

## BOOK REVIEW

Agnete Weis Bentzon, Anne Hellum, Julie Stewart, Welshman Ncube and Torben Agersnap, *Pursuing Grounded Theory in Law: South-North Experiences in Developing Women's Law*. Oslo and Harare: Tano Ascheboug and Mond Books (1998). (18 + 311 pp.)

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Feminist legal scholars and activists involved in grassroots activities in Southern and Eastern Africa have provided valuable theoretical insights in the course of grappling with the issues facing women in the developing world. Their theoretical perspective emphasises women's experiences as the point of departure in developing a distinct discipline of 'women's law'. *Pursuing Grounded Theory in Law*, which is meant to be both an exposition of these theoretical concerns and a guide to empirical research, illuminates the links between women's law in the South and the North. It is the product of long-standing collaborations between the University of Oslo and two partners in the South: the Women and Law in Southern Africa (WLSA) project and the Women's Law Programme at the University of Zimbabwe.

This volume is distinctive for its women's law approach which is an important example of the development of third world feminist theory and jurisprudence. For this reason alone it should be of interest to readers of this journal. More particularly, however, its promise lies in its refusal to accept a simplistic or uncausal explanation of women's subordination. It is distinctive in its emphasis on the lived realities of women in the third world, its refusal to adopt a legal centralist stance in research on women in favour of a more grounded understanding of their experiences in situations of legal pluralism, and its attempts to forge links between theory and practice. It has been described as:

...[an] essentially multidisciplinary overarching methodological approach to studying women and their interactions with the law.... It recognises as an inherent part of the multidisciplinary process the significance of legal pluralism, the importance of women's lived experiences and the dynamics

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## BOOK REVIEW

Ambreena Manji

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within semi-autonomous social fields in mediating women's access to and utilisation of a variety of different normative orders. (Maboreke 1990: 3)

*Pursuing Grounded Theory in Law* makes a further contribution to the development of women's law. Of the book's three parts, it is the first - which is entitled "Theories and Perspectives in Women's Law" - which is of particular interest for feminist legal literature. The remaining two sections provide a useful guide to students and researchers planning to carry out fieldwork. Dealing with such issues as problem formulation, demarcation of the field of study, and interpretation of data these sections will function as an invaluable research handbook. Whilst it is unusual to find practical guidance and theoretical exposition being attempted in one publication, this arrangement is explained by the 'grounded' approach of women's law theorists. The authors describe grounded theory as iterative: "[T]he interaction between developing theories and methodology is constant, as preliminary assumptions direct the data collection and then the collected data, when analysed, indicates new directions and new sources of data" (18). The decision to discuss theoretical issues and methodology in one work, whilst explicable, is nevertheless in my view the source of a number of weaknesses in the volume which are discussed below.

Section one discusses legal pluralism both as it is manifested in the southern and eastern African context and as it has received attention in the Scandinavian setting. This is done using detailed references to research which has employed a legal pluralist framework. For example, the insights provided by the work of the WLSA's Zimbabwean research team on inheritance (WLSA Zimbabwe 1994) are described as are the findings of Petersen's Scandinavian research on informal law and the norm of consideration (Petersen 1992). This approach illustrates the insights to be gained by adopting a legal pluralist approach whilst also providing the reader with sources for further reading.

The book's analyses might have been enriched by discussions of three important issues. These are, in fact, touched upon at various points in the volume but never elaborated. This shortcoming is perhaps due to the authors' attempts to cover a good deal more ground than might be possible in one volume. Whilst these weaknesses are understandable, therefore, they are to be regretted because they go to the heart of the theoretical discussions in the book.

Firstly, recent important developments within feminism remain unaddressed. In recent years, feminist writing has drawn on Foucaultian notions of power and resistance. Foucault's idea that wherever power exists there also exists agency and resistance (Foucault 1988) has been used to locate sites of resistance and the multitude of forms it takes. Post-structuralist critiques and the work of Foucauldian influenced writers are widely established within the academy and

their possible contribution to a distinctive third world theorisation - and vice versa - might have been explored. The authors mention in passing the impact of post-modern work (Fitzpatrick 1993), in particular in calling into question the category 'woman' (95). They do not however engage with this important body of work in any detail. This is a major weakness of the book. The authors rightly decry the hegemony of western feminist writing (95) but do not seize the opportunity to detail their position in this debate or locate their writing more carefully. Such work has important implications for the advancement of theory.

A second and closely related issue which might have been addressed is the location of the women's law paradigm within the larger feminist debates occurring since the late 1980s. The authors do not describe these contemporary debates within feminism, stopping short at older debates such as those generated by the work of de Beauvoir (1961) and Gilligan (1982) (82-84). More recently it has been argued that feminism's engagement with the material has given way to a concern with ontological, epistemological and representational questions:

[T]he focus... is not primarily the central question of early second-wave feminism - 'what is to be done?', but rather the more reflexive, 'what is the basis of my claim to knowledge' and 'who is the "I" that makes such a claim?' (Kemp and Squires 1997).

This trend has been variously characterised as the turn to culture, the turn to talk and the turn from 'things' to 'words' (Bar 1992).

If indeed the locus of struggle and debate within feminism in the west has shifted from the once dominant concern with the material and sociological context of women's lives, it is important to address this development. It would have been informative to read the response of women's law theorists whose work has been generated largely outside the commanding American, British and French traditions.

Another related point arising from this is that a number of factors militate against the development, publication and dissemination of third world feminist perspectives. Not least amongst these are the material circumstances in which they are generated (Altbach 1975). In consequence, theoretical contributions originating outside the developed countries have yet to attain the prominence of western writing. It would have been useful to have an account of the women's law response to this trend and its implications for attempts to formulate a more grounded body of feminist theory.

The third issue remaining to be addressed by the authors is a more detailed account of women's relationship to the state in both the colonial and post-

## BOOK REVIEW

Ambreena Manji

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colonial periods. A number of theorists, amongst them political scientists, feminists and jurists, are attempting to 'bring the state back in' to writing (Evans et al. 1985; Fatton 1989; Parpart and Staudt 1989; Mamdani 1996). The women's law approach has been subject to criticism and described as 'feminist fabianism' because of its failure to develop an adequate theory of state power and the hurdles to be overcome by women's law (Stewart 1993). This criticism is touched upon in *Pursuing Grounded Theory in Law* (92) but is not adequately confronted. The authors simply assert that "[t]he methodologies which were evolved to deal with the problems of Scandinavian women based on an experiential and empirical starting point, have a more general application." This assumption is indeed the basis of the North-South collaboration discussed in the book. It is not self-evident, however, and it was for the authors to make a more detailed case for the approach.

In doing this, the authors and other legal pluralist theorists might profitably take as a starting point a substantial body of writing on the nature and function of the state and of state law. These insights might have been deployed in making the case for legal pluralist analyses by suggesting that women's experiences of state law in the third world differ from those of men: the attitude of the state towards women has been at best ambivalent and at worst physically and symbolically coercive (White 1990; Mbilinyi 1988). It is in the context of such conduct that we should understand women's relationship to the state. The actions of the state endured by women illuminate why they might elect to 'exit' the ambit of the state or to operate at arm's length from it (Fatton 1989).

The tendency for women to distance themselves from the state and from its laws is significant to a discussion of the legal centralist and legal pluralist paradigms because it provides the context of women's 'legal world'. It is arguable that women in the developing world have experienced, and continue to perceive law differently to men. Theoretical work on women and law must recognise the reality of women's experiences of law. Such a recognition strengthens the case for employing a legal pluralist paradigm. The task is to "bring the state back in" in order to expose the limits of its power.

In spite of the shortcomings described above, this is a book which develops further the important discipline of women's law and in particular contributes to African feminist jurisprudence. It contains a good deal of useful material which will helpfully guide the students to whom it is largely directed. The methodological section is detailed and valuable. In its theoretical chapters, it also touches upon important questions. The development of such issues is of crucial importance to the advancement of feminist jurisprudence in general and to that originating in the developing world in particular. For this reason, it is hoped that the authors will present us with greater theoretical elaboration of their ideas in

the near future.

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BOOK REVIEW  
Ambreena Manji

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