

Practice and Persuasion: Women, Feminism and Judicial Diversity

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I Introduction

For over 25 years, academics have debated questions of gender and judging and considered the relationship between the lived experience of judges and the requirement of judicial neutrality. Debates have also considered whether diversity of judicial appointment makes a difference. As part of the Australian Feminist Judgments Project, we interviewed 41 women decision-makers throughout Australia who identified publicly as feminist or had been identified by their judicial peers as feminist. We asked them how they understood feminism and whether, and if so how, their feminism influenced their decision-making. Many of the judges we spoke to accepted that they brought their personal philosophy, including their feminism, and their previous experiences to the task of decision-making. In this chapter, we consider how the judges in our study reconcile their commitment to feminism with the judicial oath. We argue that they present a picture of change which has been encouraged by more women on the bench, chiefly through the practise of judging in court and through their participation in the exchange of ideas and knowledge between judges.

II Arguments about Diversity and the Difference It Makes

There is a burgeoning scholarship on the need for judicial diversity and, in particular, the need for gender diversity.¹ There is a relatively high proportion of women in Australian courts compared to other similar jurisdictions. Around one-third of Australian judicial officers are women (Table 1), with women currently making up three of the seven members of Australia's High Court. Women constituted 51 per cent of all law graduates by the early 1990s.² Graduate Careers Australia reports the

* Research for this chapter was supported by the Australian Research Council's Discovery Projects funding scheme, project number 120102375: *The Australian Feminist Judgments Project*.

1 See, eg, Erika Rackley, *Women, Judging and the Judiciary: From Difference to Diversity* (Routledge, 2013); Ulrike Schultz and Gisela Shaw (eds), *Gender and Judging* (Hart Publishing, 2013); Ulrike Schultz and Gisela Shaw (eds), *Women in the Judiciary* (Routledge, 2012).

2 Law Council of Australia, *Beyond the Statistical Gap: 2009 Court Appearance Survey* (2009) 10, Table 1 (Percentage of Female Law Graduates, 1960-2009).

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