

Gender Equality

Dimensions of Women's Equal Citizenship



Edited by

Linda C. McClain and Joanna L. Grossman

CAMBRIDGE

D447.12
G325

Gender Equality

DIMENSIONS OF WOMEN'S EQUAL CITIZENSHIP

Edited by

Linda C. McClain

Boston University School of Law

Joanna L. Grossman

Hofstra University School of Law



CAMBRIDGE
UNIVERSITY PRESS



E2009003609

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press

32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org

Information on this title: www.cambridge.org/9780521766470

© Cambridge University Press 2009

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2009

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication data

Gender equality : dimensions of women's equal citizenship / edited by
Linda C. McClain, Joanna L. Grossman.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-76647-0 (hardback)

1. Women – Legal status, laws, etc. – United States. I. McClain, Linda C.
II. Grossman, Joanna L. III. Title.

KE478.G46 2009

342.7308'78 – dc22 2009000947

ISBN 978-0-521-76647-0 hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate. Information regarding prices, travel timetables, and other factual information given in this work are correct at the time of first printing, but Cambridge University Press does not guarantee the accuracy of such information thereafter.

GENDER EQUALITY

Dimensions of Women's Equal Citizenship

Citizenship is the common language for expressing aspirations to democratic and egalitarian ideals of inclusion, participation, and civic membership. However, there continues to be a significant gap between formal commitments to gender equality and equal citizenship – in the laws and constitutions of many countries as well as in international human rights documents – and the reality of women's lives.

This volume presents a collection of original works that examine this persisting inequality through the lens of citizenship. Distinguished scholars in law, political science, and women's studies investigate the many dimensions of women's equal citizenship, including constitutional citizenship, democratic citizenship, social citizenship, sexual and reproductive citizenship, and global citizenship. *Gender Equality* takes stock of the progress toward – and remaining impediments to – securing equal citizenship for women, develops strategies for pursuing that goal, and identifies new questions that will shape further inquiries.

Linda C. McClain is professor of law and Paul M. Siskind Research Scholar at Boston University School of Law. She is the author of *The Place of Families: Fostering Capacity, Equality, and Responsibility*, which was praised as “the most careful and comprehensive defense to date of the progressive liberal feminist position on the civic role of families.” She is currently at work on a book on contemporary challenges over regulating civil society titled *Free and Equal Association*. McClain is a former faculty Fellow of the Harvard University Center for Ethics and the Professions.

Joanna L. Grossman is professor of law at Hofstra University, where she served as associate dean for faculty development from 2004 to 2008. She has also taught at Vanderbilt Law School and the University of North Carolina–Chapel Hill School of Law and is a former recipient of a Women's Law and Public Policy Fellowship. She is an expert in sex discrimination law and has written extensively about workplace equality, with a focus on issues such as sexual harassment and pregnancy discrimination. She is a regular columnist for FindLaw's *Writ*, an online source for legal commentary.

Contributors

Kathryn Abrams is Herma Hill Kay Distinguished Professor of Law at the University of California (UC)–Berkeley School of Law. She is a graduate of Harvard College and Yale Law School. Before coming to UC-Berkeley, she was on the faculty at Cornell University, where she taught in the law school, directed the Women’s Studies Program, and received several awards for teaching and service to women. Her widely anthologized articles have focused on feminist jurisprudence and its intersection with the law of gender discrimination, particularly in the areas of employment and violence against women. She has also written in the areas of voting rights and the regulation of sexuality. Through her early work on feminist methodology and epistemology, Professor Abrams has become interested in the relationship between law and the emotions; with Professor Hila Keren, she is working on a book on the relationship of law to the emotion of hope.

Kerry Abrams is associate professor at the University of Virginia School of Law, where she is also the codirector of the Center for Children, Families, and the Law. She received her BA from Swarthmore College and her JD from Stanford Law School. Abrams teaches family law, immigration law, and feminist legal theory. Her scholarship focuses on the intersection of immigration law and family law, including issues of culture, citizenship, gender, and the state’s role in regulating marriage.

Regina Austin is the William A. Schnader Professor of Law at the University of Pennsylvania and director of the Penn Program on Documentaries and the Law. Professor Austin’s research primarily deals with economic discrimination, minority legal feminism, and law-genre documentary films. She teaches documentaries and the law and a production seminar in visual legal advocacy. She is a graduate of the University of Rochester and the University of Pennsylvania Law School (cum laude, Order of the Coif).

Beverley Baines is a professor in the Faculty of Law, head of the Department of Women’s Studies, and cross-appointed to the School of Policy Studies at Queen’s University in Canada. Since publishing *The Gender of Constitutional Jurisprudence*

with Ruth Rubio-Marin (Cambridge University Press, 2004), she authored three articles analyzing sex equality jurisprudence under the Canadian Charter of Rights and Freedoms and coauthored a study of polygamy and Charter rights. Her current research interests include assessing the implications of Ontario's new long-term care homes legislation for women; identifying the feminist features of the jurisprudence of Justice Bertha Wilson, the first woman on the Supreme Court of Canada; and examining the Charter conflicts posed for feminist sex equality proponents by religious freedom claimants in the contexts of not only polygamy (in Canada), but also faith-based family arbitrations (in Ontario) and multicultural accommodation (in Quebec).

Mary Anne Case is Arnold I. Shure Professor of Law at the University of Chicago. A graduate of Yale College and the Harvard Law School, she studied at the University of Munich and litigated for Paul, Weiss, Rifkind, Wharton, and Garrison before joining the faculty of the University of Virginia, where she rose to become professor of law and Class of 1966 Research Professor. Her scholarship to date has concentrated on the regulation of sex, gender, and sexuality, although she also has done work on other aspects of constitutional and comparative law and on the early history of feminism. Among the fellowships she has held are the 2006–2007 Crane Fellowship in Princeton University's Program in Law and Public Affairs, to continue her work on the role of the state in marriage, and a 2004 Bosch Public Policy Fellowship at the American Academy in Berlin, to study the German abortion compromise.

Brenda Cossman is a professor on the Faculty of Law at the University of Toronto. She holds degrees in law from Harvard and the University of Toronto and an undergraduate degree from Queen's University. She has been a visiting professor of law at Harvard Law School. Before joining the University of Toronto in 1999, she was associate professor at Osgoode Hall Law School of York University and director of the Institute for Feminist Legal Studies. Her teaching and scholarly interests include family law, freedom of expression, feminist legal theory, law and sexuality, and law and film. Her most recent book is *Sexual Citizens: The Legal and Cultural Regulation of Sex and Belonging* (Stanford University Press, 2007). Her other books include the coauthored *Bad Attitudes on Trial: Pornography, Feminism, and the Butler Decision* (Toronto University Press, 1997); *Subversive Sites: Feminist Engagements With Law in India* (Sage, 1996); and *Secularism's Last Sigh?* (Oxford University Press, 1999) and the coedited *Privatization, Law, and the Challenge to Feminism* (Toronto University Press, 2002).

Maxine Eichner is professor of law at the University of North Carolina (UNC)–Chapel Hill School of Law. She received her BA and JD from Yale University and her PhD in political science from UNC while on the law school faculty. Before joining the faculty at UNC, she held clerkships with Judge Louis Oberdorfer on the District Court for the District of Columbia and with Judge Betty Fletcher on the Ninth

Circuit Court of Appeals and fellowships from the Women's Law and Public Policy Fellowship and the Miller Center for Public Affairs at the University of Virginia. She also practiced civil rights and employment discrimination law at Patterson, Harkavy, and Lawrence, in Raleigh, North Carolina. She teaches family law, employment discrimination, and sex equality and is the author of the forthcoming book *Family Matters: The Family-State Relationship and Our Liberal Democratic Ideals* (Oxford University Press, 2009).

Martha Albertson Fineman, Robert W. Woodruff Professor of Law at Emory University, is a leading authority on family law and feminist legal theory. She directs the Feminism and Legal Theory Project. Her scholarly work addressing the legal regulation of intimacy has won awards, including the prestigious Harry Kalven Prize for Distinguished Research in Law and Society. Fineman is the contributing editor of foundational collections of feminist legal theory, including the first published anthology. Single-authored books include *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform* (University of Chicago Press, 1991), which challenged the country's no-fault divorce reforms; *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies* (Routledge, 1995), which critically explored single motherhood and marriage as social policy; and *The Autonomy Myth: A Theory of Dependency* (New Press, 2004), a radical reconception of the societal role and purpose of the family.

Joanna L. Grossman is professor at Hofstra Law School in Hempstead, New York. She has also taught at Vanderbilt Law School, Tulane Law School, University of North Carolina–Chapel Hill School of Law, and Cardozo Law School. She is a graduate of Amherst College and Stanford Law School (with distinction, Order of the Coif). She clerked for the Honorable William A. Norris of the U.S. Court of Appeals for the Ninth Circuit and received a Women's Law and Public Policy Fellowship. Her research focuses on issues of sex equality, especially sexual harassment and pregnancy discrimination, and family law, with an emphasis on state regulation of marriage and the history of divorce. Grossman has published articles in the *Stanford Law Review*, *Harvard Women's Law Journal*, and *American Journal of Legal History*, among other journals. She is also a regular columnist for FindLaw's *Writ*, where she writes about a wide variety of legal and policy issues.

Nancy J. Hirschmann is the R. Jean Brownlee Endowed Term Professor and Professor of Political Science at the University of Pennsylvania. She is the author of *Gender, Class, and Freedom in Modern Political Theory* (Princeton University Press, 2007); *The Subject of Liberty: Toward a Feminist Theory of Freedom* (Princeton University Press, 2002), which won the 2004 Victoria Schuck award for the best book on women and politics from the American Political Science Association; *Rethinking Obligation: A Feminist Method for Political Theory* (Cornell University Press, 1992); and numerous articles in books and journals, including the *American Political Science*

Review and Hypatia. She is coeditor of *Revisioning the Political: Feminist Reconstructions of Traditional Concepts in Western Political Theory* (Westview Press, 1996); *Women and Welfare: Theory and Practice in the United States and Europe* (Rutgers University Press, 2001); and *Feminist Interpretations of John Locke* (Penn State Press, 2007). She has held fellowships from the Institute for Advanced Study in Princeton, the National Endowment for the Humanities, the Bunting Institute, and the American Council of Learned Societies.

Linda C. McClain is professor of law and Paul M. Siskind Research Scholar at Boston University School of Law. She writes and teaches in the areas of family law, feminist legal theory, and gender and law. She is the author of *The Place of Families: Fostering Capacity, Equality, and Responsibility* (Harvard University Press, 2006), which offers a liberal feminist theory of the relationship between family life and political life, and of numerous scholarly articles and book chapters. She holds a BA from Oberlin College, an MA from the University of Chicago Divinity School, a JD from Georgetown University Law Center, and an LLM from New York University School of Law. She is a former Fellow of the Harvard University Safra Foundation Center for Ethics and the former Rivkin Radler Distinguished Professor of Law at Hofstra Law School. She is currently working on a book on civil society titled *Free and Equal Association*.

Martha T. McCluskey is professor of law and William J. Magavern Fellow at the State University of New York at Buffalo. She earned her JSD with distinction from Columbia University and her JD from Yale Law School. Her scholarship focuses on feminist legal theory and economic policy, and recent articles include "Thinking With Wolves: Left Legal Theory After the Right's Rise," 54 *Buff. L. Rev.* 1191 (2007); and "Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State," 78 *Ind. L. J.* 783 (2003). She is also the coauthor, with Martha Albertson Fineman, of *Feminism, Media, and the Law* (Oxford University Press, 1997). She recently co-organized a series of workshops launching Class-Crits, a scholarly network focused on critical analysis of economic inequality, which produced a collection of essays published in a 2008 volume of the *Buffalo Law Review*.

Eileen McDonagh is professor of political science at Northeastern University and a visiting scholar at the Institute for Quantitative Social Science at Harvard University. She is a Fellow at the Center for Advanced Study in the Behavioral Sciences at Stanford University for 2009–2010. She is the recipient of grants from the American Association of University Women and the National Science Foundation. She has written extensively on gender and political issues from institutional and historical perspectives, focusing on women's political representation, reproductive rights, and American political development. She is the author of *The Motherless State: Women's*

Political Leadership and American Democracy (University of Chicago Press, 2009); *Playing With the Boys: Why Separate Is Not Equal in Sports* (with Laura Pappano; Oxford University Press, 2008); and *Breaking the Abortion Deadlock* (Oxford University Press, 1996). Her articles have appeared in leading journals, including the *American Political Science Review*. She has been president of the Politics and History Section and of the Women and Politics Section of the American Political Science Association. She is the founder and director of the nonprofit abortion rights advocacy group the Pro-Consent Coalition (<http://www.proconsent.org/>).

Anne Peters is professor of public international law and constitutional law at the University of Basel. Before taking up the tenured post in 2001, she was assistant professor at the University of Kiel, where she obtained the Habilitation qualification on the basis of her Habilitation thesis “Elements of a Theory of the Constitution of Europe” (in German). Born in Berlin in 1964, Anne Peters studied law, modern Greek, and Spanish at the Universities of Würzburg, Lausanne, and Freiburg im Breisgau and pursued postgraduate studies at Harvard Law School. Her research activities cover general public international law, especially its constitutionalization; European constitutional law; constitutional theory; constitutional comparison; and human rights. She is vice president of the European Society of International Law, a member of the Scientific Advisory Committee of the *European Journal of International Law*, and a member of the Research Council of the Swiss National Science Foundation and was visiting professor at the Science Po, Paris, in September 2008.

Gretchen Ritter is professor of government, director of the Center for Women’s and Gender Studies, and a Fellow of the Alma Madden Professorship at the University of Texas (UT) at Austin. Her research focuses on women’s political activism, democratic movements, feminist theory, constitutional law and history, and work-family issues as they impact gender equity. She is the author of two books – *Goldbugs and Greenbacks: The Antimonopoly Tradition and the Politics of Finance in America* (Cambridge University Press, 1999) and *The Constitution as Social Design: Gender and Civic Membership in the American Constitutional Order* (Stanford University Press, 2006) – and has a coedited volume titled *Democratization in America* (Johns Hopkins University Press, 2009). She is the recipient of several fellowships and awards, including a National Endowment for Humanities Fellowship, the Radcliffe Research Partnership Award, and a Liberal Arts Fellowship at Harvard Law School. She has taught at UT Austin, the Massachusetts Institute of Technology, Princeton, and Harvard.

Elizabeth M. Schneider is Rose L. Hoffer Professor of Law at Brooklyn Law School and has also been visiting professor of law at Harvard and Columbia. She is the author of the prize-winning book *Battered Women and Feminist Lawmaking* (Yale

University Press, 2000) and the coauthor of *Domestic Violence and the Law: Theory and Practice* (2nd ed., with Cheryl Hanna, Judith G. Greenberg, and Clare Dalton; Foundation Press, 2008), and has written many articles and book chapters on gender and law, violence against women, and civil procedure. She graduated from Bryn Mawr College and received an MSc in political sociology from the London School of Economics and Political Science and a JD from New York University Law School. She clerked for the Honorable Constance Baker Motley of the Southern District of New York and was staff attorney at the Center for Constitutional Rights, where she litigated many civil rights and women's rights cases in federal and state courts around the country.

Mary Lyndon (Molly) Shanley is professor of political science on the Margaret Stiles Halleck Chair at Vassar College. She is the author of *Feminism, Marriage, and the Law in Victorian England* (Princeton University Press, 1989); *Making Babies, Making Families: Reproductive Technologies, Surrogacy, Adoption, and Same-Sex and Unwed Parents* (Beacon Press, 2001); and *Just Marriage* (ed. Deborah Chasman and Joshua Cohen; Oxford University Press, 2004). She edited, with Carole Pateman, *Feminist Interpretations and Political Theory* (Penn State Press, 1990); with Uma Narayan, *Reconstructing Political Theory: Feminist Essays* (Penn State Press, 1997); and with Iris Marion Young and Daniel I. O'Neill, *Illusion of Equality: Engaging With Carole Pateman* (Penn State Press, 2008). Her articles have appeared in a wide range of scholarly journals. Her current work concerns social justice issues in family formation and bioethics and human reproduction. In her local community, she works on domestic violence issues and leads a women's writing group at the Dutchess County Jail.

Rogers M. Smith is Christopher H. Browne Distinguished Professor of Political Science at the University of Pennsylvania. He teaches American constitutional law and American political thought, with special interests in issues of citizenship and racial, gender, and class inequalities. He has published more than 100 essays in academic journals, edited volumes, and public interest publications. He is author or coauthor of five books: *Stories of Peoplehood: The Politics and Morals of Political Memberships* (Cambridge University Press, 2003); *The Unsteady March: The Rise and Decline of Racial Equality in America* (with Philip A. Klinkner; University of Chicago Press, 1999); *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (Yale University Press, 1997); *Citizenship Without Consent: The Illegal Alien in the American Polity* (with Peter H. Schuck; Yale University Press, 1985); and *Liberalism and American Constitutional Law* (Harvard University Press, 1985; rev. ed., 1990). He currently chairs the interdisciplinary Penn Program on Democracy, Citizenship, and Constitutionalism.

Barbara Stark, BA Cornell, cum laude, JD New York University, LLM Columbia University, is professor of law at Hofstra Law School. She has published more than

fifty chapters and articles in the *California Law Review* and *UCLA Law Review* and in the *Yale Journal of International Law*, the *Stanford Journal of International Law*, the *Virginia Journal of International Law*, and the *Michigan Journal of International Law*, among other journals, and she has written two books: *International Family Law* (Ashgate Publishing, Ltd., 2005) and *Global Issues in Family Law* (with Ann Estin; Thomson West, 2007). In 2003–2004, she was Distinguished Visiting Professor at the New England School of Law, and she was the Visiting Copenhagen Chair at West Virginia College of Law for the Fall 2008 semester. She has served on the Executive Council of the American Society of International Law and currently serves on the executive committees of the Association of American Law Schools Sections on International Law and Family Law, which she chaired in 2004. She chairs the Family Law Committee of the International Law Association and serves on the editorial board of the *Oxford Encyclopedia of Human Rights*.

Stefan Suter is a research assistant to Professor Anne Peters and a PhD candidate at the University of Basel, Switzerland.

Anisseh Van Engeland-Nourai is the Boulton Fellow at the Law Faculty of McGill University. Prior to going to McGill, where she teaches Islamic law and human rights, she was a Max Weber Fellow at the European University Institute and an adjunct professor at James Madison University in Florence. She is a jurist and a political analyst. She holds a PhD from the Institut d'Etudes Politiques, a master's in law from Harvard Law School, a master's in international relations from Université Paris II Assas, and a master's in Iranian studies from Paris III Sorbonne. Her fields of expertise are international human rights, human rights in Iran, international humanitarian law, Islamic humanitarian law, refugees' issues, terrorism, and torture. She is also a consultant for several universities, research centers, and think tanks worldwide.

Deborah M. Weissman is the Reef Ivey II Distinguished Professor of Law and the director of clinical programs at the University of North Carolina School of Law. Her current teaching interests include immigration, human rights, and gender violence. For the past ten years, she has been engaged in comparative analyses of law-related responses to gender violence and its political economic determinants in Cuba, Mexico, and the United States. Her recent publications include: "Public Power and Private Purpose: Odious Debt and the Political Economy of Hegemony," 32 *N.C. J. Int'l L. and Com. Reg.* 699 (2007) (with Louis A. Pérez Jr.); "The Personal Is Political – and Economic: Rethinking Domestic Violence," 2007 *BYU L. Rev.* 387; "Proyecto de Derechos Humanos: Una Perspectiva Crítica," 47 *Rev. Temas* 105 (2006); and "The Political Economy of Violence: Toward an Understanding of the Gender-Based Murders of Ciudad Juárez," 30 *N.C. J. Int'l L. and Comm. Reg.* 795 (2005).

Acknowledgments

In generating this book, we have benefited from the valuable contributions of many friends and colleagues and from institutional support. The basic idea underlying this book, exploring the dimensions of women's equal citizenship to take stock of progress made toward gender equality, grew out of an interdisciplinary conference, "Dimensions of Women's Equal Citizenship," held at Hofstra University School of Law on November 3 and 4, 2006. This conference began a long and fruitful conversation with this volume's contributors, many of whom presented early versions of this book's chapters at that conference. We regret that the untimely death of Iris Marion Young prevented her from participating at the conference, but her insightful work has enriched our understanding of gender and citizenship. We are grateful to our Hofstra colleagues Dean Nora Demleitner and Barbara Stark for their help with planning that conference, which inaugurated the law school's Center for the Study of Gender, Law, and Policy. Hofstra University School of Law and Hofstra University generously funded the conference. We are also grateful to Hofstra Law School and to Boston University School of Law, Linda McClain's new home, for research grants that supported our work on this book. Colleagues in other departments at Hofstra, Margaret Abraham, Amy Baehr, Cheryl Mwaria, and Lisa Merrill, also provided incisive commentary at the conference, which helped to shape some of the contributions to this volume.

We thank all our contributing authors for their dedication to this project, manifest both in their extensive work on their chapters and in their input on the contours of this book. Having the opportunity to read and edit their chapters has enriched our understanding of both gender equality and the many challenging relationships among the dimensions of equal citizenship. In addition, we are grateful to Martha Albertson Fineman, not only for her contribution to the book, but for her role in modeling, as the director of the Feminism and Legal Theory Project, the importance of supporting and generating interdisciplinary exchange and scholarship. Sincere thanks go to John Berger, senior editor at Cambridge University Press, for his encouragement and support of this book from its early stages. We are also grateful to two anonymous reviewers for Cambridge University Press, whose comments helped us to

improve the book. In addition, Linda Bosniak and Kris Collins provided instructive comments on our introduction to this volume.

Many people helped with the preparation of this manuscript: at Boston University School of Law, senior administrative assistant Sue Morrison provided valuable help with word processing; Stefanie Weigmann, Head of Reference at the Pappas Law Library, provided needed research help for both the book proposal and the book itself; law student Erica Cadez also provided research assistance; and law student Claire Superfine assisted with editing. At Hofstra, Fran Avnet assisted with preparation of the manuscript; law students David Arnold, Lara Cahan, Sara Crabtree, John DiNapoli, and Becky Kulik provided expert and tireless assistance with footnotes. A special note of thanks to Lara Cahan for her willingness to take on the task of electronic indexing. Our appreciation also to Grant Hayden, who proposed we use the painting that appears on the cover, Vermeer's *A Woman Holding a Balance*, for its representation of equality and justice, two important themes of the book.

We thank our friends and families for their support of this project. Thanks to Jim Fleming and to Grant Hayden for constructive engagement with this book's aims and for encouragement and support during our work on it. We hope that our daughters (Sarah and Katherine McClain Fleming) and sons (Luke Grossman, Benjamin Hayden, and Milo Grossman) will see, in their lifetimes, a more complete realization of the ideals of equal citizenship.

The chapter by Kathryn Abrams incorporates, in revised form, an earlier essay, "Women and Antiwar Protest: Rearticulating Gender and Citizenship," which appeared in 87 *Boston University Law Review* 849 (2007). Permission from the *Boston University Law Review* to use this material is gratefully acknowledged.

GENDER EQUALITY

Contents

Contributors	page vii
Acknowledgments	xv
Introduction	1
<i>Joanna L. Grossman and Linda C. McClain</i>	

PART I: CONSTITUTIONAL CITIZENSHIP AND GENDER

1	Gender at the Margins of Contemporary Constitutional Citizenship	23
	<i>Rogers M. Smith</i>	
2	Becoming a Citizen: Marriage, Immigration, and Assimilation	39
	<i>Kerry Abrams</i>	
3	Women’s Civic Inclusion and the Bill of Rights	60
	<i>Gretchen Ritter</i>	
4	Must Feminists Identify as Secular Citizens? Lessons From Ontario	83
	<i>Beverley Baines</i>	
5	Feminist Fundamentalism and Constitutional Citizenship	107
	<i>Mary Anne Case</i>	

PART II: POLITICAL CITIZENSHIP AND GENDER

6	Women and Antiwar Protest: Rearticulating Gender and Citizenship	131
	<i>Kathryn Abrams</i>	
7	Stem Cells, Disability, and Abortion: A Feminist Approach to Equal Citizenship	154
	<i>Nancy J. Hirschmann</i>	
8	Representation, Discrimination, and Democracy: A Legal Assessment of Gender Quotas in Politics	174
	<i>Anne Peters and Stefan Suter</i>	

9	Citizenship and Women's Election to Political Office: The Power of Gendered Public Policies <i>Eileen McDonagh</i>	201
PART III: SOCIAL CITIZENSHIP AND GENDER		
10	Pregnancy and Social Citizenship <i>Joanna L. Grossman</i>	233
11	Equality: Still Illusive After All These Years <i>Martha Albertson Fineman</i>	251
12	Razing the Citizen: Economic Inequality, Gender, and Marriage Tax Reform <i>Martha T. McCluskey</i>	267
PART IV: SEXUAL AND REPRODUCTIVE CITIZENSHIP		
13	Sexual Citizens: Freedom, Vibrators, and Belonging <i>Brenda Cossman</i>	289
14	Feminism, Queer Theory, and Sexual Citizenship <i>Maxine Eichner</i>	307
15	Infertility, Social Justice, and Equal Citizenship <i>Mary Lyndon Shanley</i>	327
16	Reproductive Rights and the Reproduction of Gender <i>Barbara Stark</i>	345
PART V: GLOBAL CITIZENSHIP AND GENDER		
17	Women's Unequal Citizenship at the Border: Lessons From Three Nonfiction Films About the Women of Juárez <i>Regina Austin</i>	359
18	Domestic Violence, Citizenship, and Equality <i>Elizabeth M. Schneider</i>	378
19	On the Path to Equal Citizenship and Gender Equality: Political, Judicial, and Legal Empowerment of Muslim Women <i>Anisseh Van Engeland-Nourai</i>	390
20	Gender and Human Rights: Between Morals and Politics <i>Deborah M. Weissman</i>	409
	Suggested Readings	431
	Index	437

Introduction

Joanna L. Grossman and Linda C. McClain

This book addresses a basic problem: a commitment to gender equality and to the equal citizenship of women and men features in the constitutional, statutory, and common law of many countries, as well as in international law and human rights instruments. Yet there remains a palpable and, in some cases, stark gap between formal commitments to the equal rights and responsibilities of men and women and against discrimination and subordination based on sex and the gendered realities of women's lives. Few would deny that women around the globe – and the societies in which they live – have made enormous progress toward the goals of gender equality and equal citizenship, but neither would most claim that those goals have been fully realized in life as well as in law. There continues to be ambivalence about and resistance to equality as well as legal, political, and social obstacles to attaining it.

This book takes stock of the progress toward and remaining impediments to the goals of securing gender equality and the equal citizenship of women and men. It develops strategies for securing such goals and identifies new questions, theories, and perspectives to help shape further inquiries about both gender equality and equal citizenship. It brings together an interdisciplinary group of distinguished scholars in law, political science, and women's studies to investigate several dimensions of women's equal citizenship.

Why use the language of equal citizenship to guide this inquiry about gender equality and the persistence of inequality? Why not simply talk about gender justice? Quite simply, citizenship remains the common language for expressing “the highest fulfillment of democratic and egalitarian aspiration.”¹ Even more so, the term *equal citizenship* conveys a society's goals of equal status for all members of society and its ideals of inclusion, membership, and belonging.² In his classic work on the evolution of modern citizenship, sociologist T. H. Marshall referred to “an image of an ideal citizenship against which achievements can be measured and towards which

¹ Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton, NJ: Princeton University Press, 2006), at 1.

² On the importance of “belonging,” see Kenneth L. Karst, *Belonging to America: Equal Citizenship and the Constitution* (New Haven, CT: Yale University Press, 1998).