



## GENDER PARITY VERSUS EQUITY IN THE 21ST CENTURY

### The Crisis of Modern Societies

Paridad de género versus equidad en el siglo XXI:  
La crisis de las sociedades modernas

LUCÍA VILLALÓN ALEJO, TERESA MARÍA GERALDES DA CUNHA LOPES  
Universidad Michoacana de San Nicolás de Hidalgo, México

---

#### KEYWORDS

Gender  
Society  
Crisis  
Parity  
Equity

---

#### ABSTRACT

*The position of women today is a recurrent and differentiating theme. One of the pillars of democratic renewal and the legitimacy of democratic law considers gender parity.*

*However, theoretically it undermines the fundamental key to democracy: the principle of equality. Because this is the first and last architectural link of any democratic structure, it requires a series of instruments and other established principles - such as freedom - to become the principle of Equity.*

*We show how equity introduces a set of remedial measures that contribute to the realization of a fairer society.*

---

#### PALABRAS CLAVE

Género  
Sociedad  
Crisis  
Paridad  
Equidad

---

#### RESUMEN

*La posición de las mujeres en la actualidad, es un tema recurrente y diferenciador. Uno de los pilares de renovación democrática y de la legitimidad del derecho democrático, considera la paridad de género.*

*Sin embargo, teóricamente socava la clave fundamental de la democracia: el principio de igualdad. Éste por ser el primer y último eslabón arquitectónico de cualquier estructura democrática, requiere de una serie de instrumentos y otros principios establecidos - como la libertad - para tornarse en el principio de Equidad.*

*Mostramos cómo la equidad introduce un conjunto de medidas reparadoras que contribuyen a la realización de una sociedad más justa.*

---

Recibido: 12/ 09 / 2022

Aceptado: 16/ 11 / 2022

## 1. Legality - legitimacy: Equality, parity vs equity

The arguments for the creation and improvement of parity illustrate the difficulties of coexistence between parity and equality that some jurists and philosophers try - in vain - to minimize or ignore by inventing conceptual terms ("equality of opportunities or results", measures of action or positive discrimination, etc.), which are often unconvincing (Rodríguez, 2008).

Currently, within what we could call "politically correct thinking" these concepts are mixed, unified and used as synonyms most of the time; wrong, but highly regarded. The democratic and social narrative considers them fundamental (Mishkin, 1984).

Theoretically, we accept that gender parity is considered one of the pillars for democratic renewal and for democratic law legitimacy. However, this recognition undermines the fundamental key to democracy: the equality's principle (Zafar, 2017).

The concept of equality has deeply penetrated our society so that there are so-called ministries in several of the most legislatively advanced countries around us. The position of women in society is a recurrent and differentiating theme among the countries considered first level.

From our point of view, the principle of Equality is the first and last link in the architecture of any democratic structure and requires a series of instruments and principles established, as freedom and others, to become like the principle of equity (Achin, 2006). Being a close and distant concept of equality, equity tends to introduce a set of remedial measures that contribute to the realization of a fairer society.

Parity, like all positive actions or discriminations, fits much better in terms of legitimacy -at least in legal terms- under the principle of equity, rather than in some artificial and unstable subcategories of equality.

Our goal is to highlight the way in which parity opens a legal principle, latent in contemporary law and rooted in the Aristotelian sense of justice, in line with the current reality of democratic societies.

In conclusion, we consider that even though these close but not synonymous concepts are used indistinctly in colloquial language and even in informative language, they instead present their own identifiers in the legal field of Western democracies. Constituting themselves as elements capable of philosophically supporting new laws, in accordance with the principles of democracy and tolerance.

## 2. The principle of equality as a modern state foundation

The principle of equality is the foundation of the modern state, it has been the source of innumerable advances in the development of fundamental rights and freedoms. From the Universal Declaration of Human Rights and the Citizen of 1793 in support of the Universal Declaration of Human Rights of 1948, to the present day, equality has become universal, at least, in theory. By comparison, it is in a way the "Big Bang" of an expanding universe with numerous "constellations" of rights, many of which already have a long existence. However, as in the case of the physical universe, the expansion of the universe of rights is not infinite (Lépinard, 2018).

"The theoretically announced universe" from the principle of equality by scientists has already been demonstrated and observed by lawyers in litigation.

Beyond the metaphor we see, in fact, that the fundamental rights and freedoms, if they continue to develop, do so in a diluted way by trusting in a principle of equality that has lost its strength, its vitality; Without much encouragement, such a principle is in crisis. This is so because, on one hand, it no longer responds to the inequalities and injustices that affect the subjects of law and, on the other hand, the institutions, as well as the rule of law itself, no longer inspire trust in citizens, which also has repercussions in the crisis of representation and citizenship (Benvenisti, 2017). This manifests itself in the context of participation in political and economic governance and the underrepresentation or even exclusion of a group of individuals that make up any organized human community: women.

In addition to this, with the support of international law, the leaders have adopted all kinds of measures to respond to the democratic deficit caused by the virtual absence of more than half of humanity in political places. The so-called parity is, among other measures, the most emblematic of positive action and discrimination, also called affirmative action.

Even though its radicalism seduces politically - not to everyone! -, from a legal point of view, parity has become a "Pandora's box" by questioning what have been the fundamental arguments of the democratic rule of law until now: freedom and, above all, equality. In addition, due to the nature of the joint measure, the internal contradictions and the egalitarian principle, made equality tremble in its *raison d'être*, or at least in its "classical" interpretation.

A well-known notion by judges can serve as a legal basis for parity and even for all positive discrimination actions and measures: *equity*.

In fact, it has common characteristics or very close to equality; it distinguishes itself because it refers to justice. In other words: parity is a fair measure to establish a balance in the representation of both sexes in the exercise of elected positions and functions (Achin, 2006).

Elevated to the rank of a principle of law in the same way as the principle of equality, equity should contribute to renewing the dynamics of the latter. In fact, by associating the two principles based on complementarity and

not substitution, all the rules and policies that tend to correct inequalities would be legally covered, without running the risk of undermining public policy or the principles on which they are based on. Ultimately, parity offers us a new way of interpreting and applying the principle of equality using the *principle of equity* (Rodríguez, 2008).

The combination of the principles of equality and equity is defended from the tangible that exists in the international legal system and in national systems. Treaties, laws, including constitutions, and jurisprudence form the basis of such a combination (Fredman, 2015). This is the reason why, in addition to the references to international law and to the human rights of the Council of Europe, as well as to the law of the European Union, comparative law has been throughout the study, the limited interpretive framework to Belgian, Spanish and French law, with occasional references to customary law (Mathieu, 2016).

### 3. The principle's crisis

With the impetus of the American and French revolutions of the 18th century, political and philosophical ideas developed the principle of equality as the founder of the modern state, which, with the principle of freedom, later became a democratic state of law (Riot-Sarcey, 2008).

In the old continent, under the so-called principle of legality, the equality of all before the law was conceived to put an end to arbitrariness. But it was only from the 20th century, particularly after the Second World War, that the right to equality began to be defined as a right before the legislator and since then, the idea of, on one hand, a right to equality before the law (in the application of the law) and on the other hand, a right to equality in the law (the law against the normative author).

With the rise of the welfare state in the immediate post-war period, the idea of equality was also extended to all rights in the economic and social spheres with the generous claim of offering equal opportunities to all citizens with civil and political rights, but also economic, social and cultural.

However, recurrent economic crises, beginning in the 1970s, marked the limits of the generosity of the welfare state and gave rise, among other things, to much criticism. Some affirm that this passive or assisted "fabricated" citizen is the user of the principle of redistributive justice based on equity, while others denounce the excessive interventionism of the welfare state in favor of social rights, called "equal rights" that restrict embodied freedoms for civil rights (Kiejman, 1985).

Over time, new inequalities have emerged, but the welfare state, through public action, cannot save these people from them. The institutional framework itself, in which the principle of equality was forged, is called into question, from at least three points of view.

First, the State is criticized for not preventing the development of these new inequalities when "Providence" was founded on the principle of equality. Thus, by questioning the scope of equality, conceived as equal rights, the law, or rather justice, seeks another equality that offers a fair response to inequalities.

Second, the legal system and the political institutions that develop it are affected by a questioning of their efficiency by maintaining a panoply of instruments that are no longer used to fight adequately against inequalities or unjust situations. The principle of equality must accept the compatibility with the test of new standards destined to eradicate them.

And thirdly, citizenship, as a homogeneous and abstract collective, is fragmented by urgent demands for the recognition of specific or community identities that, if ignored, can ultimately distance certain individuals or groups of individuals from legality and from equality. The principle of equality must be adapted to these realities, often historically hidden by this abstract citizenship that has no gender, color, race, etc.

### 4. The crisis of representation and citizenship

Due to institutional deficiencies, there is a political duality, with two differentiated groups in our society. On one hand, there are people who enjoy full citizenship based on their ability to maintain their own rights: economic and social. Second-class citizens, on the other hand, are those who are hampered in exercising these same rights because they do not have the means to do so for themselves.

This "summa divisio" of society thus generated a hidden segregation in the political participation and representation of citizens. Those in the first category, with socioeconomic status, participate and have a voice in political assemblies and in public life. Those of the second can, at most, participate passively in the elections in which they are underrepresented (Henrion, 2001).

#### 4.1. The absence of women in governance

One of the symptoms of this crisis of representation and citizenship lies in the unequal participation between women and men in political and economic governance, the inequality that results in the lack of opportunities for women to participate in the exercise of mandates and functions electives.

The underrepresentation of women in politics is due to a late recognition of their right to vote, mainly due to the traditional conception of the role of women in Western societies (Elomäki, 2021) that, until the second half of

the 20th century, had their activity limited to private sphere and household chores, while the political sphere was under the almost exclusive responsibility of men.

However, the challenge of redefining citizenship consists above all in the articulation of the social and political dimensions, within the framework of the welfare state. When it comes to women's participation in politics, it is necessary to consider their ability to impose a definition of citizenship that includes a social dimension. Later, women become political subjects when they consider social rights as a field of struggle and negotiation. They could have weight in the public and political space due to their involvement in cases of participatory democracy (Kiejman, 1985).

Therefore, female citizenship must adopt a participatory character, not a passive one. In other words, women should be able to represent civil society as a whole and not just be able to express their voices when called for in a referendum, legislative or local election. It is up to them to assert an effective presence in political arenas.

#### ***4.2. The evolution of mentalities and the need for political renewal***

Between the evolution of mentalities and the need to renew the political class, all political parties, whatever the trend, and governments seek to guarantee effective representation of citizens by applying positive measures for the participation of women in political life.

Recognizing the need for political renewal, and ultimately citizenship, for women, leaders have adopted regulations and measures to facilitate their access to elected positions. Inspired by international law and the experience of North America, various legal orders have introduced so-called affirmative action or discrimination measures in the system of political (and socioeconomic) representation.

In general terms, positive measures (action and discrimination) tend to establish equality in favor of a person who is discriminated against for belonging to a minority, disadvantaged or disadvantaged group. Its objective is to achieve, within a certain period, equality between this group and the others who are not discriminated against. The characteristics and the various forms of positive measures make them experimental and temporary exceptions, with respect to the principle of equality.

In fact, the introduction of these positive measures has become a "revolution", which we can call parity democracy (Kiejman, 1985).

### **5. Conclusions: Equality has become a "Revolution"**

Even though, like all positive measures, quotas and parity have found their legitimacy in their proportionality, justified and provisional according to the objective pursued - balanced representation -, few legal systems have instituted these positive measures.

Although the electoral quotas were the first to be approved, the parity that was based, beyond a clear objective (30, 40 or 60%) on a balanced participation of both sexes in the decision-making bodies, is based on the idea that society is "equally" made up of citizens and therefore should also be represented in political decision-making positions. The controversy generated by parity is at the height of its radicalism.

In the political field (Meyer, 1999), parity constitutes a positive obligation for the actors in the political game and for the parties. However, this is a very difficult type of legal intervention to manage for several reasons. Thus, for example, parity is a positive obligation that implies an effective collaboration of the recipients, who are generally reluctant, because they are mostly men. Another reason lies in the idea that this type of obligation comes from the action strategy or positive discrimination; it is no longer a simple "protection of equality", but a "promotion of equality".

But the most difficult thing is the incompatibility (Kiejman, 1985) between parity and the principle of equality, both from the point of view of their respective natures and objectives. This difficulty is reflected in the parliamentary debates related to the legal adoption of the parity measure, as well as in the jurisprudence of the constitutional courts of the national systems that have integrated "parity democracy". This questions the classic reading of the principle of equality, because by seeking to create a balance of representation between men and women in political life, it constitutes a radical change in the political life of the traditional principle of equality and non-discrimination, and enshrines equality of concrete gender, which in the classical configuration leads to a distinction that would denature the principle of equality.

In conclusion, the combination of the principles of equality and equity accompany the positive measures and beyond, to all the actions of the legislator and the public administration based on equality and justice. Combination that offers a new interpretation of the principle of equality, dynamic and safe, from a legal point of view. References to UN law, the Pact of San José da Costa Rica and that of the European Union, as well as comparative law, provide undeniable support for making the association of the two principles something tangible in legal terms (Mathieu, 2016).

This association - which is part of a complementarity and not in the context of a substitution - leads us to observe that all standards and public policies that tend to correct inequalities would be legally covered without there being so much questioning of public action or the legal principles in which they are registered.

That is: if the reference to this double principle helps to contain the possible excesses of any normative device of an affirmative action or discrimination measure - such as parity - it also allows to avoid the dangers of excessively strict control of proportionality or reasonableness. This would weigh on every act or decision that was taken, without being able to paralyze public action for violating the “sacrosanct” principle of equality. Beyond the question of compatibility of parity, the double principle of “equality-equity” protects public action against these legal restrictions and invites the legislator to be more creative in the development of positive rules aimed at restoring equality and justice.

In addition to the fact that this combination of principles reminds us that, when reading the principle of equality, it is essential to consider the data or science: political, social, economic, statistical, etc. - that do not enter the legal field. It is true that for the judge who must rule on the validity of a quota, parity or any other positive measure, it will be difficult for them to rely exclusively on the science of law. Our “binomial” thus establishes the link between the legal and the “non-legal”. It turns equality itself into a principle open to external considerations that are part of the framework of balance supported by the principle of equity.

As for the beneficiaries of the application of the combination of equality and equity, they must be able to better understand the purpose, logic and scope of the normative mechanisms and judicial decisions that affect them. It constitutes and ensures protection against acts, trials that “kill” freedom and measures that go beyond the framework of equality and equity.

In short, this new understanding of the principle of equality leads to abandoning the contradictory interpretations of equality and its variants that have fueled legal debates in political assemblies and in jurisdictions - European and national - that had established a “grid”. It has turned the latter into a dynamic and balanced principle in keeping with the demands, both constant and variable, of our democratic societies.

## **6. Acknowledgments**

This text is part of the program of the Academic group in formation 287 “Nicolaitas construyendo ciencia” (UMSNH-CA287, 2019-2022. PRODEP) and of the consolidated Academic group „210 UMSNH, Derecho, Estado y Sociedades Democráticas“. from the Universidad Michoacana de San Nicolás de Hidalgo, México.



## References

- Achin, C. L. (2006). Femmes et militarism. En C. L. Achin, *Femmes in Politique* (Vol. Repères, págs. 32-59). Paris, Francia: La Découverte. Recuperado el 21 de 02 de 2022, de <https://www.cairn.info/femmes-en-politique--9782707147417-page-32.htm>
- Benvenisti, E. &. (01 de 01 de 2017). Embracing the tension between national and international human rights: the case for discordant parity. *International Journal of Constitutional Law*, 15(1), 36-59. doi:<https://doi.org/10.1093/icon/mox002>
- Elomäki, A. (20 de 06 de 2021). 'It's a total no-no': The strategic silence about gender in the European Parliament's economic governance policies. *International Political Science Review*, 00 (0), 15. doi:<https://doi.org/10.1177/0192512120978329>
- Fredman, S. &. (2015). *Gender equality and human rights*. UN Women. UN Women flagship report. Recuperado el 12 de 04 de 2022, de [unwomen.org: https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2015/Goldblatt-Fin.pdf](https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2015/Goldblatt-Fin.pdf)
- Henrion, R. (2001). *Les femmes victimes de violences conjugales: le rôle des professionnels de santé*. Paris: La documentation française. Recuperado el 23 de 04 de 2022, de <https://www.vie-publique.fr/rapport/24751-les-femmes-victimes-de-violences-conjugales-le-role-des-professionnels>
- Kiejman, L. R. (1985). Le féminisme sous la troisième république: 1870-1914. *Matériaux pour l'histoire de notre temps, Histoire des femmes et du féminisme*, 8-11. Recuperado el 12 de 03 de 2022, de [https://www.persee.fr/doc/mat\\_0769-3206\\_1985\\_num\\_1\\_1\\_403977](https://www.persee.fr/doc/mat_0769-3206_1985_num_1_1_403977)
- Lépinard, É. (2018). The French Parity Reform: The Never-Ending Quets for A New Gender Principle. En E. R.-M. Lépinard, & C. U. Press (Ed.), *Transforming Gender Citizenship. The Irresistible Rise of Gender Quotas in Europe* (págs. 62-93). Cambridge, Massachusetts, USA: Cambridge Studies in Law and Society. doi:<https://doi.org/10.1017/9781108636797>
- Mathieu, B. V. (2016). Jurisprudence Constitutionnelle, France. *Revue européenne de droit public*, 28(2), 713-742.
- Meyer, M. K. (1999). *Gender politics in global governance*. (M. K. Meyer, Ed.) New York: Oxford: Rowman & Littlefield Publishers.
- Mishkin, F. (1984). At real interest rates equal across countries? An empirical investigation of international parity conditions. *The Journal of Finance*, 39(5), 1345-1357.
- Riot-Sarcey, M. (2008). *Histoire du féminisme* (Vol. Repères). La Découverte.
- Rodríguez, R. B.-M. (2008). The gender of representation: on democracy, equality, and parity. *International Journal of Constitutional Law*, 6((2)), 287-316. doi: <https://doi.org/10.1093/icon/mon007>
- Zafar, M. V. (2017). From Parity to Preferences-based Notions of Fairness in Classification. *31st Conference on Neural Information Processing System (NIPS)* (págs. 1-11). Long Beach, CA, USA: s/e. doi:<https://doi.org/10.48550/arXiv.1707.00010>