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Scottish Feminist Judgments: (Re)Creating Law from the Outside In. Oxford: Bloomsbury, 2019. 440 pp.

The Feminist Judgments Project (FJP) was conceived by the Women’s Court of Canada (WCC), formed in 2004 as a shadow court to rewrite Supreme Court of Canada decisions from feminist perspectives. Replicating judicial form and voice, and following applicable rules of evidence and precedent, the WCC aimed to show that Supreme Court decisions could legitimately have been reasoned or decided differently.¹ Since the first six judgments were published by the WCC in 2008, rewritten feminist judgments have now been published in other jurisdictions, including England, Wales, Northern Ireland, Ireland, Australia, New Zealand, and the United States.

Every feminist judgments project is unique, each aiming to impact its own national legal terrain. Recently published *Scottish Feminist Judgments: (Re)Creating Law from the Outside In* presents sixteen rewritten Scottish judgments, each accompanied by commentary from an expert and a reflective statement from the judgment writer. Five men are included among the nineteen judgment writers and sixteen commentators. Judges selected their own cases, spanning a diverse range of topics, applying substantive and methodological feminist interventions. The judgments are grouped under four headings: crime, victimisation, and violence; family, home, and belonging; relational duties, equality, and discrimination; and citizenship, culture, and protection. This contribution to the FJP also adds seven works from Scottish artists, included to transcend the textual format familiar to lawyers and legal academics and make the project more accessible outside the legal community. The artistic works can be accessed via a virtual exhibition hosted on the Scottish Feminist Judgments Project website.²

A central focus of this book is a feminist concern as pressing now as it was when the WCC was formed almost two decades ago: how to fully represent women’s experiences within standard legal methods. No rewritten judgement more clearly demonstrates how the application of common law rules and reasoning obscure women’s lived experiences than *Drury v HM Advocate*, a case dealing with the sexual infidelity exception to the partial defence of provocation. In this case, an accused male violently assaulted and killed his former female partner after finding her with another man. In her rewritten judgment, Claire McDiarmid points to the unprincipled expansion of the defence of provocation in Scots Law, which, in the case of sexual infidelity, required only that an accused had learned of infidelity and killed under impulse or passion. The policy question this feminist judge raises in her rewritten judgment is whether the law *should* continue to place “such a high

¹ Jennifer Koshan, “Impact of the Feminist Judgment Writing Projects: The Case of the Women’s Court of Canada,” *Oñati Socio-legal Series* 8, No. 9 (2018): 1325.

² See <www.sfjp.law.ed.ac.uk/virtual-exhibition/>.

mitigatory value on the jealous rage generated by the discovery of sexual infidelity,” an exception originally developed to protect men’s honour and property. It is possible, she reasons, for parties to the same relationship to hold a different view of its nature. She suggests the sexual infidelity exception is now both out of step with social norms and also disproportionately available to male accused, who are much more likely than their female counterparts to kill an intimate partner. Demonstrating the added power of accompanying the rewritten judgment, which replicates the original in form and voice and follows rules of evidence and precedent, with a reflective statement, McDiarmid is able to contextualize the lived experience of the victim. The accused had been stalking and harassing the victim for almost two years after she ended their violent relationship. He had five breach of the peace convictions for his stalking and killed the victim while serving a deferred sentence for one of those convictions. None of these facts appear in the original judgment, instead emerging during the later debate in the Scottish Parliament on a petition presented by the victim’s family about the treatment of crime victims.

Taken together, the rewritten judgments gathered under the heading “Family, Home and Belonging” illustrate the wide-ranging goals and processes of feminist judging and the range in feminist perspectives now included within the project. In the first two cases, feminist judges use gender neutrality to trouble dominant narratives about gender and heteronormativity integral to decisions about marriage and access to children following the breakdown of marriage. In the third case, however, when contending with the economic consequences of the breakdown of marriage, the commentator observes that the key question is whether “a gender-neutral statute can accommodate appropriately the disparities that arise from a gendered and discriminatory society,” exposing the tension between gender neutrality and the possibility of correcting for gendered structural experiences. In the fourth case, addressing questions of how family relationships themselves may be conceptualized, the commentator cautions against replacing patriarchal assumptions with individualistic ones, suggesting that any understanding of family relationships should be drawn from the subjective experiences and narratives offered by those party to them. The final judgment in this part directly addresses the issue of how to mediate collective versus individual interests using a non-gendered dispute about the use and management of property owned in common.

The original aims of the FJP were to spark “a broader, public conversation about the operation of law and judicial power, and to bring to the fore the emotive, visceral and human dimension of legal judgments.”³ What this contribution makes visceral is how wide-ranging contemporary feminisms now are. If the original judgments are understood to yield to one way of seeing the world, through the application of so-called patriarchal methods, the rewritten judgments offer not one contrasting way of seeing the world but, rather, a growing range of ways of seeing the world. It is possible to imagine one of the rewritten judgments rewritten yet again, through a different feminist lens, perhaps altering the outcome, perhaps

³ Vanessa E. Munro, “Feminist Judgments Project at the Intersection,” *Feminist Legal Studies* 29 (2021): 251 at 253.

altering the reasons, in both cases using existing legal methods to arrive at a preferred procedural or substantive result. Each feminist judgments project is unique. Because of the breadth of feminist perspectives and approaches, this one has the potential to spark a different conversation about the operation of law, judicial power, and the critical lenses we apply to them than originally contemplated by the WCC.

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