Books

Feminism and Dolls' Houses (Review Essay)

THE HIDDEN GENDER OF LAW by Regina Graycar and Jenny Morgan, Federation Press, 1990, 464pp, $45, ISBN 186287 0 411

JENNIFER HILL and PATRICIA LOUGHLAN*

Out of the ash
I rise with my red hair
And I eat men like air.

Sylvia Plath, *Lady Lazarus*.

They belong here in their own quenched country.
I had forgotten nice women could be so nice,
smiling beside large sons on the makeshift quay,
frail, behind pale faces and hurt eyes.

Their husbands are plainly superior, with them, without them.
Their boys wear privilege like a clear inheritance, easily.

Anne Stevenson, *By the Boat House, Oxford*.

This is the one song everyone
would like to learn: the song
that is irresistible:

the song that forces men
to leap overboard in squadrons
even though they see the beached skulls ...

Shall I tell you the secret
and if I do, will you get me
out of this bird suit?

... This song
is a cry for help: Help me!
Only you, only you can,
you are unique

at last. Alas
it is a boring song
but it works every time.

Margaret Atwood, *Siren Song*.

In spite of the explosion of feminist legal writing in the last decade or so, recognition of the ways in which laws may discriminate against women and contain covert stereotypical images of women,[1] like those described or parodied in the poems above, is by no means new.

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* Senior Lecturers, Faculty of Law, University of Sydney.

1 See Alcoff, L, "Cultural Feminism Versus Post-Structuralism: The Identity Crisis in Feminist Theory" (1988) 13 *Signs* 405 at 406, who contrasts the way in which women have

A particularly vivid portrayal of this gender divide is to be found in Ibsen's play, *A Doll's House*, first published in 1879.[2] At the beginning of the play, we find the central character, Nora, leading a protected and claustrophobic existence under the aegis of her lawyer husband, Torvald Helmer. Helmer constantly addresses his wife in diminutives — "my little skylark", "my little squirrel", "my little featherbrain" — and forbids his "Little Sweet-Tooth", herself the mother of three, from eating macaroons.

In spite of Nora's comments to Helmer that "I wouldn't do anything that you don't like" and "I can't do anything without you to help me", we discover that all is not as it appears in the household. At an earlier time when Helmer was gravely ill, Nora had, without his knowledge, borrowed a large sum of money and taken him abroad to recover. To circumvent the law, which discriminated against women by requiring that their husbands or fathers should act as surety for the loan, Nora had forged the signature of her dying father.

It is the discovery by Helmer of Nora's earlier act that leads to the crisis in the play and demonstrates the characters' divergent perspectives on what has occurred. For Nora, her motive of acting to save her husband's life is all important and she expresses the view that a law not concerned with motives "must be a very stupid law".[3] For Helmer, on the other hand, the law brands Nora "a liar, a hypocrite — even worse — a criminal" and makes her unfit to bring up their children. According to Helmer, "nearly all young men who go to the bad have had lying mothers". "Why only mothers?" asks Nora.[4]

The conflict presented by Ibsen might be seen as a precursor to the claim by some feminists that men and women reason differently in moral and legal matters. The claim is that women avoid abstract and universal principles in favour of more specific, factually based analysis, that they look into the particular circumstances and context of a problem for insight into its appropriate resolution. Carol Gilligan, in particular, has pointed to that mode of moral reasoning as one which is especially consonant with the female voice.[5] Ibsen's goals of exposing and confronting some of the underlying assumptions about women in society[6] also seem closely aligned to those of modern feminist

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been "defined, delineated, captured" through stereotyping, with the traditional philosophical picture of man as "free-willed subject" with limitless possibilities.

2 All references to *A Doll's House* in this review essay are taken from Ibsen, H, *A Doll's House and Other Plays*, translated by Peter Watts (1965).

3 Id at 175.

4 Id at 179.

5 Gilligan, C, *In a Different Voice: Psychological Theory and Women's Development* (1982). See also Menkel-Meadow, C, "Portia in a Different Voice: Speculations on Women's Lawyering Process" (1985) 1 *Berkeley Women's LJ* 39. For historical antecedents to the "different voice" approach, see Weisbrod, C, "Images of the Woman Juror" (1986) 9 *Harv Women's LJ* 59. For a recent reassessment of Carol Gilligan's work and the related "strategy of difference", see Frug, M J, "Progressive Feminist Legal Scholarship: Can We Claim 'A Different Voice'?" (1992) 15 *Harv Women's LJ* 37.

In *A Doll's House*, Nora says to Helmer "All I know is that I think quite differently from you about things; and now I find that the law is quite different from what I thought, and I simply can't convince myself that the law is right. That a woman shouldn't have the right to spare her old father on his deathbed, or to save her husband's life! I can't believe things like that" at 228.

6 Ibsen also looks at sexual relations between men and women. Helmer says to Nora "I shouldn't be a proper man if your feminine helplessness didn't make you twice as attractive to me" at 223. Cf MacKinnon, C A, "Sexuality, Pornography and Method: 'Pleasure

scholars who seek to expose ways in which rules of law, in their generality and apparent neutrality, mask the gender biases of those who design, apply and benefit from the rules.

Feminist enquiry can be both disturbing and profoundly challenging in its refusal to accept the conventional as the natural or the right. At the end of Ibsen's play, Helmer, now satisfied that Nora's act can never publicly be known, announces his forgiveness of her and attempts to revert to their previous skewed relationship. Nora however rejects this option and calmly announces that she is leaving — her husband, her children, the doll's house. So shocking did contemporary audiences find this denouement, that Ibsen was forced to rewrite the ending for performance in Germany.[7] Conservative sensibilities were assuaged in this new version, where Nora, forced by Helmer to look at her sleeping children, collapses, unable to carry out her resolve to leave the house.

Feminist legal scholarship today is still confronting the stereotypical images of women that often underlie the law and claiming legitimacy for the perspective of women. This pursuit no longer scandalises in the way that Ibsen's play did in 1879. As Katharine Bartlett states, there has been an "enormous transformation in thinking about women that the empirical challenge to law, in which all feminists have participated, has brought about".[8] Nonetheless, the transformation is certainly not complete and stereotypical assumptions about women and their relationships with men have a habit of resurfacing.[9]

The changes wrought by feminist scholars, working towards a renewal and transformation of the existing legal order, in the last decade have been substantial.[10] They have created a supple and exciting jurisprudence, shot through with rule-scepticism, at odds with rhetorical commitments of legalism and insistent that the expression of adjudicative rationality ought to be attuned to context and conscience. And there is the goal of revealing missing or suppressed points of view, the search for covert gender bias. The jurisprudence is as yet sufficiently disparate and dynamic as to resist attempts to isolate and define its central tenets and there is by no means a consensus among feminists on the best approaches to a wide array of issues such as child custody, pregnancy in the workplace, apparent sexist practices in some traditional societies and migrant communities, and pornography. Clearly then, use of feminist perspectives in law will be a continuing and refining process.

Under Patriarchy" (1989) 9 *Ethics* 314 and Atwood, M, *Siren Song*, above.

7 This rewriting was viewed by Ibsen as "an act of barbarous violence against the play" (Introduction to *A Doll's House* at 18).

8 Bartlett, K T, "Feminist Legal Methods" (1990) 103 *Harv LR* 829 at 871.

9 This is demonstrated by recent comments of a number of Australian judges. Bollen J, for example, said that a man could use "a measure of rougher than usual handling" to pursuade his wife to have intercourse. (See Director of Public Prosecutions, Ref No 199.) The transformation in thinking about women is perhaps demonstrated however by the public outcry over judicial comments of this type.

10 See Sunstein, C R, "Feminism and Legal Theory" (1988) 101 *Harv LR* 826 for a discussion of the impact that feminism has had on legal theory generally.

Against this backdrop and the expectations which are generated by it, *The Hidden Gender of Law* by Regina Graycar and Jenny Morgan is clearly a timely and significant addition to legal texts in Australia.

The authors of *The Hidden Gender of Law* describe the book as both a "law book" and a "book about law" (p6) and as neither a textbook nor a casebook but a mixture of the two (p12). They disclaim any attempt to break new feminist theoretical ground with this book; rather its stated purpose is one of applying existing feminist theory to "the concrete instances of women's encounters with law" (p6). In keeping with its stated purpose, the book never challenges but only assumes its basic premises. It thereby sacrifices the possibility of dialectic and is, in consequence, oddly enough, a rather safe and low-risk book.

The failure to explore challenges to basic premises is surprising from another point of view. Adopting this approach suggests that readers of the book accept these basic premises as dogma. Yet, the book is clearly aimed at a student audience (p9)[11] — a group about which one should arguably not make this assumption. If the assumption is made that readers of the text will accept the basic premises as dogma, then surely the authors run the risk of preaching to the converted in a way that marginalises feminist study in law schools.[12]

The book comprises an extensive collection of extracts from various sources, stitched together by a narrator who seems to be a combination of helpful guide and bossy teacher. The reader is frequently exhorted to bear certain things in mind while reading certain other things, in a way which may be off-putting to the general reader but which might go unnoticed, or even be welcomed, by students who are, after all, accustomed to being instructed. However, for us, this technique, coupled with continual foreshadowing of things later to come in the book, created a sense of disjointedness, rather than cohesion.

The book is divided into five parts: I A Framework, II Women and Economic (In)dependence, III Women and Connection: A Motherhood Issue, IV Injuries to Women, V An Agenda for Gender. A wide array of material is presented within this structure, some of it Australian, and there are comprehensive references to other feminist writings for further reading in particular areas. Indeed, so comprehensive are some of these footnoted references, that they might be rendered less amorphous and more helpful by the insertion of brief descriptions of the different positions taken by the various feminist legal scholars referred to in the footnote. There is an introduction to each chapter of each Part of the book. These introductions, which map out the course of each chapter, add to the didactic tone of the book. However, they tend to be repetitious and cluttering, at times overshadowing the substance of the sections. They could easily be jettisoned without injury to the book as a whole.

There are other troublesome aspects of *The Hidden Gender of Law*. In outlining the structure of the book, the authors tell us that they "discuss and criti-

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11 According to the authors, the book is designed as a text in a specialised course in feminist jurisprudence or feminist legal theory and may also be of interest to those seeking to examine particular legal issues through feminist debate.

12 The authors of *The Hidden Law and Gender* refer to this concern, expressed by Mossman, M J, in the teaching of specialist courses in feminism (p9).

cise traditional 'malestream' doctrines and categories" and that the book "attempts to provide an alternative (and concrete) way of dealing with legal problems as they are experienced by women"(p6). The use of pun in the reference to "malestream" law may, on one level, be regarded as mere playfulness. On other levels, however, it is revealing and far more problematic.

For a start, the mainstream/malestream assimilation suggests a monolithic and non-controversial character to traditional legal doctrines, against which feminist legal analysis can be clearly contrasted. Yet, what constitutes mainstream legal scholarship cannot be regarded as obvious or non-controversial, nor can it be automatically identified with "maleness". As Kathryn Abrams states, "[d]efining mainstream scholarship is, of course, a difficult task".[13]

The "malestream" tag has the unfortunate consequence of suggesting that some very clear and simple dichotomy exists between "male" and "feminist" law and methods. That this is not so is nonetheless apparent from the description by the authors themselves as to what marks their work out as "feminist". The authors state "[w]hat characterises our approach as feminist and what distinguishes it from most other jurisprudential work is our commitment to context and to the constant use of specific examples" as opposed to the "highly abstract" nature of much jurisprudential scholarship (p6). Legal directives in the form of rules and a legal order characterised by the rule of law fail, according to this line of feminist thought, to embody or reflect the distinctive moral reasoning patterns and different ethical voices of women. Women are thus viewed as having been pushed aside by the discursive practices of the Anglo-Australian legal system.

Yet in some ways, the common law can be regarded as the zenith of "commitment to context" and focus on the individual parties in the case[14] and recent work in experiential narrative has been viewed by some as a revival of the common law tradition.[15] And certainly the history of the equitable jurisdiction embodies a tradition of judicial insistence upon the relevance and result-determining power of the particular circumstances.[16] There has always been a tension in law between rule-specificity and greater flexibility through standards. As Katharine Bartlett states, "[a]ll major forms of legal reasoning encompass processes of both contextualization and abstraction".[17] It has also recently been argued that divisions in particular cases between judges on the US Supreme Court can be traced to different methods of reasoning — a deeper division over the choice of rules or standards.[18] Thus, rather than

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13 Abrams, K, "Hearing the Call of Stories" (1991) 79 *Cal LR* 971 at 975.

14 See, eg, Bartlett, R, "Mabo: Another Triumph for the Common Law" (1993) 15 *Syd LR* 178 and Detmold, M J, "Law and Difference: Reflections on Mabo's Case" (1993) 15 *Syd LR* 159.

15 See Scheppele, K L, "Foreward: Telling Stories" (1989) 87 *Mich LR* 2073 and Abrams, K, above n13 at 976.

16 Lord Ellesmere, writing in the early seventeenth century, stated "The cause why there is a Chancery is for that men's actions are so diverse and infinite that it is impossible to make any general law which may aptly meet with every particular act and not fail in some circumstance" (*Earl of Oxford's Case* (1615) 1 Ch Rep 1; 21 ER 485).

17 Above n8 at 856.

18 Sullivan, K M, "Foreword: The Justices of Rules and Standards" (1992) 106 *Harv LR* 22 at 57ff. See also Rose, C M, "Crystals and Mud in Property Law" (1988) 40 *Stan LR* 577 at 592-3.

breaking with tradition through the adoption of a radically different form of legal reasoning, it seems that "feminist" legal thought gives pre-eminence to certain methods of reasoning, already embedded in "mainstream" law, over others.

The malestream/feminist dichotomy in legal scholarship might also appear by implication to exclude men from being "feminists". Some feminist legal writers explicitly adopt this approach, on the epistemological basis that having women's experiences is a precondition to being characterised as "a feminist".[19] Others, however, adopting a more political version of what it means to be feminist and extending the range of allies in this political struggle, advocate the possible inclusion of men within its definition.[20]

Contemporary feminist scholars often use Simone de Beauvoir's concept of woman as "the Other" to explain the excluded status that women have traditionally occupied. Yet if anything, polarisation of the malestream/feminist kind reinforces, rather than eliminates, the image of women as "the Other" and merely reintroduces a new set of stereotypes to replace the abhorred rational, objective male/irrational, subjective female dichotomy. Strict polarisation of malestream/feminist legal scholarship, male/feminist reasoning, male/feminist issues is undesirable and does not accord with the complex and relational aspects of reality. The opposition suggested by the malestream reference and by the notion of woman as "Other" is also at odds with postmodern theory, which has tended to undermine binary oppositions in many contexts.[21] However, it has been argued that the techniques of deconstruction can aid feminism through its insights — by identifying the variables within the "falsely unified" category of woman.[22]

The combative "us/them" opposition tacit in the malestream reference obscures other issues. Two central questions in current feminist writing are "For whom do feminists speak?" and "To whom should feminists speak?". When the battle front is so clearly identified by gender alone, women themselves tend to assume a monolithic and symbolic quality. Fine-tuned attention to differences between women seems somewhat irrelevant when the focus is on a confrontation between men and women. Yet many current feminist writers see this failure to acknowledge differences between women and between their individual experiences as a matter of great concern. Gender-obsession can, for example, blind observers to other ways in which the law may discriminate against women and operate in a non-neutral way.[23]

Fine-tuned attention to differences between women, whilst important for credible feminist debate, creates its own set of difficulties. In a form of legal

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19 See Littleton, C A, "Reconstructing Sexual Equality" (1987) 75 *Calif LR* 1279 at 1294 n91.

20 Above n8 at 833 and Harris, A P, "Race and Essentialism in Feminist Legal Theory" (1990) 42 *Stan LR* 581 at 612.

21 See Bartlett, K T, id at 878ff and Poovey, M, "Feminism and Deconstruction" (1988) 14 *Feminist Stud* 51.

22 See Poovey, M, id at 58-9.

23 See Abrams, K, "Feminist Lawyering and Legal Method" (1991) 16 *L Soc Inq* 373; Bartlett, K T, above n8 at 874; Minow, M, "Feminist Reason: Getting It and Losing It" (1988) 38 *J Legal Ed* 47. Martha Minow states (at 47-48) "In critiques of the 'male' point of view and in celebrations of the 'female', feminists run the risk of treating particular experiences as universal and ignoring differences of racial, class, religious, ethnic, national and other situated experiences."

theory in which experience is paramount as a method of acquiring knowledge (hence the prominence given to the feminist technique of consciousness-raising),[24] whose experience counts? In the interests of coherence and avoidance of chaos,[25] should some women's experiences be discounted? And if so, how is it decided whose experiences should prevail? Should some women's experiences, which do not fit the "mainstream feminist mould", be devalued on the basis that they are examples of socially constructed false-consciousness? Some feminist writers implicitly adopt such an approach, whilst to others it appears presumptuous. Indeed, it has been suggested that what appears under the supposedly neutral banner of "woman's perspective", is itself the perspective of the relatively powerful and privileged subcategory of white, middle class women.[26] It is important that feminism does not impose a new fixed and unassailable "single truth", reenacting the silencing of groups, which it has criticised in other objectivist methodologies.[27] In their introduction, Regina Graycar and Jenny Morgan acknowledge that they "do not purport to be comprehensive in covering the concerns and perspectives of all women" (p13), but while a long bibliography for further reading is provided, there is little discussion or analysis of this important philosophical issue. This is also surprising in view of the fact that writings by Catharine MacKinnon feature so prominently in *The Hidden Gender of Law*. Yet Catharine MacKinnon is consistently criticised by other feminists for her rigidity, the underlying essentialism of her work, her branding of women who disagree with her as "collaborators", her unitary and exclusionary vision of women's situation.[28]

The question of "To whom should feminists speak?" is of central importance. Some feminist writers clearly view the possibility of intellectual discourse with those outside the feminist community as equivalent to the attempt by Bertrand Russell and Father Copleston to discuss the existence of God[29] and something therefore to be avoided.[30] However, it is important that femi-

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24 See, eg, MacKinnon, C A, "Feminism, Marxism, Method, and the State: An Agenda for Theory" (1982) 7 *Signs* 515 at 519-520. For criticism of Catharine MacKinnon's treatment of consciousness-raising as "the true methodology of feminism", see Bottomley, Gibson and Meteyard, "Dworkin: Which Dworkin? Taking Feminism Seriously" (1987) 14 *JL & Soc* 47 at 56.

25 See Singer, J W, "Should Lawyers Care About Philosophy?" (1989) *Duke LJ* 1752 at 1772-5, discussing Spelman, E V, treatment of the philosophical problem of universality and particularity in *Inessential Woman: Problems of Exclusion in Feminist Thought* (1988). In a different context, see Sullivan, K M, "Rainbow Republicanism" (1988) 97 *Yale LJ* 1713, arguing against the quest for a single common good, and in favour of "normative pluralism", in politics.

26 See Harris, A P, above n20 at 588; Minow, M, above n23. Martha Minow states (at 52), "Some stereotypes may be an unconscious inheritance, but they also may be clues to who has power to define agendas and priorities within feminist communities. Ignoring differences among women may permit the relatively more privileged women to claim identification with all discrimination against women while also claiming special authority to speak for women unlike themselves".

27 See Abrams, K, above n13 at 1018, 1028-1029; Harris, A P, above n20; Minow, M, above n23 at 56; and Singer, J W, above n30.

28 See, eg, Abrams, K, above n23 at 383ff; Bartlett, K T, "MacKinnon's Feminism: Power on Whose Terms?" (1987) 75 *Cal LR* 1559 at 1564; Harris, A P, above n20.

29 In this well-known incident, the debate was discontinued after a few minutes when the protagonists announced that they did not agree on each other's premises and thus had nothing to discuss.

30 For a particularly graphic depiction of this stance, see the story told by Kathryn Abrams

nism not be viewed as exclusionary and preaching to the converted. Kathryn Abrams, discussing this issue states "[t]hough we write according to our own premises, we must inevitably confront audiences that do not share them".[31]

The us/them dichotomy between men and women creates another uncomfortable paradox. If being defined as "the Other" is viewed as an important justification for feminist legal scholarship, might not feminist writers who take this approach have some stake in perpetuating the image of woman as outsider/victim? Could this be why some feminist scholars seem so uninterested in exploring how women should use power were they ever to obtain it?[32] Indeed, if male dominance is as metaphysically near-perfect as Catharine MacKinnon would have us believe,[33] one can only join Angela Harris in her wonder as to "how feminism can exist in the face of its theoretical impossibility".[34]

In discussing the place of feminist legal studies in law curricula (p22), the authors of *The Hidden Gender of Law* extract a portion of an article in which Mary Jane Mossman argues that both in life and in the law school, woman is characterised as "the Other". She states that "[i]n most university law courses, the rights and responsibilities that are analyzed are either explicitly those of men (for example, the reasonable man) or implicitly those of men (for example, the taxpayer or the shareholder, more often than the battered wife)".[35] Thus laws relating to taxpayers or shareholders are represented as belonging to a "male" domain, in contrast to laws related to battered wives which would fall within a "female domain". This is puzzling. While laws relating to battered wives are certainly more "gender specific" than the other areas mentioned, there is indisputably a great number of women who *are* taxpayers and shareholders.[36] To focus so narrowly on women's experience in this way, relegating taxpaying and shareholding to a "male" world, is as misleading as it would be to define women only in terms of participation in the commercial world, without reference to injuries often suffered at the hands of spouses. Not only is it misleading, but it recreates a new and potent form of stereotyping of woman as victim and "the Other".

Selectivity in choice of materials can also raise concerns of this kind. The central Parts of *The Hidden Gender of Law* make up the bulk of the book and present various legal responses to particular issues affecting women. The authors state that they do not purport to be doctrinally comprehensive (p13) and indeed, little effort is made to present an accurate account of the current law on particular points. The authors are very open about this, however, suggesting that a reader wishing to know "all there is" doctrinally on a topic

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about what occurred after her presentation at the 21st National Conference on Women and the Law in Abrams, K, above n13 at 1049-1050.

31 Id at 1020.

32 See Bartlett, K T, above n28 at 1565-1566, where Catharine MacKinnon's lack of vision in this regard is criticised.

33 MacKinnon, C A, "Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence" (1983) 8 *Signs* 635 at 638.

34 Harris, A P, above n20 at 591.

35 Mossman, M J, "'Otherness' and the Law School: A Comment on Teaching Gender Equality" (1985) 1 *Can J Women & L* 213 at 214.

36 Particularly so if one includes indirect shareholding in companies through institutional investors via, for example, superannuation. In fact these days very few natural persons, men or women, are direct shareholders in publicly listed companies.

would be better served going to a standard textbook (p13). Rhetorical use is sometimes made of old, discredited and overruled cases and statutes, drawn from many jurisdictions.[37] This is fair enough, where such materials are clearly discussed in the context of relevant legal changes, because the materials are interesting and because history matters. But where there is such selectivity, particularly in the case of outmoded materials, the picture presented can be skewed.

Feminist legal scholarship has, in recent times, focused not only on the law itself, but also on matters such as the process of judging[38] and legal methods.[39] Feminist methodology can make feminism truly "radical" in that it challenges not only an existing order, but also the very epistemological assumptions upon which that order is constructed.

Regina Graycar and Jenny Morgan provide materials demonstrating the theoretical underpinnings to feminist legal scholarship in chapter 3 of *The Hidden Gender of Law*. The authors themselves state that they do not exhaustively deal with the theoretical debates within feminist legal scholarship. While the selection of material provides a tantalising glimpse of some divergent strands of feminist theory (see, for example, the exchange between Catharine MacKinnon and Carol Gilligan (pp52-3)), there is insufficient guidance to assist the reader in understanding the different assumptions and approaches to method which underscore these disparate strands of feminist thought. These different philosophical positions constitute a dynamic and fascinating aspect of feminist legal scholarship, which demands more attention. Much of the rest of the book is devoted to the consideration of specific areas that particularly affect women, and the occasional recalling of feminist theory or methodology from chapter 3 by the authors tends to be perfunctory. Perhaps this reflects the authors' commitment to a "theoretical framework (that) is not disengaged from women's lives" (p12). But as well as raising the question "Which women's lives?", this approach constitutes a missed opportunity to dissect the important underpinnings of feminist legal theory.

Much feminist writing to date has understandably been restricted to gender specific issues. Feminist methodology however reinforces the potential breadth of feminist legal inquiry — it shows that there is nothing to prevent scrutiny by feminist legal methods of a far broader range of legal issues. The structure which Regina Graycar and Jenny Morgan have adopted in *The Hidden Gender of Law* perpetuates the focus on gender specific issues, although the authors note in passing that feminist analysis is not restricted to these areas (pp21-2).

Mary Jane Mossman's characterisation of some areas of law as implicitly concerning men (p22) unnecessarily restricts feminist legal inquiry. It is certainly possible, for example, to look at recent developments in the law relating

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37 The authors themselves acknowledge use of this technique (at 13).

38 See Resnik, J, "On the Bias: Feminist Reconsiderations of the Aspirations of Our Judges" (1988) 61 *S Cal LR* 1877; Cain, P A, "Good and Bad Bias: A Comment on Feminist Theory and Judging" (1988) 61 *S Cal LR* 1945; Minow, M, "Stripped Down Like a Runner or Enriched by Experience: Bias and Impartiality of Judges and Jurors" (1992) 33 *William and Mary LR* 1201.

39 See, eg, Abrams, K, above n23; Bartlett, K T, above n8; Littleton, C A, "Feminist Jurisprudence: The Difference Method Makes" (1989) 41 *Stan LR* 751.

to passive directors of corporations from the perspective of gender. Should a woman director, who may have relied totally on her husband/son as managing director of the company, be personally liable under s588G of the Australian *Corporations Law* for the company's debts if it has been trading whilst insolvent?[40] Is gender inequality between the woman and corporate controller relevant in determining whether the woman director should be liable?

That it is possible to examine such an issue from the perspective of gender is clear.[41] What is also clear, however, is that attention to this perspective in no way gives any automatic normative result. There is considerable room for debate on the appropriate response. It could, for example, be argued that to disregard gender inequality in such circumstances is to unjustly punish the woman director. However, it is also clear that an action under s588G involves the rights of third parties, creditors, who may be unaware of any actual inequality. And, of course there is to be reckoned with the danger that acceptance of such a defence may further stigmatise and stereotype women. This was certainly the approach taken in the US decision of *Francis v United Jersey Bank*.[42] Rejecting as a defence the argument that the defendent was "a simple housewife who served as a director as an accommodation to her husband and sons", the judge stated:

> Let me start by saying that I reject the sexism which is unintended but which is implicit in such an argument ... The ultimate insult to the fundamental dignity and equality of women would be to treat a grown woman as though she were a child not responsible for her acts and omissions.[43]

In the future, there will be much debate among feminist legal scholars as to the appropriate response of the law to issues such as this. What is important is that, in pursuing women's interests in an us/them framework, feminism does not unwittingly lead women back to the "doll's house".

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40 Cf *Metal Manufacturers Ltd v Lewis* (1988) 6 ACLC 725 and *Morley v Statewide Tobacco Services Ltd* (1992) 10 ACLC 1233.

41 Indicative of such a trend is a recent article by Gabaldron, T A, "The Lemonade Stand: Feminist and Other Reflections on the Limited Liability of Corporate Shareholders" (1992) 45 *Vand LR* 1387.

42 392 A 2d 1233 (1978) (Superior Court of New Jersey).

43 Id at 1241.