CONTENTS

Foreword, by Bev Baines xii
Acknowledgments xv
Table of Cases xvi

Introduction: The When, Why, What, and How of the Book and How the Personal Becomes Political 1
I.1 The When and Why of This Book 1
I.2 The What and How of This Book 12
I.3 The Limits and Limitations 21

1 The Constitutional Establishment of the Gender Order: Revolutionary Times and Exclusionary Constitutionalism 26
1.1 The Revolutionary Moment and Women’s Citizenship 26
1.2 The Enlightened Marital Contract and the Modern State 30
1.3 Women’s Struggle in Revolutionary Constitutionalism and the Birth of Modern Patriarchal Family Law 39
1.4 The Constitutional Embedding of the Breadwinner Family Order 44
1.5 First-Wave Feminism and Women’s Constitutional Engagements 47
1.6 The Struggle for Women’s Suffrage and the Separate Spheres Tradition 51
1.7 Sex Equality Enters Constitutionalism and So Does Motherhood and the Protection of the Family 57
1.8 Post–World War II Constitutionalism: Between Continuation and Rupture, toward Inclusive Gender Constitutionalism 67

2 Inclusive Constitutionalism and Its Limits 81
2.1 Second-Wave Feminism and Women’s Equality Claims 81
2.2 Overcoming the Head-and-Master Regime: Toward Women’s Equal Legal Status and Transitional Queries 85
2.3 Women and the Market: The Fruits and Limits of Assimilationist Workerism 93
2.4 The Working Mother: The Potential and Limitations of Maternalist Accommodationism 101
2.5 The Birth of Abortion Constitutionalism 111
  2.5.1 Reproductive Autonomy Becomes Constitutionally Entrenched 114
  2.5.2 Normative Motherhood Becomes Constitutionally Entrenched 118
2.6 Inclusive Constitutionalism Revisited 126

3 Participatory Constitutionalism: Women as Norm Creators Broadening the Agenda 130
  3.1 The Participatory Turn in Women’s Equality 130
  3.2 Women Joining Constitution-Making 137
  3.3 Toward Substantive Gender Equality 155
  3.4 Toward Parity Democracy 176
  3.5 Toward Women’s Multinational and Multicultural Equality 194

4 Transformative Gender Constitutionalism: Toward an Egalitarian Family Structure and Sexual and Reproductive Order 211
  4.1 Destabilizing the Public/Private Divide: Intimate Partner Violence and Violence against Women as a Constitutional Concern 214
  4.2 New Abortion Constitutionalism and the Need for a Fuller Recognition of Women’s Sexual and Reproductive Autonomy 231
  4.3 A Positive Right to Motherhood and the Foregrounding of a Caring Citizenship 246
  4.4 The New Constitutional Father? 259
    4.4.1 Removing the Remaining Sex-Based, Care-Related Differentiations 263
    4.4.2 Gender-Neutral Legal Orders Shaping Interpersonal Relations and Implicit Gender Role Assumptions 267

5 Toward a Constitutional Gender Erasure or a Constitutional Gender Reaffirmation? 274
  5.1 Gender Constitutionalism in the New Millennium 274
  5.2 Constitutional Challenges to the Hegemony of the Heterosexual Marital Family 279
# CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.3</td>
<td>The Gender/Sex Categorization System under Constitutional Scrutiny:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Toward the Affirmation of a Right to Gender Identity</td>
<td>295</td>
</tr>
<tr>
<td>5.4</td>
<td>Preemptive Action, Gender Equality Backlash, or the Reassertion</td>
<td></td>
</tr>
<tr>
<td></td>
<td>of the Traditional Family Order</td>
<td>309</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>329</td>
</tr>
<tr>
<td></td>
<td>Index</td>
<td>340</td>
</tr>
</tbody>
</table>