
MYTHS ABOUT WOMEN'S RIGHTS

How, Where, and Why Rights Advance

FERYAL M. CHERIF

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Contents

List of Figures and Tables vii

Acknowledgments ix

Part One THEORIES ABOUT THE EVOLUTION OF WOMEN’S RIGHTS

1. Introduction 3
2. Conventional Wisdoms About Women’s Rights 15
3. The Core Rights Framework 40

Part Two HOW, WHERE, AND WHY RIGHTS ADVANCE

4. The Evolution of Women’s Nationality Rights 59
5. Struggling for Political Equality: From De Jure to De Facto Rights 87
6. The Path Toward Reproductive Choice 114
7. Toward Economic Equality: The Status of Women’s Property Rights 144
8. Culture, International Norms, and Core Rights Across Issues: Bringing It All Together 167

<i>Appendix A</i>	<i>The Status of a Woman's Right to an Independent Nationality</i>	189
<i>Appendix B</i>	<i>The Status of a Woman's Right to Transmit Nationality to Her Children, 2000</i>	191
<i>Appendix C</i>	<i>Women's Political Representation in National Legislatures, 1990–2010</i>	195
<i>Appendix D</i>	<i>Women's Political Representation in Ministerial Positions, 1990–2010</i>	199
<i>Appendix E</i>	<i>Women's Appointment to Traditional and Nontraditional Portfolios, By Ministry</i>	201
<i>Appendix F</i>	<i>The Status of Abortion Rights, 2009</i>	203
<i>Appendix G</i>	<i>The Status of Family Planning Rights, 2009</i>	207
<i>Appendix H</i>	<i>The Status of Women's Land Rights, 2009</i>	211
<i>Appendix I</i>	<i>The Status of Women's Inheritance Rights, 2009</i>	215
<i>Appendix J</i>	<i>The Status of Women's Property Rights, 2009</i>	219
<i>Appendix K</i>	<i>List and Description of Variables</i>	223
<i>Notes</i>		227
<i>References</i>		241
<i>Index</i>		269

List of Figures and Tables

Figures

- 4.1 The Probability a Woman May Retain Her Citizenship at Marriage, By Cultural Variables 73
- 4.2 The Probability a Woman May Transmit Citizenship to Her Children, By Cultural Variables 75
- 4.3 The Probability a Woman May Retain Her Citizenship at Marriage, By International Norms-Building Variables 78
- 4.4 The Probability a Woman May Transmit Citizenship to Her Children, By International Norms-Building Variables 80
- 4.5 The Probability a Woman May Retain Her Citizenship at Marriage, By Core Rights 83
- 4.6 The Probability a Woman May Transmit Citizenship to Her Children, By Core Rights 84
- 5.1 Women's Share of Legislative Seats, By Cultural Variables 101
- 5.2 Women's Share of Ministerial Positions, By Cultural Variables 102
- 5.3 Women's Share of Traditional and Nontraditional Ministerial Portfolios Over Time 104
- 5.4 Women's Share of Legislative Seats, By International Norms-Building Variables 107
- 5.5 Women's Share of Ministerial Positions, By International Norms-Building Variables 108
- 5.6 Women's Share of Legislative Seats, By Core Rights 111
- 5.7 Women's Share of Ministerial Positions, By Core Rights 112
- 6.1 The Probability a State Permits Elective Abortion, By Cultural Variables 131

- 6.2 The Prevalence of Contraceptive Use Among Women, By Cultural Variables 132
- 6.3 The Probability a State Permits Elective Abortion, By International Norms-Building Variables 135
- 6.4 The Prevalence of Contraceptive Use Among Women, By International Norms-Building Variables 136
- 6.5 The Probability a State Permits Elective Abortion, By Core Rights 140
- 6.6 The Prevalence of Contraceptive Use Among Women, By Core Rights 141
- 7.1 The Probability of Granting Women Equal Land Rights, By Cultural Variables 157
- 7.2 The Probability of Granting Women Equal Inheritance Rights, By Cultural Variables 158
- 7.3 The Probability of Granting Women Equal Land Rights, By International Norms-Building Variables 161
- 7.4 The Probability of Granting Women Equal Inheritance Rights, By International Norms-Building Variables 162
- 7.5 The Probability of Granting Women Equal Land Rights, By Core Rights 164
- 7.6 The Probability of Granting Women Equal Inheritance Rights, By Core Rights 165
- E.1 Women's Appointment to Traditional Portfolios 201
- E.2 Women's Appointment to Nontraditional Portfolios 202

Tables

- 3.1 Empirical Implications of Cultural, International Norms-Building, and Core Rights Explanations 55
- 8.1 Summary of Evidence Across Issue Areas: To What Extent Do Cultural Factors Influence Women's Rights? 169
- 8.2 Summary of Evidence Across Issue Areas: To What Extent Does International Norms-Building Influence Women's Rights? 173
- 8.3 The Influence on Norms' Ambiguity, Framing, and Who Violates Rights on Norms-Building Outcomes 178
- 8.4 Summary of Evidence Across Issue Areas: To What Extent Do Core Rights Influence Women's Rights? 181

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Myths About Women's Rights

Part One

THEORIES ABOUT THE EVOLUTION OF WOMEN'S RIGHTS

1

Introduction

In March 1984, Unity Dow married an American named Peter Dow, an act that would cost her future children their citizenship.¹ In Botswana, women confer citizenship only when their children are born out of wedlock. Despite sharing the same father, and being born in the same city, only one of her three children acquired citizenship at birth.²

In what would become a seminal case, Unity Dow filed a lawsuit challenging the Botswana Citizenship Act of 1984, arguing that she was deprived equal protection under the law. Were she male, it would not matter whether she was married to a non-national or whether her children resided or were born in Botswana, as all of her children would be granted citizenship. Moreover, by denying her children citizenship, the government restricted her freedom of movement, a right guaranteed by the constitution.

The government countered that as a woman Dow had no grounds upon which to sue, because “the heartbeat of Botswana is not the Constitution but its culture and traditional practices” (Dow 2001, 326). The government emphasized the importance of custom and urged the court to avoid privileging statutory law, arguing that “if gender discrimination were outlawed in customary law, very little of customary law would be left at all” (Dow 1995, 20). Nonetheless, both the High Court and the Court of Appeals ruled in Dow’s favor and called for a revision of the Citizenship Act. In 1995, three years after the court ruling, the law was amended to allow both male and female Botswanans to transmit citizenship to their children regardless of marital status.

How, Where, and Why Women’s Rights Advance

Compared to other countries, Botswana’s treatment of women is not unusual. A thumbnail survey of developing countries reveals that while 70 percent permit women to confer nationality to their children on the same basis as men, in only about 10 percent of these states do women hold at least a third

of legislative seats and cabinet positions. Women have the unfettered right to terminate a pregnancy in only one in four countries, and less than 50 percent of states afford women equal property rights.

Given these widespread inequities and discrimination, it comes as little surprise that scholars and activists are keenly interested in understanding when advances in women's rights occur. Stories of successful challenges to the discriminatory treatment of women offer advocates hope for improvement across the globe. Translating successes into reforms elsewhere, however, requires an understanding of the factors that lead to such advances and raises important questions about how equal rights for women can best be achieved. Consequently, successful campaigns in countries like Botswana often inform both activists and scholars.

Unity Dow's successful challenge of the Citizenship Act, for example, has long been regarded as a hallmark case illustrating the power of international norms (Dow 2001). Many, including Unity Dow herself, attribute the success of the Citizenship Case to the partnerships forged among women's rights organizations and the influence of international norms (Dow 2001). Along with Dow and the organization she headed, the Methaetsile Women's Information Center, women's rights groups in Botswana were joined by regional and international (nongovernmental) organizations working toward the repeal of the discriminatory nationality law.³ Their strategy was to publicize the Citizenship Case, to foster outrage about the injustice of the nationality law, and to apply pressure on the Botswanan government to change its practices.

The story of Unity Dow—and of the advancement of women's rights in Botswana more generally—reflects a broader set of narratives that have developed into a series of conventional wisdoms about how, where, and why women's rights advance. Scholars generally invoke one of two explanations to account for the status of women's rights across countries: culture and international norms-building. While international norms-building is widely regarded as *the* way to improve women's rights, culture is largely seen as *the* main impediment to gender equality. Generally speaking, cultural accounts point to enduring patterns of belief and practice, while international norms-based explanations emphasize the role of advocacy by women's rights groups and international institutions to explain the status of gender equality across countries. Seldom considered in these debates, however, is the importance of developing particular rights. A third perspective, one I refer to as the *core rights framework*, explains how cultivating female education and labor force participation facilitates advances in other women's rights.⁴ The core rights framework holds that with advances in female education and labor force participation, women's rights constituencies develop, greater opportunities for political organization

arise, and new normative contexts emerge, such that politicians have greater incentives to push for changes in women's rights.

This book examines cultural, international norms-building, and core rights-based explanations across four domains: nationality, political, reproductive, and property rights. While there is an extensive body of research on women's rights, it is often limited to specific issues or a few countries. By examining the role of culture, international norms, and core rights in tandem, this book offers a more systematic investigation into why women's rights advance in some places but not others, and offers a broader picture of how women's rights fare globally.

As we will see both in the case of Botswana and in the subsequent empirical chapters, conventional wisdoms explaining why women's rights advance are often incomplete. International norms-building, for example, describes only one of several processes that account for improvements in women's rights. Studies explaining reform in Botswana, for example, rarely attribute advances in women's rights to improved levels of education or labor force participation among women, even though studies show that core rights foster individual empowerment, support for feminism, and political coordination (Conway, Steuernagel, and Ahern 1997; Inglehart and Baker 2000; Inglehart and Norris 2003; Klein 1984). Indeed, while Botswana is often held up as an economic and political model for sub-Saharan Africa, the educational opportunities that were available to Botswanan girls and the subsequent growth of subconstituencies of professional women are less well appreciated (Duncan 1989).

The Role of Culture

While cultural explanations of women's rights vary, most discussions focus on the dominant traditions within a particular country or a region, or across religiously similar countries (Merry 2006). Whether primarily religious or national, a country's cultural traditions are thought to be highly influential in shaping social norms and individual attitudes toward gender equality, and as these explanations reason, the rights that states afford women.⁵

Botswana's Citizenship Act illustrates how cultural traditions impeded women's equality. Reflecting enduring social norms that regard children as belonging to and deriving lineage from the father, the Citizenship Act of 1984 limited the right to transmit citizenship to Botswanan males. When Unity Dow challenged the constitutionality of the Citizenship Act, the government invoked claims of tradition and cultural authenticity in defense of gender discrimination, arguing that the heartbeat of Botswana is its culture, which is patriarchal and patrilineal.

The persistence of discriminatory cultural traditions provides the most popular explanation of why women's rights continue to lag in some countries but not others. But while traditions may effectively explain the origins of discrimination, such as the patriarchal nature of the Citizenship Act (1984), they offer less insight into how these practices evolve and whether they are amenable to change. Cultural explanations based on tradition are unable to explain, for instance, why Botswana's Citizenship Act was ultimately rejected. Consequently, culture only partly explains women's status in Botswana.

The Role of International Norms

While culture is typically cited to explain why gender equality continues to lag, research that examines how, where, and why women's rights have evolved advances a second conventional wisdom: that the promotion of international norms by activists and international institutions best explains improvements in women's status. These explanations hold that international institutions, women's rights groups, and other advocates develop new domestic norms by disseminating progressive ideas about gender equality and human rights. Progressive norms may replace discriminatory ones, even in countries with less receptive political, cultural, and economic conditions, if sufficient transnational activism exists and governments are vulnerable to pressure to respect internationally recognized norms (Risse, Ropp, and Sikkink 1999).

In the Citizenship Case, Botswana was susceptible to these pressures because it valued its reputation in the international community. One justice, for example, argued that in striving to preserve Botswana's status as a model for other African states, "we cannot afford to be immune from the progressive movements going on around us in other liberal and not so liberal democracies such movements manifesting themselves in international agreements, treaties, resolutions, protocols" (Dow 1995). In their ruling, justices who ruled in favor of Dow cited the Declaration on the Elimination of Discrimination against Women, the Convention on the Rights of the Child, the Universal Declaration of Human Rights, and the African Charter on Human and People's Rights, noting that domestic law should not be interpreted without consideration of the international treaties Botswana had committed to (Dow 1995).

Though gender inequality in Botswana persists, by many accounts activism by women's rights organizations has brought about important changes in women's status. Since the Citizenship Case, property rights have improved,

discriminatory employment laws have been struck down, spousal abuse has been criminalized, and new legislation establishing equal marital power has been passed (Van Allen 2007; Lee 2013).⁶

The success of transnational activism is not limited to Botswana or the Citizenship Case. Over the last 100 years, perhaps no explanation for advances in women's rights has been accorded greater significance than have the efforts of groups seeking to cultivate progressive norms and social change. Women's rights activism is credited with advancing political, economic, reproductive, property, and nationality rights, in countries as diverse as Colombia, Morocco, India, and Tanzania, such that international norms-building has become the dominant explanation for understanding how, where, and why women's rights advance (Berkovitch 1999; Forero 2006; Milani, Albert, and Purushotma 2004; Rachidi 2003, 2005; Ramirez and McEneaney 1997; Ramirez, Soysal, and Shanahan 1997).

Given the apparent success of activists in Botswana and elsewhere, it is easy to overlook alternative explanations that may contribute to improvements in women's rights. Despite the presence of traditional social norms in Botswana, in many respects it is more supportive of gender equality when compared with other developing countries. The fact that Unity Dow, a trained lawyer, was capable of bringing such a case at all serves as a reminder that other factors almost certainly contributed to the ability of women's groups to advance gender equality in Botswana.

The Role of Core Rights

The core rights framework offers a third lens for understanding how, where, and why women's rights advance. I argue that female labor force participation and education serve as building blocks—or core rights—for the advancement of other women's rights. While female education and labor force participation have long been subjects of study in their own right, the role core rights plays in changing laws and practices is less well established. While extensive research speaks to the importance of educating women to reduce dependency on males, to enable individual agency, and to reduce poverty, the broader effects of cultivating core rights have largely been overlooked.

By empowering individuals but also eliciting broader, collective effects, core rights enable women to contest violations of their rights within the home and by the state. At the individual level, cultivating female education and labor force participation enables wage earning, facilitates learning new skills, and leads to greater bargaining rights in marriage (Agarwal 1994; Iversen and Rosenbluth 2006, 2010; Sassen 1996). Simply put, core rights foster financial