Feminism faces many challenges to its continued viability as both a social theory, and a political movement. Politically, the tides have turned against a range of equality enhancing projects. The rise of neo-liberal and neo-conservative political discourses has produced an environment hostile to the claims of feminism.¹ Neo-liberalism insistence on individual self reliance, formal equality and minimalist governance has diverted attention away from political claims about redressing historical and systemic inequalities. Neo-conservatism, by contrast, has fueled an anti-feminist backlash by rearticulating traditional gendered norms and roles. Add to this a general post-feminist malaise which views feminism as little more than historical vestige. Feminism’s political resonance is in serious trouble.

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¹ See generally B Cossman and J Fudge (eds), Privatization, Law and the Challenge to Feminism (2002).
Theoretically, feminism faces equally perilous challenges, though this time, often at the hands of its own. The critique of difference and essentialism has challenged the coherency of Woman as the subject of feminism, threatening its fragmentation into a multitude of competing identities. The postmodern critique has threatened to further shatter this subject of feminism, allegedly robbing it not only of its coherence, but of its agency, and its very commitment to political transformation. The queer theory critique has troubled the gendered division of feminism's discourse — male/female, man/woman — as constituting the troubled terrain that feminism seeks to disrupt. The foundational concepts of feminism — of women, oppression, political transformation — have all become sharply contested within the discourse of feminism.

Feminist theory and politics face a crucial question: what is left after the critique of feminism. What is feminism after the demise of the Keynesian welfare state and its replacement with a neo-liberal state, after the neo-conservative resurgence and the feminist backlash? After the critique of difference and identity, the critique of subjectivity, the critique of postmodernism and post-colonialism and queer theory? What of feminism remains, after being bruised and battered from inside and out, from political transformations and intellectual currents, from its friends and enemies? What is 'feminism after'?

The essays in Visible Women: Essays on Feminist Legal Theory and Political Philosophy are clustered around several of these challenges confronting feminism. The editors, Susan James and Stephanie Palmer, begin their Introduction by flagging 'the cultural shift away from feminism' as a feature of intellectual and political life that must be grappled with by feminists. They frame the volume as one in which the authors engage critically to develop the intellectual tools required to 'maintain and increase the visibility of women'. Despite the significant diverse theoretical frameworks and backgrounds of the contributors, many of the essays are specifically engaged with both the politics of difference and the challenge to the subject of feminism.

See J Butler, Gender Trouble (1990); E Sedgewick The Epistemology of the Closet (1990).

The Keynesian welfare state refers to the postwar state in many western democracies that was directed to address market failures, managing the economy and providing for the basic wellbeing of its citizens. In the 1980s, it began to be displaced by a neo-liberal state, which has sought to limit state intervention in the economy, and redefine its role in relation to its citizens, no longer responsible for ensuring their basic welfare but only for helping citizens to help themselves. See B Cossman and J Fudge, above n 1.


Ibid 1.

Ibid 3.
Anne Phillips, in her essay entitled ‘Feminism and the Politics of Difference. Or, Where Have All The Women Gone?’, engages with the implications of the critique of difference and essentialism within feminism, tracing a shift from feminism to a broader politics of difference, where sexual difference becomes but one of a multiplicity of axes of differentiation. While Phillips is sympathetic to insights of this critique, she highlights the threat to the politics of feminism from the obscuring of any focus on women, the reification of difference, and the convergence of feminism and multiculturalism. She is particularly concerned with the implications of this politics of difference outside of feminism, where it becomes harder to talk about and keep women visible.

The challenge to the subject of feminism is taken up in different ways by other authors. In her essay entitled ‘Sexual Difference and Collective Identities’, Seyla Benhabib takes up the problem of the subject from the feminism/postmodernism debates, continuing an ongoing debate between Judith Butler and herself. According to Benhabib, post-structuralist critiques such as Butler’s subscribe to an overly socially constructivist conception ‘of subjectivity and agency that leaves little room for explaining the possibilities of creativity and resistance’. She argues in favour of a narrative conception of subjectivity as preferable to Butler’s performative model. The narrative vision — one in which the self can tell a story of its self that makes sense of its own existence — is one that is neither fixed nor isolated, but rather, located within webs of narratives. This narrative process of making sense involves, rather, the psychodynamic capacity to go on, to retell, to remember, to reconfigure. Retelling, remembering, and reconfiguring always entail more than one narrative; they occur in a ‘web of interlocution’ which is also a conversation with other(s).

While Benhabib’s critique is sophisticated, it is ultimately unsatisfying. Too much of her essay is preoccupied with her ongoing debates, with long footnotes clarifying her many differences with her critics, rather than staking out new terrain. From the perspective of the dilemmas of ‘feminism after’, although her narrative theory of subjectivity may have much to contribute, Benhabib herself only turns to the specific dilemmas of feminist theory in the final pages of the essay. She provocatively posits the feminist critique as a cultural broker, with a key role to play in the ‘complex renegotiations of sexual difference and new collective identities’. She touches on the return of a respect for the universal, hinting at a renegotiation of the relationship between the universal and the particular, of which

8 Visible Women, above n 4, 140.
9 Ibid 149.
feminism's dilemmas of difference are a subset. But, she tells us little more about the future of 'feminism after', or the role of cultural broker who will help in its negotiations.

Some of the other essays, somewhat less ambitious but no less engaging, offer more insight into negotiating the challenges of 'feminism after'. Moira Gatens, in her essay 'The Politics of Presence and Difference: Working Through Spinoza and Eliot', argues for a creative 'working through' of past philosophy by feminists that goes beyond the identification of the explicit or implicit sexism of the texts. This 'working through' is a process of remembering and acknowledging past philosophy, repeating or re-enacting its assumptions and judgments with an imaginative feminist twist, and conceiving such recollection and repeating differently as a process of working through past philosophical thought in order to move beyond it.10

Like Phillips, Gatens is concerned with a politics of difference, but in an altogether different manner. She is interested in theorising how individuals can be present in their differences; how our individual identities are embodied and how our ideas are not separate from this embodiment. She then sets out to work through the philosophy of Spinoza, as a rich philosophical text for re-imagining the relation between presence/embodiment and ideas. Gatens' contribution is interesting for both its methodology of working through, as well as its theoretical insights on a renegotiation of the binaries of mind/body, and the constitution of the subject.

Nicola Lacey's essay, 'Violence, Ethics and Law: Feminist Reflections on a Familiar Dilemma', explores the question of legal subjectivity within the broader framework of the relationship between law and violence, and the possibility of using law for ethical purposes. She engages with the work of Derrida, who has argued that the very process of applying rules of general application to particular cases is a violent one. The process of fixing subjects and drawing unchallengeable conclusions 'closes off the possibility of justice' by foreclosing 'the irreducible particularity of the human world'.11 Unlike Benhabib, Lacey explicitly frames her engagement in terms of feminist theory. Her interest is in the question of the law's relationship to sexual justice: are law and ethics mutually exclusive, or can law be used to advance ethical utopian feminist projects?

Lacey explores this question in the specific context of legal subjects; that is, the way in which the law conceptualises its subjects, and the feminist engagement with this subject. She maps out three dimensions or levels of the project of 'sexing the subject of law'. First, there is 'a critical analysis geared to unearthing law's

10 Ibid 162.
11 Ibid 120.
gendered assumptions about the ideal legal subject. Second, there is a focus on the ‘dynamic role of law in producing sexed identity and sexed social subjects’. Third, there is the more utopian attempt to move towards a ‘resexing’ law, that is, ‘changing the shape of its assumptions about sexed and sexual identity’. Lacey attempts to illustrate the extent to which there is often an elision between critical, reformist and utopian projects within this sexing project. She maps two different kinds of feminist legal strategy: contextualisation as critique, and contextualisation as strategy. While the former is an explicitly critical project, the latter is also reformist and utopian, aiming to bring about ethical or political advances in law. Lacey unearths the difficulties of converting a critical deconstructive argument into a reformist or utopian project, while at the same time refusing the modernism/post-modernism dichotomy, and advocating a pragmatic deployment of a range of critical and reformist arguments. Her essay is an excellent mapping of different forms of feminist critique, highlighting the tensions, while at the same time refusing to be paralysed by them.

Ngaire Naffine, in her essay ‘Can Women be Legal Persons’, turns her critical eye on the concept of legal personhood, and argues that it remains a fundamentally sexed, and sexing category that constitutes sexed legal subjects. While women are no longer explicitly excluded from the category of legal personhood, Naffine delves more deeply into the category to unearth its deeply sexed character. She documents the emergence of modern legal personality through Sir Henry Maine’s story of the transition from status to contract and the anthropological account of the etymology of the word by Marcel Mauss. Through these works, Naffine illustrates the extent to which the legal person is constituted as a ‘sovereign, self-legislating and notionally universal legal individual’. Drawing upon examples of conjugality, pregnancy, and rape law, she reveals some of the ways in which the legal category of woman is not unitary, assertive and self contained, and therefore falls short of the allegedly universalistic category of legal personhood. Naffine interrogates whether women can be legal persons, and in the process, critically engages with the concept for its failure to capture a richer, more relational notion of subjectivity that can accommodate the mutability of individual identity. She remains skeptical of whether the category of the legal person or legal woman in their current historical form can advance the interests of feminism.

Kristen Savell addresses similar issues of legal personhood in ‘The Mother of the Legal Person’. Deploying some of the insights from Naffine’s work, Savell explores how the law constructs the bodies of legal persons, and the ways in which the pregnant body, although formally recognised as a legal subject, is not in fact

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12 Ibid 126.
13 Ibid.
14 Ibid.
15 Ibid 70.
treated in the same way as the male legal person. Savell provides a rich and detailed analysis of the legal regulation of the pregnant woman and the fetus to illustrate the extent to which women's bodies are not regarded as bounded in the way as the legal person. She persuasively illustrates some of the ways in which law creates boundaries between the pregnant woman and the fetus, allowing the law to intervene and cede control of her body to others who might patrol the boundary by, for example, determining the conditions for abortion or childbirth.

Palmer's essay 'Feminism and the Promise of Human Rights: Possibilities and Paradoxes' focuses on the many paradoxes of the feminist reliance on rights discourse, arguing that despite the limitations, the adoption of the Human Rights Act 1998 in the United Kingdom represents an opportunity for feminist engagement, theorising and strategy. While the essay is a good review and application of feminist debates on rights discourses to recent human rights developments, it is less integrated with the themes of the collection. While Palmer attempts to connect the feminist critique of rights with questions about the possibility of speaking on behalf of the subject of Woman, this does not represent a major focus of the essay. As a result, an otherwise very competent essay seems somewhat out of place in the collection as a whole.

Finally, Susan James' essay, 'Freedom and the Imaginary', takes up the work of Michele le Doeuff, Moria Gatens and Drucilla Cornell on the imaginary. She identifies two distinct ways in which the imaginary has been used in feminist work: (1) as a individual and psychological phenomenon (associated with Cornell) and (2) as a more social phenomenon about the ways images and symbols are embedded in discourse, that plays a role in the construction of individual subjectivity (le Doueff and Gatens). James maps these different positions, tracing them to their earlier theoretical influences. James is particularly critically engaged with Cornell, and her liberal arguments for the right of individuals to have their imaginary domains protected. She deploys a more social understanding of the imaginary to critique this position, persuasively arguing that women need to 'reflect on the inherited images through which we understand ourselves, and on the processes through which we may internalise or change them'. James thus connects the discussion of the imaginary with broader themes of subjectivity.

The collection is a modest contribution to ongoing debates about the challenges to the subject and legal subject of feminism. On the one hand, one wonders whether feminist engagement with these seemingly intractable dilemmas has made much progress since the debates hammered out in the late 1980s, culminating for example in the public debate in Feminist Contentions. On the other hand, one of the interesting features of at least some of the essays in Visible Women is the extent to

16 Ibid 195.
17 See above n 6.
which they refuse the modern/post-modern dichotomy of these earlier debates, and adopt, as Lacey recommends, a more pragmatic approach to theorising the challenges of ‘feminism after’. But, the collection as a whole appears to be more partisan, implicitly siding with the modernism of Benhabib, in contrast to the post-modernism of Butler, the normative liberalism of Cornell rather than the materialism of Fraser. The ‘feminism after’ of Visible Women is a feminism that seems to be reacting to the post-modern critique of the subject, rather than embracing or transcending it. Yet, the feminism of Visible Women is first and foremost a feminism that seeks to keep women visible, without succumbing to the simplicity of earlier visions of the subject. It is a feminism that is unapologetic in its focus on women, while at the same time, engaging critically with the category itself. And it is a feminism that is unapologetically theoretical. It does not shy away from the critical and intellectual project of rethinking the foundational categories of feminism.