

# Feminist Judgments

## A Conversation with Professor Bridget Crawford



**Your book, “Feminist Judgments: Rewritten Opinions of the United States Supreme Court” was published this spring by Cambridge University Press. How did that book come about?**

In 2013, my co-editor Kathy Stanchi at Temple University heard British law professor Erika Rackley speak at a conference about a similar project in the U.K. The U.K. project was itself inspired by the Women’s Court of Canada, a group of Canadian lawyers and law professors who rewrote several Canadian cases from a feminist perspective. The U.K. project rewrote 23 opinions from the Court of Appeal and House of Lords and then paired each rewritten opinion with a commentary that explained the original case, how the feminist rewrite differed, and what difference the feminist rewrite could have made, had it been the actual opinion. Kathy Stanchi thought it would be interesting to try something similar in the U.S. context, so she invited Linda Berger at UNLV and me to join her as co-editors of

a U.S.-based project. We considered several different themes and organizations for the book, but ultimately we decided to focus on U.S. Supreme Court cases because of the Supreme Court’s influence on the legal knowledge and awareness of the American public of the decisions of the Court.

**How did you choose which cases to put in the book?**

Our book includes 25 Supreme Court cases, from *Bradwell v. Illinois* decided in 1873 to *Obergefell v. Hodges* decided in 2015. The book has over 50 contributors, as each case is paired with a commentary, and we have a substantive introductory chapter. It was definitely difficult to decide which cases to include! We had an Advisory Panel of over twenty experts who gave us their views on which United States Supreme Court cases would most benefit from a feminist rewriting. With a tentative case list in-hand, we put out an open call for contributors. We were tremendously grateful that over 100 people applied to be part of the project.

We tried to match contributors’ interests with our own sense, based on input from the Advisory Panel, of cases where a feminist perspective might have made a difference. Some of those cases will be familiar to most lawyers—*Roe v. Wade* and *Lawrence v. Texas*, for example. But we sought to have a wide variety of subject matters represented in the volume, too. So there’s a pension case, *City of Los Angeles Department Dep’t of Water & Power v. Manhart* from 1978, and a case involving the military draft, *Rostker v. Goldberg* from 1981. Ultimately, we chose 25 cases and assigned to each case an opinion writer and a commentator.

My former students will be surprised to know that there are no tax cases in the book. But don’t worry; there may be a follow-on volume of tax cases.

**You’re joking, right?**

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No! Tax law is so important! Don't forget that *United States v. Windsor*, the 2013 case that laid the groundwork for same-sex marriage, was a tax case. Tax cases are a fascinating lens on power, privilege and social values. I kid you not when I tell you that we are already planning a follow-up volume of *Feminist Judgments: Tax Opinions*. Actually, Cambridge University Press has agreed to publish a series of *Feminist Judgments* books. Over the last year, as we have presented our work at conferences and more informally, people always ask about cases that didn't make it into the book. There is also interest in looking at decisions of courts other than the United States Supreme Court and other subject-matter specialties. The purpose of the series is to expand the essential inquiry into how feminist methods and perspectives might impact other courts and other fields of law.

**So what exactly is a feminist judgment?**

To me, feminism is the simple belief in political, social and economic equality for women and men. As editors, we took a broad view of feminism, thinking of it as a movement and mode of inquiry that has grown to endorse justice for all people, particularly those historically oppressed or marginalized by or through law. So, broadly construed, a feminist judgment is one that centers the experience of disadvantaged people and retains the hope that law can remedy injustice. There is no one way of "doing" feminism. We talk about feminist methods and feminist reasoning processes in the plural.

**Can you give an example of where feminist methods or reasoning makes a difference in one of the rewritten opinions?**

Let's take the familiar case of *Roe v. Wade*. Professor Kim Mutcherson at Rutgers-Camden rewrote that opinion for the book. Professor Mutcherson wrote her judgment in the form of a concurring opinion. She agrees with Justice Blackmun's judgment that the Fourteenth Amendment privacy right includes a woman's right to terminate a pregnancy, but Professor Mutcherson rejects the trimester approach in favor of a recognition of a woman's right to cease to be pregnant. Professor Mutcherson locates this right in the both the

right to privacy and the Equal Protection clause of the Fourteenth Amendment insofar as carrying a pregnancy to term requires women (and only women) to use their bodies in a way that subjects them to personal, professional, and social consequences.

**Were Pace students involved in the project?**

I had three fantastic research assistants: Rosemarie Hebner (3L), Ryan Koleda (3L) and Sheila Arjomandi (2L). Without them, this book would not have stayed on track! Rosemarie, Ryan and Sheila helped me review rewritten opinions and commentaries and cite checked hundreds of cases and other sources. Integral to the integrity of the *Feminist Judgments* project was that opinion rewriters could only use law and precedent in existence at the time of the original opinion. The larger point is that feminist results were possible under the then-current law, but courts went in another direction. The students helped make sure the authors observed these constraints and kept me sane when we were right up against the deadline.

I was also very fortunate to have the involvement of Professor Michelle Simon as one of the contributors to the volume. Professor Simon wrote the commentary to *Gebser v. Lago Vista Independent School District*, a 1998 case involving a school district's liability for the rape of minor. Throughout the process of working on the book, it was so helpful to have a colleague right down the hall with whom I could discuss ideas and work out challenges in the editing process.

**What are your goals for the book?**

The book's big claim is that perspective matters. What passes for neutral law making and objective legal reasoning is often bound up in traditional assumptions and power hierarchies. All of us engage in our decision making from a situated perspective that is informed by gender, race, class, religion, disability, nationality, language, and sexual orientation. That is true of judges, too. Because a judge's worldview informs her or his decisions, the need for diversity on the bench is plainer than ever.

I'm hoping that the book makes people realize that systemic inequalities are not built into the law.