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**O Estranho e
o Estrangeiro no
Teatro**

**Strangeness and
the Stranger in
Drama**

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LAUGHTER IN THE TEMPLE OF JUSTICE

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Introduction

Our destination today is the Royal Courts of Justice located on the Strand in central London. Designed by the architect George Edmund Street and built between 1862 and 1882 in a French Gothic style (Brownlee, 1984) its size and scale befits the description a 'Temple of Justice'. The complex is made up of 90 courtrooms, judge's chambers, a range of support facilities and long corridors linking the many spaces that make up the public and back stage operations. It is the home of many of the highest courts of England and Wales, including the court of the Lord Chief Justice, the Courts of Appeal and branches of the High Court. It is at the centre of what has been described as 'Legal London',¹ which includes the Inns of Court and barristers' chambers, the headquarters of the solicitors' branch of the profession, the Law Society, and many solicitors' offices. The expansive front of the building with its cliff like white Portland stone walls and towering spires rises above a busy London artery linking Westminster in the west with the City of London to the east. A broad truncated pointed arch frames the public entrance that lies in its shadow. This provides a perfect counterpoint to the sight that greets the viewer on entering the building; a light filled lofty interior. When not distracted by

¹The phrase 'Legal London' is one more associated with tourism. <http://www.london-walking-tours.co.uk/inns-of-court-tour.htm> But it does signify a particular concentration of law and court related businesses that surround the Royal Courts.

negotiating the airport style security that greets visitors the design of the first internal space the visitor encounters draws the eye along the hall to an archway and balcony on the horizon. The columns that line the walls lift the eye up to the pointed arches and vaulted ceiling high above. On both left and right the walls are pierced by expanses of leaded glass that allow light to cascade into the hall. Reviews on the popular tourist website TripAdvisor² left by those who have visited the complex offer a snapshot of perceptions of the building and emotional responses to it. The exterior and the large hall that greets visitors are most frequently described as ‘Gothic’ and ‘cathedral like’, ‘iconic’, ‘astounding’, ‘fantastic’, ‘imposing’ and ‘magnificent’, ‘CruiseInvestor’ suggests the Gothic style of the building, ‘...shouts Empire and confidence.’ ‘Lovtogo6’ talks about the emotions generated by the space in the following comment, ‘...the cathedral like majesty is meant to be awesome, to take the law seriously’. ‘Neil C’s’ review records a rather different dimension of the experience of ‘awe’.³ He describes his wife’s response to the building in the following extract, ‘Once inside the building she took some persuading I can tell you, she felt as though she may [be] evicted at any moment... she tiptoed around the halls and corridors not daring to impact the hallowed stones with her heels...’ ‘Maze like’ and ‘labyrinth’ are other common descriptions of the interior. If ‘wander’ is the term reviewers commonly used to describe the experience of entering into this maze, the many references to the importance of a guide suggests the labyrinthine space has a potential to confuse and disorientate. Other reviewers expand on this. ‘Wingate’ reports his experience of the maze as one of, ‘Tramping the endless corridors in search of the right [room]’. Many express surprise that the most sacred site of justice, the courtroom, is open for visitors. Reviewers report their fascination

²The Royal Courts of Justice is ranked number 231 in a list of 1,343 ‘things to do’ in London on the TripAdvisor website. https://www.tripadvisor.co.uk/Attraction_Review-g186338-d214622-Reviews-Royal_Courts_of_Justice-London_England.html. Other courts appear in the list of ‘Things to do’. The UK Supreme Court is ranked 219th and the Central Criminal Court, the Old Bailey is number 393.

³ While many of the reviewers note the age of the building scholars of courtroom design have noted how some of these experiences and emotional effects are still being used by those designing contemporary courts. For example see Haldar (1994) Mulcahy (2010), Resnik and Curtis (2011).

with these ‘theatres of ‘justice’; as a location associated with high drama and news making disputes, with celebrity and the uplifting sensations linked to ‘doing justice’ Others record their experience of mystification, ‘[not] entirely understanding what’s happening’, or an encounter with the ‘dreary’ (Connoneill) and the ‘mundane’ (WIMIN) nature of law and justice. Some experience the inner sanctums of justice as ‘univiting’ and ‘hostile’ places (CruseInvestor). Despite the rich diet of reactions and emotions recorded in the TripAdvisor archive there is no evidence that laughter is ever associated with this Gothic ‘Temple of Justice’.

The experiences of the Royal Courts that prompt this study, a total of 18 visits, have been filled with laughter; ranging from gentle smiles to raucous belly laughs. It is true that these experiences have a particular location; the courtroom of the highest judge of England and Wales, the Lord Chief Justice. But this inner sanctum is not the kind of setting readily associated with laughter. The diffuse lighting (part natural from clerestory windows over the body of the court, part electric) of that courtroom produces a sombre gloomy ambience. The dark wood panelled and book lined walls and the large monotone royal emblem that dominates the wall immediately behind and the dark wooden pew-like benches fill the well of the court all add to the serious air of the place. As befits the space, the business that has drawn me to the courts is the serious business of judicial institutional renewal; the inauguration of new judicial appointments and of women in particular. The goal of this paper is to examine the nature and role of the laughter in the court of the Lord Chief Justice in that context.

Courts, judges and laughter

There is little literature on law and laughter in the courtroom and laughter and the judiciary. The work that exists certainly offers some empirical evidence that laughter does occur in courts. Anleu, Mack and Tutton (2014) have undertaken a thoroughgoing survey of the literature that addresses this humour and responses to it. Their study explores the nature and uses of humour in the adversarial legal tradition. In this context the study of humour occurs within what might be thought of as the main business

conducted in courtrooms; litigation. In this setting the judge is the impartial referee managing the participation by the key players involved in that process with a view to ensuring that the rules of engagement are followed and that justice is delivered. Their review demonstrates that there is much opposition to humour. In general humour and laughter have no place in the courtroom. More specifically humour is taken to be a threat to 'core judicial values...' They identify a variety of reasons for this state of affairs: humour threatens to reveal judicial bias; it offers to expose judicial disrespect for the objects of humour; and has a potential to undermine confidence in the judiciary. Its appearance during the courtroom process may provide the basis for an appeal against a judge's decision or be the basis for disciplinary action.

Like others (Scarduzio, 2011) before them Anleu et al (2014) with some caution identify a limited context in which humour may be an acceptable aspect of judicial practice and courtroom behaviour. This is when humour is used to diffuse tensions or to create a more welcoming environment so as to better enable participants in the trial to realise their full participation.

While Anleu et al's (2014) study is an invaluable resource the literature they review and the conclusions they draw are problematic for this study. There are a number of reasons for this. The case study at the heart of this paper is not concerned with humour that occurs during the course of courtroom proceedings associated with litigation. It deals with a different type of courtroom business; a ceremony dedicated to the swearing in of new members of the senior judiciary. While this remains serious legal and courtroom business, the judiciary as an institution, the event differs from litigation in a variety of ways. It is not an adversarial contest between opposing parties. Its primary focus is on the judiciary and one member of the judiciary in particular. One audience member described the event as being, '... like a coronation'. This comment not only emphasises the ceremonial nature of the courtroom event and its institutional focus but also its celebratory dimensions. Another description that appears in my data is 'family event'. Far from suggesting that the swearing in is an adversarial this is a phrase that emphasises close connections and bonds in common. There is also evidence in the research data that humour and laughter is not so much an unwelcome aspect of the

swearing in event but a required part of it.⁴ During the course of one swearing in speech the speaker commented that in preparing the speech she was aware that the Lord Chief Justice, ‘...would expect...stories to entertain those assembled...’ (Eaton 2013) This fits with my experience of these events; humour has been a part of every event.

Unlike Anleu et al’s study in which a goal of their survey is to identify and prescribe when humour may or may not be used in court, the approach adopted here is empirical: the observation of an event in order to study the way judges and other courtroom participants use humour and a reflection on how humour is used, how it works, and with what effect. Of particular interest is the work humour and laughter do in the formation of the judicial institution and the legal community more generally. This particular focus draws upon an insight from Henri Bergson (1914), ‘...laughter always implies a kind of secret freemasonry or even complicity, with other laughers, real or imaginary.’(12) The analysis of the humour in the case study that follows provides an opportunity to begin a consideration of the nature of the judicial community that is being formed and performed in swearing in events.

Before turning to the case study itself I want to introduce two tools that will be used in the subsequent analysis (Stott 2005). One is the ‘superiority’ model of humour, the other is the ‘incongruity’ model. The first highlights the connection between the moment of pleasure produced through humour to the existence and the (re)production of violent social hierarchies. In this model the humour is connected with the positioning of the speaker as the superior/insider at the expense of the object of the humour; the present or imagined inferior/outsider. This insider/outsider dynamic is an aspect of humour that Anleu et al. (2014) identify as being a particular threat to the staging of justice in the courtroom especially where the ‘outsider’ is one of the parties to the litigation; be it the lawyers, their clients, the plaintiffs, defendants, unrepresented individuals before the court acting as litigants in person or witnesses.

⁴ There is a need for caution here as expectations may vary from court to court and between jurisdictions.

The 'incongruity' model of humour brings a number of other issues into the frame. One dimension of this model is its attempt to recuperate humour. Humour has a number of negative associations in its connection: with the 'lower' faculty of passion rather than the higher one of reason; with the body not the mind; with popular rather than elite culture. 'Incongruity' theory in part challenges these associations in an attempt to legitimate humour as a social practice. In this model humour is named as 'wit'. 'Wit' is said to be a form of humour that requires the engagement of the higher faculties; of intelligence, insight, imagination and wisdom. It is said to call for and demonstrate high linguistic ability. It relies upon a keen awareness of social and cultural conventions. All set 'wit' against other forms of humour that are linked to the body and its pleasures such as the physical humour associated with slapstick, lower, baser topics and passions and the lower classes. The incongruity model also highlights the way humour works with and draws attention not only to a gap between two or more situations (the high and the low) that are presented as inconsistent, unsuitable, normally taken to be mutually exclusive but also draws attention to their proximity; time bringing them together, making them the same.

The two models are introduced here not as alternatives, one being that which is to be forbidden in contrast to the other which is to be prescribed. They are offered here as tools, as two heuristic devices, two ideal types to facilitate the identification of particular social and cultural practices through which humour is generated and to assist in the process of understanding how humour works and more specifically to shed some light on how it works to form institutional cultures.

The swearing in case study

The swearing in of Lady Justice Macur took place at 9.30 am on 31st July 2013. The bench party was made up of, from left to right, Lord Dyson Master of the Rolls (the Head of Civil Justice for England and Wales), Sir James Munby (President of the Family Division of the High Court) the Lord Chief Justice, Lord Judge. Immediately to his left, and the only member of the bench party standing

throughout the whole event, was the new appointee, Lady Justice Macur. To her left was Sir Terence Etherton, The Chancellor of the High Court (Head of the Chancery Division). All were wearing full ceremonial robes including the full bottom wig. With the exception of the Lord Chief Justice who wears a scarlet robe with fur lined trim and a golden chain of office, all the others were dressed in the black and gold robes worn by judges of the Court of Appeal with a white lace scarf about the neck. Lady Justice Macur also carried a pair of white gloves. Other judges dressed in their working robes, and where appropriate wearing bench wigs, stood elevated at the same height as the bench but in the wings, to the left and right of the bench party. The clerk to the court, in black robes and full bottom wig, sat at a desk immediately beneath the Lord Chief Justice. Also in front of the bench and to the right in an enclosed box with ranked seating sat members of Macur's immediate family. The pews that fill the well of the court were packed with a mixture of bewigged and robed barristers and a variety of others in civilian clothing.

The event also followed the standard format. The formal start of the proceedings began with the command, 'All rise' uttered by one of the court ushers. The bench party then arrived entering the courtroom through doors behind the bench; to the left and right of the royal crest. Once in place the clerk to the court rose from his seat, turned to face the new appointee and administered two oaths; one of allegiance to the Crown and the other the judicial oath. Once signed by the new appointee the clerk returned to his seat. Two speeches followed. The first was by the Lord Chief Justice. The other as per usual was delivered by a senior barrister, (Queens Counsel) who speaks on behalf of the Bar and usually comes from the chambers of the newly appointed judge. After swearing the oath the new judge remains silent.

The case study at the heart of this paper is the swearing in ceremony for Julia Wendy Macur. It has been selected in part because it has much in common with all the 18 swearing in events I observed. All the swearing in ceremonies related to the appointment of individuals to high judicial office. All took place in Court 4; the court of the Lord Chief Justice. All followed a particular pattern of proceedings. The staging, roles performed, costumes

worn, props used and the structure of the event were very similar. All ran for between eight and 10 minutes. While the humour and the level of laughter varied from event to event, humour and laughter were a part of every one of the ceremonies.

The swearing in of Lady Justice Macur has also been selected because it stands apart from the norm. The majority of ceremonies attended related to the appointment of men. A minority, seven swearing in events including this case study related to the appointment of a woman to a senior judicial post.⁵ The swearing in event for Lady Justice Macur was to mark her elevation from the High Court to the post of judge in the Court of Appeal.⁶ The norm is that all the speeches were delivered by men. In this case one of the speeches, delivered on behalf of the Bar, was given by a woman; Deborah Eaton QC.⁷ It also stands out because of a particular coup de theatre that occurred during the course of Eaton's speech that resulted in an explosion of laughter in the Lord Chief Justice's court.

Common to all the speeches is their hagiographic form: they celebrate the life of the new appointee (Moran, 2011). It is a type of life writing that has a hyperbolic quality. Another distinctive feature is that the speeches produce a double textual portrait of their subject; individual and institutional. The speeches fashion their subject, the individual being appointed to judicial office, as the embodiment of virtues and values of that office.

The following are examples of the hyperbolic tone of the speech made by Lord Judge, the Lord Chief Justice at the time, about Lady Justice Macur. Some relate to particular qualities of the new appointee. For example he describes Macur's communication skills (her capacity to give speeches without notes and to deliver extempore judgements of the highest quality) as 'remarkable'. Her memory is 'incredible', 'photographic'. Her drive and enthusiasm are 'inexhaustible'. Her efficiency, energy, wisdom and judgment

⁵ This number represents an oversampling of events relating to the appointment of women.

⁶ The judicial swearing in ceremonies attended related to a variety of senior judicial appointments; 1 Lord Chief Justice, 10 appointments to the Court of Appeal (8 male, 2 female; 2 gay men 8 heterosexuals) and 7 judges of the High Court (2 male, 5 female).

⁷ The only other occasion in my sample where the Bar's response to the Lord Chief Justice was delivered by a woman was the swearing in of Geraldine May Andrews as a judge in the High Court on the 7th October 2013.

are 'great'. Another theme is her legal and judicial career. Her first judicial appointment in her mid thirties is indicative of her 'remarkable' career. 'Leading' meaning best/top makes several appearances. Her contribution to the chambers where she practiced as a barrister, Lord Judge explained, elevated them to 'the leading set'. She practiced in 'the leading city in a leading circuit'.⁸ Another device used by the Lord Chief Justice to denote her exceptional qualities is by drawing attention to a number of links she has with the Lord Chief Justice. The value attached to these links is represented by way of their long duration. They begin close to the birth of her career: the Lord Chief Justice first met her when she was 'a young lady' at Lincoln's Inn in 1979. The value also comes from institutional proximity: she was the 'assistant circuit junior' a demanding role in the Midland Bar that involves organizing events for fellow barristers when Lord Judge was head of the Midland Bar.

The hyperbolic tone of the reply to Lord Judge's speech by Deborah Eaton QC follows in the hagiographic tradition. On some occasions Eaton repeats phrases used by Lord Judge; Macur's memory is 'photographic'. On other occasions she uses different terms with similar hyperbolic effect. Her management and leadership skills are 'brilliant'. Her expertise crosses 'an almost unimaginable spectrum of work.' Her career is described as 'meteoric' and as if this were not enough Eaton adds, '...is an understatement'.

Where is the humour?⁹

Much of the humour comes from the swearing in speeches and their delivery. One outburst of laughter occurred during the course

⁸ The circuit is a unit of court administration that has its origins in the mediaeval period when the King's Justices went out of London to dispense the King's justice. The 'circuit' still refers to a unit of court administration. Barristers also organise themselves by reference to circuits that parallel those of the courts. Lady Justice Macur practised as a member of the Midland Bar which serves the Midland Circuit.

⁹ The following examples draw upon references to 'laughter' that accompany my notes of the speeches made during and immediately after each swearing in event. The following are selected from my notes of Lord Judge's speech. It is rare that speeches delivered in these events are publically available. Lord Judge described his speeches as, '...brilliant spontaneous, carefully prepared totally spontaneous speeches. (Moran 2012)

of Lord Judge's description of the links between Lady Justice Macur and his own career. Having developed the story about the *longue durée* of their social and institutional proximity culminating in the relationship between Macur as 'assistant circuit junior' and Lord Judge as head of the Midland Circuit Bar he proceeds to explain that this final relationship was in fact short lived, just 9 days. He then left to take up his first full time judicial post. My notes record Lord Judge's punch line, '...this short period was quite enough because he was exhausted by her drive, her enthusiasm and he found it difficult to take.' (Moran 2013) The 'incongruity' model helps to understand the laughter associated with this comment. The humour lies in the juxtaposition of the contrast between the long and short duration of the encounter. The surprising intensity of the latter is a hyperbolic reference to her skills more generally. A second example is produced through Lord Judge's repeated use of the term 'leading' to describe Lady Justice Macur's career; she worked in the *leading* set of chambers, in the *leading* city (Birmingham) of a *leading* circuit (the Midland Circuit). My notes record that the final 'leading' was accompanied by much laughter. The reason for the laughter is all to do with word play and grammar and knowledge about the organisational culture of the Bar. Lord Judge's use of the definitive article 'the' reinforces the status associated with the use of 'leading'. The substitution of the indefinite article 'a' in the third case introduces a qualification that threatens to diminish the status of the Midland Circuit, of which Lord Judge was the head. The humour, in good part, arises from Lord Judge drawing attention to this substitution. After highlighting that he hadn't said '*the* leading circuit' my notes record that he explained, 'He had to be careful because he had just been elected to the Welsh circuit so the Midland circuit was 'a' leading circuit rather than 'the' leading circuit. He added, he didn't want to tread on anyone's toes.' While the slippage from 'the' to 'a' potentially introduces a violent hierarchy of insider/outsider circuits that threatens to reduce the status of the Midland Circuit and thereby Lord Judge's status as its former head, by drawing attention to this and an explanation that it reflected his split loyalties he was able not only demonstrate his own commitment to loyalty across multiple professional communities but also to avoid any loss of face by recuperating the status of the Midland circuit as 'the best'. This

is another example of the importance of 'wit' in the swearing in speeches; humour being based upon language skills and prior knowledge of the conventions of the Bar.

One important source of humour in Deborah Eaton's is to be found in the results of her 'search for stories to entertain'. It produced a sequence of scenarios about Lady Justice Macur's career that provoked much laughter in the courtroom. Each makes use of incongruity; using a series of 'striking parallels' that make connections between things commonly taken to be mutually exclusive. All juxtapose what might be described as low skill jobs performed by working class people with the roles associated with the judicial elite who populate the Court of Appeal. Two of the parallels will be briefly outlined. The third will be described in more detail as it generated the biggest laugh of the ceremony.

One 'striking parallel' draws a link between working on the sweets counter, known by the brand name 'pick and mix', in a particular retail store, Woolworths, a low price mass market high street chain and working in the Court of Appeal. These apparently disparate types of work are brought together in the following way. The Woolworth's sweets counter offered the consumer the ability to combine a variety of sweets, 'a bit of this and a bit of that'. The work of a judge in the Court of Appeal is also made up of 'a bit of this and bit of that' being made up of appeals from a wide variety of disputes. Another parallel makes reference to the time Lady Justice Macur worked on the production line of a sweet manufacturer producing a particular product; 'Bassett's Liquorice Allsorts'. This time her factory role was to pick out those sweets that were misshapen. The punch line is that this factory work is, 'just like she will be doing in the Court of Appeal!' (Moran 2013)

The third parallel refers to the time Lady Justice Macur worked on a factory production line of a well known cake manufacturer. One source of humour involves the use of the catch phrase associated with this particular brand of cakes: it describes the cakes as, 'exceedingly good cakes'. This is repeated and adapted for use in a judicial context. Her judicial career demonstrates an ability to produce 'exceedingly good judgments'. A related parallel focuses on the particular kind of cake she was involved in producing; the 'cherry Bakewell'. It is a cake topped with a glacé cherry on a thin

coating of icing. The parallel involves a play with a well known phrase. 'putting a cherry on the cake' that acknowledges the exceptional status and extra special associations linked to a glacé cherry topping. In the factory setting Lady Justice Macur worked as a factory operative who put the cherry on the cake; both the final stage of the process and the one that adds a special, extra value. Eaton forges an otherwise unlikely connection between this job and the work she will be doing in the Court of Appeal; being in reality the final appeal court that finishes and perfects the justice process.

As she presented this particular part of her speech a fellow barrister, also dressed in wig and gown rose from the front pew close by the speaker and proceeded to advance towards the Lord Chief Justice and the other senior judges who made up the bench party with a box of 'cherry bakewells'. This culminated in him handing the box of cakes to the Lord Chief Justice accompanied by an explosion of laughter both on the bench and in the well of the court. This coup de theatre involved wit. This involved a parody of courtroom procedures; the box of cakes was described by her as 'an Exhibit'. She explained that it was being 'produced' in the proceedings, 'In case my Lord is unaware of the intricacies of the Bakewell Tart...' The humour connected to the presentation of the box also involved an element of physical comedy; a parody of the actions that would accompany the presentation of an 'exhibit'. Such was the volume of laughter, Eaton's delivery had to stop to let it subside being able to continue.

Reflections on swearing in humour: Context

The first reflection focuses upon the ubiquitous presence of humour in swearing in events. It is expected (Eaton 2013). The work of anthropologist Arnold van Gennep helps to make sense of this expectation. Swearing in ceremonies are examples of what van Gennep describes as a rite of passage having a 'magico-religious' quality (1960, 15). Rites of passage involve a crossing of a boundary. To facilitate understanding this process of crossing has a number of dimensions. One is 'separation' of the subject from their previous state. The second is 'transition'. The third stage is the arrival at a

new point. This sequential model can be applied to judicial swearing in ceremonies. Judicial appointment involves a movement from the status of 'natural subject' (an individual) to that of institutional subject (a judge). In the case of Lady Justice Macur the rite of passage has another dimension being also a transition from a lower to a higher position within the judicial institution. Van Gennep notes that the transition from one social position to another is a 'special situation' both physically and magico-religiously (symbolically) (van Gennep 1960, 18). As a zone of transition it has a particular quality; liminality. As a time and space 'in between' the rite is also a time and space of 'disturbance' when the ordinary rules of decorum are subject to suspension.

The time of swearing in events has is of particular note in this context. They take place outside the time of the 'ordinary' business of the courthouse: they occur in the time between the 'ordinary business' of justice. For example the swearing in of Lady Justice Macur occurred at 9.30 am. The ordinary business of justice didn't begin on that day until 10.00am. Other swearing in events I attended took place after the ordinary business of the day was over, at 4.45 pm. Another, though less popular time was during the lunch break, at 1.45. For anyone planning to visit the court to observe a swearing in event, a public event, the timing of these events generates a curious state of affairs. The visitor is faced with a building that is not yet open, has already closed, or in the case of a lunchtime event, a building in which the business of law appears to be taking a break.

Mohr's (1999) study of incidents in courts in Australia that take place in the time between the ordinary business of justice suggests humour and laughter is one of the possible forms of 'disturbance' that takes place during these times in between. His research also suggested that this is a particular time of 'satire' and 'carnival' in courtrooms. If this might explain in part the expectation of humour in the court at certain times there is evidence to suggest that the swearing in event is not the only case of humour taking place in the time in-between the ordinary business of justice at the Royal Courts of London. The cathedral like space of the main entrance hall of the court complex is use out of court time for a number of leisure activities such as badminton competitions, the performance of

operas, debutants balls, wedding receptions, conference cocktail parties and celebratory dinners. All have strong associations with entertainment and the frivolous.

Reflections on swearing in humour: audience.

The second reflection returns to Bergson's comment that 'laughter always implies a kind of secret freemasonry or even complicity with other laughers...' His comment draws attention to the importance of the audience. The phrase 'secret freemasonry' and 'complicity' suggests that for humour to work there has to be a particular proximity between those who laugh. One important factor shaping the audience is that they are limited to those who attend the events. It is not possible to experience swearing of the judiciary of England and Wales at a distance in a mediated form. The swearing in events I observed all take the form of face to face encounters. The audience is therefore confined to those who are in the court of the Lord Chief Justice. In addition in court swearing in events that are technically open to the public are a minority; preserved for those appointed to the highest judicial offices. Being a member of the audience depends upon some prior knowledge of the event. While notice of swearing in events is included in the public notices that announce the proceedings in the Royal Courts of Justice the public announcement is only made the evening before the event. I found little evidence that members of the public attend.¹⁰ The audience is much more selective. Members of the judiciary and members of the Bar are the main attendees. The regular description of swearing in ceremonies as 'family events' by those giving speeches at the ceremonies also helps to make sense of the particular composition of the audience. It's a phrase that has a double meaning. It refers to the presence of members of the biological family of the judge, (wives, husbands, children, parents, brothers and sisters). It also refers to the new judge's social family (Moran, 2011); the professional network ('brother' and 'sister' judges, other members of the judge's chambers, other legal

¹⁰ As others have noted public attendance in courtrooms is the exception rather than the rule. See Mulcahy 2010.

practitioners who have had close working relations with the new appointee and clients) and friends of the new judge.

Of particular interest for this study is the gender composition of the gathering. As noted above, in the majority of the events studied the speeches have been delivered by men. While the audience has always been mixed in terms of gender the balance has varied from time to time. In the case of Lady Justice Macur there was a noticeable presence of other women. My research notes for the event contain a comment on the composition of the judicial group that flanked the bench party, 'I counted 12 female members of the judiciary... The swearing in event seemed to be particularly well attended by judges.' (Moran 2013, 1) Scholarship on gender and humour has drawn attention to the potential impact of gender on the community of laughers. Research on women and humour suggests that certainly in the past women occupied a particular place as initiators of and as members of the 'secret freemasonry' of laughter. Being active players in the production of humour was frowned upon. Kitthoff (2006) notes that making laughter has long been associated with masculinity and as a threat to a woman's femininity. Women who were humorous in public were labelled unfeminine, immodest and indecent. In their audience role the tradition and practice has long been that women have occupied the place of being the complicit subjects in the production of women as the objects of laughter rather than as its subjects (Kotthoff, 2006). Another point to consider is the presence of multiple 'audiences' in a single setting. Alan Sinfield (1991) makes the point in relation to sexual orientation. He comments on the possibility of two adjacent members of an audience with different sexual orientations watching the same event, having two very different experiences of that event. Even if both are laughing they may not be laughing at the same thing. (Moran, 2011; Moran 2008) With these points in mind I want to return to some of the examples of humour set out above to examine the gender of the subjects of humour and the place of women in the community of laughter.

While the appearance of Deborah Eaton QC as the person giving the response to the Lord Chief Justice is some evidence that women's position has shifted enabling them to be instigators of humour in that context it remains the case that this is still an

exceptional state of affairs. Kotthoff notes that the person who has access to humour has access to a potential to create new, unusual perspectives of the object of humour and thereby perform and communicate sovereignty, creative power and power to intervene in the world (05). There is some evidence in my data to suggest that in swearing in events men still occupy the position from which they can use humour to imagine the judiciary as an institution. How does gender work in the examples referred to above?

First, it is important to note that the hyperbolic qualities of the hagiographic speeches are a requirement of all swearing in speeches regardless of the gender of the speaker or the object of the speech. The importance of 'wit' in the speech by Eaton suggests is also a feature of the speech by Lord Judge.

Two examples of humour will be considered in more detail. One is taken from the examples set out above. The second introduces another instance of humour that involved an exchange between the Lord Chief Justice and Deborah Eaton focusing on the Family Division of the High Court that has the highest concentration of women in any of the three major divisions of the High Court.

As noted earlier the humour generated by Deborah Eaton's three parallel stories illustrates the contiguity approach to humour. All juxtapose and bring together things that are usually understood to be separate and apart; the labour associated with working class jobs is both juxtaposed with and in so doing made close to the labour undertaken in elite institutions by its middle and upper middle class occupants. The wit that they draw upon is to be found in various forms. There is much in Eaton's speech to demonstrate her witty credentials. For example the incongruities she presents involve a running parody of the civilities of courtroom exchanges in describing the incongruities. For example she begins the three parallels sequence with the following, 'My Lord I am, as I hope my Lord knows, a diligent person.' (Eaton, 2013, 6) If Eaton's speech demonstrates her skills in occupying the position of the one who is in a position to imagine the world and thereby intervene in its formation is there any evidence that this involves reimagining judiciary as an institution and more specifically as a gendered institution?

There are two moments in the ‘cherry Bakewell’ I want to briefly consider. The first inverts the associations that circulate around the ‘cherry on the cake’ analogy. If this tends to be a phrase associated with the pinnacle of achievement then Eaton’s suggestion that the work of a judge in the Court of Appeal may be nothing more than adding ‘I agree and have nothing useful to add’ suggests that this is not always necessarily the case. The second example is connected to the coup de theatre that involved the presentation of the box of cakes to the Lord Chief Justice. The incident in its use of physical humour upturns the hierarchy between two approaches to humour; incongruity and superior. In part the explosion of laughter that accompanied the presentation of the box of cakes breaks the taboo against physical comedy. In staging this coup de theatre Eaton demonstrates her knowledge of the relevant conventions that regulate the use of humour. Both in different ways challenge the hierarchy; one of the institutional structure the other the structure of cultural and social conventions attached to an institution.

The last example from Eaton’s speech I want to consider appears to be a section that is in dialogue with comments made earlier by Lord Judge. It focuses on the career of Lady Justice Macur. At the end of a section that links her ‘remarkable’ talent to her ‘remarkable’ career my notes of Lord Judge’s speech record that after noting that she was appointed to the Family Division of the High Court in 2005 Lord Judge, ‘...commented that she could have been appointed to the QBD as she had ‘skills manifold’ for that role.’ It is a comment that resonates with the fact that the highest concentration of female judges is to be found in the Family Division and the perception and reality that women continue to be excluded from the higher status judicial positions that are associated with the civil and commercial areas of adjudication in the Queen’s Bench and Chancery Divisions of the High Court. Lord Judge’s comments appear to reaffirm that state of affairs. Lord Judge’s recognition that Lady Justice Macur had ‘skills manifold’ for the higher status job is little consolation for her appointment to what appears to be acknowledged as the lower status post.

It is a matter Eaton appears to address in her reply to the Lord Chief Justice. She uses the hyperbolic requirements associated with

the speech to rewrite the work done by judges in that Division. She emphasises the challenging nature of the work undertaken by those judges. The work is 'exacting' and involves disputes that are characterised by 'extreme complexity'. The Family Division is a 'jungle' and to be successful in that setting requires skills that can respond to the 'rich diet of Black Letter Law and psychology with accountancy thrown in...' How are we to make sense of the laughter that the comments about the work of the Family Division generated?

One answer is that it acknowledges the different world that Eaton is imagining. The shared experience of laughter is recognition of that proximity. The humour may lie in the challenge to the status quo that comes about by virtue of the uses of congruity; making proximate things that are usually separate. But it may also lie in the temporary nature of the pleasures of a disturbance of the status quo; the return of the status quo may enable some to laugh. This particular example of a humorous incident may offer some evidence of the use of humour in the context of the swearing in of a new female judge to reframe an established hierarchy offering a different characterisation that revalues aspects of the judicial institution.

This is also much in Eaton's speech that points to her allegiance with the status quo. The demonstration of her ability with wit may be one example of this. Another is in her choice of parallels. All three produce/reproduce a violent hierarchy of insider/bourgeois elite over against the working class as outsider. While equivalence is central to the humour, it is an equivalence that has a short duration.

Conclusions

The comments found on TripAdvisor in many respects capture many of the perceptions and experiences commonly associated with Temple of Justice. But one that is missing is humour. The findings and analysis presented here suggest that while humour may be an exception this does not necessarily lead to the conclusion that it is an aberration in that place. In some contexts it is a requirement. The fact that it occurs outside the ordinary

business of justice that is practiced in that place does not necessarily lead to the conclusion that it has nothing to do with the serious business of justice. The case that has been considered here is intimately connected to some major issues about a key institution that is involved in the delivery of justice; the judiciary. One of the questions at stake in that institution is the serious business of the composition of the judiciary and the ongoing under representation of women in the higher reaches of the judiciary.

The swearing in of Lady Justice Macur provides an opportunity to examine the nature and use of humour that is 'in place'; an accepted and required part of judicial proceedings. The fact that one of the individuals involved in making the humour was a woman is some evidence that in the context of this particular judicial institution the simplistic model of 'actively joking men and the receptively smiling woman' has lost some ground. The fact that this is a rare example suggests that the emphasis needs to be placed on 'some' when thinking about the progress women have made. But Eaton's speech provides an example of a woman who is in a position in which she has a degree of control over the processes of imagining the judiciary as an institution and the place of women within it. This is perhaps most clearly demonstrated in the humour associated with her re-characterisation and revalorisation of the Family Division. At the same time the incongruities she makes and deploys around social class have the potential to (re)inforce the status quo of class division in the judicial institution. Whether the contiguity has the potential to challenge it is more problematic.

REFERÊNCIAS BIBLIOGRÁFICAS

ANLEU, Sharon. R, Kathy, MACK and J. TUTTON (2014) 'Judicial humour in the Australian Courtroom' *Melbourne University Law Review* (38) 621

BERGSON, Henri (1914) *Laughter: An essay on the meaning of the comic*

BROWLEE David B. (1984) *The law courts: the architecture of George Edmund street. Architectural History Foundation/Mit Press Series, Boston.*

EATON, Deborah (2013) 'Lady Justice Macur'. Copy on file with the author.

HALDAR, Piyel. (1994) 'In and out of court: On topographies of law and the architecture of court buildings' *International Journal of the Semiotics of Law* 7(2) 185-200.

KOTTHOFF, Helga. (2006) 'Gender and humor: The state of the art' *Journal of Pragmatics*, 38(1) 4-25

MOHR, Richard. (1999) 'Unauthorised performances: Court rituals in satire, carnival and failure'. Available at:
https://www.academia.edu/8229880/Unauthorised_Performances_Court_rituals_in_satire_carnival_and_failure

MORAN, Leslie. J. (2013) 'Research notes on the swearing in of Dame Julia Wendy Macur DBE as Lady Justice Court of Appeal 31st July 2013 at 9.30 am Royal Courts of Justice'. Copy on file with the author.

MORAN, Leslie. J. (2012) Interview 27/9/12, Royal Courts of Justice. Interviewee: Lord Chief Justice, Lord Judge. Rachael Collins Senior Press Judicial Office was also present'. Copy on file with the author.

- MORAN, Leslie. J. (2011) 'Forming sexualities as judicial virtues' *Sexualities*, (2011) 14(3), 273-289.
- MORAN, Leslie. J. (2008) 'Judicial bodies as sexual bodies: A tale of two portraits' *Australian Feminist Law Journal* 29 (December) 91-108.
- MULCAHY, Linda. (2010) *The Place of Law: The architecture of the law court and its relationship to due process*, Routledge Cavendish.
- RESNIK, Judith and CURTIS, Dennis, (2011) *Representing Justice: Invention, controversy, and rights in city-states and democratic courtrooms*. New Haven: Yale University Press.
- SCARDUZIO, Jennifer. (2011) 'Maintaining order through deviance: the emotional deviance, power and professional work of municipal court judges' *Management Communication Quarterly* 25(2) 283.
- SINFIELD, Alan. (1991) 'Private Lives/Public Theatre: Noel Coward and the politics of homosexual representation' *Representations* 36(Fall): 43-63.
- STOTT, Andrew (2005) *Comedy*, Routledge, Abingdon.
- VAN GENNEP, Arnold (1960) *The Rites of Passage*. Translated by Monika B Vizedom and Gabrielle L. Caffee. University of Chicago Press, Chicago.

