The word ‘strategy’ connotes an assessment of various means to a particular end with a view to identifying the best way to achieve that end, typically under circumstances in which there are risks to deploying any of the available options. Legal strategy, then, implies an assessment of law as a means of achieving some end. A discussion of legal strategy could take two forms. The first involves assessing various legal techniques against one another; the second, comparing legal and other forms of activism. An analysis of strategy informed by feminist theory might then assess the relationship between means and ends from a feminist perspective, or perhaps bring to bear particular feminist critiques of law to reassess more conventional analyses of legal strategy. This collection of essays contributes to such an endeavour only sporadically and haphazardly. Although most essays employ the idea of strategy in some sense, by and large they do so in an unfortunately unreflective way.

The editors’ introduction says remarkably little about the idea of strategy itself. Instead, the editors outline two themes for the volume: the relationship between legal theory and practice; and the potential use of law to further a feminist agenda. While the latter more accurately describes the common thread linking the various essays, the editors tend to conflate the two themes. The two can be related in that some feminist critiques of law as inherently male purport to deny altogether the constructional potential of law, thereby denying a link between, at least, feminist theory and legal practice. One suspects that a desire to controvert this tendency in feminist thinking motivates this volume. The authors represented all share a commitment to struggle within law to improve women’s lives. While this commitment is re-freshing, its connection to the idea of strategy is loose. These essays succeed in varying degrees in providing a theoretically interesting feminist analysis of strategy issues.

Questioning the utility of law in achieving feminist objectives opens the door to a discussion
of strategy in treating law just as a tool and therefore instrumentally connected to goals. But without a discussion of alternative means to an end, no real theorizing about strategy can get off the ground. This is where many of these essays fall down. One exception is the essay by Nikki Lacey, clearly the strongest in the collection, on the theoretical distinction between public and private spheres and its influence on the pornography debate. Lacey weds a reconsideration of the public/private distinction to a discussion of whether pornography, its publicness revealed by feminist critique, is best eradicated by legal means. She clearly lays out the choices, carefully canvassing the costs and benefits of each option. Ironically, this is also the only essay in the collection to conclude that legal intervention is not the best available strategy.

The shortcomings of the other essays, as efforts to theorize legal strategy from a feminist perspective, are various. Annie Bunting’s piece on the common ground between feminist anti-essentialism and cultural relativism and its importance to international human rights, while interesting and provocative, seems somewhat out of place. Unlike the others, her focus seems to be the strategic deployment of argument rather than law. While law is commonly thought of as instrumentally rather than intrinsically valuable, it is harder to think of normative positions in this light. Once a moral claim is labelled strategic, its sincerity and hence its credibility is undermined. Furthermore, much of the force of Bunting’s argument might be said to rely less on the validity of strategic deployment of culturally relativist arguments about women’s rights in non-Western societies than on the charge that Western feminists have not become sufficiently knowledgeable about other cultures before wading into these debates.

Other essays, such as Deborah Cheney’s on bias in the exercise of administrative discretion in immigration law, and Katherine Da Gama’s on legal constraints on women’s reproductive autonomy, fail to present alternatives in search of the best means of achieving the objective envisioned. Both contrast a clearly unsatisfactory state of affairs under the current law with a sketchily proposed alternative. If this counts as a discussion of legal strategy, so too does virtually any prescriptive analysis of the law. Anne Bottomley’s analysis of the
gender stereotypes used to enable women to claim equitable ownership of property following a relationship breakdown is equally one-sided, but in a different way. Bottomley acknowledges the risk of deploying these stereotypes—that it reinforces a conception of femininity that has often harmed women—but concludes, with little argument, that the immediate benefit to women who fit the stereotype is sufficient justification for pursuing this strategy. This fails to take the other side of the debate sufficiently seriously to be a useful contribution to the important strategy question involved here. Fran Olsen’s argument for an organized equal rights litigation strategy in Europe similarly fails fully to canvass the weaknesses of her preferred option. Canadians will also be disappointed to see no discussion of the Canadian experience in this area—Olsen confines her examples to the N.A.A.C.P. Legal Defense Fund.

Denise Twomey’s analysis of psycho-therapists’ sexual exploitation of their patients and Joanne Conaghan’s exploration of various legal approaches to providing pregnancy benefits do assess the pros and cons of several legal rubrics for addressing these matters. But Twomey does not raise a very interesting question of strategy—some possible causes of action or type of legal intervention would work reasonably well and others would not. There are no hard choices presented here. Similarly, Conaghan’s analysis of three ways of working towards better pregnancy benefits lacks bite because the options presented—equality litigation, statutory workers’ rights, and casting pregnancy benefits as a health and safety matter—are not inconsistent with one another.

Despite these shortcomings, this collection usefully provides a survey of various challenges for feminist law reform in very different areas of law. In also highlighting the issue of strategy as a fit subject for feminist theorizing, we may hope that it will open up these issues for more systematic treatment in the future.

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