SEXUAL VIOLENCE, DOMESTIC ABUSE AND THE FEMINIST JUDGE

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Abstract: One of the enduring problems identified by feminist legal scholars is the difficulty of implementing feminist legislative reforms in practice. In part, this occurs because myths and stereotypes about issues such as "real rape" and domestic violence continue to be reflected and sustained by some barristers and judges in trials and other court procedures. In this context, Christine Boyle speculated, over twenty years ago, on what difference a feminist judge might be able to make in a sexual assault case. Boyle’s question has been taken up and extended to other areas of law in feminist scholarship and feminist judgments projects in recent years. Interviews conducted as part of the Australian Feminist Judgments Project provide an opportunity to further explore the question of what difference a feminist judge might be able to make in a criminal case. Forty-one judges agreed to be interviewed on the basis of their identification as feminists. Many discussed the challenges they face in cases involving issues such as sexual assault and domestic violence and how they have responded to these challenges. This article considers how they perceive that their feminist worldview influences their approach to decision-making. Drawing on the interviewees’ comments, the article identifies feminist approaches to understanding key legal concepts, managing the courtroom, controlling the admissibility of evidence and cross-examination, and approaches to language.

Keywords: Australian Feminist Judgments Project; domestic abuse; feminist perspectives; sexual violence; feminist judge

I. Introduction

One of the enduring problems with the legal process that has been identified by feminist legal scholars is the way women’s evidence of sexual violence is excluded, marginalised and disbelieved. Myths and stereotypes have developed around “real rape” and legal rules were introduced, initially by judges, which reflected and

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sustained these myths and stereotypes. In this context, Boyle speculated, in 1985, on what difference a feminist judge might be able to make in a sexual assault case. Interviews conducted with judicial officers as part of the Australian Feminist Judgments Project provide an opportunity to further explore the question of what difference a feminist judge might be able to make in a sexual offence case. I include domestic abuse cases in this discussion as well, because similar issues around the stereotyping and silencing of women also proliferate in this sphere. This article draws on the judges’ interview comments and considers how they see their role in relation to addressing outdated assumptions, myths and stereotypes surrounding sex offences and domestic abuse and in the treatment of witnesses who testify in their courtrooms. The article begins by reviewing some of the ongoing issues that scholars have identified about the prosecution of sexual offences and with respect to domestic abuse before outlining some of Boyle’s key arguments. It then briefly reflects on the possibilities that have been opened up by feminist judgments projects, which have flourished in recent years before considering the strategies identified by the interviewees. In the final section, I draw some conclusions about the role of feminist judging in cases involving sexual violence and domestic abuse.

II. Law Reform — Translation and Implementation

A. Sexual violence

There is a long history of feminist scholarly engagement and activism around rape law reform. As scholars have recognised, women’s credibility has been at the centre of the rape and sexual assault trial. The presumption that rape victims are a class of particularly unreliable victims was developed by male judges centuries ago. The English jurist Sir Mathew Hale infamously claimed that “rape is an accusation easily to be made, hard to be proved, and harder yet to be defended by the party

accused, tho’ never so innocent” and this approach justified judges warning juries that without corroboration, the testimony of rape victims was highly suspect. In contrast to Lord Hale’s pronouncement, research suggests the exact opposite is true for many complainants with false complaints being rare. Legislative reforms have attempted to eradicate or reduce the circumstances in which judicial warnings can be given about the unreliability of rape complainants.

Evidence of a complaint made close in time to when a sexual offence occurred — “a recent complaint” — was understood to buttress the credit of the complainant, whereas a failure to make a recent complaint suggested fabrication. Legislative efforts have also been made to remove the need for a recent complaint in recognition that there may be good reasons for a complainant to delay complaining, sometimes for years, because of the trauma associated with the sexual offence or because of other reasons including shame, fear and lack of support. The admission of sexual history evidence has also been used as a technique to challenge the victim’s credibility. The underlying suggestion is that if the complainant has had sex with the alleged perpetrator in the past, or perhaps with others in the past, it is more likely that she consented on the occasion of the alleged rape, or generally that “unchaste” women are less likely to be credible. Law reform has also attempted to reduce the circumstances in which sexual history evidence can be given.

8 Mary Heath, “Rape Law” in Patricia Easteal (ed), Women and the Law in Australia (Sydney: LexisNexis 2010) p.100. Although research continues to find that victims are regarded as suspect and that claims of false allegations continue to rely on myths and stereotypes about rape: Jacqueline Wheatcroft and Sandra Walklate, “Thinking Differently about ‘False Allegations’ in Cases of Rape: The Search for Truth” (2014) 3 International Journal of Criminology and Sociology 239; see Leahy, “The Corroboration Warning in Sexual Offence Trials” (n.6).
has stated, in the context of rejecting sexual history evidence in an imagined feminist judgment, “one does not consent to sex in general or even to one person in general. One consents to a particular act of sex, with a particular person, at a particular time and place”. Furthermore, in recognition of the trauma experienced by complainants required to give evidence in rape and sexual assault trials, various witness protection practices have been introduced to enable them to avoid a direct confrontation with their alleged attacker. Such practices include the use of screens in the courtroom and the possibility of giving evidence remotely by video.

Despite these significant legislative and procedural advances in rape law reform, which have been led by feminist scholarship and activism, there does not appear to have been any perceptible increase in successful prosecutions for rape and sexual assault. In Australia and the United Kingdom, few sexual assault charges make it to court, and when they do, they have a high rate of acquittal. Victims continue to report that they are often inadequately prepared for and supported during the trial. Studies also continue to reveal that the legislative reforms referred to earlier have often been very loosely managed or interpreted generously in favour of defendants by judges. For example, in her study of rape trials in the United Kingdom, Kelly and colleagues found that legislation aimed at reducing the admission of sexual history evidence has been “evaded, circumvented and resisted”. In Australia, one study found that despite the abolition of the requirement for a corroboration warning, they were still given in 80 per cent of trials.

Part of the reason for the persistence of these issues, according to scholars such as Temkin, is an enduring problem of attitude among judges, and legal advocates, who continue to be influenced by outmoded assumptions about rape.

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16 See generally Wendy Larcombe, “Falling Rape Conviction Rates: (Some) Feminist Aims and Measures for Rape Law” (2011) 19 Feminist Legal Studies 27; Marianne Hester, From Report to Court: Rape Cases and the Criminal Justice System in the North East (Bristol: University of Bristol in Association with the Northern Rock Foundation, 2013) p.3; Notably also, many rapes and sexual reports remain unreported: Liz Kelly, Jo Lovett and Linda Regan, A Gap or a Chasm? Attrition of Reported Rape Cases (Home Office Research Study 293, 2005) pp.14–15.
17 See Heath, “Rape Law” (n.8) p.89; Hester, From Report to Court (n.16) p.3.
20 Reported by Temkin, Rape and the Legal Process (n.13) p.266.
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Temkin et al. identify a number of highly resilient, damaging false beliefs about rape that persist, including: that false allegations of rape are common; rape is committed by strangers; women ask for it through their dress, behaviour (ie drinking alcohol and taking risks); there are always injuries associated with rape and victims report promptly. As Heath points out, if the relevant evidence laws are not enforced and rape myths remain unchallenged, low conviction rates are likely to persist as will traumatic experiences for victims in the court room. The suggested disconnect between legislative reform and its implementation raises the question of whether a feminist judge might make a difference.

B. Domestic abuse

Similar to sexual violence, there are low prosecution rates of domestic abuse as a crime and many myths continue to attach to it. One often repeated claim is that if the violence is serious, the victim of abuse will leave the relationship, and if she leaves, the violence will stop. Yet studies consistently reiterate the many reasons a woman may have for not leaving, or if she does leave, why she is likely to return. These reasons and difficulties might include the very real risk that abuse will escalate if she leaves, the lack of financial resources and other support, concern for the well-being of children and pressure from others to stay. There has also


26 Heath, “Rape Law” (n.8) p.93. See also Wells, “The Impact of Feminist Thinking on Criminal Law and Justice” (n.21) pp.88, 100, who similarly points to the problem of translation of reforms into practice.


been a tendency in legal responses to domestic abuse to understand it as discrete incidences of physical abuse, which has resulted in a failure to appreciate the serious psychological impacts ensuing from ongoing abuse that may, for the most part, involve coercive and controlling behaviours that are not physical assaults. As Stark has observed, “viewing woman abuse through the prism of the incident specific and injury-based definition of violence has concealed its major components, dynamics and effects”. Others have identified a misleading assumption made by some justice officials that domestic abuse occurs between two “equal” individuals, and that it is a problem of intimacy or “relationship rivalry”. There also continues to be debate about whether domestic abuse is gendered, despite the fact that studies regularly demonstrate that domestic abuse is experienced predominantly by women and perpetuated predominately by men. Similar to sexual violence, there have been claims made, especially by fathers appearing in the family courts, that women make up allegations; however there is little evidence that this is the case. Also similar to the experience of sexual violence cases, many victims of domestic abuse have reported experiencing trauma while being cross-examined by violent ex-partners in domestic abuse cases.

Analogous to legislative developments in relation to dealing with sexual violence, there have been many legal developments in the context of domestic abuse that have been introduced to respond to these concerns. For example, legislation has increasingly recognised the coercive and controlling nature of domestic abuse and the psychological harms associated with non-physical domestic abuse. In some jurisdictions, legislation has been introduced that disallows the cross-examination of a victim by a violent ex-partner and the possibility of using

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32 See Wilcox, “Communities, Care and Domestic Violence” (n.30) p.735; Hunter, “Narratives of Domestic Violence” (n.30) p.756.


alternative approaches to evidence giving, including screens and closed-circuit television (CCTV). However despite such legislative changes and research findings, a recent survey of Australian magistrates conducted by Wakefield and Taylor identified that almost three quarters of Australian magistrates surveyed agreed that women use domestic violence as a tactic in family law matters and that some magistrates accepted that a woman could leave the relationship if she made the choice to do so. Stark has stated that “for the millions of women who are … coercively controlled by their partners, the law is just when it becomes part of [women’s] safety zone”. However, for many women who appear before the courts in domestic violence matters, the court process continues to facilitate secondary abuse, and in qualitative studies, victims of domestic violence continue to report that alternative evidence-giving options are rarely employed by magistrates in the lower courts. In this context, the question is also raised as to whether a feminist judge might make a difference.

III. The Possibility of a Feminist Judge

In 1985, in her influential essay *Sexual Assault and the Feminist Judge*, Boyle speculated on what difference a feminist judge might be able to make in a sexual assault case. She begins with two important assumptions for the purposes of her analysis. The first assumption is that the function of judging and the judicial role and the criminal justice system remain unchanged; the second assumption is that it is possible for a feminist to function in the judicial role in the existing criminal justice system. Her second assumption has been challenged by successive feminist scholars. Some have argued that a completely new system is needed if feminism and feminist principles are to be applied to the problems addressed by law. For example, Lorde famously stated that “the master’s tools will never dismantle the master’s house”. Specifically, in its response to rape, Smart has argued that the legal process is at best ambivalent and at worst destructive, and Mossman has

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38 See Domestic and Family Violence Protection and Another Act Amendment Act 2015 (Qld), Clause 5; Family Violence Protection Act 2008 (Vic), s.70.
40 Stark, *Coercive Control* (n.31) p.403.
42 Amanda George and Bridget Harris, *Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria* (Victoria: Deakin University School of Law’s Centre for Rural Regional Law and Justice, 2014) p.85.
43 See Boyle, “Sexual Assault and the Feminist Judge” (n.1).
argued that legal method “disqualifies other knowledges which may be rooted in feminism”. In light of these concerns, Boyle accepts that some feminists may find it difficult, indeed impossible, to accept a judicial appointment because, for them, it is ethically difficult or too restricted.

Boyle begins her article with a consideration of the then newly introduced Canadian sexual assault law as a case study for her thesis. The meaning of “sexual” was not defined in the legislation, leaving it open to interpretation by the judiciary. Thus, she asks, how would a feminist judge define the term? After examining previous judicial decisions on the question, Boyle concludes that a feminist judge would reject the idea that “sexual” might be understood merely by knowing which body part has been violated. She finds this approach objectionable because it “divides women’s bodies up into bits” allowing some parts to be defined as sexual and others not, and perceives women’s bodies “out of their social and political context”. Her analysis results in her making several suggestions about how a feminist judge might approach decision-making. She suggests that a feminist judge would reject decision-making based on the protection of male interests or male groups; she would be alert to identify male interests that are masquerading as human interests and she would try to take into account the interests of women as well as men.

The criminal law’s use of concepts such as “common sense”, “reasonable” and “ordinary” continues to be problematised by feminist scholars. For example, Morgan and Graycar have identified that historically, the interpretation of these concepts has been resolved by selecting the male perspective as the “common” or “reasonable” one. The gendered assumptions underlying concepts such as these are at the heart of Boyle’s critique. To take into account women’s interests as well as those of men, Boyle argues that the feminist judge would require an understanding of the collective experience of women; therefore she urges that feminist judges would need to continue their conversations with other women to learn how they experience the world.

47 See Boyle, “Sexual Assault and the Feminist Judge” (n.1) p.94.
48 Ibid.
49 Ibid., pp.102–103.
52 See, Boyle, “Sexual Assault and the Feminist Judge” (n.1) p.102. Note similarly Sally Kenney has considered that there should be more judges who understand women’s experiences and take them seriously, see Sally Kenney, Gender and Justice: Why Women in the Judiciary Really Matter (Abingdon: Routledge, 2003) pp.15–16.
Boyle also observes that a feminist judge would “avoid propositions that are abstracted to the level that they are gender neutral when she is dealing with an area in which gender is significant”.53 Although she argues that a feminist judge would treat gender as material when it is material, she also notes that as feminist analysis is not monolithic, there may be disagreement about when this is the case.54 To understand the question of gender significance, Boyle suggests the feminist judge would draw on her knowledge and beliefs about how women and men experience the world.55 Such knowledge might, in part, she suggests, come from interdisciplinary work. Notably, Boyle predicted that “the appointment of feminist judges will probably produce a tremendous upsurge in the importance attached to interdisciplinary work and the attention paid to non-legal research in advocacy and judgments”.56 It might be argued that it is the increasing number of women judges57 who have driven the developing acceptance of judicial education; bench books; and increasing reference to social science literature by judges — at least in Australia.58 While the legitimacy of such tools and approaches is currently a matter of considerable academic interest and debate,59 their use may be perceived to signal the “upsurge in the importance of interdisciplinary” work to judges as Boyle predicted.60

Notably, Boyle also accepts that men might be feminist judges observing that “a feminist judge, whether male or female, would actively incorporate a different

53 See Boyle, “Sexual Assault and the Feminist Judge” (n.1) p.103.
54 Ibid.
55 Ibid., p.106.
56 Ibid., p.103.
59 See Rathus, “Shifting Language and Meanings between Social Science and the Law” (n.58). It is perhaps not surprising, given its jurisdiction that social science issues seem to be debated in that court; it is, however, the court with the highest proportion of women judicial officers in Australia.
60 However, there are a number of other theories about the relationship between law and social “facts”. For example, Valverde points to the importance of “social movements” and also suggests that it is “impossible” to make a generalised claim about the relationship between law and social science, see Mariana Valverde, “Social Facticity and the Law: A Social Expert’s Eyewitness Account of Law” (1996) 5 Social and Legal Studies 201, 202–203. Kate Malleson has pointed to the Human Rights Act as driving the judicial poly making role: Kate Malleson, The New Judiciary: The Effects of Expansion and Activism (Aldershot: Ashgate Publishing, 1999) p.1. Others have credited the “digital revolution”, see Allison Orr Larsen, “Confronting Supreme Court Fact Finding” (1998) 98 Virginia Law Review 1255, 1260.
(feminist) worldview into his or her decision making”. 61 Boyle’s early analysis has helped to inform a flourishing scholarly interest in feminist judgment and judging. 62 Particularly prolific in relation to this topic has been Hunter who has, following Boyle, also argued for the possibility of a feminist judge. Hunter has restated and expanded on Boyle’s strategies and suggests that a feminist judge should: 63

1. “ask the woman question” and notice the gender implications of apparently gender-neutral rules, as well as the implications for other traditionally excluded groups;
2. “include women”, writing women’s experiences into the judgment (both as litigants and collectively) and in the construction of legal rules;
3. challenge gender bias;
4. contextualise and particularise, reasoning from context and making individualised rather than categorical or abstract decisions;
5. seek to remedy injustice and improve the conditions of women’s lives;
6. promote substantive equality;
7. be open and accountable about the choices made between competing interests; and
8. draw on feminist scholarship to inform decisions.

The strategies developed by Boyle and expanded by Hunter have subsequently been reflected in the imaginary feminist judgments produced in various feminist judgments projects.

A. Imagining feminist judgments

Feminist judgments projects have sprung up, or are currently underway, throughout many parts of the world. 64 In their imaginary rewritten judgments, the “feminist judges”, usually academics, have engaged in assessing the evidence, identifying and applying legal principles and making a decision. 65 Many of the

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61 See Boyle, “Sexual Assault and the Feminist Judge” (n.1) p.103.
64 Majury, “Introducing the Women’s Court of Canada” (n.3); Douglas, Bartlett, Luker and Hunter, Australian Feminist Judgments (n.2).
rewritten judgments within these projects have focussed on violence against women including sexual assault and domestic abuse\(^{66}\) and in many of the rewritten cases the fictional feminist judges have employed the strategies Boyle and Hunter recommend, including challenging the gender bias inherent in concepts and assumptions, drawing on women’s experiences to avoid abstraction and contextualising decision-making.\(^ {67}\) To illustrate, I have included an overview of one of the rewritten feminist judgments from the Australian Feminist Judgments Project.

Daniel Phillips was convicted, after a single trial, of six sex offences against five separate teenage girls.\(^ {68}\) The relevant criminal statute provided that an indictment must charge one offence only and not more offences unless the offences were founded on the same facts or formed part of a series of offences of the same or similar character or a series of offences committed in the prosecution of a single purpose.\(^ {69}\) The relevant statute also stated that if an accused person may be prejudiced or embarrassed in their defence by reason of being charged with more than one offence in the same indictment, the court could order a separate trial.\(^ {70}\) Before the trial commenced, Phillips’s lawyer requested separate trials on the basis that the evidence of a complainant was admissible only on the charge relating to that complainant, and not in relation to the other complainants, because the rules for the reception of “similar fact” evidence were not satisfied. Thus, on this argument, trying all of the relevant charges against him in a single trial was prejudicial to his defence. This claim succeeded on appeal to the Australian High Court.\(^ {71}\) In dissenting from the High Court majority, and finding that the counts should be joined, the imaginary feminist judge found that the six rapes showed striking similarities and met the test for similar fact evidence, and relatedly, that

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\(^{67}\) See Boyle, “Sexual Assault and the Feminist Judge” (n.1); Hunter, “Justice Marcia Neave” (n.63).

\(^{68}\) Phillips v The Queen (2006) 225 CLR 303.

\(^{69}\) Criminal Code 1899 (Qld), s.567.

\(^{70}\) Ibid., s.597B.

\(^{71}\) Mehera San Roque, “Locating Consent in Similar Fact Cases” in Douglas, Bartlett, Luker and Hunter (eds), Australian Feminist Judgments (n.2) p.291.
the probative value of the evidence outweighed the prejudice of hearing the counts together.72 On a subsequent interview about her approach, the feminist judgment writer on Phillips, Cossins, commented:

“I remember [the judges’] phrase [from the original judgment], that what the six complainants had suffered was a type of sexual behaviour at the hands of the defendant that was entirely unremarkable. I thought, ‘goodness me … so you can be sexually assaulted and it is entirely unremarkable?’ ‘So therefore, what’s the problem?’ That was almost what I felt they were saying … As a woman, I’ve always felt that sexual assault was entirely remarkable. That’s an experiential thing that probably really most men are never going to have to go through”.73

While academics who have re-written cases for feminist judgments projects are role-playing the judicial position, they have been able to do this, generally, within the rules that were applicable at the time the original case was decided, showing, as Boyle et al. suggest, that there are possibilities for applying feminist principles and approaches to facts and evidence within existing rules.74 As part of the Australian Feminist Judgments Project we wanted to explore this possibility further and consider the views of feminist judicial officers in Australia in relation to whether, and if so, how their feminist outlook influences their decision-making. This part of the project is discussed in the next section.

IV. Interviews with Judicial Officers

Throughout 2012–2013, researchers approached judges who had publicly identified themselves, or been identified by their judicial colleagues, as “feminist”, for an interview.75 Ultimately we interviewed 41 women judicial officers, one of whom was male. They came from a range of different courts and places in Australia. Six were retired. To ensure anonymity of the participants, they are referred to only by the type of court (or tribunal) in which they currently work or most recently worked (see Tables 1 and 2 for the distribution of participants).

73 Cossins quoted in Douglas et al., “Reflections on Rewriting the Law” in Douglas, Bartlett, Luker and Hunter (eds), Australian Feminist Judgments (n.2) p.31. See the original judgment: Phillips (n.68), [56] (Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ).
74 In the Australian project, there were some exceptions where Indigenous judgment writers felt too constrained by these rules; see the discussion in Douglas, Bartlett, Luker and Hunter (eds), Australian Feminist Judgments (n.2) pp.34–36.
75 See Douglas, Bartlett, Luker and Hunter (eds), Australian Feminist Judgments (n.2): the interviews were conducted by Heather Douglas, Francesca Bartlett and Trish Luker.
Our interviews covered questions such as what feminism means to the interviewee; what it means to them to be a feminist judge; what scope they have had for feminist decision-making; how, if at all, feminism has influenced their decision-making and to what extent they have drawn upon feminist theory in their decision-making. Even though we did not ask specific questions about sexual offences or domestic abuse, unsurprisingly many discussed the issues they face in such cases and how they have responded to the challenges they raise. In the following sections, I have drawn on the interviews to consider how judges understand their feminism and how they believe it informs their approach to judging in relation to tackling the myths and stereotypes associated with gendered violence and protecting and supporting witnesses, especially victims of sexual violence and domestic abuse, to give their testimony.

76 Relevantly, for the purposes of this article, the jurisdiction of Australian Magistrates Court is similar to the jurisdiction of Magistrates Courts in England and Wales. It is the starting point for most criminal matters, and it also deals with domestic abuse protection order applications. The Australian County or District courts are jury trial courts and rapes and serious sexual assaults are generally heard in these courts; their jurisdiction is similar to the Crown Courts in England and Wales. More serious cases, including homicide, are generally heard in Supreme Courts in Australia; these courts have a similar jurisdiction to the High Court in England and Wales. The Appeal Courts in Australia have a similar jurisdiction to Appeal Courts in England and Wales.
A. Feminism, women and judging

In signing consent forms, the interviewed judges consented to being asked questions about “their experiences and perceptions of the impact of feminist legal theory on their decision-making”. Only one interviewee agreed to be interviewed and then refused to engage with the questions we asked. The remaining judges did not dismiss the idea that a feminist judge might make a difference. However, the judges explained the relationship between their feminism and their judicial role in different ways. The largest group, around 24 of the interviewees, identified that they were feminists but did not consider themselves to be a “feminist judge”, two identified as feminist but were not sure if they were “feminist judges” and around 14 considered that they were “feminist judges”.

The comments of many of the judges demonstrate slippages between feminism, sex, and gender when commenting on how their feminism made a difference to their decision-making and court management. For example, in relaying an example of a sentencing case a magistrate commented: “I don’t know whether this is a feminist issue or a women’s issue because there’s … a collapsing of all these kind of concepts” (Magistrate: 11). Another judge commented: “I don’t know whether it’s a feminist issue because it’s not so much about women’s rights. It’s more about women [judges] being prepared to look more carefully at people” (District: 36). Although we aimed to focus attention on the approach of the feminist judge, or how the application of feminist theory might make a difference to decision-making, many judges conflated being a feminist judge or having a feminist worldview with being a woman judge, suggesting that for them the two are necessarily connected. There have been a number of empirical studies that have tried to determine whether women judges do things differently than their male counterparts; overall, these studies come to ambivalent results. Notably, as Rackley argues, once we acknowledge

77 Ethics approval was obtained from the University of Queensland.
79 We have discussed this in Douglas and Bartlett, “Practise and Persuasion” (n.57). See also Rosemary Hunter “More Than Just a Different Face? Judicial Diversity and Decision-Making” (2015) 68 Current Legal Problems 119, 132.
80 There continues to be debate about these issues; for examples, see Sally Kenney, “Thinking about Gender and Judging” in Schultz and Shaw (eds), Women in the Judiciary (n.62) p.105; Martha Chamallas, Introduction to Feminist Legal Theory (Gaithersburg: Aspen, 2nd ed., 2003).
81 See Hunter, “More Than Just a Different Face?” (n.79) pp.133–134; Heather Douglas, Francesca Bartlett, Trish Luker, Rosemary Hunter, “Introduction: Righting Australian Law” in Douglas, Bartlett, Luker and Hunter (eds), Australian Feminist Judgments (n.2) pp.4–5, where some of this literature is identified. For a recent contribution to this literature, see Adam Glynn and Maya Sen, “Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women’s Issues?” (2015) 59(1) American Journal of Political Science 37, who have analysed US case law and found that judges with daughters consistently vote in a more feminist fashion on gender issues than judges who have only sons.
that discretion is often exercised by judges, “we should expect gender, as the
inescapable backdrop to all our experiences and as a central contributor to many”
to be an influential factor. However, inevitably it will be difficult to disentangle
the myriad effects of the variety of factors that make up an individual’s complex
identity; such factors may include holding feminist convictions and other factors
such as race and class. It is not surprising that many of the judges in this study
often found it difficult to pin down the influence of feminism on the way they
approached their judicial role.

At the outset of this project, we did not define feminism to the participants.
Most judges described their feminist outlook in a practical way. For example, a
Supreme Court justice observed:

“I am just not knowledgeable or educated in what I call waves of feminism
and I just really wonder how important all of that is. I think what is
important is what I’ve always just considered women should be able to do,
and that is what they want to do”. (Supreme: 25)

Another said: “I want to see how it expresses itself in practice. So ideas about
making women’s lives better is what is important to me” (Supreme: 22). Most
interviewees articulated their feminist outlook in terms of equality and thus there
was little conflict between their feminism and their judicial role. One magistrate
commented: “[W]hen I was growing up … it was on loud speaker in my sort
of formative years I guess. But it was more … equal opportunity for women”
(Magistrate: 11). A Supreme Court judge carefully explained her understanding of
feminism as centrally concerned with substantive equality:

“It’s a commitment to practical equality for women, formal and practical
equality. [For example] the equality is not just having the same right to
defend yourself as a man has or had before the changes to the law in this
state, which were to do with meeting force with equal force and that kind
of thing, but having a right to defend yourself which took account of your
different stature and your different experiences and your basic human right
to be safe. So that’s the substantive equality but that’s what I mean by
practical equality”. (Supreme: 39)

82 Erika Rackley, Women, Judging and the Judiciary: From Difference to Diversity (Abingdon: Routledge-
83 Hunter, “More Than Just a Different Face?” (n.79) p.11 — also race, religion, ethnicity, etc.
84 See also Hunter, “More Than Just a Different Face?” (n.79) and Douglas and Bartlett, “Practise and
Persuasion” (n.57). See also Wells, “The Impact of Feminist Thinking on Criminal Law and Justice”
(n.21) pp.88, 92, who suggests that of “the many strains of feminism” one of the premises held in common
is that “within and by means of male-dominated social institutions in our culture, women are unequal to
men; and such inequality is both unjust and changeable”.
A District Court judge (19) similarly explained her aspirations for substantive equality using the metaphor of “unpicking” to explain how she approached her analysis:

“To me much of feminism springs out of an appreciation of past inequality and a desire to remedy that. It’s a recognition too that you don’t remedy inequality by treating everybody the same, because if they start off unequal treating them the same may just perpetuate the inequality. So it’s to do with unpicking the values behind things to see whether in fact they’re treating people differently because of gender or an assumption about gender …”

Some participants were concerned about being labelled a “feminist judge” on the basis that it might suggest bias (eg Supreme: 39; Magistrate 31). For example, a judge explained that she would not say she was a feminist judge because “that would assume … that I’ve replaced one bias with another. I would certainly hope that I haven’t” (Supreme: 2). However other judges identified as “feminist judges” confident that this did not result in partiality: “I’m making decisions about the facts in accordance with the law, like every other decision-maker does” (Tribunal: 4).

### B. Sexual violence

It is in response to the resilience of rape myths and stereotypes that many of the judges interviewed claimed that they might make a difference. For example, a judge commented that with more women judges, barristers could no longer pronounce:

“[O]ld clichéd truths … [They] can no longer be said. Like the one that used to be said about rape - that rape was an easy accusation to make and a difficult one to disprove, which is really the point of view of someone who is falsely accused of rape, not of someone who’s afraid they might not be believed when they make an accusation. So some of the unthinking clichés have had to go — and have gone. It doesn’t mean it’s all done. It’s not”. (Supreme: 2)

Similarly, another judge pointed to the fact that as a feminist judge writing a judgment in an appeal case, she was also able to challenge the myth that children “make up” complaints: “… all those assumptions about girls will complain and girls will report and girls making it up for no reason, all those kinds of things. I’ve had a bit of a shot at those ….¨” (Supreme: 39) Another judge who identified as a feminist judge stated that she also often challenged myths and stereotypes about rape. In particular, she pointed to the need to restrain the inappropriate questioning of complainants by barristers:

“[W]hen I am doing cases like rape cases, sex cases, I am careful to make sure that the barristers aren’t feeding the jury stereotypical arguments that
aren’t necessarily cogent …. I often used to have to send the jury out so I
could say: you can’t submit that because she was wearing a G-string she was
consenting to the rape. Then we would have these long arguments because
[the barrister] couldn’t quite see that that was a problem … certainly I am
careful to make sure that we don’t have [those things] in the court and try
and limit misconceptions about things like sexual abuse …” (District: 12)85

Similarly a judge spoke of being “alert” to the use of stereotypes in the barristers’
closing addresses (Supreme: 40) and a District Court judge (19) explained that in
writing judgments:

“[O]ne of the things you do when you look at old decisions is, you sort of
unpick some of the social or cultural assumptions or values that are behind
it. So I’m quite happy to set them out [in my judgment]”.

Boyle’s suggestion that a feminist judge might draw on interdisciplinary work to
better understand men’s and women’s experiences of the world,86 was reflected in
some of the comments made by the judges interviewed. For example, one judge
explicitly made a link between an increased understanding of the world through
developments in research in the social sciences and her refusal to accept old myths
and stereotypes around rape:

“[Rape is] a classic area where I see what was said to be traditional
knowledge or human experience that informed the old common law, was
just the absolutely uninformed and outrageous values or beliefs of an
individual group of mainly older, white men, which became crystallized
as the common law, and which then, judges and lawyers would sort of
steadfastly believe in and refuse to challenge by looking at learnings from
social science”. (District: 19)

Relatedly this judge also pointed to an example where judges could nudge rape law
to develop in line with the community’s expectations. In particular she referred to
how women judges on her court had contributed to the developing understanding
of the injury of rape in sentencing:

“[A] rape, but having it without a condom … most women judges now on
this court would see as an aggravating feature. So it’s not just the violation

85 Note that recent research has found that despite legislative changes, barristers ask similar questions
in rape cases as they did in the 1950s; see Sarah Zydervelt, Rachel Zajac, Andy Kaladelfos and Nina
Westera, “Lawyers’ Strategies for Cross-Examining Rape Complainants: Have We Moved Beyond
early/2016/02/18/bjc.azw023.full (visited 18 February 2016).
86 See Boyle, “Sexual Assault and the Feminist Judge” (n.1) p.100.
of the woman, but there’s the added aspect of exposing her to risk of pregnancy or STD … no doubt it’s informed by my feminism. …. It adds to the seriousness of the offending — because he not only violated her autonomy, but also exposed her to added risk”. (District: 19)

This judge clearly identified that she drew on feminist principles in her approach, not only in her labelling of rape as a violation of autonomy\(^{87}\) but also in her consideration of what might make a rape more serious, specifically the risk of pregnancy or a sexually transmitted disease, both of which can also be seen to operate as violations of autonomy.

As noted earlier, there have been significant changes to evidence rules around sexual offences including changes to corroboration warnings and evidence about sexual history.\(^{88}\) Procedural reforms allowing for the use of screens, evidence giving via CCTV and video-recorded evidence have been introduced in many jurisdictions to shield victims from the secondary victimisation that is experienced by many complainants during cross-examination.\(^{89}\) One judge referred to these developments and emphasised the importance of “being conscious of the rules” (Supreme: 40). She also recognised that at the same time there needed to be consideration given to managing the physical space of the court room and attention paid to the practical effects of where people were positioned in the space. She explained:

“It can be even down to where people are sitting in the courtroom … you could have a situation where …. just because of where our dock is positioned in the courtroom, an accused might be sitting at one end of the dock. That might be making things a little uncomfortable. Or the counsel may be standing in a position facing the witness so that the witness has to look at the accused. Well, I would … ask counsel to move. The witness didn’t have to have the accused in their line of sight if that was obviously causing a discomfort or I was concerned that it may”. (Supreme: 40)

When a magistrate (18) was asked to think about cases where she thought being a feminist made a difference, she went into some detail about a rape committal over which she had presided. She explained that in the particular case, a woman had returned to an apartment with a man she had met at a nightclub. He brought a friend along and they all drank alcohol and may have taken some cocaine. The woman refused the sexual advances of one of the men and then fell asleep. She woke up with his friend having sex with her without her consent. The magistrate described the scene

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87 Dorothy Roberts suggests that this expansion of society’s perception of rape has been one of feminism’s "most dramatic" contributions to legal culture; see Dorothy Roberts, “Rape, Violence and Women’s Autonomy” (1993) Chicago-Kent Law Review 359, 359.
89 For a discussion, see Ellison and Munro, “A ‘Special’ Delivery?” (n.15).
as one that “must be played out every Saturday and Friday night across the world and so ordinary sadly but so incredibly horrible and she went and reported it [to the police]”. At the committal hearing the remote witness facilities, which the magistrate had made sure were available, did not work properly and so the complainant decided to come to court to give her evidence. The magistrate explained:

“[I] protected her because that is how it feels. … The task of [the evidence legislation] is to get the best evidence before the Court … you find yourself saying well I’m not going to judge that young woman. That’s the issue and the fact that there were many questions asked of her which were inappropriate and I had to stop, in the end you let some of them through because it’s actually getting nowhere and it doesn’t matter because I don’t have to take the answers into account because it’s not relevant”. (Magistrate: 18)

The magistrate described her role as a protective one in shielding the victim from incorrect assumptions and improper questions, essentially to safeguard the law. Clearly the facts of this case provided the defendant’s lawyer with the potential opportunity to exploit various rape myths, ie that women are raped by strangers and can only blame themselves for rape as it results from their choice of drinking habits and risky behaviours.90 However, this magistrate explained that she refused to presume that the victim should be blamed:

“[The complainant’s] evidence was really sound but I don’t assume because she said that’s what happened it did. She still has to go through that process, but I’ve cleared — what I call I’ve cleared the fog to allow that to happen. So that feels to me that I am allowing and supporting the absolutely critical issue which is feminist that no matter whether she was drunk, drugged, normally goes and has sex with people at the end of the [nightclub] every night, that’s just not relevant to what happened that night”. (Magistrate: 18)

Several judges identified vigilance about following court rules, especially in relation to cross-examination of complainants, when asked how their feminism informed their approach to decision-making. In particular, they identified the need to be attentive to the questioning by barristers to ensure that it did not stray beyond permissible limits. When it did stray, they then needed to make decisions about the way to deal with the issue so they did not highlight the inappropriate material. A judge commented:

“A couple of times counsel have asked a series of questions and then, bang, have come out with this question. It’s too late. The question’s asked,

90 See Temkin, “Prosecuting and Defending Rape” (n.21) p.715.
answered and I’ve been caught off guard. If only I’d seen that coming I would have stopped it. That was just awful, an awful question. It’s too late. You’re just going to highlight it. You just sit on the edge of your seat, wait for the next one and be ready to pounce”. (Supreme: 40)

Clearly the adversarial system creates a very stressful environment, particularly for vulnerable witnesses. One of the judges described the difficulties for women who often come to court as victims of crime. She commented: “They come to the court with a disadvantage. It’s difficult to correct that, I think. All you can do is be alert to that” (Supreme: 40). Some judicial officers identified that they tried to promote a supportive environment in order to get the best evidence from the parties. Although there is arguably less scope to facilitate a more supportive court room in a rape trial than, for example, in a tribunal setting, judges in trial courts suggested there is still scope within more formal court settings to support vulnerable witnesses. For example, one judge explained that her feminism was reflected in the way she managed the examination of vulnerable witnesses (although at the same time she recognised that both men and women judicial officers may take this approach). She said:

“I’m very careful and conscious of the need to manage a court and a trial fairly when it comes to women who are complainants for example, but I think most men are too, who are judges, I think that’s not peculiar to me, it’s how I’d do it but I’m sure that generally speaking all judges do that”. (District: 24)

Others identified analogous strategies as part of their feminist judicial practice: “I’m thinking about women as complainants … I think I try and make people feel comfortable” (Supreme: 37). Another pointed to “acknowledging victims … making them feel comfortable and encouraging them to give their evidence in a relaxed fashion. Making the experience less oppressive for them” (Supreme: 41).

Many feminist scholars have emphasised the power of language to shape social assumptions and expectations. As Kelly and Radford explain, language can “make visible what is invisible, define as unaccepted what was accepted; make sayable what was unspeakable”.91 The way behaviours are labelled can minimise their seriousness and change the way the world is understood.92 Several judges we interviewed identified that language could be used as a powerful (and) feminist method to contribute to change. For example, one justice commented: “[T]he language was sexist language. I always made a point, from the very beginning,

of using non-sexist language in my judgments …)” (Supreme: 32). Another judge pointed out:

“The way language is used can be detrimental to a large part of the population. I think you have to be really, really careful about it. You have to be aware of it. I would have thought that there’s a lot of work that can be done”. (Magistrate: 31)

Overall it was widely accepted by the interviewees that court processes had the potential to be injurious93 and many thought that their feminist approach helped to inform a style that at least limited the damage. When asked to consider how her feminism influenced her approach, one judge explained: “The judge has a role. It’s as much what you don’t do as what you do do, the do no harm thing as well” (Supreme: 40). A judge specifically considered the potential for harm to arise from the public nature of judgment. She described her methodology as judging in “good faith” explaining that this meant that:

“[Y]ou’re careful and caring about how you write about them, because this is an enduring record — public record — for them.94 So, if you make adverse findings about them, which we often have to, or a comment on their character, or their conduct, or explain why we have not accepted some evidence that they’ve given, and accepted contrary evidence given by somebody else, that we do so in kind terms”. (District: 8)95

Although this particular judge went on to explain that her approach is not necessarily limited to women or feminist judges, she suggested that it was probably an aspect of a “more feminist approach” (District: 8). Another judge explained that she had done a lot of work in criminal compensation cases and that as a feminist judge she could influence the atmosphere of the courtroom, which could help the victim to move forward (rather than to entrench harm or re-victimise the complainant). She explained:

“Sometimes it’s just creating a different environment … hearing these horrific cases and these shattered lives, I decided I would acknowledge

94 As Justice Brennan has observed, the reported judgment becomes the “charter” Nicholas v The Queen (1998) 193 CLR 173, [18].
95 Sarah Murray has conceived of writing judgments as a “letter to the loser”, noting that this form of judgment goes beyond simply clearly explaining why the losing party has lost, but also clearly identifying that the court has “heard a party’s case and validating the litigant’s experience”. Sarah Murray, “‘A Letter to the Loser?’: Public Law and the Empowering Role of Judgment” (2014) 23(4) Griffith Law Review 554, 547.
that the life was shattered … during my remarks — I would outline, I would make visible the pain that the victim had suffered. Then at the end I would say… I hope you will be able to deal with what has happened to you and I wish you all the best for the future”. (District: 10)

This judge expanded on her approach, challenging the idea that the law should not engage with grief and emotion stating,96 “you could actually engage with the emotion and grief before the court” (District: 10).97

C. Domestic abuse

As identified earlier, domestic abuse cases raise some similar issues to trials involving rape and sexual violence and some of these concerns may be ameliorated if feminist judging strategies are employed. Boyle’s view that the feminist judge would refuse to see things as gender neutral when they are not gender neutral,98 was clearly reflected by one judge who commented:

“[T]here were a few areas that I thought one could at least make some difference and that was domestic violence which is still primarily a women’s issue. Ninety per cent I think still — it was data — … of victims are women”. (Magistrate: 5)

Others identified that their experience had led them to reject outdated myths about domestic abuse, for example, that women are responsible for the abuse because “she could have left”.99 A magistrate pointed out that her understanding of these myths influenced her approach; she said “other magistrates will strike out an [protection order] application if she hasn’t come to court, whereas I will ask why isn’t she at court? Maybe she’s too scared to come here or something?” (Magistrate: 20). This magistrate suggested that her understanding and approach might lead to a different result; for example, rather than simply throwing the matter out of court, she may suggest further investigation or an adjournment to obtain information about the reasons for the failure to attend. One of the magistrates believed she had a responsibility as a feminist magistrate to educate barristers who appeared before

96 Her approach also challenges the view that it is realistic to expect judges to be entirely dispassionate. See, for example, Terry Maroney, who has made this point in a different context: “The Emotionally Intelligent Judge” (2011) 49 Court Review 100; Terry Maroney, “Emotional Regulation and Judicial Behaviour” (2011) 99(6) California Law Review 1485.

97 The role of empathy and emotion in judicial decision-making has been the subject of significant debate and discussion. For further discussion, see Sharyn Roach Anleu and Kathy Mack, “Judicial Authority and Emotion Work” (2013) 11 The Judicial Review 329, 331–334.

98 See Boyle, “Sexual Assault and the Feminist Judge” (n.1) p.103.

99 See Wakefield and Taylor, Judicial Education on Family Violence (n.39) for a discussion of myths about domestic and family violence.
her about the social context of domestic abuse and to debunk the myths presented about it in her court:

“[A] barrister stands up and says well it can’t have happened because she got an interim Intervention Order and then she didn’t go back; and you can say … have you read much about cycles of violence, about the impact of violence on the difficulty of leaving, about the danger of leaving, can I help you? Could I give you some reading you might like to go away with? … I wouldn’t need to refer to an article in my judgement. I would just say anyone working in this area has to know that many people who have been the targets of violence are going to have great difficulty in leaving …”  
(Magistrate: 18)

Similarly, a magistrate identified important changes in legislation in her jurisdiction that define domestic abuse as coercive and controlling behaviour. She suggested that it is feminist magistrates who will have an important influence on how those laws are interpreted in the specialist domestic abuse courts where many domestic abuse protection applications are heard. She commented:

“I think it’s mostly the feminist magistrates who are the ones that sit the most in [the specialist family violence] courts and that influences change …. [H]owever we’ve got many courts all over [the state], so there’s a lot of non-feminist decisions being made as well. But the law was there and it’s pretty clear”.  
(Magistrate: 20)

Her comment emphasises that although the law may be clear, there is a role for a feminist magistrate to ensure that’s it’s applied.

As noted previously, in the context of domestic abuse cases, legal developments to support witnesses, similar to those associated with rape law reform, are beginning to take place. For example, in order to protect the domestic abuse victim from secondary abuse via cross-examination, in some jurisdictions legislation has been introduced that disallows the cross-examination of a victim by a violent ex-partner (or a victim’s cross-examination of her violent ex-partner) and the use of screens and remote evidence giving. However, in the Family Court in Australia, parties
can still cross-examine each other directly\(^{103}\) and one of the judges explained how abusers might use this process as an opportunity to further abuse their ex-partner\(^{104}\) as well as the risk that a victim’s difficulty with cross-examination may be interpreted in a way that fails to understand the complex and controlling dynamics of domestic abuse. This judge said that she is very “sensitive” to this issue and explained that often she would act as a kind of buffer to protect the victim. She reported that she might say to the male partner, “you tell me what you want to ask, and I’ll ask her …” (Family: 13). The judge provided an example of a case in which an unrepresented woman expressed such terror at the prospect of cross-examining her unrepresented ex-partner that she was unable to ask him any questions. The judge commented:

“[Y]ou can see some aggressors trying to use the opportunity of cross examination to belittle, to continue the abuse. It’s very helpful in a way to see them act like that, because it’s exactly what they’re saying they’re not doing. You also have to be mindful about this. They shouldn’t be using the opportunity to perpetrate the abuse”. (Family: 13)

This judge suggested that her knowledge of the dynamics of domestic abuse helped her to better understand the relationship dynamics that were playing out in the courtroom in front of her. Although the problem of perpetrators using justice processes to re-abuse their victims is becoming better-recognised, most Australian jurisdictions continue to allow parties to directly cross-examine each other in both civil protection order applications and family law cases, even where there is domestic abuse.\(^{105}\) This means the judge may have a particularly important role in intervening to enable safe and appropriate cross-examination and evidence giving.

In domestic abuse cases, prosecutors have often expressed frustration that a victim’s story changes from one time to another and in some cases that she may become an uncooperative or even hostile witness.\(^{106}\) Understanding the possible reasons why her story might change may be helpful in coming to a just determination in a case. A Family Court justice suggested that her knowledge of social science

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104 A behaviour that is increasingly recognised in research; see for example Australian Law Reform Commission and New South Wales Law Reform Commission, Family Violence (n.10), see especially pp.831–890.


research had helped to inform her views about responding to discrepancies between statements given to police and testimony provided in court. She said:

“Does it mean she is lying … now, because she told the police something different? I mean there are masses of research about this sort of stuff …. Well it’s trying to realize that that may not be the whole story. When somebody with support says this is what happened, you don’t automatically [accept] that’s what happened. But you [also] don’t … say well why didn’t you tell that to those two police that came round at three in the morning. They would have looked after her”. (Family: 14)

Relatedly, research has led to greater understanding about women’s experience of violence and has identified that there might be a variety of reasons why a woman does not attend court when her matter is listed. An applicant in a domestic abuse protection order matter may face a variety of obstacles. She may fear reprisals from the perpetrator should she come to court to give evidence against him or there may be other more material obstacles such as childcare responsibilities. Similar concerns may arise in a rape or sexual violence trial. One magistrate identified this as an issue and considered how she might respond to it:

“[I]f you’re concerned that there may be issues that he may attack her again, and I’ve had cases where that’s why she’s not come to court, and I feel sound but brave and it feels again like going out on a limb saying I’m satisfied she’s not here because she’s likely to be assaulted. … I’m going to allow the evidence in and then I appreciate I have to work through what I can do with that evidence …” (Magistrate: 18)

It is important in this extract that this magistrate describes her approach as both sound and brave. Sound because she believes her approach is legally correct but nevertheless brave, underlining the courage needed to give the law its full effect.

V. Some Conclusions

This is a small group of interviewees, and although the judges interviewed provided examples of how their feminism informed their judging, many also recognised that other aspects of their identity also informed their approaches. Despite this

109 See Hunter, “More Than Just a Different Face?” (n.79) p.22, who notes that “bravery is not on the judicial appointments list of judicial qualities and abilities. Perhaps it ought to be”.
qualification it is clear that many of the examples of feminist judging identified by the interviewees do reflect some of the feminist strategies suggested by Boyle and Hunter in relation to how feminist judges might approach their role.110 As Boyle suggested a feminist judge might, in dealing with sexual offences (and in cases involving domestic violence), many of the judges interviewed reported that they drew on their feminist worldview to challenge assumptions and stereotypes, carefully consider context to better understand behaviour and work to ensure that women’s voices can be heard. Many of the judges’ comments reported in this article emphasise their need to remain vigilant about the implementation of rules and procedures and the protection of vulnerable witnesses. Although formal changes to the law have been introduced to limit the reliance on myths and stereotypes and to improve the experience of complainants in the courts, the judges’ comments show how formal legal changes may be insufficient unless they are vigorously implemented and protected by judicial officers. It seems clear from many of the judges’ comments that the strategies they employ in sexual offence and domestic abuse cases are designed to give full effect to legal rules both in their “letter” and in their “spirit”. As some of the judges’ comments suggest, the feminist judge’s contribution is one of careful attentiveness to protecting a space in the court room so that the best evidence can be given by witnesses — especially complainants. Given the persistence of myths and stereotypes around gendered forms of harm that continue to limit women’s redress within legal processes, judicial vigilance to ensuring the law is followed may be seen as an important part of being a feminist (informed) judge.

It is relevant that this article was concerned primarily with feminist judicial practices around rape and sexual violence law and laws relating domestic abuse; areas of law that have been the subject of extraordinary levels of legislative reform that has largely been driven by feminist scholarship and activism over the past fifty years.111 It is perhaps not surprising then that judges who identify as feminists were keen to give full effect to those reforms. Writing in 2004, Celia Wells recognised that the change in language and the concepts that inform many areas of criminal law can be attributed to the political influence of feminist writers.112 However, at the same time she identified that the translation of legislative reforms and procedural change into practical effect was “another thing altogether” and that “a gendered understanding of criminal law and justice [had] yet to be fully realized”.113 As Kelly and her colleagues have identified, “chasms”114 remain between the fact of sexual violence and its reporting, between its reporting and its prosecution, between

110 See Boyle, “Sexual Assault and the Feminist Judge” (n.1); Hunter, “Can Feminist Judges Make a Difference?” (n.62); Hunter, “Justice Marcia Neave” (n.63).
111 See Heath, “Rape Law” (n.8); Elizabeth Schneider, Battered Women and Feminist Lawmaking (New Haven: Yale University Press, 2000) p.11.
113 Ibid., p.100.
114 See Kelly, Lovett and Regan, A Gap or a Chasm? (n.16).
its prosecution and conviction, and complainants continue to report traumatic experiences as witnesses in the courts. Similar concerns persist in relation to domestic abuse.\textsuperscript{115} While the judges in this study appear to be trying to apply their feminist worldview to the practical task of judging in order to translate sexual violence and domestic abuse law reforms into practical effect, it is not clear what difference this makes to the experience of victims and the rates of conviction — this would be a worthwhile question for future research.

\footnotesize{115 See Douglas, “The Criminal Law’s Response to Domestic Violence” (n.27).}