

GENDER AND CONSTITUTIONAL CITIZENSHIP:

Combining Historical, Theoretical and Doctrinal Perspectives

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What does it mean to be a citizen? Many people, including many scholars of citizenship, have answered this question with a reference to rights - political rights in particular. A citizen, many would say, is a member of the political community, a person who enjoys the right to participate in political decision-making, to vote, and to stand for public office. Feminist scholars, writing about women's citizenship, have focused, in particular, on the long struggle by women to gain the right to vote. However, I want to argue that the focus on rights gives us a limited understanding of the nature of citizenship. Such a focus is valuable, but it overlooks a more important question: how is citizenship acquired in the first place? This question, which concerns what I call *constitutional citizenship*, is central to a full understanding of the gendered history of citizenship.

This is not to diminish the importance of political rights. The enjoyment and exercise of the rights we associate with citizenship are critical. The right to vote is both in practice, and symbolically, vital. It allows individuals to take part in selecting those who make the laws under which they live. This form of participation is a core element in the idea of democracy, and a key token of the liberal-democratic commitment to the

equality of individuals. It symbolises the autonomy of the individual, and it permits the individual to assume and to exercise a public identity. The latter is of particular importance to women, in their emergence from the private, domestic identity that was so long ascribed to them. So, indeed, for as long as women were unable to vote, they were in this sense, non-citizens, excluded from exercising political judgment or taking part in public life, and assumed to be incapable of doing so.

We know that one of the long-standing arguments against women's enfranchisement was their supposed irrationality, their incapacity to understand the political realm, or make autonomous political choices. Women have proved this to be wrong, in every country in which they have been enfranchised. We know that women can exercise not only the vote, but also political leadership at the highest level. Australia, at the time of writing, has a woman Governor-General and a woman Prime Minister. This was inconceivable at the time the Australian nation-state was formed under a federal Constitution one hundred and ten years ago. The founders of the Commonwealth of Australia were advanced enough to believe that women were capable of voting and standing for elected office; they extended the vote to women

in the first federal Franchise Act, in 1902, in one of the earliest women's enfranchisement laws in the world. But they would never have envisaged that the end result would be to see women occupy these top political positions.

We know also that, in almost all parts of the world, women can now hold property in their own right, sit on juries, sit as judges, and work in the public service: all of which were denied to women before the twentieth century in almost all countries, and until well into the twentieth century in many. But, while these are enormously important indicators of progress in democratic thinking and in women's lives, this is not, in my view, the first thing we should look for in understanding the relationship between gender and citizenship.

There is a further perspective on rights that we need to consider, before making a case for 'constitutional citizenship.' Since 1950, when T. H. Marshall published his seminal work, *Citizenship and Social Class*, the idea that social rights, and not merely civil or political rights, are a measure of citizenship, has been influential. Marshall's idea has been taken up in recent times, and the emphasis on political rights as a token of citizenship has attracted criticism. Political rights, as Marshall stated, are purely formal rights. Social and economic inequality is a significant impediment to participation – to full citizenship – and the claim that equal citizenship has been achieved cannot be satisfied while such inequality exists. Although Marshall did not address the issue of women's social rights or 'citizenship', feminist scholars have noted that women are disproportionately represented in most categories of disadvantage: poverty, illiteracy, homelessness, and vulnerability to abuse. If citizenship means equality, women have not yet achieved it, even in the most modern, developed, and wealthiest parts of the world. For as long as women are

disproportionately disadvantaged according to socio-economic measures, they are, in this sense, non-citizens, or at least, lesser citizens.

These are certainly important considerations to apply to theories of citizenship, and Marshall's analysis is an important qualification to place on claims that political equality under the law is an adequate measure of citizenship. The theory of social citizenship is also a valuable corrective, or challenge, to more recent theories of 'republican citizenship', which emphasise 'civic virtue' on the part of the individual and 'good citizenship', promoting duties and responsibilities in the place of rights. From the perspective offered by an understanding of social citizenship, the counter-argument can be made that those who are socially and economically disadvantaged cannot be expected to act as 'good citizens' on an equal footing to those who are advantaged. But again, to understand citizenship in this manner is to abstract it from its core meaning, to make it essentially normative – a theory about what *should* follow from being a citizen, rather than an analysis of the experiential impact of law – and to turn it into a broad claim for equality, rather than an understanding of status.

My concern is with citizenship as status. Although the denial of rights, such as the right to vote, and socio-economic disadvantage are a matter of injustice, the denial of citizenship is an existential injury. The existential importance of citizenship is not always apparent: like good health, we take our citizenship for granted until we experience its loss. To lose one's citizenship, without one's consent or control, or to be forced to take the citizenship of another country, is a deep denial of independent selfhood. It also places a person in a state of personal and physical vulnerability. To become stateless, to have no citizenship, is a tragedy. These experiences, as I will explain, were the fate of many women, under

the law, until relatively recently.

In August, 1958, the United Nations Convention on the Nationality of Married Women came into force. According to its opening statement, the contracting States,

Recogniz [ed] that, conflicts in law in practice with reference to nationality arise as a result of provisions concerning the loss or acquisition of nationality by women as a result of marriage, of its dissolution or of the change of nationality by the husband during marriage,

Recogniz [ed] that, in article 15 of the Universal Declaration of Human Rights, the General Assembly of the United Nations has proclaimed that “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”, [and]

Desir [ed] to co-operate with the United Nations in promoting universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to sex ...

Among other things, the States that ratified this Convention committed themselves to ensuring that, under their laws, the nationality of a husband would not in itself determine the nationality of his wife. Neither marriage, nor divorce, would change a woman’s nationality without her consent; and a change in a man’s nationality would not automatically lead to a change in his wife’s nationality.

Why was the question of married women’s nationality so important as to give rise to a whole United Nations Convention on the subject? Why were these commitments necessary? Behind this Convention lay a long and complicated history of women’s loss of citizenship as a consequence of

marriage or change in their husband’s nationality. In asking such questions and considering this history, I therefore turn the lens away from the rights that come, or should come, from being a citizen, and I look, instead, at how citizenship is acquired in the first place. How does a person become a citizen under law? What are the qualities or attributes that allow a person to be legally defined? What are the consequences of loss of citizenship? And are the legal rules surrounding the acquisition of citizenship gendered? This is what I call ‘constitutional citizenship’, in contrast to the ‘political citizenship’ (or even social citizenship) associated with rights. To conceptualise citizenship in terms of rights pre-supposes the acquisition and retention of citizenship – the legal capacity to exercise or enjoy these rights - in the first place. To identify the legal and conceptual rules for acquisition and retention of citizenship, however, is not only a matter of identifying those eligible to exercise rights. It is also to consider identity, personhood, and membership of the constitutional community.

Constitutional citizenship has been deeply gendered until the recent past, and there are ways in which it remains gendered. To understand this, we first need to consider the place of citizenship law in the modern state. The evolution of constitutional citizenship is a key element in the evolution of nation-state sovereignty and, in particular, in the development of international relations. This is a history in which the place of women – married women in particular – has largely been forgotten. It is also a history in which the shortcomings of an approach to citizenship, understood without reference to law that defines the citizen, is revealed.

This history can be stated very briefly, for our purposes. The modern constitutional state emerged from the revolutions at the end of the 18th century, and from the first modern, written

constitution, the American, in 1787. In place of the feudal, hereditary sovereign, the 'people' became identified as sovereign. We see this in the famous words in the Preamble to the American Constitution: 'We the People ... do ordain and establish this Constitution for the United States of America'. Once the idea of the people as sovereign became widespread and then constitutionally entrenched, a definition of the people – those who belonged to 'We, the people' – became necessary. Nation states began to define their members, both for their own purposes and as against each other. With the growth of modern international relations and international law, the modern state drew lines between its members and those of other states; it needed to know what to do with other countries' citizens, for reasons both of diplomacy and to control the character of its own population. Although an incipient idea of citizenship had been expressed in the law before this time – largely through laws governing the property rights of aliens – it was only in the nineteenth century that citizenship was first seriously defined under law. This process of definition continued well into the twentieth century.

Just as women were beginning to claim the political rights we associate with citizenship (in particular, the right to vote), the laws of constitutional citizenship were narrowing. Around the world, in almost every country, at some point between the mid-nineteenth century and the mid-twentieth century, up to the end of the Second World War, women were effectively treated under the own country's law as aliens. This is starkly illustrated by the 'problem' of the nationality of married women.

The legal rule that was finally repudiated by the 1958 United Nations Convention on the Nationality of Married Women was that a woman must take the citizenship of her husband. It was accompanied by the policy of single family

citizenship, and a virtually uniform opposition to dual nationality. These policies were adopted in almost every country in the world, including Australia and Japan. In a history that is largely forgotten, the status of married women became the subject of progressively complex national politics and complicated legal responses, interwoven with international negotiations and issues of diplomacy and international comity. In particular during the world wars it was the subject of deep disquiet and policy confusion. Ultimately, as we have already noted, it became an international issue, to be resolved by an international convention.

What was behind this history? Historically, what distinguished a citizen (in the constitutional sense) from an alien, was *allegiance*. Allegiance to the sovereign was demonstrated principally, in military terms, by a person's – a man's – willingness to fight for his sovereign. In return, protection was offered to him by the sovereign. This history of military concepts of citizenship went hand in hand with often-belligerent nationalism, in which women found no place.¹

The feudal principle of allegiance was recognised in common law up until the nineteenth century. In many countries, it was subsequently expressed in legislation. Indeed, although it is essentially a feudal notion, it is still found in modern citizenship law, as well as in theories of constitutional citizenship. Under the common law, nationality was acquired by the fact of birth within a territory. Allegiance, and the reciprocal duties of military service and protection, were assumed to arise from birth. These duties were not optional. At least in Britain, the United States, and Europe, it was not possible for a person, either voluntarily or involuntarily, to renounce his citizenship, or change his allegiance. It was only until well into the nineteenth century, and in many cases the twentieth century, that it was accepted, under law, that a person could voluntarily

relinquish citizenship. (I note here a provision of the Japanese Constitution, Article 22, which illustrates this idea, protecting the '[f] reedom of all persons to move to a foreign country and to divest themselves of their nationality...') Prior to the abandonment of the principle of perpetual or indelible allegiance, it was recognised that some aliens wanted or needed the citizenship of another country, usually the county in which they had made their home. Naturalization was conceded in principle. Once conceded, it became the field in which legislative definitions of citizenship first systematically emerged in the nineteenth century.

To illustrate these histories, this paper will now concentrate on legal developments in the British Empire and the United States (although such developments were not confined to those countries, and indeed were followed in most countries around the world at the relevant time). With the emergence of legislation regulating naturalisation, the law began to draw tighter distinctions between citizens and aliens, and with this, distinctions between the citizenship of men and women. Under the first British Naturalization Act of 1844, among other things, a foreign woman automatically acquired British nationality upon marriage to a British citizen (or subject). The United States law of 1855 mirrored this provision. Under the next British Naturalization Act, 1870, a British born woman who married a non-British national was assumed to take the citizenship of her husband and automatically lost her British citizenship. Further, if a man became naturalized in a foreign citizenship, even without his wife's consent or knowledge, she too was automatically naturalized in his new citizenship. The United States followed, with similar provisions in the 'Expatriation Act' of 1907.

The impact of 'marital denaturalization' was wide-spread, and for many married women, unfortunate. Married women had previously been

assumed to hold citizenship or nationality in their own right, although conceptually, the idea of citizenship did not extend to women, because the core test of allegiance was masculine. (This is probably the main reason few people seemed to notice when these 19th century Acts were passed that they included provisions for marital naturalization and denaturalization.) These laws were based on the assumption that the true citizen was a man and the definition of citizenship was masculine. A woman's constitutional identity was thus, subsumed under a man's. This was not noticeable for women married to men of the same nationality, but its effect was strongly felt in cases where a woman married a foreign citizen. If she lived in her own country, she lost not only the political rights she would have previously enjoyed – including the right to vote in those countries where it had been granted - but her very identity as part of the constitutional community. To be a married woman was, by legal definition, to be 'under disability', a legal status that was shared with minors, infants and 'lunatics'.

Early in the 20th century, women's groups began a campaign in protest against these laws, at the same time as they were campaigning for political rights. Nevertheless, marital denaturalization continued, even, as noted, in the United States despite the apparent guarantee of the right to citizenship for all persons born in the United States found in the 14th Amendment of its Constitution. When Britain first defined its own citizenship under legislation, in 1914, its new Nationality Act retained the principle that a husband and wife must have a single citizenship - the husband's. Thus, a British woman would still lose her citizenship if she married a foreigner. This policy, in force in almost every country in the world at that time, including in the British Empire, endured until the end of the Second World War.

The principle of single family citizenship and

the automatic acquisition of a husband's citizenship by his wife were no doubt advantageous, in a practical sense at least, for many women, especially those who lived in their husband's country where they could enjoy whatever political and social rights came with a woman's formal citizenship. However, there were also countless hardships. Women who had been deserted by their foreign husbands remained aliens in their own country, and, until the British pension and social welfare laws were amended, could not receive the benefits reserved for legal citizens. Women whose husbands became naturalised in another country lost their citizenship, even in cases where the wife did not know of her husband's action and/or her husband had naturalised in order to avoid legal obligations in his own country, including the obligation to support his wife and family. The hardships were particularly severe during wartime. Wives of 'enemy alien' men, even if they lived in the country of their own original citizenship, were also classified as enemy aliens and subjected to restrictions, including regular reporting to the police and limits on their freedom to move around what had previously been their own country. The property of enemy aliens was also confiscated or held in 'custodianship': despite the 19th century reform of laws in many countries that had formerly prohibited married women from holding property, women's entitlement to their own property became again dependent upon their marital status.

British nationality laws were amended, progressively, in response to these hardships: the 1914 Nationality and Status of Aliens Act included a provision allowing women who had divorced or whose foreign husbands had died, to apply to regain their British citizenship, but the provision provided no relief for deserted wives. The Act was amended in 1918, permitting women whose husbands were citizens of a country at war with Britain similarly to apply for citizenship,

but it was subject to executive discretion, and in practice, it applied only in cases where the marriage had effectively ended. Respect for the masculine institution of marriage prevailed over the recognition of independent citizenship. Again and again, in response to the campaigns of women's organisations seeking reform of the marital denaturalization laws, policy-makers (especially in Catholic countries) affirmed the primacy of single family nationality and the importance of family harmony, and asserted that disharmony would necessarily follow if the wife were permitted to retain her own nationality. A second argument (more commonly stressed in non-religious countries), presumed that diplomatic complications and embarrassments would necessarily follow if a husband and wife held different nationalities or if the woman enjoyed dual nationality. These outcomes – different nationalities and dual nationality - are now commonplace and uncontroversial in many countries, and are accepted under both national and international law. Families and diplomats, it seems, have adjusted, and (as so often in history) what appeared impossible in the past has been accommodated.

The first signs of an international willingness to give way on the principle of single marital nationality arose around the issue of statelessness. Statelessness was the most dramatic effect of the martial citizenship laws, and was most significantly related to changes in American law. In 1922, with the passage of the 'Cable Act', the United States partially repealed both its marital denaturalisation law and the law that automatically conferred American citizenship upon foreign women who married American men. Under this Act, women who had lost their American citizenship upon marriage became entitled to apply for its return. This benefitted many American women, and many took advantage of it. The

benefit depended, however, on the individual woman's eligibility for naturalization under existing American law: until the latter law was amended in 1934, coloured women and women of Japanese or Chinese ethnicity were ineligible to naturalize, despite their having acquired American citizenship by birth. Women who married men of colour or 'undesirable' ethnicity were also barred from naturalization, as were 'immoral' women, and those (including for religious reasons) who refused to swear to defend America. In the international context, the Act had serious consequences. As noted, non-American women who married American men no longer automatically acquired their husbands' citizenship. At the same time, such women, if their own country practised marital denaturalization, lost their original citizenship. The result was statelessness. The problem was particularly acute in Canada, where British denaturalization law applied, given the large number of marriages between Canadian women and American men.

This situation served, at last, as the trigger for reform. Over the years, marital denaturalization laws had been challenged in the courts, but the results were uniformly adverse to the women. The laws were discussed, again and again, at Imperial and other trans-national Conferences. Women's groups had campaigned against the laws for even longer. By the 1920s, the hardships and complexities had become so well recognised internationally (thanks to the campaigns of women's groups) that the question of married women's nationality emerged as one of the most important at the League of Nations Conference on Nationality in 1930, and was addressed – albeit unsatisfactorily – in the Hague Convention on Nationality. The international community, however, could not agree to dismantle the principle of single family nationality or abandon its opposition to dual nationality, but the problem

of statelessness attracted sympathy.

The 'solution' adopted in this Convention was that a woman should not lose her nationality upon marriage in cases where she did not automatically acquire her husband's. Otherwise, her nationality followed his. The women's groups were far from satisfied; the Convention, they maintained, perpetuated the assumption that a woman did not have independent selfhood, and that her identity remained merged with that of her husband. While they recognised the importance of reducing the number of cases of statelessness, women campaigned against ratification of the Convention, which, in their view reinforced the psychological harm caused by the marital denaturalization laws. Little by little in the inter-war period, countries around the world began to follow the American example and repeal or amend their laws, but, only after the international community had given way on the principle of single family nationality after the Second World War was the policy of forced marital naturalization and denaturalization widely abandoned.

Why, under this law – which lasted well into what we consider to be the era of women's 'citizenship rights' - did an alien woman acquire the citizenship of her husband, and a non-alien woman lose her citizenship? Embedded in this law was the same principle of allegiance that informed the masculine idea of citizenship. But here, the assumption was that a woman's allegiance was owed, not to her country, but to her husband. Women – who did not take part in military service - were assumed to be incapable of independent allegiance to a state: their allegiance was to their husband, and their husband was the family sovereign. In 1915 an American-born woman, resident in San Francisco and married to a British man, challenged the constitutional validity of her country's marital denaturalization law. She was unsuccessful. The United States Supreme Court

concluded that the '[m] arriage of an American woman with a foreigner is tantamount to voluntary expatriation.'

Women's groups, as noted, urged their governments not to ratify the Hague Convention, or to incorporate its principles into domestic law. They continued their campaign. In the mid-1930s, the Australian and New Zealand parliaments offered a compromise – one which illustrates the difference between so-called 'citizens rights' and 'constitutional citizenship' - by amending the law to allow women who had lost citizenship upon marriage to retain the political rights they would have enjoyed prior to their marriage, so long as they remained resident in their country. While the value of this provision is not to be underestimated, the assumption was again perpetuated that a woman's personal status and identity were co-mingled with that of her husband.

Slowly, across the twentieth century, citizenship laws that were gender neutral, on their face at least, were adopted. Despite a preference in domestic and international law for single nationality, and for common family nationality, it was conceded that a woman might retain her own nationality upon marriage, even if she also acquired that of her husband. Tolerance of dual nationality finally facilitated the idea that a woman's citizenship could be an attribute of her person, independently of her relational status. The 1958 UN Convention, as noted, expressed this principle in international law.

So, have women now acquired equal constitutional citizenship? Not fully. It is striking to find in modern theories of constitutional citizenship or related concepts, such as 'constitutional patriotism', that the question of constitutional identity is still posed in terms that assume a test of allegiance. Many, if not most, modern theories of constitutional citizenship or patriotism address the phenomenon of pluralism,

and attempt to offer a solution to the problems they perceive to arise in a pluralist state. Ethnic, religious and cultural sub-national communities are treated, essentially, as the core descriptors of modern pluralism. These communities are assumed to lack allegiance to the nation-state, and with this, fragmentation or disunity are believed to arise. Jurgen Habermas, the most celebrated and influential of the theorists of constitutional citizenship, offers allegiance to the constitutional state as a way of unifying sub-national groups, under a shared commitment to liberal democratic constitutional principles and practices.² Habermas's work has much to commend it, but neither he, or his followers, appears to recognise the troubling history of allegiance as a test of citizenship, nor acknowledge its military and masculine character. None recognises the history of women's loss of constitutional citizenship, nor do they attempt to incorporate gender into the theoretical resolution of the tension between plurality and unity.

The problem is not a shortage of theoretical studies of citizenship and gender. Many feminists, indeed, have considered the history of women's citizenship, but most, as noted, have concentrated on the acquisition or rights – political or social - and have ignored constitutional citizenship. Many also have rejected (or questioned) a focus on the legal parameters of citizenship. For example, leading English feminists have called for a 'broad analysis of diversity and social divisions ... [of] patterns of inclusion and exclusion which shape [the] membership' of a community, as an alternative to studying the formal relationship between an individual and the state. This rejection of the legal record has, I suggest, been an impoverishment of understanding. It has neglected the lived experience of women whose citizenship has been taken from them, or changed without their consent, often with drastic consequences, and who have effectively been forced to choose

between love and nationality.

How then, can constitutional citizenship be understood with respect to women's experience? How can it be protected? One approach is to look at whether a country's constitution itself makes provision, either directly or indirectly, for the acquisition of citizenship, and if it does, whether this reflects the principle of gender equality.

The Australian Constitution, which was written in the 1890s, says nothing about the acquisition of citizenship, but leaves this to the parliament to regulate by law. There is no constitutional provision recognising gender equality, or prohibiting laws that are discriminatory with respect to sex or gender. Gender inequality in citizenship laws would, therefore not be *unconstitutional* – and indeed, as we have seen, for several decades citizenship laws operated in Australia which were discriminatory, specifically against women who married foreign citizens. Men, on the other hand, were free to marry whomever they wished, without loss of citizenship. Although it is extremely unlikely that gender discriminatory citizenship laws would be permitted in Australia today (indeed, it is likely that, according to modern interpretive reasoning, they would be held unconstitutional), the historical validity of these discriminatory laws remains as both a legal and conceptual hurdle.

The Japanese Constitution also lacks a definition of Japanese citizenship, and it does not state how nationality is acquired. Like the Australian, it leaves this up to legislation (Article 10 of the Japanese Constitution states: 'The conditions necessary for being a Japanese national shall be determined by law.')

However, the Japanese Constitution does include a sex equality and anti-discrimination provision (Article 14), and although this does not extend specifically to citizenship laws, there is a marriage equality provision (Article 24) which may help. This has not, it seems, excluded all gender discriminatory

citizenship laws since 1947.

The United States Constitution includes a provision governing the acquisition of citizenship, and some modern constitutions go further and guarantee citizenship, although very few extend this guarantee expressly to women as well as men (the 2005 Iraqi Constitution, Article 18, is a surprising exception).

As we have seen from the history, however, the guarantee of citizenship in a constitution does not necessarily protect women from discriminatory citizenship laws, or from laws that cause the loss of citizenship. A constitution, itself, cannot provide a guarantee of equality. This requires a culture in which claims for equality and independent personhood are recognised and respected. We need to reconceptualise citizenship, including through understanding and remembering these histories. We need to think of constitutional citizenship both legally and theoretically as an essential aspect of a person's self-hood and autonomy, as well as being vital to their life chances. Citizenship, while governed by law, is existential, an aspect of one's identity.

Currently, as I have noted, we take notice of, and factor cultural pluralism into accounts of constitutional citizenship. We seek ways of accommodating religious and cultural communities in a shared citizenship, under which their claims for recognition are respected. Similar considerations can and should apply with respect to gender. The validity of claims for recognizing minority interests and cultural pluralism rests on the centrality of citizen 'consent' in establishing constitutional legitimacy, and the recognition that a requirement of consent is unrealistic and/or unreasonable where the constitution is based on principles of exclusion. Similar considerations apply to gender.

Secondly, we need to recognize that constitutional narratives are often gendered,

embedded in heroic stories of constitutional ‘founding fathers’, and accounts of allegiance conceptualized as military service. So, too, are judgments of constitutional courts.⁴ We need to understand the residual impact of past deprivations, as well as the impact on women’s experience of the privileging of the traditional public sphere as the site of (virtuous) citizenship. We need to remember the histories of gender oppression and resist the trivializing of women’s political and legal victories. We need to recognize the importance of law, and extend to women the recognition of equal citizenship that we offer – at least theoretically - to cultural minorities. We need to re-tell the story of married women’s denaturalization and the campaign to reverse this. And we need to recognize that women’s experience as real, embodied persons is central to the experience of constitutional citizenship.

Notes

- 1 Discussed by Chizuko Ueno in, ‘Citizenship and Gender: Is Feminism Compatible with Nationalism?’ in Tsujimura (ed.), *International Perspectives on Gender Equality and Social Diversity*, 2008.
- 2 Jurgen Habermas, *Between Facts and Norms*, 1997.
- 3 Barbara Hobson and Ruth Lister, ‘Citizenship’, in Hobson, Jane Lewis, Birte Siim (eds.), *Contested Concepts in Gender and Social Politics*, 2002, p. 23.
- 4 Eloise A. Buker, ‘How Does the Constitution Constitute Women Citizens?’ (1988-89) 24 *Gonzaga Law Review* 109.