

# Foreword

## Engendering New Law Stories : Feminist Legal Theories and Praxis

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This special issue of the *Sydney Law Review* contains a series of texts which explore the uses of feminist legal theory for engendering changes in law's institutions, discourses and practices. The feminist project in law has not been about "adding women and stirring" but about redefining our understanding of law; challenging its boundaries and categories; reconstituting its institutions and practices. We sought contributions which connected theory and practice and which considered the ways in which feminist legal theory enables change in concepts of law and the practice of law.

One of the issues with which we grappled was the appropriate order of the contributions. The links between the articles in this edition are not linear — they are complex and multiple. Since the medium of publication requires a linear order we opted for alphabetical order. This also had the advantage of challenging traditional expectations that the "most important" articles by the "most important" authors would be positioned in certain ways. Together with many of the contributors, we resist the traditional legal distinction between form and content. This edition of the *Sydney Law Review* thus seeks to suggest that changing texts and narratives about the law and including different voices in its articulation, can change the law. It also demonstrates that the limitation of "the law" to certain kinds of sanctioned forms means that the law cannot speak (of) certain subjects/experiences.

Feminist legal journals have, for many years, included stories and poetry. This feminist edition of the *Sydney Law Review* includes four poems by poet (and lawyer) Margie Cronin. Kris Walker also engages with the "content" of "form" by using stories of the experiences of refugees juxtaposed with conventional legal analysis. Rather than taking pride of place, the doctrinal discussion is confined to footnotes, and forms a commentary on the stories of refugees.

Several of the contributions have in common a confronting of the usual subjects of the privileged legal genre which is the law journal article, and to the discourses and texts which write the law more generally. Whilst it is common for law journals to include reviews, these are usually reviews of books by other legal academics. Thus conventional legal texts are presented and re-presented. They become what it is possible to speak and write of, and thus delimit what can be spoken or written. As Margaret Thornton says in her article here, "Feminist legal scholarship, a phenomenon of the last two decades, has destabilised conventional understandings of law, legality and the legal subject." This edition thus undertakes its feminist project by expressing a broader vision than that encompassed in the conventional law journal review (or review article). Jenni Millbank's contribution, for example, might be described as a film review or as cultural criticism which treats the law as a species of cultural practice. She considers the ways in which the stories of lesbian lives created by film and law inform one another and perpetuate distorted images of lesbian experience. For Millbank, embodied lesbian subjectivity and such representations intersect in complex and often contestatory ways. Jock Morrow and Mehera San Roque's

article examines representations of the death of Leigh Leigh in the writings of academics and playwrights. Like Millbank, Morrow and San Roque pose troubling questions of the law's writing out of the bodies and the lives of those who disturb its categories beyond the possibility of containment. And, like Millbank, they treat law as one of a range of cultural practices which do violence to those outside the law's privileged speaking positions.

Two pieces in this edition deal directly with the legal profession. Margaret Thornton's article makes explicit the voiceless but pervasive and influential operation of the legal fraternity, its particular socialisation and its power in generating the discourses that constitute law for all of us. Nan Seuffert's concern with the profession is at first blush different, although in many senses it is strongly related to Thornton's. She focuses on the experience of women clients in developing theories and practices of lawyering, and graphically illustrates the failures of lawyers — perhaps their inability under the present dispensation — to hear and understand the stories of women who have been subjected to violence.

Articles in this issue also illustrate the reality of the marginalisation of women's perspectives, and thus of women themselves, in legal analysis and the legal system generally. Reg Graycar and Jenny Morgan disclose this marginalisation as the inevitable product of traditional legal analysis. They do so through a discussion of their work for a government funded project which required them to develop materials to assist law teachers to "Includ[e] Gender Issues in the Core Law Curriculum". Kerry Petersen explores the issue of reproductive freedom through an analysis of wrongful birth cases. She considers the issue of damages claimed as a result of a loss of the opportunity to terminate a pregnancy, and the legal and policy arguments that are articulated in the decided cases. She engages with the conflicts which arise between law and public policy on the one hand and women's reproductive freedom on the other.

Many of the contributions are linked by their recognition of the diverse identities of women and men and the intersection of gender with other aspects of subjectivity. This is true of Kris Walker's article on sexuality and refugee status, which explores aspects of the intersections of sexuality, gender and race. Jenni Millbank's focus is on lesbians and their representation in film and law. But the intersections she pursues are between legal texts and filmic portrayals of "true crime", between cinema, jurisprudence and the lived experience of violence. Nan Seuffert's article is conscious of the race of the subjects of her research. She reports elements of a research project on violence against women where parallel studies were undertaken of Maori and non-Maori women. Jock Morrow and Mehera San Roque's article explores the implications of class and sanctioned/unsanctioned models of feminine sexuality for the law's response, or lack of response, to gendered violence.

This special feminist edition of the *Sydney Law Review* grounds itself in a transformative feminist politics which proceeds by articulating theory with practice and collapsing the dichotomy of law's content and form(s). It does so in order to argue for and engender change in law(s) which, as presently constituted, generate injustices and inequities for women, as for a myriad of others.

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