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Summary and Critique
of
E Rackley’s
‘Representations of the (woman) judge’

The main focus of this article is that increasing the introduction of women in the judiciary is beneficial to society and the legal profession. Rackley suggests a woman judge’s difference would play a part in revitalising the judiciary.

This is argued through extensive reference to “fairy tale and myth”\(^1\). The use of “fairy tales”\(^2\) detract from the legal authority of the article; where cases and precedents are avoided in favour of “a fabrication”\(^3\). Certainly, it is defended that these allusions offer “truth of a different or deeper kind”\(^4\), but they cannot be given legal authority as they are simply nonlegal materials placed into a legal context.

Rackley’s style is noteworthy sweeping and unsubstantiated; such as the undefended claim that that the “woman lawyer… [is] mirroring the little mermaid”\(^5\), which is entirely subjective. Summarily, it is a glorified (perhaps biased) opinion; seldom are counterarguments addressed (such as how “distinguishing the woman judge… reinforc[es] the man as the norm”) and this weakens the arguments put forward, despite their actual strength.

Rackley’s argument that a judge should “bare his self”\(^6\) is equally a priority for her article and for criticism of it. Certainly there is a reason that often more than one judge is required to preside over a case, and this is in part due to the fact there is (in English law at least) value in their differing opinions. The common law “necessarily recognises that the answer[s to legal questions] will change as society does”\(^7\); a pre-programmed response to legal situations based

\(^1\) E. Rackley, ‘Representations of the (woman) judge: Hercules, the little mermaid, and the vain and naked Emperor’ (2002) 22(4) Legal Studies 602
\(^2\) Ibid 621
\(^3\) Oxford Dictionary of English (Oxford University Press, 1999) 1 p 908
\(^5\) E. Rackley, ‘Representations of the (woman) judge: Hercules, the little mermaid, and the vain and naked Emperor’ (2002) 22(4) Legal Studies 603
\(^6\) Ibid 623
\(^7\) DPP v Jones [1999] 2 AC 240
solely on analogy would not allow progress of law or policy considerations. Rackley notes how “the-law making role of the judge continues to be presented as minimal”\(^8\), whether judges should consider their own feelings is a matter for contention. Nonetheless, it is the “humanity”\(^9\) of judges that often allows the sound judgement that facilitates the law and its progress. It is for the insuring of this “humanity”\(^10\), over the cold logic usually required of judges, that Rackley advocates, which is a valid view (to an extent) but insubstantially argued.

\(^8\) E. Rackley, ‘Representations of the (woman) judge: Hercules, the little mermaid, and the vain and naked Emperor’ (2002) 22(4) Legal Studies 615

\(^9\) Lord Chancellor, Woman Lawyer Conference (1998)

\(^10\) E. Rackley, ‘Representations of the (woman) judge: Hercules, the little mermaid, and the vain and naked Emperor’ (2002) 22(4) Legal Studies 614