

## BUCHBESPRECHUNGEN / BOOK REVIEWS

*Ruth Rubio-Marin, Global Gender Constitutionalism and Women's Citizenship: A Struggle for Transformative Inclusion*, Cambridge University Press, 2022, 404 pages, £21.99 (25,69 EUR), 978-1-107-1772-4

Women's struggle for equal citizenship and transformative inclusion was and is a fight for and against the gender roles entrenched in the constitution. Rubio-Marin shows the spectrum of these constitutional gender regimes on a global scale from the revolutions in France and the USA in the late 18<sup>th</sup> century to the leaked US Supreme Court decision to overturn *Roe v Wade* in May 2022. Building on citizenship literature focusing on individual countries, as well as her own individual<sup>1</sup>, as well as collaborative contributions<sup>2</sup> to this field, this book adds a macro-scale overview highlighting parallel and contradicting developments around the world. Rubio-Marin analyses these developments as four different forms of gender constitutionalism (exclusionary, inclusive, participatory, and transformative). These should not be understood as linearly progressing stages, but as forms that have been fought for and against in different jurisdictions at different times.

The forms, as Rubio-Marin describes them in an idealized typology, 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, [...] (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" (p. 18).

1 Among others *Ruth Rubio-Marin*, *Immigration as a Democratic Challenge*, Cambridge 2000; *Ruth Rubio-Marin*, *The (Dis)Establishment of Gender: Care and Gender Roles in the Family as a Constitutional Matter*, *International Journal of Constitutional Law* (2015), p. 787.

2 For example, *Beverly Baines / Ruth Rubio-Marin*, *The Gender of Constitutional Jurisprudence*, Cambridge 2004; *Ruth Rubio-Marin / Helen Irving*, *Women as Constitution-Makers*, Cambridge 2019.

The Chapters 1 to 4 follow the identified forms through their historical development. Chapter 5 is concerned with newer developments “Towards a Constitutional Gender Erasure or a Constitutional Gender Reaffirmation”, denoting progress made by women’s movements, as well as for sexual and gender minorities, and the conservative reactionary push back in the last decade. The Conclusion revisits the four forms and their impact on women’s equality.

The Introduction “The When, Why, What, and How of the Book and How the Personal Becomes Political” requires a special mention, as it highlights Rubio-Marin’s positionality within scholarship and the broader gendered society of today as a (fairly) white, middle-class, employed woman. She uses the journey of developing this book as a focal point for women’s struggles persisting today, especially combining employment with motherhood and care work, which is an important thread throughout the book. Her nuanced intersectional understanding of the double burden of reproductive labour and the privileges allowing her to follow her research, is an evocative entry point into this book. Allocating this space to it is also a compelling challenge to the (mostly) silent ubiquity of male-centred scholarship. Additionally, the introduction is exemplary for Rubio-Marin’s talent for weaving a compelling narrative, without sacrificing the insistence on the non-linearity of progress. This apparent talent gains further importance, as Rubio-Marin succeeds in her goal of including failed attempts to further gender equality throughout the centuries (p. 19) to counter the hegemonic narratives of liberal constitutionalism as emancipatory for all. This book highlights liberalism’s implicit reliance on the heteronormative traditional family ideal “as a foundational unit of society” (p. 329) and the public/private divide sustaining women’s dependence on men and the gendered division of labour throughout the centuries.

Rubio-Marin’s central argument focuses on the hypothesis that the public-private divide was and is integral to modern constitutionalism and hindered women’s participation in the public sphere, including constitution-making, and the recognition and protection of women as equal citizens. Her political impetus seems to be the disestablishment of the foundational gender order (cf. p. 17), especially through a challenge of normative motherhood, the constitutionally entrenched conception of women primarily as care-givers and as primary care-givers. Understanding this as her goal should not discourage readers from using her framework, nor does it devalue her insights, as the transparency over an author’s positionality reveals biases that often remain undetected.

The insistence on forms, rather than stages, compels readers to see the different gender regimes in their non-linearity. This is important to Rubio-Marin’s aim to tell a global story, a promise mostly fulfilled in the later chapters. The inclusion of several jurisdictions from Europe, North and South America, Asia, Africa, Oceania and Australia, shows the simultaneity of parallel and contradictory developments across the world. For example, how the USA and Germany (paradigmatic for Western Europe) follow contradictory approaches to sex equality standards in the 1970s till 1990s (see Chapter 2), or how the degree of the gender responsiveness of constitutions influence the road to women’s suffrage in Australia vs the USA (see Chapter 1). Chapter 3 itself is the strongest reminder that the different

gender regimes are not mutually exclusive, as the stories from South Africa, Nicaragua and Colombia (among others) show that demands for equal participation can coincide and further transformative gender constitutionalism (see Chapter 4).

The main confusion for me as a German constitutional and citizenship law scholar is the lack of clear definitions of the central terminology or their underlying theories in this book. Neither the distinction between written constitutions and constitutionalism itself, nor between citizenship, citizenship rights and fundamental human rights is clear from the onset. A definition would help distinguish whether rights were conferred or denied to women in their status as (equal) citizens or as human beings entitled to dignity and autonomy. Especially the lack of a definition of “gender” in contrast to “sex” is confusing. Most of the book is concerned with women’s rights. It references the understanding of different actors in different time periods without a clear template. Only one sentence in the introduction and chapter 5 including a section about trans rights indicate an understanding of gender as socially constructed category utilised and entrenched in law (p.18). A more detailed engagement with the terminology and its underlying theories, as well as practical impact, would have benefited an audience more unfamiliar with these topics, as Rubio-Marín attempts to bridge a gap between different disciplines, as well as jurisdictions.

Despite this unclarity, the forms and narratives presented in this book bring an important focus on the gendered nature of citizenship, understood in the broad terms dominant in citizenship studies since T.H. Marshall’s 1950 essay “Citizenship and Social Class”<sup>3</sup>. Rubio-Marín also succeeds in weaving an increasingly global story, highlighting success stories as well as failed attempts to further gender justice. This global aspect presents a valuable addition to existing scholarship, and I would recommend this book to citizenship scholars interested in entry points to global developments, as well as to constitutional lawyers interested in the gendered nature of constitutionalism, as Rubio-Marín’s forms of gender regimes provide a compelling framework for understanding the intersection of gender and citizenship. Especially young law academics can use this book as an inspiration what a feminist engagement with the law can accomplish, one of the goals Rubio-Marín sought to achieve with this book (p. 10).

*Meret Trapp*

Research Fellow and Ph.D. candidate

Chair for Public Law and Comparative Law, Humboldt University Berlin

3 T.H. Marshall, *Citizenship and Social Class: And other essays*, London 1950.