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AN HISTORICAL VIEW OF THE TERM ESQUIRE AS USED BY MODERN WOMEN ATTORNEYS

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Few developments in philological history are as interesting to the general mind as those which represent the emergence of an aristocracy of words—words which have established an ascendency over others and have begun to claim more than their share of the connotative spoils of language, thereby profoundly reflecting, possibly influencing, the civilization they are supposed to serve. One such word is *esquire.* Although there may be doubt as to the influence this word has had on civilization, there should be none—at least by the end of this essay—about the extent to which it has reflected the evolving values of civilization. But the point of real interest has to do with the affixing of the term in written documents to the names of women attorneys. My concern is in no way with the legality or official propriety of the usage but is rather with its semantics.

To clarify what is meant by "its semantics," one might consider the various terms capable of designating the woman who presides at a meeting: Madam Chairman, Madam Chairperson, Madam Chairwoman, or even Mister Chairman. The literalist (choosing Madam Chairwoman) sacrifices the traditional connotations of terminology to the impact of the denotative moment, while the traditionalist (choosing Mr. Chairman) rejects meaning and sense for the sake of pure form. The compromisers lean in the direction of depersonalization (Madam Chairperson) or paradox (Madam Chairman). In each case the central problem relates to that angle of semantics that might be called "emotional coloring"—something that all enthusiasts, whatever their persuasion, respond to in one way or another, and that no one of good will can ignore.

The term *esquire* is, etymologically at least, a "sexist" term in several ways. For instance, in its earliest known form, the Latin *scutarius,* it is a second declension masculine noun. But this is a matter of grammatical gender and, though relevant to our subject, is not relevant to the subject of emotional coloring. What is rele-

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vant is the gender dealing with the sensible, natural (or more properly social), functional, and with still something more—something that despite the semantic erosion of the ages has never been completely detached from the sexual impact of the word—the sense of gender that derives from meanings that have adhered through ages of change and that still cast their shadows on the borders of memory.

In its abbreviated form *Esquire* is, in modern English correspondence, used as a courtesy after a man's last name. It is almost as widely used as is *Mister,* a term with which it is almost identical in certain shadings of their meanings.[1] In America such a general usage would be considered an affectation hinting in some vague way at social elitism, but there are narrower uses which took shape in the seventeenth and eighteenth centuries. Early in the seventeenth century the rank of gentleman—an official status—was bestowed so generously that the degree of esquire was given, perforce, the role of maintaining differences when differences were disappearing—of representing a superior range of gentleman.[2] By the late eighteenth century the distinctions were defined and refined: There were esquires by inheritance, esquires by royal letters-patent, esquires by prescription, and, finally, those by office or by "reputation." What applied to England in the eighteenth century also, for most of that century, applied to America. The altered circumstances of post-Revolutionary America eliminated as far as she was concerned the relevance of three of the categories of esquire. There being no crown, no peerage, no lords of parliament, no chivalry, no hereditary ranks or degrees, none of the conditions remained to allow for the presence of esquires except the offices that made some by "reputation." This was not a vaguely defined category. From the sixteenth century on justices of the peace (while in commission) and others holding offices of trust under the crown were considered to hold the rank of esquire. Subsequently, more precise definition included officers of the King's Courts, counsellors-at-law, holders of any superior office under the crown, barristers-at-law (but not solicitors), and, in those colonies where the roles of barrister and solicitor were combined, attorneys. It is thus from the common legal heritage of the United States and

[1] So close are they, in fact, that it would be a tautology to use both in the same expression.

[2] Coke certainly, though not clearly, makes the distinctions I follow. E. COKE, SECOND INSTITUTE *667.

England that the tradition derives of describing certain officials as esquires. The perseverance of this tradition, becoming as it has a kind of certificate of professional identity, is a most curious phenomenon in a country philosophically committed to levelling and constitutionally opposed to titular distinctions that harken to an hereditary caste system.

One might consider more fully the evolution of the term. The late Latin source *scutarius*[3] means "shield-maker" and, by extension, "shield-bearer." These two earliest meanings may be seen as suggesting rather strikingly the basic divisions of a social order: the shield-makers, who were workers, originally slaves (*servi*), and the shield-bearers, who were freemen (*liberi*).[4] A massive hoard of words has been preserved well into modern times enhancing these distinctions, though long robbed of their original powers. Freemen were men of birth (*gens*), of note (*nobilitas*), of worth (*dignitas, honestus*), and, by extension, generous (*gens*) and liberal (*liberi*). Slaves are of no birth, are unknown (*ignobilis*), and worthless (*inhonestus*). Freemen of right bear arms;[5] slaves do not—for practical reasons (they might rebel) and for moral reasons (they lack proof of worth).[6]

So, although a late addition to the Latin lexicon in its meaning of warrior, *scutarius* represents an old concept in which is implied a rudimentay caste system evolved from military necessities. That caste was later extended to include religious, legislative, and magisterial functions. It is this association of values and civic functions that survived the evolving complexities of Roman civilization, that survived the collapse of Rome in the fourth and fifth centuries, and that either reasserted itself in the rebirth of civilization in the ninth century or was repeated by the Gothic heirs of Roman civilization.[7]

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[3] See text p. 209 *supra*.

[4] "Et quidem summa divisio de iure personarum haec est quod omnes homines aut liberi sunt aut servi." GAIUS, GAI INSTITUTIONES, Book I, § 9 (4th ed. E. Poste trans. 1904).

[5] The constitutional right of citizens to bear arms is not original to American thinking. *Freeman* and *citizen* are synonymous, both implying a nobility with not only the privilege but the obligation to bear arms. (Gaius, I, secs. 32, and 129). What is original is the eventual extension, by implication, of nobility to all Americans.

[6] From the simple point of view slaves are slaves because they allowed themselves to be conquered (*Id.* § 129); man of honor and worth would have preferred, sought, and achieved death.

[7] Since my concern is mainly with the endurance of a word, I see it as beyond

By the eleventh century in France the word had, as *esquier,* begun to reflect other distinctions. These depend on the fact that feudalism—the dominant social, economic, and military order—had not only a resemblance to tribalism in its two-class system (noble and ignoble, lord and serf)[8] but also a highly systematized hierarchical scheme.[9] In this scheme the *esquier* represented not a general function—that of warrior (whether citizen or hireling)—but a specific rank or degree. He was the potential knight, the apprentice warrior, the son who served his father as shield-bearer, until he could join him as equal in the lists of chivalry (the new military organization).[10] The shield was still an important object in the armory of the warrior—his first line, as it were, of defense—but where warriors in earlier ages had been largely personally accoutered, the cost of their weaponry well within the means of private ctizens, they now had to adjust themselves to an age altered by a new science and technology. Armor covered the new warrior cap-à-pie; it covered his horse; the armor needed maintenance and replacement parts and a service crew of spurriers, platers, cuishers, sheathers, smiths, haubergers, furbishers, and armorers. To get this lumbering mass into battle was a formidable undertaking requiring a subordinate military of jackmen, billmen, spearmen, pikemen, archers, and more. To support the establishment there were not only more craftsmen—bowyers, arrowsmiths—but also victualers, cooks, stablemen, horsemongers, and so on, and so on. All of these formed the basic operating

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my obligation to decide whether when a people adopt a language as the various Gothic nations did Latin—modern French, Spanish and Portuguese are simply dialects of the language of Rome, spoken elsewhere and elsewhen—they adopt the values and institutions of its original speakers or they simply adopt these portions of the language applicable to their own conditions. Whatever the case, *scutarius* survives in late Latin documents of the dark ages to describe the mercenary soldier. And though the role of mercenary would have been contrary to the ideals of most nations that had any ideals (at whatever their stage of development) still the denotative sense of the word as shield-bearer continued to apply.

[8] As Charles Wareing Bardsley put it: "The whole genius of the feudal constitution was opposed to [a middle class]." C. W. BARDSLEY, ENGLISH SURNAMES: THEIR SOURCES AND SIGNIFICATIONS 198 (3d ed. 1889).

[9] This hierarchical scheme was not resolved or completely defined till the sixteenth century, well after the death of feudalism (*exampla:* the establishing in the reign of Henry VIII of an English scale of precedence—still used—and the next century's labors in describing feudal obligations [Coke] and titles of honor [Selden]).

[10] "Our [names] 'Squiers,' 'Squires,' 'Swiers,' or 'Swires' carry us, as does the now meaningless 'Esquire,' to the times when the sons of . . . 'Knights' bore, as the name implies, their shields." *Id.* at 199.

unit of a kind of embryonic tank corps. The whole arrangement was expensive to maintain, and it had to be able to survive the lives of its individual members. These two conditions are what determined the economic extent and hereditary character of the feudal land system. The basic land holding was the knight's fee, calculated to support one such military unit. The continuance of that unit depended on hereditary succession. The heir to the knight (in a sense his replacement part) was the *esquier.* This term, along with the feudal system in which it fit, moved to England after the Norman Conquest.

In the twelfth century another relevant feature began to manifest itself in western Europe: heraldry. Both a science and an art serving profound social and psychological needs, heraldry had its roots in classical antiquity but its full flowering in the Middle Ages (its more refined cultivation was not to come until the sixteenth and seventeenth centuries after its original function had declined). In the ancient world warriors, especially leaders, had displayed identifying devices on their shields either as acts of bravado or as means for conveying military intelligence,[11] but these devices were personal or tribal symbols. In the twelfth century the hereditary factor entered the picture and there evolved the family coat of arms which became strikingly important to the mental milieu of the age.[12] At the artistic center of the coat of arms was the shield—the *escutcheon*[13]—which "bore the arms," in a new sense, of its owner.

In the later Middle Ages changes in the technology and strategy of war eventually spelled end to the military significance of chivalry and altered that intimate balance between economic and military organizations called feudalism. Although circumstances demanded hasty changes in the military order, they were slower in their demands on economic institutions. The feudal land system persisted and knights' fees survived. Feudal lords were discouraged, however, from maintaining standing armies, and the tenants of knights' fees rarely sought knighthood. What were the holders

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[11] *See Boutell's Heraldry* 3 (C.W. Scott-Giles rev. 1950) for Aeschylus' reference to the badges on the shields of the seven against Thebes, and Vergil's reference to the "*insigne paternum* on the shield of Aventinus."

[12] As Sir Walter Scott has Diana Vernon say: "What! is it possible? . . . Not know the figures of heraldry? of what could your father be thinking?" W. Scott, Rob Roy 95 (A.and C. Black publ. 1929),

[13] *Escutcheon* derives from the same Latin word—*scutum* (shield)—that is the source of *scutarius.*

of knights' fees if they were not knights? They were the potential knights, knights unrealized, which is to say esquires; so subsequently there was a new class—the squirearchy: people long established on the land, holders of feudal tenures, the principal property owners of parish and county.[14] This was a recognizable body, but it was unplanned, undeliberate, and unofficial.

The sixteenth century witnessed in England further social reorganizations. The seizure and redistribution of church lands made way for the growth in numbers of important property holders who did not hold by feudal tenure. The reduction of the clergy's monopoly on education gave laymen access to the corridors of power (the national bureaucracy). Administrators, lawyers, and educated laymen began to appear, often with the accoutrements of gentility, but just as often without the origins. The Tudors, Elizabeth in particular, were chary in the awarding of titles, since titles required means for maintaining their dignity and estate. Fewer financial demands were made on the crown when the rank of gentleman was extended to those serviceable subjects whose means and authority were substantial but whose births were modest. This enlargement of a gentle class demanded some even superior distinctions for the elevated but untitled worthies of the kingdom. Thus the rank of esquire was redefined and refined by the end of the sixteenth and beginning of the seventeenth centuries to the point of pure formality—by which is meant something divorced from function.[15]

So far nothing has been said about the conjunction of the term *esquire* with women's names. In its earliest use, women would seem quite irrelevant—as relevance concerns free citizens obliged to bear arms.[16] *Scutarius* could generate a feminine form (*scutaria*) though there is no documentary evidence of such a form. Had there been such a form, it could have produced an Old French *esquière* to parallel the masculine *esquier*, but once anglicized the two

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[14] The commissioning of members of this class (the more substantial county citizens) as justices of the peace established the—originally casual—association between the title of "squire" and the function of J.P., still given official status in some parts of the United States.

[15] The original functional meaning of the term *esquire* was, of course, preserved symbolically. If he did not, literally, carry a shield and bear arms, the new esquire did, legally, have an escutcheon which "bore his arms."

[16] The possibility of women's bearing arms is attested to in legend by reference to the Amazons and in language by the existence of the Latin word *armigera* (a female warrior, literally "arms bearer").

terms would have produced an indistinguishable *esquire.* Such a situation would, in the Middle Ages, have been unacceptable.

Similar problems had arisen in the careers of other words. The late Latin *baro* (*baronis*), since it meant (roughly) "thug," had no feminine equivalent. The mazes through which such a term must have wandered to obtain honorable estate probably would not bear close scrutiny, but it eventually did arrive, as *baron* and with a feminine form in attendance—*baronne* (based on some hypothetical Latin *barona*). In crossing the channel, however, the pair became indistinguishable, so analogy was sought. Classical Greek had contributed (not enthusiastically) a feminine affix for masculine nouns: *-issa.* Late Latin seized on the few Greek instances and added some of its own. The Latin--*issa* became French *-esse,* from which came the *-ess* of English, and the baron acquired a baroness. In this instance the operation was English as is the English pair *marquess/Marchioness* (in French, *Marquis/Marquise* which created the same problem that *baron/baronne* had). Although in some cases the operation occurred elsewhere—late Latin or the early Romance languages produced *duke/duchess, count/countess,* and so on—the English language has been especially pleased with the procedure, producing such curious linguistic hybrids as *murderess, waitress, procuress, adulteress.* So pleased has it been, in fact, with *-ess* that it has rejected virtually all other possibilities for feminizing its nouns. Latin for instance offered the feminine affix *-trix* for nouns ending in *-tor,* but English has strongly repulsed even the possibility of an *educatrix* or *doctrix*—the terms are simply sexless—and has rewritten the genealogy of *actor* to graft on to it the feminine *actress.*[17]

With respect to a feminine esquire, purists may find support in the labors of the great *Oxford English Dictionary*; which records *esquiress* (a female esquire). Aims of the *O.E.D.* include citing the original appearance of a word in the written records of the language and quoting representative instances of its changing usage. The first recorded appearance of *esquiress* occurred in 1596: "The principall mourneress apparalled as an Esquiresse." The next illustration comes from 1630: "Martha Legge, Esquiresse . . . Laundresse to the Right worshipfull and generous the Innes of Court." And

[17] Certain precisionists insist on distinctions for *né/née* and *naïf/naïve.* Less precious may be those who preserve *blond* and *blonde* from assimilation. The law's delay (or resistance) may be responsible for *executrix.*

finally in 1864 from Sir Richard Burton's *Dahome:* "[a]n esquiress at arms, generally a small slave girl, carrying the musket."[18]

If representative of usage, these illustrations, though interesting, are hardly encouraging. By 1596, the masculine form had been around for several hundred years; the appearance of a feminine form at such a late date, even though *esquire* has lost any of its original military connotations, strikes one as rather forced; it still did not look well-adjusted to the language, especially in a passage so excessively delicate as to describe a female mourner as a *mourneresse.* The second illustration sounds slightly patronizing. Possibly the members of the Inns of Court, some of whom certainly were esquires, were more lavish with their praise than with their pence. The third illustration suggests a variation on the medieval sense of the esquire as a weaponsbearer for his knight (Burton was, after all, a celebrated linguist who was at the time making observations about the notorious women warriors of Dahomey). In short, all of these usages, though fastidiously documented, have a certain factitious air about them; all are, as justifications, unsatisfying.

Several points have, I hope, been established by this etymological and historical survey. *Esquire* is a word wary enough to resist change when change has meant perverting an honorable position, but wily enough to adapt to change when the alternative was extinction. Words do not seem inclined to seek death before suffering dishonor, and Language, like Nature, is red in tooth and claw in its treatment of words no longer useful. In the process of observing the adaptability of *esquire* we have seen the word as a simple description of a functionary; then we have seen it applied not only to the functionary but to a code of behavior; thereafter it acquired connotations of caste. Much later it described a functionless formal status, then served as an umbrella term for the holders of a wide variety of offices. In modern times, as an appendage to names, it has become an honorific—in England for virtually every man and in America for the members of a particular profession.

What then remains for the future of the word, especially as it relates to those women who now appear not as "helpmates" but as full performers of previously purely masculine roles? The possibilities are not unlimited: omit altogether, change, or change not. The first option could suggest on one hand the Leveller's repugnance of anything smacking of elitism,[19] or, on the other hand, the

[18] 8 THE OXFORD ENGLISH DICTIONARY 293 (1933)(*sub* "Esquiress").

[19] Coke might be cited in partial rebuttal, insisting, as he does, that "an es-

dissatisfaction of linguistic purity (itself a brand of elitism) with a skew given the rich historical associations of the term. Those desiring change might of course be charged with tastelessness (*Esq'ess!*) or sexist zeal or a bias towards literal-mindness (neither of these last two is necessarily censurable). Opposition to change might imply, possibly, a narrow formalism but just as possibly a respect for the word as an evolutionary surviver.[20]

The last possibility, I think, might be most desirable. Formalism, however narrow, is not necessarily empty of purpose. It can aid, willy-nilly, as a preserver and conserver. Nor does evolution mean only adaptibility—submission—to environment. What adapts also influences what it is affected by. In America the term *Esquire* signals something more than a profession: it carries with it a cluster of meaningful associations. To more virginal intelligences, a sound may signal something one-dimensional, something simple; but lawyers are "an heep of lerned men" and so presumably their ears hear the semantic echoes. If the English use the term with a fine democratic abandon, it is an abandon which mutes meanings. The American's more niggardly use should keep apparent the term's resonances. Although the Latin *scutarius* would seem then to have little in common with *Esquire*, the historical survey shows that there is a kind of Darwinian logic in the relationship between the two terms.

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quire . . . is no name of dignity" but rather, with armiger, scutifer, etc., one of the "names of worship." E. COKE, SECOND INSTITUTE *594, 667.

[20] The second and third positions may be seen reflected in the differing philological philosophies of the two editions of Fowler's *Modern English Usage*. Under "Feminine Designations," the quirkily personal and prescriptive first edition comes out boldly for change, as a matter of "general convenience," and "in the interests of the language or of people in general." H. W. FOWLER, A DICTIONARY OF MODERN ENGLISH USAGE 175 (1st ed. 1926). Justification is that the public has a right to precise information. The disenchanted and descriptive second edition neuters its predecessor by laconically observing that "feminine designations seem now to be falling into disuse." H. W. FOWLER, A DICTIONARY OF MODERN ENGLISH USAGE 194-195 (2d ed., E. Gowers rev. 1965). The reason seems to be that men are surrendering "those ideas about women in the professions that moved Dr. Johnson to his rude remark about women preachers." *Id.* at 195. Both editions are speaking, however, of feminine forms broadly applied, not of *esquire/esquiress* in particular (of which neither makes any mention).