

The Hidden Gender of Law (2nd Edition) by Regina Graycar and Jenny Morgan
The Federation Press, RRP\$66

Times have changed since *Balfour v Balfour*¹, where Lord Justice Aitkin struck contracts made within marriage off the judicial intervention agenda and declared that each house was “a domain in which the King’s writ does not seek to run”. In this challenging but very interesting book, Graycar and Morgan raise hundreds of issues which reflect the evolution in gender-related assessment of the law and the legal system over the last 50 years.

Gender equality (or inequality) is an issue dealt with early in the book, with discussion of, on the one hand, ‘formal equality’ or ‘gender neutral treatment’ and, on the other, the ‘differences approach’, which acknowledges women’s differences from men, but which can lead to challenges by men, on the basis of discrimination, to the very programs designed to redress discrimination against women. Is reverse discrimination fair? At what stage does it become unfair?

The level of scholarship, research and analysis on the part of Graycar and Morgan is very high. Their method in the area of gender (in)equality, as with all the topics dealt with by them, is to identify the issue, then review and explain the differences between those on opposite sides of the debate, as well as the differences between those who are essentially on the same side but still hold significantly different views. The authors then raise questions of their own for the reader to think about. The intention is not necessarily to have the reader answer the question and solve the problem, but rather to realize the nature of the problem and think about possible solutions.

I mention some other topics which caught my attention in particular:- the economic consequences of family breakdown: who gets what in the post-separation asset split; the common law’s labelling of domestic work in the home as non-economic and its consequent failure to compensate injured female plaintiffs for their inability to work in the home by an award of damages for economic loss (as distinct from damages for ‘loss of amenity of life’); the ongoing debate as to the measure of damages in the undiagnosed pregnancy or wrongful

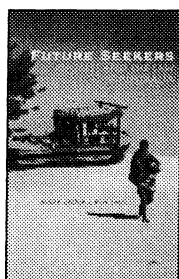
birth cases; the notion of foetal rights (touched on by Territory Coroner Greg Cavanagh in the 1998 Baby J. case); an exploration and analysis of the rules of evidence and how they affect the course of cross-examination in rape and sexual assault trials; and whether tort law or discrimination law works better for victims of sexual harassment in the workplace.

Justice Mary Gaudron, in her foreword to the second edition of this book, wrote:- “... Graycar and Morgan pose fundamental questions as to the impact of the law on women and their participation in society. They are questions to which every lawyer should attempt an answer. Many of the questions do not permit of a single correct answer, but an understanding of the problems posed ... is a most important step along the road to equal justice for women and, ultimately to equal justice for all.”

Overall verdict: the challenge of this book is well worthwhile; strongly recommended.

- Peter Barr, barrister, William Forster Chambers

¹ [1919] 2 KB 571



Future Seekers: Refugees and the Law in Australia by Mary Crock and Ben Saul
The Federation Press, RRP

We now know there were no children thrown overboard. We now know that the Howard Government exploited both successfully and mercilessly the arrival in Australian waters of the Norwegian vessel MV Tampa with its human cargo of asylum seekers.

We now know from the evidence in the ongoing Human Rights Commission inquiry into children in immigration detention that Australia’s policy of mandatory detention of asylum seekers exacts an appalling human cost. We know Australian society is deeply divided over the issue of how

we should treat those who come uninvited to our shores seeking asylum. We hear many ignorant sentiments expressed about refugees and those who flee their countries.

It is for this reason that a text which presents the Australian reader with accurate and readily accessible information about Australian law, policies and practices relating to refugees and asylum seekers is welcome.

Future Seekers: Refugees and the Law in Australia presents a clear, concise and objective overview of the law, Australia’s policies and practices and future options for the treatment of asylum seekers. It stands in refreshing contrast to much of the contemporary political debate and stale fare from radio talk back land.

At the outset of the book, the authors

state that they aim to:

- Provide a clear and simple explanation of the legal, administrative and political procedures governing refugee claims made inside Australia.
- Encourage readers to make their own assessment of the fairness and efficiency of Australia’s asylum procedures and the extent to which law and practice meet international human rights standards that Australia has agreed to uphold; and
- Combat some of the myths and misunderstandings about refugees that characterise public debate.

The authors achieve their aims with simplicity and clarity. They utilise an easily readable summary system at the beginning of each chapter in the 130 page paperback text.

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