

GENDER, CONSTITUTIONS, AND EQUALITY

A Global Comparison

Priscilla A. Lambert and Druscilla L. Scribner

Designed cover image: Martin Barraud

First published 2023

by Routledge

605 Third Avenue, New York, NY 10158

and by Routledge

4 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2023 Priscilla A. Lambert and Druscilla L. Scribner

The right of Priscilla A. Lambert and Druscilla L. Scribner to be identified as authors of this work has been asserted in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

ISBN: 978-1-032-30164-8 (hbk)

ISBN: 978-1-032-30161-7 (pbk)

ISBN: 978-1-003-30372-5 (ebk)

DOI: 10.4324/9781003303725

Typeset in Bembo

by Apex CoVantage, LLC

CONTENTS

<i>List of Figures</i>	<i>xi</i>
<i>List of Tables</i>	<i>xii</i>
<i>Preface and Acknowledgments</i>	<i>xiii</i>
1 Gendering Constitutions	1
<i>Priscilla A. Lambert and Druscilla L. Scribner</i>	
<i>Introduction</i>	1
<i>Why Constitutional Gender Provisions Matter</i>	3
<i>Gendering Constitutions: A Typology</i>	5
<i>A Mixed Methods Approach</i>	7
<i>Organization of the Book</i>	10
<i>References</i>	12
2 Why Constitutions Matter for Gender Equality	15
<i>Priscilla A. Lambert and Druscilla L. Scribner</i>	
<i>Introduction</i>	15
<i>Why Constitutions Matter for Gender Policy and Gender Equality</i>	16
<i>Theoretical Expectations</i>	18
<i>Enhances the Legitimacy of Rights Claims</i>	18
<i>Enables Policy Change</i>	19
<i>Provides Legal Tools and Arguments That Facilitate Litigation</i>	21

	<i>Comparing Constitutions and Gender Equality</i>	22
	<i>A Database of Constitutional Gender Provisions</i>	22
	<i>Gender Provisions Across Countries and Across Time</i>	24
	<i>Building a Typology of Gender in Constitutions</i>	27
	<i>Methods</i>	31
	<i>Quantitative Analysis</i>	31
	<i>Case Studies</i>	32
	<i>References</i>	34
3	<i>Constitutional Gender Provisions and Equality: Cross-National Evidence</i>	38
	<i>Priscilla A. Lambert, Druscilla L. Scribner and J. Kevin Corder</i>	
	<i>Introduction</i>	38
	<i>Gender Provisions and Mid-Range Outcomes</i>	39
	<i>Gender-Based Violence Provisions</i>	40
	<i>Reproductive Rights Provisions</i>	41
	<i>Workplace Protection and Equality Provisions</i>	42
	<i>Family and Customary Law Provisions</i>	43
	<i>Multivariate Analysis</i>	45
	<i>Measuring Gender Equality</i>	45
	<i>Egalitarian, Maternal, and Gender-Neutral Provisions</i>	46
	<i>Alternative Explanations and Control Variables</i>	49
	<i>Women's Mobilization</i>	49
	<i>Democracy and Constitution Age</i>	50
	<i>Judicial Independence</i>	51
	<i>Socio-Economic Development and Population</i>	51
	<i>Panel Regressions</i>	51
	<i>Robustness Checks</i>	53
	<i>Conclusion</i>	55
	<i>Chapter Appendix</i>	56
	<i>References</i>	59
4	<i>Gender Provisions, Rights Advocacy, and Policy Outcomes in Chile and Argentina</i>	61
	<i>Priscilla A. Lambert and Druscilla L. Scribner</i>	
	<i>Introduction</i>	61
	<i>Constitutional Provisions and Policy</i>	
	<i>Change—Expectations</i>	63
	<i>Enhances the Legitimacy of Rights Claims</i>	63

<i>Enables Policy Change</i>	63
<i>Provides Legal Tools and Arguments</i>	63
<i>Comparing Constitutions</i>	64
<i>Part I: Gender in the Constitution</i>	64
<i>Argentina</i>	64
<i>Chile</i>	66
<i>Part II: Gender Policy</i>	69
<i>Gender-Based Violence</i>	69
<i>Argentina</i>	70
<i>Chile</i>	71
<i>Workplace Equality</i>	73
<i>Argentina</i>	73
<i>Chile</i>	75
<i>Sexual and Reproductive Health</i>	77
<i>Argentina</i>	77
<i>Chile</i>	79
<i>Conclusion</i>	81
<i>References</i>	86

5	<i>Gender Provisions, Rights Advocacy, and Policy Outcomes in Botswana and South Africa</i>	89
	<i>Priscilla A. Lambert and Druscilla L. Scribner</i>	
	<i>Introduction</i>	89
	<i>Constitutional Provisions and Policy</i>	
	<i>Change—Expectations</i>	91
	<i>Enhances the Legitimacy of Rights Claims</i>	91
	<i>Enables Policy Change</i>	92
	<i>Provides Legal Tools and Arguments That Facilitate Litigation</i>	92
	<i>Comparing Constitutions</i>	92
	<i>Part I: Gender in the Constitution</i>	93
	<i>South Africa</i>	93
	<i>Botswana</i>	96
	<i>Part II: Gender Policy</i>	98
	<i>Family and Customary Law</i>	99
	<i>South Africa</i>	99
	<i>Botswana</i>	101
	<i>Gender-Based Violence</i>	103
	<i>South Africa</i>	104
	<i>Botswana</i>	106

x Contents

<i>Sexual and Reproductive Health</i>	108
<i>South Africa</i>	108
<i>Botswana</i>	110
<i>Workplace Equality</i>	111
<i>South Africa</i>	111
<i>Botswana</i>	113
<i>Conclusion</i>	115
<i>References</i>	121
 6 <i>Conclusion</i>	 125
<i>Priscilla A. Lambert and Druscilla L. Scribner</i>	
<i>Introduction</i>	125
<i>Constitutional Provisions and Gender Equality Gaps</i>	126
<i>Process and Outcomes—Comparing Across Regions</i>	127
<i>Legislating</i>	127
<i>Litigating</i>	129
<i>Connecting Qualitative and Quantitative Results</i>	130
<i>Constitutional Reform Efforts in Chile and Botswana</i>	132
<i>Lessons for Women's Rights Advocacy</i>	133
 <i>Appendix A: Coding Constitutions and Construction of Egalitarian and Maternal Provisions Scores</i>	 135
<i>Appendix B: Egalitarian and Maternal Constitutional Provision Scores, 1995–2015</i>	141
<i>Index</i>	148