domaines réservés of legal historians or *jus ad bellum aficionados* but also for a much broader audience of international lawyers.

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Ruth Rubio-Marín. ***Global Gender Constitutionalism and Women's Citizenship***. Cambridge: Cambridge University Press, 2022. Pp. 406. £21.99. ISBN: 9781316819241.

Since at least the turn of the century, a group of constitutional law scholars have sought to tell the success stories of constitutional struggles for equality.[1] These scholars have challenged the marginalization of gendered concerns in constitutional discourse in an effort to bring gender to the centre stage. This is a goal shared by many scholars who have been preoccupied with the place of women's rights in the international legal order. Ruth Rubio-Marín's ambitious 'global analysis of constitutionalism through a gendered lens' furthers her already significant contributions to these debates – singularly[2] and with others[3] – and offers readers compelling proof that there have indeed been 'key milestones and landmarks' (at 6) in terms of what constitutions have achieved for gender justice.

Reading this book with the eyes of an international legal scholar, we can see the importance of engaging with constitutions as a tool for the domestication of women's rights norms. Yet we can be forgiven for concluding that constitutions may lag behind emerging international women's rights standards. Acknowledging the significant work of constitutional advocates and the progress made over several decades, women's rights nonetheless appear too often marginalized in yet another legal domain.

Rubio-Marín's book pays homage to the belief that constitutions can be turned into a 'tool of transformation' for women's justice (at 6). Yet, like the author, readers grapple with the challenge of establishing how much there is to celebrate in the

[1] See, e.g., H. Irving, *Gender and the Constitution: Equity and Agency in Comparative Constitutional Design* (2008), available at www.cambridge.org/core/books/gender-and-the-constitution/0B9B0B1C87A8E3015B729D0338FA26C9; K. Rubenstein and K.G. Young (eds), *The Public Law of Gender: From the Local to the Global* (2016); Sullivan, 'Constitutionalizing Women's Equality', 90 *California Law Review* (2002) 735.

[2] Rubio-Marín, 'The (Dis)Establishment of Gender: Care and Gender Roles in the Family as a Constitutional Matter', 13 *International Journal of Constitutional Law* (2015) 787.

[3] B. Baines and R. Rubio-Marin, *The Gender of Constitutional Jurisprudence* (2005); R. Rubio-Marín and H. Irving, 'Women as Constitution-Makers: Case Studies from the New Democratic Era', *Cambridge Core*, March 2019, available at www.cambridge.org/core/books/women-as-constitutionmakers/71ACBDAF42D8FF3D5C9F360E28C97B7B.

role that constitutions have played in the struggle for women's rights globally. Nepal's 2007 Interim Constitution, which is described quite extensively in the book for recognizing that 'every woman shall have the right to reproductive health and other reproductive rights', is indeed 'a rare exception in constitutional law' (at 245).[4] As noted by others, even countries like Nepal still have far to travel in order to arrive at 'transformative equality'.[5]

To the credit of Rubio-Marín, we are reminded about these limits in the very first pages of the book. Shortly after noting her positionality as the author – a European white woman of privilege – we are given a fuller picture about how constitutions too often have negatively impacted the least privileged, disenfranchising poor, single women and people of colour (at 31). The author incorporates this tension between hope and despair into the narrative of the book, developing a theory around four 'states' or phases of constitutionalism – non-linear and non-sequential – that structure her thoughts in this book: (i) exclusionary gender constitutionalism, where constitutional law significantly fails to prioritize sex equality as a concern (at 18); (ii) inclusive gender constitutionalism, which grants women equal rights to those of men but fails to fundamentally challenge the underlying gender order that is 'superimposed on a reproductive family structure, built around marriage, which was both naturalized and romanticized' (at 79); (iii) participatory gender constitutionalism, which is receptive to the idea that gender justice requires going beyond equal rights to actively call for women's equal participation from a greater diversity of women (Rubio-Marín uses the terms 'feminist multiculturalism' and 'multicultural constitutionalism', although intersectional feminism might be more familiar language to some); and, finally, (iv) transformative gender constitutionalism, whereby constitutional law radically subverts the gender order.

In many respects, the book is an assessment, offering readers an opportunity to ask how far we have come in the endeavour of subverting the gender order. For the rest of this review, I focus on three key questions that attracted my attention as an international and comparative scholar of women's rights. First, I am left pondering whether we are too hopeful in investing so much in gender constitutionalism, particularly when one contrasts this work to the ongoing critiques of global international women's rights and feminist scholars. Second, what lessons can we learn from Rubio-Marín's book about the potential and challenges for an international comparative law scholar to draw from countries that tend to be less discussed? Finally, this book begs us to ask what gendered constitutionalism tells us about the successes and failings of the intersectional project domestically and whether there is hope for any transnational action on this issue.

[4] Government of Nepal, Interim Constitution of Nepal (2063) (2007) (1st Amendment, 1997).

[5] Here, I borrow from the framing in Melissa Upreti's chapter on the Nepali decision. See Upreti, 'Toward Transformative Equality in Nepal: The Lakshmi Dhikta Decision', in R. Cook, J. Erdman and B. Dickens (eds), *Abortion Law in Transnational Perspective* (2014) 279.

1 Evaluating the Successes of Gendered Constitutionalism

It becomes readily apparent that, although Rubio-Marín offers a critical lens to the role of constitutions in the struggle for women's justice, the author is optimistic about both the emancipatory and transformative potential of constitutions. This optimism is refreshing and, along with the accessible writing, helps to surge readers through the phases of constitutionalism that the author presents in Chapters 2, 3 and 4. Yet, in more recent evaluations, international women's rights scholars tend to appraise gender discrimination globally as not only persisting but also growing 'in new and different contexts, dysfunctionally widening the gap between the principle of gender equality and its realization'.[6] In this respect, the concession by Rubio-Marín that many women and women's movements remain 'skeptical about constitutionalism' and its lofty and, in many respects, unfulfilled promises probably comes a little too late in the book (at 138). Rubio-Marín acknowledges that there are 'only scattered but promising expressions' of transformative constitutions, offering the examples of Nepal noted earlier as well as the de-gendering and re-centring of care in the Ecuadorian Constitution (at 259).

Ecuador's Constitution of 2008 provided for 'maternal and paternal co-responsibility' for the upbringing of daughters and sons and expressed these responsibilities of mothers and fathers to be one of 'equal proportion'.[7] As a scholar of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),[8] I value Ecuador's example, but I am hesitant to concede that it rises to the level of 'transformative'. Can it be transformative to incorporate into the Constitution, even if in a slightly more expansive manner, what CEDAW called for in 1979 – that is, the 'recognition of the common responsibility of men and women in the upbringing and development of their children'?[9] Perhaps what is unique in this example is the explicit inclusion of equal responsibilities for care as a constitutional matter, given the value we tend to attribute to constitutions as legal documents.

Throughout the book, readers may go back and forth in their view about how much there is to celebrate, perhaps precisely because the struggle for women's justice is a story of progress alongside disappointments. For instance, the example of India, which Rubio-Marín offers very early on, cautions us about the limits of what we can expect from these legal reforms. The Constitution of India[10] came into force on 26 January 1950 and contained numerous generic and specific rights to equality. Yet none of these provisions stopped the courts in India, until 2018, from sanctioning different rules for men and women accused of adultery, from disqualifying women from certain roles based on traits deemed 'natural' to them as women or from justifying

6 Cook, 'Frontiers of Gender Equality: Transnational Legal Perspectives', in R. Cook (ed.), *Frontiers of Gender Equality* (2023) 1, at 2.

7 Constitución de La República Del Ecuador, Publicada en el Registro Oficial no. 449, 20 October 2008, Art. 69(5).

8 Convention on the Elimination of All Forms of Discrimination against Women 1979, 1249 UNTS 13.

9 *Ibid.*, at Article 5(b).

10 The Constitution of India (26 January 1950).

different retirement rules for male and female flight attendants based on women's 'roles' as mothers and caregivers (at 78–79).

Readers may be similarly torn when it comes to the contribution of constitutions to advancing the interests of sexual and gender minorities. In 1993, the Supreme Court of Hawaii released its groundbreaking judgment *Baehr v. Lewin*, holding for the first time in the world that the denial of a marriage licence to a same-sex couple amounted to a violation of equal protection under the state constitution (at 279).[11] However, we have to ask, as the author does, whether this decision continues the glorification of the institution of family and marriage. In the words of scholar Ratna Kapur, queer radicality has been 'swept into the normative vortex of human rights'.[12] The book also leaves us pondering what we are to make of the constitutional protections for motherhood that have helped to pave the way towards, for example, social security entitlements for parental leave or protections from discrimination in the workplace but that, too often, use a 'paternalistic undertone' and 'convey women's weakness or fragility' (at 253).

There are cases in which it is even harder to concede success. Abortion is a topic that unsurprisingly occupies quite a presence in this book. Rubio-Marín rightly concedes how much contested terrain exists when it comes to securing women's rights to abortion. This is not only in the USA, although this is probably the best-known example globally, with its 'truly conservative obsession' in a 'never-ending attempt to overturn *Roe* and *Casey*' (at 116) – the book pre-dating but somewhat predicting the ways in which *Dobbs*[13] has left women's bodies to be legislated over by individual states across the USA. The author offers examples from Europe, Latin America and South Africa to demonstrate that no constitution expressly recognizes the right to interrupt an ongoing pregnancy or have an abortion (at 233). International scholars continue to critique the shortcomings of international law when it comes to women's rights to access an abortion, including the International Covenant on Economic, Social and Cultural Rights.[14] Yet with CEDAW having gone further in recent years,[15] it seems that it is constitutions that are lagging behind the standards evolving globally.

[11] *Baehr v. Lewin* (1993),74 Haw. 530, 74 Haw. 645, 852 P.2d 44.

[12] Kapur, 'The (Im)Possibility of Queering International Human Rights Law', in D. Otto (ed.), *Queering International Law: Possibilities, Alliances, Complicities, Risks* (2017) 131, at 135.

[13] US Supreme Court of Appeals for the 5th Section, US Supreme Court, *Dobbs, State Health Office of the Mississippi Department of Health et al., v. Jackson Women's Health Organisation et al.*, Case no. 19-1392, 24 June 2022, at 597, available at www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf.

[14] International Covenant on Economic, Social and Cultural Rights, 1966, 993 UNTS 3; Campbell, 'Like Birds of a Feather? ICESCR and Women's Socioeconomic Equality', in Cook, *supra* note 6, 153, at 163–164.

[15] Ngwena and Cook, 'Restoring Mai Mapingure's Equal Citizenship', in Cook, *supra* note 6, 406, at 425; Vijeyarasa, 'Quantifying CEDAW: Concrete Tools for Enhancing Accountability for Women's Human Rights', 34 *Harvard Human Rights Journal* (2021) 37 at 60–61.

2 A Truly Comparative Study of Global Lessons

Now I turn to Rubio-Marín's commendable goal of de-privileging the biases that exist in comparative law scholarship. The author seeks to not over-represent countries from the global North. The book reflects a deliberate effort to compensate the Anglo-Saxon dominance in existing literature and the tendency, within Europe, for some countries such as Germany to be 'taken as a key reference in continental European constitutionalism' to the neglect of others (at 14). Few scholars would accept the challenge of trying to bring to the fore the 'experiences of relatively small and underexplored countries' (at 21), a goal that is far from easy to achieve. This work joins a body of literature that has, in more recent times, including in this journal, acknowledged the problem of an English-language imperialism in international law[16] and the emergence of English in international law as the 'lingua franca'.[17]

Certain countries dominate parts of the book, and there are evident reasons why. The USA and European examples occupy the early chapters of the book; Rubio-Marín's starting point is 'the birth of modern rights-based constitutionalism resulting from the French and American Revolutions' (at 27), where the use of the term 'men' – meant only to refer to white propertied men – saw the literal exclusion of women. Mary Wollstonecraft's *Vindication of the Rights of Woman*, published in England in 1792, would inspire the constitutional campaigns of women for decades to come.[18] Chapter 2 opens with the example of the 1970 Women's Strike for Equality in 40 US cities, which demanded equal opportunities for women at work and education, free abortion on demand and free 24-hour childcare centres.

Yet what makes this work so ambitious and informative is that the examples offered throughout the several hundred pages come from a very long list of countries, spanning all regions of the world: Australia, Austria, Bolivia, Colombia, Costa Rica, Ecuador, Germany, Kenya, India, Ireland, Nepal, Japan, Poland, Spain and Zimbabwe, just to name a few. Several countries from Asia – an area of the world that I am particularly drawn to in my scholarship – are presented as places where constitutional litigation is a relatively recent tool deployed by women activists. We read of Taiwan declaring unconstitutional a provision in the Civil Code that gave final decision-making powers to the father in cases of disagreement about the exercise of parental rights, challenges by Nepalese lawyers to discriminatory constitutional provisions on inheritance and a South Korean example striking down a Civil Code provision requiring adoption of the paternal family name (at 87, n. 13). Günter Frankenberg once described comparative law as being like travel and cautions against 'collecting countries', which teaches us little about ourselves or others.[19] There are naturally

[16] Ammann, 'Language Bias in International Legal Scholarship: Symptoms, Explanations, Implications and Remedies', 33 *European Journal of International Law* (2022) 821, at 823.

[17] A. Roberts, *Is International Law International?* (2017), at 3.

[18] M. Wollstonecraft, *A Vindication of the Rights of Woman: With Strictures on Political and Moral Subjects* (1792).

[19] Frankenberg, 'Critical Comparisons: Re-Thinking Comparative Law New Directions in International Law', 26 *Harvard International Law Journal* (1985) 411, at 411–412.

going to be limitations to the depth that can be achieved when one chooses to spread one's selection as broadly as this book. In embracing the challenge of de-privileging in her country selection, Rubio-Marín's work does an excellent job at teaching us the skill of comparative constitutionalism.

3 The Contribution of Gendered Constitutionalism to Bringing an Intersectional Perspective to Law

Finally, this book naturally leads us to consider the experiences of marginalized subgroups of women. Hence, I conclude this review by asking: can we construe an intersectional meaning of constitutional equality? That is, what has the gender and constitutionalism project achieved for a diversity of women's interests? Rubio-Marín turns to 'multiculturalism and intersectionality' about half-way through the book when describing 'participatory constitutionalism' (at 136). The issue is posed as a challenge for the gender constitutionalism project: '[T]he challenge of ensuring that women's diverse voices were sufficiently represented' in the making of these constitutions (at 136). Several stories are offered as illustrations. South Africa is presented as an example of what was a racial and gendered battle in which there was a clear sense that race was prioritized over the gender axis of subordination, both of which were eventually addressed, first in the interim Constitution in 1993 and then in the final Constitution in 1996 (at 143). Brazil's process of constitution making from 1987 to 1988 attempted to create opportunities for submissions by indigenous peoples, environmentalists, Black movements, women and LGBTQI groups (at 145). In India, the framers of the 1950 Constitution attempted to address deeply entrenched inequality on the basis of both caste and sex (at 156), although there is mixed success when it comes to the interpretation of these articles.[20]

Yet when we move from participation by women and other minorities in the making of constitutions to the substantive impact such constitutions have had on their lives, the debate gets even more complicated. Here, the book moves to the place of customary legal systems in constitutions – that is, the acceptance of local 'customary' social norms alongside formal law in legally pluralistic societies. For many feminist scholars, although certainly not all,[21] constitutional provisions that insulate such customary laws from constitutional challenge remain a concern for women's rights.[22] As Rubio-Marín notes, referring to the work of Wendy Lacey, this is like a CEDAW

[20] Baudh, 'Demarginalizing the Intersection of Caste, Class, and Sex', 20 *Journal of Human Rights* (2021) 127.

[21] Mnisi and Claassens, 'Rural Women Redefining Land Rights in the Context of Living Customary Law', 25 *South African Journal on Human Rights* (2009) 491.

[22] Okin, 'Is Multiculturalism Bad for Women?', in S. M. Okin, *Is Multiculturalism Bad for Women?* (2019) 7; see also Merry, 'Legal Pluralism', 22 *Law & Society Review* (1988) 869 (where Sally Engle Merry, who does not see minority groups as entirely passive or powerless in customary systems, nonetheless notes how state courts that adopt customary law may refuse to hear claims by women, at 882).

reservation – it leaves women unprotected or under-protected.[23] In fact, as Rubio-Marín goes on to note, in some communities, sex-based discrimination is so 'deeply rooted' that 'parity or gender-balanced participation may be too far removed from the starting baseline within religious or customary jurisdictions to be a viable option in the foreseeable future' (at 207). Kenya's and Zimbabwe's constitutions in 2010[24] and 2013,[25] respectively, did not allow for such exclusionary clauses, which, from the perspective of international women's rights, is progress. For the constitutions that permit customary and traditional legal practices to operate alongside formal law, readers cannot help but be left with a sense that these constitutions have failed women in these communities. It is perhaps for these women that the author's optimism seems least warranted.

4 Conclusion

I conclude this review by taking advantage of the outlet where this review is published, turning our attention to the place of women's rights in international law. One decade ago, as a scholar of transitional justice, I offered an assessment that, sadly, international feminist scholarship remained at the margins of international law.[26] I was reminded of this reality when reading Rubio-Marín's work. In fact, Rubio-Marín offers an important disclaimer at the beginning of this book: '[T]ransformative gender constitutionalism' is far from realized in today's world. In my view, this makes the role of scholarship in bringing gender equality to the forefront of the constitutional and international law debates even more significant, whereby we must not only note the shortcomings but also highlight the successes that may inform future practice. In this context, this work makes a fundamental contribution to that goal, offering not only 'counter-narratives' and 'counter-histories' from a diverse number of jurisdictions but also a sense of direction, not only from where we have come but also, more importantly, to where we must strive to land.

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[23] Lacey, 'Gender Equality: International Law and National Constitutions', in H. Irving (ed.), *Constitutions and Gender* (2017) 135, at 143–144.

[24] Constitution of Kenya (2010), http://kenyalaw.org/lex/actview.xql?actid=Const2010.

[25] Constitution of Zimbabwe No. 20 (2013), https://www.dpcorp.co.zw/assets/constitution-of-zimbabwe.pdf.

[26] Vijeyarasa, 'Women at the Margins of International Law: Reconceptualizing Dominant Discourses on Gender and Transitional Justice', 7 *International Journal of Transitional Justice* (2013) 358.