Book Notes: Adding Feminism to Law: The Contributions of Justice Claire L'Heureux-Dubé, by Elizabeth Sheehy (ed)

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When Justice Claire L’Heureux-Dubé stepped down from the Supreme Court of Canada in July 2002, she left behind an enviable legacy of enhancing women’s legal and social equality rights in Canada through her decisions in more than six hundred Charter of Rights cases. Adding Feminism to Law is a collection of twenty papers that celebrates and recounts L’Heureux-Dubé’s contributions to the many areas of social justice important to the advancement of women’s rights.

As Chief Justice Beverley McLachlin writes in the foreward, “[c]ompassion is at the core of Justice L’Heureux-Dubé’s judicial philosophy. She consistently approached the task of judging with consideration for the hardships experienced by others.” These qualities are echoed in the writings of jurists, practitioners, academics, and front-line workers.

Following the introductory materials, which include a tribute to L’Heureux-Dubé, the collection of papers is broken into three sections that focus on themes that stand out in her judgments. The first section, entitled “The Enterprise of Judging,” looks at L’Heureux-Dubé’s approach to judgment writing, highlighting an intellectual curiosity that is marked by a respect for academic and grassroots contributions to the issues. In the second section, “Shaping Substantive Law,” the five authors examine L’Heureux-Dubé’s judgments in the area of family, human rights, taxation, immigration, and criminal law, reflecting on the doctrinal shifts that were the result of her judgments. Rounding out the collection is an examination of L’Heureux-Dubé’s commitment to invoking substantive equality, not only to women, but to all marginalized groups. As the authors note in the final section, “Committing to Equality,” this commitment to substantive over formal equality influenced emerging debates in Canada and equality jurisprudence in other countries.

Among the book’s contributors is newly appointed Supreme Court of Canada Justice Rosalie Silberman Abella; Lee Lakeman, a collective member at Vancouver Rape Relief and Women’s Shelter, and author of the 2003 report Canada’s Promises to Keep: The Charter and Violence Against Women.
In stark departure from the conventional, ever-expanding body of thought on the ontology of human rights, Alan Dershowitz forwards a rights theory that is not predicated on human nature, logic, law, or religious faith. Dershowitz contends that human rights exist notwithstanding the ontological status of God; that human nature is inherently value-neutral and, therefore, not the source of rights; that the a priori premises of logic, while cogent in a vacuum, enjoy little practical consensus; and that positivist legal sources cannot, in themselves, effectively sustain rights, since they can provide no independent means of self-evaluation.

Dershowitz characterizes his approach as a bottom up dystopian account of human rights. Dershowitz argues that rights are founded by human experience—we gain human rights knowledge from the wrongs of the past. For example, the right to religious freedom was fostered by historical tragedies of religious intolerance and persecution, such as the Holocaust, the Crusades, or the Spanish Inquisition. If human nature is at all relevant to human rights, it is because the human species has an unique ability to learn from its mistakes and avoid their repetition.

Dershowitz provides a refreshing departure from the moral essentialism that seems to dominate human rights discourse. However, Dershowitz—more renowned as a celebrity defence lawyer and left-leaning political commentator than as a socio-political thinker—occasionally slips into his own undefended version of essentialism. There are moments when Rights from Wrongs reads less like a carefully reasoned theory than a populist polemic. Dershowitz strives to make his argument accessible to a broad audience, and while his non-technical prose is engaging, he has a tendency towards deconstructing straw men rather than nuanced moral philosophies. However, while Dershowitz’s thesis is not altogether persuasive, his central claim is an important reminder that effective rights protection depends more on hard work than ideology.