

Book Review - Janet November *In the footsteps of Ethel Benjamin: New Zealand's first woman lawyer* (Victoria University Press, Wellington, 2009).

Grant Morris

It may seem a little tardy to be reviewing a book released three years ago but in the world of New Zealand legal history biography, publications are few and far between. In fact, Janet November's biography of New Zealand's first female lawyer, Ethel Benjamin, is the first such publication since Alex Frame's biography of John Salmond (1995, VUP) and Peter Spiller's *The Chapman Legal Family* (1992, VUP). Credit must go to Victoria University Press for being the publisher of all three books, although each book required further financial assistance to ensure its publication. In November's case, New Zealand Law Foundation funding was needed before a publisher would commit to the project. The market for New Zealand legal history biography is, unfortunately, very small. Therefore, congratulations to November for her persistence in bringing this important book to the wider public.

I have read this book several times and use it for discussion in my Legal History elective course at Victoria University of Wellington. I have also read the other reviews published since the book's release in 2009. These reviews ably summarise the book's content and stress the importance of Benjamin's place in New Zealand's legal history. The academic reviews are positive, but each one mentions the major problem of an almost complete lack of private archival material. For example, Caroline Morris states, "Because of this lack of private papers, November has had to reconstruct the personal life of Ethel Benjamin through the technique of a parallel investigation into the society Ethel lived in....These parallel histories are interesting in and of themselves, but the reliance on them makes startlingly clear the impact of the loss of Ethel Benjamin's personal papers on her biography and our history."¹

I would go one step further than Morris and posit the question: Does a complete lack of private papers undermine the biography to such an extent that it should not have been written? There is no doubt that legal historians will find enough of value in this book to justify the purchase price. November's skillful use of Benjamin's business letters allows for fascinating insights into her legal practice in Dunedin from 1903-1907. Benjamin's ongoing battles with the Otago District Law Society for equal treatment also provide a riveting story of perseverance in the face of overt discrimination.

The reality is that pleasing legal historians will not sell enough books to break even. What of other potential readers, in particular, the significant group of New Zealanders who devour New Zealand historical works on a regular basis? I fear some may be left frustrated after reading November's biography. One of the fundamental aims of any biography must be to provide a descriptive and analytical portrait of an individual's public and private lives. Without the private life, the public life can only be a partial portrait, an official existence with little substance and a shadow of the real person. If the biographer is not content with a partial portrait, and lacks private archival material, then he or she must engage in guesswork in providing the private information. This is where November's book is most problematic. Throughout the book, November uses

¹ Caroline Morris "Book Review" (2010) 41 Victoria University of Wellington Law Review 85 at 85.

the historical contexts of the period to make educated guesses as to what Benjamin might have been thinking and doing at any given time. In looking at just a couple of pages in the first chapter, the phrases “it must have”, “almost certainly”, and “it would seem very likely” appear.

When writing my PhD, a biography of Chief Justice Prendergast, it first appeared that his personal papers would be very limited. This posed major problems and, in my view, could have seriously undermined the project. Luckily, a substantial archive of Prendergast’s personal correspondence is stored at the Hocken Library in Dunedin, although it is not particularly easy to locate. Without this discovery, I would have faced November’s dilemma: whether to provide only a ‘public’ biography, to rely on guesswork, or to give up.

Personally, I am very glad that November did not give up. Ethel Benjamin is just too important to our legal history to go without a biography. November has conducted comprehensive primary research and uncovered as much as could be reasonably expected. That said, I would have preferred November to focus on Benjamin’s public career and only provide personal details that could be supported by archival evidence. This may have resulted in a shorter book, but it would have been a more satisfying one. The guesswork does not adequately fill the gaps but rather risks historical inaccuracy.

Alex Frame also faced November’s dilemma when writing the biography of John Salmond. This raises an important historiographical question: should we be looking to write biographies of our ‘most’ important legal figures or should we focus on the important legal figures for which adequate archival sources exist? I do not have a ready answer to this difficult question but it is one that has occupied my mind ever since reading November’s book