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To Kill a Songbird: A Community of Women, Feminist Jurisprudence, Conscientious Objection and Revolution in *A Jury of Her Peers* and Contemporary Film¹

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Abstract. In Susan Glaspell's *Jury of Her Peers*, women's awakening, their feminine bonding, and ideological activism are inseparable from their realization of the gender discrimination and oppression inherent in the existing legal system, and their responsive creation of alternative, feminine justice and judgment. The search for feminist consciousness and the foundation of an informed community of women imply rejection of the legal order as a tool of patriarchal domination, and exploration of feminine legal thought. I suggest that in her 1916 short story, Glaspell anticipates both legal feminist theory that focuses on dominance, oppression, and resistance,² and psychological feminist theory that focuses on an ethics of care, women's voice, and feminine networking.³ Further, her narrative offers a uniquely coherent, comprehensive world-view, combining the two perspectives, often perceived as contrasting. Quilting serves as a three-dimensional metaphor for feminine social networking, feminist storytelling, and women's engagement in law (their unique method of piecing evidence together). Quilting thus symbolically mediates between the fundamental structures of feminine community, feminist literature, and feminist legal thought. Introducing jurisprudential rhetoric, I go on to show how Glaspell's literary quilting of feminine communality and feminist legal thinking represents an episode of emerging feminist consciousness as an act of collective "conscientious objection"—if not potential revolution. My essay concludes with the suggestion, based on personal teaching experience, to include *Jury* in law-school curriculum, together with contemporary feminist films. Significant issues and motifs link Glaspell's short story (and play) with contemporary feminist film. Read with Glaspell's text, feminist films can be seen as modern, influential remakes of her turn-of-the-twentieth-century work. Such films, as well as their literary predecessor, are powerful teaching materials in twenty-first-century law school curriculum.

Keywords: A Jury of Her Peers, *feminist jurisprudence*, *conscientious objection*, *Susan Glaspell*, *feminist films*, *feminism and the law*, *women's community*, *feminine communality*, *feminine legal culture*, *revolutionary disobedience*, *patriarchal legal dominance*, *patriarchal law*, *Marleen Gorris*, A Question of Silence

STORY SYNOPSIS

In Glaspell's 1916 story (based on a 1900 court case, which Glaspell then covered as a reporter),⁴ an abused woman, Minnie Foster (Wright), strangles her abusive husband (Mr. Wright) to death in his sleep. As Marina Angel notes:

Susan Glaspell refined the fictional case of an abused woman who kills her abuser into the most dramatic and legally complex situation: the wife was emotionally abused, but not obviously physically abused by her husband; she killed her sleeping husband sometime after the specific abusive incident had taken place; she killed by a means—strangulation with a knotted rope—considered difficult and abnormal for a woman, especially since there was a loaded gun in the house.⁵

The narrative begins when the sheriff, the county attorney, and a witness visit Minnie's home, the scene of the crime, in search of evidence and a motive. They are joined by the sheriff's wife, Mrs. Peters, and the witness's wife, Mrs. Hale, who were asked to select some clothes for the imprisoned Minnie Foster. As the men inspect the outdoors and the upper floor in search of clues, the two women bond with the absent Minnie and with each other as they explore her kitchen. Through dialogue, applying their own life experiences while closely reviewing the details of her oven, armchair, towel, and preserves, the women piece together Minnie's secluded, lonely, silenced life. Finding an empty birdcage and the strangled body of a treasured canary, they recognize the deceased man's dominating brutality that had triggered Minnie's desperate, violent outburst. "No, Wright wouldn't like the bird . . . a thing that sang. She used to sing. He killed that too."⁶

The women reason that the strangled bird had been treasured by the desperately lonely farmwife for its companionship and killed at the hands of her husband, and must have been the proverbial last straw prompting the wife to kill her abusive husband.⁷

Examining the stitches of the quilt she was knotting, they learn of her distraction and excitement after committing the killing.

Belittling the women, the condescending men exclude them from the legal investigation, doubting the women could recognize a forensic clue.⁸ External to the official process, the women collect the evidence, analyze it, and reach their own verdict:

[T]he women try the case, find the accused guilty, but dismiss the charge, recognizing the exigencies that led her to the act. In the process of judging they become compeers, Mrs. Peters recognizing her own disenfranchisement under the law and her own potential for violence, Mrs. Hale recognizing her failure to sustain her neighbor and thus her culpability in driving the desperate woman to kill.⁹

They refrain from supplying the investigating men with the dead canary, and undo and replace Minnie's uneven stitches. Realizing their social position outside the legal arena as well as the law's inability to see women's lives, to hear their stories, to recognize their pain or to try them justly, they refuse to cooperate and instead implement their own justice in a silent, collective act of defiance and disobedience. "Not waiting to be given the vote or the right to serve on juries, Glaspell's women have taken the right for themselves."¹⁰ Yet their disobedience is secret and their voices remain mute. Perhaps they save Minnie Foster, but they do not attempt to change the world. Excluded from the legal process and the public sphere, their brave act of feminine solidarity and resistance remains unnoticed. Thrown together through the tragic fate of another woman, they are momentarily enlightened and empowered. Yet this communal activism is short-lived and of limited scope; they do not reach out to other women, nor do they attempt to leave their mark on history before returning to their respective solitary kitchens.

WOMEN'S COMMUNITY, DOMINANCE AND CARE

Female bonding is a central theme in *Jury of Her Peers*, long celebrated by feminist writers.¹¹ Conversing, Minnie's neighbor and the sheriff's wife realize how difficult her work must have been at the bad stove, how shabby and humiliated she must have felt in her worn-out clothes, and how she must have longed for music. They appreciate how desperately she must have missed

other women's company and their social activity, friendship, warmth, conversation, and compassion. Pausing from their daily chores to scrutinize Minnie's life, they come to apprehend their own, reluctantly admitting: "We all go through the same things—it's all just a different kind of the same thing! If it weren't—why do you and I *understand*? Why do we *know*—what we know this minute?"¹² As Karen Alkalay-Gut rightly notes, the women "not only sympathize but also *identify* with the murderess."¹³ Looking into Minnie's life, they are horrified to discover that it reflects their own. Faced with this reflection of their muted lives, they share the painful process of seeing themselves, confronting the reality of their lives, admitting it, voicing it, and acting on it as a community.

Acknowledging Minnie's life as a reflection of their own lives, Mrs. Hale and Mrs. Peters recognize their distinct cultural perspective as women and find their unique, communal voice. Using this newly discovered voice, they begin to articulate their story of Minnie's life and of their own. The women's story is told with much compassion for the accused woman. Their quiet, hesitant narration focuses on emotional elements: her pain, hardship, and disappointment. Empathizing with the absent woman, the two neighbors notice the smallest details of Minnie's life, respectfully acknowledging their significance. Intuitively, "[i]t came into Mrs. Hale's mind that that rocker didn't look in the least like Minnie Foster—the Minnie Foster of twenty years before. It was a dingy red, with wooden rungs up the back, and the middle rung was gone, and the chair sagged to one side."¹⁴ Minnie's life is reflected in that chair. Similarly, the women apprehend the hard labor that went into preparing the fruit preserves they find in her kitchen, and feel for Minnie's loss. They appreciate the sentimental value of Minnie's little box, which she must have had since childhood, and understand her deep attachment to the canary she buried in it. They notice the uneven stitches in Minnie's quilt, expressive of her emotional turmoil, and carefully replace them with prettier ones. In contrasting the women's attitude with the men's, Glaspell emphasizes the distinct nature of their different voices and points of view.

While Glaspell's female protagonists speak in a different voice, the story they tell is one of patriarchal dominance and oppression. The Minnie they reconstruct is an abused woman, confined and tormented by a tyrannical spouse. Witnessing the men's legal investigation of Minnie's crime, the women perceive it as additional abuse of the unfortunate woman. Invading Minnie's home, the men turn it against her. Blind to the tragic circumstances

of her life, they read every piece of information as testifying to her guilt. Even the dirty towel is said by the men to attest to Minnie's lack of the "home-making instinct."¹⁵ Further, Glaspell subjects Mrs. Peters and Mrs. Hale themselves to male oppression. The men repeatedly belittle, patronize, and mock them, trivializing their domestic work, doubting their intelligence, and ridiculing their interest in feminine craft. "[W]omen are used to worrying over trifles,"¹⁶ observes Mr. Hale, and wonders: "[W]ould the women know a clue if they did come upon it?"¹⁷ In response, "[t]he two women moved closer together."¹⁸

It is, therefore, masculine oppression and the women's awareness of it that bring about their unity, their support of Minnie, and their increasing awareness of their unique feminine identity, voice, story, and community. As Marijane Camilleri puts it, "Exclusion and vulnerability compel the women to unite in the hopes of emerging politically empowered persons, and the women in the story find security in each other's company."¹⁹ To use Catharine MacKinnon's familiar phrase, it is the men's boot on their necks that instigates their different, communal voice. Nevertheless, once vocalized, this voice is unique and powerful, although discrete. It is clear and brave, caring and just, genuinely valuable and feminine. In a paradoxical way, it is under the tyranny of patriarchal oppression that Glaspell's women converse and find their collective feminine voice. But once found, their voice marks the community of women, empowering them in resistance to patriarchal oppression.

THE LAW AS INSTIGATOR OF WOMEN'S COMMUNITY AND FEMINIST JURISPRUDENCE

The law plays a crucial part in the awakening and transformation of Mrs. Hale and Mrs. Peters, both as vehicle of male oppression and in provoking a responsively unique feminine culture. The existing legal system manifests male domination of women. It is closely associated with male brutality, patronizing attitudes, and systematic exclusion and dismissal of women. In Glaspell's text, men participate exclusively in the official legal enterprise that is aimed solely at proving the woman's guilt of the death of the man. The sheriff, country attorney, and farmer form the homogeneous male community that searches for evidence, establishes the facts of the case, determines the scope of relevance, and evaluates the reasonableness of actors and behavior. It is the men's

common sense, their life experience, and point of view that underlie the entire preliminary procedure that will later frame and determine events in the courtroom. From the men's perspective, John Wright was a good man: "He didn't drink, and kept his word as well as most, . . . and paid his debt."²⁰ He was respectable and intelligible. Mrs. Wright, on the other hand, lacked the "home making instinct," and looked "queer."²¹ She was strange, incomprehensible, and a failure at her social and domestic duties. Neither the men nor the law can see Minnie Foster: the reality of her life with John; her hard work; her pain, isolation, and frustration. Least of all can they see her victimization by her husband, nor can they apprehend her violent response as "self-defense" or a desperate act of self-preservation provoked by his cruelty. Within this legal story and logic, she must be inherently wicked, or simply "insane." Either way, her existence is deeply disturbing and threatening to the legal order, and she must be punished and distanced. Other women must be disciplined accordingly.

In *Jury*, the brutal blindness of the legal investigation all but forces Mrs. Hale and Mrs. Peters to identify with Minnie Foster. They rightly realize that they each could have been in her place, and that mere chance or luck has spared them this time. As Alkalay-Gut points out, "Minnie's existence and her behavior are determined by her man who makes the rules she lives by. In this respect, all three women are the same. Their behavior varies only because different men motivate different behavior."²² The law's patronizing dismissal of everything the women know and understand, of their life experience and point of view, leaves them no choice but to rebel. Glaspell's women realize that accepting the legal system's interpretation of Minnie would entail accepting a system of meaning in which *all* abused women are either evil or crazy. It is a system of meaning that excludes their perspective, obviating their "subjecthood" and status as human beings. It is a system of power that is bluntly and blatantly set against them, one that is inherently unjust and dangerous to them as women. Accepting it would mean self-denial and self-annihilation. Resistance and disobedience are therefore acts of self-defense and self-preservation whereby the women preserve their dignity, humanity, and sanity. They have endured hard work, isolation, daily patronizing, and mockery, but this legal dismissal and dominance threaten the core of their existence, and they must confront it. And since it is as women that the law challenges them, they unite against it as a community of women.

In the face of a hostile, masculine legal system, the women find their own distinct sense of justice and judgment. They apply their own common sense, life experience, and point of view. Conducting an alternative legal process, they determine what is and is not relevant to the case, and what constitutes reasonable behavior. They pay careful attention to the smallest details, mocked and ignored by the investigating men, relying on intuition and expressing compassion. They see the tragic circumstances of Minnie's life, respect them, and deem them relevant. They recognize John Wright's brutality and violence as horrible crimes committed against Minnie. They acknowledge the devastating effect of isolation and silence. They assume personal and communal responsibility for society's negligence and indifference to Minnie's suffering. They establish the existence of a "reasonable woman," determine her distinctness from the "reasonable man," and find that, placed in Minnie's situation, the "reasonable woman" could well have acted as the accused did.²³ In this, they find Minnie "reasonable" and exonerate her. In their alternative legal proceeding, the women claim the murdered bird as crucial evidence. Within the men's legal system, this evidence would have supplied the motive for Minnie's crime, proving her wickedness, madness, and guilt. Within the women's legal system, the dead bird proves John's crime and Minnie's reasonableness. Uninterested in fine, abstract legalistic distinctions between excuse and justification, the women simply find that Minnie has suffered enough.²⁴ By claiming the crucial evidence (the dead canary) exclusively for their own legal proceeding, the women express self-confidence and faith in their alternative judiciary.

Feminine legal culture is thus a clear outcome of and response to patriarchal legal dominance, yet it manifests a distinct ethos of compassion and care. Two feminist perspectives that are often perceived as contrary and adversarial, the ethics of care and dominance theories, seem completely coherent and mutually explanatory in Glaspell's story. Patriarchal law is so deeply oppressive to women that their only rational means of resistance and survival is communal disobedience. No individual woman stands a chance in the face of the coercive, pervasive, and powerful legal system. Extending existing individual legal rights to women is irrelevant reparation. In order for women to survive the law, their collective social oppression must be acknowledged, and the reality of their social conditions must be viewed from their own unique perspective. A resisting community of women, speaking in a different voice, is therefore imperative in the face of the hostile legal system.

QUILTING AS METAPHOR FOR FEMINIST COMMUNITY, STORYTELLING, AND LEGAL THOUGHT

Quilting is one of *Jury*'s central metaphors, much discussed in feminist scholarship. I wish to emphasize that this feminine skill, ridiculed and minimized by the men in the story, serves Glaspell to define not only feminine communal networking, but also feminine legal thought. In women's legal thinking, as in their community-making, "Each patch has an individual entity, but its beauty (and meaning) is in relationship to the other patches formed with similar painstaking consideration. The colors are coordinated and contrasted by balance and relationship, but the general pattern is one that emerges with the quilt."²⁵

The art of quilting is a patient one, dignifying small details, aspiring to communal harmony and respecting the uniqueness of each material and piece, different, worn-out, or "queer" as it may be. Quilting demands long-term solidarity and caring investment, an eye for trifles and a vision of harmony. It is a practical art, gracing survival with beauty. Patiently, respectfully quilting together the small pieces of life, Glaspell's women compassionately understand and judge Minnie's violent act in the full context of her chronic and prolonged victimization. In this context, their deliberation about Minnie's intention to quilt or knot her work is deeply significant.

Quilting and knotting, also called tying, are two different methods of holding the soft filler in place in the individual pieces that make up the quilt. Quilting is a more artistic, but time-consuming, method of in-and-out stitching. Knotting is simple, quick, single stitch. That Minnie Wright was going to knot rather than quilt the individual pieces is symbolic both of the joyless, spartan life Mr. Wright had forced on her and her method of killing him. The story ends with the county attorney facetiously asking about the quilt and Martha Hale responding that Minnie Foster Wright was going to "knot it, Mr. Henderson."²⁶

In their determination that Minnie was knotting (rather than quilting), the women pronounce judgment: John Wright's brutal restriction of her life forced his wife to "knot," i.e., it was his abusive behavior that provoked her and elicited her violence against him.

Like Mrs. Hale and Mrs. Peters, Susan Glaspell quilts her story compassionately. Unlike an official legal decision, her text does not open with an "objective," "factual" narration of John Wright's strangulation by his wife.

Such a seemingly “neutral” presentation of the “relevant facts” would have been damning, closing the reader’s mind rather than opening it to attentive reading of details and complexities. The text opens with Mrs. Hale’s unfinished work in her kitchen, and it is from her point of view that the small patches of detail slowly come together to form the sad picture of Minnie’s life and crime. The patches quilted together in the making of meaning include experiences and memories from the lives of all three women, and the outcome is a colorful, communal story. The crime only emerges in the context of the bigger picture of Minnie’s life and of women’s lives generally; it is not an isolated, objective, given fact, but an interpretation of a cluster of details within a wider context. This story’s reader is invited to join Mrs. Hale, Mrs. Peters, and Susan Glaspell in quilting the story of women’s lives, victimization, and crimes. She is further invited to quilt together feminine community-making, feminist storytelling, and feminist legal thought, and to join the feminine community of characters, writer, and readers constituted by the text.

FEMININE COMMUNITY: FROM CONSCIENTIOUS OBJECTION TO POTENTIAL REVOLUTION

I contended that in *Jury*, a resisting community of women is essential in the face of the official legal system, which is inherently blind and hostile to women. Another facet of this argument, as Glaspell’s work recognizes and demonstrates, is that *a genuinely feminine community, taken seriously, is inherently a resisting and disobedient community*. In order to examine more closely the jurisprudential implications of this hypothesis, let me introduce the conventional terminological distinction between “conscientious objection,” “civil disobedience,” and “revolution.”

In his classical treatment of the jurisprudential issue, the legal philosopher Joseph Raz offers the following summary of three distinct categories of legal disobedience:

It is convenient to follow the traditional classification of morally and politically motivated disobedience into three categories: revolutionary disobedience, civil disobedience, and conscientious objection. *Revolutionary Disobedience* is a politically motivated breach of law designed to change or to contribute directly to a change of government or of the constitutional arrangements (the system of government). *Civil Disobedience* is a politically motivated breach of law designed

either to contribute directly to a change of a law or of a public policy or to express one's protest against, and dissociation from, a law or a public policy. *Conscientious Objection* is a breach of law for the reason that the agent is morally prohibited to obey it, either because of its general character (*e.g.* as with absolute pacifists and conscription) or because it extends to certain cases which should not be covered by it (*e.g.* conscription and selective objectors and murder and euthanasia).²⁷

A person engaged in an illegal act of a revolutionary type wishes to challenge and undermine the entire existing social and legal order. He or she does so in an attempt to expose the inherent flaws of the ruling ideology or institutions and to convince the public to join a political effort challenging the existing social order and replacing it by a superior one. The particular breach of law is designed to serve a full-blown revolution. In contrast, a person performing an illegal act as civil disobedience does *not* wish to challenge the hegemony of the ruling order. Such a person wishes to strengthen, protect, and perfect the ruling order by calling public attention to a specific rule or legal institution which, in his or her mind, severely contradicts and endangers commonly held values and assumptions underlying the social order. A person performing an act of civil disobedience breaks the law as a message from a single, concerned, generally-obedient citizen to all others; the act is a means of appealing to the community that he or she believes shares his or her respect for and commitment to the legal system and the ideology it upholds. It is in the name of ideological solidarity and the sanctity of the rule of law that the person performing civil disobedience breaches the law to demand protection and perfection of the existing system, and in this sense it is an essentially conservative act.

Unlike either of these social actors, a conscientious objector appeals to no one. He or she privately deems a certain legal arrangement immoral and refuses to adhere, comply, or participate. A conscientious objector does not seek to sway public opinion, does not aim to challenge or uphold existing ideologies and social systems, and is not motivated by an ambition to instigate political changes. He or she merely wishes to avoid participation in a specific situation sanctioned by law. Raz stresses that "[r]evolutionary acts and civil disobedience are cases of political action, they are essentially public actions designed to have a political effect. Conscientious objection is not. It is essentially a private action by a person who wishes to avoid committing moral wrong by obeying a (totally or partially) morally bad law."²⁸

Raz claims that

much intellectual effort has been invested in an attempt to articulate and justify a doctrine of the permissible forms of civil disobedience. It must be used as a measure of last resort after all other means have failed to obtain one's desired goal; it must be non-violent; it must be openly undertaken; and its perpetrators must submit to prosecution and punishment; such acts must be confined to those designed to publicize certain wrongs and to convince the public and the authorities of the justice of one's claims; it should not be used to intimidate or coerce. Such and similar conditions have been much discussed and often favored.²⁹

Raz maintains that narrow definitions of civil disobedience are designed to support the claim that civil disobedience is morally justified. He himself argues that "there is no moral right to civil disobedience in liberal states; normally there is such a right in illiberal states,"³⁰ and that "[t]he case for a right to conscientious objection—however, even in liberal states—seems much stronger."³¹ Nevertheless, "[a] right to conscientious objection should be introduced only very sparingly and only in the absence of better ways of protecting freedom of consciousness."³²

Read in light of this discussion, *Jury* poses the jurisprudential questions of how to categorize Mrs. Peters' and Mrs. Hale's illegal conduct, and whether it can be justified. Using Raz's definitions and following the logic of his analysis, *Jury*'s protagonists' withholding of evidence most resembles conscientious objection. Mrs. Peters and Mrs. Hale refuse to obey a law that seems to them morally wrong, but do not articulate a "political" ideology. Their conduct is not publicly oriented to call for and bring about systematic change. They avoid performing a legal act that seems thoroughly immoral to them, but refrain from addressing their community in a demand for support, recognition, and change of existing legal arrangements. Can such conscientious objection be justified within Raz's conceptual framework? Given the disenfranchisement of American women in 1916 (they could not vote or serve on juries), the relevant political system may be described as "illiberal," at least in its treatment of women. Under such circumstances, Mrs. Peters and Mrs. Hale's fear that Minnie would not get a fair trial can be understood and deemed "reasonable," and their choice to disobey the law demanding their cooperation in her prosecution can thereby be justified. The story makes it clear that the women saw no alternative legal means of avoiding the immoral outcome of supplying the legal system with evidence of Minnie's crime.

Their action was not violent and did not provoke fears of additional acts of legal disobedience. *Jury* thus seems to present a case that can be accommodated by traditional jurisprudential categories and logic, and even justified as manifesting reasonable conscientious objection.

And yet, *Jury* may also be read in a more radical light, as a text offering deeper criticism of the ruling legal system and its clear conceptual distinctions. Glaspell's awakening women feel their new communal solidarity compels them, while withholding evidence from the state legal system, to conduct an alternative legal proceeding. Further, their newly realized solidarity leads them to perceive society, social responsibility, the boundaries between private and public, and therefore also the functions of the legal system in a new light. Martha Hale feels she should have been more involved in Minnie's life. She understands that she should have been more available to Minnie, quilting with her, talking with her, supporting her, preventing John Wright's complete isolation and domination of her. She recognizes that a woman needs a supportive feminine community to maintain her sanity and identity. Her realization implies a woman's right to protection from isolation and abuse, and society's obligations to her. The existing legal system in *Jury* reflects and upholds a set of individualistic values, distinguishing the private sphere from the public one, limiting social intervention to the latter. Martha Hale's newly acknowledged value system implies an alternative legal philosophy, one that would interfere in men's "private" spheres, acknowledging violence against women and taking proactive action to prevent spousal abuse. Within this alternative forensics, silence in the face of brutal spousal behavior would be a crime. Reflecting on her own past behavior, applying her new standards, Martha voices the logic of her alternative law: "Oh, I *wish* I'd come over here once in a while!" she cried. "That was a crime! Who's going to punish that?"³³

Let me push this line of thought further. Robin West reads *Jury* as a critique of a fundamental social value and institution sanctioned by law, marriage as we know it:

Through marriage, the story suggests, young girls are separated from their communities and families of nurturance, and isolated within heterosexual relationships in which they are expected to altruistically sacrifice their own needs and subordinate their own wills, and which are often—typically?—far less emotionally nourishing than the communities from which they came. That lack—the absence of emotional nourishment—is severely injurious.

Whether or not a marriage is physically abusive, a marriage in which a woman's need for intimacy and emotional companionship is not met, and which simultaneously severs her from sources of emotional nourishment, is profoundly damaging. . . . What it is about is the injury done to women through the rendering of their emotional attachments to their largely female communities of origin, and of friendships, and the displacement of those communities with the too often isolating, cold, and non-sustaining relationship of heterosexual marriage.³⁴

Within this framework, creation of a feminine community challenges a social institution that obviates and precludes communities of women (thereby silencing women, undermining their source of strength, subjecting each of them to the rule of an individual man, and facilitating their domination and oppression). In our patriarchal societies, "[t]he function of law is to validate, through the institution of marriage, the isolation of women from each other."³⁵ A community of women, therefore, can be a direct challenge to existing law and the rule of law. Such a community can challenge not merely a single rule, decision or legal institution, but the entire legal order. If the law upholds and enforces an ideological preclusion of women's community and culture, then constitution of such a community and culture confronts it directly, implying an alternative set of values, social order and legal system, the substitution of a patriarchal legal order with a completely different, egalitarian one. Seen in this light, a community of women, such as described, constituted, and propagated by *Jury*, contains the potential for full-scale revolution.

Let me conclude this jurisprudential discussion with yet another dimension. Stripped of its wider context, the literary legal transgression performed by Glaspell's fictional Mrs. Hale and Mrs. Peters can be viewed as a discrete instance of withholding of evidence, motivated by specific moral reasons, and therefore a clear case of conscientious objection. As such, the fictional characters' illegal act may even be justified within conventional jurisprudential logic. But *Jury* strongly resists literal reading, insisting on "holistic," wide-ranged reading-in-context, implicating its readers in the acts of its characters. Hale and Peters' fictional withholding of evidence must be viewed together with Minnie's fictional killing of her abuser, with Susan Glaspell's artistic portrayal of these illegal acts, and with generations of readers' identification with and justification of the fictional characters' transgressions. The fictional act of conscientious objection must be read within a century-long history of feminist philosophy and activism, in a context of continually expanding communities

of women. The complex of fictional and non-fictional feminine attitudes towards patriarchal law and social order is deeply public and political. In context, Mrs. Peters and Mrs. Hale's fictional private act of conscientious objection takes on ideological dimensions, challenging specific legal structures as well as patriarchy in general. From this perspective, *A Jury of Her Peers* engages in what I would call "poetic revolutionary networking," or, more simply, "feminism." It challenges conventional jurisprudential categories, as well as the clear-cut separation of "fictional" from "real" and "literary" from "legal," in a context of feminist community-building, storytelling, and legal thinking that transcends temporal and spatial boundaries.

JURY IN LAW-SCHOOL CURRICULUM

Jury's insights are as relevant today as they were at the turn of the twentieth century, and need to be presented to law students today as then. Having taught *Jury* several times in three law schools in two different parts of the world,³⁶ I know it to be a powerful and thought-provoking text.

A reading of *Jury* can be integrated in various ways in traditional law-school classes (such as Evidence, Family Law, Criminal Justice, and Jurisprudence). I have taught it in a Law and Literature class that focuses on the portrayal of women as victims and criminals in law and film.³⁷ In this context, the text's specific insights and arguments (discussed throughout this paper) elicited important class discussion. Further, the text illuminated and illustrated the significance of unconventional theoretical perspectives such as "law and literature," "feminist law," and "feminist law and literature." Legal studies, like legal practice, often distinguish between "relevant" and "irrelevant" facts, values and considerations, inviting practices of exclusion and narrow construction of arguments and decisions, isolated from wider socio-cultural contexts. Literature, as well as feminist thought, invites inclusion of details, values and readings, emphasizing broad contexts and humanitarian motivation. In this respect, feminism and literature pull in the same direction, a direction that cannot fail to enrich the training and practice of legal professionals. A close reading of *Jury* with law-school students effectively makes this point.³⁸ Glaspell's careful treatment of "trifles," like that of her protagonists, demonstrates both literary and feminist compassionate sensitivity to detail, portraying the dramatic discrepancy between "masculine," legalistic proceedings and

outcomes, and “feminine,” “literary” ones. The text leaves no doubt as to the great cost exacted by the blindness to detail and to social context of the men and their legal system, through their lack of empathy and insensitivity to excluded Others.

In the specific context of a “feminist law and film” class, *Jury* can serve as an excellent focal point for analysis of feminist films dealing with women’s victimization and criminal behavior. Comparison with *Jury* reveals important aspects of these films’ treatment of issues such as feminine community, feminist theories of dominance and care, disobedient feminine behavior in the face of oppressive law, and the possibility of male-female dialogue and heterosexual pairing. The 1948 film *Adam’s Rib* and the 1991 film *Thelma and Louise* are two prominent representatives of this feminist sub-genre,³⁹ while perhaps the most interesting example is Marleen Gorris’ acclaimed Dutch film *A Question of Silence* (1982).⁴⁰ In this text, a silenced, oppressed housewife confronts the boutique owner who catches her shoplifting and refuses to return the stolen dress. Joined by two other female shoppers, these three customers attack the condescending boutique owner and beat him to death. Four other female customers stand by watching, and silently leave the shop. Awaiting trial, the three defendants are interviewed by Janine, a woman psychiatrist (married to a lawyer) assigned to determine their sanity. The housewife refuses to speak, while the other two narrate fragments of their lives. The bewildered psychiatrist attempts to apply detached, abstract, formal professional tools, but is co-opted by the defendants who demand that she treat them as women rather than scientific objects and that she see their points of view and hear their voices with empathy, compassion, and care. Janine comes to see the gender discrimination and oppression that pervade the women’s lives and that triggered the violent outburst. Transformed, she informs the court that the women are perfectly sane. Her opinion, unacceptable to the legal system, evokes harsh responses from lawyers and judges, including her own spouse. In the meantime, the three defendants in the courtroom respond with roaring laughter to the prosecutor’s complete failure to understand them, obstructing the legal proceeding. As they are taken away, Janine finds herself bonding in silence with the other boutique customers, the silent courtroom audience. Walking away from the courthouse, looking away from her waiting husband, her eyes find theirs and she smiles.

In this drama of emerging feminine community in the face of a hostile legal system, the woman psychiatrist is a contemporary Mrs. Peters. Like Glaspell’s

character, Janine is perceived by the legal system as “one of us” and “married to the law,” and, like the sheriff’s wife, her intimate acquaintance with the case at hand lures her into a process of awakening, drawing her into a resisting community of women. Like Mrs. Peters, Janine finds herself torn between her loyalty to her husband and professional career on the one hand, and the silent and laughing community of (oppressed) women on the other. Further, *A Question of Silence* embraces three of *Jury*’s central themes, lending them forceful cinematic treatment. Echoing Glaspell’s quilting metaphor, *A Question of Silence* pieces together flashes of the women’s lives into a painful, colorful, pattern of oppression and humiliation. Respecting the uniqueness of each woman’s life, preserving the distinct character of each of their stories, the film weaves them into a coherent feminist manifesto. The murder is not presented in one coherent cinematic scene, nor is its narration placed at the beginning of the film; rather, the depiction of the crime is made up of short flashes, quilted together with flashes portraying the women’s muted lives both before and after the crime. Emerging in the full, detailed context of women’s oppression under patriarchy, the accused women’s crime thus blends in with their systematic victimization. Narrated in small doses, towards the film’s end, only after the viewer is well acquainted with the women’s long-standing victimization, the murder is presented, if not as justified, at least as comprehensible.⁴¹

Extending another of *Jury*’s central features, *A Question of Silence* creates ever-expanding resisting communities of women, inviting its viewers to identify, join, and participate. In *Jury*, the reader observes Mrs. Peters and Mrs. Hale disobediently withholding evidence and assisting a killer after the crime as they discover the silent, desperate killing committed by Minnie Foster. The reader, and the woman reader in particular, is invited to emulate Mrs. Hale and Mrs. Peters, identifying with them as they do with Minnie, justifying their rebellion as they justify hers. Similarly, *Silence* presents its viewer with several expanding circles of disobedient women, inviting the viewer to join their community. The housewife is joined in the killing itself by two other customers; these three are silently joined by the other women customers, witnesses who withhold evidence and who come to offer moral support in the courtroom. Janine, the psychiatrist, comes to understand and identify with the accused women, joining them and the silent female witnesses in rejecting her official obligation to the legal system; this move the (woman) viewer is invited to share.

Finally, like *Jury*, *Silence* explores the jurisprudential implications of a community of women. In fact, it can be read as taking *Jury*'s approach to its logical conclusion. The public, ritualistic murder of the boutique owner, performed by the defendants, their silence and laughter in the face of the law, the witnesses' withholding of evidence, and Janine's refusal to define the women as insane present a large-scale feminist revolution. The film's women, completely alienated by the oppressing patriarchal system, deny the system's legitimacy, and actively refuse to acknowledge it. They resist the social order's attempt to classify and explain them within its logic and concepts, stripping it of any power it could have over them. Through identification with Janine, the film's woman viewer is invited to validate the women's rebellion against the rule of patriarchal law.

A contemporary Palestinian-Israeli documentary film offers a profoundly disturbing gloss on both Glaspell's story and Gorris' feature film. Nizar Hassan's 1996 *Yasmin* documents the story of an eponymous Palestinian-Israeli female prisoner. The film patches together fragments of the director's interviews with Yasmin, some in prison and others in a cemetery, searching for her young sister's grave. Yasmin's stories introduce the life of a woman, born in 1965, who was married at fourteen to a man she hardly knew. Divorced with two young children, she returned to her father's home, to be closely watched and controlled by her younger brother, Ali. Although she had purchased a home for herself and her children, Ali forbade her to live on her own, demanding that she live under his supervision in their father's house. She describes how, caught attending a wedding, she was locked up and beaten by Ali and a male cousin. As a result, she never again attended a wedding. On another occasion, she reports, her mother gave in to weeks of begging and allowed Yasmin to visit a cinema with her sisters. Sensing her brother's disapproval, she never again sought such permission. In reply to the director's repetitive questioning, Yasmin declares that she deeply loves, honors, and fears her brother. Disobeying him is unthinkable, she claims.

The interviews with Yasmin are woven together with fragments of interviews of other Palestinian-Israeli women and men. The interviewees' life-stories, perspectives, and views vary greatly. Amongst the male interviewees are a conservative Muslim sheik, a male liberal intellectual, and some male university students. Female interviewees include a model and the director's sister Manar Hassan, then a doctoral candidate and the leader of a Palestinian-Israeli feminist organization. Yet the fragmented interviews portray a painfully

coherent reality of women's systematic silencing and oppression in Palestinian-Israeli society.

For almost seventy minutes, Hassan's documentary acquaints its viewer with Yasmin's stories, and those of the other Palestinian-Israelis introduced in the film. Only during the film's last ten minutes do we hear Yasmin's narration of her participation in Ali's murder of their young sister, Amal. Sixteen years old (born in 1975), Amal spent days at a time away from home in the company of an older man who refused to marry her. On one occasion, Yasmin filed a complaint with the Israeli police, specifying that they contact her and not her brother. Nevertheless, the police notified Ali. Having fetched Amal home from the police station, Yasmin tied her up to prevent further escapes. Ali ordered Yasmin to bring her car, and together they laid Amal in the trunk. Pressed by the director to describe the homicide, Yasmin refuses, repeating "please spare me." The film concludes with her statement that upon the death of her sister, she herself died with her.

The legal narrative shows that on October 11, 1991, sixteen-year-old Amal Mussarati was picked up at a police station by Yasmin and other family members. At 5:00 p.m., Yasmin scolded her sister, hit her, and tied her up. At 8:00 p.m., Ali returned home, and ordered another sister to watch Amal. At 11:30 p.m., he ordered Yasmin to bring her car, a Subaru, license plate number 6182082. Yasmin drove to a gas station to fill the car's tank, and returning home helped Ali load Amal, against her will, into the trunk. Yasmin and Ali took turns driving to a secluded spot, where they placed Amal on the ground, behind the car, covering her with a carpet. As Ali took the driver's seat, Yasmin told Amal to praise Allah the Almighty (the Muslim "last rites"). Ali and Yasmin then disposed of Amal's body and the blood-stained carpet, and the next morning Yasmin washed the car and reported Amal missing. In court, Yasmin admitted to all these details, was convicted of manslaughter, and received an eighteen-year sentence. Almost none of these details are included in Hassan's documentary. Equally few of the details documented in the film appear in the legal narrative.

In 1996, Nizar Hassan's documentary did for Yasmin's 1991 homicide what, eighty years earlier, Susan Glaspell's play and short story did for Margaret Hossack's 1900 homicide. By 1996, thanks to persistent feminist activism such as Glaspell's, a crime such as Margaret Hossack's has become widely comprehensible, and legal systems around the world are learning to perceive an abused woman's assault on her abuser within a context of her systematic victimization by him. But a crime such as Yasmin's is still as incomprehensible

and bewildering as the one portrayed in *A Question of Silence*. The connection between women's systematic oppression and victimization under patriarchy and their "random" acts of horrifying violence still eludes contemporary society and its legal systems. Acts of violence committed by oppressed women against persons other than their immediate abusers are still incomprehensible. By cinematically quilting Yasmin's story together with those of other women and men, Hassan invites his viewer to see painful similarities between Yasmin's life and theirs. Associating Yasmin with her society's "reasonable woman," he invites his viewer to identify with Yasmin and understand her story. Like *Jury* and *Question*, *Yasmin* dismisses the existing legal system, exposing its incapacity to see the accused woman in context, and hence to treat her justly. Like *Jury* and *Question*, *Yasmin* suggests that nothing less than a social revolution can set women free and grant them real justice. *Yasmin*, like its predecessors *Question* and *Jury*, continues the struggle to make women's crimes comprehensible in light of their patriarchal victimization. A full century after Margaret Hossack's trial, Glaspell's feminist project is still as revolutionary and relevant as ever.

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- 1 I am grateful to Nita Schechet and Tamar Weiner for generous feedback, assistance, and support.
 2. See Catherine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, MA: Harvard University Press, 1987).
 3. See Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, MA: Harvard University Press, 1982).
 4. For a detailed comparison of the fictional drama with the historical event, see Linda Ben-Zvi, "'Murder, She Wrote': The Genesis of Susan Glaspell's *Trifles*" in *Susan Glaspell: Essays on Her Theater and Fiction*, Linda Ben-Zvi, ed. (Ann Arbor, MI: University of Michigan Press, 1995), 19–47. For an illuminating historical background, see Elaine Hedges, "Small Things Reconsidered: 'A Jury of Her Peers'" in *Susan Glaspell: Essays on Her Theater and Fiction*, 49–69. The accused woman in the 1900 case was Margaret Hossack, who killed her husband John.
 5. Marina Angel, "Criminal Law and Women: Giving the Abused Woman Who Kills *A Jury of Her Peers* Who Appreciate *Trifles*," 33 *American Criminal Law Review* 230–348, 235 (1996).
 6. Susan Glaspell, "A Jury of Her Peers," in *Women in the Trees: U.S. Women's Short Stories about Battering and Resistance, 1839–1994*, Susan Koppelman, ed. (Boston, MA: Beacon Press, 1996), 77–93, 90.
 7. Robin West, "Invisible Victims: Herman Melville's *Bartleby the Scrivener* and Susan Glaspell's *Jury of Her Peers*," in Robin West, *Caring for Justice* (New York: New York University Press, 1997), 218–258, 243.
 8. *Supra* note 6 at 82.
 9. *Supra* note 4 at 34.
 10. *Id.* at 39.
 11. Leonard Mustazza, "Generic Translation and Thematic Shift in Susan Glaspell's 'Trifles' and 'A Jury of Her Peers,'" 26 *Studies in Short Fiction*, 489–496 (1989), shows how this process is much deeper and more interesting in *Jury* than in *Trifles*. See, in particular, p. 496.

12. *Supra* note 6 at 91.
13. Karen Alkalay-Gut, "Murder and Marriage: Another Look at *Trifles*," in *supra* note 4 at 71–80, 75.
14. *Supra* note 6 at 79.
15. *Id.* at 82.
16. *Id.* at 81.
17. *Id.* at 82.
18. *Id.*
19. Marijane Camilleri, "Lessons in Law from Literature: A Look at the Movement and a Peer at Her Jury," 39 *Catholic University Law Review* 557–594, 584 (1990).
20. *Supra* note 6 at 88.
21. *Id.* at 79.
22. Karen Alkalay-Gut, "Jury of Her Peers: The Importance of *Trifles*," 20 *Studies in Short Fiction*, 1–9, 6 (1984).
23. For a discussion of the reasonable woman in this context, see *supra* note 5 at 315.
24. For a discussion of excuse and justification in this context, see Angel, 1996, 316–317.
25. *Supra* note 13 at 73.
26. Marina Angel, "Susan Glaspell's *Trifles* and *A Jury of Her Peers*: Woman Abuse in a Literary and Legal Context," 45 *Buffalo Law Review* 779–844, 804 (1997).
27. Joseph Raz, "A Right To Dissent? I. Civil Disobedience, II. Conscientious Objection," in Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, 1983), 262–289, 263.
28. *Id.* at 264.
29. *Id.* at 269.
30. *Id.* at 272.
31. *Id.* at 278.
32. *Id.* at 288.
33. *Supra* note 6 at 91.
34. *Supra* note 7 at 243–249.
35. *Id.* at 254.
36. Over the course of the last nine years, I have taught *Jury* at the Hebrew and Tel Aviv Universities in Israel and at the University of Michigan in Ann Arbor.
37. My book, *Framed: Women in Law and Film* (Durham: Duke University Press, 2006), contains the analysis of a dozen law-films from countries around the world that portray and discuss women's victimization and aggression. The book grew out of the teaching of these films to law students and is meant, among other things, to enable and assist others in teaching such feminist law-and-literature courses. See Rebecca Johnson, "Judging Magic: Can You See the Sleight of Hand?" 105 *Michigan Law Review* 1353–1366 (2007).
38. For a comprehensive discussion, see *supra* note 19.
39. For a reading of *Adam's Rib* against *Jury*, see Orit Kamir, "X-Raying *Adam's Rib*: Multiple Readings of a (Feminist?) Law-Film," 22 *Studies in Law, Politics and Society*, 103–129 (2000). A feminist analysis of the film is also included in *supra* note 37 at 135–159.
40. For a comprehensive comparison of *A Question of Silence* and *Jury*, see *supra* note 37 at 217–242. See also Linda Williams, "A Jury of Their Peers: Marleen Gorris's *A Question of Silence*," in *Multiple Voices in Feminist Film Criticism*, Diane Carson, Linda Dittmar, and Janice R. Welsch, eds. (Minneapolis: University of Minnesota Press, 1994), 435–437.
41. In this context, it is interesting to compare *Question's* narrative choices with *Adam's Rib's*, which opens with an "objective" portrayal of a woman's violent attack on her husband. The woman's crime is depicted out of context, and it is only much later in the film that the viewer learns of her abuse and oppression by the man she assaulted. For a full discussion, see *supra* note 10.