AUSTRALIAN CANADIAN STUDIES

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The STATUS of WOMEN in CANADA and AUSTRALIA
AUSTRALIAN CANADIAN STUDIES

Australian Canadian Studies (ACS) is a multidisciplinary journal of Canadian studies. It is the official journal of the Association for Canadian Studies in Australia and New Zealand (ACSANZ) and is published twice a year. ACS is a double blind refereed journal for the humanities and social sciences that welcomes Canadian and comparative Australian – New Zealand – Canadian analysis. The audience is worldwide.

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Special issue:
The STATUS of WOMEN in CANADA and AUSTRALIA
Guest Editors: Nancy Wright and Brooke Collins-Gearing

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2004 ACSANZ Conference

The Association for Canadian Studies in Australia and New Zealand (ACSANZ) is hosting its bi-ennial conference in Sydney, 23-26 September, 2004.

The Conference Theme is “Learning From Each Other” which we will do in public dialogues on social issues of particular importance to Australians, Canadians, and New Zealanders; panel presentations; and research paper presentations. Conference details will soon be published on ACSANZ’s website at http://homepage.powerup.com.au/~acsanz/

ACSANZ is a multidisciplinary association and so encourages paper submissions across the humanities and the social sciences. Comparative research enabling Australians, Canadians and New Zealanders to learn from each other’s experiences is particularly welcomed. Specific fields of interest include – but are not limited to – recent developments in legally lead politics, the changing role of the military, non-territorial indigenous governance, theorising cultural heritage/museum studies, the problems of modern cities, social health, trade, economics, and management.

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CALL FOR PAPERS

CANADIAN LITERATURE AND THE POSTCOLONIAL GOTHIC

In a 1977 essay entitled “Canadian Monsters,” Margaret Atwood stated that Canadian literature, by definition, has typically excluded the gothic and the supernatural in favour of a more “social-realistic” mode. In her more recent essays in *Strange Things* and *Negotiating with the Dead*, she revised her position substantially. Indeed, a study of Canadian literature reveals an overwhelming fascination with gothic elements. This is particularly apparent in contemporary Canadian writing, which reveals an obsession with the uncanny or invisible world. However, it may be that the gothic takes a somewhat different form in a New World context from that of the Old-World prototypes. Are we beginning to define a new genre: the postcolonial gothic? Postcolonial theorists have for some time been using the terminology of the uncanny and the unhomely to describe the unsettling and ambivalent nature of postcolonial experience. If postcolonialism is inherently unsettling, this might suggest that tropes of the gothic and uncanny are especially useful in figuring the nation’s ambivalent relation with its past (and present).

Submissions are invited for a special issue of *Australian Canadian Studies* on the **Postcolonial Gothic**. Topics might include, but are not limited to, the following:

- What are the connections between postcoloniality and the gothic?
- What kinds of gothic narratives predominate in Canadian literature?
- In what ways are gothic conventions inverted or transformed in Canadian writing?
- How are gothic conventions used or modified in a postcolonial context?
• In what ways is the gothic used to explore questions of history, nostalgia, genealogy, memory, trauma, guilt, or mourning?

• Are there connections between Canadian, Australian, and/or New Zealand uses of the postcolonial gothic?

• Is there a connection between the postcolonial gothic and the nation?

• How are settler/Aboriginal relations gothicized?

• How do writings by Aboriginal authors engage with gothic conventions?

• In what ways were/are New World landscapes and societies inherently gothic sites?

• Are national narratives necessarily haunted by an inherently gothic subtext?

• How do non-mainstream writers attempt to gothicize the nation-state?

• How are contemporary historical fictions making use of gothic traditions?

Deadline for submissions is 1 March 2005. Comparative studies of Canadian, Australian, and New Zealand literatures are welcome. Papers should conform to the Chicago Manual of Style and should be 5000-7000 words, double-spaced. Submissions should include a brief 50-word bio and may be sent electronically or in hard copy to:

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In a prefatory statement to Setting the Stage for the Next Century: The Federal Plan for Gender Equality (1995), Sheila Finestone, Secretary of State (Gender Equality), directs attention to many issues in Canada that remain to be addressed in relation to the status of women: “closing the gender gap in medical research and health care; appreciating women not only as consumers but also as contributors to public policies and to the public purse; sharing work and family responsibilities equitably between women and men; valuing women’s work — both paid and unpaid; indeed, reintegrating market activity into the larger sphere of economic activity generally.” Finestone acknowledges reform of social policy and legislation necessary to improve the status of women. Securing gender equity, particularly in the formal labour force in Canada, has been the subject of provincial task forces. The Pay Equity Task Force established by the Office of the Attorney General of British Columbia in 2001 examined the extent to which current Canadian models of pay equity legislation are an effective and efficient response to sex-based wage disparity in the private sector. Working Through the Wage Gap, the Report of the Pay Equity Task Force, concluded, “There is no dispute that substantial sex-based wage disparities (also referred to as gender pay gaps) exist in British Columbia and across Canada, or that they adversely affect women in a number of ways. Aside from reflecting and reinforcing gender-based inequality in our society, sex-based wage disparities contribute to women’s poverty both in the short term and the long term, as lower incomes lead to lower pensions” (Iyer 2002, i). The report, tabled in 2002 by Nitya Iyer, the Chair of the Pay Equity Task Force, recommends an inclusive and innovative approach to the...
ongoing obstacles to pay equity and the rights of minority women in Canada.

The history of the economic, legal and political status of women in Canada has relevance beyond the boundaries of that nation. Recent scholarship comparing Canada to Australia has been particularly productive in identifying factors benefiting women workers. The comparative methodology used by Raelene Frances, Linda Kealey and Joan Sangster (1996) in their research indicates factors producing not only similarities but also differences in the experiences of women participating in the formal labour force in Canada and Australia. Factors common to both countries include sex-segregation of occupations, lower rates of pay for “female” work and the marginalisation of women workers. Comparative historical study reveals how different patterns of migration produced female workforces with notably different ethnic characteristics. Frances, Kealey and Sangster find that the most striking differences relate to the extent of the Australian state’s involvement in wage tribunals and in the compulsory arbitration system. They conclude that the success of Australian women in “playing the state” led to relatively better wages and a “floor of protection” for Australian women workers (1996, 82–84). It is not only in the area of labour history that comparative research can reveal important insights about the status of women in Canada and Australia. This issue of Australian Canadian Studies engages in comparative study of changes in family and property law and rights of citizenship affecting women in the two countries. Many of the following articles develop a comparative analysis, while others, which address a topic in relation to either Canada or Australia, can be read together as companion pieces to gain insight into subtle differences in these two societies. Collectively these articles reveal change from the nineteenth to the twenty-first century has yet to secure equality, not only between men and women but, as importantly, among women.

Women’s travel writing, which circulated in manuscript as well as printed texts, identifies important points of comparison for study of
married women’s legal and economic status in nineteenth-century Canada and Australia, as shown by Kathryn Carter and Anette Bremer’s articles. The marriage of high-ranking employees of the Hudson Bay Company to British women who travelled and resided in Canada, Carter explains, was viewed as part of a “civilizing” process. Such marriages disrupted the custom of “country marriages” or marrying “à la façon du pays,” which united a Métis or First Nations woman with a British groom in a non-legally binding arrangement. The marriage of Frances Simpson to the governor of the Hudson Bay Company promoted racial differentiation and segregation. During her residence within Canada, she interacted primarily with women of her own class and came into contact with Indigenous and working-class women only when they acted as servants. In contrast, Mary Ann Parker, during her circumnavigation of the globe and while residing in London, engaged in cultural exchange with Indigenous people, particularly two Eora men. She, like Frances Simpson, encodes her journey in terms considered appropriate to her gender and class, particularly ideas of domestic labour and sentiment. In contrast to the inscription of racism as a norm of culture in Frances Simpson’s narrative, sentiment in Parker’s A Voyage Round the World challenges the concept of savagery informing ideas of racial difference. Her use of the discourse of sentiment, typical of abolitionist writing, however, entrenches both feminine gender and race in the concept of nature. Parker, who was widowed, wrote her travel narrative about her journey circumnavigating the globe in order to improve the economic status of herself and her children. Although as a widow, Parker was entitled to property rights denied married women, she suffered both poverty and imprisonment for debt.

In the nineteenth century, marital status differentiated the property rights of women. Femes sole — a legal category that includes unmarried and widowed women — had rights of ownership. Prior to the 1830s, a widow enjoyed a right of dower in the freehold lands seised of her husband during their marriage. Dower provided a widow with the use of one-third of her husband’s freehold lands. Dower, as Lori Chambers has explained, “extended the husband’s responsibility
for his wife’s maintenance beyond the grave. Common law dower was intended to provide the wife with security against the interests of her husband’s heirs and creditors and to prevent poorer widows from becoming a public liability” (1997, 19). Although other legal provisions for widows, such as jointure and strict settlement, became commonplace during and after the seventeenth century (Staves 1990), dower remained in common law until limited by imperial and colonial legislation in the 1830s (Wright 2004). A.R. Buck constructs a comparative case study of debate and case law about dower in Upper Canada and New South Wales, where this species of property right, intended to secure the welfare of widowed women, was the subject of equitable jurisdiction in the nineteenth century. The history of the development of the equitable jurisdiction in Upper Canada and New South Wales, Buck argues, needs to be related to wider economic and social factors in order to reveal its consequences for the property rights of women residing there. Case law, popular debate and legislative reform pertaining to dower reveal striking differences in the two common law societies and their attitudes to women’s property rights.

A married woman, according to the English common law doctrine of coverture, was subsumed within the legal personality of her husband, who represented her in civil affairs. As a result of “spousal unity,” wives could not enter into contracts, execute wills, sue or be sued independently of their husbands, and could not control their own wages (Dickenson 1997, 87–88). Coverture also required that upon marriage a woman transferred to her husband absolute ownership of her personal property (e.g. money and chattels) and the use rights of her real property (i.e. land). Late in the nineteenth century Canada, Australia and New Zealand followed British statutes implementing legislative reform that enabled married women to own property. Hilary Golder and Diane Kirkby propose that comparative study of the reform of legislation in different jurisdictions is necessary to reveal the various meanings of married women’s property rights in colonial societies. In New South Wales, they argue, legislation to reform the law of property pertaining to married women was promoted as a welfare not a rights issue. In addition, comparative study reveals in
other areas of legislation — the enfranchisement of women, their representation by industrial tribunals and the liberalisation of divorce law — reform did not follow in the wake of British legislation. The question of married women’s property rights and the value of contributions that women make in the home rather than the formal labour force remain vexed questions in Family Courts in Australia, as an article by Lisa Young explains. She challenges the popular belief that the family law system gives undue financial advantages to divorced women. Young shows that non-financial contributions made to a relationship by women are devalued by the “common sense” approach adopted by courts when parties’ assets are high. She provides evidence that women’s equal status in marriage has only recently been recognised by Family Courts in Australia.

Although to this day undervalued in divorce settlements, women’s work within the “private sphere” was of notable significance to public debate about women gaining the electoral franchise. The women’s suffrage movement in the late nineteenth century encountered resistance because of fear that women would abandon unpaid work in the home if they obtained political equality. As an article by Marion Sawer explains, the metaphor of “housekeeping the state” became a maternalist discourse of suffrage supporters in Canada, Australia and New Zealand. Suffrage was secured first in New Zealand, where Maori women obtained the right to vote at the same time as Pakeha women in 1893. This was also the case for Indigenous women in South Australia but, Sawer explains, this was not the case in general for Indigenous women in Australia and Canada for whom political rights came much later than for non-Indigenous women. Women’s political status, however, involves not only the right to vote but also the right to stand for election in these countries. Women have held important political offices as members of parliament, leaders of political parties and, in Canada and New Zealand, as prime minister and governor general. Comparative study enables Sawer to reveal factors influencing women’s political status in the three countries that share not only the Westminster system and democratic traditions but also unresolved issues with Indigenous people.
These papers contributed to a conference held during 2002, the centenary of women’s suffrage in Australia. The Centre for the Interdisciplinary Study of Property Rights at The University of Newcastle organised the conference as part of a research project sponsored by The International Council for Canadian Studies and The University of Newcastle. I wish to thank all those who participated in the conference, particularly Nitya Iyer of Heenan Blaikie LLP (Vancouver, Canada); John McLaren, Lansdowne Professor of Law, University of Victoria, Canada; Marion Sawer, Head of the Political Science Program, Research School of the Social Sciences, Australian National University; and Glenda Strachan, Professor, Griffith University, who presented plenary papers.

**Works Cited**


When Englishwoman Frances Ramsay Simpson penned a journal letter during a six-week voyage from Lachine to York Factory with her husband, Hudson’s Bay Company governor George Simpson, it functioned as an open letter to friends and family in England, and it offered a representation of self, crafted in response to that audience and the exigencies of Simpson’s cultural position as a white woman in a colonial space. It is a reticent document that demonstrates an identified feature of women’s writing: it “mediates in complex, nuanced, and often highly conflicted ways between individual experiences and cultural imperatives” (Joanne Dobson quoted in Buss 1993, 62). The careful wording of Simpson’s text results from the lived pressures of a role — mapped for her in advance by her husband — as a civilising presence in fur trading culture. Living up to that prescribed role, and travelling in fur trade society as a conspicuously classed and raced figure, meant circumscribing her imaginative conceptions of self. The resulting narrative strategies and silences suggest a discomfort about inscribing self in a culture that would seek to deny agency. In addition, the narrative gaps constellate around her anxiety about sending self into circulation in the potentially treacherous form of a journal letter. However, her engagement with such limitations also, importantly, creates a site where she can maintain or produce a subject position and a site where, perhaps paradoxically, she reproduces the social and cultural norms that determine her subject position.

The genre Simpson chooses for her 1830 narrative, a journal letter, is in no way a repository for the spontaneous overflow of powerful emotion. Rather it brings with it generic conventions and
assumptions. The journal letter flourished during the early part of the
nineteenth century and is defined by the *Oxford English Dictionary*
as a “letter written as a diary” with many examples appearing in
fiction and non-fiction from the late eighteenth and early nineteenth
centuries. Diary scholar Harriet Blodgett describes the journal letter
as “an ongoing, daily dated letter, addressed to a recipient which
function[s] simultaneously as a diary and as correspondence” (24).
This kind of writing makes explicit its connection to a reading
audience. Usually, it invokes a limited audience, which speaks of
modest aims couched in an apologetic apparatus and which promises
to uphold class and gender expectations. However, the dialogic
form makes room for a covert presentation of self, and Simpson risks
drawing attention to the one thing that should remain invisible:
herself as subject and not object. In response, her writing strategies
seek to contain and subdue representations of self-as-subject. This
paper outlines the strategies she uses to subdue self-as-subject and
suggests that the generic conventions of the journal letter help her
move toward that goal. She is somewhat successful, but no matter how
confined her assumed network of readers, no matter how scrupulous
her self presentation, the meaning of her text — and subsequently the
reading of her “self” — cannot be commanded by her, but (to draw
on Lacan) is at large, abroad, in circulation. A textually-rendered
self — one which has the potential to circulate promiscuously — has
consequences for her as a woman and an epistolary writer in a highly-
charged colonial situation.

Simpson’s journal letter begins with a retrospective of the ocean
crossing before beginning daily entries that chronicle her travels
by canoe from Lachine, Quebec, west through Timiskaming (in
Ontario), Michipicoten on Lake Superior, and Fort Garry, then up to
York Fort on Hudson Bay. It is clearly intended for limited circulation
in England because it ends, after 161 manuscript pages, with a direct
appeal to the “indulgent eye” of those who “may take the trouble of
perusing the foregoing unconnected memoranda” (Simpson 1830,
160). She planned to continue her “narrative” (although she was
reluctant to give it that label) on further journeys. As far as we know,
she did not create a second journal nor did she seek publication for the first. The manuscript stayed in the family’s possession until 1969 when a great granddaughter in Scotland sold the manuscript to the Hudson’s Bay Archives in London.\(^3\) It then moved with the Archives to Winnipeg where the original and microfilmed versions survive. The existing archival version exhibits careful penmanship and repeats catchwords at the bottom of each page; it is safe to say that this is a fair copy created sometime after the actual events of 1830. Internal evidence also suggests that the existing version could not have been written before 1836: for example, the book in which she wrote her journal was printed by Blight and Burrup, 56 Lombard Street, and they did not operate under that name until 1834 (Maxted 2002). Additionally, Simpson’s text draws attention to her meeting with Mr Aster, made famous in Washington Irving’s story “Astoria,” but this story was published for the first time in 1836 (Matthews 2002, 58). As her reference to Astoria makes clear, the fair copy was subject to some degree of editing or authorial intervention.

Parts of Simpson’s journal letter have since been published, beginning with articles in *The Beaver* in 1953 and 1954. It was excerpted in Germaine Warkentin’s 1993 anthology of exploration literature and named “the most repressed of exploration documents”(384). A different excerpt, with a biocritical introduction by S. Leigh Matthews, is published in *The Small Details of Life: Twenty Diaries by Women in Canada, 1830–1996*. Simpson’s sister, Isobel Finlayson, likewise kept a journal when she visited York Factory some ten years later and hers was excerpted in a 1951 issue of *The Beaver*. The two journals have received limited attention from scholars: Helen Buss offers the most extended treatment in an article and in the opening pages of *Mapping Our Selves* where she focuses mainly on Finlayson, and Ian S. MacLaren compares the portrayal of landscape by Simpson and her husband in their separate journals. Some of these critics, namely Buss and Matthews, tend to read Simpson as someone who “maintains a sense of humour about her social privilege” (Matthews 2002, 37) which leads them to a slightly different reading of the journal than that which is presented here.
Invigorating what critical attention there is to Simpson and her sister is an appreciation of the historical role played by these two in the fur trade as outlined in Many Tender Ties, an influential study of women in the fur trade published by Sylvia Van Kirk. Van Kirk’s 1980 study argues that the fur trade was “not simply an economic activity, but a social and cultural complex that was to survive for nearly two centuries” (2). Within this social and cultural complex, the role of wives was important because of the marriage rites which evolved within fur trading culture. The so-called “country marriage,” or marrying “à la façon du pays,” united, usually, a British groom and a native or Métis bride in a non-legally binding arrangement that came with a set of ceremonies and moral obligations. Such marriages were crucial in cementing fur trading alliances and a “central social aspect of the fur traders’ progress across the country” (Van Kirk 1980, 4). If the relationships came to an end, as they did for any number of reasons, there was a ritual of “turning off” or separating. In other colonial contexts, contact between colonisers and native women could be more casual or temporary, but these fur trade alliances formed family units which were sometimes quite long-lasting. For example, John Rowand, Chief Factor at Fort Edmonton, enjoyed roughly forty years of this kind of union, until his native wife died in 1849 (Van Kirk 1980, 111). However, the coming of white women had “serious repercussions, particularly on the fur-trading elite” (Van Kirk 1980, 5). Van Kirk states that their introduction “underscored the increasing class and racial distinctions which characterised fur-trade society in the nineteenth century” (1980, 5). This important historical and cultural shift was inaugurated primarily by the arrival of newly-married Frances Simpson and her friend Catherine Turner, bride to Chief Factor John George McTavish.

Simpson was an educated, upper-middle-class woman who arrived in Quebec as the eighteen-year-old wife of her forty-four-year-old cousin Governor George Simpson, the so-called “Little Emperor” of the Hudson’s Bay Company and “the most important personage in the nineteenth-century fur trade” (Van Kirk 1980, 161). Governor Simpson had previously enjoyed at least two liaisons with native
or Métis women, though he would not have called them country marriages. One of Simpson’s companions was Betsey Sinclair, with whom he had a daughter, Maria, and there was a more long-lasting arrangement with Margaret Taylor who had given birth to two sons by 1825. Governor Simpson was notoriously callous, referring to individual women in correspondence as “the commodity” or “the article” (Van Kirk 1980, 161). Likewise, John George McTavish had lived with Métis Nancy McKenzie for several years and produced several children. Perhaps neither Simpson nor McTavish had been properly acculturated to fur trade society and its unwritten rules about such relationships because they were viewed as particularly hard-hearted in the way they treated their companions: neither had followed the custom of “turning off” before heading to England on a wife hunt in 1829 (Van Kirk 1980, 187).

In England, Simpson and McTavish deliberately chose wives from the upper-middle class, and this was correctly interpreted as an affront to the white daughters of Red River colonists, who were considered too coarse, and to the native and Métis women, who were denied the significance of their role — personally and professionally — in the fur trade. Governor Simpson opined publicly that Frances represented a civilising presence in the rough world of fur trading and let it be known that any factors hoping for advancement would be wise to follow his lead. Therefore, the marriage of George and Frances was not simply a domestic footnote to fur-trading history, as Sylvia Van Kirk makes clear; it catalysed a crisis in fur trading culture. It is important to emphasise that Frances’s skin colour was not the only contributing factor. Governor Simpson wanted a wife of a certain social standing who could help to establish “a higher civilized tone” in fur trading society (Van Kirk 1980, 187). Frances’s travels along a fur trading route put into circulation a conspicuously raced and classed figure that embodied the governor’s plan to “civilize” the fur trade.

So what did Frances Simpson have to say about this in her journal? Not much. Simpson’s journal letter is remarkable mostly for what it does not say. There is clear evidence, for example, that she witnessed
the events when British wife Catherine Turner McTavish confronted her husband’s past. Catherine McTavish, who had accompanied Frances from England, was warned before arriving that she would be “expected to act as step-mother” to her husband’s mixed race children (Van Kirk 1980, 206). However, Catherine’s first meeting with one of his daughters, thirteen-year-old Mary, while they were still in Montreal was particularly uncomfortable, and Frances was there to offer comfort. This account of the situation comes from a letter written by Letitia Hargrave, wife of factor James Hargrave:

[McTavish] rose & took her up to his wife, who got stupid, but shook hands with the Miss who was very pretty and mighty impudent . . . Mrs. McTavish got white & red & at last rose & left the room, all the party looking very uncomfortable except [her husband] & the girl. [Frances Simpson] followed and found her in a violent fit of crying, she said she knew the child was to have been home that night but thought she would have been spared such a public introduction (quoted in Van Kirk 1980, 36).

Simpson’s appearance in this drama indicates that she certainly knew about country wives though she was personally spared from confronting the governor’s ex-wife Margaret Taylor (Van Kirk 1980, 187). More interesting is that she never writes about this or any related topic in her journal; only in a discussion with Catherine McTavish does she admit, by way of referring to country wives, that “she was always terrified to look about her in case of seeing something disagreeable” (Van Kirk 1980, 206).

Governor Simpson’s plans meant that his wife dwelt in isolation from other women; he felt she should only associate with women of her own class. In a land where any female company was scarce, Frances Simpson was “restricted to those few white women whose husbands possessed social standing” (Van Kirk 1980, 204). While Simpson had enjoyed the company of Catherine McTavish at first, they were separated when the Simpsons journeyed through Rupert’s Land. There
Frances Simpson was met with “a worshipful attitude” and “was not introduced to a single native wife” for fear it would sully her ladyhood (Van Kirk 1980, 186). The factors and their wives were outraged, but Governor Simpson simply shrugged it off: “I … understand that the other Ladies at Moose [Factory] are violent and indignant and being kept at such a distance, likewise their husbands … The greater the distance at which they are kept the better” (quoted in Van Kirk 1980, 205). Frances Simpson came in contact with native women only when they acted as servants, as did McTavish’s former wife (Van Kirk 1980, 205). Simpson’s reaction is, of course, not mentioned in the journal.

When seen within the framework of the Hudson’s Bay Company and its policy on journal writing, or indeed, the generic conventions governing letters and letter journals (especially those written in colonial settings), Simpson’s reticence about personal matters is not particularly surprising, for factual (as opposed to emotive) record-keeping was considered crucial to colonial enterprises. For example, Hudson’s Bay Company men were asked, in an 1814 memorandum, to keep journals that “contain nothing but a plain and simple memorandum of the facts,” primarily those pertaining to cartography, geography, meteorology, and ethnography. The memo further reminded workers that observations regarding the “weather and progress of the season … are not to be considered as a matter of idle curiosity; but may be of very essential use” (Batts 1979, 136). Realistic, not impressionistic, observations were deemed useful for the successful extraction of natural resources and the successful implantation of empire. Keeping a reticent, observational journal letter was congenial to the cultural conditions of writing in the colonies and performed within generic conventions.

Keeping a journal letter was congenial, too, to the material conditions of writing in the colonies. Sending daily letters to England was not an option; six weeks to two months could elapse between mailings, so letter writers had always to be one step ahead of the post. Simpson, for example, begins correspondence as soon as she leaves the shore
of England. She writes: “Immediately upon clearing the dock-gates, I went below for the purpose of writing a few lines to my father to be sent ashore by the Pilot” (5). Not only was the mail slow, it was unpredictable. The very last entry in her journal letter, written at York Factory, remarks on the tardy arrival of two ships bearing mail. She describes the expectant crowd and their eager reception of the mail: “In a few minutes all were busily engaged perusing the communications of those dear friends of whose welfare they had so long been anxiously wishing to hear” (159). Winter weather and shipwrecks complicated the system. In the winter of 1848, during a visit to Canada East, Simpson recalls worries about the safety of a mail ship in a letter to her sister: “The last mail had a very long passage, so much so that the most serious apprehensions were entertained for her safety. She, however, did arrive but brought me no letters.” If the lines of communication between the colonies and Britain were precarious, they were also urgent. Diary scholar Andrew Hassam offers an evocative entry from an Australian immigrant in the mid-nineteenth century who describes shipboard diarists lobbing their journal letters, attached to lumps of coal, onto a passing ship said to be heading for Cork, Ireland (1995, 27). Commercial and emotional ties to the imperial centre made communication necessary. “The importance of letters in nineteenth-century lives is indicated by the innumerable complaints of failure or delay on the part of correspondents”(1994, 23), writes David Fitzpatrick in his study of letters written by settlers from Australia to Ireland, naming concerns that are echoed by correspondents from the Canadas. Elizabeth Simcoe, for example, writes in the late eighteenth century: “I was disappointed at not hearing by the November mail,” she writes, “[I] doubt not that you thought (as I did when in England) that there was no communication with Quebec but in summer” (Innis 1971, 48). Simcoe responded to postal uncertainties by preparing a journal letter in advance and sending off a bundle of diary entries to her daughters in England when she could. Canadian diarist Lucy Peel, writing in the 1830s, frets over the passage of the mail in her journal letter, and the list could go on. Simply put, the tenuous postal link to Britain served
to fuel the popularity of journal letters. After 1850, when the postal system functioned more smoothly in the Canadas, women wrote single letters or kept diaries, practices that did not result in the hybrid journal letter.

If there was general concern about how the journal letter would circulate there was also a concern about where it would circulate. Who would be its readers? The question is raised, in part, by the rhetorical situation occasioned by the journal letter, aptly described by Janet Gurkin Altman in Epistolarity as “unique in making the reader (narratee) almost as important an agent as the writer (narrator)” (1982, 88). David Fitzpatrick, in his Australian study, agrees that no study of colonial epistolary can “ignore the patterns of response, which in turn dictated much of the content and rhetoric of further letters” (1994, 26). Like many eighteenth- and nineteenth-century diarists, Simpson and her sister were keenly aware of audience. Simpson appeals to sympathetic readers at the end, and Isobel Finlayson addresses “the dear domestic circle, for whose amusement [this notebook] has been written.” In both cases, this rhetorical gesture is meant to serve as a kind of contract, specifying the intended audience and implying an apology should the manuscript find unintended readers. The “dear domestic circle” named by Finlayson was a fluid entity but commonly understood to mean family and friends. A number of British travelers and settlers writing in the Canadas in the 1830s such as Frances Stewart (writing in the 1830s), Lucy Peel (1833–1836), Jane Ellice (1836), Mary Gapper O’Brien (1828–1838), Anne Langton (1833–1846), and Mrs Langton, Anne’s mother (1837), address a similar audience. My research shows that nineteenth-century female diarists usually addressed other women though men could sometimes be the recipients: Jane Ellice writes for the benefit of her father-in-law (Godsell 1975, n.158–159) and Anne Langton and her mother address a brother and son. These intimates formed the immediate audience, but writers knew that their journal letters might circulate in a wider family circle, perhaps among friends they had never met. It was even possible that the journal letters would be published, as they sometimes were, in the
local newspaper as information for prospective emigrants. With this potentially unbounded audience in mind, editing was commonplace. Some passages were removed, and sometimes the journal was thrown out altogether. Writing in 1837, Anne Langton’s mother remembers “a little journal or rather a diary of my feelings” she had written “when first embarking on our awful voyage.” Looking it over later she found that “it was such a melancholy catalogue of sufferings and sensations produced by sea-sickness that I thought it better torn and destroyed than distressing poor William with a perusal of it” (Langton 1950, 10). Simpson knows her journal letter is a semi-public document that may circulate widely among her friends and family. It therefore does not offer access to an inner self, nor does it explicitly record her concerns, anxieties, or hopes. What she does record tells us much about what constitutes acceptable subjects of discourse and knowledge for a woman of her social standing at that particular historical moment. What she does not record shows that, like other nineteenth-century journal letter writers, Simpson was aware of audiences — intended and accidental — and was anticipating reader reactions.

Elizabeth Simcoe’s journal letter, written between 1790 and 1796, shows how one author anticipated audience reaction. Simcoe addresses four daughters through a primary correspondent, Mary Ann Burges, who was the adviser among four women left to look after the children. Like Simpson, she revised field notes and composed her daily entries in “perfectly legible” writing (Innis 1971, 24). Critic Helen Buss notices how Simcoe’s concern for her readers, her daughters, entails a balancing act which she sees as intrinsic to the presentation of female subjectivity (1993, 43). She argues that Simcoe downplays the representation of her own feelings in dangerous circumstances so as not to arouse her daughters’ fears. This balancing act, with its acute awareness of reader/s, exploits an expository mode which allows the writer to smuggle in representations of self without seeming self-congratulatory or immodest. Simcoe demonstrates when she writes about an incident on board a ship: “My servant came to me several times to tell me we were going to the bottom. I told her to shut the door and leave me quiet for the motion of the vessel made me
sick” (Innis 1971, 157). Simcoe stays in her cabin, stoically enduring the frightening event while her servant runs about. Simcoe tempers this description by emphasising that sickness forces her to endure alone, but the impression of bravery remains to colour Simcoe’s self-representation for both the servant (who may or may not be told of the sickness) and the reader. The scene of writing — specifically the dialogic writing of the journal letter — offers a textual arena in which to mediate the tensions between “individual experiences and cultural imperatives” (Joanne Dobson quoted in Buss 1993, 62). This brief example suggests how the potential for representing female subjectivity is embedded in the negotiation between the writer’s experience, the resulting expository description, and the needs of her readers.

Anna Jameson is a more knowing writer who capitalises on the notion that journal letters might circulate beyond the family circle in *Winter Studies and Summer Rambles in Canada* (1838). She opens with a conventional apologetic gesture of the genre, explaining that it is based on “fragments of a journal to a friend” (Ottilie von Goethe) and avowing that “it was never intended to go before the world in its present crude and desultory form” (Jameson 1838, 9). Jameson’s strategy is more carefully planned: she knows quite well that her text will be put into wider circulation because she is privately publishing it. Indeed, private publication is what prompts the apologetic preface in which she excuses her temerity in presenting the work “before the world.” She also knowingly invokes Ottilie von Goethe as a way to situate herself within an epistolary network of women. Her addition of a quotation from Bettina von Arnim, by way of an epigraph, is meant to remind readers of von Arnim’s journal letter to Goethe published in 1835 and von Arnim’s collection of correspondence with Karoline von Günderrode published in 1840 (Martens 1985, 320). Von Arnim was part of a tradition of German women’s epistolary autobiography, according to researcher Katherine Goodman, a tradition especially popular among women at the end of the eighteenth century (Goodman 1988, 317–18). My point is that a network of interconnected women readers and writers stretch out like a web
from Jameson’s text. By the end of her narrative, her female circle (the dear domestic circle in Isobel Finlayson’s figuration) cunningly extends beyond friends and family to German women writers, British writer Harriet Martineau, Chippewan women Mrs Schoolcraft and Mrs MacMurray, and the newly-crowned Queen Victoria. Jameson cleverly interrogates the fluid boundaries of “private” correspondence and limited circulation.

Critic Eva Meyer asks, “how many thousand readers does it take to exceed the family circle?” (1987–1988, 85), suggesting something of the delicious treachery of journal letters: at what point does the family circle exit the “private” and move into the “public” realm? What if the letter goes astray? The paths for the circulation of private correspondence are not fixed, of course, but fluid. Jameson makes use of the opportunity, but Frances Simpson is reluctant to exploit the possibilities of the genre. Or unaware. She apologetically describes the journal letter as her “first essay at committing my ideas, or the result of my observations to paper except in the form of a familiar note or letter” (Simpson 1830, 160). The humility *topos*, while certainly used by other writers like Jameson, is here used as a rhetorical gesture that excuses her, as a woman, for putting pen to paper because she knows that her journal letter may not remain in private circulation. Unlike Jameson, Simpson is not actively seeking publication, but she knows that her text may indeed escape into a more public realm. Indeed, the fact that she transcribed her rough copy some six years after the events suggests that she took the text seriously. When Simpson refrains from describing the trials and tribulations of life in a new country, she does so in order to appear a proper representative of British culture. Simpson’s writing — and in turn her imaginative conception of self — are bound by cultural forces that both serve to bring her to the colony (as the “ideal” wife for the governor) and restrict her within a set of representational strategies which reinforce her role as a British lady.

An appeal to sentiment is one of the strategies Simpson employs, beginning with a formulaic scene of leave-taking at the English
Kathryn Carter

port calculated to show her as an educated, respectable woman of the upper middle class with profound ties to her country. This is an excerpt from that opening:

After taking leave of my dearest Mother and Sisters, my feelings at which time I cannot attempt to describe Mr. Simpson and myself were accompanied into town ... I can scarcely trust myself to think of the pang which shot thro’ my heart, on taking the last Farewell of my beloved Father, who was equally overcome at the first parting from any of his children — suffice it to say, that this was to me a moment of bitter sorrow, and one over which in pity to my own feelings I must throw a veil (Simpson 1830, 2–3).

Nearly identical passages appear in her sister’s journal written ten years later, in the journal letter of Anne Langton’s mother, and in Susanna Moodie’s description of leaving England in the autobiographical novel Flora Lyndsay (1853). Her portrait uses a motif favoured by Victorian narrative painters such as Ford Madox Brown in his 1855 painting The Last of England. The content and pathos of The Last of England is strongly reminiscent of the departure scene depicted by Simpson and others. It depicts a young couple and their child leaving an English port, facing the future and the viewer head on. The child is only barely visible: its tiny hand clutches its mother from beneath her coat, buttoned stoically against a strong and cold sea breeze. Brown explains that the emotional tug of this painting relies on the class of those leaving:

The educated are bound to their country by closer ties than the illiterate, whose chief concern is food and physical comfort. I have, therefore, in order to present the parting scene in its fullest tragic development, singled out a couple from the middle classes, high enough, through education and refinement, to appreciate all they are giving up, and yet dignified enough in means to have
put up with all the discomforts and humiliations incident to a vessel “All one class” (Rose 1977, 19).

Simpson’s sentimental opening is meant to evoke similar emotions. She appreciates all that she is giving up and imagines a day when she will return “to the home of my infancy” and the siblings from whom she “had never been separated” (1830, 1) yet she quickly assures the reader that she will not be travelling in a vessel “All one class.” “The Ladies Cabin was entirely at our disposal,” she writes two pages later, “… and a very pretty appearance it had. The Wainscot being formed of the Curly Maple, highly polished, and bearing a strong similarity to the finest Satinwood” (4–5). Clearly she wishes to be seen as a woman of refinement, who can appreciate the fine woodwork even though it is designed to slide with the motion of the boat and creates “the most tiresome and distressing noise” (6). She represents herself in the way that Governor Simpson hoped she would: as an example of the English upper class.

Simpson situates her emotional distress within acceptable aesthetic frameworks, so too her discriminating eye situates the new landscape and its climate within acceptable aesthetic frameworks. The following description of a stormy sky allies her descriptions with the sublime:

The Heavens from being clear and serene suddenly became disturbed by clouds, which appeared charged with mighty volumes of dense smoke in some parts, and in others bore the appearance of an awful conflagration having taken place. The water was agitated & assumed a darker hue than it had previously worn; the wind howled mournfully, and the whole face of nature seemed to have changed, it however passed over… (17–18).

Nothing actually happens, so the event is worth recording only because it can be used to mark her aesthetic education. The formulaic sentimental opening, the attention to the interior design of her ship cabin, and her description of threatening storm, tell the reader about what constitutes acceptable subjects of discourse and knowledge for a woman of her social standing at that particular historical moment.
The imagined (and potentially unknown) reader is key to the rhetoric of this journal letter. “The reader” described by Janet Gurkin Altman’s epistolary pact is the one who “is called upon to respond” (1982, 89) and, in so doing, affirm Simpson’s allegiance to cultural hegemony. These excerpts alert us to her evident skill in handling the conventions of journal letter writing.

As she reminisces about the ocean crossing, Simpson alludes to difficulties of expression which seem the antithesis of her evident writing skills. Quite early in the journal she despairs that “any representation will fall short of the reality” (8). Using expressions such as, “my feelings at which time I cannot attempt to describe,” “I can scarcely trust myself to think,” “I must now pass over in silence,” or “I am at a loss” indicate that Simpson will consistently avoid placing herself or her judgments prominently in the narrative. When she begins the daily diary entries of her inland journey on 2 May 1830, the “I” disappears behind the narrative. This is partly to be expected from the daily diary format in which she now writes; diary writing is immediately recognisable in the way it omits the subject in sentences like “left LaChine at 4 a.m. in two canoes” (Simpson 1830, 28). Who or what left Lachine is to be filled in by the reader. But Simpson is also carefully negotiating her way through a cultural dilemma; she is conforming to a tacit dictum articulated by Mary Louise Pratt: “as a woman, she is not to see but be seen, or at least she is not to be seen seeing” (1992, 104). When Simpson’s “I” does surface in a main clause, the attached verbs often indicate states of being rather than activity or judgment. In phrases such as, “I was surprised… ,” “I was highly entertained… ,” “I experienced the greatest kindness… ,” Simpson shows herself as a passive agent, someone who is acted upon by external agents. Alternatively, if she does ascribe any action to herself — and generally this appears in the subordinate clause — it has to do with perception. In so doing, she grounds her description in sentimental writing, which according to Pratt, “explicitly anchors what is being expressed in the sensory experience … of the human subject” (1992, 76). Simpson does show herself seeing, but prefers to represent herself as an empty vessel awaiting information.
Emphasising perception is a way to defer judgment and to be the ideal imperial observer as described by the Hudson’s Bay Company memo of 1814; she is a transparent eye witness who simply records events without passing judgment. Simpson portrays herself as an object to be gazed upon (thereby upholding gender ideologies), feeling perhaps that the role of gazer — which she cannot entirely escape — is one that is thrust upon her as a representative of the imperial centre.

Simpson generally defers the expression of self and has at her disposal several rhetorical strategies. Whenever the narrative calls upon her to step forward as a sentient subject and be seen, she summons one of three methods of evasion: she uses the plural pronoun “we,” buries the “I” in a subordinate clause, or employs the passive voice. The first method, relying on the pronoun “we,” attaches to the subject the safety of numbers. Negative comments are muted using this strategy. It is not only Simpson who is in a bad humour but others as well. For example, she writes: “the morning was exceedingly cold; so that we got from under our blankets in a very bad humour” (1830, 58).

A second manoeuvre results when the “we” acts as a main clause subject, and the “I” appears in a subordinate clause only to qualify her description: “In a short time, we came to the beautiful Rideau Falls, the sight of which equally delighted and amazed me, being the first I had ever seen” (38). Examples of this second habit are too numerous to catalogue, and what they do is offer an implicit apology for her lack of experience. Simpson excuses her own judgments by veiling them in “we” or burying a disclaimer about her own perceptions in the subordinate clause.

A third method Simpson uses is the passive voice which neatly removes any trace of an active experiencing agent. She writes, for example: “from the upper story are to be seen the fine and romantic Kettle Falls” (40). The passive voice proves a usefully evasive strategy, not only in self-representation but in the portrayal of others. It allows Simpson to feign blindness to Governor Simpson’s faults and avoid directly contradicting statements about the governor’s kindness. Twice Simpson uses the passive construction “the starting signal was
given,” politely referring to the fact that her husband has once again awakened his travelling companions at 2 a.m., 1 a.m., or midnight to begin their day. When she does think him cruel, she soft-pedals her anger, as in this description of the third rude awakening on 30 May 1830:

I had scarcely closed my eyes when I was roused by the well-known and (to me) unwelcome signal of “Leve Leve Leve,” and found on enquiry, the time to be a few minutes after 12 . . . I could not help thinking it the height of cruelty to awake them at such an hour, having a strong fellow-feeling for them, as it was with the greatest difficulty I managed to keep my eyes open and more than once fell on the slippery and uneven ground (96–97).

She still avoids naming her husband directly, even though he is the one crying “leve, leve, leve.” Helen Buss reads this as “ironic good humour,” (1989, 4) but I find it difficult to substantiate that reading because of the shift in language. The passivity is used to cover for the governor, not to hide herself as was previously the case; here, finally, she attributes active verbs to herself, to the narrated “I.” She thinks; she manages to keep her eyes open; she slips and falls. She overlooks class differences to empathise with the voyageurs. These are significant departures from the rhetorical strategy used elsewhere in her narrative.

In 161 pages, there are only three passages where the “I” is active and in a main clause. One is the scene of the midnight awakening. Two weeks later, in an entry about mosquitoes, the reader is surprised to find another active-voiced outburst in which Simpson uses a similar pattern of syntax and vocabulary: “I confess they absolutely familiarised me to cruelty, as I really felt a satisfaction in hunting them to death by the thousand” (135–36). At first reading, I was puzzled by the fact that Simpson would use the active voice and the term “cruelty” to describe her husband and her own delight in killing. It may be explained in part by Helen Buss’s commentary on the deferral of inexpressible emotion in pioneer women’s diaries: “often
when a beloved child or parent dies, the diarist hardly notes the passing, but later a detailed description of the grave or a sentimental rendering of a pet’s death will indicate the continuing ‘inexpressible grief’” (1993, 45); in this case, however, the inexpressible emotion is anger. It would be impolitic and unladylike for Simpson to enrage or blame her husband, so she uses the passive voice when describing his cruelty and then defers her anger to the hapless mosquitoes, where she can safely name the thrill of “hunting them to death by the thousand.” And while I want to argue that this outburst gives voice — if only briefly — to another story erased from Simpson’s journal — a story of discomfort, hypocrisy, and cruelty that surely could be told — is this necessarily so? Do the mosquitoes give her an excuse to lash out for a moment, or is it a form of apology, a way of saying that the land brings out cruelty in both the governor and herself? This example, and her empathy for the voyageurs, allows enough indeterminacy that readers may begin to question Simpson’s acceptance of the governor’s project.10 Recall that the social system in which she circulated was by no means settled, and that she was part of an effort to reformulate the status quo, and you begin to see how the unstable dynamics of the situation created gaps and fissures in which she could begin to re-negotiate her role in the process.

Diary critic Margo Culley advances two theories about reading the silence of diary writing: on one hand, she writes, the diarist “always knows more about her world than the reader does” and does not need to fill in every detail; on the other hand, silence can also indicate “some implied audience” (1985, 19). Silences are frequently met with psychological explanations from critics. Helen Buss, for example, sees such gaps as evidence that women’s writing is aware of the needs of others, thereby occasioning a manoeuvre which she describes: because “the inevitable illnesses, danger, and discomforts … [are] difficult to write home about; they appear in a certain disguise, a female rhetoric” (1993, 43). Buss’s notion of a female rhetoric can be made even more cogent by unfastening her notion of “disguise” from its unspoken reliance on the psychological concept of repression and the model of reality it implicitly embraces. To say that writing or women adopt
disguises implies that there is a repressed or essential reality waiting to be uncovered. The concept of repression, explains Raymond Williams, relies on particular assumptions about the nature of reality: that it is “out there,” external, waiting to find reflection in writing (1977, 99). Williams offers an alternative approach: “the problem is different from the beginning if we see language and signification as indissoluble elements of the material social process itself, involved all the time both in production and reproduction” (99). Simpson’s language does not merely reflect a reality (which according to psychological theories, she may portion out in bigger or smaller doses, sooner, later, or never, with affiliated consequences for her psychic health). Instead her writing is participatory; it produces meaning, reproduces social and cultural norms. Using this model, female rhetoric can be seen as participating in the material social process; it produces the woman and her society, and reproduces herself/itself in her cultural forms, including her putatively “private” writing, which can be understood as part and parcel of a more public culture or society. Society is not “out there” waiting to find reflection in language, but produced by/reproduced in what are supposedly her most “private” acts of writing.

At least two different power relationships are at work shaping Simpson’s self-knowledge in fur-trade society and, subsequently, her acts of self-representation: one is structured around gender; the other around race. The journal letter, which Simpson knows will be read by others, re-enacts the gender ideologies of British imperialism, and because she does not overtly question those power structures, she re-inscribes them in the colonial space and upholds the governor’s agenda of “civilizing” fur trade society. The other power imbalance is structured around race. Unlike the governor’s country wives, Simpson was expected by her friends and family to record her experiences in a new land. As an exponent of British morality and civilisation, her response to the new world is invited and solicited by friends and family. If the representational strategies she uses are limited by her cultural position, the very act of representation is in fact made possible by those same limiting factors. Any subsequent acts of self-representation are, if not entirely made possible (they partly depend
on literacy that she has and others do not), at least invited by that colonial encounter. In addition, her adventure in the colonies and her resulting journal letter might serve as a source of identity upon her return to England. This is certainly one of the ironies about women’s writing and imperial history: that sometimes white British women come to be imbued with agency and identity they might not otherwise have in situations promoting racist agendas. Simpson’s journal, its role in the colonial project, and her subjectivity are bound in a complex relationship: her subjectivity emerges in the mutually constitutive process of self and society even when that process involves the maintenance and renewal of “negative determinations that are experienced as limits” (Williams 1977, 87); in turn, her negotiation of those negative determinations elicits an agency and identity she might not otherwise have. Her journal letter tends to uphold cultural hegemonies and it also elicits or accommodates writing strategies in the representation of self that suggest a degree of agency. Simpson’s text tries to maintain narrative equilibrium. In other words, she will rearrange herself in the canoe to find a more comfortable spot, but she will try not to tip it over.

Simpson’s writing is passive, reticent, deferential, and modest. She uses a genre that allows her to defer representations of self and claim the limited appeal of her work to those friends with “an indulgent eye” (Simpson 1830, 160). The journal letter and its high degree of reader awareness play an integral role in upholding class and gender expectations. It appeals to domesticity, to sentimentality, to class, to modesty, and to aesthetics, all calculated for the potentially unbounded British audience who might read her text. It is not a repository for the spontaneous overflow of powerful emotions and cannot be contrasted to the kind of writing solicited by the Hudson’s Bay Company in its desire to textually map a new land. Simpson’s journal letter is “less an antithesis to male rhetoric of discovery and possession than its exact complement, an exact realisation of the other side of male values whose underpinnings it shares” (Pratt 1992, 105). It upholds the same imperial project. Simultaneously, and paradoxically, the journal letter also invites the presentation of
other types of self-knowledge that can begin to challenge or question the stability and uniformity of those ideological agendas. Simpson’s journal letter exceeds its role as simple representation. It becomes a textual arena where she can negotiate the tensions of a cultural position, and a site where colonial culture is, indeed, produced.

Works Cited


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Notes

1 In the history of diaries written in Canada by women, Simpson’s journal letter is an early example, but certainly not the earliest. A collection of women’s diaries and letters from Nova Scotia, edited by Margaret Conrad, Toni Laidlaw, and Donna Smyth, includes excerpts from two diaries written before 1830: that of Anna Green Winslow, a privileged young Nova Scotia girl describing her social circle in Boston (1771–1772); and that of Louisa Collins, a young rural girl frankly detailing the courtship practices of friends and relatives as well as her own romantic inclinations in 1815. Elizabeth Simcoe kept a well-known journal letter during her stay in Canada between 1791 and 1796. Archival research shows at least another twenty-one diaries written in or before 1830 (see Carter 1997). The earliest of these is written by Nova Scotian Mercy Seccombe between 1753 and 1771; her diary is the focus of an article by Gwendolyn Davies.
The earliest example cited is from Richardson’s *Pamela* (1740) where Pamela refers to her “journal-wise letters.” In 1756, Jonas Hanway published what he called a “journal letter” (but which was an extended essay on the detrimental social effects of tea) under the title *A journal of eight days journey from Portsmouth to Kingston upon Thames* (London: H. Woodfall). In 1869, a character in *Little Women* announces that she “shall keep a journal-letter, and send it once a week.” The popularity of the journal letter originated, too, in material factors. Paper was generally more available, for instance, by the early nineteenth century. By 1812, the Letts firm produced booklets for the express purpose of diary writing (Hassam 1994, 22). And by 1822, eighteenth-century methods of papermaking had given way to the “complete mechanisation [sic] of [the] paper-making process” and wood pulp replaced rags as the essential ingredient (Whalley 1975, 74–75). Manufacturing advances ensured that journal writers had workable pens. An 1827 advertisement for a “portable quill pen” boasts of its convenience: “fifty or one hundred may be carried in a small box fit for the waistcoat pocket” (Whalley 1975, 19). Tellingly, the advertisement ends with an appeal to the new market the manufacturer hoped to entice with these cheaper pens: “To ladies and the rising generation, they are a very desirable and useful present” (Whalley 1975, 19).

Anne Morton, personal correspondence.

Although the British postal system rapidly evolved between 1765 and 1830, the colonial postal system remained complicated by its attachment to Britain until it gained autonomy in April 1851 (Griffin 1988, 1728).

Frances Simpson, Letter from Lachine, Quebec, 12 December 1848. (HBCA D.6/1 fo.) 30–33d.


Helen Buss, in *Mapping Our Selves*, and Marian Fowler, in *The Embroidered Tent*, disagree about the recipient of Simcoe’s letters.
Fowler, whose work was published in 1982, says that letters were written to Mrs Hunt, one of the guardians of Simcoe’s four daughters left behind in England (20). Buss, relying on a more recent biography of Simcoe (1989), states that the letters are written to one of Simcoe’s childhood friends, Mary Ann Burges. Buss explains that Burges acted as the special adviser, aunt and correspondent on a team of four women which included Anne and Mary Hunt, a mother and daughter governess team who were in charge of educating the girls (39).

Among those scholars who address the subject position of women writing autobiographical works are Estelle Jelinek, Domna Stanton, Sidonie Smith, Shari Benstock, Bella Brodzki and Celeste Shenk, Francoise Lionnet, and Leigh Gilmore. The majority of these critics take a psychoanalytic approach, developing on the work of Carol Gilligan and Nancy Chodorow, or French feminists such as Luce Irigaray and Hélene Cixous. They identify the ideal subject of autobiographical writing as male, and the ideal story elicited by the generic demands of autobiography as male-oriented, meaning that women are denied a subject position because their lives, like their psycho-sexual development, are shaped differently than men’s. This forces women to search for variations on male-patterned autobiography.

For a linguistic approach to this feature of diary writing, see Haegeman’s article. She argues that diary writing is immediately recognisable because it follows certain grammatical rules about what it will omit. The subject is often omitted, she argues, but never the direct object which would indicate a different register of language, that of instructions.

The third active-voice passage concerns religion in the new country: “this was the first place of Worship I had seen since leaving Montréal, and I hailed it as a favourable sign of the moral state of the Colony” (Simpson 1830, 117). Simpson again chooses a respectable and non-controversial way to represent herself, invoking the terminology of piety and morality.
Economies of Affect in Mary Ann Parker’s *A Voyage Round the World*

The *Critical Review* may have admitted as early as 1777 that “the letters of female travellers are now not unusual productions” (quoted in Labbe 1998, 115), yet the preface of a late eighteenth-century woman’s travel book routinely announced that only the concerted pressure of family and friends could have persuaded the author to introduce her humble work to the reading public. Mary Ann Parker adds an economic tone to this register of female textual modesty when she claims in *A Voyage Round the World* (1795) that only the “considerable debts” revealed on her husband’s untimely death could “have induced her to solicit [the] beneficence” of subscription publication (v). If Parker predicates authorship on economic concerns, she also forges a link between writing and motherhood. The title page announces that *A Voyage Round the World* is “performed and written by [a] Widow; for the Advantage of a Numerous family” which is given graphic illustration on its last page. On this page, we read that her youngest child, an infant of seven months “has been chiefly in [her] left arm, whilst the right was employed in bringing [her travels] once more to recollection” (148). *A Voyage Round the World* triangulates economics, parenthood and writing. While Parker hopes that her foray into publishing will alleviate her family’s “great distress” (vi), at the same time, her “situation as a nurse” accounts for “brevity and greater demerits of the book” (vii).

In its insistence upon the link between writing, family responsibilities, and widowhood, *A Voyage Round the World* fully milks the convention of the reluctant female author, yet between the book’s “domestic frames” (Coleman 1999, 4) there unfolds a remarkable traveller’s
tale. A *Voyage Round the World* recounts Parker’s fifteen month-long circumnavigation of the globe, a voyage which included a three month stay in the British colony of New South Wales in late 1791, two landfalls at the Cape, a difficult passage around the Horn, and brief stays at both St Jago and Teneriffe. While the vessel she sailed on, the *Gorgon*, holds an assured place in New South Wales’s history due to its crucial role in salvaging supplies from the *Guardian*, a supply ship wrecked on route to the infant colony, Parker’s account of this rescue operation executed by her husband and captain of the *Gorgon*, John Parker, is less well known, even though after this voyage Parker becomes a member of a very select group of women circumnavigators. Parker may not have capitalised on her extraordinary travel but for her husband’s unexpected death some time during 1794. In the late eighteenth-century’s heavily gendered economic landscape, writing was one means by which genteel women could secure an income.

If the woman travel writer marries the sin of public exposure to an unladylike interest in far-flung and exotic places (Foster 1990, 3–24), how does Parker textually negotiate her voyage both across the oceans and into the “wide-open spaces” (Cook 1996, 28) of print? She positions her travel account at the juncture of what were highly visible and overlapping discourses in the 1790s — sentimentalism, abolitionism, and the redefinition of femininity according to middle-class notions of the domestic woman and her affective nature.¹

Affect rather than adventure dictates both the tone and content of *A Voyage Round the World*. “It was proposed to me,” writes Parker, repeating a language of matrimony, to accompany “him to the remotest part of the globe;” an offer which for her “did not ... take a minute’s consideration” (3). It is correct that in sailing on the *Gorgon*, Parker fractures strong family ties — her assent to her husband’s request is given without hesitation even though it would entail leaving behind two children and a mother “from whom [Parker] had not been separated a fortnight during the whole course” of her life (4). But by representing those on board the *Gorgon* as a substitute family, Parker counters any suggestion of dereliction of maternal duty.
Over and above the lines of gender and class dividing the author and her captain husband from the Gorgon’s crew, A Voyage Round the World portrays the inhabitants of the man-of-war as intimately bound together by virtue of their shared philanthropic desire. All on board the vessel, writes Parker, are united in “heart-felt pleasure” in their mission to “succour the distressed” and starving colony at New South Wales (68). In her recollection of “perverse winds,” the consequence of the unpropitious weather is displaced from the Gorgon’s sea-weary residents to those “deprived ... of the satisfaction” of its arrival for “three long days—at least they appeared so to every one of us; when we reflected that the colony stood in such great need of the supplies which we were so plenteously stored” (64). Parker’s constant harking on the Gorgon’s benevolent mission coupled with her re-imagining of the man-of-war as “our happy bark” (68) encodes its naval operation in terms of domestic values.

Pitted against Parker’s homely image of a close-knit shipboard community is her current state of widowhood. As the narrative draws to a close, her liberal use of the collective pronoun gives way to the use of a solitary and somber “I” for whom “the future presents nothing to ... view but the gloomy prospect of additional misfortune and additional sorrows!” (149). At the same time as Parker’s “retrospect of the past” recalls “the pleasing occurrences of [her] fifteen months” spent on board the Gorgon, it is also an elegy to “him” (149): “tender partner of my life, and my only support in the time of trouble and affliction” (38). This sentimental language struck at least one responsive chord; in 1796 the Monthly Review’s critic admitted to the power of Parker’s rhetoric when he confessed his sympathy for the “disconsolate widow” (112).

There is a final way A Voyage Round the World presses sentimentalism into service: in its rhetorical conflation of New South Wales’s Indigenous people and the enslaved negro. That Parker is able to connect abolitionist concerns with the impact of British colonial ambitions in New South Wales alerts us to the textual reach of sentimentalism. According to Mary Louise Pratt, “sentimentality
consolidated itself quite suddenly in the 1780s and 1790s as a powerful mode for representing colonial relations and the imperial frontier” (1992, 87). If the “domestic subject of empire found itself enjoined to share new passions, to identify with expansion in a new way” (1992, 87), my interest in Parker’s mobilisation of this rhetoric is twofold. On the one hand, this essay explores the interrelation between the manner in which Parker packages herself as a “widow” whose “fatherless children” will be brought up “not to expect any thing” (vi) with her sentimental portrayal of New South Wales’s Indigenous people. On the other hand, it asks what are the consequences of the importation of sentimental register into an Australian context?

By ending her chapter of Aboriginal manners and customs with a vignette of Bennelong, *A Voyage Round the World* weighs into a metropolitan debate concerning the nature of New South Wales’s Indigenous people. A debate which was re-ignited by the arrival in England in May 1793 of Bennelong and his compatriot Yemmerrawannie, the Eora men who accompanied Arthur Phillip, the retiring first Governor of New South Wales, on his voyage home. Bennelong has emerged as an important actor in Inga Clendinnen’s and Keith Vincent Smith’s recent books. My concern is not to participate in an historical re-estimation of the man; rather, it is to track the manner in which *A Voyage Round the World* secures cultural status through its circulation of a particular image of Bennelong.

The arrival of two “Natives of New Holland” in England was news. No less than nine metropolitan newspapers recorded the men’s arrival, but within this welter of words there is a deadening repetition of what was reported: all the newspapers repeating to a greater or lesser extent the commentary found in *The St James’s Chronicle*. It seems that the British imagination was less interested in Bennelong and Yemmerrawannie themselves than in their people’s “primitive” manners and customs. From admiring their “ingeniously contrived” fishing tackle, spears and shields, *The St James’s Chronicle* shifts to denouncing the “barbarous manner” in which Aboriginal men beat their women “on every occasion,” before concluding that “they appear
a race totally incapable of civilisation, every attempt to that end having been proved ineffectual” and that “no inducement, and every means has been perseveringly tried, can draw them from their state of nature” (3). Needless to say, the popular press missed the fact that two men at least had been enticed out of “their state of nature” to visit the so-called epitome of civilisation.

Seizing on the occasion to connect its review of Watkin Tench’s *A Complete Account of the Settlement at Port Jackson* (1793) with contemporary events, *The British Critic* takes the First Fleet officer to task for his unfavourable portrait of Bennelong. It may be, opines the magazine, that Tench is correct in devoting “a considerable portion of [his] entertaining book” to the “ferocious and untractable manners” of “Baneelon the native,” but the same fellow “now in the metropolis,” exhibits delight “with everything he sees, and [is] courteous to those who know him” (62). At first glance, it seems that Mary Ann Parker also challenges the stereotyping of New South Wales’s native people. In *A Voyage Round the World* she takes the opportunity to laud the behaviour of Bennelong, who calls upon Parker at her London home. If *The British Critic* disputes a popular obsession with what Tench calls “savage barbarity” (290–91), Parker attacks the same object by way of sentimentalism.

Uniting the diverse variety of literature which can be grouped under the heading of sensibility is a use of the sentimental tableaux to frame contrasting and exemplary emotion (Todd 1986, 4). In her vignette of Bennelong, Parker depicts him as caught between two conflicting feelings. It is “impossible,” writes Parker, to describe the “pleasure that overspread the poor fellow’s [Bennelong’s] countenance” (102) on being shown a portrait of the then absent Captain John Parker. But this smile was quickly chased away by “the tear of sensibility [which] trickled down his cheek” (101–2). With this sentimental portrayal of Bennelong, Parker questions the prevailing discourse of Aboriginal savagery in two ways. The “tear of sensibility” washes away visible signs of racial difference (Ellis 1996, 19). Signalling a common human physiology, Bennelong’s tear externalises an innate correspondence
between European and native breasts, disputes the visible disharmony between black and white skins, and challenges the cultural valency of dark skin colour as a signifier of racial inferiority. If the tear associates black and white over and above their external differences, Parker strengthens this connection by equating the emotions felt by Bennelong and herself. In the same sentence, Parker adds that the portrait of her husband over which Bennelong sheds tears traces “features which will never be obliterated from my memory” (102). By showing the native remembering, as she does, the kindness of Captain Parker, A Voyage Round the World elevates Bennelong out of the ranks of “mere savage[ry]” (102).

In representing Bennelong and herself in a sentimental tableau, it would seem that Parker is questioning racial hierarchies. Yet, it should be noted that while Parker’s book showcases a native displaying exemplary emotions, these noble feelings are discovered in a man in conversation with the European. Parker’s portrait of the Aboriginal sentimental is “very much a metropolitan vignette” (Coleman 1999, 33). She offers a particular Bennelong in her travel account: bearing on his full admittance to the family of man is his English location. In its delineation of a sensitive, caring Bennelong, Parker’s verbal portrait, I would suggest, presents the native to an English audience as a symbol of “assimilable otherness” (Greenblatt 1991, 112).

Chapter Eight of A Voyage Round the World, devoted to Aboriginal manners and customs, is distinctively titled: “Description of the inhabitants of New South Wales — their huts — their extraordinary honesty — account of Banalong — an instance of his sensibility — observations on the Slave Trade.” In its yoking of Aboriginality and the slave trade, this title reads as a non-sequitur, confusing the ignominious plight of the slave as the universal condition of blacks. Yet I would suggest, by referring to a popular understanding of the black, Parker is making a plea for the recognition of the humanity of Aboriginal people. She asks, why should the inhabitants of New South Wales be considered “mere savages?” Answering by way of quotation from William Cowper’s “The Negro’s Complaint” (1788),
Anette Bremer

a poem which has been identified as “the motto of the abolitionist movement of the 1790s” (Sussman 1994, 53), her book in effect maps Aboriginality onto the figure of the slave. A Voyage Round the World links Bennelong’s glistening cheek with a potent concern of sentimentalism, the issue of Negro slavery.

What is the effect of Parker’s association of Negro slavery and Aboriginality? On the one hand, through establishing a metaphorical parallel between enslaved Negroes and New South Wales’s Indigenous people, her book harnesses the rhetorical power of abolitionism. The misconceptions about the nature of the Negro that abolitionism seeks to shatter are likewise revealed as specious with regard to the Eora. Parker concludes optimistically, “I flatter myself the time is hastening when they will no longer be considered mere savages” (102). Bennelong’s sorrowful countenance singles him out as not of his kind, yet at the same time, his tear is an instance of “the natural goodness of their [his people’s] hearts” (102). Paradoxically, in this moment when Bennelong expresses emotion, he is read as empty of personal foibles and individual character; his behaviour typifies the potential of his race rather than registering his individuality or personality. The sorrow so palpably revealed by the tear glistening on his dark cheek becomes a general sign of the sensibility of his people.

On the other hand, in collapsing the fate of the natives of New South Wales into the issue of black slavery, Parker’s chapter on Aboriginal manners and customs erases the Eora’s specificity. Her conflation of Aboriginality and the Negro suggests that both groups of subject people require a similar remedy: liberation. For one group, this entails the abolition of the slave trade, and for the other, liberation from preconceptions that they are “mere savages.” The Eora are not so much subject to the effects of British imperial ambitions — a matter predictably sidelined in A Voyage Round the World — as to stadial theory. Even if Parker is successful in replacing an illiberal language of racial difference with a sentimental rhetoric of brotherhood, what is less certain is whether or not her universalising of affect frees the Eora from the category of “savage.”
Parker’s chapter on Aboriginality concludes with an image of an urbanised Bennelong, but its opening sentence signals the distance between her visitor and his people. “The inhabitants of New South Wales, both male and female, go without apparel,” commences what is very much a stock account of the Eora (95). After noting the absence of clothing, Parker anatomises their persons, mentioning skin colour, shape of noses, lips and eyes, “filthy” appearance (97), stature and hair type, before listing their “rude and barbarous” habitations (97). A conventional device of the travelogue, this mode of description first reduces indigenes to the sum of their parts and then distils these physical attributes into a “true and complete” picture. Her ethnographic portrait appears to condemn the Eora as utter savages, depriving “them,” in naturalist George Forster’s elegant phrase, “of the very shadow of sensibility” (quoted in Thomas 1999, 151).

Parker’s initial representation of the Eora as savages makes the book’s image of Bennelong in London all the more remarkable. However remote Bennelong seems from his naked, uncivilised fellows, Parker implies that this distance is not insurmountable. The Bennelong who visits the author has not only traversed thousands of nautical miles, he has overcome a huge cultural and social distance: he has been transformed from a creature prey to base nature to one who manifests exemplary affect. How does A Voyage Round the World link what at first glance appear to be incommensurate images — the civilised, sensitive Bennelong and his “filthy[,] disgusting” (96) people?

Parker’s book remains only briefly loyal to a language of typification. After the dispassionate classificatory language of the opening paragraphs, her narrative style shifts register. In the next section Parker dramatises herself and the Eora as actors in the theatre of contact. Of a meeting in the forest, she writes:

I have been seated in the woods with twelve or fourteen of them, men, women, and children. Had I objected, or shown any disgust at their appearance, it would have given them some reason to suppose that I was not what they term their damely or friend; and would have
rendered my being in their company not only unpleasant, but unsafe (98).

Black and white gazes are shown as interlocked, both equally interested in the other: just as Parker views her naked company, they in turn observe her. Her glance may be fleeting and coy (remembering the naked state of her company) but she implies that her every move is scrutinised. Parker heightens this visual exchange by participating in a linguistic transferral: she imports an Aboriginal word into her text, the italics and attribution — “what they term their damely” — alerting readers, if they at first miss the word’s strangeness, to its exotic provenance.

Foregrounded in the above passage are the dynamics of exchange. As with the looks flowing back and forth, language circulates between the British woman and the Indigenous people, and a bit of this equivocal, halting exchange is captured in her text. This sole word carries a great weight in Parker’s account, authenticating, in a way no other part of her book can, her bodily confrontation with the Eora. The other Aboriginal words dotted throughout the travelogue — “kingaroo,” “Parramatta,” for example — are either animal or place names, ubiquitous within writings on the British colony, and part of commonplace parlance when speaking on matters pertaining to New South Wales. Presented in Parker’s text as a “yield of otherness” (Healy 1997, 55), damely acts mimetically, a textual reminder of the time when her English words were heard and responded to by black bodies and voices.

It remains a question of debate as to whether or not the word lists of the native languages of the Sydney region compiled by the First Fleet annalists constitute a hybrid construct. For example, Paul Carter conjectures that the vocabularies collected by the First Fleet officers might well record a language “formerly spoken by none, [but] now spoken by all who hope to circulate within the new imperial orbit” (67). While remaining aware of the linguistic slipperiness of her source documents, Jakelin Troy has used the word lists and grammars transcribed by the officers of the First Fleet — Collins, Phillip, Tench,
and in particular, Lieutenant William Dawes — to reconstruct the Sydney Language (1992). Troy, however, does not regard the language transcribed by the marines as free from linguistic contamination, and identifies what she calls New South Wales Pidgin as a significant feature of the language of the early colony (165–66). My point in introducing this debate is not to arbitrate on the etymology of “damely,” rather, it is to emphasise the fact that language itself was subject to exchange, a facet of contact missed in both Parker’s use of the term “damely” and in her account of cross-cultural relations.

Against the one-sided flow of description, information and gazes informing the opening paragraphs of Parker’s Aboriginal chapter, the middle section is structured by circulation — words, gazes, information, and significances are represented as flowing back and forth between Parker and the group of Eora. This economy of exchange has a dominant trajectory, however. Black and white may be seen initially as equivalently scrutinising one another but the encounter’s decorum is maintained by Parker’s level of civility. In this circuit of vision, it is Parker’s behaviour which determines the nature of exchange: “Had I objected, or shown any disgust at their appearance, it would have given them some reason to suppose that I was not ... their damely, or friend” (my emphasis). Metropolitan civility tutors the Indigenous people, and their good behaviour is exemplary of Parker’s lead. Within the group of Eora, watching her ideal manner causes a response in kind.

The history of representation of cross-cultural encounters is littered with moments when natives mirror the exemplary behaviour of their sophisticated European interlocutors. Here, it is taken as read that the circuit of learning is one-way, that it is only the native who is receptive in this pedagogical moment. I have already suggested that the provenance of “damely” is open to conjecture. However, by foregrounding a word which looks like an Aboriginal derivation of an English expression, Parker occludes the fact that in early New South Wales language exchange occurred in both directions. If words migrated from English into the language spoken by the native people,
a similar border crossing occurred with Aboriginal words, which, as Troy has argued, became key descriptors within the language spoken in the colony as a whole. What united black and white in the colony over and above differences of race and class, was a shared understanding of this language. While Collins might denounce New South Wales Pidgin as a “barbarous mixture of English with the Port Jackson dialect” (quoted in Troy 1993, 41), it was a language which spoke of and explained the land and culture in which both convict and free, black and white now lived.

Indeed, Parker's book participates in a cross-cultural circulation of language, albeit unwittingly. She makes mentions that she “ate part of a Kingaroo, with ... much glee” (89), but what her book does not acknowledge is that the expression was imported into the Sydney Language by the colonists themselves. One of the terms in an Aboriginal word list appended to James Cook’s account of his voyages to the Pacific, “kangaroo” is a Guugu Yimidhirr word of the Endeavour River region, and was inadvertently introduced to the Eora by the First Fleet officers who initially assumed one language was spoken across the country (Troy 1993, 34–35). By restricting her model of exchange to a unilateral one, Parker misses the multiple transactions which comprise colonial culture as well as the way in which its shape evolved out of commerce between indigenous and imported cultures.

What makes Parker’s invocation of the above scene of observation more than routine is that it marks the first stage in a cross-cultural pedagogy of seeing. According to Janet Todd, through its framing of exemplary emotions, sentimentalism teaches “its consumers to produce a response equivalent to the one presented in its episodes; it is a kind of pedagogy of seeing” (1986, 4). If the reader is expected to match the emotion portrayed in the affective vignette, in A Voyage Round the World this dynamic also unfolds within the book’s diegesis — Parker herself becomes a scene of emotional instruction, with the Eora as her model readers.

The first vignette depicted Parker as having a civilising influence on the entire group of Eora sitting around her in the woods. One
particular man is singled out from amongst the group. His deportment, countenance and manner pleases her “far beyond what I could possibly have expected” (100), and this respect is mutual; he seeks her out. Sitting down beside her and exchanging names with her husband, the native becomes interested in Parker’s travelling cutlery, which she gives to him. The following day, armed with his European eating utensils, the man visits Parker on board the Gorgon “and shewed me that he had not lost my present, but made use of it, though somewhat awkwardly, whilst he demolished two or three pounds of the ship’s pork” (100).

Much has been made of the gustatory habits of the Indigenous people who fraternised with the colonists. For example, writing of Bennelong, Tench complains that during a period of limited food supply, “the ration of a week was insufficient to have kept him for a day” (167). What is notable about Parker’s comment on the Aboriginal man’s appetite is not that she follows a well-trodden path in the history of the representation of Aboriginal/colonial relations, but that her remark remains oblivious to the broader context in which she frames her travel narrative: the Gorgon’s benevolent mission in relieving a starving colony. In gently parodying the native man’s relish for ship’s pork, surely an unpalatable item for any one familiar with a long sea voyage, Parker obscures what was driving his appetite. Instead of introducing the question of how the Eora survive on Port Jackson’s natural food supply when the newcomers cannot, A Voyage Round the World restricts its focus to the pedagogical relation between the “gent” and Parker. What interests me here is the way in which her vignette details a more complex circuit of seeing. More than responding in kind during a scene of primary instruction, the native demonstrates his mastery of British table manners unsolicited, and in doing so, evidences a cross-cultural competency. It is assumed, however, that the man puts on this performance to win the approval of the British. What is not recognised is that he may have an altogether different motivation.
The officers of the First Fleet were well aware that food could be used to bribe the Eora, but their writings rarely exhibit awareness that the local people may not have been manipulated by the colonists so much as exploiting the British for their own ends. An exchange recorded in one of William Dawes’s language notebooks suggests that his chief informant, a young woman named Patyegarang, agreed to participate in the lieutenant’s linguistic experiments for her own reasons. In response to a question as to why she was learning English, Patyegarang stated that Dawes “gave her victuals, drink & every thing she wanted, without putting her to the trouble of asking for it” (quoted in Troy 1992, 160). Dawes, along with Tench and other marines who had completed their colonial tour of duty, sailed home with Parker on the Gorgon. While we can only speculate whether or not the complex interplay of relations between the whites and the Eora was a topic discussed on board during the lengthy return voyage, we can say with certainty that Parker consistently renders exchanges between native and British as if they could only unfold according to a colonialist logic.

Three tiers of visuality are intertwined in the moment that the Indigenous man demonstrates his command of table manners. The “gent” shows Parker that he has remembered what he originally saw, and Parker reproduces for the reader the consequence of her instruction. It is in such moments of overlapping instruction that her book can be understood as dramatising a doubled pedagogy of seeing. I have suggested that Parker’s chapter on Aboriginal manners and customs describes a pedagogy of seeing in which the natives respond to the civilising ways of the British. There is another level to this pedagogy, one directed towards the book’s consumers. Parker’s chapter contains three vignettes of cross-cultural contact, and in terms of an Indigenous actor responding to metropolitan tuition, each scene builds upon the previous one. Beginning with the group in the woods where the Eora respond admirably in kind to a decorous Parker, the second vignette describes the native man’s competency with European cutlery, and the series culminates with Bennelong in the city, domesticated and sensitive. This narrative of increasing Indigenous
sensibility can also be read as eliciting an equivalent incremental response in the book’s readers, who, by the time they have reached the final vignette of a dolorous Bennelong, have been transformed as well, shedding their preconceptions about these people.

I have shown how Parker’s sentimentalisation of Aboriginality is ambivalent in terms of the success of its humanist agenda. On the one hand, Bennelong’s tear expresses the “natural goodness of [the Eora’s] hearts” but on the other hand, in her appeal to nature, Parker attempts to ground her argument in the most slippery and ambiguous of words. A Voyage Round the World is not alone in associating the native teardrop and nature. The Gentleman’s Magazine documents London’s vivid excitement on witnessing William Ansah Sesarakoo, who was thought to be the son of African Moorish king, and his companion view a stage production of Aphra Behn’s Oroonoko in 1749. The deep wells of public sentiment were stirred by the doleful sight of two blacks weeping unabashedly at this tender tale of disappointed native love. According to the magazine, Sesarakoo and friend were assailed by that “generous grief which pure nature always feels, and art had not yet taught them to suppress” (89).

What is this “nature” that The Gentleman’s Magazine and Parker celebrate? Here, the term has at least three interrelated meanings, all of which readily slide into one another. As a sign of nature, the teardrop signals the natives’ untutored, innocent state, a kind of pure responsiveness, to be contrasted to the artifice and show of Georgian society. Fanny Burney, for example, compares the affected, foppish behaviour of her peers with Omai, the Tahitian whom James Cook brought to England, who brought up “with no Tutor but Nature,” nonetheless “appears in a new world like a man [who] had all his life studied the Graces” (63). The tear is also a sign of an elemental human nature, which in Parker’s book bridges the differences between black and white; in the lines from Cowper’s poem which she quotes, affect “[d]wells in white and black the same” (102). Thirdly, nature needs to be contrasted to culture. Creativity, inventiveness, the tools for humanity’s progression are to be found in the “arts,” which
is why Tench casts the First Fleet’s mission as one of bringing the “happy arts” (28) to a barbarous land and people.5 In the context of an eighteenth-century discourse of race, nature becomes a euphemism for racial difference itself, an umbrella term, contracting or expanding to capture those shifting features which distinguish Indigenous people from middle-class Britons.

I would suggest that rather than universalising affect, Parker imprisons the Eora further in a racialised notion of nature. What for Europeans is merely one sign of their humanity, the tear, for the local people metonymises their character. At one and the same time, the “natural goodness” powerfully expressed by Bennelong’s tear suggests the Eora’s potential for emotional, intellectual and civil growth and marks the limits of their development. Paradoxically, the three cross-cultural vignettes show the progression of the local people into their nature. Notwithstanding her claim that they should “no longer be considered mere savages,” in Parker’s narrative, the Eora figure as exemplary natural men. A circular logic also informs the manner in which Parker presents her plea as to the essential goodness of the Eora. Her emphasis on affectivity as a vehicle for racial advancement becomes hamstrung by the force which drives it. Many critics have noted sentimentalism’s self-imposed political cul-de-sac: an expression of sentimentality by its very nature demands a sentimental response, and, in the context of a sentimental critique of race, such a response can only be, in Karen Sánchez-Eppler’s words, a “self-reflexive liberation” (1993, 30).

What is curious about Parker’s advocacy of Aboriginality is that her emphasis on Bennelong’s tear overshadows his performance of another culturally significant act. Her book tells us that Bennelong “spoke, with all the energy of Nature, of the pleasing excursion which [he and Captain Parker] had made together up the country” (102). In the context of Enlightenment theories which couple linguistic ability and rationality, Bennelong’s command over English might be considered a more appropriate vehicle upon which to shackle a claim for his humanity. Although Parker centrepieces what she considers a native word in her
book, she desists in offering the reader Bennelong’s English words. A *Voyage Round the World* further silences the native by qualifying his expression with the phrase “with all the energy of nature,” reducing his competency over a foreign tongue to a spontaneous force.

In privileging the tear over language, Bennelong is denied the same presence granted to Europeans. His words, even if mediated through Parker’s book, would trace — if only vestigially — his intentions and intelligence. The only language allowed to Bennelong is a body talk, yet, further paradoxically, his eloquent tear is a sign requiring mediation. It would seem that Parker’s sentimental rendering of Bennelong repeats a logic of representational confinement which structures the colonial archive. According to Benita Parry, in cross-cultural exchanges the native is “sometimes an informant, always a topic, but rarely ... an interlocutor” (1997, 15). Parker’s incorporative gesture is thus uneven in its outcomes. In sentimentalising Bennelong, she pleads for his people’s inclusion in the family of man but, on the other hand, in valuing sentiment (the tear) over rationality (language), *A Voyage Round the World* reasserts the category of uncivilised nature which it sought to confute.

*A Voyage Round the World* was an orchestrated attempt to foster public compassion for a near-destitute widowed mother; its constant reference to Parker’s plight was calculated to tug at readers’ purse strings as well as their heart-strings. We know now that this discourse of loss did not serve its purpose in the long term. What Parker acknowledges as the book’s “unhoped-for success” (vi) — an impressive subscription list of approximately 400 names, including leading social luminaries of the day such as Joseph Banks and Hannah More — coupled with her strategic self-sentimentalisation as an impecunious widow struggling with her domestic responsibilities, ultimately did not prevent the dire predicament that she feared. In 1804, the author found herself confined in Fleet Prison, “this horrid abode” (quoted in Coleman 2004), for debt. With hindsight, Parker’s dreadful fate illustrates the powerful connection between publication and genteel female poverty in the late eighteenth century. The
author’s eventual fate, however, belongs to another realm of enquiry; my concern is the effect of *A Voyage Round the World*’s mobilisation of a discourse of affect. Parker firmly inserted her travel memoir into metropolitan debates on the place of the woman writer and the nature of the black. If the sentimentalised Bennelong is a commodity by which Parker seeks to increase the currency of her writing, his representation in *A Voyage Round the World* does little to improve his prospects. In the face of metropolitan scepticism as to the feasibility of maintaining a British colony in New South Wales, Parker is one of very few voices who advocates its continuance: her book includes extracts of her husband’s proposal for a whalery based at Port Jackson. In *A Voyage Round the World*, the future of Aboriginality lies not with the group of naked people in the woods, but with the urbanised Bennelong, made over in the image of the colonisers.

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**Works Cited**


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Parker, Mary Ann. 1795. *A Voyage Round the World, in the Gorgon Man of War, Captain John Parker. Performed and Written by his Widow; for the advantage of a numerous family*. London: John Nichols.


**Notes**

1 Nancy Armstrong is the classic reference for the emergence of a domestic ideal for femininity in the late eighteenth century. Sussman traces the intersection of domestic femininity, abolitionism and sentiment in a British context.

2 In an essay concerned with the power of labelling, a word on naming is required. The people living on the land on which the First Fleet established a British settlement were known according to their various tribal groupings. Within a few months of contact, “Eora” was adopted by the Europeans to name these people. While a healthy debate is currently being staged in Australia as to the appropriateness of this name, this essay follows Anita Heiss (8) who concludes that the word “Eora” means “here” or “from this place,” and was used by the Aborigines to describe to the British where they came from. The spelling of Bennelong varied from author to author. I use the currently agreed-upon spelling. Keith Smith (2001, 15–60) offers a list of all the transliterations of Bennelong’s name found in contemporary accounts. Bennelong’s and Yemmerrawannie’s time in England is discussed by McBryde (1989, 21–25) and Brook, who disputes McBryde’s conclusion that the men were “paraded as curiosities” (2001, 23). While Bennelong returned to his country late in 1795, sadly, Yemmerrawannie died in England in May 1794; his remains are still interred in Eltham, Kent.
The newspapers in which I have traced reports of Bennelong’s and Yemmerrawannie’s arrival at Falmouth with Governor Phillip are *The St James’s Chronicle* 28–30 May 1793, 3; *Lady’s Magazine* June 1793, 334; *Morning Chronicle* May 24 1793, 3; *The Diary of Woodfall’s Register* May 1793, 3; *The London Chronicle* 21–23 May 1793, 490; *Star* 29 May 1793, 3; and *The Sun* 29 May 1793, 3. McBryde (1989, 21–22) mentions two newspapers which note the men’s arrival in England: *The Times* 30 May 1793; and *The Dublin Chronicle* 4 June 1793.

Burney encounters Omai when her brother Charles, a naturalist on Cook’s vessel, entertained him at their residence. Omai’s visit to England has been extensively researched. See, for example, Bernard Smith 1989, 80–4; and Rennie 1995, 125–40.

“[W]e weighed anchor and soon left behind every scene of civilization and humanized manners, to explore a remote and barbarous land; and plant in it those happy arts which alone constitute the pre-eminence and dignity of other countries” (Tench 1961, 28).
Introduction

Let me begin by providing you with two rather different attitudes towards one particular type of property right, which was the subject of equitable jurisdiction in both Upper Canada and New South Wales in the nineteenth century. The property right I will refer to was the right of dower — the right of the widow to one-third of the real estate of which her husband had been seised to be enjoyed during her widowhood. In an article in the Canada Law Journal in January 1879, the anonymous author narrated the following emotional hypothetical:

A farmer dies leaving a widow and three or four small children; makes no will, but has little to bestow, save his farm and its belongings. The widow stays on the homestead, works the place and brings up the children, till they come to years of discretion and can do for themselves. Twenty-five years elapse from the husband’s death, and the children then of age claim the farm, as theirs absolutely. The widow has thought nothing of her legal rights, or of asserting her claim for dower, and she is told that, under such circumstances, her rights are extinguished. Can it be possible that such is the law in a civilized country? (Anon. 1879)

Compare those sentiments with the dominant attitude being expressed to the Royal Commission into Real Property in New South Wales in the same year. Alfred Cape drew attention to, in his words,
“another troublesome matter ... and that is the practice of noting dower” (Real Property Inquiry Commission 1879). If a landowner desired to convert land from old system title to the more saleable Torrens title which was introduced in 1863, he was required, not only to state in his application whether he was married, and if married on or before 1 January 1837 whether his wife was entitled to dower, but to negate dower by statutory declaration. As the purpose of Torrens title was to make land more saleable, so the denial of dower was effected for that purpose. The fact that dower had even to be noted, however, aggravated Alfred Cape. “There are very many certificates,” he claimed, “issued in which dower is noted as an encumbrance, and the chances are ten to one, owing to the lapse of time since the Dower Act, there is no dower at all, and yet it is a blot on the certificate” (ibid.).

From one perspective, the fact that the widow could be denied dower questioned the very foundations of a civilised society; from another perspective, a widow’s rights amounted to nothing more than a “blot on the certificate.” Nor were these differing perspectives on this question unique or unrepresentative of the nature of debate over this topic in the two jurisdictions. What insights might a focus on one specific object of equitable jurisdiction — dower — tells us of the relationship between property, equity and the courts in these two similar yet subtly different jurisdictions and societies?

Equitable jurisdiction in two colonies: history and historiography

The legal regulation of property in both British Canada and Australia mirrors its English origins in that it is bifurcated: property rights are regulated, protected and interpreted in two legal systems — law and equity. This also means that there were two courts systems, the courts of common law and the courts of equitable jurisdiction. By the nineteenth century legal disputes over the right of dower were heard in the courts of equitable jurisdiction. Philip Girard (2000, 31–33) has provided an admirable summary of the history of
equivocal jurisdiction in Upper Canada. The first statute of Upper Canada enacted that in matters of controversy as to property and civil rights, resort was to be had to the laws of England as of 15 October 1792. There was, of course, no specific reference to equity, nor a Court of Chancery to apply equity. The incomplete nature of imperial legislation throughout the empire made the reception question notoriously complicated. It has been asked why the Governor did not act as Chancellor under his authority as custodian of the Great Seal, as had happened in four of the maritime provinces (Girard 2000, 32). Upper Canada had to wait until 1837 before a Court of Chancery was established. Girard has noted that this “lacuna in Ontario legal history has never been satisfactorily explained” (32). I hasten to add that I have no intention of trying to explain it here. Rather, I wish to outline an historical narrative about the court.

The confusion resultant upon the absence of a Court of Chancery prior to 1837 is evident in reflections of Boulton J in Simpson v. Smith, looking back from the vantage point of 1847:

I am of the opinion, that before the establishment of the Court of Chancery, those rules of decision, or that system of jurisprudence called equity, as administered in England in the Court of Chancery, did not exist in Upper Canada. For although the word equity is used in 32 Geo. 3, chap. 1, sec. 4, [the 1792 Act] and occasionally in other acts of the legislature, yet I cannot regard these expressions even as indicative of the legislative mind, that equity as a system had been or was thereby intended indirectly to be recognized as a rule for the decision of questions regarding civil rights when they abstemiously forbore for half a century to establish any tribunal wherein such a system could be administered.

Legislation in 1837 settled the issue to some extent by creating a Court of Chancery. While the lieutenant-governor was declared to be chancellor, his judicial duties were delegated to a judge as vice-chancellor. While the court was to possess “like power and authority”
of the English Court of Chancery, rather than stating that the
Canadian court had identical powers to the English Court, specific
subject areas were detailed to be within its jurisdiction (Girard 2000,
33; Brown 1983, 287).

A series of administrative reforms followed in the subsequent
decades (the expansion of the bench to three judges in 1849, the
addition of partition powers to the Court’s jurisdiction in 1850, the
extension of equitable jurisdiction to the County Courts in 1853,
etc). These culminated in the passage of the Judicature Act of
1881, which abolished the existing courts and replaced them with
a single Supreme Court of Judicature, although in practice different
jurisdictions remained in place until final amalgamation in 1913.
Inevitably, as Elizabeth Brown has noted, procedural chaos followed
the introduction of the 1881 Act (1983). Rather, I would like to turn
to New South Wales, to relate a narrative history with surprising
similarities to the story in Upper Canada.

Alex Castles has noted that into the twentieth century “the division
between common law and equitable proceedings in New South Wales
came to be treated by judges and members of the legal profession
with a reverence which many would regard as hard to justify” (1982,
192–3). As Castles’s comment makes clear, twentieth-century
members of bench and bar might not have been so reverential to
the distinction between common law and equity if they were more
familiar with the details of their own legal history. Looking back from
the vantage point of 1857, Mr Justice Therry claimed that when he
arrived in the colony of New South Wales in 1829, “all the Equity
business was disposed of in a half a dozen days a year” (Sydney Morning
Herald 28 August 1857). The equitable jurisdiction and, indeed,
business in equity, was to grow slowly in the early year of settlement
in New South Wales. Both Bruce Kercher and Alex Castles have
noted that the First Charter of Justice in 1787 did not provide an
equitable power for the civil court (Kercher 1996, 11; Castles 1982,
92 and 496). The Second Charter of Justice in 1814 created a civil
Supreme Court with equitable jurisdiction. Under the New South
Wales Act of 1823 the Supreme Court was to be a court of equity, but the absence of both judges and practitioners familiar with equity affected the volume of business generated. As Chief Justice Dowling noted in 1840, prior to 1837 “there was very little Equity business in the Court, and, indeed, very few practitioners who were conversant with that branch of the jurisdiction” (Currey 1929, 240). The year Dowling J referred to — 1837 — was mentioned in conjunction with the arrival of a person who was a very important link between the equitable jurisdiction of the courts in New South Wales and Upper Canada: that person was John Willis. Willis had been appointed to the Bench in Upper Canada as Equity judge in 1827, having previously practiced in Chancery in England. He was amoved from office in 1828. He then went, like so many of the peripatetic justices of Empire, on a geographically diverse career path that took him to British Guiana in 1831, where he was appointed vice-president of the Court of Civil and Criminal Justice. Returning to England in 1836, he was subsequently appointed a judge of the Supreme Court of New South Wales in 1837, arriving in Sydney in February 1838. Willis was not an easy man to work with. Governor Gipps arranged to have him moved to Melbourne to resolve the personal friction between Willis and his fellow judges.

These activities coincided — were in fact related to — important developments in equitable jurisdiction in New South Wales. As there was no separate court of equity, and in the absence of judges with a taste for equity, an arrangement had developed after Willis’s arrival whereby all work in equity devolved on him. But when Willis argued to the governor that a separate Court was needed, with himself as “Chief Baron in Chancery,” his fellow judges were less than enthusiastic. The result, as usual in politics, was a compromise that satisfied no-one. An Administration of Justice Act was passed in 1840 which enacted that the position of primary judge in equity devolve upon the chief justice, “unless he shall decline,” in which eventuality the Governor could appoint one of the puisne judges to hear all matters in equity. The chief justice, Dowling, who had little love of equity but even less for Willis, accepted the position rather than
let an opportunity arise whereby Willis might be appointed. Willis meanwhile was sent off to the dubious delights of 1840s Melbourne, where his rather erratic behaviour in court, which included refusing to hear a solicitor who wore a moustache, finally resulted in his second amoval from office in 1843, at which time he returned to England, remaining there until his death in 1877. Both his arrival to and his departure from Upper Canada and New South Wales draw together the relationship between equity and the courts in surprising ways.

As in Upper Canada, after the 1840 Act there were a number of statutory reforms in New South Wales in subsequent years (Equity Claims Act 1852; Equity Practice Act 1853; District Courts Act 1858, etc.) culminating in the Equity Act of 1880 which adopted many of the provisions of earlier English reforms of the 1850s, including giving, in Section 4, the Supreme Court in its equitable jurisdiction “power to determine incidental questions of law arising in suits for equitable relief” (Evans 1996, 6). At the time the 1880 Act was seen by some as “going far towards a fusion of Law and Equity” (Parkinson 1880, i; quoted in Bennett 1974, 103), but of course it didn’t. Separate jurisdictions were broken down in England in 1873, but the reverence felt by members of the bench and bar in twentieth-century New South Wales towards the old English distinction between Law and Equity (that Castles noted) lived on in the Supreme Court of New South Wales until the implementation of the Supreme Court Act in 1972, with New South Wales being one of the last jurisdictions of the former British Empire to effect reform. In the legal chambers of late twentieth-century Sydney “English tradition,” as Bruce Kercher has noted, “had an abiding quality, even after some of its complexities were abolished there” (Kercher 1995, 97).

What does this brief historical comparison of the equitable jurisdiction in New South Wales and Upper Canada reveal? In the early nineteenth century we have two frontier colonial British settler societies. Both are encumbered by imperial legislation which fails to settle the question of the reception of English law. We have the formalising of the equitable jurisdiction at very similar dates, in
Upper Canada in 1837 and in New South Wales in 1840. We have subsequent decades of piecemeal procedural reform culminating in important legislation at almost the same time, in New South Wales in 1880 and in Upper Canada in 1881. We even have, in the person of John Willis, the same person being instrumental in the establishment and development of the equitable jurisdiction in both colonies. On the other hand, in the middle year of the nineteenth century, Upper Canada possessed a separate Court of Chancery, while New South Wales possessed a single Supreme Court which dealt with the business of both law and equity. What questions have scholars asked about these respective historical narratives?

Perhaps not unsurprisingly, scholarly attention devoted to the equitable jurisdiction of the courts in Upper Canada and New South Wales has focused on the question of why, or why not, jurisdictional reforms occurred when they did. Elizabeth Brown, in a 1983 article in the *Osgoode Hall Law Review*, subjects the history of the equitable jurisdiction in Upper Canada to exhaustive study (274). She outlines the politics of the support for, and opposition to, Chancery in the middle years of the nineteenth century, concluding with the passage of the *Judicature Act* of 1881. Scholarly and detailed, it is, ultimately, an “internal” history of legal institutions. John Weaver's 1990 article in the same journal is more concerned with relating internal legal and jurisdictional developments to wider historical forces (871). Weaver argues that the absence of a court of Chancery in the early nineteenth century worked in favour of creditors. From the standpoint of mortgagees of land, with the absence of a court of Chancery there was no institution that might enforce a mortgagor’s equity of redemption. Moreover while provincial law allowed lands to be sold for debt, the absence of a court of Chancery meant creditors were not as disadvantaged as mortgagors. He argues that the introduction of the Court of Chancery in 1837 was sponsored by creditors, and designed to provide mortgagees with the means to obtain final orders of foreclosure. Weaver's intriguing thesis relates developments internal to the law to wider social and economic forces. Weaver asks why jurisdictional reforms internal to the courts happened when they did.
For the New South Wales case, the principal historian of equitable jurisdiction remains John Bennett (1962, 1963 and 1974). Bennett argues that the effect of allowing two jurisdictions to co-exist in one court was, ironically, to result in two de facto courts operating within the single Supreme Court; and this was, he argues, “almost a conspiracy to defeat the clear intentions of an Imperial Statute” (1963, 279 n.11). Bennett’s concern to explain why the twentieth-century Sydney bench and bar’s “reverence” (in Castles’s words), for the separation of law and equity meant that any serious attempt at fusion was resisted until the 1970s. In answering this question Bennett traces the historical development of the equitable jurisdiction throughout the nineteenth century, and particularly after the passage of the New South Wales Act of 1823, which vested the Supreme Court with jurisdiction in both common law and equity. Bennett has argued that the de facto separation of the equitable jurisdiction in New South Wales had “no historical authority” (1962, 406). Bennett reasons that since the Supreme Court was established in 1824 as a single court with plenary powers, “the early assumption that the Supreme Court sitting in Equity could not grant remedies at Common Law was erroneously founded on a supposed identity between the colonial Equity Court and the High Court of Chancery in England” (1962, 406–7).

However, like Brown’s work on Upper Canada, Bennett’s work on New South Wales relegates the importance of equity to internal jurisdictional questions. Is it possible to wrench attention from this fascination with jurisdictional boundaries to examine the relationship between the law and the society in which it functions? In the remainder of the paper I will turn attention to where this paper began, to a comparative assessment of one specific area of substantive equity law — the treatment of dower.
Dower and equitable jurisdiction compared

In an article on the law of dower to the Canada Law Journal in June 1877, the author briefly outlined one important difference between metropolitan and colonial law:

While the action, or plaint, for dower is almost unknown in England, this claim of the widow is a subject of frequent and difficult legislation in this Province. The judges and Legislators of Ontario have carefully preserved the ancient immunities of the widow, though the rights of the married woman have been for the last few years in a state of flux and change. The words of Lord Bacon, though no longer applicable in their entirety to England, are full of significance in Ontario. The tenant in dower, he says, is so much favoured, as that it is the common by-word in the law, that the law favoureth three things: (1) life; (2) liberty; (3) dower. (Anon. 1877, 154).

Although the author of that article may not have been aware of it, the distinctiveness of Ontario was not simply in relation to England, but also in relation to a very similar settler society — New South Wales. Dower was protected in Upper Canada throughout the nineteenth century, while it was attacked and eroded in New South Wales.

In New South Wales the machinery to bar dower, such as a fine or a conveyance to uses to bar dower, did not exist in early convict New South Wales. Consequently, a proclamation of 1819 gave a married woman the right to alienate her jointure, dower or other estate of freehold or inheritance. That proclamation was confirmed in 1825 by an Act of Council giving married women the power to bar the dower. As with a fine (for which the Act of Council was a substitute) provision was made for a woman to be examined separately from her husband, in order to determine that she was acting of her own free will. In 1833 a Dower Act was passed in England that simplified the means by which a husband could will his lands without the right of dower being attached. This legislation was adopted in New South Wales in 1836. It meant that from 1 January 1837 dower did not apply
to any lands that had been absolutely disposed of by the husband by sale or by his will. It also provided that the husband could wholly deprive his wife of her right to dower by so declaring in his will, or by any deed. This provision was later applied to any transfer under the Real Property Act of 1862, which introduced Torrens title. The husband could, moreover, exclude the wife from enjoyment of dower even if he died intestate, by executing a declaration to the contrary. After 1837, in other words, the widow’s right to dower was weak. But that did not satisfy its critics. In 1850 the Dower Act Amendment Act further restricted the widow’s access to dower, by enacting that no widow should be entitled to dower unless she could meet the following criteria: 1) that she resided in the colony as the wife of the deceased while he owned the land, and 2) that the purchaser had notice, before or at the time of the sale, that the deceased owner had been married to her. If these requirements were met, the dower right was determined as one-third of the estimated rents on the unimproved land. The few residual rights to dower were further attacked in parliamentary debate in 1879 and 1881 and finally in 1890 the Probate Act was passed which consolidated and rationalised the entire law of inheritance. Dower was one of its victims.

Compare the situation in Upper Canada. The English Dower Act of 1833 was not adopted in the province with the important exception, as Philip Girard has noted, that in 1834 a local statute extended dower to equitable estates, as the English Act had done, but with none of the limitations of the English legislation (2004). This is not to say that there was not opposition to dower, but significantly it failed, and dower, as Girard argues, “was expanded by Ontario Courts and legislatures with a kind of baroque exuberance that extended it further than anywhere else in the common law world” (ibid.). How the courts treated dower in Upper Canada and later Ontario is a vast topic, so I will confine discussion to the question of dower in an equity of redemption. An equity of redemption refers to the bundle of rights that a court of equity regards a mortgagor (the person who borrows money on their property) as having in the mortgaged property,
including the right to the return of the mortgaged property after the repayment of the relevant money to the mortgagee.\(^5\)

As mentioned earlier, there was an important piece of Provincial legislation passed in 1834.\(^6\) Prior to that date a widow in Upper Canada only had dower in the lands her husband had been seised of during the marriage. Since seisin implied the possession of a legal estate in lands, there was no dower in any interests in land that courts of equity recognised. The Provincial Act of 1834 adopted that part of the English Dower Act of 1833 which gave a widow dower out of lands to which the “husband \textit{dies} beneficially entitled whether wholly equitable or partly legal and partly equitable.”\(^7\) Now, the effect of this was that it enabled a widow to claim her dower where the equity of redemption subsisted in her husband at his death. He died beneficially entitled, so the dower would be assigned to her subject to a mortgagee’s prior claim. This gave rise to a number of thorny legal questions about the exact nature and extent of the widow’s rights. The issue was further complicated by legislation in 1879.\(^8\) In \textit{Martindale v. Clarkson} (1880) it was decided that prior to 1879 the wife had no estate in her husband’s equity of redemption after a conveyance made in his lifetime, even though he had been seised of the lands, provided he mortgaged them in his lifetime and his wife joined to bar the dower.\(^9\) The legislation of 1879 changed the rules. Section 1 provided that no bar of dower in a mortgage should operate to any greater extent than is necessary to give full effect of the rights of the mortgagee, and Section 2 preserved the widow’s dower in any surplus arising where the lands are sold by the mortgagee under his power of sale or where they are sold by any legal process. These provisions raised the question of whether the wife, by virtue of the statute, retained her inchoate right of dower in an equity of redemption after joining in her husband’s mortgage to bar her dower. In \textit{Martindale v. Clarkson} (1880) already referred to, Patterson JA stated that the legislation created a “new right” in the wife’s favour, entitling “her to dower out of that equitable estate notwithstanding that the husband should not die seized of it.”\(^10\) This was reaffirmed in \textit{Re Luckhardt}
(1898) where Mr Justice Ferguson quoted *Martindale v. Clarkson* and spoke of the “new right” conferred by the legislation of 1879.\(^{11}\) Or take the decision in *Re Croskery* (1888), where the chancellor stated: “Personally I do not see why the wife’s claim to dower in these cases rest in the caprice of the husband. She has forgone her dower for a certain purpose, and that being satisfied, it revives, and all the world has notice of this, so that if the husband assigns or sells the equity the assignee or grantee is not a purchaser for value without notice of her possible rights if the mortgage is more than satisfied out of the land.”\(^{12}\) Many other cases subsequently upheld this sentiment and protected the widow’s right to dower in relation to an equity of redemption.\(^{13}\) My interest here is not with the technicalities of the law, however, or with tracing a doctrinal history. I merely use these few examples to affirm the validity of Girard’s assertion that both the courts and the legislature defended and extended the widow’s right to dower in Upper Canada and later Ontario.

This invites comparison with the situation in New South Wales. I have already outlined the legislative history of dower in the colony, which shows the extent to which legislators were determined to reduce the widow’s rights in their desire to make land more marketable. How did the Supreme Court respond in its equitable jurisdiction? Not all of the widow’s rights had been eroded by the English *Dower Act* of 1833. In the adopting colonial legislation of 1836, if a husband died beneficially entitled to land in an interest which would not be sufficient for the widow to take dower at law but which was an estate of inheritance in possession, or equal to it, the widow would be entitled to dower in equity. Moreover, a husband could enter into a covenant or agreement not to bar dower, which the court of equity were bound to enforce.\(^{14}\) The question arose as to what the position was with regard to rights to dower before the passage of the *Dower Act*.\(^{15}\) In *Carr v. Harrison* (1871) it was held that an appointment by conveyance to such uses as the purchaser should appoint, remainder of the purchaser in fee, had the effect of barring the dower of the purchaser’s widow, notwithstanding that
her marriage had taken place before the Act. In the same case “it appeared that the Court would be prepared to regard dower as being barred in equity after a lapse of twenty years by analogy to the Statute of Limitations” (Bennett 1962, 334). This was one of many decisions that would weaken the widow’s claim to dower.

In 1862 the Real Estate of Intestates Distributions Act (which abolished primogeniture) also provided that on the death of the husband intestate, should the intestate’s realty be sold, a payment equivalent to the widow’s dower was to be made to her. When the court was asked to consider what that payment might be, as they were in Ex parte Murphy (1867), the court held that she was entitled to dower only out of the proceeds of sale as reckoned as if invested in government debentures at 6%.16 Hard luck for the widow if the sale was profitable. In Merriman v. The Perpetual Trustee Co. Ltd. (1896)17 the Full Court held that through the partial failure of a trust for the conversion of realty a testator had died intestate and that the proceeds of conversion passed to the executors as personalty. Accordingly, by the terms of the Real Estates of Intestates Distribution Act of 1862, the widow took nothing. The pattern emerging here demonstrates if the courts of Upper Canada and Ontario displayed a “baroque exuberance” to protect and extend the right of dower, the courts of equitable jurisdiction in New South Wales were doing their level best to move in precisely the other direction. To what extent might the social contexts of Upper Canada and New South Wales illuminate our understanding of the relative treatment of property and equity in the courts?

Law in context

While Upper Canada and New South Wales seem similar societies in many respects, it is their subtle differences that help us understand the reasons why the law operated along different trajectories in different settings. Jeffrey McNairn has recently provided an explanation for the abolition of the law primogeniture in
the Canadian colony in his study of public opinion and deliberative democracy in colonial Upper Canada (2000). McNairn draws upon the work of Jürgen Habermas (1989), isolating what he believes to be the essential insight of Habermas’s analysis of public opinion, namely that “debates about the nature and power of public opinion were not only matters of political rhetoric; they were also part of people’s experience of concrete social, economic and cultural change” (2000, 9). McNairn then uses the debate over primogeniture in the early nineteenth century as a case study in the creation of public opinion, arguing that the debate “helped to create the concept of public opinion to which government was to be responsible while, at the same time, demonstrating that Upper Canada lacked such a government. Once deliberative democracy was established, primogeniture was abolished” (361).

McNairn’s work demonstrates that one characteristic of Upper Canada, not found in New South Wales, was that the population was committed to working through the consequences of responsible government and a distinctively Canadian moderate reformist agenda, rather than launching any sort of vigorous democratic blueprint. From the viewpoint of these people, a colony comprising small farms was to be desired. Opposed to this view was the opinion of some politicians and landowners that equal partibility could have a detrimental effect on the size of holdings and agricultural viability, most especially in the most heavily settled regions of the colony. Some of these individuals painted a picture of increasing numbers of landholders declining into peasant farmers. Interestingly, McNairn’s study does suggest that the abolition of primogeniture was passed at the same time as more landowners were taking steps through wills to protect holdings by devising it to a single heir, although not necessarily the eldest, while at the same time making adequate provision for other offspring. Here, perhaps, is evident the same concern for preserving the interests of families in an agrarian economy that others, such as Girard, have also identified.
New South Wales, on the other hand, was decidedly different. “Of all the communities in the world,” wrote the *Southern Courier* in August 1861, “next to the Americans, the British Australians are more given to a kind of gregarious todyism than any other. If a man be successful in his worldly ventures, and build up a fortune, no matter with what materials, he is at once ‘great’ in the eyes of the sycophant mob” (*Southern Courier* 2 August 1861). Some conservatives in New South Wales lamented both the democratic and the materialist character of the population in New South Wales. As the Chief Justice Sir Alfred Stephen remarked in despair: “The tendency of the community is, it seems to me, for each man to think himself perfectly equal to any other” (Select Committee on Intestacy 1858). Indeed, in New South Wales, the nature of the polity reflected a quite assertive “democracy.” Economic relations took the form of a remarkably “egalitarian” market economy, where as few barriers as possible were placed in the way of the widest possible number becoming participants in the system of buying and selling — particularly in the case of land. Finally, the community evidenced no “feudal attachments” but was marked by a tendency “for each man to think himself perfectly equal to any other.” The nature of the community itself, in other words, was “democratic,” but within the context of an “egalitarian” market economy.

If, following McNairn, “deliberative democracy,” informed by a distinct colonial variant of liberalism, is a good description for the political culture of nineteenth-century Upper Canada, then I would argue that the political culture of mid to late nineteenth-century New South Wales was a type of “distributive democracy” informed by a system of values I would term “possessive egalitarianism.” One important element in explaining this comparison lies in the relative importance of the franchise in both societies (Buck 2004). As I have argued elsewhere, law reforms including the introduction of Torrens title, the abolition of primogeniture, and the erosion of dower were all indicative of a widely shared set of values that valorised the market over ancient rights. In 1859 Robert Richard Torrens wrote: “In Australia, the great mass of the people are, or confidently look to become, landed proprietors. In Australia, therefore, ‘thorough
law reform’ is essentially ‘the people’s question’” (7). Torrens’s claim was an accurate one. During the debate over the introduction of registration of title in New South Wales, the Southern Cross editorialised: “We are not troubled with class prejudices against law reform. We have no landed aristocracy chary of exposing its titles. On the other hand we have the whole community desirous to have our laws brought practically to every man’s door” (21 July 1860). Or as was stated in the Sydney Morning Herald in 1859: “The land is not in possession of a limited number of families from generation to generation. It is greatly subdivided; it is held to a great extent by small capitalists; it is the working man’s savings bank; and it is constantly being mortgaged and transferred” (23 June 1859, 4). In such a society as late nineteenth-century New South Wales, the widow’s right of dower was not protected or extended with “baroque exuberance” because dower was not articulated as a right; rather it was overwhelmingly articulated, as Hargrave J. did in Underwood v. Underwood (1871), as a “burden of a feudal nature.”

Conclusion

This paper surveys the relationship between property, equity and the courts in two national jurisdictions. A study of property, equity and the courts in a comparative fashion can yield insight depending on the questions we ask. A simple focus on doctrinal development, even in a comparative fashion, does not necessarily allow us to understand the reasons why doctrinal differences appeared in one jurisdiction as opposed to another. A simple focus on the procedure of the courts is also unlikely to reveal to us the reasons for differences between national jurisdictions. Studies of the law that are hermetically sealed from the society in which the law operates fail to yield insight into the consequences of property law upon widows, for example. In order to truly appreciate the relationship between the courts and the community, either in a single jurisdiction or in a comparative fashion, we need to find a way of revealing, analysing and finally understanding the conflict that is the interface between the
courts and the community.

Works Cited


**Notes**

1 Imperial Act, 31 Geo. III, c. 31.


3 Bennett’s scholarship is extremely interesting, and it is a pity that much of his work is hidden away in typescript held by only a few libraries or in his graduate thesis, like the equally important thesis of C.H. Currey (1929).

4 The following section draws on A.R. Buck 1987.

5 For an excellent historical analysis of the equity of redemption, see David Sugarman 1995.

6 4 William IV. c. 1.
The following section draws on Shirley Denison 1913.

42 Vict., c. 22.


Martindale v. Clarkson (1880) 6 A.R. 1 at p. 6.

Re Luckhardt (1898) 29 O.R. 640 at p. 117.

Re Croskery (1888) 16 O.R. 207.

See, for example, Ayerst v. McClean (1890) 14 P.R. 15; Pratt v. Bunnell (1891) 21 O.R. 1; Re Auger (1912) 26 O.L.R. 402.

7 Will IV., No. 8, Sections 2 and 12 respectively.

The following section draws on Bennett 1962, 333–36.

Ex parte Murphy (1867) 6 S.C.R. Eq. 63.

Merriman v. The Perpetual Trustee Co. Ltd. (1896) 17 NSW Eq. 325.

See, for example, A.R. Buck 1995, 145–67.

Underwood v. Underwood (1871) NSW Eq. 16.
Settler Colonies Embrace Married Women’s Property Reform

“…in the manner sanctioned by English precedent.”

It is well known that under the common law doctrine of coverture, at marriage a woman traditionally surrendered her property and her property rights to her husband. It is also well known that in the nineteenth century this doctrine was eroded by statute, as legislatures in common-law jurisdictions passed Married Women’s Property Acts. This reform commenced in the United States, travelled to the United Kingdom, then to Canada and the colonies of Australia and New Zealand by the last decades of the century. The ubiquitousness of the reform in English-speaking countries in the nineteenth century has tended to make married women’s property legislation appear to be the same reform throughout the English-speaking world. We think it is worth pausing to question whether this is indeed the case, or whether there is something more to be said.

To date scholars have not explored the reform in a comparative context. We suggest that a comparative approach is likely to be instructive especially if it is taken from the perspective of settler colonies. Australia, Canada and New Zealand had inherited the common law doctrine of coverture from England, and, as members of the British Empire, had also inherited the impetus for reform. Settler colonies did not initiate the reform, they responded to directives from England where women had been campaigning for the statutory reform of coverture for decades. We need to ask whether the same demands were coming from the colonies, and with what speed the colonial legislatures were acting on promptings from England, for the timing of legislation is often as significant as its actual passage.
Historians from the settler colonies have drawn attention to two aspects of the reform in their own jurisdictions: first that the colonies simply enacted the imperial legislation when it was passed; and second, that this happened without campaigning from colonial women.¹ These factors, we argue, suggest that settler colonies had a different attitude towards married women’s property and there is potentially another way of seeing the significance of the legislative reform. This article attempts to draw together some of the work that’s been done on settler colonies, to draw out their similarities and show how analysing one can shed light on the others. Studying the statutory reform of coverture comparatively in this way may offer us insights into the meaning of married women’s property rights in colonial jurisdictions. We hope thereby to generate further research and to contribute to the continuing discussion about statutory reform of coverture.

In 1891 the *Sydney Morning Herald* editorialised on the slowness of married women’s property reform in the Australian colony of New South Wales, drawing attention to the issue of timing when examining the reform. The editor, in company with the Chief Justice of the Supreme Court, William Charles Windeyer, was campaigning to give the New South Wales parliament a push to revise its 1879 Act in line with subsequent and more progressive legislation passed by the House of Commons in 1882. The ground on which the newspaper argued that additional reform was necessary, was reasonableness: “Seeing that our Legislature had done so much to improve the legal position and to enlarge the rights of married women…,” it seemed only reasonable to continue to do so. Tardiness, not lack of will, was the problem — “it can hardly be supposed that there was any rooted objection in principle to the further enlargement of those rights…” so it must simply be a slow response, or colonial arrogance. Had the colonists, “the vigorous manhood of the colony,” been too busy boasting about their achievements to see the usefulness of measures enacted in other colonies? For by now most other settler colonies
had fallen into line with the imperial legislation. The clinching argument, therefore, was to tie the enlargement of women’s rights to the authority of this imperial relationship: how could New South Wales revise its law when called to do so “in the manner sanctioned by English precedent”?²

There was clearly an expectation being expressed here that following England — “in the manner sanctioned by English precedent” — was decisive for the argument, entirely appropriate for a colony, and that enlarging the rights of married women was both necessary and desirable on those grounds. Two years later New South Wales passed an amended Act, thus bringing itself at last into line with other jurisdictions in the Empire.

This imperative to “toe the line” was the “colonial mentality” Constance Backhouse has described as adopted by the Canadian legislatures when they were considering married women’s property rights in the later decades of the nineteenth century (Backhouse 1998, 211–57). In their initial considerations of enlarging married women’s property rights, Canadian colonial jurisdictions were very progressive on the matter. But by the end of the century, as the House of Commons liberalised the rights of English married women to hold property, the Canadian legislatures had fallen back on simply following the English legislation. Now “it was strikingly apparent… where a colony which had independently forged ahead of the mother country, took on a decidedly imitative and quiescent character in the decades following confederation [in 1867].” In Canada, Backhouse has argued, “a distinctly colonial mentality [had taken] root, and subservience to English precedent” took priority over colonial innovation as Canadian statutes “slavishly copied” the English. Subsequently, according to Backhouse, legislation “seems to have been enacted largely as a form of self-imposed genuflexion on the part of an imitative subservient colony to an imperial power” (231, 241).

As Lori Chambers has pointed out in discussing the passage of the Married Women’s Property Act of 1884 in Ontario, despite the “obvious failure” of earlier legislation passed in 1872 and 1873, “amendment of
the law in Ontario seems to have been considered only in the wake of the English reform.” The 1884 Ontario Act was modelled on the English 1882 Act, which, once passed, had meant Ontario was “faced with a choice between adopting English legislation… or losing the benefit of English decisions altogether” (Chambers 1997, 138). So, in Canada as in New South Wales, the passage of married women’s property was a matter of following English precedent. This seems also to have been the pattern in New Zealand where, Bettina Bradbury has pointed out, the Act of 1884 “virtually duplicated” the English one of 1882. Until then, New Zealand had tended to lag behind England and other jurisdictions in not attempting any reform of coverture. When it did finally pass legislation, it chose not to take a more revolutionary path of giving married women the same property rights as men and single women enjoyed. Instead the New Zealand reform virtually copied the second English Act and retained the concept of separate property (Bradbury 1995, 56). So New Zealand was both tardy and imitative in reforming the property rights of colonial wives.

This pattern of simply enacting the provisions of English law, which was also the case in most Australian jurisdictions, is surprising, because the colonies did not always just follow English precedent blindly. The settler colonies of Australia, New Zealand and Canada had indeed led England in many areas of social reform, and continued to do so in the next decade, with the enfranchisement of women, the establishment of industrial tribunals and minimum wages, and the further extension and liberalisation of divorce.

This puzzle about the settler colonies’ response to married women’s property is compounded by the fact that property ownership in land was at the heart of settler colonialism. In England, land was locked into lineage in ways which restricted the agency of husbands as well as wives. While a wife’s personal property and leasehold lands passed to her husband, he only acquired a life interest in her freeholds and there were limitations imposed on his power to alienate them without her consent. In the mobile migrant societies of settler colonies, the fictional availability of land was an incentive to migration. Land
generated an intensity of feeling that was “mythical indeed religious” in its quality (McQueen 1986, 156). Popular demands to “unlock the lands” held by the Crown, to democratise land ownership, became a major issue for Australian colonial legislatures in the post gold-rush decades. Comparisons were made with the old country, what the Sydney Morning Herald editor in 1891 called “effete civilisation,” where too much land was corralled in large estates and one of the main impulses to married women’s property reform had been the desire to free up the land market. The colonies’ inheritance of the common law doctrine of coverture could only restrict the free trade in that land. Commodifying land would promote a free and often speculative market, which was hampered by married women’s inability to buy and sell in the marketplace. Thus the caution of colonial parliaments on property reform for married women seems curious given the fact that settler colonies resented the barriers to the free trade in land that were implicit in the common law restrictions on married women’s ownership of real property, on the limitations the law imposed on married women’s ownership of property.

Land-holding women were not in a majority in the settler colonies, but the impetus for freeing up the land market did put pressure on the issue of reforming married women’s property. In the Australian colonies, wives had a temporary legal existence thanks to the demands of the early land market, but they were treated as property holders in need of special protection. Wives were interviewed apart from their husbands to ensure they were not being coerced or tricked into a sale. These were procedures which carried assumptions about married women’s absence of economic agency that frustrated reformers seeking to modernise arcane legal process.

It is important to remember that married women’s property reform began outside England in 1839, in the state of Mississippi in the United States. By 1865, twenty-nine states in the US had passed married women’s property laws in some form (Basch 1982, 27–29). Most of these did not emerge initially in response to feminist campaigning. Although she also found there was undoubted feminist
influence in the state of New York before the middle of the century, Norma Basch has pointed to connections between married women’s property reform and efforts to clarify debtor-creditor relations in other states (29). Reform of coverture did become a big issue among women in England. In the 1850s, English activists put a premium on the reform of married women’s property law, arguing that under the doctrine of coverture the common law reduced the wife to a legal and economic nonentity (Holcombe 1983, 57–70). Feminists, and their influential male allies like John Stuart Mill, put forward a simple but radical proposal; married women should have the same rights as single women and all men. When a Married Women’s Property Act was finally passed in 1870, however, this proposal had been mangled to produce a complicated and largely class-specific “reform.” The Act was designed to allow working-class wives to retain and invest their small earnings (Holcombe 1983, 171–78). While English feminists went on to agitate for broader reforms, this “legislative abortion” (Arthur Arnold quoted in Chambers 1997, 142) of an Act was promoted to the Australian, Canadian and New Zealand colonies as a model.

It was not obvious to the colonists that legislative changes were going to be advances for colonial wives. That women in “the old world” demanded legal reforms, or that the UK parliament granted them, did not necessarily make those reforms appropriate or desirable to women in the colonies or to men in colonial parliaments. Thus colonial responses were varied — from cautious to hostile. New Zealand ignored the 1870 Act. The legislatures of Tasmania and South Australia dithered. They considered reform, but were still debating it when the imperial parliament produced an improved Married Women’s Property Act in 1882. They then adopted this amended legislation. The frontier colonies of Queensland and Western Australia, which had high masculinity ratios and tended to see wives and their assets as scarce resources essential to building up husbands’ individual enterprises and the colony as a whole, put off such “inappropriate” legislation until the 1890s, when they also took up the 1882 model. In Australia, only the colonies of Victoria and New South Wales adopted and adapted the original English Act of 1870.
In 1879, New South Wales passed a faithful replica of the English legislation. Victoria introduced and passed its Bill almost simultaneously with the UK. One slight change New South Wales made to the English legislation was to allow the married women of New South Wales to invest their earnings in land. This was significant in the context of a settler colony. Land was also central to the Victorian Married Women’s Property Act 1870. The enthusiastic reformers of Victoria substantially changed the English model, producing a radical if ramshackle Act, which covered real as well as personal property. However the significant changes to the English model were scarcely debated. The Victorian Act was passed quickly at the end of a parliamentary session, and was promoted as a welfare measure.³

Under the doctrine of coverture, colonial law offered no protection for the earnings of a working wife who lived with her husband. As male reformers in the colony argued repeatedly (and with a kind of relish), a husband could take a wife’s wages and spend them on drink, or another woman. In Victoria, the parliament’s attention on passing the Married Women’s Property Bill was firmly focused on the sufferings of working-class women married to these drunkards and other delinquents. If such women could retain their own earnings they might be able to care for their families without calling on overtaxed colonial charities. The egalitarian implications of the legislation were not explored as the measure passed hurriedly through the Victorian parliament. The New South Wales Act was sold in similarly welfarist terms.

These arguments must have resonated with colonial women who would, only a decade later, become suffrage activists. Many of these colonial women were already active in philanthropy. Their experiences in soup kitchens, night refuges and infants’ homes helped to shape their views on women’s vulnerability to desertion, seduction and drunkenness. Indeed those female experiences could well have been incorporated into the narratives of male reformers like Supreme Court justice William Windeyer, who as a member of parliament was
responsible for the New South Wales *Married Women’s Property Act* of 1879. To overcome parliament’s resistance to reform, he relied heavily on scenarios of wronged womanhood, whose savings were “at the mercy of the drunken beasts of prey, their husbands.”

When these first colonial Acts were passed in Australia in the 1870s, they did not attract any petitions from philanthropic or other women. Later, anti-suffragists would point to married women’s property reform as proof of men’s chivalrous willingness to legislate for women without any public intervention by women. This is a point made by scholars also working on Canadian and New Zealand jurisdictions: that this legislation was passed in the absence of campaigns from colonial women. There do seem to have been several petitions presented by women to the Canadian parliament in the 1850s when laws “protective” of women’s property rights were being considered, but not when the “egalitarian legislation” of the 1870s and subsequently was being adopted from England (Backhouse 1988, 223, 230). In the settler colonies the statutory reform of coverture preceded the emergence of formal women’s organisations, which could be expected to promote or critique the reforms. The first statutes were passed in Victoria in 1870, Ontario in 1872, British Columbia in 1873 and New South Wales in 1879. Suffrage and temperance societies were first organised in Canada beginning in 1876 but more particularly in the 1880s, similarly in Victoria in the 1880s, while the New South Wales Womanhood Suffrage League was not set up until 1891 (Backhouse 1998, 223; Chambers 1997, 139; Grimshaw 1996, 170–71). This pattern holds true for other colonies. For example, Western Australia passed its *Married Women’s Property Act* in 1892, two years before a group of women in Perth set up the first formal organisation for women in that state, a debating and literary society known as the Karrakatta Club. Women’s formal organising did not begin in New Zealand until after the 1884 Act was passed (Bradbury 1995).

Colonial women were not completely silent on property issues. The Canadian legislature in Nova Scotia received many petitions demanding measures to curb husbands’ economic irresponsibilities
When the parliament in the colony of Victoria was debating property reform in the 1870s, the issues of women’s political participation and economic autonomy were being discussed by individuals like Mrs Henrietta Dugdale and her freethinking friends. According to Alice Henry, who wrote the first history of woman suffrage in that colony, from the early 1870s they “never missed an opportunity of advocating publicly and privately woman’s inherent right to the franchise… (and) power over her own property…” (Henry 1934, 22; see also Kirkby 1991). Yet they were not organised to do so and responses were individualised. Perhaps private lobbying was more effective than public debate.

In the tightly-knit colonial elites of the 1870s and 1880s, there were many opportunities for private advocacy as prominent women could exchange views with judges, magistrates, legislators and editors, and in Victoria and New South Wales they did so successfully on issues such as wife desertion and child poverty. Indeed, Windeyer’s emphasis on rescuing women and children from men’s neglect or exploitation may well have come from these sources and it had an obvious appeal to parliamentarians, “the vigorous manhood of the colony.” The reformers’ rhetoric of rescue was congenial to sympathisers in Victoria and New South Wales, but it meant married women’s property reform was being promoted as a welfare, not a rights, measure. Consequently, the New South Wales Act 1879 was a tentative instalment of reform, which allowed a wife to keep her earnings from employment or self-employment. She could invest this “separate property” in specified ways (e.g. in land) and she could access certain legal remedies to protect it. But she could not make contracts respecting that property in her own name.

This was a significant omission. Without the capacity to contract, the married woman could not actively manipulate her assets, although such manipulation was usually regarded as the essence of property ownership. The legislation therefore constituted a limited feminised form of property ownership. It is worth repeating that this paternalism was “made in England,” since the New South Wales Act was so
closely modelled on the imperial statute of 1870. In England, a well-organised Married Women’s Property Committee continued to demand full economic rights, including that crucial right to contract (Holcombe 1983, 185–201). This right was conceded (though still with limitations) in an amended Married Women’s Property Act in 1882. But in New South Wales, no further reform was instituted until 1893, and all that time the feminist response to the issue was muted.

Similarly according to Bradbury, “New Zealand women had little to say about the content of the laws that changed the legal rights of married women between the 1840s and 1880s,” not because they were unaware of the issues but because they were not yet organised (Bradbury 1995, 64). Wives in the Australian colony of Victoria already had a contractual capacity, although the poor drafting of the 1870 colonial Act gave the judges headaches in interpreting the relevant section. In the Canadian maritime provinces, the Nova Scotia legislature was more like the New South Wales parliament, preferring to follow the more conservative earlier English Act of 1870 than its more liberal 1882 sequel. Nova Scotia attempted to strike a fine balance between giving women greater rights and simultaneously protecting husbands and creditors in the essentially agricultural economy where women were key contributors to the family economy (Girard and Veinott 1994, 67–90). As in other parts of Canada, Nova Scotia’s earlier attempts to pass a married women’s property bill were also the boldest. Attempts to copy the New York legislation of 1848, which would have secured complete control and title over all of a married women’s property both real and personal, failed regularly in the legislature between 1855 and 1865. Only an act based on protectionist principles finally succeeded — the Act for the Protection of Married Women — passed in 1866, and followed in 1884 by an Act which emulated the separate property reforms of the English Act of 1882 but was more closely modelled on the 1870 Act (Girard and Veinott 1994).

Because New Zealand and the other Australian colonies were slow to legislate, they simply adopted the English 1882 Act. They did so not
on any grounds of justice for women, but “in the interests of imperial uniformity,” leaving New South Wales to stand alone with its original legislation intact for another decade. Law reformers in the other colonies were able to follow a familiar script, emphasising the welfarist need to protect the earnings of working-class wives and saying little about the more egalitarian provisions such as the right to contract which was also in their legislation.7

Perhaps the statutory reform enshrining women’s rights to own property did not affect the economic security colonial women wanted. Authorities like Timothy Coghlan, the New South Wales Government Statistician, saw Australian wives as supported by their husbands and not “forced” into economic activity. Understandably, in this view they would not press for economic rights.8 Yet, while Coghlan’s view might have seen Australian married women as fortunate, the situation was more complex: many wives were economically active in the second half of the nineteenth century and needed their legal rights reformed.

This was illustrated by the case of Olivia Mayne whose suit against the MacMahon brothers, which was heard in the New South Wales Supreme Court in 1891, prompted the Sydney Morning Herald editorial urging further reform.9 Mrs Mayne was relying on the 1879 Married Women’s Property Act when she brought her case against the MacMahons for money she said they owed her for the hire of her property, a kangaroo she had trained to box, but the court held she had no power to make the contract under that particular statute (see Golder and Kirkby 2003). Economically active married women like Olivia Mayne needed legislation to catch up with their economic realities. In the nineteenth century, colonial married women were making contracts; they and the people they dealt with could then get into difficulties, but colonial parliaments did not take the lead on demanding reform. Instead colonists adopted measures passed in the UK, following the imperial leader, enacting legislation “in the manner of English precedent.”
Enacting legislation to maintain “imperial uniformity” allowed colonial legislatures to evade discussion of the difficult issues married women’s property raised. Parliamentary discussions were generally brief and formal, simply re-enacting the British model, without needing to probe the issues. In Ontario, for example, the 1884 bill was passed “with almost no debate” and passage of the Act “excited little controversy” (Chambers 1997, 143–44). Similarly in Victoria the 1870 Act was introduced at the end of a parliamentary session and was passed quickly with scarcely any debate. At times in other colonies, the discussion tended to ramble, shifting effortlessly from discussions of women’s property into discussions of women as property and the dangers to marriage of liberalising women’s economic status, particularly of allowing married women to make economic arrangements with men other than their husbands. Falling into line, “in the interest of imperial uniformity” with a measure “sanctioned by English precedent,” was a convenient short-circuit which avoided these problems.

Another aspect of colonial subservience to imperial precedent lies in the insignificance those statutory reforms had in the light of colonial realities. Innovations the colonies had already made to circumvent the common law may have meant there was little value to statutory reform for married women in the colonies. Rather than pursuing statutory reform of coverture, colonial legislators found other ways of eroding married women’s disabilities. For example, Australian colonial innovations in the technicalities of conveyancing, the Torrens system, gave married women some property rights. R.R. Torrens was a public servant in South Australia who developed a new system of registering land ownership in the late 1850s. His methods were adopted in all eastern Australian colonies by 1862, simultaneously with the land selection acts, and by Western Australia a little over a decade later. While Australian legal scholars have recognised the innovative effect of Torrens’s system on land titles, the implications for married women’s property reform are also significant. Torrens’s innovations allowed for the possibility of the married woman owning land and consequently land registration was administered in ways
which allowed a married woman to hold and to sell land (Golder and Kirkby 2001, 207–21). Thus Torrens’s system facilitated colonial women’s holdings of real property without challenging the doctrine of coverture. Some wives simply continued to act and to be treated as economic agents even without formal reform of coverture. Therefore, by a process of piecemeal pragmatism, without ever being debated in parliament as a matter of justice for women’s economic rights, colonial married women’s legal status was subtly reformulated. Possibly, the piecemeal solutions available through these conveyancing measures blunted the edge of colonial discontents and it was for this reason that women in the Australian colonies were not pressing for married women’s property reform as their English sisters were.

Similarly in New Zealand, there were ways that women could hold on to property. From as early as 1842 the ordinance to facilitate the Transfer of Real Property made conveyances between husband and wife possible in New Zealand, in spite of the restraints under common law, and although wives could not make a will without their husbands’ consent. In addition, some women could take advantage of provisions which fell outside the common law: for instance, Maori women marrying Maori men whose land remained outside the European land courts, and wives who had some sort of marriage settlement or formal separation agreement consistent with provisions available in the English equity jurisdiction (Bradbury 1995, 42–44). Nova Scotia law reform was propelled by conservatives, not liberals, and efforts to conserve the family carried more weight than those to individualise women’s economic activities.

In short, the meaning of colonial reform of married women’s property remains insufficiently examined. Settler colonies shared a common experience of relationship to the imperial centre, and they were subject to the same expectations of following imperial precedent. This imperial tie put pressure on colonial jurisdictions to reform, but it did not necessarily mean that the colonies had the same reasons as either the UK, the US or each other for enacting the reform. Furthermore it did not mean that the reform necessarily followed women’s political
demands for it. Only in the aftermath of the reform of coverture were women in the Australian colonies beginning to formulate a critique of contemporary marriage. From that time the developing discourses of feminism and law reform were mutually reinforcing as feminists, judges and legislators simultaneously struggled with the issues of women’s rights in the 1890s–1900s. Scholars in Canada have also pointed to changes in views about marriage after the 1880s (Girard and Veinott 1994, 78).

It seems that the settler colonies were not innovative in reforming coverture. Indeed, Australian, Canadian and New Zealand colonists were tentative and imitative on the question of married women’s property, at first delaying and then insisting that they must toe the imperial line, when they had been innovative in other key areas affecting the status of women. This calls for further investigation. More work needs to be done to evaluate the meaning of property reform for women in settler colonies. This article is only a start. It has been argued that a comparative analysis allows us to open up discussion of married women’s property in a way that is crucial if we are to assess the larger significance of the statutory reform of coverture. The timing of the reform in settler colonies is only one dimension of difference. There is also the absence of controversy, the lack of campaigning from colonial wives, the strict adherence to legislating “in the manner of English precedent.” In drawing attention to these matters, we hope we have opened an important window on to the statutory reform of coverture for women beyond the metropolitan centres.

Works Cited


Notes

1 See for example Backhouse; Bradbury; Chambers; Girard; Girard and Veinott.

2 Sydney Morning Herald 6 May 1891, Editorial.

3 O’Shanassy, Victorian Parliamentary Debates, Vol. 11 (1870), 399–400.

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5 Chambers (1997, 139) does attribute a demand for reform in Ontario to a growing strength in the women’s movement, but her evidence suggests this occurred in the 1880s, coincidentally with or following the passage of the law not preceding it, and her source for the power of the women’s movement on the property issue is Holcombe’s 1983 study of England, *Wives and Property*, chapters 4 and 9.

6 Karrakatta Club — President’s Address, 1895–96, J. S. Battye Library, Library and Information Service of WA, PR9527/6.

7 e.g. Ramsay, *South Australian Parliamentary Debates* (1883–84), 258.


9 e.g. *Mayne v McMahon* (1892) 13 NSWR 97–104.

10 See articles critiquing marriage in *Dawn* (1 June 1889 and 4 March 1893), and *Woman’s Voice* (9 August 1894, 24 August 1894, 9 June 1895 and 24 August 1985). See also Kirkby (1991), Margarey (1993) and Allen (1994). For a discussion of later (early 20th century) feminist arguments about marriage see Lake (1999a) and Lake (1999b).
Rich Women and Divorce: Looking for a “Common Sense” Approach

Introduction

If you open the inside covers of most Australian newspapers and read the letters to the editor — or listen to talkback radio — you might gain the impression that family law is one of the few areas where women are doing too well financially. The tables have turned. Women get all the property on separation and, as they often have care of the children, an extortionate amount of child support on top.

Whilst the media is doing a great job of selling this position to the general public, experts in the family law field do not find that the research to date supports these claims. For example, recent research by the Australian Institute of Family Studies (the “AIFS”) has concluded:

…the ‘feminisation of poverty’ post-separation and divorce remains an important issue for family law in Australia; and the adjustment parties make to their property interests in recognition of this financial need on the part of sole mothers, and women from long-term marriages, is currently inadequate (Sheehan and Hughes 2001, 34).

…in general, women are more likely than men to experience financial hardship after divorce… children usually live with their mothers after marital separation and mothers typically have a lower earning capacity than fathers. This situation often creates an income shortfall for divorced women given their household needs. Child support can fill some, but not all, of this shortfall (Smyth and Weston 2000, 19).
Such research challenges the notion that the family law system sees
the world through a feminist lens, and as such women are its only
financial beneficiaries.

This paper also aims to debunk a strand of this pervasive myth.
In a later research paper, the AIFS found that women received a
reduced settlement (on a percentage basis) where non-basic assets
(eg a business, superannuation, investments and shares) made up a
substantial proportion of the parties’ assets (Sheehan and Hughes
2001). The authors concluded that financial contributions weigh
heavily in the division of matrimonial property (ibid., 35). However,
the family law legislation and case law is very clear that non-financial
contributions to a relationship must be valued, and not merely in a
token way. No particular type of contribution — financial or non-
financial — has statutory supremacy. However, the finding in this
research came as no surprise to those working in the field of family
law. The Family Courts in Australia have a long history of struggling
to grasp the value of contributions that women make in the home.

The modern face of this struggle can most easily be seen in cases
where the parties’ assets are in the very high range — now commonly
referred to as “big money cases.” This paper provides an insight
into judicial reasoning in these cases. It shows how decision makers
find it difficult to equate the value of non-financial contributions
to a relationship typically made by women, with the financial
contributions made by spouses working outside the home in paid
employment. The Family Court’s treatment of rich wives seeking a
property settlement confirms that the traditional wife is, financially,
a second-class citizen in the eyes of the law. Moreover, this approach
has long been considered simply “common sense” and so no legal basis
has been provided for continuing to equate the status of the women in
these marriages to little more than unpaid domestic help.

Perhaps the high (or low!) point in this approach came with the
trial judge’s comments in the now infamous case of In the Marriage of
Ferraro.2 This case involved a marriage of nearly three decades, where
the couple had started with nothing. Mr Ferraro was a carpenter
who became involved in property investment in the 1980s and was very successful. By the time of trial, the couple’s assets totalled nearly $12 million. Mr Ferraro had worked hard in the business, as had Mrs Ferraro at home. It was accepted that she had to run the household and raise the children largely on her own, and that she was a homemaker *par excellence*. However, when it came to assessing her contribution to the parties’ assets the trial Judge said:

The parties’ property empire blossomed because the husband had the innate drive, skills and abilities to enable him to succeed in his chosen occupation, whereas the wife’s contribution was neither greater nor less than when the husband had been a carpenter. To equalize the parties’ contributions is akin to comparing the contribution of the creator of Sissinghurst Gardens, whose breadth of vision, and imagination, talent, drive and endeavours led to the creation of the most beautiful garden in England, with that of the gardener who assisted with the tilling of the soil and the weeding of the beds.3

This led the trial judge to award Mrs Ferraro only 30% of the parties’ assets. On appeal this was increased to 37.5%.

One might argue that this sums up the Family Court’s approach to big money cases over recent years. However, all hope is not lost. The Family Court has very recently begun the process of reconsidering this position, though there remains a long way to go in having women’s equal status in marriage recognised. Having critiqued the traditional case law in big money cases, this paper will consider the recent Family Court decision of *In the Marriage of Figgins*,4 where three Family Court judges broke with tradition and viewed the couple’s marriage as an equal partnership!
The legal context

When a married couple approaches the Family Court for a division of their assets, the Court must apply section 79 of the Family Law Act 1975 (Cth) (“the Act”). That section compels the Court to take account of the following categories of contributions by the parties:

- financial and non-financial, direct and indirect, contributions to the acquisition, conservation and improvement of the parties’ property (secs. 79(4)(a) & (b) of the Act), and
- contributions to the welfare of the family including contributions made in the capacity of homemaker and/or parent (sec. 79(4)(c)).

The Family Court has said that contributions to the welfare of the family are “to be given as much weight as those of the primary breadwinner”. This sub-section was inserted in 1983 after it became apparent that it was not appropriate to recognise only those contributions that generated property. The Full Court of the Family Court has since held that the intention behind this amendment was to ensure that homemaking and parenting contributions were given greater recognition in property settlements.

Once the parties’ contributions have been assessed, an adjustment may be made based on the future needs of the parties, and this takes account of disparities in assets and earning capacity, the care of children and so on.

In “small money” cases — that is where the assets of the parties are in the low to average range — a typical outcome of this process is a finding of an equality of contribution, and then an adjustment of up to about 20% for the future needs of a party. This accounts for the common notion that assets of separating couples are often split 60/40, with the higher proportion going to the homemaker parent due to (usually her) greater future needs.
In cases where the parties’ assets are over about $8 million, one sees a different trend, however. The parties’ future needs tend not to be an issue in such cases, as even a modest distribution of assets will result in financial security. The predominant question in the big money cases has been whether there was an equal contribution by the parties. The cases reported in this area have typically involved long marriages, where the parties have accumulated the wealth during the marriage and the wives have not been in paid employment. Wives in this situation have been told by the Family Court that their contributions have, overall, been less substantial than those of their husbands and they have all received substantially less than half of the parties’ property.\(^9\)

How then does the Family Court justify this disparate treatment of homemakers, as it is absolutely clear that if the asset pools were smaller, the wives in the big money cases would have been credited with an equal contribution? The Family Court has developed a principle known as the “special skill” rule. The Courts have found that all of the breadwinners in the big money cases have possessed a “special skill” and this has been the justification for their larger share of the assets. In theory, this rule can apply to parties who make non-financial contributions as well, though there are no reported cases where this has happened.

The most recent decision of the Full Court of the Family Court on this issue is \textit{JEL v DDF}.\(^{10}\) In that case, the husband came across an opportunity, through his employment, to exploit a gold mine. He took the opportunity and over a short period of time the investment paid off to the tune of $35 million. The Full Court (Holden, Kay and Guest JJ) adopted an argument Guest J had put forward in a paper.\(^{11}\) Essentially, they found that:

- If you recognise special skill, you:
  - Acknowledge that the production of \textit{discrete} capital or assets is not really a collective effort at all levels
• Validate a recognition of an individual’s right to the value of his or her innate skill and intelligence, and
• Offer a justifiable recognition for exceptional skills and effort.

If you do not recognise special skill you:
• Impose on one party (because of the fact of the marriage) a moral duty to share equally regardless of the contribution element
• Deny or at least minimise the role of exceptional skill and intelligence in the production of wealth
• Endorse the theory that financial success is the result of some indiscriminate or collective process that both parties did something but that it is impossible to tell who did what, and therefore some sort of equalitarian distribution is necessary.

Apparently, according to Guest J, this is just a “common sense” approach.12 Although previous judges had not labelled this rule as “common sense,” Guest J was right on the money. His reasoning was “common” to that of previous judges in these cases. Moreover, the inability of any of the judges in the big money cases to lay down a coherent legal foundation for this rule exposes the reality: the rule is based on intuition rather than legal logic or principle.

Legal — and logical — flaws in the “common sense” approach

There are many arguments that can be advanced to expose the legal and logical flaws in the Family Court’s approach to big money cases.13 Let us consider some of the most obvious.

Section 79 of the Act does not mention “skills” — or gifts, talents or intelligence. It talks about “contributions” to assets and family
welfare. Thus, there is no legislative basis for attaching any weight
to skill in a property settlement. Some judges have attempted to
avoid this criticism by referring to the rule as one relating to “special
contributions.” The problem, however, is that when they start
explaining the rule they invariably revert back to discussing the skill
of the husband in making money. This is evident in the reasoning
adopted in *JEL v DDF* set out above.

The distinction between skill and contribution is important. A skill
is the facility to do something or a practised ability. A contribution,
on the other hand, is where one helps to bring something about,
 together with others. If one were measuring skill, the acid test would
be outcomes. Skill involves a comparison of how one person performs
a task as against other people performing the same task.

The only proof the Family Court has that the breadwinners in the
big money cases are skilled, is the fact they made fortunes. If such
a principle *could* be applied to homemakers — as the Family Court
insists — then one would start measuring, for example, how well a
parent’s children turned out. This is something the Family Court has
never done — and would never do. In fact, the examples that the
Family Court has given for homemakers who might hypothetically
claim the application of this rule, all involve contributions. For
example, the Court has referred to parents who perform a homemaker
role whilst the subject of domestic violence or without the financial,
physical or emotional support of the other party. Certain skills may
develop as a result of having to make this extra contribution, but it
is the extra contribution, rather than the skill that might develop,
that would be recognised. However, as I have indicated, the Court
has never found a homemaker to have actually made any “special
contribution,” let alone to have had a special skill. Thus, even if the
Act permitted recognition of skills, there is no way of reconciling the
Family Court’s focus on the *skill* of breadwinners and the *contributions*
of homemakers.
Indeed, the focus on the skill of a multimillionaire is inconsistent with the way “ordinary” breadwinners are treated. As far back as Ferraro the Family Court acknowledged:

[t]here does not appear to be any reason in principle or logic why those business skills [of Mr Ferraro] should be treated differently from the high level of skill by a professional or trade person such as a surgeon, lawyer or electrician. Typically in those cases there is a high level of professional training and the picture of long hours of work over many years... The fundamental difference is that those cases normally do not produce the very high value of property with which this and comparable cases are concerned, and a common outcome... is... equality.15

Thus, extra effort alone is not sufficient. Nor is every skill of a breadwinner to be rewarded. For the rule to apply in practice, one needs to establish a skill for making money. The Family Court has made it abundantly clear that the brilliant artist, who fails to be discovered during his/her lifetime, cannot claim the special skill rule. Despite this, the Family Court maintains that making money is not the only special skill — or contribution. The Full Court in JEL v DDF suggests the possibility that a breadwinner may make a special contribution under this rule, without accumulating any great wealth. There are no reported cases where this has happened and it is telling that the judges did not even suggest an example — it is hard to imagine one.

So, the only special skill that has been recognised in practice by the Family Court is making money. Even if one were to accept this as a valid approach (which is hard to argue under section 79) this does not assist in establishing where the line is drawn. Precisely how much money must be earned to justify applying the rule? About $8 million, according to the decided cases. No attempt has been made by judges to rationalise this point of demarcation. One might hypothesise that it needs to be an amount that impresses judges, who might consider that
lesser sums are more easily attainable by hardworking professionals like themselves.

There is yet another problem with choosing to reward skill in property settlements. The explicit assumption — made so clear in the Sissinghurst analogy in Ferraro — is that the men in these cases were solely responsible for the creation of this wealth. Guest J’s exhortation to recognise “an individual’s right to the value of his or her innate skill and intelligence” is premised on his belief that there is in fact something innate in these people that leads to their wealth. The “Bill Gates was always going to be a trillionaire” rationale is difficult to sustain in these economic times, where so many fortunes have been made and lost. The simplistic approach of the Family Court fails to recognise the complexity of causation. Treyvaud J’s Sissinghurst analogy — in which he mistakenly attributes the creation of this garden to Vita Sackville-West alone — makes this point in a strikingly ironic way. This world famous garden was anything but the sole creation of one person, as any historian of the garden, or Vita Sackville-West, would confirm.\textsuperscript{16} There were a myriad of factors that went to its creation, not least of which was Vita’s husband, Harold Nicholson: [it is] the living product of two sympathetic human minds (Quenell 1982, 42).

Causation is not a new issue in the legal world. It is somewhat surprising that whereas judges in the areas of negligence and contract appreciate the complexity of causation, Family Court judges appear to believe they can, at a glance, determine why one person succeeds financially in life and another does not. The classic example is the case of the artist. One of the well-known big money cases in Australian family law is that of Brett Whiteley.\textsuperscript{17} Perhaps Brett Whiteley’s talent is beyond doubt — but can the same be said of all wealthy artists? Or singers? Or actors? Talent and financial success often do not go hand in hand. To assume that wealth necessarily derives from talent or skill in one’s profession is simplistic and compounds the error of rewarding skill in the first place.
Even if one sticks to the idea of contribution, it is difficult to justify this rule. Many of these cases involve income that is derived from investment. Even if one were to accept that at some point in time a breadwinner’s exertions changed from the mundane to the special, whose money would that breadwinner be investing? If the couple in *JEL v DDF* had separated before the $35 million was made, no doubt the property would have been divided equally on the basis of contribution. When the husband in that case made the investment, was he not investing money that belonged to them both? How can the capital be theirs jointly, but the profit be mostly his? Certainly, you can be sure the couple would not have assumed that outcome. Moreover, if the money had been lost then that loss would have been shared equally by the parties.

In terms of contributions, what is often said in “normal cases” is that both parties worked in their respective spheres to the best of their ability. One contributed their time to earning an income and the other to the unpaid work in the home and with the family that comes with such a partnership. In many cases, the breadwinner will have contributed nearly 100% of the income. Thus, their contribution is *all* the money. Surely this is the relevant point, rather than the amount of money they earned. For example, one could not successfully argue in a case that because a breadwinner earned more than average weekly earnings, they made a greater contribution than their partner. In fact, their level of income is generally all but irrelevant. What is the logical justification for abandoning this approach when 100% of the income is $10 million, but not where it is $4 million?

Finally, the passage of Guest J, relied upon by the Full Family Court in *JEL v DDF*, suggests that the only alternative to the special skill rule is to “democratise” contribution. By this, Guest J means that equality of contribution would be assumed in all cases. This is patently not the only alternative. The Court could simply abandon the notion of special skill. This would no doubt increase the number of cases where there was found to be an equality of contribution, but that would not
result from any presumption, but rather the proper application of the relevant legislative provisions.

It is true that a democratisation of contributions would run counter to section 79, which requires a comparison of the respective quality of the parties’ contributions. The Family Court long ago rejected, in *In the Marriage of Mallet*, the notion that the starting point for property division should be an assumption of equality of contribution. Interestingly, however, in *Ferraro* the Full Court said that “for cases within what might be regarded as the norm or normal range of such roles, no detailed assessment [of the parties’ respective contributions] is either called for or appropriate”. So, it is fine to assume an equality of contribution in “normal” cases — that is, to “democratise” contribution — but it is impermissible in the big money cases. How does this fit with the general *Mallet* principle, which was laid down by the High Court and therefore takes precedence over statements of the Full Family Court? What is the rationale for democratising the contributions of a couple with $2 million worth of assets but not those of a couple with $8 million — apart from money, of course!

The Family Court has embraced the idea of providing guidelines for the application of its principles. In the area of special skill, though, there are no guidelines. Nor is there any explanation of characteristics that would help identify what things — other than massive wealth — might attract the operation of this rule. This might be mere oversight. As the Family Court has turned its mind to big money cases on many occasions, this seems unlikely. Alternatively, it may be that the Court is struggling to articulate any identifying characteristics, beyond waxing lyrical about the innate talent of rich men, that is. This brings us back to the “common sense” tag. It is too easy to avoid providing a full and justifiable legal rationale for this principle by saying that it is just “common sense.” In the 21st century, when claims of discrimination are being made, as here, the idea that “common sense” can be relied upon to justify a rule that has, in every case, adversely affected a woman, is insulting, to say the least.
The Family Court’s dogged adherence to this rule — which they admit they cannot clearly articulate\(^2\) — is testament to the inability of the judiciary to accept the inherent value of the work that women typically do. The bottom line is that the best homemaker in the world will never have contributed as much to a relationship as the best breadwinner. The outcomes in the cases in this area show this, as do the judicial statements.

Given the very small number of women that these cases will affect, what is the point in critiquing this rule (apart from simply abolishing it)? It would be surprising if a judicial bias that valued paid labour more highly than unpaid domestic labour in big money cases was not reflected, at least to some extent, in decision making in run of the mill cases. However, just as importantly, this analysis is crucial at a time when the Australian public seems so keen to believe that the tables have turned against men in family law, and calls for reform are rife. Not only do the data not support this public perception, but the decisions in big money cases evidence a judicial mindset that is reluctant to give proper weight to the contributions women make to marriage. Rather than knee-jerk reactions to vocal, disaffected sectors of the family law community, legislators need to consider closely what the research into family law tells them about its operation.

**Figgins**

At the time I delivered this paper, *JEL v DDF* was the most recently reported big money case. On 16 August 2002, the Full Court of the Family Court of Australia handed down its decision in *Figgins*. Although the magnitude of the assets involved — $22 million — make this technically a big money case, it has little in common with the cases referred to above. However, the Family Court took the opportunity in this case to reconsider the basis of its approach in big money cases.

The parties in this case had lived together on and off for about 6 years, until February 1993 when their final period of cohabitation
began. They had little in the way of assets and married in May 1994.
Two weeks after the wedding, the husband’s father and stepmother
were tragically killed in a helicopter accident. It happened that the
husband’s father ran a multi-million dollar retail footwear business,
and the husband and his sister inherited a total of about $28 million.
As neither sibling had any experience in running the business, a
Board of Management was set up to take the helm of the enterprise.
The husband soon after bought his sister out. In 1998 the husband
had gained sufficient experience to take over management of the
Figgins Group, and by the time of trial his net worth was $22,500,000,
which was an increase (in his personal share) from the time of his
inheritance. The parties had separated in May 1997 and had a young
child. The wife’s assets at trial were under $50,000 and she had a debt
of $63,000.

At first instance the trial judge awarded the wife a total of $1.1
million, $600,000 of which was based on her contributions and the
remainder a recognition of her future needs. Surprisingly, the trial
judge characterised the husband’s inheritance as a “special factor,”
specifically referring to the big money cases. In setting the quantum
of the award, the trial judge seemed to base her decision on what the
wife needed to set herself up in a reasonable manner, referring to the
wife’s needs for accommodation, a car and so on.

The wife appealed to the Full Court asking that her award be
increased to $2.5 million. In particular, she argued that the trial judge
had erred in holding that the inheritance was a “special” contribution
in the sense intended in the big money cases.

The Full Court comprised Nicholson CJ, Ellis and Buckley JJ, thus
including the Court’s two most senior judges, who wrote a joint
judgment. All three judges concurred that the trial judge’s decision
should be overturned and the wife was awarded the amount she
sought. However, it is the comments of Nicholson CJ and Buckley J
on the case law in this area that make this an important decision. Ellis
J substantially agreed with these comments.
The Full Court started out by characterising “special contributions” as “some special factor or skill or capacity that produces the result that there is a loading in favour of the party providing it”.21 One can immediately see the difficulty the Court is having in describing its own principle. Having extracted a portion of the JEL v DDF decision, the Court went on to say:

We are troubled that in the absence of specific legislative direction, courts consider they should make subjective assessments of whether the quality of a party’s contributions was “outstanding.” It is almost impossible to determine questions such as: Was he a good businessman/artist/surgeon or just lucky? Was she a good cook/housekeeper/entertainer or just an attractive personality? We think it invidious for a judge to in effect give “marks” to a wife or husband during a marriage. We think that this doctrine of “special contribution” should, in an appropriate case, be reconsidered... It is apparent in any event that being the fortunate recipient of an inheritance does not amount to a contribution characterised by special skills.22

The Full Court then concluded that the trial judge had vastly undervalued the wife’s contributions to the marriage. Leaving aside the inheritance, this was a case where the parties made their best efforts in a relationship, and each contributed equally. It was plainly inappropriate to determine the award to the wife on the basis of her needs.

In rejecting the needs approach, the Full Court referred to English case law. Then, in considering the overall award to the wife, the Court again cited an English precedent, White and White.23 This recent House of Lords decision, also a big money case, has sparked considerable interest in the UK, however the parties’ lawyers in Figgins did not refer to it. Nicholson CJ and Buckely JJ were nonetheless clearly determined to draw on its findings, despite neither side taking the opportunity to engage with the decision.
*White* was a more typical big money case and involved a much longer marriage than *Figgins*. The wife in *White* sought an equal division of the parties’ fortune based on a presumption of equality. Adopting an approach similar to that seen in *Mallet*, the House of Lords rejected any such presumption. In confirming that this remained the Australian position, the Full Court referred to recent failed attempts to amend the Act to introduce a presumption of equality. It pointed out that “the danger inherent in any legislative reference to equality of sharing as a starting point is that it will be interpreted as extending such equality to the end point of any distribution.”

The Full Court went on to cite recent research that found that “rule equality frequently does not provide a just and equitable outcome for separated families. In [the 46% of] cases where the assets are meagre, equality of division is likely to do substantial injustice to the spouse who has, or has had, the primary responsibility for the care of the children.”

Here we see the Full Court recognising the financial hardship often faced by women after separation. Whilst that is not an issue in the big money cases, the Full Court was clearly taking the opportunity to discuss the general position of women in property settlements under the Act, just as the House of Lords had done in *White*. Drawing on statements made in *White*, Nicholson CJ and Buckley J went on to acknowledge that the parties in very wealthy marriages were not being treated equally by the Family Court.

> [I]n order to test whether a result is fair... it is important to ask whether the husband and wife are being treated equally... *White* states in the clearest terms the modern recognition of equality of sexes and the need to abandon all forms of discrimination.

... 

We reject the concept that there is something special about the role of the male breadwinner that means that he should achieve such a preferred position in relation to his female partner. To do so is to pay mere lip service to gender equality. Marriage is and should be regarded
as a genuine partnership to which each brings different gifts. The fact that one is productive of money in large quantities is no reason to disadvantage the other. We think cases such as *JEL v DDF*... have missed this point and have led to an imbalance of gender considerations in arriving at results that unduly favour the male partner.26

### Conclusion

*Figgins* was not, as I have said, a typical big money case. A short marriage and a large inheritance are factors that are likely to result in something other than an equal division of assets. Moreover, this decision will not bind, in a legal sense, later Full Courts, as only decisions of superior courts can create binding precedents. It is therefore unclear how future, differently constituted, Full Courts will respond to these statements. The Chief Justice, who has clearly taken a lead on this issue, is due to retire. Other judges — notably Guest J — have taken a radically different approach to that seen in *Figgins*, and attracted some support from other members of the Full Court.

The Family Court now has a clear choice. Whereas in the past there was little judicial dissention on the question of big money cases, two competing approaches have now emerged. I have attempted to argue in this paper that the traditional approach is legally inexplicable and therefore unjustifiable. Moreover, the “common sense” underlying these decisions is overtly discriminatory. It places a value on making money that can never be paralleled in the domestic sphere — the same old story of women’s work being undervalued simply because women do it. The *Figgins* approach, on the other hand, recognises that marriage27 is, for most us, a partnership. It is a partnership that has the potential to produce much more than its common, commercial counterpart. The marriage partnership has, at its core, a fundamental role in the creation and protection of our family. As we leave this world, we will not regret our failure to generate a fortune, but we may regret our failure to create a loving and supportive family
environment. Family Court judges are directed by the Act to consider all the contributions a couple makes to their relationship. The Act was specifically amended to ensure that non-financial contributions were not overlooked. It is time for the Family Court to follow the lead of the House of Lords and its own Chief Judge and choose the approach that respects the significant and valuable contributions that women make to their relationships.

Works Cited


Notes

1 See generally Kaye and Tolmie (1998), and in particular footnote 2 and the text accompanying footnotes 17–22.


3 At 79, 564.

4 Unreported, Full Court of the Family Court of Australia, SA49 of 2001, 16 August 2001.

5 In the Marriage of Waters and Jurek [1995] FLC 92-635 at 83, 379.

6 See decisions such as Harris (1991) FLC 92-254 at 78, 705–6 and indeed, Ferraro at 79, 578–9.

7 See sections 79(4)(e) and 75(2) of the Act.

8 In fact, even this notion is inaccurate, as certain types of assets are often left out of the process, particularly entitlements to superannuation. Research has shown that once superannuation and similar “financial resources” are accounted for, women’s share of the asset pool drops dramatically: see the findings in Dewar, Sheehan and Hughes (1999), and Sheehan and Hughes (2001). There have been recent and substantial amendments to the Act to improve access to superannuation (see the Family Law Legislation Amendment (Superannuation) Act 2001), however it is yet to be seen what impact this will have on the problems identified by Dewar et al.


12 Ibid. at 16.
13 For a more detailed discussion see Young (1997, 268) and Young (2001, 189).

14 *JEL v DDF* at 88, 331.

15 At 79, 579.

16 Too much has been written about the garden to cite here, however, see Young (1997) for a discussion of this issue.

17 *In the Marriage of Whiteley* (1992) FLC 92-304.


19 At 79, 572.

20 See *Ferraro* at 79, 579.

21 At paragraph 56.

22 At paragraph 57–58.


24 At paragraph 120.

25 At paragraph 124.

26 At paragraphs 132–134.

27 By referring only to marriages, I do not intend to exclude de facto marriages. However, the Family Court does not currently have any jurisdiction in relation to de facto marriages and so its impact is necessarily limited to married couples.
2002 was the centenary of the *Commonwealth Franchise Act*, which gave most women the right to vote and to stand for the Australian Parliament. To understand the significance of such anniversaries it is useful to put them into comparative perspective with countries that share in the Westminster inheritance and democratic traditions on the one hand, and unresolved issues with Indigenous peoples on the other. Despite the commonalities there are significant variations in the story of women’s franchise in Australia, Canada and New Zealand, and in length of time it took to convert political rights into presence in parliaments and positions of political leadership. I shall explore here some of the factors influencing both convergence and divergence in women’s political history in the three countries.

**Daughters of the empire**

In the late 19th and early 20th centuries, Australia and New Zealand were hailed as pioneers of women’s political rights and enfranchised women from the Antipodes played an active role in supporting suffrage struggles at “home.” For example, in 1911 Margaret Fisher, the wife of the Australian Prime Minister, together with Emily McGowen, the wife of the New South Wales Premier, pinned on the purple, white and green colours of Mrs Pankhurst’s Women’s Social and Political Union and marched through the streets of London to demonstrate for women’s suffrage. They were in London for the coronation of George V.

Internationally, the suffrage movement in the late nineteenth century had to overcome fears that women would abandon their unpaid work
in the home if they were to obtain political equality: who will mind
the baby and who will cook the dinner was the usual knock-down
argument of opponents of women’s suffrage. Endless reassurance had
to be provided that women would not neglect their families, would
not forget to put the chops on, that voting would just be an extension
of their maternal role, and that they would be housekeeping the
state. Suffrage supporters in Australia, Canada and New Zealand all
engaged in this maternalist discourse (Bacchi 1983; Koven & Michel
1993; Sawer 1996). As the state took on nurturing roles in relation
to education, public health and child welfare, it needed the expertise
of women, whose maternal roles would thereby be strengthened, not
weakened.

Despite reassurances that the gender order would not be overturned,
opponents often remained intransigent and played dirty politics. They
struck at women’s weak point, the desire to be attractive to men.
Endless propaganda was produced, like the cartoons published by
“Hop” in the Sydney Bulletin in the 1890s, showing how the pursuit of
political equality made women short-sighted, scrawny and beak-nosed,
as compared with the buxom attractiveness of women who eschewed
the vote. John Stuart Mill advised the use of pretty suffrage lecturers,
to convince young women that suffrage would not unsex them or cost
them a husband (Caine 1979, 64).

The British suffrage organisations created their own art departments
to contest hostile propaganda through appropriating its methods.
Such bodies produced posters, postcards, banners and other artwork
(Tickner 1988; Atkinson 1997). Dora Meeson, the Australian artist
who created the Commonwealth of Australia “Trust the Women”
banner carried in suffrage processions in London, won a poster
competition sponsored by the Artists Suffrage League, but was more
closely associated with the Suffrage Atelier. The latter specialised
in bold woodcuts, such as that depicting an anti-suffrage conjuror
summoning up the bogies of petticoat government, the unwashed
baby and the unsexed woman (Tickner 1988, 26).
Despite such opposition, temperance mobilisation helped women to secure the franchise in the 1890s in New Zealand and South Australia (Grimshaw 1987; Oldfield 1992). Members of the Woman’s Christian Temperance Union, the largest women’s organisation in Australia in the 1890s, wore white ribbon bows, the badge of purity and moral reform. The Auckland Women’s Suffrage League provided white camellias for suffrage supporters to wear in parliament during the tortuous progress of the bill through parliament. It is important to note that in New Zealand, Maori women obtained the vote, and later the right to stand at the same time as Pakeha women. While this was also the case for Indigenous women in South Australia, in general political rights for Indigenous women in Australia and Canada came much later than for their non-Indigenous sisters (see Table 1). Once we look below the national level, Canada’s Francophone/Anglophone divide creates still greater diversity in women’s political history. Women had to wait until 1940 for the provincial franchise in Québec, almost as long as their sisters in France. Indigenous women in Québec had an even longer wait for political rights, which came only in 1969.

The opportunity created by the timing of federation, and the political blackmail by South Australian delegates to the Constitutional Convention, meant that Australia became the first country where most women achieved the right both to vote and to stand for the national parliament — in 1902. The early achievement of political rights did not guarantee the presence of women in parliament in Australia and New Zealand. Both countries were exceptional for the length of time it took for the first women to be elected to parliament — they seemed to have won the right to stand but not to sit. Even when eventually elected, there was anxiety to present women simply as housekeeping the state, rather than as rivals for power. This was exemplified by Pix magazine’s 1944 cover story on “Women Legislators” (22 April) showing federal parliamentarian Dame Enid Lyons pouring tea for Senator Dorothy Tangney.
In Canada we have a rather different timetable. As in Australia and New Zealand, temperance mobilisation played an important role in the suffrage movement in English-speaking Canada (Bacchi 1983, 69–85), although why success took so much longer is a puzzle yet to be solved. One advantage of the late achievement of political rights in Canada was that it occurred when women were already mobilised for war and engaged in non-traditional work. As we have seen, the penalty for early achievement was the accompanying guarantee that traditional roles would be maintained. In 1916 the prairie provinces of Manitoba, Alberta and Saskatchewan were the first to enfranchise women. In accordance with the law of combined and uneven development, Canada swiftly overtook Australia and New Zealand in actually electing women to their legislatures.

Table 1. Political rights and representation at the national level

<table>
<thead>
<tr>
<th></th>
<th>Australia</th>
<th>Canada</th>
<th>New Zealand</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Right to vote:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Most women</td>
<td>1902</td>
<td>1918</td>
<td>1893</td>
</tr>
<tr>
<td><strong>Right to stand:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Most women</td>
<td>1902</td>
<td>1919</td>
<td>1919</td>
</tr>
<tr>
<td><strong>Right to vote: All</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indigenous women</td>
<td>1962</td>
<td>Inuit 1950; Status Indians 1960</td>
<td>1893</td>
</tr>
<tr>
<td><strong>First woman elected</strong></td>
<td>1943</td>
<td>1921</td>
<td>1933</td>
</tr>
<tr>
<td><strong>First Indigenous woman elected</strong></td>
<td>—</td>
<td>1988</td>
<td>1949</td>
</tr>
<tr>
<td><strong>First woman cabinet minister</strong></td>
<td>1949</td>
<td>1957</td>
<td>1947</td>
</tr>
<tr>
<td><strong>First woman party leader</strong></td>
<td>1986</td>
<td>1989</td>
<td>1993</td>
</tr>
</tbody>
</table>
Only a year after women had won political rights in Alberta, Louise McKinney became the first woman elected to a legislature in the British Empire when she was elected for the Non-Partisan League. She was a long-time temperance organiser who held leadership roles in the Woman’s Christian Temperance Union (WCTU) and often wore the temperance white ribbon. Although she only served one term before being defeated, she continued to be politically active, becoming national president of the WCTU, and was one of the Famous Five involved in the person’s case of 1929, which finally decided women’s right to be appointed to the Canadian senate. When she died, over a hundred WCTU women lined up at the graveside to deposit white ribbons on the casket. Today the white ribbon has been adopted by men’s groups campaigning against sexual violence, and is worn on the International Day for the Elimination of Violence against Women (25 November). This campaign was initiated in 1991 in Canada, where men wear the ribbons until 6 December each year, but it has also reached the Antipodes.

Another extraordinary story is that of the second woman elected to the Alberta Legislative Assembly, also in 1917. The Alberta Military Representation Act 1917 provided for the overseas election of two soldiers’ representatives. Roberta MacAdams was the dietician at a large Canadian military hospital in the UK. She was pressed into standing by Beatrice Naismith, publicity secretary for the Alberta Agent General in London, who also made an excellent campaign manager. Naismith enlisted the support of press proprietor Lord Beaverbrook and designed a very effective poster. It had a fetching photograph of MacAdams in a nursing sister’s veil and the slogan: “Give one vote to the man of your choice and the other to the sister.” This was a pioneering second-preference strategy and it worked perfectly.
It might also be noted that during World War One, patriotic fervour ran so high in Canada that at the national level the right to vote was determined by attitudes towards the war. Conscientious objectors were disenfranchised, while army nurses and close female relatives of soldiers were given the vote before other Canadian women, because of their assumed political views. Apart from Alberta, women were elected in British Columbia, Manitoba and Saskatchewan before Edith Cowan became the first woman elected to the Western Australian parliament in 1921. Cowan was a social reformer and President of the National Council of Women whose face today appears on the Australian $50 note. When she ran for parliament she was accused by her opponents of heartlessly neglecting her home and family, although she was sixty at the time and her youngest child was thirty. In the same year Cowan was elected, another social reformer and National Council of Women leader, Mary Ellen Smith, was appointed to cabinet in British Columbia. Although touted as the first woman cabinet minister in the British Empire, Smith was appointed
without portfolio, a fate also experienced by Dame Florence Cardell Oliver in Western Australia in 1947 and Dame Enid Lyons at the Commonwealth level in 1949.

Elizabeth McCombs, the first woman in the New Zealand House of Representatives, had a similar temperance background to Louise McKinney in Alberta. McCombs had been a member of Christchurch City Council for more than a decade when she entered parliament and had already achieved the lowest electricity rates in New Zealand for her constituents, as well as a crèche and a women’s rest room in Cathedral Square. She and her husband had been radical liberals before the formation of the Labour Party, and attended the Christchurch socialist church. She had previously been unsuccessful in obtaining pre-selection, but in the end inherited her husband’s seat in 1933, like a number of “first women” MPs in all three countries. These included the first woman elected in British Columbia (1918), Saskatchewan (1919), Victoria (1933) and the Australian House of Representatives (1943).

**Indigenous women in “settler” societies**

Australia, Canada and New Zealand share a troubled relationship with the Indigenous populations who were displaced by European settlement. How has this impacted on women’s political history? As we have seen, Indigenous women gained political rights at the same time as other women in New Zealand and South Australia, but not generally elsewhere. As with the “first” women in parliaments already discussed, standing in for a husband or father could help legitimise Indigenous women’s representational role. The first two Maori women elected to the New Zealand parliament were Iriaka Ratana, who succeeded her husband in Western Maori in 1949, and Whetu Tirikatane-Sullivan, who succeeded her father in Southern Maori in 1967. The Maori seats were instituted in 1867 at a time when the Maori would otherwise have been excluded from the franchise due to their collective form of landownership. Today, the number of Maori seats is tied to the number of Maori opting to go on
the Maori rather than the general roll, and there are currently seven such seats.

When Ratana, like many other “first” women in parliament, was accused of neglecting her children, she pointed to the example of Dame Enid Lyons in the Australian House of Representatives, another political widow with a large family. The much earlier accession of Indigenous women to political rights and representation in New Zealand than in the other two dominions reflects in part the relative demographic weight of Indigenous minorities in the three countries. At the time of the 2001 census (standard census years being a legacy of the British Empire) the Indigenous population made up 2.2 percent of the Australian population, 3.3 percent of the Canadian population, but 14.5 percent of the New Zealand population. The Polynesian presence in New Zealand is over 20 percent once one adds in the closely related Pacific Islanders.

In Canada, the Aboriginal population includes Inuit, Métis and North-American Indians, also known as First Nations. The first Aboriginal women were elected in the 1970s in the Yukon and the Northwest Territories, by which time the need for the “halo” effect of a deceased male relative was not as great. The first Aboriginal woman elected to the House of Commons was North American Indian Ethel Blondin-Andrew, elected in 1988 as Member for the Western Arctic. In 1993 she became the first Aboriginal woman appointed to the federal cabinet and has continued to hold cabinet appointments ever since. The first Innu woman, Nancy Karetak-Lindell, was elected to the House of Commons in 1997. In Australia, the first Aboriginal women were elected to parliament in 2001 (in Western Australia and the Northern Territory) and although two more have been elected in Tasmania and New South Wales, none have been elected to federal parliament.
The 1970s and beyond

Despite the early achievement of political rights in Australia and New Zealand and the early successes of women social reformers in Canada in achieving seats in parliament, all three countries became laggards in terms of women’s political representation over the subsequent period. The social reformers of the suffrage movement tended to distrust the existing political parties; in combination with the party attitudes discussed below, this greatly restricted the number of women candidates. The real upturn does not begin again until after the arrival of the second wave of the women’s movement in the 1970s. The second wave brought a significant influx of women into parliament in all three countries, but their fortunes have been various. Today (March 2003), New Zealand ranks 14th in the Inter-Parliamentary Union’s world ranking of the representation of women in national parliaments, Australia ranks 23rd and Canada ranks 36th.

Figure 2. Percentage of women in national parliaments (lower houses), March 2003. Source: Inter-Parliamentary Union: Women in National Parliaments. [http://www.ipu.org/wmn-e/classif.htm/](http://www.ipu.org/wmn-e/classif.htm/)
In Canada, Linda Trimble and Jane Arscott (2003) have identified a “glass ceiling” set at about 25 percent. This level of parliamentary representation is seen as “good enough” and indeed the level of female nominations tends to fall under this level, except for the New Democratic Party (NDP), the Parti Québécois and the Bloc Québécois. But while the number of women in the Canadian House of Commons has seemingly stalled and the number has fallen slightly in the New Zealand House of Representatives, in Australia, the number in the House of Representatives has continued to rise, thanks to quotas taking effect in the Australian Labor Party (ALP).

There are some factors affecting women’s representation that are common to all three countries, some pertaining to at least two of the countries, and some that are country-specific. All three countries inherited the Westminster system of responsible parliamentary government, complicated by federalism in Australia and Canada and by strong upper houses in Australia. Canada has only an appointed Senate and no provincial upper house.

The nature of the electoral system is one factor with a significant influence on the parliamentary representation of women. In general, proportional representation (PR) facilitates the representation of women because of the desire to appeal to all sections of the community and to placate all internal groups through “balanced” party tickets. The Westminster tradition, on the other hand, is associated with single-member constituencies. Even in Australia, much more prone to electoral experimentation than Canada or New Zealand, single-member systems were predominant until well after World War Two. Today Australia’s bicameral parliaments all have one chamber elected (or about to be elected) by PR, and this is also the case for one of the two Territory assemblies. Women have generally done better in houses of parliament elected by PR in Australia than in those elected from single-member constituencies. This effect, however, has been blurred by the implementation of quotas by the Labor Party.
The shift to mixed-member proportional (MMP) for New Zealand’s unicameral parliament in 1993 came later, but with even more dramatic effects in terms of creating a multi-party system and increasing ethnic representation in parliament. The impact of MMP on the election of women per se is not as clear as its effect on increasing ethnic diversity, including the election of the first Asian woman in 1996, and a significant increase in the number of Maori women in parliament. In Australia, the three Asian women elected to parliament since 1988 have also been elected to upper houses elected by PR, although this was not true of the earlier election of Anglo-Indian women.

In Canada no electoral reform has taken place, despite strong interest in Québec. The increasing diversity of Canadian women legislators has occurred without the benefit of PR and has included the election of Black women (the first being Rosemary Brown in 1972) and Asian women (the first being Jenny Kwan in 1993). In both cases it was the NDP in British Columbia that was responsible, and the NDP in Ontario also appointed the first Black woman to cabinet in 1990. At the federal level two women originally from the West Indies, Hedy Fry and Jean Augustine, successively held the dual portfolios of Multiculturalism and Status of Women in the Liberal governments of Jean Chrétien (Black 2003). As we have seen, however, the representation of women in general across the country appears to have stalled at about 20 percent of legislators, making PR a feminist issue.

Another factor influencing the level of women’s parliamentary representation is the nature of the party system. Generally, in a two-party system such as found in Westminster countries we would expect parties of the Left to be the pacesetters in women’s representation, because of their commitment to goals of social equality. The strong labour parties of Australia and New Zealand, however, did not historically promote women’s equality in the same way as social democratic parties elsewhere. The blue-collar unions that formed their base supported the arbitraged family wage, sufficient for workers to keep their wives at home rather than out and about on political
platforms. Intersecting with laborism in the Australian case was the conservative gender ideology of Irish Catholics, increasingly dominant in the party after the departure of protestant leaders during the conscription splits of World War One. The political influence of Catholicism in Australia was something shared, as we have seen, with Québec in Canada. It was associated in Australia with an Irish tradition of machine politics.

There was a lot of catching up to do in all three countries in the 1970s. Labor women in New Zealand even picketed their own party conference in 1974. By the 1980s women were making policy not tea in the labour parties, although in the Australian case resistance was so strong that several phases of affirmative action were required to achieve equitable representation. The first phase was a voluntary affirmative action program adopted in 1981. Progress was patchy, particularly with the entrenchment of formal factions within the party, carrying forward the older traditions of machine politics.

A new phase of affirmative action was initiated in 1994, when mandatory targets of 35 percent of parliamentary parties by 2002 were adopted by the party's national conference. An independent feminist fund-raising trust, EMILY’s List, was also created in 1996 to support endorsed women candidates who made pro-equity commitments. It has now assisted over ninety new Labor women into parliament and helped pressure the party into adopting a new target in 2002. Nationally, the proportion of Labor women in parliamentary parties is over one third, as contrasted with about one fifth of Liberal parliamentary parties.

In New Zealand, the Labour Party presented less obstacles to the progress of women, and quotas were never needed. During the 1980s, the party became distinctly feminised as women became the majority of party members and as a succession of women were elected president. Thanks to the Labour Party, New Zealand became the country with the most women members of parliament of any country with a single-member electorate system. The Party has been led by feminist Helen Clark since 1993, and women constituted about 35
percent of her first Cabinet on becoming Prime Minister. Since 1990, according to the New Zealand Election Study, more women than men have voted for the Labour Party, with the gender gap gradually increasing — there was a nine-point difference in 1999. This was a marked contrast with the ALP, which continued to have a shortfall in women’s votes over most of this period.

Canada has an equivalent to the Australian and New Zealand labour parties in the New Democratic Party (NDP), which has union affiliations and is identified with the Left. However, although the NDP has been a pacesetter in terms of representation of women and women leaders, it is not a major party at the national level, so has less impact on the overall presence of women in parliament.

In Australia as in New Zealand, women have done well in post-materialist parties, those founded after the appearance of the new social movements and with environmental and social justice platforms. In Canada, Green parties have not succeeded in obtaining parliamentary representation, one of the effects of its single-member electorates. While minor parties always tend to give opportunities to women to undertake the relatively thankless role of candidate, the post-materialist minor parties have been particularly woman-friendly, as we can see from Green parties worldwide. The advantage of proportional representation (and public funding tied to votes) is that it fosters such parties.

On the other hand, the new populist parties of the Right, even those with female leaders such as Pauline Hanson, have not fostered women’s participation and their membership has been overwhelmingly male. In Canada, one effect of Reform/Canadian Alliance was to stall the upward progress of women in the House of Commons (Trimble and Arscott 2003). This populist party first drew the Progressive Conservative Party to the Right and then merged with it in the new Conservative Party, which fielded only 11.7 percent women candidates in 2004. A similar dynamic was created in Australia by the emergence of the populist Pauline Hanson’s One Nation. There has been a steady drop in the proportion of women
candidates fielded by the Liberal Party of Australia, from over 25 percent in 1996 to under 18 percent in 2001.

In the electorate there has been gender realignment in all three countries, with men more likely to move to the Right. In Canada women have remained more faithful to the NDP while men were disproportionately attracted to Reform/Canadian Alliance (Gidgengil et al. 2000; Erickson and O’Neill 2000). The Australian Democrats and the Greens have generally garnered more support from women than from men, while the populist One Nation party on the Right has received more of its support from men. In New Zealand, women are also much less likely to vote for the free-market ACT (Association of Consumers and Taxpayers) party. On the other hand, perhaps because of the feminised character of the New Zealand Labour Party, the Greens did not attract more women’s than men’s votes in the 1999 election.

**Women’s leadership**

By the 1990s, women started achieving leadership positions in political parties in all three countries. However, they tended to inherit political leadership at times when their parties were in desperate straits and had an urgent need to re-badge themselves and project a less tarnished image. Well-known examples include the ascension to leadership of Joan Kirner and Carmen Lawrence, who became State Premiers in Australia, of Kim Campbell, who became the first woman Prime Minister of Canada, and of Helen Clark as first woman Leader of the Labour Party and Jenny Shipley as first woman Prime Minister of New Zealand.
The story is rather different in minor parties, where the rewards are less and there are correspondingly more opportunities for women’s leadership (see Tables 2 and 3). This has been particularly true of the NDP in Canada and the Australian Democrats. The Greens have been ambivalent about having a leader at all, believing in collective leadership, although the Tasmanian Greens have had two women leaders.

Linda Trimble and Jane Arscott (2003) suggest, as we have seen, that a high-water mark in terms of women’s political leadership in Canada was reached between 1992 and 1995, that there has been a falling away since then, and that new advances are unlikely in the near future. They argue that political leadership is unattractive for women in Canada because of the penalties. Women are chosen to revitalise failing parties, but if they are successful they are pushed aside and if they are unsuccessful they are judged by a gendered yardstick.
Table 2. First women leaders of parliamentary parties* at the national level

<table>
<thead>
<tr>
<th>Australia</th>
<th>Canada</th>
<th>New Zealand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Dates</td>
<td>Party</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Janine Haines</td>
<td>1986–90</td>
<td>AD</td>
</tr>
<tr>
<td>Audrey McLaughlin</td>
<td>1989–95</td>
<td>NDP</td>
</tr>
<tr>
<td>Helen Clark</td>
<td>1993––</td>
<td>Labour</td>
</tr>
<tr>
<td>Janet Powell</td>
<td>1990–91</td>
<td>AD</td>
</tr>
<tr>
<td>Kim Campbell</td>
<td>June–Dec 1993</td>
<td>PC</td>
</tr>
<tr>
<td>Jenny Shipley</td>
<td>1997–2001</td>
<td>National</td>
</tr>
<tr>
<td>Cheryl Kernot</td>
<td>1993–97</td>
<td>AD</td>
</tr>
<tr>
<td>Alexa McDonough</td>
<td>1995–</td>
<td>NDP</td>
</tr>
<tr>
<td>Jeanette Fitzsimons</td>
<td>1999–</td>
<td>Greens Co-Leader#</td>
</tr>
<tr>
<td>Meg Lees</td>
<td>1997–2001</td>
<td></td>
</tr>
<tr>
<td>Natasha Stott Despoja</td>
<td>2001–02</td>
<td></td>
</tr>
<tr>
<td>AD</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Excluding parties with only one or two parliamentary representatives.

# Fitzsimons was also Greens co-leader in the previous parliament when the Greens were part of the Alliance Party.

Abbreviations:

AD    Australian Democrats
NDP   New Democratic Party
PC    Progressive Conservative Party

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Table 3. Women prime ministers

<table>
<thead>
<tr>
<th></th>
<th>Australia</th>
<th>Canada</th>
<th>New Zealand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>—</td>
<td>Kim Campbell</td>
<td>Jenny Shipley</td>
</tr>
<tr>
<td>Party</td>
<td>—</td>
<td>PC</td>
<td>National</td>
</tr>
<tr>
<td>Name</td>
<td>—</td>
<td>—</td>
<td>Helen Clark</td>
</tr>
<tr>
<td>Dates</td>
<td>—</td>
<td>—</td>
<td>1999–</td>
</tr>
<tr>
<td>Party</td>
<td>—</td>
<td>—</td>
<td>Labour</td>
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</tbody>
</table>

Should one be similarly pessimistic about Australia? Currently, the only woman head of government is Clare Martin, who led the Labor Party to its first election victory in the Northern Territory’s 23 years of self-government. The federal systems of Australia and Canada have tended to provide more opportunities for women in the small jurisdictions than in the larger units of government. In 1991, Nellie Cournoyea, an Innu woman, was elected by the Northwest Territories Assembly as the first Aboriginal woman to head a government in Canada. Cournoyea had represented the Western Arctic constituency of Nunakput since 1979, and helped negotiate the Inuvaluit land claim settlement of 1984. After she stepped down as premier in 1995 she headed the Inuvaluit Regional Corporation, investing the financial compensation arising from the settlement.
Both the Northwest Territories, and the newly created Nunavut, have eschewed political parties, and their assemblies operate on consensus principles, regarded as more in accord with Indigenous traditions. Assembly members elect the premier and cabinet. Despite what is widely regarded as a woman-friendly mode of operation, in 2001 women only constituted about ten percent of both the Northwest Territories and Nunavut legislatures.

In New Zealand, Helen Clark became Labour Leader at a time when Labour had suffered overwhelming rejection by the electorate at two general elections and was internally split in the wake of the “great experiment” it had presided over in the 1980s. Clark was re-elected as Prime Minister in 2002, although again heading a minority government. New Zealand became famous as the country where women were on top, where the last two prime ministers, the chief justice, the governor general and the CEO of the largest company were all women. The one public office that has not been filled by a woman in New Zealand, unlike Australia or Canada, is the office of Speaker in the national parliament.

Despite or because of its feminised leadership, of the three countries New Zealand is the most subject to adverse international criticism of its economic policies (some re-regulation and increase in welfare expenditure and the top marginal tax rate) and of its defence policies (reoriented to peacekeeping roles in the South Pacific rather than high spending on military hardware).
Table 4. Women heads of government at sub-national level

<table>
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<th></th>
<th>Australia</th>
<th>Canada</th>
</tr>
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<tbody>
<tr>
<td><strong>Name</strong></td>
<td>Rosemary Follett</td>
<td>Rita Johnston</td>
</tr>
<tr>
<td><strong>Dates</strong></td>
<td>1989; 1991–95</td>
<td>April–October 1991</td>
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<td><strong>State/Province/Territory</strong></td>
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<td>British Columbia</td>
</tr>
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<td><strong>Party</strong></td>
<td>ALP</td>
<td>Social Credit</td>
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<tr>
<td><strong>Name</strong></td>
<td>Carmen Lawrence</td>
<td>Nellie Cournoynea</td>
</tr>
<tr>
<td><strong>Date</strong></td>
<td>1990–93</td>
<td>1991–95</td>
</tr>
<tr>
<td><strong>State/Province/Territory</strong></td>
<td>Western Australia</td>
<td>Northwest Territories</td>
</tr>
<tr>
<td><strong>Party</strong></td>
<td>ALP</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Name</strong></td>
<td>Joan Kirner</td>
<td>Catherine Callbeck</td>
</tr>
<tr>
<td><strong>Date</strong></td>
<td>1990–92</td>
<td>1993–96</td>
</tr>
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<td>Prince Edward Island</td>
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<tr>
<td><strong>Party</strong></td>
<td>ALP</td>
<td>Liberal</td>
</tr>
<tr>
<td><strong>Name</strong></td>
<td>Kate Carnell</td>
<td>Pat Duncan</td>
</tr>
<tr>
<td><strong>Date</strong></td>
<td>1995–2000</td>
<td>2000–02</td>
</tr>
<tr>
<td><strong>State/Province/Territory</strong></td>
<td>ACT</td>
<td>Yukon</td>
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<td><strong>Party</strong></td>
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</tr>
<tr>
<td><strong>Name</strong></td>
<td>Clare Martin</td>
<td></td>
</tr>
<tr>
<td><strong>Date</strong></td>
<td>2001–</td>
<td></td>
</tr>
<tr>
<td><strong>State/Province/Territory</strong></td>
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<td></td>
</tr>
<tr>
<td><strong>Party</strong></td>
<td>ALP</td>
<td></td>
</tr>
</tbody>
</table>

Abbreviations:

ACT  Australian Capital Territory
ALP  Australian Labor Party
Embodying the nation

I shall finish by looking to the symbolic level, at who is chosen to embody the nation. Canada has led the way here, as can be seen in Table 5. Jeanne Sauvé was appointed first woman governor general in 1984. She had been a broadcaster and journalist before being elected to the House of Commons for a Québec riding in 1972. She was a minister in Liberal governments in the 1970s and was elected Speaker of the House of Commons in 1980. While Speaker, she was proud of opening the first childcare centre on Parliament Hill.

Table 5. Women governors general

<table>
<thead>
<tr>
<th></th>
<th>Australia</th>
<th>Canada</th>
<th>New Zealand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>—</td>
<td>Jeanne Sauvé</td>
<td>Cath Tizard</td>
</tr>
<tr>
<td>Dates</td>
<td>—</td>
<td>1984–90</td>
<td>1990–96</td>
</tr>
<tr>
<td>Name</td>
<td>—</td>
<td>Adrienne Clarkson</td>
<td>Silvia Cartwright</td>
</tr>
<tr>
<td>Dates</td>
<td>—</td>
<td>1999–</td>
<td>2001–</td>
</tr>
</tbody>
</table>

Adrienne Clarkson, who became Canada’s second woman governor general in 1999, also had a background as a broadcaster and journalist as well as serving on major cultural bodies. She represents another aspect of Canada’s cultural diversity as a Chinese refugee from Hong Kong who came to Canada as a small child during World War Two. Her husband is the well-known public intellectual and writer, John Ralston Saul.

Dame Catherine Tizard was appointed New Zealand’s first woman governor general in 1990, after seven years as Mayor of Auckland, New Zealand’s largest city. Her daughter has been a minister in the Clark Labour governments. Like Canada, New Zealand currently has a second woman governor general. Dame Silvia Cartwright was a prominent feminist and judge in New Zealand, the first woman on the High Court and a member (1993–2000) of the United Nations Committee on Elimination of All Forms of Discrimination against Women (CEDAW). While on the High Court she chaired, together
with the Chief Justice, a gender equity education program for all New Zealand judges.

At the sub-national level, today women are lieutenant governors in seven of the ten Canadian provinces, including all of the most populous provinces. In Australia the picture has also recently improved, with women currently holding the position of governor in three out of six States. They include Professor Marie Bashir, of Lebanese descent, in New South Wales and Quentin Bryce, former (Commonwealth) Sex Discrimination Commissioner, in Queensland. However, there is yet to be a woman governor general and there is still discomfort in some quarters in Australia at the suggestion that those who embody difference can embody the nation. In particular, there is a belief that those who not only embody difference but have engaged in advocacy and equality-seeking, are incapable of representing the whole or standing for the mainstream. They are trapped in their partiality, unlike the traditional representatives of the nation, who are able to transcend the dominant characteristics they embody. It is still quite unlikely that an openly lesbian woman could be elected president of the Labor Party in Australia, or that a transsexual could be elected for a rural constituency, both of which have occurred in New Zealand.

This is the kind of diversity not anticipated by the suffragists of a hundred years ago. While they would have been delighted that committed feminists should be chosen to embody the nation, they would have been surprised at the ethnic diversity and probably shocked at the diversity of gender identity. The suffragists were seeking the equal partnership of women in the state not only to purify politics but to safeguard the future of the race, through maternal and child welfare policies and the control of venereal disease. While issues of Indigenous welfare were often taken up by maternal feminists, for the Anglophone women of the British Dominions, the race over whose future they were most concerned was definitely the British race.
Works Cited


In Literary Culture and Female Authorship in Canada 1760–2000, Faye Hammill examines six Canadian women writers who address, from different perspectives and over more than two centuries, the creative possibilities of Canada. If not a new subject, this remains a perennially interesting one, and Hammill handles it with skill and good sense. Choosing to cover an expansive range of writers — Frances Brooke, Susanna Moodie, Sara Jeannette Duncan, L.M. Montgomery, Carol Shields and Margaret Atwood — Hammill focuses on their presentation of the Canadian (or colonial) cultural scene, examining “the practical conditions of writing and publishing in Canada” (xi) and the “literary possibilities of Canadian subject-matter” (xi). The focus gives Hammill a significant degree of flexibility. She covers fiction and non-fiction literary texts as well as personal letters, diaries and essays. Ranging across the rough-hewn sketches of Moodie, the ironic comedies of Duncan and the parodic, self-reflexive fictions of Shields and Atwood, she can address the particularities of each writer while also making striking connections between them. She shows how Moodie, Duncan, and Atwood, for example, were all deeply affected by their awareness of Canadian cultural parochialism; all six writers were inspired and exasperated to varying degrees by questions of audience, identity and authenticity. While alert to the differences between her writers, Hammill makes her case effectively that all were centrally engaged with the ambiguities of creative activity “in a political and/or cultural colony” (xi).

This is almost as much a biographical study as it is a literary one, and Hammill’s preference is to pay attention both to each author’s
experience of writing and publishing — especially as revealed in letters to publishers, prefaces and journals — and to their fictional portraits of creative artists. Because not every writer in the study wrote about artists, however, Hammill defines that term very loosely so as to include not only writer figures such as Mary Swann (in Shields’s *Swann*) or Emily Byrd Starr (in Montgomery’s *Emily of New Moon* and sequels), but also creative individuals such as Arabella Fermor, the lively letter writer in Brooke’s *The History of Emily Montague*, and Lorne Murchison, the political visionary in Duncan’s *The Imperialist*. This loose definition might seem stretched past usefulness, but I didn’t find it weakened Hammill’s analysis. Among the four chronologically earlier writers in the study, an unmistakeable pattern emerges: both writers and characters lament the barriers to literary and creative activity in Canada (the formidable distance from cultural centers, the paucity of outlets for creative work, the small reading public, family and societal disapproval, the difficulty of earning money as an artist) but also affirm the country’s potential as site and material for creativity in terms of its social freedom, wilderness, and the challenge to create new artistic forms. Moodie, for instance, while overwhelmed by fatigue and annoyed that her Canadian neighbours felt only “supreme detestation” for “authors and literary people” (25), nonetheless found in her poverty and un congenial environment a bracing stimulus to literary productivity; she was inspired to create a generically heterogeneous form in *Roughing It In The Bush* to encompass her unconventional material. Montgomery, like her character Emily Starr, experienced to the full both the stifling and nourishing aspects of her small village community, and the hyper-conventionality of a repressive Victorian environment may have, ironically, heightened the rapturous response provoked by the natural beauty of rural Prince Edward Island.

Writing in a more established literary environment (though Atwood has commented extensively on the Canadian backwardness she experienced when she was starting out, as well as the continuing hostility she has faced as a literary superstar), Shields and Atwood find creative inspiration in examining, critiquing and revising literary
traditions and cultural myths. With particular attention to Swann, but also Small Ceremonies and The Box Garden, Hammill shows how the American-born Shields, now claimed as a Canadian writer, has engaged in a playful interrogation of how nationalist categories are imposed on literary works and writers by the Canadian academic community, suggesting the creative utility of both resisting and engaging with that process. Atwood has been consistently intrigued by the development of the Toronto arts scene, in “Uncles” and “Isis in Darkness,” and by the need to continually recreate Canadian myths of identity, in “Death by Landscape” and “Wilderness Tips.” The final chapter in the study examines the different ways both Shields and Atwood have engaged with Moodie as historical figure and mythic symbol. Widespread interest in Moodie suggests that she continues to embody or evoke Canadian cultural concerns, and the study ends by reminding us of the various ways these six writers are linked across the centuries, not only by intertextual acknowledgements such as these literary responses to Moodie, but particularly by a shared ambivalence about the meaning of authorship in Canada.

There is much to commend in this elegantly conceived and well researched book. I was fascinated by a detailed appendix listing citations of Moodie and Catharine Parr Traill (her pioneer sister) in Canadian literature since 1950. The prominence of these backwoods sisters is striking in the Canadian tradition, and there is material here for at least another article (and perhaps another book?) should Hammill wish to pursue it. Moreover, Hammill’s thorough research has uncovered many intriguing details, such as Duncan’s enjoyment of Emily Montague as a young writer, and Montgomery’s delight in and awe of Roughing It. While we feminist literary historians often imagine ourselves the recoverers of lost “foremothers,” Hammill demonstrates that in fact the female tradition was never entirely forgotten. Hammill has done a fine job in fleshing out the literary milieu and cultural awareness of each of her authors.

As is the case with nearly any ambitious literary study, there are points of interpretation with which a reader will be inclined to
quibble. While I find much to like in Hammill’s reading of *The Imperialist*, I was disappointed that while emphasising Lorne’s “epiphanic identification with his compatriots in Elgin market square” (71), she does not consider the way in which Duncan ironises — or at least suggests irony in — Lorne’s embrace of his countrymen. Ultimately, they do not accept his imperial vision of Canada with its celebration of faith and sacrifice, and if we are to understand Lorne as a figure for the creative artist in that novel, then we need to consider the social forces of cautious pragmatism and corrupting materialism that Lorne significantly fails to overcome. In a famous passage in which Hugh Finlay and Advena Murchison debate the relative merits of Canada versus Great Britain (with Hugh championing the New World and Advena the Old), Hammill reads their strenuous defences as straightforward expressions of the characters’ political views. To some extent they are, but when Hugh claims that “the human spirit, as it is set free in these wide unblemished spaces, may be something more pure and sensitive…” (53), he is not merely observing the new country but also articulating, perhaps unconsciously, his growing love for Advena. This is a minor difference of opinion hardly worth raising except that it points to a more general complaint about this study, which is that Hammill seems to be more interested in the large issues addressed by her writers than in the details that make their texts such rich cultural documents. Rarely paying extended attention to matters of language, voice, irony and metaphor, Hammill has a tendency to pass over quoted passages with little or no commentary, assuming that they prove her point self-evidently. She mentions, for example, the paradoxical position both Brooke and Moodie occupy in relation to the Canadian landscape — a relationship in which both writers emphasise the land’s aesthetic qualities but fail to “appreciate Canada on its own terms” (43) — yet this central paradox, much noted in criticism, is not demonstrated with the careful and extended analysis required for it to be anything more than a standard critical gesture. Thus while I benefitted from Hammill’s useful conceptual framework and able research, I more rarely had that pleasure of seeing the texts anew that a detailed reading can produce. A book cannot,
however, do everything, and in opening up the points of convergence between these six writers, Hammill makes a worthy and stimulating contribution to an ongoing conversation.
Barry Gough

**Katie Pickles. Female Imperialism and National Identity: Imperial Order Daughters of the Empire.**


My mother, Dorothy Mouncy Morton Gough, lived in a world rich in music. She was a champion pianist and much in demand as an accompanist in Victoria, British Columbia. Our household was happily satiated with music in the 1940s and 1950s, and all in the family made contributions to the cacophony. My mother was well known in town for her music, but as I have learned from this book she, like many another leading female in that city or any other in Canada of size, was also a member of a leading political organisation that was not connected to a political party as such. She was a member of the Imperial Order Daughters of the Empire. It always sounded august, and was of undoubted importance. The name is now truncated to IODE (without other explanation, except to say, for we can read between the lines, that the membership wanted to take less of an imperial and more of a Canadian national position — all part of the imaging of the institution, I imagine).

As a youthful observer of this strong corps of good citizens it always seemed to me a benign group, totally in keeping with good works and good intentions — the Canadianisation of immigrants, the arranging of the details for citizenship courts, the raising of money (and the granting of) fellowships for advanced degree seekers (including myself, destined for Kings College University of London to do British Imperial and Commonwealth History). Besides these, the IODE promoted native welfare in the Canadian north. It ran libraries for Canadian service personnel overseas during the Second World War.
Only recently, and this is what one finds most fascinating, the IODE was happily helping to safeguard Canada from dreaded communism during the Cold War. It was an effective pressure group in the shaping of national policies on immigration and citizenship. So, this recent history by Katie Pickles, a senior lecturer in history at the University of Canterbury in New Zealand, of this remarkable made-in-Canada effort of female imperialism and national identity, reveals the Anglo-Canadian features of the likes of the Dorothy Goughs of this world. In my time it all seemed quite natural — and a good thing. Like the wide-ranging aspirations of our leading citizens, and our growing self consciousness as Canadians (and not Americans or British) we embraced the IODE as central to our understanding of who we were.

Legacies of this movement exist today, though numbers are fewer and accordingly less influential. But even so, scholarship monies are raised and various projects for national appreciation and strength are encouraged. The need is nowadays as significant as in days gone by; only the numbers have changed and the causes less well defined or attended to. Feminism along the lines of the IODE has vanished, and such committees that attend to the national status of women are not engaged in such things at the community level, certainly not in such a zealous fashion as the IODE. The IODE was never militant, though it could show the flag in parades on occasion. Rather it worked the back rooms as a lobbyist. Because its members were in the upper echelon of society that cared for such things at Canadian autonomy and Canadian culture, it worked in many ways not normally identified with, say, tying oneself up to a railing outside of Parliament in Westminster.

The IODE had some powerful leaders, many of whom went on to prominence in other political and civic worlds. Most well known of the prominent women was Charlotte Whitton, Canada’s first woman mayor (Ottawa). Ms Whitton, we learn from this book, considered women’s auxiliaries to be, and I quote from a source cited, “the butterers of bread, the cutters of cake, the brewers of tea, folders of letters, lickers of stamps — generally the handmaidens of
social trivialities.” But as Whitton knew herself, holding teas could be a means to political power, a way to the top. This feminist on the right considered that women’s progress into the political arena was motivated by an intent to improve the system rather than to alter it. A social worker of prominence, she found herself caught up in a measure to stop “babies for export” in Alberta — and the ensuing and impressive Alberta Royal Commission on Child Welfare, 1948–1949 — brought forth a report that led to government intervention and the ending of the practice.

Charlotte Whitton could be replicated in all sorts of communities, but on a smaller scale. Like various members of the female auxiliary of various clubs of Rotary International, IODE members found many good works needed to be done. But like Rotary Anns, they faded with auxiliary female groups and invariably found themselves working for hospital support groups or some other worthy work. Though many IODE members would also have been Rotary Anns, the difference that separated the groups was that IODE was not an auxiliary of anything: it was established by women, for women, for king and country.

Reading this book tells so much about becoming Canadian in those years. In particular, we find that the membership could and did support the British Empire and undoubtedly the Crown, which lay at the centre. But it was invariably a Canadian version of British imperialism, and as time went on, Canada replaced Empire in priority. My reading on this is that after the Great War, Canada’s appreciation of its own destiny and separate status took on a higher priority than any such membership in a council of Britannic nations — not that it did not want such membership or partnership, but being a North American economic powerhouse with so much promise and expectation, Canada left empire behind, as it were. The members of IODE reflected this change in what they did: they wanted to serve Canadian needs at home and abroad. In larger measure this is an extension, with modification, of Carl Berger’s classic theme, as announced in his 1970 book The Sense of Power. Berger considered
the years from Confederation to the Great War, and he explained that Canada saw the British Empire as a way of fulfilling her own identity and influence. The imperial theme did not vanish in consequence of the Great War, but those in the IODE still retained its awe and majesty in their work. They worked to a larger purpose, but they did so for themselves, their communities and for Canada. In a sense, the Empire came home. The IODE had no concern with domestic affairs in the strict sense of the word, but they were determined to make their communities better and to foster an interest in Canadian, Imperial and Commonwealth history and affairs. We are the less for their having generally abandoned such high and noble pursuits, though small branches exist throughout the country, perhaps avoiding the inevitable.

As I drive to work, I pass by a magnificent statue of the Queen Empress Victoria, standing on a plinth in Victoria Park, Kitchener, Ontario. It was erected by IODE in 1909, about the time of the dreadnought naval race scare. At one time the statue looked across at the bust of the Kaiser which stood nearly opposite. Some patriots took care of that by throwing the Kaiser's bust in the Victoria Park pond during the Great War. The deposed statue's whereabouts is still a matter of speculation, but there Victoria still stands, a tribute to the mother of peoples of Canada and an Empire now largely past. She is benign and caring, not militant or enforcing. At one time IODE did her work in the name of Canada, and as this carefully researched book attests, there was a time when the collective work of females counted for something in the affairs, social, cultural and political, of the nation. IODE was a purely Canadian institution and is now an institution now almost lost, sadly so. Then again, civic pride and duty seems to have almost vanished, too.
Eva Darias-Beautell. *Graphies and Grafts: (Con)Texts and (Inter)Texts in the Fiction of Four Contemporary Canadian Women.*


The critical study of Canadian literature in English and French has over the past twenty years become an international phenomenon, with Canadian studies centres in universities as far apart as Gran Canaria (where Eva Darias-Beautell is professor of American and Canadian literatures at the University of La Laguna), Brussels (where this book was published), Japan, China and the Netherlands (three countries with which the novelists discussed here have affiliations through family patterns of immigrancy). Reading across boundaries between countries, cultures and languages, an increasingly common feature in postcolonial studies, has produced a new kind of transcultural critical imagination. This new criticism draws on a range of theoretical approaches from literary and cultural studies in order to make sense of texts which, through their difference, challenge the limits of certain theories or the critic’s own ethnocentric assumptions, so making criticism more alert and responsive to different modes of representation. In the Canadian context, most often it is postmodern fiction, written from marginalised positions of gender, sexuality, race or ethnicity, which poses such challenges, and that is the area that Beautell focuses on. As she writes in her introduction: “Contemporary Canadian fiction sets out to explore the intersections between texts and their intertexts, between difference and context” (12).

Beautell has selected four recent Canadian women’s novels written in English, which she analyses through a series of different critical lenses. They are: Joy Kogawa’s *Obasan* (1983), Aritha Van Herk’s *No Fixed Address* (1987), Kristjana Gunnars’s *The Prowler* (1989), and Sky Lee’s
Disappearing Moon Café (1990). Not insignificantly, they all belong to the decade of the 1980s, when women’s writing suddenly attained a new self-consciousness under the heady influence of feminism and poststructuralist theory. (We only have to remember Shirley Neuman and Smaro Kaboureli’s A Mazing Space: Writing Canadian Women Writing or Barbara Godard’s Gynocritics/La Gynocritique, both published in 1987, to locate the enthusiasm for theory at that period in Canada.) Beautell’s own criticism is very theoretical, as her title with its Derridean echoes suggests, and though this is not an easy book to read, anyone with an interest in Canadian women’s recent fiction or in any of these particular novels will find it well worth the effort.

To summarise briefly, the book is arranged in three sections which approach these novels from different though overlapping perspectives: autobiography, historiography and intertextuality. Beautell’s project is to explore the complex construction of gendered and cultural identities through fictions. She is especially interested in ethnic minority writing: Japanese Canadian (Obasan); Chinese Canadian (Disappearing Moon Café); Icelandic Canadian (The Prowler). No Fixed Address does not invoke ethnicity at all, though Van Herk is the child of Dutch immigrant parents: she operates on different margins of geography and gender. (“I belong to the region of the West and the region of woman,” as she remarked in an interview with Dorothy Jones at the University of Wollongong in 1987.) For Beautell, the writer’s context is of primary significance, and for this reason I shall discuss the sections on autobiography and historiography together, as issues of identity cannot be separated from social and historical context.

Obasan presents a peculiar case of psychic damage and recovery as it tells the history of Japanese Canadians’ internment and dispersal in the Second World War after Pearl Harbor, and its aftermath. This is a survivor’s narrative which seeks to piece together the fragments of family history and a scattered ethnic minority community. It is the story of a split self as a woman moves beyond repressed memory
and silence into speech, past all the obstacles of a story which “does not bear remembering.” What emerges is a tale of pain and loss — of a broken community, of racial prejudice, and of the death of the narrator’s mother which throws the shadow of the bombing of Nagasaki over the whole narrative. Such an autobiographical project filled with the twin images of broken nets and seepage of past into present goes beyond writing an individual life to writing history. The two “graphies,” as Beautell calls them, overlap where old diaries and letters, official documents and newspaper reports cause stories to proliferate in competing versions, against which the narrator tries to negotiate a contemporary space in which to live: “Her self questioning attitude marks the problematic constitution of the subject in-between cultures and languages” (37). Beautell does not take up theories of cultural hybridity, but rather reads subject construction through Kristevan theories of mother-daughter relations. In this case, she emphasises the absent mother whose silence is transcended only in her daughter’s dreams, though it is the resolution of the maternal mystery plot which constitutes the central healing in the novel as the female narrative moves “from silence to fact to poetry” (46).

In *Disappearing Moon Café*, the autobiographical project is rather different, for here a woman’s identity is constructed in relation to patterns of kinship and inheritance in a Chinese Canadian family whose patriarchal head arrived in Vancouver in the mid-nineteenth century. Inevitably, genealogy will be tied to social history — railway building, settlement, and racial hostility between whites and Chinese — though the narrative focus falls on the secrets and scandals of women’s domestic lives in the claustrophobic Chinese Canadian enclave represented by the Disappearing Moon Café (whose address incidentally corresponds to that of the present Chinese Community Centre in Vancouver). Interestingly, the narrator’s quest to establish her identity is both dependent on and undermined by her investigations into her family’s past, where she uncovers a catalogue of sexual transgression and women’s oppression which blur the boundaries of individual identity, as Sky Lee formulates it: “If there is a simple truth beneath the survival stories, then it must be that
women’s lives, being what they are, are linked together. Mother to daughter, sister to sister... together, we may be able to form a bridge over the abyss” (65).

After such crowded scenarios, the autobiographical subject in *The Prowler* looks particularly isolated. Emphasising her dislocation from her native Iceland, her family and her impoverished post-war childhood, Gunnars’s narrative seems intent on writing the erasure of any coherent sense of identity, or as Beautell describes the experiential account of immigrancy, of “constructing herself as a non-subject.” This would seem a paradoxical project for a fictive autobiography, only to be explicated by poststructuralist theories of subjectivity and performative identities. Beautell does this very well, for her strength as a critic lies in her agile handling of theoretical perspectives and she succeeds in persuading us that this very elusive text — without a subject, a story, or a country — should be read as a narrative of love, loss and displacement, opening alternative ways for the interpretation of individual and collective experience.

*No Fixed Address*, Van Herk’s western starring a female instead of a male picaresque hero, represents a very different fictional experiment in women’s life writing, being constructed as biography rather than autobiography, where the central character manages to elude the constraints of socialised femininity, and who finally escapes narrative definition by becoming a missing person. Van Herk’s approach is witty and confrontational in its feminist agenda, as her narrative shifts between realism and fantasy, parodying not only the western but also travel narratives and romance fiction. Her heroine, Arachne Manteia, is a travelling saleswoman for women’s underwear (though she wears none herself) who drives her vintage black Mercedes around the small prairie towns and in the end drives off the map into “four dimensional nothingness” up in the Yukon, leaving only a teasing trail of brightly coloured panties behind her. Arachne is a slippery subject, always an outsider and a trickster who eludes classification. Not surprisingly, Van Herk chooses cartography as her figure for redrawing the textual spaces that women’s writing might occupy and for charting Arachne’s
mobility. Here Beautell draws on Graham Huggan’s postcolonial readings of the ideology behind mapping — what is included and what is excluded — supplemented by Van Herk’s feminist essays on map making and her “geografictione,” Places Far from Ellesmere. Beautell emphasises the multiple functions of maps in this novel — its gender resistant map reading, mapping of a woman’s body, and mapping as figure for female desire: “How can she explain her inordinate lust to drive, to cover road miles, to use up gas? There is no map for longing” (153). The author’s intention is political in a feminist sense: “I want to explode writing as a prescription, as a code for the proper behaviour of good little girls” (14), so she constructs a very improper heroine who chooses to flout conventions and whose life story opens a new space for what Beautell describes as “the intertextual negotiation of the female subject in myth and mythologies.”

Arachne’s entry into myth is of course a re-entry from a revisionist angle, for her namesake is the spider woman of Ovid’s Metamorphoses, as Beautell points out in her chapter on “Myths, Spiders, and Arachnologies.” Though it occurs in the third section, “(Inter)Textual Grafts,” this chapter also illustrates the connectedness between sections, for intertextuality might be seen as another form of context for the writing of biography and history. Likewise, the revisionary use of biblical symbolism combined with Zen Buddhism and Shintoism in Obasan, or the intertexts of domestic melodrama combined with Chinese opera to stage the tragic performance of the fall of a dynasty in Disappearing Moon Café.

This book is very well researched and it provides an interesting case study where European poststructuralist theory is tested against multiple Canadian differences. I do have one complaint against this book, however: it should have been far more rigorously edited to get rid of non-English coinages like “obstacularizing” or “theoreticality” which make the text more obscure than it needs to be.
Brenda Margaret Appleby. *Responsible Parenthood — Decriminalising Contraception in Canada.*


During the week I was reading this book for review, an Australian public broadcaster televised a documentary about the advent of the contraceptive pill in the 1960s. The program focused on the work of the American feminist Margaret Sanger and her advocacy and support for research into a contraceptive pill and the pill’s impact on the lives of individual women and the community generally. Sanger herself had become a birth control advocate after seeing her own mother die at 49 after being pregnant 18 times and suffering seven miscarriages. The documentary was an evocative reminder of a period when debate about oral contraception raged throughout the western world, with extravagant claims being made about social breakdown and promiscuity likely to follow in the pill’s wake if it became freely and legally available.

Brenda Margaret Appleby’s informative book takes us back to that time and examines the process in Canada which led to the decriminalisation of contraception in 1969. An unusual and worthwhile focus in the book is her assessment of the — perhaps unexpected — positive contribution made by the churches to the eventual changes to the Canadian Criminal Code.

The Canadian Criminal Code, like its counterparts in other English-speaking countries, was based on notions of protecting the public and maintaining social values. The sanctions relevant to contraception prohibited the sale, advertising, disposal, instructions about, or medicines and drugs intended (or represented) as a method of...
preventing conception or causing abortion or miscarriage. Although
an escape clause existed if a person could prove that their actions
leading to the criminal charge served the public good, this line of
defence was mostly unsuccessful. In fact, the Canadian Planned
Parenthood Association (CPPA) was formed to lobby for legal change
in 1961 following the failure of the *pro bono publico* defence in a case
in which a Toronto pharmacist was convicted and fined for selling
condoms.

The founders of the CPPA were not the only people agitating for
change during the 1960s, of course. Post-WWII baby boomers, the
so-called sexual revolution, the counter-cultural youth movement
and the women’s liberation movement all played a part — although
the latter, according to Appleby, did not gain momentum until
later in the ‘60s in Canada. She also notes that representatives of
various established social institutions (such as the medical and legal
professions) publicly supported decriminalisation, together with
members of more radical organisations whose advocacy for birth
control dated back to before the Depression.

By the mid 1960s, the pressure for change had led to four private
members’ decriminalisation Bills being presented to the House of
Commons. These in turn were referred to the Standing Committee
on Health and Welfare which held public hearings on contraception,
and, later in the process, on abortion. Appleby makes detailed
use of the submissions to the House Committee and they make
fascinating reading. The social context in which the debate took
place is made very clear via presentations from a wide range of groups
including medical and legal organisations, welfare councils, women’s
bodies and consumer associations. The organisations supporting
decriminalisation did not all have the same agenda. Appleby
thinks that the doctors were most concerned about avoiding civil
and criminal liability (although they used the language of ethical
concern), but she also concludes that decriminalisation would have
been most unlikely without the support of the Canadian Medical
Association. The various women’s groups appearing before the
committee were primarily concerned about the safety and welfare of women and children, and they saw the Criminal Code as denying women information, advice and access to the means of regulating their fertility, with resulting harm to their own health and that of their children. The Consumers’ Association of Canada focused on advertising and safety issues.

Appleby argues that the role played by the churches (and their approach to Christian social ethics) in the debate was complex and important. The Criminal Code provisions dealing with conception prevention were situated in a category of sections concerning sexual offences, public morals and disorderly conduct, and one section came under the sub-heading “Offences Tending to Corrupt Morals.” The origins of the provisions (sourced from Britain) came from the belief that life itself was God’s to bestow and withhold and actions to prevent conception interfered with God’s will and frustrated the divine prerogative. Contraception was therefore both immoral and sacrilegious. However, by the 1960s, science had necessarily modified some of these ideas. If human interference to prolong life had become acceptable, then the argument against contraception became harder to sustain. Theologians had also begun to look differently at the nature and meaning of human freedom and responsibility. At least within the context of marriage, some sort of human control over fertility became permissible.

Appleby’s analysis suggests that fear of global overpopulation, awareness of the problems confronting undeveloped countries and the hardships faced by poor families with large numbers of children prompted some Christian churches to rethink their attitude to contraception. Protestant churches, especially those in the World Council of Churches, were not only aware of the potential benefits to the poor, but many church members also knew that the longstanding belief that birth control was only practised by people in illicit relationships was untrue. Building on the idea that marital unity could be strengthened by intercourse and that this was true even when procreation did not result, the notion of “responsible parenthood”
was developed. With the exception of the Pentecostal Assemblies, the Protestant churches supported legislative amendments that would enable married couples to plan their families. The Pentecostal Assemblies did not believe it was possible to amend the Code in such a way that only married couples could access birth control services.

It had been anticipated that the Roman Catholic Church would oppose decriminalisation but, in the event, the Canadian Catholic Conference adopted the position that civil law was distinct from moral law and that religious beliefs did not necessarily require legislative implementation. Furthermore, members of the Catholic Church who were also legislators and Canadian citizens had a responsibility to work for the common good of society in their latter capacity, not just to function as members of their church. Appleby considers that the concept of “responsible parenthood” and the distinction between civil and moral law made significant contributions to the eventual outcome of the birth control debate.

The House Committee recommended removal of conception prevention from the Criminal Code and, in due course, legislation to that effect was passed. Appleby notes that many of the benefits reformers had hoped for or expected did not materialise. Family planning remained a privilege of middle and upper class Canadians. Family planning clinics were established, but not outside large urban centres. Abortion rates continued to rise, no research into conception prevention was undertaken, and government funding for information and education was very limited. Appleby concludes that the failure to implement universal access to fertility control services arose from the thinking underlying the reforms themselves. Limiting the right to plan a family only to married couples, understanding the right as a couple’s right rather than a women’s right, and developing these notions within the context of middle class, individualistic values became obstructions to universal implementation. As Appleby puts it:

To hold women accountable for the reproductive consequences of sexual activity in the absence of substantive public policies guiding provision of fertility
control services to women, regardless of their marital status, was to deprive them of the requisite conditions for exercising their reproductive responsibilities in a voluntary, rather than compulsory manner.

Reproductive technologies have moved on since the debates surrounding the pill in the 1960s, but the appropriate relationship between morality and the law in this area remains a matter of some contention. This book makes a very useful contribution to that broader ongoing debate, as well as providing extensive material for social and legal researchers interested in the interaction between legal change and social behaviour. It is also a salutary reminder that narrowly based reasons for reform are likely to thwart aspects of the reform in the longer term, and that the desired outcomes of legal reform must be supported by concomitant public policies.
Contributors

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