

<sup>9</sup> See, for example, L.T. Meade, *The Girls of Merton College* (London: Hurst and Co: 1911); Mrs Sinclair Stevenson, *Hilary: the Story of a College Girl* (Oxford University Press, [1920]).

## Biography

Rosemary Auchmuty is Professor of Law at the University of Reading. She is currently an executive member of the Society of Legal Scholars, a member of the Socio-Legal Studies Association and the Law and Society Association and a Fellow of the Higher Education Academy, and was made a Fellow of the Royal Society of Arts in 2012. Since 2000 she has been a Visiting professor at the University of Paris-Ouest Nanterre La Defense, France, teaching Land Law and Trusts. She has been a pioneer of women's studies and feminist legal studies in higher education in Britain.

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# I'm Not Watching I'm Waiting: the Construction of Visual Codes about Womens' Role as Spectators in the Trial in Nineteenth Century England

**Abstract:** Accounts of the interface between law, gender and modernity have tended to stress the many ways in which women experienced the metropolis differently from men in the nineteenth century. Considerable attention has been paid to the notion of separate spheres and to the ways in which the public realm came to be closely associated with the masculine worlds of productive labour, politics, law and public service. Much art of the period draws our attention to the symbiotic relationship between representations of gender and prevailing notions of their place. Drawing on well known depictions of women onlookers in the trial in fine art, this essay by Linda Mulcahy explores the ways in which this genre contributed to the disciplining of women in the public sphere and encouraged them to go no further than the margins of the law court.

**Keywords:** biography; law; women: gender; art

*“Women did not enjoy the freedom of incognito in the crowd.  
They were never positioned as the normal occupants of the public realm.  
They did not have the right to look, to stare, scrutinize or watch.”*

Pollock, 1988 p71.

## INTRODUCTION

Accounts of the interface between law, gender and modernity have tended to stress the many ways in which

women experienced the metropolis differently from men in the nineteenth century. Considerable attention has been paid to the notion of separate spheres and to the ways in

which the public realm came to be closely associated with the masculine worlds of productive labour, politics, law and public service (Pollock, 1988). The new social codes which emerged during this period expected women to confine, or aspire to confine, their activities to the private sphere of home, suburb and prescribed spaces of bourgeoisie recreation such as the art gallery, park, opera and museum. Much art of the period draws our attention to the symbiotic relationship between representations of gender and space and to the ever increasing ways in which women were subjected to the male gaze in the city.

The separate spheres thesis continues to have considerable explanatory force in our understandings of how women experienced the increasingly imposing law courts of the Victorian era. Attempts have also been made to provide more nuanced accounts of modernity which unpick the simple dichotomy of public and private and question the extent to which the bourgeois ideal of women as homemakers insulated from the market, politics and public space was reflected in practice. These revisionist accounts have produced new stories of modernity which intersect with, and challenge, the concept of the public sphere as exclusively masculine. In this short article I reflect on how the ideal of the separate spheres and the inaccessibility of the legal system was communicated to women. More particularly, I begin to explore what nineteenth century art and illustrations can tell us about how women were encouraged to stay in their place on the edges of the civic sphere. In doing so, I draw on visual resources which have been ignored by legal scholars in their research on the dynamics of the trial. The contribution I hope to make to legal and information management is to draw attention to the ways in which fine art can provide important reminders to lawyers of how behavioural codes about how we should act before the law are constructed and maintained.

It is undoubtedly the case that women have historically played a much more restricted part in legal proceedings than men. It has largely been men who have made laws in parliament and an all-male judiciary who have interpreted it. Women were directly and indirectly barred from taking office as barristers, solicitors, judges, jurors or clerks until the twentieth century.<sup>1</sup> Even criminality was associated with the masculine (Zedner, 1991; Lacey, 2008) as is apparent from the fact that women who stepped out of the role expected of them by murdering their husbands, lovers, seducers and children were characterised as 'freaks, lunatics or rebels' by the press, court artists, judiciary and even 'sober historians' (Hartman 1973 p381; Nead, 2002).

In direct comparison with this extensive interest in the characterisation of women defendants over time, accounts of women who watched law being administered from the public gallery of courts have largely been uncharted by scholars. This is despite the fact that spectating has long been one of the roles in the trial that women have not been barred from. To draw on Pollock's quotation at the beginning of this introduction, it suggests that the

spectators' gallery in the nineteenth century law court may have been a place in which the male gaze was reversed and women had the right to look, to stare, scrutinize or watch.

## WOMEN WATCHING AND WOMEN WAITING

The notions of spectacle and spectatorship are major themes to have emerged from scholarly reflections about modernity, but the trial has been largely ignored in this context<sup>2</sup>. In part, this can be explained by the fact that this particular type of audience does not fit comfortably into the categories of either leisure or civic duty. Whilst it might aspire to the latter it seems more often to have been experienced as the former. However, it is clear that the concept of the observation of trials as a civic duty has a long heritage that can be traced to the fact that the attendance of the local community was compulsory in many ancient English tribunals (Mulcahy, 2011)<sup>3</sup>. Spectators of the trial serve the important functions of bearing witness to decisions and their acceptance of the process and outcomes reached provides important opportunities for the sovereign to re-affirm their might and right to punish (Foucault, 1977; 2008). Ideas about the function of spectatorship shifted in the early nineteenth century as Bentham's (1827) argument that observation of trials was a way in which subjects could hold those administering law to account took hold. In this way the passive spectators of earlier eras were transformed in political theory at least into active observers who served as auditors of modern legal proceedings (Resnik, 2007; Fischer-Taylor, 1993). Newly imbued with moral and political purpose it becomes possible to conceive of nineteenth century observers of the English trial as engaging in a form of what Bailey (1978) has labelled 'rational' pleasure.

Discussion of the role and behaviour of spectators of the trial remains in its infancy and those embarking on a study of the issue will find very few references to the spectator in legal literature or official record of trials. It is argued that by way of contrast, fine art of the period provides important information about the presence and expectations of women spectators and the interrogation of the concept of spectatorship more generally. It is highly significant in the current context that in her seminal work on the history of court design Graham (2003) draws attention to the highly sociable habits of courts up until the latter part of the eighteenth century in which proceedings were noisy and the public galleries populated by both men and women. This had all changed by the early twentieth century. Representations of legal trials, sentencing and courtroom incidents were extremely popular during the Victorian period (The Tate, 1986) and have the potential to provide a rich source of clues as to what happened in the intervening period.

Two paintings of contemporary legal scenes in the narrative style are worthy of particular note because of what they reveal about prevalent attitudes towards women



Figure 1: Abraham Solomon, *Waiting for the Verdict*, 1857, Tate Britain.

and the law. Abraham Solomon's *Waiting for the Verdict* (figure 1) and its sequel *Not Guilty (The Acquittal)* (figure 2) are amongst the best known treatments of the trial in the Victorian age. Although there are many depictions of the trial by Victorian artists, most of them focus on biblical or historical scenes. These two paintings by Solomon offer contemporary depictions of legal process. In addition, they made a significant contribution to visual codes about what seem to be ideal female behaviour amongst women with an interest in legal proceedings. *Waiting for the Verdict* served to establish Solomon as a more substantial painter than hitherto had been thought the case (Tate, 1982–4) and has been described as one of the blockbuster successes of the era (Treble, 1986). A great number of replicas of the works created and sold (Geffrye Museum, 1985) and both were produced in oils and subsequently engraved in mezzotint for widespread reproduction. Such was the popularity of *Waiting for the Verdict* that it has been reported that copies of the print could be seen in Inns and homes as late as 1925 (Tate 1986).

It soon becomes clear that both paintings suggest that women have a limited role to play in the public sphere of law when not directly involved in the trial as either

defendants or witnesses. Significantly, the courtroom remains remote in both paintings and can only be glimpsed at through open doors and corridors. Significantly, both depict scenes outside of the courtroom and portray the predominantly female members of the defendant's family as recipients of justice rather than participants in its delivery. The complete lack of female agency is emphasised in *Not Guilty* by news of the acquittal being communicated to the family outside of the court and one is left to wonder why the family were not present in the court when the verdict was announced<sup>4</sup>? The fact that they have been left waiting for the outcome is indicated by their physical exhaustion and the presence of a depleted food basket in *Waiting for the Verdict*. This painting also serves to reinforce the suggestion that women are removed from the public sphere in other ways. The aspiration that the family and public sphere of the court are distinct domains is suggested by the division of the painting into two separate sections. The first, which stands to the right of the vertical line marked by the left edge door of the door frame and space between the floor tiles, depicts the masculine domain of the remote and busy court full of male barristers with a male judge in his scarlet robes of office at their





Figure 2: Abraham Solomon, *Not Guilty, The Acquittal*, 1857, Tate Britain.

apex. The second, which stands to the left of the line, could be said to represent the feminine domain of family and dependency. The painting also reflects dominant discourses of the time which emphasised the difference between feminine and masculine. While the masculine sphere is full of people busily going about their work, the feminine is populated by people in an emotional state of despair. Only a straying petticoat and the wistful over the shoulder look of the young female relative suggests any connection between the two. Abraham Solomon did not come from a conventional family and his sister enjoyed some success as an artist in her own right, but consciously or sub-consciously it could be argued that these works represent a highly discriminatory representation of the role of women in the trial.

## CONCLUSION

This short paper makes a modest attempt to fill a gap in the existing literature on gender, modernity and the law. In doing so it has suggested that the history of art has a considerable contribution to make to our understanding of

how the suggestion that women could perform a civic duty by watching trials might have been received in the nineteenth century. Other authors have pondered on the issue of why women's participation in the trial as spectators dwindled in the latter part of the nineteenth century long before men became routinely absent from the public gallery (Graham, 2003). This article begins to provide clues as to why that might have been and how prevailing preferences were communicated to the middle class women of the era who frequented the new public art galleries of the emerging modern metropolis. It becomes clear from the brief analysis of two of the most popular paintings of the era that those who commissioned, created and displayed fine art of this kind were complicit in the legitimisation of a particular vision of women that attempted to limit their participation in the civic sphere. Future publications will suggest that the visual culture of the working classes challenged this message about the agency of women (Mulcahy, 2015) but the importance of this article is the call it makes to legal scholars to pay closer attention to what art can contribute to the debate about the emergence of new legal cultures in the nineteenth century.

## Footnotes

<sup>1</sup> The first female solicitor was admitted in 1922, the first female barrister was called to the bar in 1921, the first female Kings Counsel was created in 1949. The first female juror was sworn in at the Old Bailey as recently as January 1921 and the first county court judge, Elizabeth Lane was not appointed until 1962.

<sup>2</sup> Even Foucault's work on discipline in the modern age focuses on punishment rather than the trial though he did concede that the English adversarial trial had more spectacular qualities than its French counterpart (see Foucault, 2008).

<sup>3</sup> See the extensive discussion of this point by Chief Justice Burger in *Richmond Newspapers Incorporated v Virginia* 448 US 555 (1980).

<sup>4</sup> The presence of children would not have barred entry into the court until the Children Act was passed in 1908.

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## Biography

Linda Mulcahy's research focuses on disputes and their resolution and she has studied the socio-legal dynamics of disputes in a number of contexts including the car distribution industry, NHS, divorce, public sector complaints systems and judicial review. She has qualifications in law, sociology and the history of art and architecture and her work has a strong interdisciplinary flavour. Linda is the co-director of the LSE's Legal Biography Project.