Gender Equality from Beneath: Electoral Gender Quotas in Poland

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Abstract
This article explores the introduction of electoral gender quotas and the unprecedented social mobilization in pursuit of gender equality in Poland. The quota law was adopted as a citizens' initiative organized by the Congress of Women, a new women's movement. The article analyzes the factors that account for the success of this initiative, which permanently changed the public debate on gender rights in Poland. In contrast to other countries with legislative gender quotas, the Polish law was the result of bottom-up processes, and it has a strong democratic legitimacy. The law has not significantly influenced the representation of women in the Parliament, yet it significantly mainstreamed the gender perspective in the public debate. Nonetheless, the way in which the quota law has been applied by political parties shows that Polish women in politics are a “minority” devoid of power, and that the prospects for a parity democracy are still remote.

Keywords: gender equality, gender electoral quotas, social movements, Poland

Résumé
Le présent article examine l’adoption de quotas électoraux visant l’égalité des sexes et la mobilisation sociale sans précédent afin d’obtenir l’égalité entre les sexes en Pologne. La loi des quotas a été adoptée à la suite d’une initiative de citoyens organisée par le Congrès des femmes, un nouveau mouvement des femmes. Le présent article analyse les facteurs qui entrent en jeu dans le succès de cette initiative, qui a changé de façon permanente le débat public sur les droits des hommes et des femmes en Pologne. Contrairement à d’autres pays ayant des quotas législatifs liés à l’égalité des sexes, la loi polonaise a été le résultat de processus ascendants et elle possède une forte légitimité démocratique. Cette loi n’a pas eu de véritable influence sur la représentation des femmes au Parlement, mais elle a cependant intégré de façon significative une perspective égalitaire dans le débat public. Néanmoins, la manière selon laquelle la loi des quotas a été appliquée par les partis politiques montre que les Polonaises en politique ne sont qu’une « minorité » dépourvue de pouvoir et que les perspectives d’une démocratie paritaire sont encore bien loin.

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Mots clés: égalité entre les sexes, quotas électoraux visant l’égalité des sexes, mouvements sociaux, Pologne

I. Introducing Gender Quotas in Poland

The idea of introducing electoral gender quotas in Poland is not new. Yet, it is only recently that the Electoral Code has required political parties to have at least 35 percent of either gender among their candidates on the electoral lists. The adoption of this rule was acclaimed as a success because it was a rare instance in which a bill proposed through a citizens’ legislative initiative became binding. This article argues that electoral gender quotas introduced via a bottom-up initiative have a strong democratic legitimacy and the potential to provide an impetus for social change. The intention was to induce social change through a statutory law, which could ultimately change the composition of Parliament and allow female members of Parliament (MPs) to have a greater impact on legislation. This initiative was a reaction to the lack of progress in the realization of women’s rights in the last two decades of Polish transition from a Communist state to a fully-fledged democracy. The choice of law as the device to engineer social change and to establish equal and fair opportunities for women to participate in decision making indicates that those who spearheaded this initiative did not believe in the efficacy of “soft law” mechanisms like voluntary party quotas or other gender-related preferences relying on voluntarism.

Whereas the concept of gender parity or quotas is frequently contested in the United States, many European states have adopted parity or quota measures in order to move beyond a narrow anti-discrimination framework to a more inclusive citizenship project. Gender quotas have also been recently included in the EU agenda. Contrary to this evolution, the Polish case demonstrates that gender quotas may be introduced in a country where anti-discrimination law is not fully implemented and operational. In this context, quotas serve to revive the gender equality concept and to help overcome the ideological, political, and social barriers to its advancement. However, due to these barriers, the law as applied in the 2011 parliamentary elections proved to be incapable of bringing a significant change.

4. There are thirty-seven countries in the world with legislative candidate quotas. See www.quotaproject.org.
with respect to women's political representation in a short time. Assessing the impact of the law in the first year after its adoption allows us to examine whether a legal rule, which threatens the status quo of men in power, is likely to be enforced by those who are not themselves committed to the intended social change.

It is evident that the quota law had an important effect in reshaping public discourse about gender equality. By presenting the immense social mobilization in support of electoral gender quotas, this article emphasizes the important role citizens and their organizations play in the legal process. In this regard, it explores the social and political context in which the electoral gender quotas was adopted. In particular, it examines the emergence of a new women's movement—the Congress of Women (Kongres Kobiet), without which the adoption of the quota law would not have been possible. Although the Congress of Women, which was a women's forum, was planned as a one-time event, it was convened again a few times in subsequent years. The appearance of such a strong women's movement could not be overlooked by the political leaders, and the government accepted some of its positions, bringing gender equality onto the government's agenda. Surprisingly, when the quota law was adopted in Poland, the European Union equality directives had not been fully implemented and the enforcement mechanisms in the hands of the European Commission proved to be ineffective.

This article argues that the adoption of the electoral gender quotas law was the outcome of a dynamic interaction between public officials (party leaders, government members, MPs), citizens, and feminist activists. While winning the battle over the constitutionality of the bill was a real success, it required giving up the idea of gender parity. This was an important compromise, because parity reflects a qualitatively distinct approach to gender equality through quotas. In particular, the law was redefined in terms of positive action that aims to eliminate the exclusion of members from a particular social category. As a result, the debate accompanying the quota project focused on the intra-constitutional tension between formal and substantive equality, and it did not directly address the problem of the underrepresentation of women as an issue of citizenship and a main deficiency of democratic processes. In this way, the tradeoff between "parity in the draft" and "quotas in the statute" undermined the prospects for a parity democracy. Moreover, the choice of statutory law to introduce electoral

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8 See Dennis Galligan, Law in Modern Society (Oxford: Oxford University Press, 2006), 121.
9 See www.kongreskobiet.pl.
10 Article 32 (1) of the Polish Constitution enshrines the principle of formal equality ("All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities"), while Article 33 lays down the principle of substantive equality ("Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland...").
gender quotas advanced gender equality as a core value of the Polish constitutional system, which, however, is not necessarily shared by those who are supposed to implement it in practice.

The next section of this article provides a brief overview of women's political representation in Poland now and in the past (Part II). Part III examines the women's movements, which emerged after the 1990s, and explains the factors that determined the nature and trajectories of their mobilization over time. Part IV describes the legislative process in pursuit of gender parity and later of quotas in the electoral lists. This process witnessed various often-dramatic turns in the debate accompanying the adoption of the quota law and the tactics used by the Congress of Women to win at first social and then political support for its initiative. Finally, Part V analyses the results of the quota law after the 2011 parliamentary elections to conclude with a discussion on the prospects for enhancing de facto gender equality in Poland (Part VI).

II. Women's Political Representation in Poland: The State of Affairs
Polish women obtained electoral rights in 1919. Between 1919 and 1939 their representation reached just 1.9 percent in the Lower House (Sejm) and 3.8 percent in the Upper House (Senate). During the years of façade parliamentarism under the Communist regime (1952–1989), women did not exceed 23 percent in the unicameral parliament. Notably, even then, they were absent from the decision-making bodies of the ruling political party. After 1989, the year that epitomized the country's transition to democracy, the underrepresentation of Polish women in politics continued to persist. Neoliberal reforms that affected women's position in the family and the market were pursued in the absence of women from the political decision-making structures. One reason for their continuous under-representation has been the lack of equal opportunities for female candidates in the election process, due either to overt discrimination or to a generally unfavorable environment for women in politics. With regard to Poland, however, the assumption that women who run for office are as likely to win their races as men is false due to voting based on the party-list proportional representation system at the national level.

In Poland, the male dominance in politics seems to be a consequence of a mixture of sociological and cultural factors, while the preference given to men by political parties can be attributed to their desire to consolidate the existing

13 The Polish United Workers' Party (Polska Zjednoczona Partia Robotnicza).
17 Malgorzata Fuszara, Kobiety w polityce (Warszawa: Trio, 2006).
division of powers. Prior to the adoption of the Electoral Code, the opinion polls showed that the politicians were more hostile to gender parity than the rest of the society. At present, the underrepresentation of women in the Parliament results mainly from a choice made by the party elites with regard to the rank that women candidates received on electoral lists. Whereas the proportional system with party lists in Poland allows voters to choose their preferred candidates within a party list, only candidates on the top positions have any real chance of being elected.

The aversion to the idea of a pre-established number of female representatives originates in the Communist era and the rejection of earlier proposals introducing statutory gender quotas. However, some political parties accepted voluntarily internal party quotas in 2001 that contributed to an insignificant increase in women's representation in the following parliamentary term. By 2010, women constituted only 20 percent of all members of the Sejm and 8 percent of the Senate. Since the 2011 parliamentary elections, which were organized on the basis of a new Electoral Code, the situation has slightly improved, as there are 110 women (23 percent) in the Sejm and 13 women (13 percent) in the Senate. Based on these data, Poland is in forty-third place out of 186 countries analyzed by the Inter-Parliamentary Union with respect to women's representation. Among the political parties in the Sejm, only the government party, the Civic Platform, has 35 percent of women among its current MPs.

In the local elections of 2010, the percentage of women elected to local, provincial, and regional councils rose from 23 percent to 26 percent and the percentage of women on the electoral lists from 18 percent to 23 percent. Yet women constituted only 10 percent of all candidates who ran for a mayor's seat. Fewer women candidates leads to a smaller number of women who become mayors. The clear correlation between the number of female candidates in the mayoral elections and women mayors needs to be viewed as a consequence of the majority rule and the direct voting for a single candidate. The process of nomination of a single candidate for this office by a political party is likely to be dominated by male political incumbents.

Additionally, women hold few important parliamentary offices, which underscores their underrepresentation in politics. In the previous parliamentary term, three women held the distinguished positions of the Vice Speaker of the Sejm, the Vice Speaker of the Senate, and a member of the Convent of Seniors. Three other women presided over the permanent committees in the Sejm, but only men chaired the Senate committees. While there was one woman who was the leader of a parliamentary group, there was no female leader of a political party represented in the Parliament. Furthermore, the Parliamentary Group of Women

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18 In 2009, 70 percent of women and 52 percent of men were in favor of gender parity. See http://wyborcza.pl/1,6881,1,6897954,Bring_Them_In__Poles_Firmly_for_Gender_Parity.html.
(Parlamentarna Grupa Kobiet) seldom played the role of a forum for women's cooperation above the party lines, and it was criticized for avoiding controversial issues. In the present term, for the first time in history, a woman became the Speaker of the Sejm. Women also hold the Vice Speaker's office in the Sejm and in the Senate. Three women in the Sejm and one woman in the Senate chair permanent committees.

A critical mass in women's representation in politics, as propounded by Drude Dahlerup's theory, does not exist in Poland where women's presence in decision-making bodies does not reach the threshold of at least 30 percent of members in a decision-making body. Women's presence is devoid of real power and influence over the decision-making processes. In this politically unfavorable context, social change and reforms to promote women's participation in the electoral campaign have been pursued by women with political aspirations. They shared a general interest in public affairs and could be potential candidates for elective offices due to their economic and social status. Although the Congress of Women, which united their voices, expressed the views of a women's elite, this elite managed to mobilize other women and broader segments of society in general in support of a gender parity law (and later quota). By advocating an increased presence of women in electoral lists they aimed to augment women's numerical representation in the Parliament and local government. The underlying expectation is that the election of more women is likely to help in incorporating their perspectives and experiences in law and policy.

III. Women's Movements and Mobilization for Gender Equality in Poland

From a historical perspective, social mobilization in support of an electoral gender quota is a unique phenomenon in Poland. In the past, Polish women have participated in liberation movements during the partition period or in opposition movements during the Communist regime. It is only now that, for the first time, they have stood up to pursue their interest for their own sake. It is worth noting that in the nineteenth century women, took part in conspiracy, subversion attempts, and even national uprisings. However, they also needed to face the reality of being mothers who were, at the same time, breadwinners, as their husbands had died, were incarcerated, or served in national militia or foreign armies. For these reasons they used to cherish more the republican traditions of participation in public life than liberal values. Later, the voting rights of women were recognized without bloodshed, and the suffragist movement did not develop such radical forms as its Western counterparts.

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The other important feature of women's movements in Poland is their post-Communist legacy. During the Communist period, a single mass organization of women—the Women's League—was set up in 1945 to promote women's equality in employment and education. However, women also formed grassroots groups and took part in, or organized, women's strikes. Many of them were active members of the Solidarity trade union and suffered as victims of political repression. The Communist state promoted a number of feminist demands such as the legalization of abortion (in 1956), equal treatment between the sexes, and the inclusion of women in employment. Yet there was also “a great deal of inequality before 1989” with respect to women's wages and women's participation in managerial positions and positions of political power. Moreover, this limited, state-controlled feminism prohibited any authentic debate on women's rights and contact with Western activists. It also gave a “bad name” to gender equality.

After 1989, the first independent women's organizations could be formed, but they found themselves at the crossroads of two conflicting ideologies—those of the Catholic Church and Western second-wave feminism. While the authority of the Catholic Church grew because, together with the Solidarity movement, it could claim credit for the peaceful overthrow of Communism, the influence of feminism grew with the opening up of the borders. The strong position of the Catholic Church in the public sphere led to the adoption of a rather restrictive abortion law in 1993, which remains valid today. It also reinforced a welfare model that aimed to reassign to men and women social roles as family breadwinners and wives and mothers, respectively. In consequence, some scholars argue that a “masculine” and “clerical state” politics prevailed in Poland on issues central to women in the early period of democratic transition.

The conservative ideology was on many occasions presented as the part of the national project that aims to protect national sovereignty, the Catholic religion, the sanctity of marriage, and the family model against foreign influences. Although the Catholic Church has supported Poland's accession to the European Union,

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it allegedly did so in exchange for maintaining the status quo of its abortion law.\textsuperscript{52} Whereas the EU accession process helped to consolidate new democratic institutions and civic initiatives,\textsuperscript{53} it also was a symbol of Western values and acceptance of certain human rights standards that resonated with the teaching of the Catholic Church. Two examples reflecting this tension concern the Protocol allowing an opt-out to the legally binding nature of the EU Charter of Fundamental Rights\textsuperscript{34} in domestic law, and the lack of implementation of decisions of the European Court of Human Rights that transgress the margin of appreciation with respect to sensitive moral and ethical issues. Importantly, the decision to accede to the Protocol was fed by fears of liberalization of the abortion law, legalization of euthanasia, and same-sex partnerships (marriages).

As a consequence of the powerful influence of the Catholic Church, particularly over the conservative right, alternation of government power between the right and the left often involved shifts in policy and institutional reforms, in particular with regard to gender equality. One example is the changing status of the Government Plenipotentiary for Women that was responsible for antidiscrimination policies, gender equality, and equal opportunities.\textsuperscript{35} The political decisions to rename the office, move it in and out of the structure of the Chancellery of the Prime Minister and the Ministry of Labor and Social Affairs, and to appoint to the Plenipotentiary persons who had never before advocated women's rights or equality, were indicative of the hostile government attitude towards the question of gender equality.

Currently, the differences between the conservative and the feminist ideology still play a role in the formation of the women's movement in Poland. Women's organizations remain divided along ideological lines\textsuperscript{36} and mirror divisions within Polish society.\textsuperscript{37} In this polarized landscape of the women's movement in Poland, the Congress of Women appeared to mobilize citizens not against the government or the European Union, but in pursuit of systemic change. In 2009, the participants of the first Congress of Women believed that the introduction of electoral parity law would initiate such a change. The decision to introduce parity followed the

\textsuperscript{52} Whereas the issue of abortion falls outside the scope of the EU law, the status quo is challenged by the European Court of Human Rights prohibiting conscientious objection with regard to the women's right to information and access to prenatal testing, and for access to legal abortion. See \textit{R. R. v. Poland}, judgment of 26.05.2011, Appl. No. 27617/04 and \textit{Tysiqc v. Poland}, judgment of 20.03.2007, Appl. No. 5410/03.
\textsuperscript{34} Adopted on December 18, 2000 in Nice, Official Journal of the European Communities C 364.
failure of a women’s political party—the Women’s Party (Partia Kobiet)—to win parliamentary elections in 2007.  

The Congress of Women that marked the beginning of the quota struggle was an unprecedented initiative. For the first time, it gathered around three thousand delegates in June 2009 in reaction to the organization of official celebrations of the twenty-fifth anniversary of Solidarity and the twentieth anniversary of the democratic transition, both of which ignored the role that women had played in those processes. The resulting feeling of disappointment and disillusionment motivated women to commemorate the anniversaries with women and for women. In consequence, they “managed to establish a sense of community resulting from shared emotions rather than common political convictions.” Importantly, it was not a form of mobilization against an “enemy,” but a new social movement that sought to redefine the place of women in Polish society.

The first Congress of Women arose as an act of solidarity among women who negatively appraised their situation during the twenty years of democratic transformation. They found themselves adversely affected by neoliberal changes, deprived of many social benefits and of the institutional support that they had enjoyed previously. Women have been concentrated in the low-paid sectors of the market or even excluded from employment. The participants of the first Congress also identified a long list of social problems such as the feminization of poverty, women’s underrepresentation in politics and business, high unemployment, lack of effective remedies against domestic violence, the non-execution of alimony dues, and lack of respect for reproductive rights. Undeniably, the greatest achievement of the first Congress and its subsequent conventions in 2010, 2011, and 2012 was the creation of a forum for an open discussion about women’s rights and gender equality. This forum was established from within a domestic women’s movement and was outside the auspices of the European Union.

Overall, the EU has positively influenced relations among the government, political leaders, and various women’s organizations, promoting greater cooperation among them rather than opposition and conflict. In the existing multilevel system of governance women’s organizations gained opportunities to join transnational networks which could exercise pressure on the government to adopt gender equality law and policies. Polish women’s organizations have been able to act before various international monitoring bodies, presenting shadow reports and

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38 In 2007 it did not reach the 5 percent electoral threshold (it received only 0.28 percent of the valid votes in the country), while in 2009 it did not even register its own electoral lists in the European Parliament elections.


41 The Congress of Women gathered feminist activists (like Magdalena Środa and Agnieszka Graff), historical leaders (like Henryka Krzywonos), businesswomen (like Henryka Bochniarz), and public figures (like Jolanta Kwaśniewska, the wife of the former President of Poland).

standing among others as third party interveners, and to use organizations like the European Women's Lobby to exert pressure on the Polish government. Yet women's organizations participating in the policy-making processes claim that the Polish government has remained indifferent towards gender issues, and that it has not seriously taken into account the views that they expressed in social consultations. Despite the positive influence of the EU over feminist activism in Poland, the diffused influence of Catholicism and a conservative ideology explain why the EU has not succeeded in spreading its gender-equality enthusiasm in Poland, in particular among the political leaders.

In the public debate in Poland, gender equality has been subject to continuous social contestation, which became a hurdle in the process of implementing EU equal treatment directives. In the post-accession period, the Polish government has not fully transposed EU law, even in view of an infringement action initiated by the European Commission. In 2010, however, the adoption of the Equal Treatment Act was celebrated as the finalization of the implementation process in the field of anti-discrimination. As a result, the European Commission withdrew two infringement complaints against Poland without, however, carrying out any substantive assessment of the Equal Treatment Act. It did not pay close attention to its title that reads “Act on implementation of some provisions of the European Union concerning the principle of equal treatment,” which suggests that the real legislative intention was to escape infringement proceedings before the Court of Justice of the EU (CJEU).

Given the government position towards gender politics, any legislative proposal in this field needed external support. The parity/quota project was undoubtedly a model imported from abroad. The individuals involved in the Congress of Women envisaged the law in cooperation with international experts in this field, and the final push most likely came from the comprehensive report commissioned by the European Parliament, “Electoral Gender Quota Systems and their Implementation in Europe,” in 2008. Its release in Polish-language translation was followed by the appearance of Drude Dahlerup at the conference organized by the Congress of Women in the Sejm, two days before the parity law.

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44 Act of 3 December 2010 on implementation of some of the provisions of the European Union with regard to equal treatment (further as the Equal Treatment Act), Journal of Laws 2010 No. 257, Item 1700.
was presented to the Speaker of the lower house in 2010. Being a kind of “transnational norm entrepreneur,” individual actors, such as Drude Dahlerup, and organizations, such as the International Institute for Democracy and Electoral Assistance (IDEA), helped to translate the international norm (enshrined in Article 7 CEDAW) into the domestic context and to bolster popular and political support for this norm among domestic actors. More precisely, these external actors played a role in interpreting the current constitutional provisions in such a way that these were in tune with gender quotas as temporary measures to achieve de facto equality between men and women in public life. Unfortunately, somewhat “lost in translation” was the parity argument, which views women as equal citizens rather than as a minority requiring special protection of laws in the form of positive action.

In sum, the adoption of electoral gender quotas in Poland should be seen as a form of “global diffusion effect, linked most likely to the efforts of international and transnational actors to politicize the issue of women’s political representation while also facilitating various kinds of cross-national sharing of strategies and ideas.” International actors providing moral leverage and the parallel discussions taking place in other countries thoroughly influenced the arguments and strategies of the new women’s movement in Poland in the process of lobbying for the quota law.

IV. Gender Parity as a Citizen’s Project

The first Congress of Women ended with a declaration of intention to establish the principle of gender parity in the electoral law. The follow-up strategy was to introduce electoral gender parity statute via a citizens’ legislative initiative. Within a short time, the Civic Committee of the Legislative Initiative “Time for Women” was established by the leaders of the Congress of Women, and it managed to collect the signatures of citizens who supported the bill in order to be presented in the Sejm. The significance of introducing a civic initiative follows from its strong democratic legitimacy, which is unlikely to be ignored by the Speaker of the Sejm who has the power to “freeze” and delay the legislative process. Normally, the new parliamentary term puts an end to all legislative work undertaken in the previous term, but in case of a civic initiative, the new Parliament is obliged to hold the first reading of the bill pursued by the initiative within six months after

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50 In Poland a group of at least 100,000 Polish citizens who are also eligible to vote in national elections have the right to introduce legislation. Article 118 (2) of the Polish Constitution and Act of 24 June 1999 on performance of the legislative initiative by citizens. Journal of Laws 1999 No. 62, item 688.
the beginning of its term.\textsuperscript{52} Additionally, the Speaker of the Sejm has the authority to block bills that raise doubts as to their constitutionality and their conformity with EU law. In reality, this is usually applied to bills presented by the opposition.

As already noted, the adoption of the quota law was the outcome of dynamic interactions between leading politicians and citizens. The initiative was embraced by the government only after opinion polls showed a strong public support for gender parity.\textsuperscript{53} Thus, the approval given to an electoral gender quota was a political decision influenced by the opinion polls that allowed the ruling coalition to maintain its popularity. However, soon after the bill on gender electoral parity was introduced in the Sejm,\textsuperscript{54} serious concerns were voiced as to its constitutionality and compatibility with the principles of national sovereignty, political pluralism, free elections, and equality. Similar challenges against mandatory electoral gender quotas were also raised in other European countries, and in some of them, they triggered constitutional amendments.\textsuperscript{55}

From a comparative perspective, the success of a legislative initiative concerning gender quotas seems to depend on the constitutional recognition of the principle of substantive equality, including in the area of political representation, or if this is absent, on the possibility of introducing an amendment in this direction. In Spain and Poland, these preconditions were in place, although the quota law in Spain was challenged before the Constitutional Court.\textsuperscript{56} In France, on the other hand, neither the French Constitution of 1958 nor the Declaration of Rights of Men and Citizen of 1789 provide scope for substantive equality rights. For these reasons it was necessary to amend the French Constitution in 1999.\textsuperscript{57} In the case of Italy, the Constitution originally only guaranteed equality with regard to “full individual development and the participation of all workers in the political, economic, and social organization of the country.”\textsuperscript{58} Therefore it was also amended in 2001 and 2003 before legislative quotas could be adopted. The situation in Poland differed since the quota law was not subject to constitutional review after entering into force, even though the Constitutional Tribunal of Poland struck down several provisions of the Electoral Code in 2011.\textsuperscript{59}

Both the Chancellery of the Sejm and the Congress of Women commissioned legal expert opinions regarding the constitutionality of the bill. Although they contradicted each other, the opinions confirming the bill’s constitutionality

\textsuperscript{52} The previous citizens’ initiative concerned the reintroduction of the state-sponsored Alimony Fund. Despite a massive campaign by women, the bill was ignored by politicians.


\textsuperscript{54} Parliamentary Print No. 2713 of January 22, 2010.


\textsuperscript{56} Judgment of the Spanish Constitutional Court of January 28, 2008, 12/2008, upholding the law on the effective equality between men and women.

\textsuperscript{57} The amendments concerned Article 3 of the French Constitution stating that “the law shall favor equality among women and men to have access to electoral mandates and hold elective office,” and Article 4 stating that political parties “shall contribute to the application of the principle set forth in the last section of Article 3 in accordance with the provisions of the law.”

\textsuperscript{58} Article 3 (2) of the Italian Constitution.

\textsuperscript{59} Judgment of the Constitutional Court of July 14, 2011, K 9/11.
prevailed. Had the argument about the lack of constitutionality carried the day, the entire legislative process could have been blocked, and a constitutional amendment would have been necessary. Securing two-thirds of the parliamentary majority in the Sejm, as is required for such an amendment, would have been impossible due to fierce opposition by the second largest parliamentary group, the Law and Justice group. Its leaders announced their intention to submit the law to the Constitutional Tribunal, but finally, they did not do so. Theoretically, the President of Poland could also suspend the adoption of the law through veto or by requesting a preventive constitutional review before signing it. Once the first procedural hurdle was overcome, the bill was moved to the first reading in the Sejm. Meanwhile, the Congress of Women organized a conference on electoral gender parity in the building of the Sejm. It was attended by many prominent speakers, among them Jerzy Buzek, the President of the European Parliament at the time and a member of the governing party, who presented himself as a supporter of the initiative.

However, during the parliamentary debate concerning the electoral quota bill, certain social groups, mostly those affiliated with Polish right-wing political parties, protested against the idea of electoral gender parity. They used typical methods of contestation, such as building support among intellectuals, preparing letters of protest, giving interviews to the media about the unconstitutionality of the bill, and other actions. The bill became the field of an ideological battle, and in this sense, it bore a similarity to much more controversial topics like abortion, status of same-sex couples, in vitro fertilization, and the EU integration in general. While the left-wing political parties supported gender parity as a tool to increase the percentage of women in politics, the right-wing political parties saw it as an element of the Western liberal agenda threatening the traditional values of the nation. At the same time, gender equality became important for the government parties for an instrumental reason, namely, that of increasing their popularity.

After the first reading of the bill, it was directed to the Extraordinary Committee for further consideration. However, since this committee was already working on the draft Electoral Code, there was a risk that the bill would get stuck there for months due to the complex character of this codification. In the following months, women’s organizations mobilized against the practice of suspending work on bills considered to be politically uncomfortable for the ruling majority. On the occasion of International Women’s Day (March 8), a traditional event organized every year in Poland to support women’s rights, Manifa, called for the adoption of the parity law during the annual mass demonstrations in 2010. Later, the Congress of Women launched a social campaign aimed at speeding up the legislative process and protested via Facebook, emails, and official letters to the Extraordinary Committee. As the work of the Extraordinary Committee on the bill resumed on April 10, 2010, the parliamentary deliberations on the bill again came to a halt due to the

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60 Article 235 of the Polish Constitution.
61 Article 122 (2) and (3) of the Polish Constitution.
Smolensk tragedy, in which the president of Poland was killed in the air crash together with another ninety-seven high-ranking public officials.

In the context of the new elections that were organized after the death of the country’s president, gender parity unexpectedly became an issue that entered the presidential electoral campaign. However, the Civic Platform that supported the candidacy of Bronislaw Komorowski opted for gender quotas instead of gender parity. The coincidence of the presidential campaign with the second Congress of Women, which took place June 18–19, 2010 (two days before the first round of the presidential elections), became a turning point for the success of the quota law. Bronislaw Komorowski, the presidential candidate and at the same time the person who discharged the duty of the president, was invited in the second Congress of Women and declared his support for 35 percent women quotas on the electoral lists. Obviously, this statement was intended to attract women voters at a point when gender quotas were becoming a part of the mainstream politics.

Following Bronislaw Komorowski’s victory in July 2010, the legislative work on the quota bill speeded up. The Extraordinary Committee discussed amendments to the bill, which were designed to increase the likelihood of women being elected, but it did not accept any of them. The Committee considered among other things the introduction of financial penalties for political parties that breached the 35 percent quota requirement. Eventually, it opted for the refusal of registration on the electoral list as a more effective guarantee that the quota law would be observed. In the end, essential details concerning the composition of the electoral ballots like the zipper system, the rank order, and the rules of placement were deleted from the final draft, limiting the effectiveness of the law. While the unconstitutionality argument was still raised by the right-wing politicians and their external legal experts, it was put aside by the Extraordinary Committee. The Committee decided to continue its work on the bill, having in mind that the Constitutional Tribunal sooner or later could be requested to review the law.

The local government elections on November 21, 2011 presented the first opportunity to test gender quotas in practice. Although the relevant quota law had not been adopted yet, the Congress of Women encouraged all electoral committees to take gender parity into account in the composition of their lists. Furthermore, the Congress of Women organized training for women who wanted to run as candidates in local elections. Despite the lack of statutory requirements, some political parties vowed to include an adequate proportion of women on their lists. Indeed, the Democratic Left Alliance registered only lists with at least 30 percent of women candidates. The Civic Platform did the same and additionally required that in some regions at least two women were placed within the first five positions of the electoral list. The result was that 30.67 percent of all candidates in local elections were women.

V. Gender Quota Law in Practice

In December 2010, the Sejm adopted the bill requiring that electoral lists registered for the purpose of organizing the elections for the Sejm, the European Parliament, and local government include at least 35 percent candidates of either
On December 16, 2010 the bill was approved by the upper house. The Senate proposed one amendment, which required that local government election lists composed of only three candidates should include at least one man and one woman, to settle the issue of whether 35 percent in the case of three registered candidates corresponds to one or two persons. Although it was expected that the opposition party, Law and Justice, would challenge the constitutionality of the law before the Constitutional Court, this never happened. Finally, the Sejm approved the law together with the Senate's amendment on January 5, 2011.63

On the same day, the Sejm adopted the new Electoral Code, which regulates all electoral matters in one act. The provisions concerning 35 percent electoral gender quotas were thus incorporated in the Code. It entered into force on August 1, 2011 and replaced the separate legislative act on gender quotas, which was binding from March 2011.

The adoption of the quota law was acclaimed as the most momentous achievement in terms of women's political rights since they gained suffrage in 1919. The key stages of the legislative process show that the sponsors of the bill had to overcome important constitutional, political, and procedural hurdles. In the end, unexpected political consequences after the Smolensk catastrophe, combined with effective lobbying and enormous social mobilization by a new women's movement, proved to be catalytic for the introduction of the new law. They were less effective, though, in ensuring greater de facto gender equality in the political realm in the short term.

Political parties developed various approaches to quotas during the electoral campaign in 2011. Some political parties promoted the presence of female candidates through internal practices that went beyond the statutory requirement of the 35 percent quota. For instance, the Civic Platform stated that at least one woman should be present within the first three places and at least two women within the first five places. The Democratic Left Alliance argued that the new law did not change anything in its nomination processes because the party had used gender quotas in their internal regulations well before the adoption of the law. The opposition party, Law and Justice, treated women rather as a decorative element of their electoral campaign than as partners in the politics. For example, the party leader Jarosław Kaczyński was photographed with a group of young female candidates who were later called “Kaczyński’s angels.” Such a strategy seemed to reinforce gender stereotypes instead of challenging them.

As a result of the new law, the number of women candidates doubled in comparison to previous national elections held in 2007. In total, women made up 42 percent of candidates on all electoral lists.64 Still, the percentage of women candidates in the elections for the Senate, which were organized in single-member electoral districts for the first time, grew from 12.2 percent in 2007

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62 241 deputies voted in favor, 154 were against and 9 abstained from voting.
to only 13.8 percent in 2011. On the basis of these results, many women activists did not share the popular enthusiasm that the quota law could significantly boost the numerical representation of women in the Parliament.\textsuperscript{65}

In fact, the degree of women's representation in the newly elected Parliament that emerged from the 2011 elections was disappointing. Women occupied only sixteen seats more than in the previous term because the law did not prevent parties from practices that protected their current incumbents and placed women candidates on non-winning positions within the electoral lists. The data show that women's candidacies accounted for only 21 percent of electable places in all registered electoral lists. On average, men dominated the top positions, and while some parties also placed women on top of their lists, this usually happened in electoral districts traditionally dominated by their political opponents. Therefore, even high-ranked women candidates could not be elected due to the poor electoral results of their party. In the end, the election of female candidates depended on the success of their party and the popularity of an individual candidate in the particular electoral district.\textsuperscript{66} The opportunities of women candidates to win elections for the Senate were far more ambivalent since the new Electoral Code introduced a system of single-member electoral districts. Due to this change, political parties tended to promote only strong candidates with clear chances to succeed. Currently there are 13 women senators as compared to only 8 women in the Senate between 2007 and 2011. Although it is well below the level of representation in the Sejm, there is a certain progress in the Upper House as well.

Based on this analysis, the success of the Polish electoral gender quota law could eventually be evaluated not in terms of augmenting women's numerical representation, but in terms of enhancing the quality of interest representation. Additionally, the quota system may cause a kind of natural selection of women who act more like men, thus they are less representative of other women.\textsuperscript{67} At this point, however, it is premature to judge whether the current Parliament represents the interests of women better by promoting gender equality in its legislative agenda.

The mixed feelings after the parliamentary elections are a call to the need for further action by the Congress of Women, which aimed at increasing gender equality in decision-making positions in politics and business. Definitively, the level of women's participation in politics is not satisfactory and gender parity should be the ultimate goal for all political parties. The electoral gender parity thus became one of the demands presented during the fourth Congress of Women in September 2012. A realistic assessment of social mobilization that occurred in support of gender equality in the last few years brings us to the conclusion that although women won the battle over the electoral law, they did not gain power. This happened because the content of the law did not include guarantees against


\textsuperscript{66} For example Ewa Kierzkowska of the Polish Peasant's Party (PSL), number one on the list, who was not elected, despite significant popularity as the Vice Speaker of the Sejm.

\textsuperscript{67} Rodrigez Ruiz and Rubio-Marin, “The Gender of Representation,” 314.
political parties that find ways to make the 35 percent gender quota requirement practically meaningless.

When Ruth Rubio-Marin claimed that a parity democracy equality model would not work in certain constitutional frameworks such as the United States, she did not yet have in mind that this model “would not fly” in Poland. In Poland, the public debate concerning gender quotas did not really touch upon the category of “women” and the anti-essentialist arguments that dominate the gender discourse in the United States or the United Kingdom. Moreover, unlike in France, it did not redefine the concept of national sovereignty and democratic self-determination, but rather constructed electoral gender quotas as a type of positive action. Nevertheless, the law shared the same fate as the French parity law since it was subject to misapplication and misuse by political parties driven solely by the goal of re-election.

VI. Conclusions

The most distinctive characteristic of the Polish process of introducing the quota law has been its grassroots quality as a citizens’ initiative. Its adoption is clearly an outcome of the Congress of Women’s mobilization in support of gender equality and the involvement of many prominent women, without whose inspiration and lobbying it would not have been possible to pass the quota law. Even more significant than the slight improvement of women’s representation in the Parliament was that the ensuing activism of the Congress of Women brought about a qualitative shift in public discussion. For many years the Polish feminist movement was excluded from mainstream politics due to the conservatism of a large part of Polish society and the position of the Catholic Church. Now, the feminists’ banner slogans are no longer ridiculed but accepted as another voice expressing ideas and visions about democratic representation in Poland.

While the quota law did not achieve any sharp increase in women’s presence in politics, the mobilization that surrounded it has certainly moved feminism and a gender perspective, as well as their European dimension, into the mainstream of Polish politics. As a result, the government has started to consider the Congress of Women as an influential political actor and included some of its recommendations concerning women’s rights in its reform program.

In this context, the recommendations of the fourth Congress of Women gathered in September 2012 to return to gender electoral parity seem to point to the fact that the law needs to go beyond the rationale of a minimum presence of women. From the equality perspective, parity appears better than quotas as it does

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not present women as a minority group within society. It also escapes the essentializing implications of quotas, which tend to favor women for the mere fact that they are women. From this perspective, current electoral gender quotas fall short of establishing parity democracy in Poland. Still, the absence of a motion to review the constitutionality of the law shows that no one dares to challenge the law, which has gained strong citizen support and legitimacy, despite the strong disagreement expressed by the opposition.

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