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BOOK REVIEW

Heather Douglas, Francesca Bartlett, Trish Luker and Rosemary Hunter (eds): Australian Feminist Judgments: Righting and Rewriting Law

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The feminist judgment 'movement'[1]—the re-writing of judgments in decided cases from a feminist perspective—was born out of frustration with the interpretation of the substantive law, disillusionment with traditional attempts to reform the law and impatience with the pace of efforts to increase judicial diversity.[2] This book was four years in the making and is the product of the Australian Feminist Judgment Project.[3] Rosemary Hunter (one of four of the book's editors) is also the editor of *Feminist Judgments: From Theory to Practice,*[4] which is the fruit of the England and Wales Feminist Judgment Project,[5] and there are similarities between the two texts' layout, methodology and theoretical approach.

However, whilst *Australian Feminist Judgments* is the third project of its kind,[6] the book does not assume prior knowledge of the literature, nor feminist legal studies for that matter and therefore it is to be commended for its accessibility and wide appeal. For example, as well as discussing the proliferation of national and

[1] See Davies (2012, 169).

[2] See Majury (2006).

[3] See Australian Feminist Judgment Project. http://www.law.uq.edu.au/the-australian-feminist-judgments-project. Accessed 30 January 2016.

[4] Hunter et al. (2010).

[5] See England and Wales Feminist Judgment Project. https://www.kent.ac.uk/law/fjp. Accessed 30 January 2016.

[6] The first project conducted was the Women's Court of Canada, http://www.thecourt.ca/decisions-of-the-womens-court-of-canada/. The second project conducted was in England and Wales, *supra* n 4 and 5. See also the more recent Northern/Ireland Feminist Judgment Project, http://www.feministjudging.ie/ and related forthcoming publication: Enright et al. (2016). Accessed 30 January 2016.

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transnational feminist judgment projects to date, the first chapter locates the project within the field of feminist jurisprudence generally and provides a helpful introduction to relevant academic debates, including judicial diversity and disruptive ideas about judging, whether women judges make a difference and—perhaps most controversially—whether feminism and the craft of judging are compatible or even achievable. Readers from different jurisdictions or disciplines are further assisted by an overview of the Australian federal system and a separate commentary on each Australian judgment featured within the collection, explaining its legal, social and historical context. The refreshing foray into hitherto untested areas for a project such as this, including judgments on tax law, consumer protection, environmental law, equity and immigration law, extends the book's appeal to subject-specialists.

The book adopts an inclusive approach to its methodology and methods; it is a gargantuan, collaborative effort from 58 contributors, spanning five Australian territories. The book is particularly enriched, and the law particularly 'righted', by Indigenous 'judges' re-imagining determinations regarding the treatment of Aboriginal peoples. Moreover, the inclusive approach to this collection extends to the acknowledgement that there are numerous feminist viewpoints and that the judgments featured could have been written in many different ways. Thus, the project seeks to suggest what the judgment or law *could* have been rather than what is *should* have been.

Therefore, the reader will not find a fixed definition of feminist judge or judgment advanced, nor a method for producing a sufficiently 'feminist' judgment. The alchemy of alternative judgment writing demonstrated herein is more nuanced and multifarious than the subject matter of the judgment selected for study or the identity of the judge; more complex than merely placing the 'complainant' at the centre of the judgment and more diverse than closely attending to or accentuating women's stories, although it may involve some or all of these attributes. It also includes embracing the minority or 'Other' viewpoint, revealing multiple experiences, and attempts to humanise the craft of judgment writing. The reimagined determinations are feminist insofar as they critique the selective nature of fact-construction; expose dominant discourses (whether patriarchal, colonial, sexist, racist or homophobic) and acknowledge counter-narratives in their social, historical, economic and political context. For one feminist and environmentalist, alternative judgment writing imbues a sense of nurturing and connection with nature and other living beings.[7] For another, it entails the eschewing altogether of an imposed, colonial common law system and related judicial methodologies and methods.[8]

Perhaps one of the core strengths of this work is that contributors were bound by judgment writing conventions in an attempt to produce authentic and legally plausible judgments. During the re-writing process judges were bound by stare decisis and the available law, research data, judicial notice and knowledge at the time of the original decision. As a result, judgments in particular courts could only be re-written as dissenting judgments and could not change the original outcome.

[7] See Chapter 9, 136.

[8] See Chapter 3, 53.

Other reimagined decisions agreed with the original outcome, verdict or order but used the opportunity to advance a different rationale. In this respect, the book achieves 'feminist goals within the parameters of existing legal principles and practice'[9] whilst also presenting an illuminating exposé of judicial process and methods. Moreover, it demonstrates how *the way* in which judgments are written, the 'truths' portended and narratives advanced, have the power to profoundly affect and influence, whatever the outcome of the case may be.

That said, in a limited number of cases 'procedural adjustments' are made which are not (yet) possible and are therefore clearly fictitious but also more interesting as a result.[10] Therefore the strength of this book, and also to some extent its weakness, is that it lies within the realm of judicial possibility or imagination. These re-imagined judgments are therefore truly minority opinions, in the sense that they are dissenting judgments without binding authority, as well as opinions held by the minority. Nonetheless, the purpose of this book's methodology is to show how, despite constraints, feminist judgments may work in practice; how, a minority opinion, albeit non-binding on the court when first spoken, may one day become the orthodoxy.[11]

Thus, *Australian Feminist Judgments* succeeds in producing an honest portrayal of the possibilities, limits and implications of a feminist approach to legal decision-making. It is an exercise in consciousness-raising, predominantly designed to educate and to change legal discourse.[12] Far from claiming to be the feminist socio-legal panacea, this movement may be viewed as one aspect of a plethora of complementary measures designed to systematically address feminist concerns in a positive way. This collection contributes to the literature by reinforcing the proposition that, not only *can* judges be feminist, rather, that the bench is enriched by judges who *are* feminist. While the locus of this work is Australia, it is of universal appeal because of the themes it explores, the insights it provides and the activism it inspires: speaking as much to judges and the legal profession about judging and legal method as it does to feminists about feminism. Although the commentaries with their judgments are meant to stand alone, to be consulted at will and in no particular order, this book could have benefitted, in my view, from a concluding chapter, making tentative observations on the future development of the movement and to distinguish the implications of this project for policy makers.

[9] Chapter 1, 8.

[10] See Chapter 11, 179, where Heron Loban envisages an Indigenous judge also sitting with the presiding judge in the Federal Court in *ACCC v Keshow* [2005] FCA 558, and Chapter 27 in which Nicole Watson's re-imagined judgment *Djappari (Re Tuckiar)* [2035] FNCA 1 is set in the imaginary Indiginous First Nations Court of Australia.

[11] Hale (2008).

[12] For the educational opportunities presented by feminist legal judgments in higher education teaching see Hunter (2012), Duncan (2012), Koshan et al (2010).

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