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**Susan Atkins and Brenda Hoggett, *Women and the Law*, Institute of Advanced Legal Studies, University of London, 2018 (originally published by Basil Blackwell, 1984)**

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**Rosemary Auchmuty\***

*Women and the Law* was the first book ‘comprehensively to examine the gendered nature of the law’ in the UK, as the authors recall in their entry in *Women’s Legal Landmarks* (ed. Erika Rackley and Rosemary Auchmuty, Hart Publishing, 2019, 374). It has now been reprinted in the Institute of Advanced Legal Studies’s open access series, with a foreword by Susan Atkins reflecting on changes in the law in the intervening 35 years. Though there have been other admirable examinations of the gendered nature of the law since this book appeared, notably Joanne Conaghan’s *Law and Gender* (OUP, 2013), *Women and the Law* remains indispensable for its clear and historically grounded account of the impact of our law on women and its analysis of how change comes about and how and why it is all too often hindered and resisted.

The authors, academics at the time of writing, went on to play significant roles in challenging and changing the ‘gendered nature of the law’. Susan Atkins became Director of the Women and Equality Unit in the Cabinet Office. Brenda Hoggett became the Rt Hon Baroness Hale of Richmond, President of the UK Supreme Court. They are living exemplars of their key messages, that the law will not work well for women unless we first uncover and draw attention to its differential effects, that reform will not happen unless we work for it – and that it works best when we are in there helping to make the laws. ‘Only when women are aware of the extent of the discrimination against them, of how it operates and of how to use the law and to influence law reform to their own ends will further progress be made,’ they conclude (5).

‘This is not a legal textbook,’ the authors declare at the outset (1). Legal textbooks at the time (and often still) were dry ‘accounts of the legal rules’ (ibid), devoid of context or critique, and organised into conventional legal subject categories like tort, property law and crime. But it is surely an overstatement to say, as they do, that there are already ‘many admirable accounts of the legal rules’ (ibid), given that most textbooks have ignored or skated over laws that apply particularly or differently to women. ‘Our purpose,’ they go on, ‘is not to give a biased account of the law’ (we all know that anything feminist is inherently biased), but to reveal how ‘*the law itself is biased*’ (ibid, my emphasis). This is a bold and brilliant claim, amply borne out by the pages that follow.

Atkins and Hoggett hasten to deny any ‘unconscious male conspiracy’ (ibid) in devising a legal system that works in the interests of men. Otherwise, they say, women’s position would never get better, as it clearly has over the past 150 years. But the impetus for that change goes unmentioned, in sentences where agency is so conspicuously lacking as to

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suggest very cautious crafting – let's not put off our male readers on the first page! 'Once a source of inferiority has been identified and analysed, there has been considerable pressure to change,' is how the authors put it. 'Often that pressure has been resisted for long periods' (ibid). Note that neither the pressure group, nor the resisters, are named. And sometimes, they point out, improvements in women's legal position come about as side-effects of other pressures for change. (Foremost among these, of course, are situations where the current law inconveniences *men*.) 'Retrograde steps,' they conclude, 'have tended ... to be associated with the disappearance of women's issues from the agenda' (ibid). Let's say this plainly: legal progress for women tends to occur in periods of feminist activism and retrograde steps in periods of feminist retrenchment and backlash against feminism.

That reluctance to name feminists as agents of change and men as self-interested agents of reaction disappears, I am pleased to say, in the substantive body of the text, which is arranged in three sections: 'Women in society', dealing with education and the workplace; 'The private domain', covering sexuality, motherhood, the home, domestic violence and (rather remarkably, at such an early date) 'The case against marriage?' (sic); and 'The state and women's rights', which looks at the welfare state and citizenship. These divisions deliberately reflect categories of women's experience rather than traditional law subjects and, even though some chapters could easily be mapped on to property law, family law, employment law and so on, the book's organisation goes some way towards explaining why so little of its research made its way into the legal textbooks of the ensuing 35 years (not that textbook writers need any excuse for leaving out material on women). The material, as well as being biased and irrelevant to the *real* legal issues, was just not arranged in the convenient categories they recognised! But the authors' purpose was to show how the same discriminatory ideologies and techniques of control underpin all the legal fields, so that (for example) the assumed roles of women as homemaker and men as breadwinner account for their unequal treatment in paid work, on divorce, in property disputes, and under social security and tax law.

In an era well before the current fixation on equality and rights, Atkins and Hoggett demonstrate clear awareness of the limits of formal equality, and of the constant push to return to the status quo. In their chapter on 'Equality at work', they note that

There is no evidence to suggest that there has been a dramatic improvement in women's working lives in the [nine] years since the Equal Pay Act and the Sex Discrimination Act became law. The gap between women's and men's earnings is roughly the same as then. Indeed, in recent years the slight trend towards closing the gap appears to have been reversed. (51)

This is still true, 35 years on.

Most women are only too well aware that the presumption of childbirth and a presumed discontinuation of paid employment is the cornerstone of all the discrimination they face at work. (53)

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This too is still true, 35 years on. A chapter entitled 'Beyond equality of opportunity' looks at equal pay for work of equal value (not then the law) and positive action, still live issues today.

The second section, 'The private domain', is the hardest hitting. On sexuality, for example, Atkins and Hoggett point out that, however reluctant the law might be to interfere in sexual matters, it is much more concerned to protect men than women:

Men are protected against attacks and approaches by other men and even women, even though they do not suffer the risks of pregnancy and childbirth. ... Women are protected against vaginal intercourse, which does carry the risk of pregnancy and childbirth. Their interest in being so protected is certainly great, but the male interest in protecting them against it is also great [to ensure their exclusive sexual rights and legitimate children]. (80)

Even then, the law is really only concerned to protect 'respectable' women; prostitutes and sexually active women alleging rape are not so entitled. As for lesbianism, there were never any controlling laws (they suggest) because there was no male interest in its punishment (81) except when it came to matters of divorce or custody of children (116). (This is not quite true, I think, as men have not hesitated to punish lesbians simply for not being under a man's control.) Indecent assault on a woman (by a man or a woman) carried a maximum sentence of two years' imprisonment at the time; but indecent assault on a man (by a man or a woman) carried a maximum of ten years, *five times as long* (81-2). Was it really five times as serious? Finally comes a discussion of rape, remembering that at the time marital rape was not a crime (87). Some wonderful quotations from the Criminal Law Revision Committee's report on *Sexual Offences* (1980) reveal the existence of a continuing sexual double standard (a century after feminists first drew attention to it) and men's reluctance to let go of the idea that women were put on earth for their sexual gratification.

Why do we need this book? Is it not simply a historical document that scholars can consult in libraries? We need it because, first, it offers a snapshot of women's legal position in 1984, at what must have seemed a high point of feminist activism and legal change. Second, because in spite of the thousands of monographs and articles on aspects of women's legal position that have appeared since then, there has not been any book of comparable coverage, nor one demonstrating such erudition both in the research and in the analysis. And third, *because no one knows about this stuff any more*. Women's history, and especially our legal history, is routinely erased from inter-generational knowledge; it forms no part of our legal curricula, and feminism's concerns and goals have been replaced in our students' eyes by the illusory goals of gender equality, human rights, and meritocracy based on individual effort. What *Women and the Law* does is reveal the ways that the structural inequalities based on sex and the continuing injustices suffered by women continue to be maintained in spite of the legal 'progress' in every area of our lives.

A note on this new edition. The book is reproduced more or less as it was published by Basil Blackwell in 1984 when referencing practice was more casual. There is an index, but no bibliography. Footnotes have been substituted for the original endnotes – a nice idea – but some are incomplete, lacking page numbers, and others are in short form because the

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source (with full details) has been mentioned earlier in the chapter. But the reader is not told exactly where, so, instead of flicking your eyes down a list at the back, you are forced to leaf through the earlier pages in the chapter to find the relevant full reference you seek. Finally, the authors are still named as Atkins and Hoggett – doubtless their decision – but I think that renaming Hoggett as Hale might have encouraged more of our star-struck students to read it! That said, the Institute must be congratulated on making available, *open access*, such a landmark text; it is still sorely needed.

In 1984, when this book was published, a backlash against second-wave feminism was already setting in. The authors were clearly aware of this, as is evident from their treatment in chapter 6 of the newly-enacted Matrimonial and Family Proceedings Act 1984, with its cheerful disregard of the homemaker wife discarded without skills or experience to enable her to be self-sufficient after the ‘clean break’ that freed her ex-husband to maintain a second wife and family. Yet they also expressed confidence that the mainstreaming of feminist ideas through the influence of EU law and women’s increased participation in political and policy processes and lobby groups would embed women’s issues into legal and political consciousness. This has indeed happened, but only up to a point. Backlash is alive and well today and the same legal system that now acknowledges sexual harassment and coercive control of women remains reluctant to convict (or even try) rapists or accord divorced women a fair share of marital assets. Atkins concludes her 2018 foreword with the warning that ‘*Women and the Law* may have marked a moment in transition but it is a good reminder, not only of how far we have come but also of why a feminist focus remains as necessary today, for men as well as for women, as it was thirty years ago’ (xxiii).