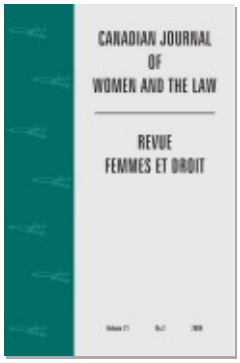
A Question of Scale: Justice, Citizenship, and Gender

Judy Fudge

Canadian Journal of Women and the Law, Volume 22, Number 1, 2010, pp. 267-276 (Article)

Published by University of Toronto Press



Book Reviews/Chroniques bibliographiques

A Question of Scale: Justice, Citizenship, and Gender

Scales of Justice: Reimaging Political Space in a Globalizing World
Edited by Nancy Fraser (New York: Columbia University Press, 2009)

Gender Equality: Dimensions of Women's Equal Citizenship
Edited by Linda C. McClain and Joanna L. Grossman (New York: Cambridge University Press, 2009)

Judy Fudge

How to measure justice is a focus of both Nancy Fraser's monograph, *Scales of Justice: Reimaging Political Space in a Globalizing World*,[1] and Linda C. McClain and Joanna L. Grossman's edited collection, *Gender Equality: Dimensions of Women's Equal Citizenship*.[2] The covers of both books depict a scale or balance. Fraser's cover also shows a compass, as she is concerned with engaging the scale as social geographers use it: "[A] geographic metric for representing spatial relationships." Her goal is to make a conceptual link between the two images of the scales of justice. Fraser considers how we understand politics and governance in a political and economic context in which the Keynesian-Westphalian state is not the exclusive site of legitimacy and authority.[3] This question troubles her because, as she explains, modern theories of justice assume the nation state as the pre-eminent space of politics. With the increased globalism of

I would like to thank the Social Sciences and Humanities Research Council for providing me with the opportunity to read and reflect on the two books that are the subject of my review.

1. Nancy Fraser, *Scales of Justice: Reimaging Political Space in a Globalizing World* (New York: Columbia University Press, 2009).
2. Linda C. McClain and Joanna L. Grossman, eds., *Gender Equality: Dimensions of Women's Equal Citizenship* (New York: Cambridge University Press, 2009).
3. Fraser, *supra* note 1 at 13 and 161, n. 1, where Fraser defines this term.

doi: 10.3138/cjwl.22.1.267

the world, citizenship has been beset by theoretical and political conundrums. Fraser's book implicitly questions whether citizenship continues to be a useful lens from which to address questions of justice. In their collection, McClain and Grossman, in part in response to criticism the adequacy of citizenship as a frame for justice, develop a multi-dimensional approach to citizenship in order to measure gender inequality.

While both books explore the broad theme of justice and citizenship in a globalizing world (Fraser's term), their approaches and levels of analysis differ. Fraser's approach is more general. It is a work of normative political theory and critical social theory. The preoccupation of her elegant analysis is the heterogeneity of justice claims, with which she also describes the incommensurability of different idioms of justice, as well as the boundaries of justice in a globalizing world. The book distills arguments that Fraser has advanced over the past ten years, often in the *New Left Review*, and it provides a multi-dimensional approach (redistribution, recognition, and representation) to the question of justice. It offers a closely argued analysis of what is required for justice in "abnormal" times—times in which the conventional grammar of claims making has been profoundly disrupted.[4] Although gender justice is not the specific focus of this book, Fraser uses the trajectory of the second-wave feminist movement in the United States as a case study to "deploy" the concepts she has developed to understand justice claims in the contemporary conjuncture.[5]

By contrast, McClain and Grossman focus specifically on gender equality, and they utilize the concept of citizenship because it is the common language for expressing aspirations to democratic and egalitarian ideals of inclusion, participation, and civic membership. They provide a very helpful introduction that identifies five dimensions of citizenship and justifies the use of this increasingly controversial term. The dimensions of justice provide the overarching themes around which the twenty wide-ranging chapters by researchers and scholars in law, political science, and women's studies who investigate facets of women's equal citizenship are organized. This book is both more specific and eclectic than Fraser's. It focuses on citizenship as the lens for evaluating whether women have achieved substantive equality and, as a whole, explores the constitutional, political, social, sexual and reproductive, and global dimensions of citizenship.

The goal of my brief review is not to provide a comprehensive assessment of the two books. Instead, I want to focus on how they join issue in order to evaluate their respective contributions to the question of gender equality in a globalizing world. To this end, I will briefly sketch Fraser's overall argument, highlighting several of the concepts she uses. I will then concentrate on her discussion of second-wave feminism as a bridge to my discussion of McClain and Grossman's collection. I will begin my discussion of their book by focusing on the introductory chapter, which presents the

4. *Ibid*. at 8.
5. *Ibid*. at 9.

overarching themes of the collection, and I will concentrate on the fifth part of the book, which is composed of the essays that deal with global citizenship.

Fraser is a critical theorist who blends descriptions of contemporary social movements' claims making with normative political theory. Her concern is justice in a globalizing world, and she builds on her influential book *Justice Interruptus*: *Critical Reflections on the "Postsocialist" Condition*, which is best known to feminists for two important contributions that shifted feminist debates and the feminist social imaginary during the 1990s.[6] The first, and broader, contribution is her mapping and conceptualization of the shift from redistribution to recognition as the central political demand in contemporary claims making.[7] Her distinction between redistribution and recognition, and especially her status-based, as opposed to identity-based, definition of recognition claims, was as controversial as it was influential.[8] The second is her conception of the universal caregiver as an alternative social imaginary to either the universal breadwinner or caregiver parity models as ideal types for replacing the male-breadwinner/female housewife model as the basis for the sexual division of labour in the twenty-first century.

Fraser's starting point in *Scales of Justice*, as in *Justice Interuptus*, is the shift in the grammar of justice claims in the contemporary world. In *Justice Interuptus*, Fraser focuses on the shift from redistribution (the economy) to recognition (culture) as the primary goal of social movements that challenge social subordination. In *Scales of Justice*, she considers the question of representation (politics): What is the proper frame for reflecting on justice? Whose needs and interests deserve consideration? Fraser claims that this question is the defining feature of justice in the globalizing world. The new salience of transnational politics and claims making, ranging from human rights activism to international feminism and the World Social Forum, has problematized the nationalist answer to the question of who is the subject of justice. According to Fraser, the frame of justice is now *the* question and site of political struggle. She believes that recognition and redistribution have been dwarfed by the intensified militarization and unilateralism of the United States' foreign policy, especially the invasion of Iraq and the so-called war on terror.

Fraser argues that the grammar of who—it was citizens within the nation state—has been taken for granted since the Second World War. Now it is the most challenging question, and one that is extremely political and rooted in the contemporary social context. According to Fraser, the problem is that social effectivity is no

---

6. Nancy Fraser, *Justice Interruptus*: *Critical Reflections on the "Postsocialist" Condition* (London: Routledge, 1997).
7. Fraser subsequently refined her analysis of recognition in "Rethinking Recognition" May/June 2000) New Left Review 3; and Nancy Fraser and Axel Honneth, *Redistribution or Recognition? A Political-Philosophical Exchange*, translated by Joel Golb, James Ingram, and Christine Wilke (London: Verso, 2003)
8. For a compilation of some of her critics and Fraser's response to them, see Kevin Olsen, eds., *Adding Insult to Injury: Nancy Fraser Debates Her Critics* (London: Verso, 2008).

longer contiguous with the state's territoriality as a result of the transnationalizing or globalizing dimension of neo-liberalism. Thus, the territorial nation state is no longer the appropriate scale of justice. It is no longer simply the "what" of justice that is controversial; it is increasingly the "who"—who can make justice claims.

Scales of Justice is concerned with the third dimension of justice, what Fraser terms representation or the political. While the two other dimensions of justice—redistribution and recognition—are political "in the sense of being contested and power-laden," representation is political in a more specific, constitutive sense, which concerns the scope of the state's jurisdiction and the decision rules by which it structures contestation. The political in this sense furnishes the stage on which struggles over distribution and recognition are played out.[9]

Representation establishes criteria for social belonging and, thus, for determining who counts as a member. It involves two levels of political injustice. The first level is internal to the scale or scope and involves the traditional or "ordinary" questions of political misrepresentation such as the relative merits of alternative electoral systems.[10] However, it is the second level of misrepresentation with which Fraser is concerned—the boundary-setting aspect of the political. She refers to this level as framing since it constitutes members and non-members and effectively excludes non-members "from the universe entitled to consideration within the community in matters of distribution, recognition and ordinary-political representation."[11] The question of framing, the meta-level of representation, is about what Hannah Arendt called the "right to have rights."[12] It is the injustice of misframing that globalism makes visible.

Having argued for the distinctiveness of a third dimension of justice—representation—which she conceptualizes at two levels, Fraser invokes the distinction between affirmative and transformative approaches to justice (which she introduces in *Justice Interruptus*) to discuss a third level of the politics of representation, which she calls the "politics of framing." The affirmative approach contests the boundaries of existing frames. It accepts the Westphalian grammar of frame setting and assumes the territory of the state. By contrast, in a transformative approach, the territorial space of the state does not provide a sufficient basis for answering the "who" of justice. Referring to Manuel Castells's distinction between the "space of places" and the "space of flows," Fraser notes how "the structural causes of many injustices in the globalizing world," including financial markets, "offshore factories," investment regimes, and global media, are not located within the territory of the nation state.[13] There is a need, she argues, for post-Wesphalian framing

9. Fraser, *supra* note 1 at 17.
10. *Ibid*. at 18.
11. *Ibid*. at 19.
12. *Ibid*.
13. *Ibid*. at 23.

and for an approach that seeks to supplement the state-territorial principle. The aim is not only to change the boundaries of the who but also of their mode of constitution.[14]

Social movements are challenging the frame-setting prerogatives of the nation-state and transnational elites in order to democratize the process of frame setting.[15] At this level, the question of misframing shifts from the "who" of justice to the "how," and it is what Fraser calls the "meta-political level of injustice."[16] Struggles against misframing reveal a democratic deficit in the globalizing world in which the majority of people affected by decisions of nation-states and transnational elites have no say. The meta-political struggle of representation is to design and to implement institutions that enable people who are excluded from participating in political decisions that shape their lives to participate as peers in creating the boundaries of political space.

Participative parity is Fraser's overarching normative principle, and it is what unites her three dimensions of justice. Justice is about dismantling obstacles to parity that are institutionalized in unjust social arrangements. Fraser provides a radical democratic interpretation of the norm of equal respect for, and autonomy of, all human beings. She provides a political conception of justice that is non-sectarian and that is compatible with a variety of different philosophical anthropologies and power asymmetries. Her critical-democratic approach to the how of justice in a globalizing world recognizes the double character—epistemic and political—of "who" questions.[17] Arguments about who is to be included in the frame "deploy knowledge claims about the nature of vulnerability and the extent of interdependence in a globalizing world," which, in order to adjudicate them, "requires a wide-ranging, open-ended mode of reasoning, in which the argument shifts back and forth among different levels and kinds of questions, some evidentiary, some interpretive, some normative, some historical, some conceptual."[18] However, the political dimension lies in addition to the epistemic dimension of the dispute over "who." Given that social and geographic locations are riven with disparities of power, interlocutors must disclose and contest the "interests and value commitments suffusing their claims."[19] Thus, Fraser's critical-democratic approach to the "how" combines two fundamental ideas: on the one hand, a critical-theoretical conception of the relationship between social knowledge and normative reflection and, on the other, a democratic political interest in fair public contestation.[20]

One result of such an approach to the "how" of justice in a globalizing world would be different frames for different questions. However, we still need a

14. *Ibid*. at 24.
15. *Ibid*. at 26.
16. *Ibid*.
17. *Ibid*. at 41.
18. *Ibid*.
19. *Ibid.* at 42.
20. *Ibid.*

normative principle in order to evaluate different frames.[21] In the chapter, "Abnormal Justice," which is a conceptual *tour de force*, Fraser evaluates three candidates that have been proposed for determining the "who" of justice—the membership principle, the humanity principle, and the all-affected principle.[22] Rejecting the first as ratifying exclusionary nationalism, the second as too abstract, and the third as unable to specify morally relevant social relations, she proposes the "all subjected" principle. According to this principle, "what turns a collection of people into fellow subjects of justice" is "their joint subjection to a structure of governance that sets the ground rules that govern their interaction."[23] Endorsing a broad understanding of "subjection to structure of governance," which encompasses relations of power of various types, Fraser claims that this principle affords "a critical standard for assessing the (in)justice of frames."[24]

Fraser provides normative principles for questions relating to the "who" and how of justice in a globalizing world. Her goal is to provide a conceptual and normative basis for transnational democratic institutions that avoid what Ulrich Beck so nicely termed "methodological nationalism."[25] She does not offer concrete proposals of institutional design. However, she does use her concepts and normative principles to diagnose contemporary social movements, and her "*zeitdiagnose*" of "some major transformations in the way feminists [in the United States] have imagined gender justice since the 1970s" is an excellent example.[26]

In Chapter 6, "Mapping the Feminist Imagination: From Redistribution to Recognition to Representation," Fraser is concerned to understand the forces behind, and the political implications of, the shift in the geography of feminist struggles away from the United States to transnational spaces such as Europe and the World Social Forum.[27] She relates the geographical shift to two others—the transformation in the ways feminists have thought about gender justice and the broader shifts in politics and post-war capitalism. This chapter exemplifies Fraser's ability to raise contentious political questions that cut to the heart of feminism's ability to articulate a transformative politics of gender equality in a globalizing world. Fraser asks difficult questions, and her critical history of feminism is not for the faint-hearted for she is not content to regard the stalemate in contemporary feminist politics as a consequence of a conservative backlash. She locates feminism's fading in the United States (and, arguably, in Canada as well) to political choices that feminists have made. She challenges the prevailing academic discourse

21. *Ibid*. at 63.
22. Abnormal justice refers to the disruption of conventional discourses about justice and the emergence of deep disagreements about the "what," the "who," and the "how" of justice claims. *Ibid*. at 8.
23. *Ibid*. at 65.
24. *Ibid*.
25. *Ibid*. at 143.
26. *Ibid.* at 100.
27. *Ibid*.

of feminism's trajectory as a narrative of progress in which the concerns of the excluded—lesbians, women of colour, and/or poor and working-class women—have been included. According to Fraser, this view of feminism's trajectory is both too internal, since it fails to link feminism with broader changes in the political economy, and self-congratulatory.

Fraser acknowledges that her historicized and critical account of feminism, which describes its trajectory in three phases—the new social movements of the 1960s, the identity politics of the late 1970s to the 1990s, and contemporary transnational politics—is both highly stylized and biased towards US/Canadian and western European feminisms. However, she runs these risks because her goal is to show how contemporary transnational feminism "portends a change in the scale of feminist politics that could make it possible to integrate the best aspects of the previous two stages in a new, more adequate synthesis."[28]

The most controversial, and what I consider to be the most insightful, aspect of Fraser's description of feminism's trajectory is her diagnosis of feminism's turn away from the economy to culture and identity politics, which occurred at the same time that neo-liberalism, which eschewed the politics of redistribution, became hegemonic. The shift in feminism from the broad perspective of phase 1, which sought to add questions of recognition to those of redistribution, to phase 2, in which questions of identity eclipsed questions of political economy, occurred within the larger historical matrix of post-communism and neo-liberalism. During the second phase, feminists' gaze was primarily internal, and thus (we) were slow to develop the resources "needed to fight for gender justice under new conditions."[29] According to Fraser, the Right "reaped the principal benefits of the cultural turn," and the Republicans used "an anti-feminist politics of recognition to conceal an anti-working-class politics of redistribution."[30] Moreover, she links the appeal of evangelical Christianity to increased insecurity. Although evangelicalism does not actually provide security, it gives people "a discourse and set of practices through which they can manage insecurity."[31]

Despite this dismal narrative, Fraser is heartened by the "strands of feminist politics that are now operating in transnational spaces."[32] Not only are they changing the scale of politics, these currents are crafting a synthesis of redistribution and recognition. She identifies the transnational political space around the European Union, various United Nations agencies, and the World Social Forum as sites for this third phase of feminist politics. Time will tell whether Fraser is overly optimistic about the possibility of this new feminist imaginary.

---

28. *Ibid*. at 102.
29. *Ibid*. at 108.
30. *Ibid*. at 110.
31. *Ibid*. at 111.
32. *Ibid*. at 112.

In light of Fraser's exploration of the injustice of misframing, one question that arises is whether citizenship is still a compelling idiom for claims making in a globalizing world. In their erudite and effective introduction, Grossman and McClain both defend and define an inclusive citizenship framework as a lens for evaluating the gap between formal legal equality and the substantive reality of gender inequality. Inspired by T.H. Marshall, they consider citizenship as a non-unitary and evolving concept.[33] They deploy the concept of citizenship because it is the common language for expressing the highest fulfillment of democratic and egalitarian aspirations. Equal citizenship connotes inclusion, membership, and belonging. However, as they note, historically it has been deeply gendered.[34] Thus, they build upon and critique Marshall's conception of citizenship. They note that "rather than abandoning the concept of citizenship, feminists made efforts to rechart the terrain by expanding understanding of the activities, practices, and locations of citizenship."[35] Grossman and McClain support this recharting and adopt this strategy to respond to contemporary criticism of the discourse of citizenship as exclusive rather than inclusive.

Grossman and McClain acknowledge the important critique that citizenship is an "inherently exclusionary concept" that reinforces the dichotomies between citizen and alien and citizenship and other.[36] However, they do not believe that it compels abandoning the citizenship framework, and they provide four reasons for retaining citizenship as their evaluative lens. First, they argue that using the citizenship frame for the book's task of assessing and advancing gender equality is faithful to the historical tradition in the United States of asserting citizenship-based rights in the struggle for gender equality. Second, they claim that gender equality as a political and constitutional commitment does not apply only to citizens—it also applies to aliens. Thus, their focus on "gender equality as measured by the yardstick of equal citizenship does not intend to leave out persons territorially present in the United States."[37] Third, they recognize the "citizenship-related confusions" that "ensue because of the tension between boundary-focused (or external) versus more aspirational (or internal) conceptions of citizenship."[38] However, given the extent to which citizenship is infused with enormous political and moral resonance and the fact that it continues to evolve, Grossman and McClain argue that citizenship need not be abandoned so long as these inevitably divided understandings are acknowledged. And, finally, they appeal to the notion of multiple dimensions of equal citizenship as a lens for assessing gender equality.

Grossman and McClain develop five dimensions of citizenship, which draw upon Marshall's initial typology of civil and political-to-social citizenship

33. Grossman and McClain, "Introduction," in McClain and Grossman, *supra* note 2 at 8.
34. *Ibid*. at 9.
35. *Ibid*. at 11.
36. *Ibid*. at 12 referring to Jennifer Gordon and Robin Lenhardt, "Rethinking Work and Citizenship" (2008) 55 University of California Los Angeles Law Review 1161, 1188–9.
37. *Ibid*. at 13.
38. *Ibid*.

(from formal to substantive equality) but adapt it to address gender equality. The five dimensions of citizenship are constitutional, democratic, social, sexual and reproductive, and global, and the book's chapters are organized around these dimensions. However, Grossman and McClain note that these dimensions overlap. Constitutional citizenship includes civil and political rights as well as the conflicts between different constitutional rights, such as, for example, between sex equality and religion. Democratic citizenship includes what Fraser terms "ordinary" questions of representation as well as biological citizenship. Social citizenship falls firmly within Marshall's classic typology and connotes "social rights to the material pre-conditions for effective participation in society."[39] Sexual and reproductive citizenship goes beyond Marshall's typology to consider how matters of sexuality and reproduction bear on citizenship. And, finally, global citizenship, which is increasingly relevant, "has many connotations."[40] One such connotation is the forms of citizenship developed by the norms of equality embodied in international human rights treaties and conventions, while another "aspect is the impact of globalization on persons as they cross national boundaries."[41]

Although these different dimensions of citizenship are a useful device for organizing twenty chapters that cover a wide array of topics that are raised in several countries—ranging from constitutional equality law, to stem cell research and abortion, gender quotas in politics, gender equality in tax law, heterosexual normativity in understandings of citizenship, to international human rights and gender equality—they are descriptive and not analytic. The descriptive nature of the dimensions is both their strength and weakness. This approach to the multivariate nature of citizenship allows the editors to capture a broad range of topics and approaches. However, inclusion comes at the cost of analytic clarity and precision.

The final part of the collection, "Global Citizenship and Gender," illustrates the strengths and weaknesses of Grossman and McClain's approach to citizenship as a lens for assessing gender equality. In "Women's Unequal Citizenship at the Border: Lesson from Three Nonfiction Films about the Women of Juárez," Regina Austin analyzes three documentaries about the murders of women in the border town of Ciudad Juárez. She explores how economic globalization and the proliferation of *maquiladoras* exposes women drawn to the region by economic opportunities to violence and death. Austin deploys the border to show how women's citizenship is compromised by globalization. She uses citizenship to capture the ability of women to enforce civil rights available to other citizens. By contrast, in her chapter "Domestic Violence, Citizenship, and Equality," Elizabeth Schneider uses citizenship as a metaphor for belonging, and she shows how domestic violence has emerged as a human rights issue at the national and international levels. Anisseh

39. *Ibid*. at 17.
40. *Ibid*. at 18.
41. *Ibid*. at 19.

Van Engeland-Nourai explores how citizenship is conceptualized in five Muslim countries and contrasts this "group" conception with the liberal approach to citizenship. In "On the Pathway to Equal Citizenship and Gender Equality: Political, Judicial, and Legal Empowerment of Muslim Women," she argues that Sharia principles have been used to interpret constitutional guarantees of equal citizenship for women in a way that undermines their civil and political citizenship. However, in "Gender and Human Rights: Between Morals and Politics," Deborah Weissman does not deploy any conception of citizenship. Instead, she examines how grassroots women's groups have successfully used international human rights norms. She also shows how hegemonic countries such as the United States selectively use international human rights norms to justify military intervention in other nations.

Of the four chapters that comprise the part of the collection devoted to global citizenship, only Weissman's chapter explicitly grapples with Fraser's concern with misframing and captures the transnational character of justice claims in contemporary society.[42] In fact, Weissman refers to Fraser's theory of "postwestphalian democratic justice." Moreover, Weissman is specifically concerned about the relationship between gender and justice at the transnational level. The fact that she does not use citizenship as a lens for evaluating the relationship between gender and justice suggests that the idiom of citizenship may be too attached to the Keynesian-Westphalian state to be of much help in analyzing normative claims in today's globalizing world.[43] *Scales of Justice* does not answer all of the questions related to gender and justice in a globalizing world; however, it offers an analytic framework and vocabulary that enables feminists to think clearly and critically about the relationship between gender and justice in these abnormal times.

42. Austin's chapter touches upon the question of justice in a globalizing world.
43. Weissman's chapter is one of four in the collection that does not refer to either citizen or citizenship in its title.