

politiques patriarcales, conservatrices, et sexistes et, par conséquent, fondamentalement discriminatoires. Finalement, ces auteurs(es) lancent une invitation forte à une mise en commun des énergies féministes du monde pour améliorer le sort de chacune que la lecture de ce livre donne le goût d'accepter.

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Penny Darbyshire

Sitting in Judgment. Portland: Hart Publishing, 2011. 478 pp.

Much has been written on how judges think. However, relatively little has been written on what judges do. Penny Darbyshire's *Sitting in Judgment* seeks to fill that gap. Over the course of several years, Darbyshire shadowed and interviewed seventy-seven judges from every level of the judiciary in England and Wales. She also "met hundreds of others" (p. 1).

This research has resulted in a textured, original, and provocative text that fulfills Darbyshire's express goals of "paint[ing] a portrait of all types of judges and judicial work, including the routine" (p. 2) and revealing the "practical character of everyday activities" (p. 14) of judges. Several findings stand out:

- That the old stereotypes of judges as elite, pompous, and out of touch is inaccurate
- That judges are "reasonable, humane, modern" (p. 123), and intensely hard workers
- That many lower courts are "law free zones" (p. 289), where judges focus on problem solving rather than legal analysis
- That many lower court judges adopt an inquisitorial rather than adversarial approach to their tasks
- That in the appellate courts, most judges make up their minds based on office case summaries; in only a small percentage of cases do judges change their positions after hearing oral arguments
- That judges toil in a system that is deeply dysfunctional because it is under-resourced, delay-ridden, serviced by mixed-ability lawyers, and surrounded by other players with underdeveloped skills

Few Canadian academics have attempted or been able to get so close to our judges. As someone who has worked with Canadian judges for more than twenty years, helping to conceptualize, design, and deliver judicial education programs, I have found that Canadian judges are apprehensive about academics. They are unlike Darbyshire's research participants, who were "ultra-transparent and approachable" (p. 368). Many of her findings resemble observations I have heard from Canadian

judges. However, this is impressionistic and anecdotal. What we need is similar comparative work of an equally engaged nature, which will be contingent on a more open judiciary.

Despite the many strengths of *Sitting in Judgment*, I have two significant concerns. The first is an issue of pitch and tone, and the second is one of methodology, but the two are connected. The basic message of the book is that English and Welsh judges are “heroes” who “we take for granted” (p. 456), and that “the system” is to blame. There is hardly a congratulatory adjective that Darbyshire does not deploy in her celebration of her research participants: kind, courteous, polite, good-humored, attentive, diligent, analytically rigorous, fair, objective, humble, efficient, organized, IT literate, collegial, public service-oriented, socially diverse, workaholic, unfalteringly empathetic and neutral, patient as Job and wise as Solomon, uncomplaining, seriously octane, remarkably tolerant, brilliant, and most importantly, “in touch with reality.”¹ Simultaneously, Darbyshire castigates journalists and (unnamed) academics who criticize judges as ludicrous, absurd, archaic, derisory, wildly unrealistic, and unfair. It all comes across as being too defensive, too protective, and just too romanticized.

Again, based on my own experience as someone involved with judicial education, I have witnessed many displays of strength of character but also a good number of lapses. This links to my second point, which concerns methodology. While Darbyshire revels in the virtues of the judges, she is harshly critical of many other participants in the legal system—lawyers, social workers, court administrators, etc. How can she be so rapturous about one constituency and so hostile to others? Darbyshire is a little slippery in her justification of her methodology, variously describing it as empirical, observational, phenomenological, and ethnographic. But in the end, she has become embedded and perhaps just a little too close for academic comfort. One is left to wonder if she would have become just as embedded with the lawyers, the social workers, and the court administrators, had she not been so quick to sit in judgment of them? Sociological research should seek to uncover the complexity and messiness of the legal system and avoid the reproduction and seduction of morality tales.

Nonetheless, despite these weaknesses, *Sitting in Judgment* is an insightful and enlightening contribution to our understanding of how judges work.

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¹ Her criticisms of her research subjects are few. Her one major objection, which she makes several times, is about gender representation: “[T]he composition of the judiciary remains an international embarrassment” (p. 447). Her other criticisms include the unresponsiveness of judges to the needs of jurors (p. 208); a relative ignorance of procedures and practices in other common law jurisdictions (pp. 221–25); the residue of hierarchy; and the snobbery of judges who were formerly solicitors or barristers.