

Keynote speech on the *International Conference on Comparative Legal Review and the Judicial Protection of Gender Equality*, 4-5 March 2021

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Abstract

On the 4th and 5th of March 2021 the International Association of Constitutional Law (IACL), Gender Equality Research Institute, scientific journal "Przegląd Europejski", AEQUITAS and The European Law Student's Association Ljubljana had organised the *International Conference on Comparative Legal Review and the Judicial Protection of Gender Equality*. "Przegląd Europejski" is proud to publish the articles on this important topic and the conference speech of the president of the IACL, professor Adrienne Stone, PhD, Redmond Barry Distinguished Professor, Melbourne Law School, University of Melbourne.

Keywords: gender equality, constitutional law, human rights.

Główne wystąpienie na międzynarodowej konferencji *International Conference on Comparative Legal Review and the Judicial Protection of Gender Equality*, 4-5 marca 2021

Streszczenie

W dniach 4-5 marca 2021 stowarzyszenie *International Association of Constitutional Law* (IACL), *Gender Equality Research Institute*, czasopismo naukowe "Przegląd Europejski", AEQUITAS oraz *European Law Student's Association* w Ljubljanie zorganizowały *International Conference on Comparative Legal Review and the Judicial Protection of Gender Equality*. "Przegląd Europejski" publikuje w niniejszym numerze artykuły związane z tą ważną tematyką oraz tekst wystąpienia Pani Prezydent stowarzyszenia IACL, prof. Adrienne Stone, Redmond Barry Distinguished Professor, Melbourne Law School Uniwersytetu w Melbourne z Australii.

Słowa kluczowe: równouprawnienie, prawo konstytucyjne, prawa człowieka

As a President of the International Association of Constitutional Law (IACL-AIDC), I was so pleased to receive the invitation and the opportunity to take part in *International Conference on Comparative Legal Review and the Judicial Protection of Gender Equality*.

Gender equality, and specifically its constitutional dimensions, are matters very close to my heart. More to the point, International Association of Constitutional Law recognises these issues as a central to the achievement of constitutional justice globally.

For more than 30 years, the IACL-AIDC has provided a forum for constitutionalists worldwide to exchange ideas and increase understanding of constitutionalism. Its overriding objective is to cooperate and work for the implementation of the aims of the Charter of the United Nations, and the Universal Declaration of Human Rights. Gender justice is a critical part of this mission, and it requires some out-of-the-box thinking. Constitutions are fundamental to the achievement of justice. They are the foundational laws of our societies. They structure our legal systems, and through their enormous symbolic power, they shape our cultures. Yet, in most times, and in most places, the story of the constitution is a story of exclusion. Historically, women have not been part of constitution making processes. In Australia, I live under a constitution drafted more than 100 years ago entirely by men. Women have not, by and large, been part of the judiciaries that interpret and apply constitutions. They have even been in the minority, or even excluded from the scholarly communities that form the important critical view on constitutionalism. Thus, in so far as constitutions structure our legal systems, build and reflect our cultures, all too often and all too consistently they reflect a structure and culture of gendered hierarchy.

However, at the same time, there is a proud history of constitutional scholarship that challenges this gendered *status quo*. Perhaps most important in constitutional terms is the development of ideas of substantive equality. That is, a conception of equality that focusses on how women's lives are really lived, and how they actually experience relationship to others rather than on formal notions of equal treatment. Along with this idea has come much improved understanding of how constitutional structures constitute that inequality.

In one of my fields of research, in free expression, it is feminist scholars who have shown how it is possible for speech to silence and exclude. And they have shown how women's subordination is constituted by expression. This critical scholarship has been done with a sense of urgency. Far from armchair criticism of the ivory tower, these scholars have sought to change the world for the better in their own lifetimes. There are few instances of practical impact of constitutional scholarship more significant than the work of feminist scholars of constitutionalism. I am thinking particular of the relentless advocacy of the idea of substantive equality by Catharine MacKinnon and others. Formal conceptions of equality continue to dominate in some places. However, the idea of substantive equality has had a massive impact especially in the constitutional law of South Africa, Colombia and Canada, which in turn are influential in the rest of the world.

I would like to impress that feminists have a proud heritage in constitutional law and scholarship. Feminist scholars and activists have the capacity to produce real change in own lifetimes. I realise that we are now living in ever more difficult times. The depressing and even frightening rise of populism and crumbling of democracy seems to be bringing with it a reactionary politics, threatening women's equality in everything from their

reproductive to their democratic rights. I also acknowledge that these problems are compounded by the circumstances of the pandemic.

Our joint task as feminist scholars of constitutional law is, therefore, as urgent as ever. In this your colleagues – whether they are close to you or are across the globe – are your most important sources support. Real change requires networks of women – critical, intellectually fearless, determined – who support each other. That is our best hope that the project of constitutional justice will continue to address its gendered dimensions. This conference, with its diversity of papers and many brilliant speakers is heartening sight in these difficult times.

Let me conclude by saying that I hope that the IACL-AIDC will continue to be a forum for the pursuit of these ideals and that you will all consider engaging with it. As an Association we aim to achieve gender equality in our own institutional structures. I am very proud to be only the second woman President of the IACL-AIDC and very happy that my leadership of the IACL-AIDC is not in the least an anomaly. Our Secretary-General and our First Vice President are also women as are a number of our Vice-Presidents are senior women scholars. We seek gender equality in all our activities, and we aim to provide a welcoming and inclusive environment for everyone. I encourage you to engage with the IACL-AIDC¹ as you pursue your commitment to scholarship, to gender justice. I would like especially to mention the Research Group on Gender and Constitutions² that is convened by under our auspices. In addition, I hope that you will consider membership of the Association³ and attending our World Congress in South Africa in 2022. Finally, you can engage with a wonderful community of scholars through our blog.⁴

Congratulations on this wonderful initiative.

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Adrienne Stone – doktor, profesor, Redmond Barry Distinguished Professor, pracuje w Wyższej Szkole Prawa Uniwersytetu w Melburnie (Australia). Jest prezydentem stowarzyszenia *International Association of Constitutional Law* (IACL-AIDC). Zainteresowania naukowo-badawcze: prawo konstytucyjne, równouprawnienie.

Received: 21.11.2021. Accepted: 07.12.2021.

¹ Information about the association can be found at the website: <https://www.iacl-aidc.org>.

² <https://sites.google.com/view/genderandconstitutions/home>

³ <https://iacl-aidc.org/index.php/en/members>

⁴ <https://blog-iacl-aidc.org>