

## BOOK REVIEWS

### *THE INCREDIBLE WOMAN: POWER AND SEXUAL POLITICS* BY JOCELYNNE A SCUTT

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Jocelynne A Scutt *The Incredible Woman: Power and Sexual Politics* (Artemis Publishing, Melbourne, 1997) (vol 1, 336 + xiv pages, \$AUS34.95; vol 2, 354 + xvii pages, \$AUS34.95).

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*The Incredible Woman: Power and Sexual Politics* is an anthology of scholarship by Jocelynne Scutt, Australian barrister and law reformer. While stated to cover 25 years of Scutt's activism, over three quarters of the articles are from the period 1990 to 1996, a fact that lends currency to the collection. The articles are arranged thematically under four headings. Volume One consists of "Part I – 'Judicial Wisdom', Patriarchal Power", a general examination of sexual politics in the legal system, and "Part II – Medicine, Power and the Politics of Health", a particular examination of sexual politics in the area of health law. Volume Two focuses on the wider equality issues of economics and power in "Part III – The Economic Politics of 'A Woman's Place'" and "Part IV – Power and the Woman".

The cover of each volume bears the image of a diver, an athlete of visible strength captured in mid-flight. Behind her, there is a faint horizon that marks the division between air and water, the diver's twin media. The image is ideal for the work presented in this collection, work reflecting Scutt's strong presence in both oral and written media, facilitating both public and private dissemination of legal scholarship.

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The cover image also resonates on a personal level, bringing to mind my childhood swimming lessons. I had annually progressed through the swimming hierarchy from the pre-beginners' class to beginners', to juniors', to intermediates', and, at length, to the seniors' class. Standing wet by the poolside after the last lesson, I waited to receive my senior's badge but was handed another intermediate's badge. I protested that I had earned a senior's badge. But apparently, the instructor had made the incredible error of enrolling me as an intermediate even though it was a designated seniors' class. As he had assessed my performance against the wrong standard, I would have to repeat the class to be assessed as a senior. I enrolled again and was again denied my badge, only this time on the basis that my ankles turned in "like a girl's" when treading water. Another case of applying the wrong standard.

*The Incredible Woman* is a catalogue of the wrong standards that the law has applied to women's performances and women's experiences. For example, in "The Sexual Politics of Law and Medicine", Scutt raises the unreported case of *R v Stanbrook*. Stanbrook had first raped a 17 year old girl and then cut her throat. As a mitigating factor, the sentencing judge concluded that "the victim was not traumatised by the event, indeed was probably comatose at the time".<sup>1</sup> While the decision was overturned on appeal, Scutt questions the useful effect of the appellate reversals: "Having one decision overturned on appeal can hardly overturn a lifetime's socialisation into the belief that an unconscious victim of rape does not suffer trauma because she is comatose."<sup>2</sup>

*R v Stanbrook* offers one example of the incredible woman, of the woman (of all women) whose credibility is denied by legal standards. As Scutt notes in "Money, Power and Sexual Politics":<sup>3</sup>

A woman's word is suspect where she is a victim of rape and says so. A woman's word is questionable where she is a victim of some other sort of sexual harassment and says so. A woman's word runs the risk of being disbelieved where she is beaten by her husband and calls the police, or where after suffering beatings for years she kills him to escape. Ironically, for a woman to retain "credibility" in such a system, she must remain silent about the crimes that are committed against her, particularly where those crimes are meted out by men and are directed against her because she

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1 Jocelyne A Scutt *The Incredible Woman's Power and Sexual Politics* (Artemis Publishing, Melbourne, 1997) vol I, ix.

2 Scutt, above n 1, vol I, x.

3 Scutt, above n 1, vol II, xvi.

is a woman. Yet if she remains silent, she will never gain redress for the wrongs she has suffered, and *her reality – the truth – remains covered, unrecognised, ignored.*

The fact of this being a collection of Scutt's previously published writings means that her message is not new. She has said it before. Catherine MacKinnon, Regina Greycar, Mary Jane Mossman, Leslie Bender and countless other feminist scholars have said it before.<sup>4</sup> Studies by the New Zealand Law Commission, the Australian Law Reform Commission, and numerous Canadian governmental agencies have confirmed it.<sup>5</sup> The law has operated and continues to operate in a manner that is discriminatory towards and detrimental to women.

Given the increasing volume of feminist legal scholarship, one must ask why the law remains a source of harm for women? To put it simply, perhaps the reason is that the incredible woman is merely the perception of the incredulous man. A finding of credibility must rest on a willingness to believe.

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4 See the many excellent articles collected in Judith Greenberg, Martha L. Minow, and Dorothy E. Roberts (eds) *Women and the Law* (2 ed, Foundation Press, New York, 1998); Margaret Thornton (ed) *Public and Private: Feminist Legal Debates* (Oxford University Press, Melbourne, 1995); D. Kelly Weisberg (ed) *Feminist Legal Theory: Foundations* (Temple University Press, Philadelphia, 1995).

5 See for example: Joanne Morris *Women's Access to Legal Services – Study Paper No 1* (New Zealand Law Commission, Wellington, 1999); New Zealand Law Commission *Justice: The Experience of Maori Women – Report No 53* (New Zealand Law Commission, Wellington, 1999); *Women's Access to Justice: The Education and Training of Law Students and Lawyers – Miscellaneous Paper No 11* (New Zealand Law Commission, Wellington, 1997); *Women's Access to Justice: Lawyers' Costs in Family Law – Miscellaneous Paper No 10* (New Zealand Law Commission, Wellington, 1997); *Women's Access to Justice: Women's Access to Legal Advice and Representation – Miscellaneous Paper No 9* (New Zealand Law Commission, Wellington, 1997); *Women's Access to Justice: Women's Access to Civil Legal Aid – Miscellaneous Paper No 8* (New Zealand Law Commission, Wellington, 1997); *Women's Access to Justice: Women's Access to Legal Information – Miscellaneous Paper No 4* (New Zealand Law Commission, Wellington, 1996); *Women's Access to Justice: Information About Lawyers' Fees – Miscellaneous Paper No 3* (New Zealand Law Commission, Wellington, 1996).

Australian Law Reform Commission *Equality Before the Law: Women's Equality – Report No 69(2)* (Australian Law Reform Commission, Canberra, 1994); *Equality Before the Law: Justice For Women – Report No 69(1)* (Australian Law Reform Commission, Canberra, 1994).

Canadian Bar Association *Touchstones for Change: Equality, Diversity and Accountability* (Canadian Bar Association, Toronto, 1993); Canada Department of Justice *Toward Equality: The Response to the Report of the Parliamentary Committee on Equality Rights* (Canada Department of Justice, Ottawa, 1986); Canadian Parliamentary Committee on Equality Rights *Equality for All: Report of the Parliamentary Committee on Equality Rights* (Canadian Parliamentary Committee on Equality Rights, Ottawa, 1985).

Given the increasing volume of feminist legal scholarship, one must ask why *this* book is important? Again, to put it simply, this book is important because it increases the volume. As Scutt states, "If all women remain silent, political change is impossible."<sup>6</sup> Each voice that adds to the volume increases the possibility of political change.

As this collection shows, Scutt has been exemplary in raising her voice and raising awareness. Her message is clear. Her work is accessible. And, not to be overlooked, her work is encouraging through her unwavering belief that change is inevitable:<sup>7</sup>

There will come a time when women are recognised for what we all are – both credible *and* "incredible" in a very real sense of the word, for our courage, our longevity, our persistence and resilience in the face of vilification and attack.

As a final note, I would like to return to the cover image of the diver. As an athlete, the diver is almost invisible, seen only for a brief second of flight and then covered over by the water's roll. Feminist legal scholarship has also struggled against such cyclical invisibility. As *The Incredible Woman* evidences, Jocelyne Scutt has made a conscious effort to maintain the visibility of feminist scholarship.

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6 Scutt, above n 1, vol II, xvii.

7 Scutt, above n 1, vol I, xiv.