

'SIT DOWN GIRLIE'

Legal issues from a feminist perspective

ACADEMIC NOTIONS, MARTYRDOM AND THE LAW

Professor Margaret Thornton has told the Macquarie University's Annual Law and Society Conference that a backlash against feminists has been sweeping through our law schools. In a paper entitled *Martyrdom in the Law School: the Case of the Feminist Scholar* she explains that the backlash is in retaliation against feminists' attempts to reform the law curriculum. Feminist lawyers have challenged the notion of 'objectivity' and neutrality of legal knowledge. They have demonstrated that far from being neutral the law is deeply partial. The consequences of the backlash for individual scholars is good old-fashioned martyrdom. Feminists, according to Professor Thornton are fighting back, particularly in the United States. In her book *Campus Troublemakers*, Athena Theodore documents incidents of injustice against feminist scholars in the United States. In Australia the legal community is so small that anecdotal evidence is difficult to catalogue for fear of defamation actions.

Professor Thornton warns that women are still expected to play a subordinate and deferential role on the fringes of the legal academy, the old stereotypes of woman as 'office manager of emotions' or as decoration still apply. At the same time the measure of success for women who achieve higher office is their ability to act in a masculine fashion, to be aggressive. Professor Thornton will expand on these themes in a book to be published by Oxford University Press next year.

WITCHES, BITCHES AND VICARS

It seems that Vicar Mr Anthony Kennedy of Luton in Lincolnshire is having more than a little trouble in coming to terms with modern theology. In a particularly unchristian response to the debate about the ordination of women he called for women priests to be burned at the stake and described

them as 'bloody bitches'. The Vicar, who for some reason is described by the *Age* as 'a 62-year-old widower', was subsequently rebuked by his Bishop.

JUDICIAL DEFENCE

In a series of articles published in the *Herald-Sun* during February 1994 some of Australia's most senior judges have broken their silence to deny they are biased against women or out of touch with society. In spite of widespread criticism, the findings of the Australian Law Reform Commission, and a Discussion Paper produced by the Attorney-General, they argue that criticisms levelled against them are unfair and uninformed. Some strengthened the case against them by reacting with disbelief that anyone could consider them to be sexist or elitist.

Federal Court Chief Justice, Michael Black, claimed that judges' personal views have nothing to do with the way they decide cases – a defence of legal neutrality which many women would have difficulty accepting given their experiences in court and with the legal system generally. Women's experience, as documented by the ALRC, does not accord with the defence put by Chief Justice Phillips of the Supreme Court of Victoria who claims that allegations of gender bias among judges are not supported by the facts and are entirely without foundation because only a few cases each year cause controversy on the issue. The fact that the press interest in the issue of gender bias is fairly recent does not mean it has not been occurring. The Chief Justice need only read the decisions made by members of his own court to establish that!

Most of the judges conceded that they could no longer consider themselves immune to criticism and said they were receptive to further education on issues like Aboriginal culture and 'alleged' gender bias. (*Girlie* wonders why they will agree to take the medicine while denying they have the disease.)

The *Herald-Sun* articles conclude that the educational and social backgrounds of judges are more egalitarian than is acknowledged in the media, more women and Australians of diverse educational backgrounds will qualify for judicial appointments (but they don't say when), courts are not a panacea for all society's evils, mega-trials are a problem, juries are good and a large number of people are ignorant of the complexities of the law. While judges argue that the public is ignorant they also oppose the televising of trials.



Judge Alistair Nicholson of the Family Court of Australia says the most frequent accusation made against his court is that it is biased against men because most custody decisions reflect society's view that children should stay with the primary care giver, who is usually a woman. The most unconvincing arguments were put by the Chief Justice of the Federal Court, Michael Black, who is reported as being 'furious' about allegations of gender bias. The comments attributed to him give added weight to the criticisms; indeed they give substantial weight to the feminist view. The Chief Justice states that 65% of all senior lawyers and managers employed by the court are women. More than half of the legally qualified staff of the judges are women. 'These are usually very bright young graduates who are, of course, selected on academic merit as well as general aptitude.' He acknowledges that gender bias can be unconscious but denies that it is a problem among judges. He says, 'I hope and expect that there will be more women on the bench' and justifies the past failures to appoint women on the grounds that the areas of practice from which judges are selected are few and women leave the law before becoming senior enough to be appointed. He acknowledges that 'the structural impediments to the advancement of women in the law need to be explored and removed'. Well, Your Honour, it is these very impediments that make women furious

and we are tired of hearing futile denials. We are much more interested in remedies.

LAW REFORM COMMISSION AT ODDS WITH JUDGES

Unlike the judges the ALRC has no doubt that the legal system is biased against women. It came to this conclusion after examining more than 600 submissions and listening to oral evidence throughout Australia. The findings are documented in its Interim Report No. 67: 'Equality Before the Law: Women's Access to the Legal System'.

These include the experiences of women seeking protection from violence. The evidence given by the women is that poor legal advice, insensitivity, high legal costs and a lack of remedies have left them feeling as bitter about the legal system as about the actual violence originally suffered. The Commission has proposed a national women's justice program to co-ordinate improvements to women's access to justice.

DEIRDRE O'CONNOR – THE OUTSIDER

The hoary old chestnut that women with appropriate experience are not available for senior appointments is always raised by those seeking to justify gender inequality on the Bench. Deirdre O'Connor has been, among other things, head of the Australian Broadcasting Tribunal, President of the Administrative Appeals Tribunal and a Federal Court judge. Even so, according to the Federal Opposition and some employer groups, she is not adequately qualified for the job of President of the Industrial Relations Commission because she lacks relevant industrial relations experience. The critics have ignored the fact that she has taken on many senior positions without having worked in the area before, and has acquitted herself with distinction. Could it be that the objections are really that she does not belong to the male dominated industrial relations club? Her critics are not about to come out and admit this. Instead she has been accused (by Ian Sinclair) of being a member of the right wing faction of the ALP, while in fact she has never been a member of the ALP at all. Accusations that she lacks experience and is unqualified have been

made by, among others, John Howard. Justice O'Connor was appointed, for a fixed term of five years, apparently at her own request so she can return to the Bench, and following the rejection of the position by Ian McPhee, ex Liberal Minister. Would the Opposition and employers be carrying on so if Mr McPhee had accepted?

POLICE WOMEN

Prime Minister Benazir Bhutto has opened a police station run entirely by women to deal exclusively with crimes against women. Sixteen officers are stationed at the Rawalpindi station which was opened following complaints from human rights organisations of sexual abuse of women by male police officers.

THE BIG AUSTRALIAN

It has taken millions of dollars, years of mediation, tribunal hearings and appeals to the Supreme and High Courts but BHP has finally conceded that it has discriminated against women in its employment practices. As Mara Golouza, one of the successful litigants is reported as saying: 'We have taken on the biggest company in the biggest case in Australia and we have won. It's been a long, long time but I am happy that in future no-one, most importantly women, will be discriminated against.'

The dispute began back in the 1970s when the company had a policy of placing 16kg lifting bans on women workers – a back door way of keeping them out. In 1980 some of the 2000 women who had been denied work took an action to the NSW Equal Opportunity Tribunal. Following conciliation some women were hired at the Port Kembla steel works but were later given the boot when BHP shed staff on a 'last on first off' basis. In 1985 the EOT found that 34 women had been discriminated against and they were awarded \$1.4 million. Four years later, following two court appeals, Australian Iron and Steel, a subsidiary of BHP, admitted it had discriminated against all women who had applied for jobs in the 1970s and early 1980s. This led to hundreds more women lodging claims.

The saga finally ended in February 1994. Seven hundred women will share about \$4 million in damages. The landmark decision will be a warning to employers. It took 14 years and was made possible by the ability of the women to bring a class action. These

were women, mainly of migrant backgrounds, who had been unfairly denied work in the iron and steel making industry, traditional male territory. The question remains, how can our legal system justify making people wait so long for justice?

SHE'S APPLES

Tasmania, for some unknown reason, is the only Australian State which does not have its own sex discrimination legislation. *Women and Sex Discrimination*, a report released in February 1994, followed a two-day phone-in conducted by the Tasmanian Women's Consultative Council for the Office for the Status of Women. It found that even in Tasmania women are fed up with discrimination and harassment in the workplace. The Report has prompted the Tasmanian Government to schedule anti-discrimination legislation for its March meeting of the Liberal Party. The Hobart City Council was successfully sued last year by an ex-employee who took action against the Council and three other workers for sexual harassment and rape.

UNNATURAL LAW

'Mummy, mummy, I'm sixteen now. Can I wear a bra?' 'No, Rodney!' That old high school joke is not so funny in Tasmania where the *Police Offences Act* makes it an offence for a man to dress as a woman between sunset and sunrise. Similarly, Tassie's Criminal Code outlaws homosexual activity and oral sex or anal sex between consenting heterosexuals. Presumably there is an exemption for the clergy – with regard to the wearing of frocks that is. Girlie offers congratulations to the Gay and Lesbian Lobby in Tasmania for their win at the United Nations on 11 April 1994 when the 18-member United Nations Human Rights Committee ruled unanimously that discrimination on the grounds of sex includes discrimination on the grounds of sexual orientation. Australia, a signatory to the International Covenant on Civil and Political Rights is in breach of the Covenant because Tasmania continues to discriminate against gay men. The Federal Government has been given 90 days to respond to the UN Committee. Meanwhile, the Tasmanian Attorney-General, Ron Cornish, has refused to repeal the State's anti-gay laws.

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