



Ruth Rubio-Marín, *Global Gender Constitutionalism and Women's Citizenship: A Struggle for Transformative Inclusion*

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Ruth Rubio-Marín's *Global Gender Constitutionalism and Women's Citizenship: A Struggle for Transformative Inclusion* is the author's contribution to taking gender constitutionalism from footnotes to the centre of the academic debate.

The book addresses the history—or, as mentioned by Bev Baines in the foreword and Ruth Rubio-Marín in the introduction, her-story—of constitutionalism with women as the point of reference. The choice adopted by the author is not to focus on one specific issue but rather to put together a broad approach aiming to contribute to the development of gender constitutionalism as a field. The book also highlights how the law has historically been used as a tool for exclusion and maintenance of inequalities but can as well be used as an empowering or emancipating mechanism, showing how it can assume a dual role. In other words, the author addresses how constitutionalism has historically and in different contexts been used to promote or harm women's citizenship. The work is beautifully written and likely to become a page-turner for those interested in gender issues, constitutional law or even history.

Sources, references, and cases in this book are also a great contribution to the field as they are not restricted to the Global North nor to works written in English. This academic effort is possible since the author—who has a good command of five different languages—has studied multiple jurisdictions and reunites knowledge about them. Her knowledge of multiple legal systems and languages plays a role in making her book one of a kind. As is expected and understandable, all the

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jurisdictions are not equally represented, and this is something she shows awareness of (p. 21). That being said, the examples and the list of cases in the book are diverse and come from all regions of the world.¹ They bring up experiences and trends that prove to be useful and enriching resources in the narrative, ranging from the foundation of constitutionalism to contemporary issues. Further, the her-story written by Ruth Rubio-Marín includes not only claims that became part of constitutions or case-law, but also struggles led by movements of women that did not yet get so far.

The very personal introduction of this book deserves special attention. In a world where white men from the Global North have historically written and published about constitutionalism for decades without any remarks about who they are and how their identity, origin, and background might affect their perspective, Rubio-Marín makes a fundamental methodological effort highlighting her disciplinary, geographical, and personal background. With this contextualisation, she recognises that the same event or object can be seen or described in different ways depending on the author's context and background. Although not common in legal academia, Rubio Marín's caveat enriches the debate. As my personal caveat and inspired by Ruth Rubio-Marín, I highlight that this review is written by a legal scholar who is a lesbian woman from South America, has light skin, is currently an immigrant in Europe, and is passionate about the engagements between constitutional law and gender and sexuality issues.

Besides the introduction and the conclusion, the book is divided into five chapters, further subdivided into thematic sections. The first four of those chapters address four forms of gender constitutionalism. The fifth one does not present a new form of gender constitutionalism. Instead, still addressing the transformative form, it presents contemporary gender constitutionalism debates that challenge binary gender/sex categories and focuses on the rights of vulnerable groups linked to gender and sexuality other than cisgender women. The forms of gender constitutionalism, according to Rubio-Marín, are,

(1) exclusionary gender constitutionalism, where constitutional law significantly fails to consider sex equality a constitutional concern; (2) inclusive gender constitutionalism, which seeks to grant women rights equal to those of men, redeeming women from their otherwise decimated citizenship status (often shaped by their marital status), yet without fundamentally challenging the structure of the underlying gender order conceptually built around traditional and patriarchal family schemes; (3) participatory gender constitutionalism, which is receptive to the idea that gender justice requires going beyond equal rights and calls for facilitating women's equal participation in the male-dominated public sphere, including in the world of constitution-making, by

¹ When it comes to national jurisdictions, the table of cases includes (in alphabetical order): Argentina, Australia, Austria, Belgium, Bolivia, Botswana, Brazil, Canada, Chile, Colombia, Costa Rica, Croatia, El Salvador, France, Germany, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Malaysia, Mexico, Nepal, Netherlands, Pakistan, Peru, Philippines, Poland, Portugal, Slovakia, Slovenia, South Africa, South Korea, Spain, Switzerland, Taiwan, Turkey, the United Kingdom of Great Britain and Northern Ireland, and the United States.

calling on notions of substantive equality, parity democracy, and what we can identify as feminist multiculturalism; and, as of recently, (4) transformative gender constitutionalism, which expects constitutional law to advance the agenda of radically subverting the original constitutional gender order by taking the domestic sphere and the types of activities centrally associated with it as a relevant domain of citizenship contribution and by defending the need to fully expand the constitutional ethos of democratic equality and individual autonomy to the various “private spheres,” ultimately contributing to the full disestablishment of gender roles and fixed gender identities and concepts (pp. 18–19).

There is undoubtedly a historical narrative in the book, and the author highlights the moment when each of those forms of constitutionalism first appeared. However, she wittingly chooses to call them forms rather than stages since they are not, for the most part, mutually exclusive, nor represent a linear development that must be followed in sequence (p. 18). Thus, they can be understood as forms of gender constitutionalism linked to the role constitutionalism plays for women. She also seeks, on multiple occasions, to present the way in which different women, part or not of different vulnerable groups, experience disparate treatment or disparate impacts on the basis of gender.

The first chapter, named ‘The Constitutional Establishment of the Gender Order: Revolutionary Times and Exclusionary Constitutionalism’, addresses a form of constitutionalism characterised by women being constitutionally given an unequal and inferior legal status and themes linked to family, household and caring being excluded from the debates around citizenship. Yet, this first chapter includes the first wave of feminism and women’s constitutional engagements, as well as important movements for equality, such as the ones focused on the right to vote and the Post-World War II moment. In fact, the chapter describes political struggles and mobilisation from its first paragraph onwards, just like women have, since the beginning of constitutionalism, engaged in mobilisation for equality and for making it part of the constitutions.

It is in the 1960s and 1970s, however, Rubio-Marín argues, with the second wave of feminism, that the movement actually started challenging the model that determined separate spheres—public and private—for men and women, respectively, which led to a revolution in the legal status of women (p. 29, p. 83, p. 330). Accordingly, the second chapter ‘Inclusive Constitutionalism and its Limits’ is focused on the second form of gender constitutionalism, in which, as a result of second-wave feminism and gender equality claims, women achieved equal legal status. The chapter is also dedicated to examining when and how this formal legal equality fell short. The author addresses the experiences of models of inclusive constitutionalism she calls the American Model or Assimilationist Workerism—focused on challenging gender stereotypes—and the European² model or Maternalist

² The European cases specifically mentioned while addressing the model are Germany, Sweden, France, Denmark, Finland, Greece, and the Netherlands, besides references to regions or groups of countries (i.e., Southern Europe, Central and Eastern European countries, and former Soviet states), and references in footnotes. The main focus of this part of the book is the case of Germany.

Accommodationism—focused on measures aiming to make it possible for women to be in the work market while still taking care of children and the household. She argues that both have shortcomings, the former especially when it comes to addressing gender-specific needs, the latter when it comes to subverting gender roles, and both for being restricted to limited domains and formal equality and for looking at men as a standard to ‘give’ women the same rights later (pp. 126–129).

The third chapter, ‘Participatory Constitutionalism: Women as Norm Creators Broadening the Agenda’, focuses on the form marked by women as constitution-makers, by mechanisms created aiming to foster women’s equal participation, and by efforts to bring about equality beyond the formal variant. While still recognising the importance of rights, this form of constitutionalism symbolises the turn towards equal participation and comprises the Athens Declaration, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Beijing Platform for Action, among others, as landmarks (pp. 130–133). When it comes to women as constitution-makers, the chapter brings up empirical examples of constitution-making processes with meaningful participation of women social movements (pp. 139–155). Moreover, in this form of constitutionalism, the diversity of women and other gender and sexuality related social minorities are also more highlighted. ‘With both substantive and procedural implications, the constitutional and gender equality participatory turns also facilitated the incorporation of multiculturalism and intersectionality as more central constitutional concerns’ (p. 136).³

Whereas women conquer the right to occupy public spaces formerly reserved exclusively for men, the opposite movement is not usually simultaneously observed, and the work traditionally assigned to women in the private sphere has historically failed to be valued, recognised, and supported as it should have been (pp. 211–213). In this context, the fourth chapter, ‘Transformative Gender Constitutionalism: Toward an Egalitarian Family Structure and Sexual and Reproductive Order’, is linked to the recognition of the importance of equality and democracy within family structures and of care and domestic work, that should, therefore, be recognised as a domain of citizenship.⁴ This gender constitutionalism form can also be understood as the constitutionalisation of the private sphere. Rubio-Marín calls it Transformative Gender Constitutionalism ‘for it aims to transform, rather than reflect or

³ Whereas intersectionality refers to acknowledging and paying attention to overlapping (intersectional) forms of discrimination and inequality that affect individuals or groups, multiculturalism refers to the recognition of ethno-cultural belonging as part of one’s identity. See also: Will Kymlicka and Ruth Rubio-Marín, ‘The Participatory Turn in Gender Equality and its Relevance for Multicultural Feminism’ in Ruth Rubio-Marín, and Will Kymlicka (eds), *Gender Parity and Multicultural Feminism: Towards a New Synthesis* (Oxford 2018); Kimberle Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color’ (1991) 43(6) *Stanford Law Review* 1241.

⁴ Citizenship is a central concept in Rubio-Marín’s work, it is even part of the title of the book. However, as I see it, in this book, it is mostly not understood in the traditional sense but rather as gendered citizenship meaning disparate access to rights, inclusion and contribution to the community based on one’s gender (or sexuality).

See also: Ruth Lister, *Citizenship: Feminist Perspectives* (New York University Press 2003); Ruth Lister, et al., *Gendering Citizenship in Western Europe: New Challenges for Citizenship in a Cross-National Context* (Policy Press 2007).

accommodate, old understandings of gender relations and roles as well as institutional structures and practices built around them’ (p. 213).⁵ The author argues that the transformation process must include understanding care broadly—encompassing different compositions of family as well as care work outside of the family or household—and as a scarce resource to be valued and dignified both within a family and as paid work (p. 254). Empirically, the chapter highlights the struggles against different types of violence against women, for the right to abortion, and for new and more egalitarian comprehensions of motherhood and fatherhood.

Bringing up contemporary civil society mobilisations—for or against the rights of women and other gender and sexuality social minorities—and contemporary constitutional issues, in the fifth chapter, ‘Toward a Constitutional Gender erasure or a Constitutional Gender Affirmation?’, Rubio-Marín does not introduce another gender constitutionalism form, but gets to address the struggles faced by vulnerable groups linked to sexual orientation or gender identity in the transformative gender constitutionalism form. This chapter focuses on issues that challenge the gender order on which constitutionalism is built. This challenge can be seen in defying and changing the traditional concept of family, frequently referred to as the foundational unit of society, and in defying gender categories themselves.

[...] the turn of the century has seen the spark of a still incipient gender/sexual revolution that has come to question the very categories the gender apparatus has relied on, thus expanding in significant ways a gender agenda that has so far focused on challenging traditional gender roles, separate gendered spheres, and gender subordination (p. 278).

The chapter focuses on cases involving the right to marriage for same-gender couples and the right to gender identity and gender self-determination for trans and other gender-non-conforming persons. Those rights, as many of the struggles in the book, are still highly contested, and this contestation is discussed in the chapter, including the expected conservative resistance (p. 308) as well as criticism of the institution of marriage as a whole (p. 293) and from trans-exclusionary activists⁶ (pp. 306–307). Further, the chapter includes the author’s considerations about backlash and strategies from conservative movements to resist the recognition of rights.

While summing up the other chapters, the conclusion of the book makes it evident from the beginning that the struggle for equality would not be easy as modern constitutionalism was built over a reproductive family structure that was naturalised

⁵ To name this form of gender constitutionalism, the author draws from how the term ‘transformative constitutionalism’ has been used in the South African and the Indian contexts to refer to constitutional transformations aiming to achieve social justice (p. 213).

⁶ Rubio-Marín calls them gender-critical feminists or trans exclusionary feminists and I would not even call them feminists, since their approach excludes a vulnerable group of women. The author is also critical of their movement and argues that, even if with legitimate objectives, it adopts disproportionate and irrational exclusionary means. See also: Sally Hines, ‘The Feminist Frontier: On Trans and Feminism’ in Tasha Oren and Andrea L (eds.), *The Routledge Handbook of Contemporary Feminism*, 94–109, (Routledge 2019); Rubio-Marín, Ruth and Stefano Osella, ‘La Autodeterminación de Género: Gender Critical Radfems a la Prueba de la Proporcionalidad’ (*IberICONnect*, 1 February 2021).

and romanticised. It is no surprise that changes towards a more egalitarian family and equality rights for women were—and are—faced with resistance and as a challenge to the constitutional order (p. 329). And, indeed, this struggle was—and is—far from easy. Nevertheless, albeit considering discriminatory discourses, anti-gender mobilisation, and possible backlash, Rubio-Marín closes the book with inspiring examples and a bold and optimistic tone regarding the rights of women and sexual social minorities.

Ruth Rubio-Marín's book is a relevant step for telling the her-story of constitutionalism and the citizenship of women and other people who are part of vulnerable groups linked to gender and sexuality. There is, indeed, room for more inclusion and for continuing and complementing the work. The author recognises this by calling the book the beginning of an exercise, by affirming her comprehensive ambition for the book might have led to decontextualising and oversimplifying, and by stating she is sure her work will be challenged, enriched, nuanced, and amplified (p. 22). Some interesting possibilities I see for future studies are linked to focusing on how specific groups of women or other gender and sexual minorities are affected by constitutional law.

As a final remark, I would like to highlight the dedication of the book. Besides her mentors and renowned scholars Javier Pérez Royo and Reva Siegel, Ruth Rubio-Marín dedicates the book to women constitution makers around the world and to the young generations of scholars. The book is dedicated to the former group as they have many times been erased from the history of constitutionalism, and to the latter group as an incentive to see the importance of feminist engagements with constitutional law and of researchers interested in (and passionate for) working with those engagements.

Young or experienced scholars who make an effort to take gender into the academic debate face criticism, like the examples the author herself presents in the introduction, stating, among others, that their work is pure ideology, that it is not academic enough, or that it is too narrow. The book supports those scholars as it makes a statement about how focusing on gender and being feminist does not make one less of a researcher, and about how gender constitutionalism is a key field in constitutional studies and should be strongly valued in the legal literature. As part of the group to which she dedicated the book and after having the opportunity to read it, I believe it is a priceless and inspiring contribution.

Declarations

Conflict of interest The author has no conflict of interest to declare that are relevant to the content of this article.

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