

**Transmittal Note to Participants in “Citizenship” Schmooze,  
University of Maryland School of Law, March 7 & 8, 2008**

I am sending, as my “ticket” of admission, part of a book proposal, *Dimensions of Women’s Equal Citizenship*, an anthology that I am co-editing with my former colleague Joanna Grossman (Hofstra Law School). We just submitted it, along with the manuscript in progress, for consideration for publication. Among the contributors to this proposed book, I should note, are two participants in the schmooze: Gretchen Ritter and Rogers Smith.

I am disappointed that, as things have developed, I will not be able to attend the schmooze. But I look forward to reading and from learning people’s tickets. I also welcome any comments ([lmccclain@bu.edu](mailto:lmccclain@bu.edu)) on this book proposal’s equality project. Because I am also beginning work on another project on equality, “Why Is Equality So Hard?: Men, Women, and Social Cooperation,” I am doubly interested in peoples’ perspectives on citizenship as it bears on problems of equality and inequality.

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**Book Proposal (Excerpted):**

**Dimensions of Women’s Equal Citizenship**

Linda C. McClain and Joanna L. Grossman, Editors

**I. Overview of the Proposed Book**

The equal citizenship of women is a common political value. A commitment to gender equality—the equal rights and responsibilities of men and women—features in the constitutional, statutory, and common law of many individual countries as well as in international law and human rights instruments. This book addresses the following problem: Despite these formal commitments, and great steps in recent decades toward securing women’s equal citizenship, sex inequality persists in many domains of life and there continues to be ambivalence about and resistance to equality. This book brings together an interdisciplinary group of distinguished scholars in law, political science, and women’s studies to consider the multiple dimensions of women’s equal citizenship and to take stock of the progress toward and impediments to the goal of securing such citizenship.

The issue of women’s equal citizenship is illuminated by considering several salient dimensions: constitutional citizenship, democratic citizenship, social citizenship, sexual and reproductive citizenship, and global citizenship. Contributors will look at these dimensions in a rich array of contexts. Challenges to equal citizenship within the United States are one primary focus of the book; comparative examination of the United

States and other nations is another. A third focus is global citizenship, or how certain forms of citizenship (rooted in international human rights norms) cross national borders and provide benchmarks for advocacy efforts by women's groups and international organizations.

Gender equality can be furthered or inhibited by public initiatives, legal norms, institutional culture, and private conduct. A perennial debate is whether fundamental differences between men and women warrant different roles in public and private life, and explain or justify economic, social, and political inequality. In some views, gender equality is an appropriate goal in the realm of political self-government and public life, but an inappropriate one in the realm of the family and the rest of civil society. Women themselves differ over these issues. These debates seem to pit the quest for women's equality against an interest in preserving strong families, cultural integrity, and religious values. In constitutional democracies, such as the United States and Canada, controversy continues over the proper scope of constitutional commitments to sex equality, particularly as they intersect with constitutional commitments to religious freedom, multiculturalism, and personal autonomy. In the constitution-making process in many transitional societies, a challenging issue has been how to craft a commitment to sex equality along with rights to family, cultural, and religious life. And, with respect to United States foreign policy, the need to elevate the status of women has served as the rationale for military intervention in other countries.

#### A. *Why Focus on Gender and Citizenship?*

Sex equality remains at the center of contemporary legal challenges, policy debates, and governmental and public initiatives. This anthology insists on the relevance of gender both as a stand-alone category and as it intersects with other identity categories, such as sexual orientation, race, ethnicity, nationality, class, disability, and religion. We take seriously arguments about the social construction of gender. This book also insists on the usefulness of examining the persistence of women's inequality despite the formal commitment to women's equal citizenship.

In the United States, the quest for gender equality continues to challenge conventional standards in many areas of law, including criminal law, torts, family law, health law, tax, and privacy law. Gender inequality continues to plague family, the workplace, educational entities, and other institutions of civil society. Struggles over the requirements of equal citizenship are evident in the judicial, legislative, and executive arenas. For example, women's reproductive rights continue to be controversial and under challenge, as evidenced by the U.S. Supreme Court's ruling in *Gonzales v. Carhart*, in which the Court upheld the Federal Partial Birth Abortion Ban Act and adopted a paternalistic view of women's decision making capacity (drawing on unsubstantiated claims about how women's maternal nature causes them to regret their decisions to end a pregnancy).

Another ready example is the surprising, but continuing, prevalence of sexual

harassment and gender discrimination in the workplace and the entrenched gender wage gap. In its last term, the Supreme Court issued two major opinions on employment discrimination: *Burlington Northern v. White*, 126 S. Ct. 2405 (2006), which dealt with the scope of protection against retaliation for women who complained to their employers about sex discrimination (as well as other forms of unlawful discrimination), and *Ledbetter v. Goodyear Tire & Rubber Co.*, 127 S. Ct. 2162 (2007), which grappled with the statute of limitations for pay discrimination. The ruling in *Ledbetter*, which was adverse to women, has triggered the introduction of fair pay legislation in Congress. The Senate is currently hearing testimony on the *Fair Pay Restoration Act*, which focuses on the establishment and perpetuation of gender wage disparities.

In the last year, Congress has also considered a variety of bills aimed at improving gender equality—everything from anti-poverty measures to stronger child support enforcement laws to paid maternity leave. At the same time, even as these legislative examples show some commitment to advancing sex equality, significant administrative enactments have also threatened to hinder it, for example, rolling back Title IX's protection against gender discrimination in schools. These conflicting examples show the importance of continuing to document instances of gender inequality and theorize about how to address them.

And, last, but not least, the gender issue is at the forefront of the American imagination because of Hillary Clinton's bid for the Democratic nomination for president. Even if it ultimately proves unsuccessful, her campaign has re-energized feminists and caused many people to grapple with the role of gender in politics and as an aspect of leadership. But, at the same time, the battle between Clinton and Barak Obama for women's votes has re-opened debates about essentialism and revealed divides among women on the basis of other, often complicated identity categories. Women are still underrepresented in the lawmaking bodies of the world's states. In many nations, gender quotas have emerged as a tool for increasing rates of women's political representation. Such measures, however, invite criticisms about whether they are a form of sex discrimination against men, whether they actually achieve their ends, and whether rates of political representation simply reflect women's and men's different preferences.

Gender remains a salient category, globally speaking, as well. Here, too, the problem of a gap between a formal commitment to women's equality and persisting inequality is evident. Women are far from equal, using virtually any indicator. Indeed, one major problem is the lack of consensus regarding how to define the problem of discrimination and ascertain its scope. This reflects and reinforces deeper problems about the lack of conceptual consensus about women's rights, the limited commitment of many countries, and the problems in holding States, international organizations, and non-State actors accountable for ongoing discrimination.

Advancing women's equality along several indicators is among the United Nation's Millennium Development Goals. The UNICEF's *State of the World's Children 2007* report identified gender inequality in the domains of family, economic, and political life as a persisting problem and contended that fostering gender equality would yield a

“double dividend” in terms of improving the lives of women *and* of children. This report echoed previous reports on problems of sex inequality, such as women’s disproportionate poverty, their disproportionate contribution of work in the home, unequal bargaining power between husbands and wives in the home, the toll of domestic violence on women and their children, and the lesser investment in female than in male children. The report urged renewed efforts to implement human rights instruments such as the Convention on the Rights of the Child and the Convention to Eliminate All Forms of Discrimination Against Women (many nations have issued reservations with respect to the sex equality commitments of these instruments; notably, the U.S. has signed but not ratified both instruments).

In addition, women’s human rights have suffered major setbacks from the HIV/AIDS crisis (exacerbated by women’s subordination in the family and vulnerability to rape by non-family members). Globalization has lifted some women out of poverty, but it has made life worse for others. Privatization and the slashing of social safety nets as a result of structural adjustment programs have had a devastating impact on vulnerable women. Despite palpable backlash against women’s rights and the persistence of discrimination against women, the spreading human rights idea continues to exert pressure on even the most recalcitrant States to afford women some rights, as shown by Kuwait’s extension of the franchise to women. Such measures may well lead to more demands for more rights by domestic constituencies over time.

The need for continued focus on gender as a category is made evident by the emerging consensus around the concept of “gender mainstreaming” as a strategy for pursuing equality. First formally announced in 1995 at the Fourth World Conference on Women in Beijing, gender mainstreaming, as the UN Economic and Social Council defines it, is “the process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.”

Gender mainstreaming is not without its critics in the global women’s community, many of whom believe it to be bureaucratic and mechanical and guilty of siphoning resources from the sharper, better-honed and more experienced specialized women’s agencies, which might serve as real catalysts for change. However, the global commitment to gender mainstreaming makes it more important than ever to focus on continuing aspects of gender inequality across the globe. There is great global support for women’s rights from States, NGOs and civil society. Conditions for women in many countries are unacceptably poor - the numbers of women living in poverty, illiteracy, or simply “missing” remain disturbing—but, at the same time, unprecedented numbers of women are not only aware of their rights, but exercising them in ways unimaginable not long ago. The progress towards women’s rights and the obstacles to it are both proof of the continuing need for interdisciplinary academic work that revolves around gender.

## B. *Dimensions of Women's Equal Citizenship*

The organizing framework for this book is the multiple dimensions of women's equal citizenship and the interrelationships among them. Here we explain these dimensions and preview some of the issues addressed by contributors. A complete set of abstracts, attached as Appendix B, provides a fuller picture.

**I. Constitutional Citizenship:** By the term “constitutional citizenship,” we attend to the role that constitutions play in declaring and fostering women's equal citizenship. To address what some scholars identify as a “gender gap” in contemporary comparative constitutional analysis -- an inattention to matters of women's rights and the role of constitutions in fostering them, contributors will address a host of significant questions: Have these constitutional guarantees secured either formal or substantive equality? What are the limits of constitutionalism as a means of securing gender equality? How does women's constitutional citizenship relate to their civic membership? How do constitutional norms of equality bear on continuing social practices of inequality in the family and other parts of civil society? If sex equality is a constitutional fundamental, then how should legislatures and courts resolve the instances of conflict between equality rights and other constitutional rights such as religious freedom and cultural life? Is it possible for women to identify *both* as feminist and religious and make, as it were, intersectional claims about their rights as citizens? In countries with newer constitutions, in which women's participation in the constitution-making process has shaped the equality norms embedded in constitutions, what have the consequences of constitutionalism been for women's equality?

**II. Democratic Citizenship:** One dimension of equal citizenship is democratic, or political, self-government. Contributors addressing women's “democratic citizenship” address such questions as: What gains have been made in fostering women's active participation in political deliberation and self-government? What obstacles remain? What institutional forms encourage self-government? Have gender-specific measures aimed at increasing women's political participation, such as quotas, been effective? How do rates of voting and political representation in countries employing such measures compare with those in countries that do not? Are explicitly “maternalist” policies necessary? Democratic citizenship also encompasses a broader spectrum of forms of participation by women, such as women's acts of dissent (as in anti-war protest), and their efforts in nongovernmental organizations and through citizens' campaigns to bring about political and social change. Our contributors examine these actions as forms of political participation. They also examine how disability bears on democratic citizenship. Women are diverse and do not speak with one voice about the extent to which gender equality is a proper political goal and, if so, in what spheres of society to foster it. How should this diversity inform considerations of democratic citizenship?

**III. Social Citizenship:** The term “social citizenship” connotes social rights to the material preconditions for effective participation in society (for example, the economic security which Franklin Delano Roosevelt included in a “Second Bill of Rights”).

Contributors ask how social citizenship bears on women's equal citizenship and how a focus on gender better informs understandings of social citizenship. Accounts of social citizenship have often focused on paid work as the avenue to citizenship, leaving out the contribution to citizenship made by the family work of women. Workplace accommodation of pregnancy remains a vexing challenge. Contemporary feminist accounts attempt to speak both of men's and women's right to economic security and to decent work and of a principle of governmental responsibility to support the important work of social reproduction undertaken when families care for children and other dependents. Is it possible to advocate social citizenship in a way that does not reinforce gender role stereotypes and gender inequality at home and at work? Is the persistence of gender role ideology a reason for the failure of a social citizenship ideal in the U.S.? Would social citizenship better be secured by shifting the perspective from a focus on discrimination against groups to a focus on privilege and how the state is structured in ways that positively protect or advantage some in society, while disadvantaging others?

**IV. Sexual and Reproductive Citizenship:** This category of "sexual and reproductive citizenship" examines how matters of sexuality and reproduction bear on women's citizenship. Sexual citizenship connotes ways in which citizenship has always been sexed; that is, belonging and inclusion depend upon adherence to an appropriate model of sexuality. Rhetoric about the vital link between strong families and a strong nation implies a powerful governmental interest in how citizens form and maintain families. Debates over marriage (particularly, same-sex marriage) and sex education have brought to the fore the more general question of government's interest in regulating sexuality and reproduction and the social institution of the family. How do such debates implicate women's equal citizenship and resistance to it (for example, how do single women feature as sexual subjects)? There has been an astonishing shift in recent decades toward beginning to include formerly excluded sexual subjects, such as gay men and lesbians, as equal citizens. The emergence of various critical theories of sexuality (such as Queer Theory) has invited the question of whether feminist theorists have offered adequate accounts of sexual and reproductive citizenship. Reproductive citizenship includes such questions as how a commitment to equal citizenship should shape understandings of reproductive justice and the ongoing debate over assisted reproductive technology? How do issues of racial inequality and economic inequality work in tandem with gender equality to shape reproduction in contemporary societies? How might visions of women's equal citizenship address these intersecting problems of inequality?

**V. Global Citizenship:** "Global citizenship" has many connotations. One is the notion of a form of citizenship developed by the norms of equality, and the obligations of states to foster such equality, embodied in international human rights treaties and international law. These human rights norms can then become a resource on which women's groups draw in their demands for equal citizenship under domestic law in such areas, for example, as reproductive freedom and protection against domestic violence. Another notion is that, today, persons may have multiple locations and may be at the margins of national citizenship, for example, the condition of women working in factories at the U.S.-Mexico border. Yet another aspect of global citizenship is how nongovernmental organizations devoted to securing women's equality have formed alliances across

national boundaries. Contributors address these issues, as well as such questions as how patterns of economic globalization as well as problems of war and displacement have shaped women's migration across borders. The invocation of redressing the plight of women as a rationale for military intervention has invited closer scrutiny of the risks of manipulating human rights rhetoric. Contributors also consider how both human rights norms and awareness of practices in other nations have shaped the efforts by Muslim women to challenge the most patriarchal interpretations of Islamic law and to secure equal rights.