

1986

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Recommended Citation

Gretchen H. Schoff, *Women, Justice, and Judgment*, 4 *LAW & INEQ.* 137 (1986).

Available at: <http://scholarship.law.umn.edu/lawineq/vol4/iss1/10>

Law & Inequality: A Journal of Theory and Practice is published by the
University of Minnesota Libraries Publishing.

Women, Justice, and Judgment

Gretchen H. Schoff*

When King Lear, stripped of his authority and losing his wits, cries, "I am a man more sinned against than sinning," he calls both himself and Justice to account. Insights into ourselves and into our systems of order are hard to come by (does the fish understand the water it swims in?), but such questions were asked by the women judges who gathered in October 1985 in Minneapolis for the National Association of Women Judges Seventh Annual Conference (NAWJ).

For one session of the conference, women judges participated in a program in which literary works, rather than courtroom cases, served as the focus for discussion. "Doing Justice," a seminar on ideas of justice in literature, is but one of many forms by which the humanities have been introduced into our public life and public policymaking in recent years, the introduction often coming by way of support and program direction from the National Endowment for the Humanities and its state-based programs.

Among these, a successful and frequently replicated offering is the "Doing Justice" program for lawyers and judges, one of a number created by the Humanities and the Professions Program at Brandeis University. In his opening remarks at the NAWJ convention, Professor Saul Touster, director of the Brandeis Program, alluded to what he calls the "two texts" examined in "Doing Justice": the literary text (this may be a play, short story, novel, or poem) and the life text (the life experience of the discussion participants). It is the interplay between these two texts which gives the programs their vitality. The underlying assumption is that the humanities in general, and literature in particular, frame for us some of the most challenging questions about life. King Lear, for example, is a man who has judged others freely, often harshly, but he begins to question everything that had once seemed so clear in the temporal and universal order.

In October 1984, the Wisconsin Supreme Court (Education Division) held a similar "Doing Justice" program at the Johnson

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Foundation's Wingspread Conference Center. Since I served as one of the discussion leaders for the Wingspread conference, I had a special interest in how discussions there differed from those that might emerge at the NAWJ conference. (The Wingspread format was longer—two days and four literary works—and was attended by judges and their spouses.)

Now, a year later, as I looked across the Amfac ballroom, jammed to the walls with women judges assembled to hear Justice Sandra Day O'Connor, I thought back to the phone call from Justice Rosalie Wahl of Minnesota.

"Did you say National Association of *Women* Judges?" I had asked.

"That's what I said. Ten years ago we probably couldn't have had such a conference. Now we can." She sounded pleased, and this crowded hall was proving her right. Judgeships for women had reached a "critical mass"; for the seventh year, they could mount a national convention.

And it was Justice Wahl's question, in a follow-up letter after the convention, that prompted an examination of the discussions women judges had there.

"Did you find differences between the women judges' approach to these ideas and those expressed at Wingspread?" her letter asked.

To this question, the answer must be a qualified yes. Similarities were there, to be sure, but the shape and contours of the discussion among women judges had been different. The best way to describe them is to take a brief look at the texts, *King Lear* and Susan Glaspell's *Jury of Her Peers*, and then to examine that special quality which every reader brings to a text: illumination from one's own life experience.

Questions of justice and judgment abound in Shakespeare's *King Lear*, and most are introduced early in the play. In the opening scene, Lear makes a rash decision on the disposition of his kingdom, insisting that its inheritance be conditioned on public declarations of love from his three daughters. The two elder sisters, Goneril and Regan, choose to flatter him; Cordelia, the youngest, chooses only to say that she loves her father according to her "bond," no more, no less. In the same scene, another parent-child set of relationships also begins to unravel. The Duke of Gloucester declares an apparent attitude of even-handedness toward his two sons, Edgar and Edmund, one legitimate, the other illegitimate. But it is a misplaced impartiality which soon erodes

when Gloucester's world is turned upside down by his bastard son Edmund's treachery and dissembling.

This opening scene of *Lear* lays the groundwork for one of the most wrenching and complex treatments of justice ever penned. Most of the "big questions" are to be found here. What constitutes the "just" execution of a public office and how does the private life impinge on the office? (Lear's decision to divide his kingdom not only produces domestic discord among his daughters but also threatens to produce political strife and civil war within the kingdom.) What is the force of natural law when human beings choose to behave like beasts? (Shakespeare makes copious use of animal imagery to describe the degradation of Lear's "pelican" daughters.) How does one tell the difference between the lie and the truth? (The truth-sayers in *Lear* are plainspoken, unvarnished, often silent; they refuse to capitulate or flatter, even when the judgments on their truthfulness lead to banishment, disinheritance, and death.)

Such questions have always confounded systems of law and justice. On the difficulty of distinguishing between moral and legal crime or of finding the truth and being fair, judges discuss *Lear* in much the same way as might any other group of college-educated adults. The chief difference, in discussion of the play among judges, seems to come from another quarter: their realization that they are empowered by their offices not only to listen and to judge, but often to sentence.

It was here that I listened most carefully, trying to discern whether or not an exclusively feminine discussion of the play would have a different focus than one in which participants were both male and female judges. Would women judges fasten on different elements of the play or bring to it special sensibilities? I think the answer must be yes.

A topic to which they returned, again and again, was the difficulty of "reading" the truthfulness of another human being. One judge commented on the necessity for watchfulness, learning to sense what she called "discordance" between what the witness says versus what the real truth might be. Another judge said, "If I have reason to doubt the veracity of witnesses, I try to let them keep talking. I find that if you let them talk long enough, some incident or event will surface which may trigger an outburst or a surprising statement. Then the 'true' person is suddenly revealed." In brief, women were interested in a skill for which they have long been given credit: careful, discerning listening. The women judges attached great importance to nuances of personality

and speech and to intuitive insight, regarding them as essential qualities for recognizing truthfulness. One judge commented, privately, that when she relinquished the role of adversary and advocate, as lawyer, and became a judge, she was quite unprepared for how much listening she would have to do.

Also of special interest were the readings of women judges on questions of motive among the female characters in the play. Most readers eventually ask, Why does Cordelia choose to tell the truth, no more or less, even if it serves her badly? Conventional literary criticism of *Lear* often takes note of the familiar "threesome" as a common motif in folklore and legend (three pigs, three wise men, three billy goats, two ugly stepsisters plus Cinderella). Much can be made of the contrasts afforded by such narrative structures. But one woman judge suggested a further motive for Cordelia's spare, plain, and loving answer. "She's the youngest of three sisters. The other two are older, and she just decides to be different. She's an 'I'll do it my way' girl." Another said merely, "Cordelia's just too good to be believed."

Finally, while the issue of the clearly masculine and patriarchal system in place at the opening of *Lear* was never explicitly discussed (the play is immense and the time was short), nonetheless the predominance of maleness was clearly felt. When the play opens, Lear's world is one in which the men call the shots. Lear has no wife to comfort, cajole, or warn him of his errors in judgment. But the passing of the kingdom to Goneril and Regan shifts the power base. Once Lear relinquishes his power to his beastly daughters, we are presented with the spectacle, on the one hand, of womanhood deformed and depraved in the figures of Goneril and Regan, and on the other, of womanhood powerless, except to love and forgive, in the figure of Cordelia. The first alternative (power and authority coupled with cruelty, hardness of heart, and ruthlessness) is abhorrent and the second (love, forgiveness, but ultimately victimization and death) is unsatisfactory.

The second literary work, an early twentieth century story, *Jury of Her Peers* by Susan Glaspell, was provocative in quite different ways. The premise of the story is less complex than *Lear* but its circumstances have striking resemblances to cases which judges are now hearing. Minnie Wright, a childless, lonely woman, has spent over twenty years married to a hard-bitten, stingy man who denies her all but the barest necessities. Her stove is broken, her clothes shabby, her furniture sagging and worn. When the law is called to investigate the garroting of Minnie's husband, circumstantial evidence suggests that Minnie is the killer. Two women,

wives of the local investigators, have come along to the scene of the crime, and while the men scour the house for motives and clues, the women find, among Minnie's sewing things, a dead bird with a broken neck. Recognizing that the bird is damning evidence, the women decide to hide the bird. The most obvious question arises from the women's decision to hide the bird from their investigating husbands. Is it ever permissible to conceal evidence? But a far more difficult question is posed by this story. How does one deal justly with women who have suffered a lifetime of psychological or physical abuse and are then suddenly propelled toward an uncharacteristic act of violent retaliation? (Minnie strangles her husband as her husband has strangled her pet bird.)

Response to this story among the women judges was heated and focused immediately on their shared understanding of the battered-wife syndrome implied in the story. Also, because of the narrative structure Glaspell chose, readers must infer that there is indeed justification for the murder. Minnie Wright's story is seen through the eyes of sympathetic women and it is they who provide most of the characterization of what Mr. Wright was like. In short, within the confines and narrative point of view of the story, the murdered husband has no one to explain his motives or to speak in his behalf. In this sense, *Jury of Her Peers* is an early twentieth century feminist tract, written before women were allowed to vote or to serve on juries. Glaspell has chosen to show that Minnie Wright's true "jury of her peers" are women who intuitively understand the abuses she has borne. Though they are powerless to serve as jurors before the law, nonetheless, in private, they choose to acquit Minnie. Predictably, women judges immediately saw the implications for women's rights; but what emerged from the discussion of *Jury of Her Peers* went well beyond the consideration of justice within the story.

These then were a few of the many questions of justice and judgment to which women applied special insights: the importance of listening and of intuition, the difficulties for women of handling power and authority without sacrificing compassion, and the moral quandaries that surround crimes of domestic violence. A second component of the discussions arose from the richness of these women's own lives. When asked how their judicial decisions might have been affected by their gender or their life experiences, the women were remarkably candid. One judge, a longtime widow, confessed that she is probably "unduly soft on widows." Another explained that her teaching experience in a ghetto had proved helpful in cases of adjudicating ghetto crime, that she felt she had a better understanding of how to apply justice in areas where

socio-economic status, mores, and value systems differ sharply from her own. A third judge remarked that she knew that being a *woman* judge made a difference in the rape cases she has dealt with.

Judges, both male and female, often feel isolated and very much alone in making hard choices. Isolation has been especially the case for women judges, who are often the only woman judge in an entire county or district. This, it seemed to me, was one of the great accomplishments of the Minneapolis conference. Women were able to relax and enjoy the company of others like themselves and to feel less alone, less the pioneer or token female.

Quite possibly, just as the old boy network and the bull session have been a significant part of the historically male-dominated profession of judging, a similar, though different kind of bonding is now developing among women judges, a bond close to what the novelist Doris Lessing, in *The Summer Before the Dark*, has called "cow talk." With Lessing, the term is not pejorative; it is her creation to describe the unspoken bond (analogous to the bull session bond) which women share by virtue of their socialization and their private roles as mothers, wives, daughters, and caretakers.

Lest Lessing's term or this analysis be misunderstood as a reversion to old stereotypes or as a caving-in of judicial rigor, it needs to be said that the spirit of the conversations among the women judges conformed to the most rigorous and justice-is-blind idealism that systems of law can muster.

"We are equal, but different," was the parting comment of one woman. Another spoke of being fascinated by what she called the "bilingualism" demanded of women judges. By this, she seemed to suggest that women judges have unique and valuable qualities to bring to the bench, but they must manage to make that contribution one of true bilingualism (judge and woman) rather than schizophrenia (woman judge trying to be man judge). The challenge, as these women saw it, was to do their jobs, to exercise their authority and carry out their legal responsibilities, as women. They see very clearly that this must be done without compromising the standards of their profession *and* without compromising the advances in equality and opportunity women have struggled so long to achieve.