What if a group of feminist scholars were to write the ‘missing’ feminist judgments in key cases? Could they put theory into practice, in judgment form? The Feminist Judgments Project was a research project in which a group of feminist socio-legal scholars wrote alternative feminist judgments in a series of significant cases in English law. Rather than simply critiquing existing judgments, the participants put theory into practice by engaging in a practical, ‘real world’ exercise of judgment-writing, subject to the same constraints that bind appellate judges.

The feminist judgments demonstrate in a sustained and disciplined way how judgments could have been written and cases could — and should — have been decided differently.

‘Reading this book ought to be a chastening experience for any judge who believes himself or herself to be both true to their judicial oath and a neutral observer of the world ... If lawyers and judges like me have so much to learn from reading this book, then surely other, more sceptical, lawyers and judges have even more to learn ... [O]ther scholars, and not only feminists, must also be fascinated by the window it opens onto the process of judicial reasoning: not the straightforward, predetermined march from A to B of popular belief, but something altogether more complicated and uncertain. And anyone will find it a very good read.’

From the Foreword by Lady Hale, Justice of the UK Supreme Court, to Feminist Judgments: From Theory to Practice (Hart Publishing: 2010).
Is it possible to be both a feminist and a judge? What difference would more feminist judges make to the outcome of cases?

The Feminist Judgments Project is a practical demonstration of how more feminist judges would make a difference to the law. More than 60 academics, practitioners and activists participated in the ESRC-funded project to produce 23 feminist judgments covering issues as diverse as undue influence, equal pay, refugee rights, contractual disputes, same-sex marriage, domestic violence, surrogacy and the application of judicial review.

While some of the cases are causes célèbres for feminist activism, others reflect intersectional issues of gender, ethnicity, sexuality and religion. All of the feminist judgments challenge our thinking about law and judging. They all come to decisions the courts could have legitimately reached while remaining within the same legal and judicial constraints. They reveal the extent to which the incorporation of diverse viewpoints and perspectives in the judiciary would improve the quality of judging. The feminist judgments have already had a practical impact including being used extensively in university teaching and influencing public debate on judicial diversity.


What did we decide?

While many of the feminist judgments argue for different results, others reach the same conclusions but for different reasons, highlighting details of women’s lives and raising arguments that the courts overlooked. In R (Begum) v Governors of Denbigh High School (2006), for example, the feminist judgment, while reaching the same outcome as the House of Lords, gave greater emphasis to the autonomy of Muslim schoolgirls when making choices concerning forms of Islamic dress.

Fairer Rape Trials

In R v A (No 2) [2001] instead of rules limiting the use of sexual history evidence in rape trials being overturned by an all-male House of Lords, the feminist judgment by Clare McGlynn upholds the restrictions, challenging the assumption at the heart of the case: that a woman who has agreed to have sex with a particular man is simply by virtue of that fact – more likely to do so again on another occasion.

Assisted Reproduction

In Evans v Amicus Healthcare Ltd [2004] Sonia Harris-Short held, contrary to the Court of Appeal judgment, that Natalie Evans should have been allowed to use frozen embryos stored prior to her treatment for ovarian cancer – her only chance to have a genetically related child despite her former partner’s objections.

Lesbian Parenting

In Re G (Children) (Same-Sex Partner) [2006], a case involving child custody and residence, Alison Diduck’s feminist judgment criticises Baroness Hale’s attempt to treat former lesbian partners in the same way as a heterosexual couple, arguing that to do so obscures specific difficulties faced by same-sex parents.

What makes a judgment feminist?

* Asking the ‘woman question’
* Including women’s stories and experiences
* Challenging gender bias in legal doctrine and judicial reasoning
* Recognising context and particularity
* Seeking to remedy injustices and to improve women’s lives
* Promoting substantive equality
* Drawing on feminist legal scholarship to inform decision-making


‘What’s unique about Feminist Judgments is that it does not merely criticise self-proclaimed feminist judges for not being feminist enough. It actually provides the missing judgments that the authors think a feminist judge might have written in more than 20 leading cases from England and Wales.’

Joshua Rozenberg, Law Society Gazette, 2010

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