



## BOOK REVIEWS

*Margaret Thornton\**

### ***UNSPEAKABLE SUBJECTS: FEMINIST ESSAYS IN LEGAL AND SOCIAL THEORY***

**By Nicola Lacey**

**Hart Publishing, Oxford 1998**

**x, 278 pp**

**ISBN 1 90 136234 5**

**W**ITH the exception of the introduction and the conclusion, these essays have all been published in recent years as articles or book chapters. The collection nevertheless works very well as a book, possessing both coherence and depth.

The essays are not about legal doctrine, although some examples of liberal reformism, such as anti-discrimination and anti-pornography measures, are explored because they are central to the feminist project of fashioning a better society; such measures also highlight the contradictions of feminism. Rather than doctrinal exegesis, Nicola Lacey problematises the more abstract concepts of justice, equality, neutrality and the public/private dichotomy, concepts which exercise an ideological as well as a descriptive and normative function within legal epistemology. Nevertheless, as she points out, feminist legal scholars have tended to be more concerned with the intersection between theory and practice, or praxis, than have liberal theorists. Liberal theory, which has invariably centred around an individualised and disembodied concept of the self, has

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tended to ignore practicalities, thereby contributing to the failure to address the gender deficiencies of the liberal state. Thus, Lacey pointedly asks, if gender, as well as the embodied realities of race and class, are confined to the boundaries, how can liberal theorists claim to produce theories of *justice*?

The distinctive contribution to social theory of Nicola Lacey is this project of engagement between feminist legal theory and mainstream (or what Mary O'Brien cleverly terms "malestream") legal and social theory. All too often, the tendency of feminist legal scholars (and many of us must plead guilty) has been to critique masculinist scholarship without seriously engaging with it. The result is that conversations between feminist and other critical legal scholars have been stifled. This is the case whether one is alluding to feminist engagement with liberal legal theorists or with those of a more critical persuasion. While there has been a proliferation of creative and imaginative feminist legal theory in recent years, it is somewhat depressing to observe that it is rarely acknowledged (or even presumably read) by the preponderance of legal theorists. Now, it does not follow that the disjuncture between feminist and malestream theory - the aetiology of which probably resides deep within the social psyche - will be automatically overcome by a reasoned engagement, but Lacey has sought to activate a number of important conversations.

Lacey's style is to identify a problem in social theory, to locate it in its social and intellectual context, to marshal and critique the pros and cons that have been identified in the literature, and to suggest a way forward. She is attracted by the play of paradox, a phenomenon that besets any feminist engagement with law. While some feminist legal scholars evince a desire to avoid or play down the contradictions, Lacey revels in the challenge. She eschews one-dimensionality and is just as likely to be critical of the reductive accounts of some feminist scholars as she is to commend the positive and egalitarian features of masculinist liberal theorists, such as Rawls and Dworkin. Her even-handed (lawyerly?) approach recognises that social change can never be effected by a mere stroke of the legislative pen. Indeed, the contradictions inherent within law mean that a feminist nirvana is unlikely to be secured through legal means, although the myopic and cosy world view induced by legocentrism can be seductive. Nevertheless, Lacey is prepared to concede the importance of small tactical victories which can be secured through law. The important message is that faith cannot be placed in legal strategies alone.

Lacey takes on board various strands of contemporary social legal theory and subjects them to a feminist critique. As well as liberal theory, the essays engage with communitarian theory and, to a lesser extent, poststructural theory. Several essays are specifically devoted to methodological questions arising from feminist legal theory and feminist jurisprudence. Thus, although some feminist legal scholars have questioned the possibility of feminist jurisprudence because of jurisprudence's perceived masculinist presuppositions, Lacey is critical of those who categorically reject its possibility, finding closure to be too limiting. She does not advocate grand theory, but a more textured, postmodern approach. Lacey argues that the dichotomies, boundaries and rigidities of law

and social theory must be exploded. She is dismissive of the one-dimensional and caricatured notions of liberal feminism. As she avers, feminism has become more complex; there has been a “loss of innocence”. That is, the expectation that radical social change could be effected through law is now likely to be recognised as naive, since law has played a key role in constructing women and “others” as subordinate.

The “unspeakable subjects” of the title is taken from Foucault’s reference to sexuality, which is a metaphor with particular resonance for feminist scholars. Corporeality and affectivity pose problems for liberal legalism in light of the emphasis on an abstract, disembodied, autonomous subject. Engaging with a recent strand of feminist scholarship that seeks to re-insert the body, Lacey adverts to the traps of essentialism that potentially arise from this school of thought - as bodies are necessarily dichotomously sexed. In her attractive inaugural lecture, Lacey discursively inserts her own body, musing on what it means to speak authoritatively as a woman professor in her investigation of the criminal legal subject.

In tandem with Lacey’s own intellectual journey, the essays map the trajectory of recent feminist legal theory, not only in the ideas that are canvassed but in the names of the Anglo-American feminist legal scholars who have become part of the “canon” and with whom Lacey engages. They include the English writers, Carol Smart and Katherine O’Donovan, and the Americans, Catharine MacKinnon, Judith Butler and Drucilla Cornell.

In discussing the influential strand of difference feminism, which transcends the limited liberal notions of sameness and neutrality, Lacey accords some attention to *l’écriture féminine* of the French psychoanalytic theorist, Luce Irigaray. Lacey exhorts a careful and subtle reading of Irigaray’s attempts to recover the repressed female body and re-insert it in language through a notion of sex-based rights, in order to avoid immediately falling into Irigaray’s essentialist traps. This example of reading and re-reading against the grain is illustrative of Lacey’s method, for the undeniable centripetal pull exerted by feminism, be it reformist or critical, is towards some notion of a feminised essence:

[I]n our diagnosis and analysis of double binds supposedly facing feminist thought, our tendency to focus on single threads, or groups of threads, rather than on the larger practices of which they are part, has sometimes accentuated our sense of impasse.<sup>1</sup>

Difference feminism also conceals yet another paradox which Lacey identifies; that is, the danger of focusing on difference is that feminists end up by reproducing rather than making a difference.

1 Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Hart Publishing, Oxford 1998) p219.

The way forward advocated by Lacey (while cautioning against progressivism) is by means of what she terms “normative reconstruction”. As is apparent from the foregoing, Lacey is unlikely to embrace a single blueprint for social change, nor is she likely to end on a nihilistic note. She stresses the importance of changing people’s ideas as to what is possible. By capitalising on the complexities and contradictions that emerge from any conflictual engagement in a manner that is both positive and productive, Lacey advocates critique and interpretation as the fruitful outcome of dialogue between the various strands of socio-legal scholarship and social theory. She nevertheless insists that cognisance be taken of feminist theory and that any “reconstruction” display an ethical sensibility. Lacey notes that feminist theorists have generally displayed a greater concern with ethical questions than modernist social theorists in pursuing the issues of justice, equality and rights.

Like a number of contemporary feminist legal scholars, Lacey has been influenced by the work of Drucilla Cornell, who advocates a regard for the “other” as the basis of any ethical rethinking. Rather than a static notion of “*the good*” which is accepted as a central tenet of modernity, ethics, like other concepts which have been transferred to the postmodern lexicon, are fluid, finding meaning in an ever-changing kaleidoscope of discourse and dialogue. In this new hermeneutic world, the alchemy of postmodernism is able to transform patriarchy and oppression into something positive. That’s fine. However, I do worry about the ethics of capitalism, globalisation and the power of the new corporatism, which receive short shrift in Lacey’s reconstruction, no less than in most liberal theory. Would that the power of discourse could transmute all dross into gold!

Nicola Lacey’s essays are lucid and elegantly crafted. I commend them to you.