

Institution: University of Kent
Unit of Assessment: 20 (Law)
Title of case study: The Feminist Judgments Project (FJP)
<p>1. Summary of the impact</p> <p>The Feminist Judgments Project put theory into practice by engaging in a real world exercise of writing feminist judgments in leading cases in English law. In doing so it demonstrated the value of judicial diversity, the extent to which women's experiences and concerns continue to be poorly reflected in law, and the contingency of appellate decision-making. It has had a significant impact in three major ways. First, it has made an important contribution to policy debates regarding the value of judicial diversity; second, it has raised awareness and understanding among judges, legal professionals, NGOs and the wider public of the contribution of a feminist approach to judicial decision-making; and, third, it has had far-reaching benefits for teachers and students, both in the UK and internationally. While the FJP was a highly collaborative project (deriving much strength from this fact), Professor Hunter's research played a distinct and major role in shaping it and she jointly led and co-ordinated its activities from Kent. Other Kent scholars contributed judgments and commentaries.</p>
<p>2. Underpinning research</p> <p>The Feminist Judgments Project (FJP) was a highly original project, begun in 2008, following Professor Hunter's appointment in 2006. It epitomises the sustained collaborative approach to impact activities described in the REF3a, bringing together a group of scholars and practitioners to put 'theory into practice' by engaging in a 'real world' exercise of writing feminist judgments, subject to the same constraints as appellate judges. It was funded by a peer-reviewed grant, won by Rosemary Hunter (Principal Investigator, Kent), Clare McGlynn and Erika Rackley (Co-Investigators, Durham) and administered from Kent. It took as its starting point the observation that while feminist legal scholarship had thrived within universities, it had yet to make a significant impact within the judiciary or on judicial thinking. The book that was the project's main output, <i>Feminist Judgments: From Theory to Practice</i> (2010, output 2), presented a series of 'missing' feminist judgments in key cases in English law, written as if emanating from the same or a higher appellate court and dealing with a broad range of substantive areas.</p> <p>The conceptual underpinning for the FJP was provided by Hunter's (2008) article, 'Can <i>Feminist Judges Make a Difference?</i>' (output 1), which was researched and written at Kent. Hunter argued that taking a feminist approach to judging does not violate the judicial norms of fairness, impartiality, independence and decision-making according to law, and set out a series of suggestions as to how a feminist judge might approach her role. This article formed the basis for a briefing paper provided to the judgment-writers and discussed at an early FJP workshop on methodology. The paper and the article itself were then used as reference points by many of the judgment-writers, as is reflected in the judgments ultimately produced.</p> <p>The main findings of the FJP were that:</p> <ul style="list-style-type: none"> • Feminist judging is not merely <i>possible</i> within judicial constraints but can actually provide a <i>better</i> way of meeting those requirements. • Judicial decisions are highly contingent and lack inevitability: bias and habitual modes of thought are deeply embedded within the existing common law. • Women's experiences and concerns continue to be poorly reflected in law. • There is no singular feminist position available on the issues raised by a case and those taking different feminist theoretical approaches may arrive at different decisions. • Feminist judges cannot always reach a preferred result within the bounds of the judicial role. • The particular feminist approach adopted by the judgment writer 'makes a difference' in the

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specific cases chosen for analysis.

- The reasoning adopted in a judgment is at least as important as the result.

The contributions to *Feminist Judgments* provide a practical demonstration of these findings. In the book, each judgment is accompanied by a commentary which renders the case accessible to a non-specialist audience. The commentary explains the original decision, its background and doctrinal significance, the issues it raises, and how the feminist judgment deals with them differently. In addition, Hunter, McGlynn and Rackley contributed three substantial original chapters introducing the project, explaining the idea of 'feminist judging' (outputs 2a and b) and describing the craft of writing judgments. Two of the judgments (by Mackenzie, and Carr (with C. Hunter, York), outputs 2c and d) were researched and written at Kent, as were four commentaries (by Conaghan, Hunter (with Weait, Birkbeck), Sheldon, and Wightman). Other contributions came from leading feminist academics and practising lawyers from the third sector, at the Bar and tribunal chairs. Practitioners and judges also contributed to workshops on judgment-writing and the development of draft judgments, providing a model of academic-practitioner collaboration.

3. References to the research

1. R Hunter, 'Can *Feminist Judges Make a Difference?*' (2008) 15 *International Journal of the Legal Profession* 7-36 (peer reviewed journal, REF2).
2. R Hunter, C McGlynn and E Rackley (eds), *Feminist Judgments: From Theory to Practice* (Hart 2010). Kent-based contributions included:
 - a) R Hunter, C McGlynn and E Rackley, 'Feminist Judgments: An Introduction' (3-29).
 - b) R Hunter, 'An Account of Feminist Judging' (30-43) (REF2).
 - c) R Mackenzie, '*R v Brown*' (247-254).
 - d) H Carr and C Hunter, '*YL v Birmingham City Council and Others*' (318-328).

The FJP was funded by a competitively awarded, peer reviewed ESRC grant of £70,202.40 (PI: Hunter; RES-000-22-3039; 2008-10). The edited volume was the key output of this project and the final ESRC evaluation rated the quality and impact of the research as 'outstanding'.

4. Details of the impact

The FJP has had significant impacts in three major areas: policy debates on the value of judicial diversity; broader critical debate and reflection on the contribution of a feminist approach to judicial decision-making; and teaching and learning in higher education and beyond.

a) Impact on policy debates on the value of judicial diversity

The FJP has had a clear impact in policy debates regarding the value of judicial diversity. In evidence to a House of Lords Constitution Committee's inquiry into the Judicial Appointment Process (November 2011), Lady Hale noted, despite having been initially 'quite sceptical' as to whether a more diverse judiciary would make a difference to the outcome of cases, that the 'very interesting' *Feminist Judgments* collection demonstrated that it might do so, telling Committee members that the best answer she could give on this question was: 'go and read that book' (source 2). In its March 2012 report on *Judicial Appointments*, the House of Lords Constitution Committee cited *Feminist Judgments* as evidence for the proposition that '[a] more diverse judiciary can bring different perspectives to bear on the development of the law and to the concept of justice itself' (source 2), which in turn supported its conclusion that 'a more diverse judiciary would not undermine the quality of our judges and would increase public trust and confidence in the judiciary', and its recommendations for a series of measures to improve the diversity of the judiciary.

b) Impact on critical debate and reflection on feminism and judging

In her Foreword to *Feminist Judgments*, Lady Hale observed that 'lawyers and judges...have so

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much to learn from reading this book'. In a subsequent public lecture she observed that the book provides 'objective evidence' that a feminist perspective can make a difference 'not only on so-called "women's issues", but on the whole range of legal issues which may come before the courts' (source 3). Other judges similarly report that the FJP has influenced their thinking: for example, an Australian judge wrote that it 'has inspired and will challenge me here also' (source 6). The eminent, recently retired Court of Appeal judge, Sir Stephen Sedley, wrote in a review that the 'highly original' exercise of the FJP provided a 'rich illustration' of the utility of taking seriously a feminist approach to difficult legal cases (source 7). A conference held in May 2011, 'Feminist Judgments: Next Steps', also saw a number of judges debating the implications of the project, including Sir Terence Etherton (Court of Appeal), Dame Laura Cox (High Court), Siobhan McGrath (Senior President of Residential Property Tribunals) and Catriona Jarvis (Upper Tribunal, Immigration and Asylum Chamber).

Prominent legal practitioners participating in the debate at the same conference included Vera Baird QC, Catherine Briddick (Senior Legal Officer, Rights of Women), and Amelia Nice (barrister, Great James Street Chambers). In October 2011, the Interlaw Diversity Forum (an LGBT networks initiative) organised an evening seminar on the FJP at Norton Rose LLP which was attended by over 100 professionals from city law firms, accounting firms, banks, and regulatory bodies. The event was very enthusiastically received and generated excellent feedback (source 6), as well as two articles in *The Lawyer* magazine (source 4). *Feminist Judgments* was favourably discussed in the *Law Society Gazette* (by the prominent legal commentator Joshua Rozenberg) and the *Equal Opportunities Review* (source 4) and in a number of legal Blogs, including the UK Human Rights Blog, Human Rights in Ireland, Lords of the Blog: Life and Work in the House of Lords, Pink Tape Blog (a blog concerning life at the family law bar) and SLAW (Canada) (source 4).

The FJP has also been relied on by NGOs in their work on women's equality before the law. The Women's Resource Centre contacted Hunter in connection with the FJP and asked her to contribute to the CEDAW shadow report for the UK on equality before the law (source 6). The shadow report describes the FJP as demonstrating 'best practice' in promoting judicial diversity and urges that the project be supported and emulated (source 5). This report will be considered alongside the UK government's report by the UN CEDAW Committee in late 2013. UNIFEM (now UN Women) also consulted Hunter on the issue of gender and judging in the context of preparation of the latest edition of their biennial publication *Progress of the World's Women*, and cited her article 'Can Feminist Judges Make a Difference?' in the 2011-12 report (source 5).

An article in the *Guardian Online* by Erika Rackley stimulated a lively public discussion about feminism and judging and was re-tweeted or shared on Facebook over 100 times (source 4). BBC R4 'Woman's Hour' featured discussion of the FJP in December 2010 in an item in which Clare McGlynn debated the merits of feminist judging with Baroness Ruth Deech, and again in May 2011, when Erika Rackley joined a discussion on 'Is Justice Influenced by Gender?'. The Pod Academy, an independent platform for broadcasts on academic research which 'aims to inform public debate and uncover intriguing and challenging new ideas' commissioned a podcast on the FJP which incorporates comments by Lady Hale from the Norton Rose seminar, and interviews with Hunter and Rosemary Auchmuty (Reading) by barrister and novelist Elizabeth Woodcraft (source 4).

c) Impact on teaching and students

The results of the FJP have been used in teaching in over 20 universities in the UK, France, South Africa and Australia in this REF period, on compulsory and optional LLB modules, LLM programmes and other M-Level courses (e.g. MSc in Socio-Legal Studies, MSc in Healthcare Ethics). The reach of this impact is not confined to specialist law and gender modules but extends to a far broader range of subjects, reflecting the diversity of legal cases tackled in the judgments (e.g. Criminal Law, Statutory Interpretation, Civil Liberties, Jurisprudence, Law and Commercial Relationships, Family Law). In these modules, the feminist judgments variously demonstrate to students how feminist ideas may be implemented in legal practice, provoke students to think

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critically about judicial decision-making, and illustrate different possibilities for the development of legal doctrine (source 1). Further funding was obtained by two project participants (including Carr, Kent) from the UK Centre for Legal Education to develop teaching materials based on the FJP, and these are available through the FJP website, and have in turn generated teaching-related publications including a special issue of *The Law Teacher* (46(3) 2012). The impact of the FJP in teaching has also extended as far as the A-level school curriculum, with Hunter invited by the Managing Editor of *Sociology Review* ('The flagship magazine for A-level Sociology') to contribute an article on the FJP aimed at A-level students (source 8).

5. Sources to corroborate the impact

1) A spreadsheet demonstrating the use to which the project has been put in teaching can be found at: <http://www.kent.ac.uk/law/fjp/resources/classroomtable.html>.

2) Lady Hale's evidence to the House of Lords Constitution Committee, advising them to 'go and read that book' in order to understand the value of judicial diversity, is available at <http://www.parliament.uk/documents/lords-committees/constitution/JAP/JAPCompiledevidence28032012.pdf> (p.272), and the Committee's report, *Judicial Appointments* (March 2012) citing the FJP is at <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldconst/272/272.pdf> (p.26-27).

3) Lady Hale's Kuttan Menon Memorial Lecture, 'Equality in the Judiciary', 21 February 2013, noting that the FJP provides 'objective evidence' that a feminist perspective can make a difference on a whole range of issues can be found at: <http://www.supremecourt.gov.uk/docs/speech-130221.pdf>.

4) Some of the extensive media sources and blogs evidencing impact on critical debate within the practitioner and wider community are gathered together at <http://www.kent.ac.uk/law/fjp/news-events/news.html>, where full bibliographical details and hyperlinks are available. These include articles in *The Lawyer*, *Law Gazette*, *Equal Opportunities Review*, Human Rights in Ireland blog, UK Human Rights blog, *The Guardian*, and *Pod Academy* (featuring a leading barrister in discussion with Hunter about writing feminist legal judgments and Baroness Hale discussing how the under-representation of women in the judiciary has an impact on how the law develops).

5) *Women's Equality in the UK – A Health Check* (Women's Resource Centre 2013), citing the FJP as 'best practice' at p.159, can be found at: http://thewomensresourcecentre.org.uk/wp-content/uploads/WRC-CEDAW-Booklet_final-links.pdf. UN Women, *Progress of the World's Women 2011-12: In Pursuit of Justice* (2011), p.153, referencing Hunter's research, is available at <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>.

6) Copies of e-mails from the following describing the uses detailed above are on file and available for scrutiny if desired: Jennifer Blair (Women's Resource Centre); Laura Hodgson (Interlaw/Norton Rose); Susan Booth (Australian judge quoted in 4b). These each provide evidence of the FJP's contribution to critical public debate.

7) For Sedley's description of the FJP as a 'rich illustration' of the utility of taking seriously a feminist approach to difficult legal cases see: <http://www.womenbarristers.co.uk/Review1.pdf>.

8) R Hunter, 'Feminist Judgments' (2011) 20(1) *Sociology Review* 12-14, showing the reach of the FJP to 'A' Level students.

Further details of the project can be found on: <http://www.feministjudgments.org.uk>.