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978-0-521-88108-1 - Gender and the Constitution: Equity and Agency in Comparative Constitutional Design

Helen Irving

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GENDER AND THE CONSTITUTION

Many of the world's constitutions were written in recent times, in some cases following a dramatic break with an earlier system of government, and in others through a deliberate choice to modernize. Many older constitutions are currently under review. Whether old or new, no democratic constitution today can fail to recognize or provide for gender equality. Constitution makers need to understand that constitutions are historically “gendered” and remain so; their provisions often have a disparate or differential impact on women, even where they appear gender neutral.

This book considers what needs to be taken into account in writing a constitution when gender equity and agency are goals. It does so by examining principles of constitutionalism, constitutional jurisprudence, and history and applying a “gender audit” to existing constitutions.

In addressing such issues, the book eschews a simple focus on equality rights and examines constitutional language, interpretation, structures and distribution of power, rules of citizenship, processes of representation, and the constitutional recognition of international and customary law. Its discussion of rights treats equality rights and reproductive rights as distinct issues for constitutional design.

Helen Irving holds degrees in political science, anthropology, history, and law. She currently teaches in the Faculty of Law at the University of Sydney. Professor Irving has taught political science and law in several Australian universities since her first appointment in 1977 and was visiting professor at Harvard Law School from 2005 to 2006. She is the author of *To Constitute a Nation: A Cultural History of Australia's Constitution* and *Five Things to Know about the Australian Constitution*. She is also the editor of *A Woman's Constitution?: Gender and History in the Australian Commonwealth*, *The Centenary Companion to Australian Federation*, and *Unity and Diversity: A National Conversation*, among others.

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The University of Sydney



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Acknowledgments

In 2004, while teaching a course on comparative constitutionalism at Sydney Law School, I had the good fortune to come across a report on constitution making by Vivien Hart, written for the United States Institute of Peace. Vivien's ideas and mine seemed to run along similar lines. My impromptu correspondence with her led to our collaboration in early 2005 on a UNDP paper on gender equity and constitution making with respect to Iraq. Here, we sought to identify, in a nutshell, all the things that framers of a new constitution would need to consider if gender equity were among their goals. Inspired by this work, I developed a course, Gender and Constitution-Making from Australia to Iraq, which I taught in spring semester 2006 at Harvard Law School during a year there as visiting professor and as Harvard Chair of Australian Studies. In 2007, I taught a modified version of this course at Sydney Law School and picked up many last-minute ideas, as well as much encouragement, from my wonderful Sydney students.

This present book, thus, grew out of the thinking and research that began with Vivien Hart. My first and greatest thanks, therefore, go to Vivien, for suggesting our collaboration and for her support and intellectual generosity since that time.

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I remain, of course, entirely responsible for any errors.