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Justice in context
Judging Battered Women Defendants: a New Zealand Case Study

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A thesis submitted in fulfilment of the requirements for the degree of Doctor of Philosophy in Political Studies, The University of Auckland.
Abstract

The purpose of the thesis is to analyse the practical limits and scope of the substantive concept and principles of justice in response to a growing philosophical scepticism about the relevance and substance of the virtue of justice in the modern world. This critical reflection on justice is set in an actual context of considerable controversy surrounding the commitment to justice and compelling claims about the failure of the ‘justice system’ to fulfil those commitments. This context encompasses debates and decisions about justice for battered women defendants.

The first part of the thesis develops an extended empirical case study of the New Zealand ‘justice system’ centred on the 1994 trial of Gay Oakes who killed her abusive husband and was convicted of his murder. Using this legal case as a critical point of departure for reflection on New Zealand’s commitment to justice for battered women defendants and for women victims of domestic violence more broadly, the case study includes a detailed overview of the legal, political and cultural aspects of New Zealand’s changing commitment to justice for battered women, concentrating on the twenty-year period between 1987 and 2007. The study overall reveals the complexity of the justice challenge in this context and raises serious concerns about the ongoing failure to meet the demands of justice in spite of significant progress made.

The second part of the thesis engages in analytical reflection on the key principles of justice conceptualised in western political philosophy and underpinning the institutionalised commitment to justice in New Zealand. Divided into three distinct principles of justice – the principle of equal treatment or formal justice, the principle of equal consent, and the principle of just deserts – the analysis in this part of the thesis endeavours to translate each principle of justice defined in abstraction, based on hypothetical and universal dilemmas, to apply in specific contexts of judging what justice demands for battered women defendants. Although serious complexities of ‘translation’ arise in each case, the analysis points to the conclusion that the sceptics are wrong to
doubt the substance and relevance of justice, and that justice remains an important legal, political and moral virtue capable of guiding judgments in complex contexts.
For Gay Oakes
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