized’
interest groups and movements. Consociationalism, amicable agreement compromise, and avoiding conflict are its operating principles.

The key to Swiss politics is direct democracy with citizens exercising *direct political power* through frequent initiatives and referenda at the federal, cantonal and community levels. Some referenda are mandatory—for constitution issues or urgent federal decisions. Optional referenda occur when enough citizens initiate a vote against federal laws. ‘The electorate’s ability to define or block government decision-making through...initiatives and referenda competes with the use of national legislation’ (Stämpfi, 1994: 692). Cantonal autonomy plus direct democracy kept Swiss women from attaining the vote and representational roles in the central government until 1971 and until 1990 in the hold-out canton of Appenzell (Stämpfi: 1994) Swiss women didn’t just have to persuade politicians: they also had to persuade a majority of ordinary Swiss (male) electors in every canton to vote for women’s political rights; and defeat direct-democracy challenges to any legislation. Moreover, they had to do this with a fragmented women’s movement, divided women’s organizations and a political culture which ignored them and disallowed shows of conflict. Petitions signed by 250,000 people submitted to the Federal Assembly in 1928, were ignored until the 1950s! Not surprisingly, then, Swiss feminists opted for a constitutional strategy when the opportunity arose.

International pressure by the U.N. and ILO led the Federal Council to endorse women’s suffrage in 1957, and both national chambers voted for it in 1959. ‘If Switzerland had not been a direct democracy, women’s right to vote would have taken effect immediately’ (Stämpfi, 1994: 696). In the referendum mandatory for constitutional amendment, 69% of Swiss citizens—still all men—voted ‘no’. But the events had reconfigured the context: an umbrella group drew together most women’s organizations and let right- and left-wing women work together. Left-
wing parties became active around the issue; the central government became an ally; and international pressure persisted. The campaign resulted in cantonal suffrage rights first in progressive cantons. The contradiction that some women could vote while others couldn’t challenged naturalized justifications for excluding women and promoted general change. Women’s organizations were limited by Swiss rejection of confrontational tactics. But when Switzerland became a member of the European Council in 1963, and in 1968 asked for an exemption to let it sign the European Human Rights Convention, women’s organizations across the political spectrum demonstrated. A protest march to Bern (1969) with the slogan ‘Women’s suffrage is a human right’ generated shockwaves. When the European Council rejected the Swiss government’s exemption request, a majority of Swiss men finally voted ‘in the 1971 mandatory referendum to amend the constitution.

Cantonal autonomy permitted Appenzell to opt out until 1990 when the Supreme Court ruled that rights provided by constitutional ERA trumped cantonal autonomy, demonstrating the efficacy of the constitutional strategy was evident. A National Commission for Women was formed and a new women’s movement emerged after the vote was won. They campaigned for a constitutional ERA, Achieved in 1981, organized women then focused on its implementation, but the consociational system makes the legislative route difficult. Women’s representation in governments grew significantly; and the federal Office for Equal Rights was extrapolated to some of the cantons and universities. But the Court’s willingness to over-rule a canton’s autonomy was the first significant penetration of the interlocking institutional system in women’s interest.

ii Women’s Citizenship, Federal Jurisdictions and Constitutional Change
Suzanne Mettler (1998; 1994) explores another U.S. women’s social citizenship was constrained when the Roosevelt government introduced a *Fair Labor Standards Act* (1938), major occupations composed mostly of women were excluded. This created ‘a gender division in a seemingly gender-neutral law’ : ‘while men were guaranteed new economic rights by the national government, many women remained under the often parochial and paternalistic authority of state governments’ (Mettler 1994: 635) There was also race bias since Black women were twice as likely to be in the paid work force, and overwhelmingly worked in the excluded occupations. New Deal federalism, heralded as progressive for establishing national rights of social citizenship, ‘treated men and women workers as citizens of two distinct realms of government’ (Mettler, 1994:635). While white, male workers gained first-class, social citizenship rights, women and race-minority men were ‘subject to politics whose development was hindered by the dynamics of federalism and...administered with discretion and variability’ (Mettler, 1998: xi). The social citizenship regime constructed men and women as members of ‘separate sovereignties’: white men were rights-bearing members of a liberal regime while most states governed women and Blacks ‘in a non-liberal manner.’ (*IBID.*).

Many U.S. feminist think ‘constitutionalized decentralization’ sustains a gender bias which permeates Supreme Court interpretations. If so, does this diminishing of women’s citizenship right by assigning them to constituent governments characterize federations generally? Moreover, are constituent governments inevitably are less progressive in sex/gender terms than central governments? *When* written constitutions and jurisdictional divisions were established affect federalism’s impact on women’s citizenship. The U.S. constitution is an 18th century document; *Canada’s British North America Act* (BNA) reflects British colonial ideas at the height of empire (1867). U.S., constitutional fundamentalism valorizes American founding
fathers’ ideas about power-sharing and their pragmatic problems with slavery. Constitutions, like the institutions they prescribe, institutionalize bargains and justifications for their inclusions and exclusions. U.S. feminist legal scholar Judith Resnick theorizes federalism’s effects on women’s citizenship resulting from the assignment of jurisdictional responsibilities.

Resnick focuses on the U.S. Supreme Court’s 1999 gutting of the civil rights remedy Congress inserted in the 1994 Violence Against Women Act (VAWA). The VAWA focused on states’ responsibility to provide all citizens with security from (non-domestic) violence. The 1999 decision involved the on-campus rape of a university student. The Court ruled that VAWA’s provision of a civil rights remedy for women who experienced non-domestic violence—parallel to federal civil rights remedies provided for Blacks when state governments didn’t protect them from racial violence—was outside Congress’ competence because violence against women is ‘truly local’. The Court had previously gutted the Child Support Recovery Act of 1992 (CSRA, modified 1998), which ‘made it a federal crime to fail to make support payments...[when] the parent and child reside in different states’, again arguing it upset the balance ‘between what is truly national and what is truly local’ (Resnick, 2001: 637).

Federal civil rights remedies acknowledge that their recipients are fully citizens of the central state, entitled to the protection of the federal government. The Supreme Court declared women citizens of the states arguing that violence against women is ‘local’, and what the founders had assigned to the states. While other federations assign jurisdictions differently, but all have protocols about what activities central and constituent governments should perform. How such protocols affect women and sex/gender regimes and how they might be reformed, need close attention. A commonly advocated approach operates on the subsidiary principle which hold that ‘a ‘higher’ political body should take up only those tasks that cannot be
accomplished by the ‘lower’ political bodies’ (Watts, 1996:5). From women’s perspective of this is problematic given their disadvantage when assigned to (less progressive) ‘lower bodies’.

Resnick argues that the U.S. Court’s used what she calls **categorical federalism** in its thinking about violence against women. The Chief Justice’s insistence that ‘[t]he Constitution requires a distinction between what is truly national and what is truly local’ (cited Resnick 2001:619) shows his reasoning to be **categorical** for three reasons. First, by categorizing violence against women as ‘truly local’ (a category not even in the constitution) he assumes ‘a particular rule of law regulates a single aspect of human action’ (Resnick, 2001: 620). Second, ‘categorical federalism relies on such identifications to locate authority in state or national governments and then uses the identification as if to explain why power to regulate resides within one or another governmental structure’ (**IBID**.). Finally, categorical federalism assumes exclusive control of an activity. The categories differentiate ‘two sets of human activities: the subject matter of regulation and the locus of government with each assumed to have intelligible boundaries and autonomous spheres” (Resnick, 2001: 621). Resnick considers **categorical federalism** is a judicial attempt to **contain** violence against women at the state level and insulate federal courts from international human rights regimes. Denying women civil rights remedies keeps them second-class citizens, but protects federal judges from ‘deadbeat dads’, or violence against women cases. Resnick concludes (2001: 621) that women suffer ‘political injuries caused by [the courts ] equating family life with state law’.

Canadian legal scholar Beverly Bains also focuses on women and federalism, but with different conclusions. Doctrines, which drives judicial review, are institutionalized mediating principles, enforceable as law, which judges construct to insulate their decision-making from power politics or bias. Doctrines are important in common law federations because precedent
binds courts unless they show them to be in error. Because federations valorize written constitutions, and judicial review, dated, negative ideas about women embedded in doctrines or conventions hamper efforts to change sex/gender regimes.

Bains shows how Canada’s Supreme Court also employs ‘federalism doctrines’ to diminish women’s citizenship. Women’s increased ‘presence’ as judges won’t change much if judges remain bound by regressive assumptions embedded in federalism doctrines about how women should be incorporated as citizens. Federalism doctrine in Canada assigns women as citizens to a different level than in the U.S, but still diminishes their citizenship. In three decisions (1980s and ‘90s) the doctrine of exclusivity was used to determine jurisdiction over street prostitution, ‘protective’ reassignment of pregnant workers, and privatization of abortion services. Baines claims that in each case, concurrent jurisdiction was denied and the doctrine of exclusivity upheld. In a recent case about the federal Employment Insurance Act versus Quebec’s competing provisions, the court again precluded concurrency, although Quebec women likely preferred Quebec’s projected superior maternity and parental leave provisions.

Unlike Mettler who wants U.S women be incorporated as national citizens to enjoy first-class rights and protections, Bains thinks because Quebec’s sex/gender regime offers better rights and protections, they should get to choose to be Quebec citizens. Franco-Quebec women struggle to get things right in Quebec because as francophones they are less mobile (Vickers 1991; Belleau 2000). Baines (2006: 190) proposes a new federalism doctrine--equity federalism--which ‘would award the legislative jurisdiction to governments that had proven responsive to women’s claims’. Any statute enacted by either level of government would be upheld as constitutional, if it was shown to benefit women or another equity recognized as disadvantaged
under the *Charter*, and for whom positive action is constitutionally allowed. Women’s loyalties as citizens would go to jurisdictions promoting gender justice.

**c) How Federalism Affects Women’s Politics:**

Before exploring how federal characteristics constrain and facilitate feminists’ strategy choices, I first note how transnational forces affected opportunities by reconfiguring power within and among institutions. The 1970-2007 period has two phases divided by the end of the cold war. As long as east/west conflict blocked capitalism’s globalization, and fostered ideological conflict and competition between democracy/capitalism and socialism/communism most western governments responded to women’s claims. After the cold war, globalization, and neo-liberal models influenced many central governments to withdraw support for larger welfare-state; and download and off-load state responsibilities, while removing obstacles to free markets. This shaped opportunities so that in federal states feminists favoured constitutional strategies, usually with feminists taking advantage of openings created by governments: unification; keeping Quebec in Canada; making Australia a republic. Treated as ‘outsiders’ by traditional actors who assumed they espoused a single ‘women’s interest’, feminists developed diverse positions, and even participating increased women’s political visibility.

The main policy foci of women’s politics in federations differs little from agendas in unitary democracies. Women’s representation in central legislatures was promoted but not very successfully. Increasing women’s presence in other state bodies, especially as appointed experts often succeeded better. Feminists in several federations invented ‘women’s machineries’ and the strategy of *bureaucratic entrism*. As I discuss below, when developed in a multi-level, federal context, this strategy produced excellent results.

**i. Strategies to Increase Representation in Elected Bodies**
Different strategies succeeded in federations differed partly because multi-level governments require women’s representation across a many institutions. Figure 1 outline some effects of this broader representational agenda. If we consider only women’s representation in central governments, federations –especially the ‘old’ federations— lag behind: only two newly federalized states (Belgium and Spain) and centralized Austria are in the top 10 countries. But if we measure the ‘presence’ of women—on a composite index of representation in multiple arenas—three federal states again score in the top 10. But two —Canada and Germany—scored as high when the central lower house alone is considered; their rank is increased by representation in courts and bureaucracies. (Austria is in the top 10 on both.) Focusing on one central legislature led to a preoccupation with quotas. But to achieve their policy objectives, whether in federations or unitary states, feminists must get their ideas advocated and their experiences represented in the numerous sites of power and decision-making.

**FIGURE 1 ABOUT HERE.**

Although quotas to increase women’s legislative representation spread rapidly to over a hundred countries, they aren’t the same entity in different places because institutional configurations vary (Krook 2007). In western Europe, Kittilson (2006) shows that to facilitate the combined top-down (pressure by party elites) and bottom-up (pressure from voters/women activists) needed to promote women for office, *a centralized party structure is essential*. Although a feature of a few centralized federations (e.g. Austria) this institutional context rarely exists in *decentralized* federation. In Latin American federations legislated/constitutional quotas are supported by public opinion, presidents and judges all of whom endorsed quotas as a partial solution to women’s very low representation. Such conditions don’t exist currently in the Anglo-American federations. Some Anglo-American party women have promoted quota
tactics, but the logic of their electoral systems inhibits a contagion effect from one party to others. With decentralized and ‘federalized’ parties, electoral agendas divided between levels, and inhospitable electoral systems, quotas have at best a marginal influence in elections.

Successful affirmative action strategies other than quotas have increased women’s representation within parties, with eventual spill-over effects in candidacies. Quotas for conventions transformed the U.S. Democratic party into a vehicle for women, Blacks, the poor and gays and lesbians; and the feminist PAC Emily’s List (Early Money is Like Yeast) supports ‘women-friendly’ candidates. EMILY’s List also was transferred to Australia. But which government institutions and levels should feminists target? Women’s representation in upper territorial houses has increased more slowly, except where PR electoral systems apply to them. Women’s presence as legislators affects their s/election for government and leadership roles. Representation remains the distinctive modern institution, despite declining power in legislatures, because elections legitimize government’s control of state power. But feminists also need to focus on with how ‘women-friendly’ local and constituent governments; especially given the downloading of responsibilities to such governments.

ii Strategies Focused on ‘Bureaucracies

The idea of specialized ‘women’s agencies’ originated in the U.S. Labor Department in the 1930s, spreading quickly to other governments. Advisory Councils composed of women’s organization leaders also developed early in the Nordic democracies. In the cold-war era, while most feminists in the powerful democracies were anti-state, in marginal countries governments responded to the virtual absence of women MPs by establishing ‘special women’s machineries’. In Canada, a Royal Commission on the Status of Women recommended human rights agencies, and a women’s advisory council. Distrustful of political parties, feminists
demanded a free-standing agency drawn from and responsible to the women’s movement, to report directly to Parliament on ‘the status of women’. The Advisory Council (CACSW) established had patronage appointments and reported to Parliament through the government. None of the central-government agencies created then survive today. More lasting were ‘women’s agencies’ created by feminist movements and some constituent governments.

The most successful ‘women’s machineries’ were in Australia and based on a strategy of bureaucratic centrism. These were not marginal, outsider agencies, perched on the edge of government. Femocrats recruited from the feminist movement entered the heart of the government to promote feminist goals; significant policy-monitoring capacity was achieved through a hub located in the PM’s office and implementing spokes in various departments; with a network of sister agencies advising state governments (Sawer 1990, 1996;1 999; Chappell 2000). Many scholars (e.g. Lovenduski et.al. 2005) believe alliances between left-wing parties or governments and feminist movements are needed for activist women’s policy machinery to succeed. But little attention is paid to the institutional form and context of examples which work best. Being centrally located is thought to matter, but it isn’t noted usually that Australian feminists developed a federal model. Chappell (202:9/10) claims federalism’s multiple access points gave the Australian movement the advantages of a ‘dual democracy’ not available in Canada, because of its asymmetrical, multi-national federation and a federal, civil service which disallows advocacy.

Although in some Canadian provinces ‘femocrat’ strategies succeeded, the context needed for a fully developed multi-level strategy didn’t exist. With (old) Labour governments at both levels, the Australian femocrat strategy produced outstanding results for almost two decades, as feminist movements played governments off against each other. But neo-liberal
Labour and then right-wing governments in Canberra forced a refocusing of feminist energies to friendly state governments. A recent comparison of British Columbia and New South Wales (Teghtsoonian & Chappell, 2008) argues for rethinking the idea that left-wing governments are needed to achieve ‘women-friendly policies’ through ‘women’s machineries’. In both jurisdictions, a free-standing ministry was established, then marginalized and dismantled. But the partisan complexion of governments differed in the two cases. Non-left governments sustained femocrat projects; while lefti-wing governments marginalized and dismantled them.

Comparisons of ‘women’s machineries’ should consider their structure, location and institutional context. Teghtsoonian & Chappell’s comparison revealed a surprisingly similar trajectory: femocrats drawn from women’s movements were displaced by ‘experts’ and the projects eventually depoliticized. So while femocrat strategies are enhanced by federal institutions, the double democracy advantage doesn’t always persist. Nonetheless, networks of agencies increase WPAs’ ability to mobilize civil society and movement organizations. The multiplication of agencies creates a denser institutional complex of interlocking institutions and femocrats with similar goals. This provides a wider field of action for femocrats who can draw support from society to counteract the masculinism they experience in isolated agencies.

Shirin Rai (2003:272) thinks ‘the nature of national machineries is important—decentralized organizational structures...are important to link with civil society organizations at the grass roots,... to lobby and monitor the functioning of state-level bodies at local levels...[which are] critical for implementation of national policy’. Rai’s contributors (IBID) show that ‘greater mobilization, greater public visibility, greater impact on public opinion, a greater...participation by women’ result when initiatives ‘arise from below’. A decentralized network of interlocking institutions at different levels produces better outcomes than a single,
to-down agency. An example is Germany where neo-liberal downloading of responsibilities in industrial and social policies to the Länder has made the effectiveness of local and Länder agencies especially important. The decentralized network of agencies at all levels proved useful in post-unification efforts, compensating to somewhat for a fractured feminist movement in the west and conflict with east German feminists.

The federal women’s ministry, headed by Angela Merkel, spearheaded extensive policy-reforms. Despite defeats regarding the legal status of abortion (Kamenitsa & Geissel 2005), agencies helped achieve the Second Federal Equality Rights Law (1994) and prevent negative modifications to the Basic Law. Länder and city agency staff participated. For instance, a lawyer working for Hamburg’s equal opportunity office developed the claim that the state has the right and obligation to compensate for traditional discrimination against women (Lemke 1994:273). While achieving effective national, affirmative action legislation was difficult, progressive jurisdictions implemented it earlier and easily. Femocrats from state agencies magnified network density expanding its capacity. In federations, where women live often determines the sex/gender regime under which they live; so feminists target progressive jurisdictions as models for emulation. Feminists use the greater mobilizing capacity of a dense, decentralized network; and competition among governments to play governments off against each other. Equality policies promote centralization, homogenization and bureaucratization; but equality-seeking through decentralized networks can promote diversity, and power-sharing.

iii. Constitutional Strategies

Women’s movements engaged in constitutional politics in all the federations studied. Such efforts didn’t always succeed, but constitutional strategies often created unique opportunities for promoting sex/gender change. Feminist literature tends to conflate
constitutional restructuring with the power reconfigurations such as result from the neo-liberal 'turn' (Banaszak, Beckwith and Rucht, 2003). For federations, it is preferable to differentiate power reconfigurations which can occur without changes in written constitutions. Some scholars (Brodie 1996, 1994; 1995; Dobrowolsky 2003) define ‘restructuring’ with ‘changing state forms’. That is, the power reconfigurations associated with globalization are associated with ‘restructuring’ from a Keynesian welfare state to a post-fordist, neo-liberal states. But institutionalist understandings of women’s politics in federations must distinguish restructuring of constitutions from power reconfigurations which don’t require constitutional change.xx

In Germany, Canada and Australia, organized women responded to openings created by conventional constitutional actors—governments, politicians and lawyers—by trying to insert sex/gender regime change into restructuring; a radical strategy which opens constitutional politics up to unconventional actors—women’s movements, civil society organizations, non-governing parties. In the U.S., feminist organizations attempted to create their own opening to amend the constitutional with an ERA. Organized U.S. women campaigned long and hard to gain vote through constitutional amendment; but this time the strategy failed. Swiss women, also sought constitutional changes directly, first for the vote, and second then for an ERA. Why did women’s movements choose the high-risk strategy of constitutional politics?

In federations, founding or amended ‘bargains’ specifying how power will be shared and institutions organized are manifested in the formal, written text and in informal parts of the constitutional order. The written constitution is what outsiders can target, but the whole order shapes opportunity structures for women’s activism generally. The written inclusion or exclusion of rights, and assignments of jurisdictions, have long-term, ‘down-stream’ consequences. Even if are not immediately manifested in women’s lives, rights which form a
platform for potential actions later. Moreover, successful constitutional projects can legitimize subsequent attempts to change sex/gender regimes. Constitutional activism another dimension of women’s efforts to increase their ‘presence’ in the state and governing. The focus of their representational demands is often simply their inclusion in a process men normally dominate.

In Canada, different movements mobilized in three rounds of constitutional debate (1980s and ‘90’s) in with many issues were in conflict: between constituent governments, notably Quebec, and the central government; existing indigenous rights, including self-government; citizen/state relations; generally and how power should be shared under new circumstances. Feminists and non-feminist women’s movements insisted on participating; and although they pursued different goals and agendas, women were falsely homogenized and (wrongly) portrayed as irresponsible ‘outsiders’ disrupting normal constitutional negotiations by demanding that gender and equal rights be inserted. The interplay among diverse movements established women’s credentials as ‘good enough citizens’ (Trimble 1998), entitled to make claims on their own behalf; and successfully established, newly in Canada, ordinary citizens’ rights to participate in constitutional politics instead of in camera, elite negotiations.

The English-Canadian women’s movement seized the opportunity when Prime Minister Trudeau patriated the British North America Act 1867 and proposed an entrenched Charter of Rights and Freedoms. Alert to the negative consequences for women of the previous Bill of Rights, feminist journalists, politicians, lawyers and organizations joined forces to change the clauses, which if entrenched would have perpetuated women’s diminished citizenship (Sawer and Vickers 2001). Feminist legal experts problematized and recrafted texts of the equality rights clauses, which feminist politicians and activists then promoted. Feminists in WPAs also played an important role since it was the resignation, and promotion to hero status
of the head of the federal Advisory Council (CACSW) Doris Anderson, which mobilized feminists. Anderson formerly was the long-time editor of *Chatelaine*, a trusted mass-circulation magazine with radical articles on discrimination interspersed with receipts and fashion advice. This wording of the equality rights finally entrenched in the constitution provided first-class *legal* citizenship for women, evidenced when the Supreme Court decriminalized abortion, and struck down discriminatory restrictions on same-sex couples, paving the way for same-sex marriage.\(^{xxi}\) The Charter wasn’t part of movement’s strategy, but once in train, it was crucial to ensure clauses known to produce negative consequences for women weren’t entrenched. In federations, what is entrenched in the written constitution is hard to change; and takes on a life of its own. A strong cadre of feminist lawyers and scholars crafted a new *legal, representational strategy* including getting feminist, women judges onto senior courts and creating LEAF (Legal Education and Action Fund) to monitor and intervene in constitutional cases. Constitutional politics initially divided feminist groups: Franco-Quebec vs Acadians; franco-Quebec feminists vs English-Canadians, with First Nations, lesbians, race-minority and women with disabilities persuaded feminist ‘insiders’ were ignoring their interests. The constitutional strategy weakened all movement institutions including the umbrella group the National Action Committee on the Status of Women (NAC) and the CACSW. It forced competing movements to discuss their differences, and share power within feminist organizations. In the NAC, women developed a ‘three nations’ constitutional position recognizing the diversity of interests among women’s goals and strategies (Vickers 1993; Vickers, Rankin and Appelle 1994).

German feminists were divided when unification drew them into constitutional politics. Unification joined two states with different sex/gender regimes; and the new state had to reconcile West Germany (FGR) policies with East German’s (GDR). Women in the former
East Germany played leading roles in the movement to end communism. They then formed the Independent Women’s (umbrella) Association dedicated to keeping favourable aspects of the sex/gender regime under communism. This group achieved representation at the Roundtable formed December 1989 to draft a new GDR constitution. Unification meant this constitution never went into effect, but local equal opportunity offices were instituted by the first freely elected GDR government (Lemke, 1994: 265-7). The unification treaty focused attention on reforming the FGR’s sex/gender regime because GDR women ‘were employed at much higher rates, had more formal legal rights...,enjoyed more affirmative action programs in education and the workplace, and received many social welfare benefits to help them combine employment and family duties’ (Kamenitsa and Geissel, 2005: 115). Unification was controversial for GDR women because it threatened these rights, especially legal abortion. In the post-unification constitutional ‘round’, there were three main issues: whether there should be an ERA in the constitution; second whether compensatory or affirmative action could be constitutionally protected since gender preference laws were seen discriminating against men under the Basic Law; and if women in the eastern states would lose their prior right to legal abortion.

The constitutional strategy had mixed results. The Basic Law includes a declaration of equality rights, but the subsequent Equal Right Law (1994) was criticized for its limited compensatory provisions. In a ‘rare ... interparty alliance...women from all parties opposed the extension of the West German Law into East Germany’(Lemke 1994: 275) apparently gaining a ‘landmark decision to legalize abortion’(in 1992). But a 1993 ruling of the Federal Constitutional Court, which held that the state had to protect the ‘rights of unborn life’ effectively closed that door—a significant setback for eastern women. As in Canada, feminists had no alternative but to contest the issue and insist on their rights to be treated as political as well as reproductive adults.
Conclusion

The idea of a ‘federalism advantage’ is that the characteristics of federations offer strategic advantages to feminist movements. The success of some strategies is seen as resulting from their federal, institutional context. While ‘women’s machineries’ are copied in other contexts, the idea is that bureaucratic entrism is most successful in federations. Beyond strategic advantage, however, feminist arguments about federalism are about democracy. Some believe federations constrain ‘the will of the people’ by obstructing majoritarianism through entrenched bills of rights, territorial legislatures, limited government, separation of powers, judicial power and power-sharing. Federations elevate law and the rule of law over the will of the majority, leading many feminists to consider federalism a ‘perverse and anti-democratic system because it hampers centralized reforms and frustrates the majoritarian national will’ (Galligan, 1988: 61/2).

Those who defend ‘the federalism advantage’ arguing that it ‘enhances democratic participation and choice’, by ‘multiplying the number of governments’ (Galligan 1988). Australian feminist political scientists believe ‘federalism enabled greater democratization,…and [opened up] more political spaces for women to operate’ (Simms, 2001: 20). Sawer (Sawer and Vickers 2001) notes that, when unsupportive governments are elected at one level, feminists still have access to the other level where governments may be more ‘women-friendly’. It is the competition federalism promotes among governments at different levels which lets feminists play governments off against each other because they have multiple points of access. Clearly, decentralization brings government decision-making closer to the people, protects minority rights and limits government overall, which many consider to be qualities of democratic government. How systems of power-sharing versus majoritarianism measure up in providing women with democratic and ‘women-friendly’ governments, may well be a topic federalist and statist feminists should debate.
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* My apologies, references are not complete.
There also is some evidence that federalism advantage also involves a more vigorous rights regime which advantages women, especially minorities for whom community autonomy and/or individual diversity may also be important feminist goals. I consider this section 2.

Organized women also can gain advantage from the addition of transnational and devolved decision-making levels, but dynamic of governments at different levels competing, innovating, imitating and opposing one another which are the essence of politics in federations may be difficult to replicate.

Most interpret ‘gender’ as things pertaining to women.

They are: ‘normative institutionalism, rational choice institutionalism, historical institutionalism, empirical institutionalism, sociological institutionalism, interest-representation institutionalism and international institutionalism’ (Ma 2007:63)

Institutions were never completely abandoned in where federal institutions and the interests and identities they expressed dominated. Consequently, Australian, Canadian, and U.S. mainstream or feminist political scientists continued to consider federalism and its institutions.

Just as federations can be more or less decentralized, unitary systems can have some institutions which are more decentralized than others. For example, in Sweden, health policy includes both central state institutions and service planning by democratically elected and accountable country councils (Blank & Burau 2004:210/11) making it more decentralized than in some other unitary states including the U.K. and New Zealand. Nonetheless, most federations are more decentralized than the most decentralized unitary systems.

This implies institutions would disappear if/ gendered power imbalances ended.

I reconceptualize gender regimes as sex/gender regimes as institutions involving both structures and discourses which regulate both sexuality including choices of reproductive partners, fertility levels, and sexual practices, and gender. I understand sexuality as a ‘dialectical interchange between biology and society regardless of the...context and configuration of that engagement’ (Pryke, 1998:531). Sex/gender captures this dynamic social/biological interaction; while regime captures states’ ability to ‘freeze’ sex/gender relations by embedding them in laws, and other institutions. Sex/gender regimes are how state institutions prescribe sex/gender behaviour and monitor their consequences. Without state power, sex/gender arrangements and scripts may be more fluid and
easily changed. Since in many non-western societies, states don’t regulate ‘personal status’ matters, the distinction is important for comparative work.

ix Berkovitch cites the contemporary theorists who developed this approach in 1999: 6, note 1. But it also relies on earlier theorists especially Geertz (1973) and Douglas (1986) whose conception of institutions provided theoretical space for ideas as well as structures—i.e. patterns of action which persist.

x This understanding derives from anthropologist Mary Douglas who visualizes them as lichens in which algae and fungi live in symbiosis.

xi There have been communist and authoritarian federations—at least on paper—but they are not the subject of this paper.

xii Pauline Marois, current leader of Quebec’s separatist party, recently floated the idea of a separate Quebec citizenship to assimilate newcomers into Quebecoise history and values. Now, however, the equality of women is deemed essential to Quebec’s national distinctiveness which ‘less progressive’ immigrants must embrace. The government’s advisory council on women’s issues was enthusiastic.

xiii I rely on Regula Stampfi (1994), personal communications, and The Handbook of Federations for my understanding of the Swiss system.

xiv Social security legislation passed about the same time treated married women more generously. But far fewer Black women were legally married, so mostly white women received social security benefits; which rewarded them as dependents of male bread winners, not for their carework.

xv VAWA was a considerable achievement: based on hearings with an unprecedented marshalling of evidence showing that many states couldn’t or wouldn’t provide security from violence to women citizens, Congress committed $1.4 billion to state and local antiviolence programs and services; training for officers and prosecutors, including $21 million for “safe houses”; and law-enforcement training. The programs remained intact, and in 2000 Congress reauthorized it with new funding.

xvi Considerable effort was taken to limit the civil rights remedy to non-domestic violence, based on the argument that violence in workplaces, schools etc inhibited women’s economic activity, thereby putting it within federal jurisdiction according to earlier rulings.

xvii This is not because ‘the family’ is considered unimportant: rather the reverse. As in Australia where constitutionally the central government was forbidden to legislate regarding Aboriginal peoples for many decades, previously autonomous contracting states retained control in the founding over ‘the family’ which in the 17th century included slaves and servants, as well as women and children.

Chappell doesn’t examine feminist politics vis a vis provincial states, using ‘federalism’ as a summary variable related only to Quebec’s difference. In fact, ‘bureaucratic entrism’ was a successful strategy in some Canadian provinces and territories—e.g. Newfoundland, Quebec, and British Columbia—and some periods.

Dobrowolsky (1993: 114) treats constitutional changes as ‘the most obvious and profound example of state reconfiguration’ with power reconfigurations resulting from globalization/neo-liberalism promoting formal constitutional change. This ignores long-standing conflicts between centralizers and decentralizers and earlier claims franco-Quebec feminists for all aspects of ‘family’ policy to be in Quebec’s jurisdiction. That is, she equates English Canadian feminists’ project of the Charter of Rights to a ‘national’ Canadian project; fails to interview francophones; and denies provincial movements relevance. In sex/gender politics, however, the jurisdictions of constituent governments—in Canada, education, health, labour law, and most social welfare programs—are key.

Not all feminists favoured the resulting legal strategy. Quebec women favoured their own (statutory) ‘Charter’ which they believe protected more rights. Left feminists rejected ‘converting causes into cases’, and predicted movement demobilization.