In *Olivia Road*, the Court stated that the parties (the municipality and the occupiers of buildings) were required to "engage with each other meaningfully and as soon as it is possible to resolve their differences and difficulties" (Liebenberg 2012: 14). The outcome of the engagement was a detailed agreement on how to improve the safety and health conditions in the buildings involved in the dispute. "Meaningful engagement" has subsequently been used mainly in eviction cases. This can be seen as a successful example of a mediating strategic role played by the Courts.

Although stimulating, such solutions need to be examined carefully by constitutional thinkers. There is a fine balance between localized settlement negotiations and normative guidelines promoted in a transparent way by Courts. Despite these shortcomings, there is still a gap in the refinement of such dialogic engagement initiatives. *Constitutional Courts as Mediators* takes major steps in providing a creative approach to judicial behavior, and represents an impressive contribution and an essential resource for any scholar, judge, or politician interested in capturing the nuances of the jurisprudence of Constitutional Courts in a powerful perspective.

References

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Feminist Judgments: Rewritten Opinions of the United States Supreme Court. By Kathryn M. Stanchi, Linda L. Berger, and Bridget J. Crawford (Eds.). New York: Cambridge University Press, 2016.

Reviewed by Trish Luker, Faculty of Law, University of Technology Sydney

This collection of feminist rewritings of U.S. Supreme Court decisions is the most recent contribution to the burgeoning field of feminist judgments projects that have already emerged in a number of common law jurisdictions, including Canada, England/Wales, Northern/Ireland, Australia, and New Zealand. While feminist

jurisprudence and feminist activism has led to demonstrable changes in legislative law reform, there is less evidence of the impact of feminism in legal decisionmaking. These projects are motivated by the belief that bringing feminist perspectives to legal decision-making can make a difference to the outcome, as well as the reasoning, treatment of evidence and experience of witnesses. They aim to show that "systemic inequalities are not intrinsic to law, but rather may be rooted in the subjective (and often unconscious) beliefs and assumptions of the decision makers" (5).

In this collection, 25 U.S. Supreme Court decisions have been rewritten to incorporate feminist methods and perspectives. From an initial list of 60 cases, Kathryn Stanchi, Linda Berger, and Bridget Crawford settled on 25 that they describe as "the most significant gender justice cases decided by the court from the passage of the final Civil Rights Amendment in 1870 to the summer of 2015" (3). They called for authors to rewrite each of the decisions from a feminist perspective. A further group of authors have provided short commentaries to contextualize the cases and comment on the approaches taken.

The introduction provides a very useful account of the project's methodology and identifies common feminist themes that emerged in the rewritten decisions. Some authors have rewritten the decision so that they arrive at a different outcome; however, others have used feminist methods to change rhetorical conventions or relied upon alternative legal rules, framed issues differently or presented other rationales for the decision. The authors were not required to write decisions that persuaded the other justices. The editors point out that the volume contains 15 re-imagined majority decisions, four concurring opinions, five dissenting opinions, and one partial concurrence/dissent. The majority opinions are almost equally divided between those that change the ruling and those that changed to reasoning but not the ruling.

As with the other feminist judgments projects, the editors left it to the authors of the rewritten decisions to bring their own vision of what they meant by feminism. However, they identified their own approach to feminism as "a movement and perspective historically grounded in politics, and one that motivates social, legal, and other battles for women's equality . . . We believe that 'feminism' is not the province of women only, and we acknowledge and celebrate the multiple, fluid identities contained in the category 'woman'." (3). Feminist methods employed by contributing authors include the use of feminist practical reasoning, narrative feminist method, breaking rhetorical conventions and widening the lens. The editors identify the use of feminist theories: formal equality, anti-subordination/dominance feminism, anti-stereotyping, multi-dimensional theories, such as anti-essentialism and intersectionality, autonomy and

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agency, all of which they elaborate upon with reference to the rewritten cases.

In the second chapter, "Talking back: From feminist history and theory to feminist legal methods and judgments," Berta Esperanza Hernandez-Truyol provides a valuable framework for the collection by outlining the historical, theoretical, and methodological context of feminist history and theory. She identifies and explains the key waves and branches of U.S. feminism and elaborates on feminist legal methods. There is also a brief history of women in the U.S. judiciary and a compilation of research examining whether women's presence on the bench has made a difference to the outcome of decisions. Taken together with the rewritten cases, these chapters make the collection invaluable as teaching resources, albeit with a distinctly U.S. focus.

The cases are presented chronologically, starting with *Bradwell v. State of Illinois*, 83 U.S. 130 (1873), where the court upheld a decision to deny Myra Bradwell, a qualified legal practitioner, admission to the bar. It relied upon a narrow interpretation of the 14th amendment, limiting the scope of the equal protection clause to the ground of race. In her feminist rewriting of this decision, Phyllis Goldfarb adopts the interpretation of the amendment intended by its drafters to include sex discrimination. She also reveals the Supreme Court justices' reliance upon the ideology of separate spheres for men and women. As commentator Kimberley Holst points out, had the court found for Bradwell, this would have precipitated civil and political rights for women and other disenfranchised groups in the United States decades earlier.

There is not scope here to identify the details of all the cases and their rewriting, but I will highlight some with reference to key themes. Sex discrimination is also dealt with in other cases. In an imagined dissenting opinion in *Muller v. Oregon*, 208 U.S. 412 (1908), Pamela Laufer-Ukeles strikes down protectionist workplace legislation based on stereotypes about women derived from essentialist feminine characteristics. Sex discrimination is also dealt with in key cases from the 1970s, including *Geduldig v Aiello,* 417 U.S. 484 (1974), where Lucinda Finley rewrites the court's decision refusing to recognize pregnancy discrimination as sex discrimination. Using a methodology that foregrounds women's experience of pregnancy-related discrimination, she places the decision in historical context, revealing the court's use of an invisible male norm when applying a strict formal equality approach. Commentator Maya Manian points out that had the court adopted Finley's feminist judgment at the time, integrating sex equality arguments with reproductive liberty arguments, this would have provided stronger constitutional rights in relation to abortion in the United States.

Unsurprisingly, access to contraception and abortion are significant themes. In rewriting *Griswold v. Connecticut*, 381 U.S. 479 (1965), Laura Rosenbury tests the limits of imagination by using a sex positive feminist analysis to find a right for women to control their reproduction. Such a decision would have heralded a different outcome in *Roe v. Wade*, 410 U.S. 113 (1973), where the court again held a constitutional right to privacy in relation to abortion. In rewriting this decision, Kimberley Mutcherson concurs with the decision, however, provides an argument based on the principle of equal protection and the right to bodily integrity. She rejects the trimester framework that established the foundation for abortion law that continues to exist, presenting a powerful case for a woman's fundamental right to terminate a pregnancy at any stage.

The last, and most recent, decision is *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the landmark case deciding that the Constitution provides a fundamental right to marriage for same-sex couples. In rewriting this decision, Carlos Ball uses a variety of feminist methodologies to remove the traditional and privileged vision of marriage articulated in the court's decision. It draws on the principle of equal protection as articulated in *Loving v. Virginia*, 388 U.S. 1 (1967), another case included in in the collection, that overturned the ban on interracial marriage.

The collection has been published under the Cambridge University Press Feminist Judgment Series, indicating that we can look forward to further feminist judgments publications, including the forthcoming (2018) *Feminist Judgments: Rewritten Tax Opinions*, edited by Bridget Crawford and Anthony Infanti.

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The Myth of the Litigious Society: Why We Don't Sue. By David Engel. Chicago: University of Chicago Press, 2016.

Reviewed by Renée Ann Cramer, Law, Politics and Society, Drake University

This is a book to be grateful for. It is a joy to teach, and a well-argued corrective to previous ways of thinking about responses to injury. It is a humane and compassionate text, bringing attention to the embodied and emotional experiences of injury, and the role that these experiences play in channeling the reactions of those in

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