

constitutional interpretation. Bakan concludes that those who champion judicial review under the Charter have failed to demonstrate why such review is legitimate. The words of the Charter are indeterminate and thus require judges to make political choices, yet there is no satisfactory account of why we should entrust such choices to judges who, after all, are all lawyers, mostly male, mostly white, mostly able-bodied and mostly straight. Notwithstanding their good faith efforts to act impartially, Bakan argues that judges 'cannot escape the personal and structural conditions that determine a partial and elite perspective' (p.41).

In Part II, Bakan turns to a more substantive assessment of particular Charter provisions. He focuses on equality, speech and freedom of association and then turns to an assessment of the use of the Charter by already powerful groups and entities. While Bakan sees the right to equality as offering some limited potential as a tool for progressive social change, he is ultimately skeptical about its transformative potential and suggests that in some cases it may have negative effects. Both gender and sexual preference provide useful illustrations here. Although women have won various Charter battles, on issues such as abortion (*R v Morgentaler* [1988] 1 SCR 30) and pornography (*R v Butler* [1992] 1 SCR 452), they have also lost ground gained in the legislative arena; for example, the striking down of 'rape-shield' legislation, which prevented the introduction of evidence of a woman's past sexual history into a rape trial (*R v Seaboyer* [1991] 2 SCR 577). For lesbians and gay men, there is a similarly mixed picture: although 'sexual orientation' has been recognised by the courts as a prohibited ground of discrimination (*Egan and Nesbit v Canada* [1995] 2 SCR 513), this has not always translated into actual defeat of discriminatory laws.¹ Furthermore, even where Charter victories are achieved, they may not result in 'positive effects in people's daily lives' (p.57).

Perhaps the most chilling area that Bakan discusses concerns union and labour rights under the Charter. While in other areas gains as well as losses are apparent, here the picture seems to be all one way – losses for workers. Unions have taken seven freedom of association cases to the Supreme Court and have lost every time. Although the right to form unions has been protected under the right to freedom of association, this

does not translate into a right to strike or a right to engage in collective bargaining — yet why else would one join a union? In Part III, where Bakan looks at the role of dominant ideologies in judicial decision making, we see that the judiciary has portrayed unions as self-interested, picket lines as coercive, and workers who refuse to cross picket lines as irrational. In contrast, business advertising is portrayed as assisting citizens in making informed, rational choices, thus serving the public interest. Furthermore, as Bakan illustrates in Chapter 6, 'Power to the Powerful', corporations have been remarkably successful in bringing Charter challenges to legislative measures they find problematic — again in marked contrast to the success rate of unions.

The final Part of the book addresses two somewhat disparate issues: first, the defeat of the 'Charlottetown Accord' (which was to give Quebec and First Nations peoples some recognition as distinct cultures within Canada and to allow them some ability to override the Charter in order to protect their culture); and second, a critique of arguments for the addition of social rights to the Charter. The first issue is peculiarly Canadian and, although some of the points Bakan makes are of broader relevance, I will not discuss it here. The second issue, to which the final chapter is devoted, is more interesting. Social rights go beyond the traditional, negative conception of rights (freedom from government interference) and attempt to place duties on government to provide a range of benefits to citizens, such

as food, housing, health care, education, social security, working conditions and so on. As Bakan points out, social rights 'have been proposed by some as a solution to the Charter's limitations'. Bakan dismisses this suggestion, however, for two main reasons: first, because these rights, like those already in the Charter, would be interpreted by an elite (be it judges or members of parliament); and second, because social rights would address only the symptoms, not the complicated causes, of social inequality.

Bakan is not entirely opposed to the use of rights as a tool in the struggle for progressive change. Rather, he sees his critique as providing an insight into the limitations of rights as such a tool, in the context of a dominant ideology which sees rights, and the Charter, as the answer to all social ills. He is careful to distance himself from those who conclude that the Charter is profoundly negative, with no redeeming qualities — although at times the book reads in such a way in its unrelenting critique. Ultimately Bakan expresses the view that 'the day to day lives of people in Canada would not be that much different — not much better, nor that much worse — if the Charter had never been entrenched in the Constitution' (p.145). Bakan's careful analysis suggests that we need to think carefully about whether the battle for constitutional rights is really worth the effort.

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Women's Encounters with Violence: Australian Experiences

edited by Sandy Cook and Judith Bessant; Sage Series on Violence Against Women 1997; 268 pp; \$32.95.

We (particularly those who work, teach or do research in the area) might ask, 'What can yet another book on violence against women in Australia offer us?' The answer is, 'A great deal'. Sandy Cook and Judith Bessant have managed most successfully to bring together a variety of contributors who either provide discussion of something rarely addressed in the literature (for example, the impact of war; homeless young women) or who offer interesting and unique analyses (for example, language and bias in the court; construction of masculinity and rape law). As one would expect, there is some varia-

tion in quality. Most chapters do, however, share a consistency in presentation style that speaks comfortably even to those readers who do not have a background either in violence against women or in the law.

Preceded by an excellent introductory overview, the book is divided somewhat arbitrarily into three sections. Each of these contains largely theoretical pieces, juxtaposed with chapters of a more empirical nature. The juxtaposition is effective in illuminating an array of feminist facets about the issues in a palatable form. My only criticism of the choice of topics is

minor and possibly contentious — two chapters that report on Aboriginal women while there are none highlighting the concerns that face women from migrant cultures.

Part I, 'Sexual Violence', has three offerings: a description of the high prevalence and the specific patterns of abuse for women with disabilities and the reasons for their enhanced vulnerability to violence (Leslie Chenoweth); a discussion of mother/daughter rape (Lee Fitzroy); and an examination of the types of heterosexual violence directed towards lesbians because of their sexuality and how that hostility helps to perpetuate lesbian secrecy about their sexuality (Gail Mason).

In 'Law and Criminal Justice', Part II, there are analyses of: specific lawyering problems for Aboriginal women who kill a violent partner, with the focus on the Robyn Kina case and on the failure of lawyers to have the requisite cultural understanding and sensitivity (Linda Hancock); gendered prejudice in the language of the court and judicial interpretation of the law as exemplified in two cases—one a Victorian rape and the other, a Queensland sexual harassment trial (Jocelyne Scutt); communitarian conferencing in a domestic violence context pointing to a variety of proposed models, ambiguous results of conferencing in other contexts and the specific issues that make it problematic with domestic violence (Julie Stubbs); and how traditional victimology theories have approached violence against women conflicting both ideologically and in practice with feminist approaches (Therese McCarthy).

Part III, 'Cultural and Social Issues', includes chapters on: domestic violence in the Aboriginal community (Melissa Lucashenko): the contribution of war and the Anzac mythology to the masculinity and mateship paradigms in Australia (Susanne Davies); how men's violence has been portrayed in the written media (Adrian Howe); the frequency, manifestations and consequences of violence in the backgrounds and current lives of homeless young women (Suzanne Hatty); and the need to enhance the governability of rape by restructuring masculinity and male sexuality, reconstructing the latter as not irrepressible and removing the present onus of responsibility from the victim (Kerry Carrington).

I will elaborate on three of the chapters. They are my personal favourites (meaning that they taught me the most

because of my unfamiliarity with their approach or subject). One common denominator is that each author recognises and depicts an example of where violence against women has been essentialised. The first two were particularly courageous as the authors chose to highlight or discuss subjects either taboo or controversial. As Lee Fitzroy states, she 'seeks to name the unspeakable within the mainstream feminist discourses on sexual violence' (p.40). Indeed, Fitzroy attempts to negate the essentialist assumption that women could not sexually abuse other women and children and focuses on the specific impacts of this type of assault on its victims. Included is a feminist interpretation of mother-daughter rape which argues that these crimes could be constructed as expressions of what Fitzroy calls 'internalised misogyny'. She thus names a type of violence that may have been ignored and silenced by feminists as a threat to the gender paradigm, but she manages to provide an explanation consistent with feminist theory.

Melissa Lucashenko's chapter confronts the Aboriginal community's denial of violence against women. Within the racist context of Australia, she explains, it is acceptable (and safer) for black women to focus on the injustices of the state but breaking the silence about 'the bashings, rapes, murders, and incest for which black men themselves are responsible, however, is seen as threatening in the extreme' (p.149). Lucashenko describes the pre-contact status of Aboriginal women (probably higher than today), the prevalence of violence before European contact (likely relative infrequency), and its normative character in current Aboriginal communities. The selection ends with an overview of the reasons women stay silent including their rejection of

(some) white feminism that has essentialised the perpetrator and dynamics without recognition of class, ethnicity and Aboriginal men's lack of power.

Adrian Howe critiques a 1993 16-day newspaper feature on violence against women by the *Age* entitled 'The War Against Women'. Her analysis provides 'a unique opportunity to examine representation of violence against women in a mainstream Western newspaper' — how it is 'put into discourse' (p.178). Howe's findings are confronting (especially to someone like myself who was quoted as a so-called 'feminist expert' in 'The War'.) Giving many examples of the *Age's* fixed gender categories that exclude the non-European experience, and describing the newspaper's 'selective amnesia' in forgetting that the subject had been covered many times before, she deduces that the series was presented in a masculinist criminological positivist perspective. It did this by focusing on causes and separating the community perspective from that of the feminist experts whom the *Age* largely repudiated with other voices, including that of editorial commentary. Howe's depressing conclusion is that the newspaper series actually acted to re-situate violence against women 'within hegemonic narratives of gender relations in which women acquiesce in domestic violence, feminists vilify men, and men, as a group, are much maligned and not to be held accountable for the behavior of a small aberrant minority' (p.201).

Women's Encounters With Violence is a challenging and enriching book, offering many new insights into the field of violence against women.

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Feminism and Criminology

by Ngaire Naffine; Allen and Unwin, 1997; \$24.95, softcover.

In a spirit of optimism, this book is a feminist endeavour to engage (yet again) with criminology as it is seen to be in its proper form. It is an effort to persuade the members of the discipline of the intellectual benefits of a more modest and self-reflective criminology which acknowledges its exclusions, its limitations and its silences. [p.12]

In *Feminism and Criminology*, Ngaire Naffine makes a laudatory attempt to make a scholarly connection

with mainstream criminologists. She cites a series of examples of mainstream criminology texts to establish her claim that feminism has been marginalised or ignored. She argues that this is particularly costly to criminology as crime is predominantly a male activity:

As a rule, crime is something that men do, not women, so the denial of the gender question — and the dismissal of