

a selection of historical cases of women alleged to have killed in chapters by Jill Matthews, Juliet Peers, Lucy Sussex and Kerry Greenwood. The cases examined are quite diverse but together help to move the analysis of homicide beyond the individual level towards a recognition of the significance of social, economic and historical context. The collection also includes an essay on crime fiction by Sue Turnbull who calls for 'more dames with guns — more feral women in crime' since she argues crime fiction may help defuse anxiety about violence by rendering violence at a distance pleasurable or cathartic. Barbara Creed's chapter examines the demonisation of women who kill in both fictional accounts in film and in mass media representations of actual cases.

While the editor claims that *The Thing She Loves* challenges dangerous stereotypes of women who kill, the book is not entirely successful in this regard. And the back cover blurb hardly helps:

From Francis Knorr, the notorious 'babyfarmer' and killer who was hung in the nineteenth century, to the 1920s ballroom drama of Audrey Jacob, who killed her fiance while dancing with him, to the remarkable case of Erika Kontinnen who, despite years of beatings by him, only murdered her husband when he threatened to kill another woman.

The editor herself resorts to such stereotypes arguing that 'when a woman decides that someone must die to protect another person, she kills efficiently, with cunning, with poison or

with overkill and axes' (p.141). My reading of women's homicide cases suggests that such incidents typically arise out of desperation, may be better characterised as clumsy and improvised, and are rarely efficient and cunning.

*The Thing She Loves* is not weighed down by academic detail or attention to legal technicalities. This may widen its appeal but I found it superficial in parts and frustrating for precisely this reason. I suspect that some of the authors have been done an injustice by presenting their work in this more populist style. Kerry Greenwood attempts unsuccessfully to tie the disparate chapters together in an afterword, working in anecdotes about her own cases as a lawyer in an effort to develop an understanding of why women kill. The afterword is written in a somewhat flip-pant mode with detours into pop psychology and socio-biology. For instance:

The inhibition against murder is strong in women. It has to be, if humans are to continue to be. If a woman was 'allowed' to kill importunate pain-inflicting and dangerous persons, how long would her children last? The average three-year-old has an ego the size of a small planet, and absolutely no morals or ethics....

...A woman without a strong inhibition against leaving the little monster blue-faced and choking amongst the Mars Bars [after having thrown a tantrum in the supermarket] or dropping it off the nearest cliff did not have living offspring and was not perpetuated. [pp.136-7]

If you have a serious interest in these issues, *The Thing She Loves* will provide a starting point but you will be well advised to read on since there is a well developed Australian literature in this area: for more on the gendered nature of homicide read Alison Wallace<sup>2</sup> or Patricia Eastal's book;<sup>3</sup> on media representations of women who kill, see Adrian Howe,<sup>4</sup> Jenni Millbank<sup>5</sup> and Barbara Creed;<sup>6</sup> for an historical analysis of women's role in infanticide or other forms of homicide see Judith Allen.<sup>7</sup> And if you want to read some really good Kerry Greenwood, try her novels.

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**Thinking Through the Body of the Law**

**Pheng Cheah, David Fraser and Judith Grbich (eds); Allen & Unwin, 1996; 274 pp; \$39.95 hardback, \$29.95 softcover.**

It was with excitement that I read this book; one of the first concerted attempts in this country to bring theory to law and law to theory, with all the diversity that 'theory' and 'law' now entail. Many people have noticed that in the last few years increasing attention has been paid by 'theorists' to 'the law' — one thinks of Jacques Derrida, or Judith Butler, or Carol Smart, and of course much work which follows Gadamer and Foucault. This collection of essays draws not only upon the work of lawyers attempting to revise the legal curriculum, but also upon the work of philosophers, anthropologists, and women's studies and literature scholar's, who all see law as an increasingly important site for theoretic-

cal and political practice. *Thinking Through the Body of the Law* represents an interdisciplinary convergence in the body. Of course there is a body of law — the weight of doctrine — but there is also a body *in* law. This has not escaped the attention of (for example) some feminists, but as the editors argue:

These admirable political efforts in legal theory have...primarily approached the corporeal body as a simple substance, an object which is external to the law and which needs to be retrieved. [L]aw and legal rules...serve not just to produce generalised and to a certain extent abstract bodies of legal subjects, but also act more concretely to create specific body types in particularised ways. [xiv-xviii]

This book makes it clear that the body in law offers ways of rethinking seemingly insoluble problems of justice and corporeality.

The first and most important positivist delusion to get the chop in *Thinking Through the Body of the Law* is the Cartesian mind/body distinction. Pheng Cheah and Elizabeth Grosz use the sameness/difference debate as a point of departure for their discussion, and argue that justice and the law may be understood not as functions of the mind (the received wisdom) but as functions of the body. They see a founding violence at the level of the body, a violence which stands at the origin and the limit of the law, and reject arguments which claim an embodiment outside of law and violence as a position from which to re-proach law in the name of a more sensitive justice.

The work of the 17th century philosopher Spinoza comes up for extensive discussion in this respect. Moira Gatens' chapter, reprinted from her 1996 collection of essays *Imaginary Bodies*, is one of the most interesting. As an alternative to Cartesian dualism and the limitations of the idea of *mens rea*, Gatens explores Spinoza's models of mind/body interaction, in which reason, desire and knowledge are embodied and mutually dependent: according to Spinoza, the mind is the idea of the body. Gatens sees Spinoza as offering a conception of 'embodied responsibility' which, in the context of criminal law, would draw attention away from the punishment of individuals and toward the social and structural causes of violent behaviour — without necessarily absolving individual criminality.

Paul Patton further confounds conventional delineations of the mind and body by shifting to the metaphor of the body politic. Specifically, he explains the *Mabo* decision in Derridean terms: as both poison and remedy for the health of the state. It is a metaphor the dangers of which are picked up by David Fraser, who shows how legal science was used in Nazi Germany in the furtherance of 'racial hygiene', even while the corporeal evidence of the Holocaust — in particular the starved, tattooed Jewish boy, 'the policed, surveilled, subjected, disciplined body par excellence' (p.77) — was going up in smoke. Elizabeth Povinelli, an anthropologist at the University of Chicago who has worked with the Northern Land Council, argues that one of the (poisonous?) effects of *Mabo* has been to place pressure on Aboriginal sexuality to conform to white expectations of authenticity. By this insidious route, land claims are countered by allegations of bodily degeneracy:

'Homosexuality', 'miscegenation' and 'single motherhood', not only function within Aboriginal communities as hegemonic rearticulations of the social imaginary, but also, from a western legal perspective at least, function as a sign of cultural decay, the loss of 'specialness' in the realm of culture, and thus the loss of any basis to claim land rights in Australia. [p.99]

This sort of commodification of the legal body is the subject of much feminist analysis in this book, whereby the body in law, like other bodies which are the subject of Cartesian dualism, is seen as feminine. But here there are several interesting twists. Rosalyn Diprose, for

example, shows how many feminist critiques of maternal surrogacy contracts fail to contemplate the fact that our bodies are constituted through the 'alienation' of corporeality. The law cannot hold bodies to be inviolable, so the argument goes, because bodies are constituted through violation. Diprose rejects a critique of surrogacy which is based in contract, and prefers instead the Derridean conception of the gift, which minimises the possibility of the commodification of women's bodies (a conception which is, as it happens, favoured in Australian surrogacy law).

Diprose's chapter typifies the work in this volume, slowly revealing the sheer complexity of the body in law. It is a complexity grasped succinctly by Terry Threadgold, who uses the Jimmy Governor (Blacksmith) case to show in detail how corporeality — at the level of gender and race — is multivalent and inextricable from certain discursive formations in which law, it seems, is bound to participate (for example, the seductive and impassioned black man). Law makes itself felt in the living body.

The book is not beyond criticism. Curiously, not all the chapters address themselves to issues of corporeality. In some of the chapters, too much space is dedicated to rehearsing political critiques of legal theory, or rehearsing legal doctrine. Some of the papers are too ambitious, and start to stagger under their own weight. There is, overall, perhaps too much quotation and summary, although this is hardly surprising in a relatively experimental collection. For better or for worse, the book works as a good crib on Nietzsche, Foucault, Derrida, Robert Cover, de Certeau and, of course, Spinoza.

*Thinking Through the Body of the Law*, then, is multifarious, resolutely theoretical and resolutely academic. Generally, the book is not cheerful, with its Nietzschean premise that the body can offer no extra-legal utopia, and that the body is productive of, as well as coerced by, the law. There is throughout a sober appreciation of the difficulty, if not impossibility, of justice, a sobriety which in itself sets the book apart from some of the more delirious accounts of 'postmodern' jurisprudence. It is a thoughtful and thought-provoking collection, and I hope that this sort of work continues.

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## Sex, Power and Justice Historical Perspectives on Law in Australia

edited by Dianne Kirkby; Oxford University Press 1995; 302 pp; \$29.95 softcover.

The wide ranging collection of essays in *Sex, Power and Justice* stands as an important testament to the experiences of Australian women over the years and is an illuminating read for those who might argue that there exists in Australia 'a black armband view of history'.

The collection is divided into five themes ranging from sexuality and the family to citizenship and the state. Within these themes the essays range across a wide variety of issues and periods within Australian history, from the early 1800s to the late 1970s. In this respect the collection does not hold itself out to be a definitive historical tracing of the development of particular areas of the law but rather provides historical pinpoints for the reader. A bibliography enables the reader to undertake further investigative work.

For me, the value of *Sex, Power and Justice* lies in its clear documentation of many of the injustices and failures of earlier Australian law and policy as it impacted on women. This documentation takes on added value at a time when many of the issues touched on in the collection seem to be back on the political agenda. For example, Peggy Brock's essay, 'Aboriginal Families and the Law in the Era of Assimilation and Segregation', takes on added poignancy given the recent commentary by government representatives on the stolen children inquiry.

In a similar fashion, populist support for Pauline Hanson makes it more important that the essays of Andrew Markus and others on legislating the white Australia policy and the marginalisation of aliens be read and appreciated by those in a position to influence debate.

*Sex, Power and Justice* can be regarded as not only a powerful statement about where we have come from in the development of Australian law in the areas it touches upon, but also as a strong warning about what lies ahead of us if politicians and populist debate lead us back down these paths.

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