

Scottish Feminist Judgments: (Re)Creating Law from the Outside In
Sharon Cowan, Chloe Kennedy and Vanessa Munro (eds.), Hart Publishing,
2020

This edited collection needs no introduction, and this review is somewhat belated given it was published in 2020. Now that the release from lockdowns have allowed many of us the headspace to re-engage with academic writing, it seemed apt to revisit this collection. Returning to this work after some time has allowed me to reflect on both the value and legacy of this project, and on how the pandemic has changed how we might utilise and apply this scholarship in ways that we might not have previously. As such, I have drawn not only on my own reading and views of this collection, but those of my students after we used this as a teaching resource.

Following from several Feminist Judgment Projects, the Scottish Feminist Judgments Project was launched not only to explore Scots law through a feminist lens, but to bring together academics, practitioners, artists, and activists to develop a holistic and innovative approach to rethink law and centre women's voices and identities within law. The project produced not just this collection of feminist judgments of key Scottish cases, but also offered a creative space for dialogue through workshops and exhibits.

For those unfamiliar with feminist judging, the original Feminist Judgments Project was conceived in Canada ('The Women's Court of Canada')¹ to rewrite Canadian Supreme Court decisions to show how feminist legal theory and understandings could legitimately be adopted by judges to reach alternative decisions in key cases. Since the first rewritten judgments were produced, the methods and aims have been adopted in various jurisdictions that have each rewritten cases central to that jurisdiction,² as well as feminist judgments related to specific bodies of law.³ The aim of feminist judging is to rethink how we do legal reasoning and how law might operate differently if freed from the binary constraints that it was developed in.⁴ As the editors state:

¹ See the 'Special Issue: Rewriting Equality' (2018) 18 *Canadian Journal of Women and the Law*.

² See e.g. A Chandra, J Sen and R Chaudhary, 'Introduction: the Indian Feminist Judgments Project' (2021) 5 (3) *Indian Law Review* 261, M Enright et al (eds.), *Northern/Irish Feminist Judgments: Judges' Troubles and the Gendered Politics of Identity*, (Hart, 2017) and T H Douglas, F Bartlett, T Luker and R Hunter (eds.), *Australian Feminist Judgments: Righting and Rewriting Law*, (Hart, 2014).

³ L Hodson and T Lavers (eds.), *Feminist Judgments in International Law*, (Hart, 2019).

⁴ See R Hunter, C McGlynn, E Rackley (eds.), *Feminist Judgments: From Theory to Practice*, (Hart, 2010).

Taking on the judicial mantle, feminists who have contributed to these projects have set out to reimagine and recreate the law from the outside in, unmasking the choices that judges make when applying the law, and offering alternative visions of what would have been possible, even while bound by the conventions and precedent, state of knowledge, and structures of judicial decision-making that existed at the time of the original judgment.⁵

The Scottish Feminist Judgments Project follows in this tradition offering alternative judgments, powerful commentaries and reflexive statements on key cases that underpin Scots law and will be familiar to many readers. The conceit exposes not only law's masculine nature, practices, and methods, but also shines light on the absence of female voices in law, and the injustice and inequality that this can perpetuate. Where the Scottish project goes further is by providing these reflexive statements that asked the judges to reflect on the process of feminist judging. These are instrumental in humanising the judges and offer key insight into the challenges and catharsis of writing judgments.

The collection offers feminist judgments on sixteen Scots law cases. Each judgment is accompanied by a commentary and a reflective statement. The contributors are drawn from across Scotland (and beyond), including legal academics, ethicists, activists, artists, practitioners, and judges. The collection begins with an introduction to feminist judging and sets out the aims, methods, and scope of the Scottish project. Chapter 1, 'Through the Looking Glass? Feminist Praxis, Artistic Methods and Scottish Feminist Judging', by the editors, provides an instructive and immersive introduction to feminist judging and recounts the challenges that they faced in seeking to depart from legal orthodoxies.⁶ Chapter 2, 'Devolving Dictum? Legal Tradition, National identity and Feminist Activism' grapples with Scotland's particular legal identity and history and the editors acknowledge the difficulty of both stepping away from, and at the same time embracing, Scotland's national and legal identities.⁷ The collection is then divided substantively into four parts. Part 1 considers judgments related to crime, victimisation, and violence.⁸ Part 2 cases relating to family, home and belonging.⁹ Part

⁵ p. 1.

⁶ pp. 1-18.

⁷ pp. 19-36.

⁸ Chapters 3-6.

⁹ Chapters 7-11.

3 considers relational duties, equality, and discrimination.¹⁰ Part 4 covers citizenship, culture, and protection.¹¹ The rewritten judgments cover cases such as *Smith v Lees*,¹² *Drury v HM Advocate*,¹³ *White v White*,¹⁴ and *Greater Glasgow Health Board v Doogan*.¹⁵ As the editors acknowledge, the collection does not just focus on cases that instinctively lend themselves to rewriting or those explicitly dealing with gender. As such, a variety of topics are covered that brings the feminist lens to bare on not only criminal law, family law and discrimination law, but commercial law, property law, housing law and land law.

The collection also includes artists' statements which introduce the reader to the art works that were developed for the wider Scottish Feminist Judgments Project and were exhibited in various spaces and virtually. The artists brought their own interpretations of the original and rewritten judgments to their work, and one of the key themes to emerge is injustice. As the editors have subsequently reflected: 'By physically embodying law and legal concepts through gestures and images, our contributors were guided to show in an immediate and visually arresting way how legal norms and concepts are, or can become, powerful and persuasive but also are, ultimately, open to challenge, resistance and transformation.'¹⁶ The inclusion of the artistic works and the haunting photos of the editors provides both personalisation, but also a depth and permanence to the collection.

While the wider Scottish Feminist Judgments Project and the collection itself followed the well-used template for feminist judgments, the Scottish Project breaks new ground. It offers a holistic and fully immersive critique of Scots law, and the editors and contributors are to be commended for their thoughtful approach that constantly seeks to question and relearn, not only how we 'do' law, but who we exclude when we do so. The collection works both as an instructive introduction in feminist legal methods but will also be a useful commentary and critique in individual strands of legal teaching where academics and practitioners may wish to read the rewritten judgments alongside the originals.

¹⁰ Chapters 12-15.

¹¹ Chapters 16-18.

¹² 1997 SCCR 139.

¹³ 2001 SLT 1013.

¹⁴ 2001 SC 689.

¹⁵ [2014] UKSC 68.

¹⁶ S Cowan, C Kennedy and V Munro, 'Seeing Things Differently: Art, Law and Justice in the Scottish Feminist Judgments Project' (2020) 10 (1) [Feminists@Law](#).

Some might question the value of feminist judgment or dismiss it as a niche project. However feminist judgment offers us a gateway into the imaginary of how law can be unlearned and rethought. Thus, this collection can serve as a tool kit for future lawyers and a rewriting of historical wrongs. Chloe Kennedy's judgment, for example, rewrites one of the most explicit injustices that the law perpetuated on women by redressing the wrongs of *Jex-Blake v Senatus Academicus of the University of Edinburgh*.¹⁷ The pursuer was a woman who had attended medical lectures at the University of Edinburgh but was unable to graduate as the University would not confer degrees on women despite allowing them to enter the university.

Therefore, the collection is a necessary and welcome addition to any law student's education and offers invaluable insight for practitioners and academics alike. As a book, this collection is a worthy addition to the foundational texts of Scottish legal scholarship. However, it is difficult to explore the judgments without gaining a sense of the wider aims of the Scottish Feminist Judgments Project, which were not simply to add women's voices, but to reimage what truly feminist legal reasoning might look like. As such, this collection is less a study and critique of key cases, and more of a manual for engaging with Scots law in a wholly new way. The project's legacy has been to create a toolkit for feminist judging as a way to challenge doctrinal orthodoxies in law. Students may initially find such activities challenging, but engagement with this collection and the wider project materials has allowed them the space to develop their own critiques of caselaw.

This is a worthy collection that deserves to be centred in legal education and practice. It shows us the potential, but also the seduction of law. It has created a space to reimagine what law might be.

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¹⁷ (1873) 11M 784.