

Church of Canada's own tradition. Shepherd thus highlights how several postmodern feminist methods could genuinely enrich the process of making theological statements in regard to sexual orientation and gender identity, and beyond.

This book is of practical use to those who study theology, ethics, or biblical text in a postmodern key. Shepherd does not set her sources against each other, but rather tries to see the best in each one based on her location and goals. Building on her respect for her sources, Shepherd "braids" their contributions into a feminist theological method of her own. She has made a valuable contribution in synthesizing the work of four diverse feminist theologians and elucidating the usefulness of their methods for theologizing on sexuality and gender identity in the Canadian context. One hopes her work will influence both the academy and the current generation of church theologians and ethicists whose statements affect the lives of queers in Canada and elsewhere.

Bruce MacDougall. *Queer Judgments: Homosexuality, Expression and the Courts in Canada*. Toronto: University of Toronto Press, 2000. 360pp. \$60.00 (Cdn); \$24.95 (Cdn). ISBN: 0802009514; 0802079148.

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In *Queer Judgments*, Bruce MacDougall explores an important and timely question. The goal of the book is identified in the introduction: "This book is concerned with expression of and about homosexuality and how the courts have been implicated in that expression. Its subject is the way in which judges in Canada, particularly in the period 1960 to mid 1997, have constructed homosexuals and homosexuality and how they have betrayed their assumptions about both in their decisions" (3). That is, the book is not about the outcomes of court decisions; they have been fairly

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favorable in recent years. It is about the language employed by judges and the manner in which the language betrays stereotypes and assumptions held by the judiciary and related to queer litigants. Judges, MacDougall observes, play an important role in securing equality rights. Judges interpret, apply, and change laws. Beyond this more obvious function, judicial decisions influence attitudes in Canadian society. Real equality will not be achieved unless the judiciary, along with other institutions, reflect on the direct and indirect consequences of their language and the message such language conveys.

As a practitioner, I picked up this book with much anticipation. The task identified by MacDougall is one that is critical to counsel, critical to litigants. What might lie between the ears of a judge is a question that occupies my mind and the minds of other counsel when preparing strategy, presenting facts, and preparing legal argument.

The second chapter seems the meat of this book and in its second half especially examines different aspects of the stereotyping engaged in by the judiciary. MacDougall does, in this analysis, set out various examples of judicial decisions betraying certain destructive stereotypes. In a line of decisions regarding employment benefits, Judges are shown to evince, for example, the view that same-sex relationships are something less than, and perhaps even alien to, heterosexual relationships. Other decisions betray the stereotype that queers are obsessed with or defined by sex while still others, ironically, betray a judicial attitude that would desexualize our relationships. Same sex couples are found in some decisions to be more akin to siblings than to heterosexual couples.

MacDougall also highlights an interesting intersection of stereotypes that arises often in judicial decision. Homosexuality is seen as utterly unnatural and at the same time highly seductive. It is held that children, and indeed the public at large, should be insulated from homosexuals to avoid the danger of conversion. Finally, MacDougall illustrates — perhaps the most bedeviling of all stereotypes — the monolithic quality attributed by judges to homosexuals. Homosexuals are treated as a group, a group whose members are indistinguishable from one another in the manner of their lives, their conduct, their values, and their opinions.

This chapter concludes with prescription. First, judges must become aware that they do indeed carry stereotypes and must avoid

the mindless application of their content. Second, counsel and litigants must avoid perpetuating these views in the facts and argument they put before the court lest they risk muddying the waters for the litigants to follow.

The fourth chapter, entitled "Homophobic Expression," also has some interesting observations of judicial stereotyping as it arises in decisions of different courts. Homosexuality is too often mindlessly and improperly paired with an implication of violent conduct. Given the incidents of violence visited against homosexuals, it is most inappropriate, MacDougall argues, that the judiciary abide or perpetuate any suggestion that homosexuals are any more (or any less) violent as a group than heterosexuals. MacDougall also analyzes the judicial receptivity to the defense called "homosexual panic," identifying that the underpinning of such defense is pure homophobia. Thankfully, this defense has not been successfully employed for some years in Canadian courts. The examination of the sources of the judicial receptivity remain, however, a helpful and interesting caution to judges and all of the blinding effect of prejudice.

The balance of the book is less satisfying and seems often misplaced within the goals established at the outset.

Chapter Three, entitled "Silence in the Classroom," focuses on the implications of the reasons of McClung, J.'s issued as a majority decision of the Alberta Court of Appeal in *Vriend v. Alberta*. McClung, J.'s words were indeed vicious and inappropriate and would clearly, as MacDougall described, create a chill among any potential queer litigants who might consider seeking redress in the courts. The reasons of McClung, J., however, had little jurisprudential currency even when they were written. The decision was little more than the strangled cry of an antediluvian jurist sinking further and further into the gurgling bog of progress. Further, while the decision did deal with the dismissal of a teacher, and thus tangentially the issue of education, the litigation was brought to challenge the exclusion of sexual orientation from Alberta human rights legislation. This chapter did not provide much guidance regarding the manner in which judicial decisions have betrayed attitudes relevant to education issues.

Chapter five deals with "outing." It is an interesting examination of the question of whether litigants should be able to sue a person

who 'outs' them. MacDougall concludes that courts should deny relief and that litigants should decline to pursue such actions. He reasons that the success of such claims could only be predicated on the proposition that homosexuality is 'wrong.' If homosexuality were as neutral as, say, left-handedness there would be no question but that outing could not be an actionable wrong. MacDougall's analysis and conclusion are indeed thought provoking. This chapter, however, too seems misplaced given the express goals of this book. There is much theory, much argument and prescription, but there is very little of the descriptive agenda identified as the book's goal.

While containing many valuable insights, interesting observations and compelling cautions, the book failed to satisfy this reader. Perhaps my disappointment was due in part to the lightening pace of judicial progress in the past years that MacDougall does not cover. The book's scope stretched only to cases decided in mid 1997 and there has been much jurisprudential water under the bridge since then. In addition, judicial attitudes have been profoundly influenced by the 1998 decision of the Supreme Court of Canada in *Vriend* and that of *M. v. H.* in 1999. Decisions issuing from the courts after these two decisions have a much more positive tone and employ much less unfortunate language.

Beyond the dated quality of this book, which is unavoidable given the pace of change in judicial attitudes, my disappointment also lies in its failure to accomplish the goal it set itself. I had hoped for more analysis of the content of the judicial mind as betrayed by judicial reasons. The book contains rather little of the descriptive and focuses instead on theory and prescription. As a result, the book takes on a rather turgid and congested quality as the reader searches for the promised content.
