

1995

The Case of Lani Guinier

Rayfield Waller

Find similar works at: <https://stars.library.ucf.edu/seeds>
University of Central Florida Libraries <http://library.ucf.edu>

This Work is brought to you for free and open access by STARS. It has been accepted for inclusion in SEEDS: The Literary Journal of the Sisters of Color by an authorized editor of STARS. For more information, please contact STARS@ucf.edu.

Recommended Citation

Waller, Rayfield (1995) "The Case of Lani Guinier," *SEEDS: The Literary Journal of the Sisters of Color*. Vol. 3, Article 14.

Available at: <https://stars.library.ucf.edu/seeds/vol3/iss1/14>

The Case of Lani Guinier: Legal Forms, Political Content

1. Of Poets and Professors

It may seem odd to draw a comparison between legal theorist and professor of law Lani Guinier and a Stalin-Era poet. Yet, there is a striking formal similarity between Ms. Guinier's legal thought and the poetic practice of Osip Mandelstam. Like Guinier, Mandelstam was misunderstood for his ideas and more specifically for the way in which he chose to express them. Donald Davie, one of the many frustrated translators of Mandelstam's poems, wrote in a foreword to the 1978 Shambhala edition of Mandelstam's works:

It seemed to me. . . that Mandelstam was distinguishing one kind of form from another, and was celebrating only those forms that are "bent in," arched, the born of a foetus, or a cradle, specifically not the open-ended and discontinuous mere "pattern" (rather than "form") that a group of sailing-boats may fall into . . .

The significance of Davie's assessment of Mandelstam's complexity is twofold. First, there is the peculiar and common approach he and others take to Mandelstam: they tend to use overtly, stereotypically woman-centered imagery to talk about the poet's style ("the form of the foetus, or a cradle). Mandelstam's poetry, indeed, tended to describe and concern itself with "female" and woman-centered ways of seeing. Mandelstam, himself, academics never tire of pointing out, was a man of fragile, "feminine" beauty whose striking, sensual features burn forth from photographs which, unlike the poet, have survived Stalin's purges.

The other significant aspect of Davie's assessment is his identification of a daunting characteristic of Mandelstam's poems, namely, the poet's rigorous distinction between FORM and PATTERN. Mandelstam is an incredibly difficult poet exactly because he possessed a frighteningly intense insight into the deepest aspects of the forms -- classical forms as it happens -- in which he chose to work. Where lesser poets worked out of loyalties to or obsessions with patterns of writing and thinking, Mandelstam found a path into the deeper levels of formal exploration which allowed him to seize upon a universe of meaning contained within his forms. In this way, he is much like a gifted sculptor who, following the same "pattern" of shaping as those around her, nevertheless creates a sculpture which somehow radiates meaning and content far beyond the mere imitations of fixed form.

On April 29, 1993, President Bill Clinton nominated Lani Guinier for the position of Assistant Attorney General, Civil Rights Division; on June 4, 1993, after two months of vicious character assassination of Guinier in the racist, sexist media, Clinton dumped her as a nominee. Guinier, an intellectual and theorist, is like the poet Osip Mandelstam -- misunderstood, mistranslated, and maligned.

2. Form, Content, and The Vote

Subjected to a rancorous fit of lynch-mob resentment on Capitol Hill which betrayed an abysmal stupidity on the part of American citizens about such concepts as law, democracy, electoral politics, even elementary civics, Lani Guinier was crucified by America's mass media and by conservative politicians in Congress, in a consistently hostile and destructive attack on her character as well as on the nature of her legal thought and her published legal analysis. Only Attorney General Joycelyn Elders, forced from office two years later, has suffered as negative and overt a campaign to drive a Black woman off the public stage and away from the halls of male power in Washington. The attacks upon Guinier were directed at her writings about "proportional voting."

Like Mandelstam, Guinier's genius as a thinker is contained in her tendency to see through simple patterns into the deeper complexities of form. The American orthodox form of electoral procedure rests upon the concept "one person, one vote." With regard to Black under representation in Congress and in state and local politics, the orthodox thinking has been that the overt barriers to Black electoral participation (poll taxes, racist terror tactics to prevent Blacks from registering to vote, etc.) could be remedied through the judiciary and the legislature, in the form of the Voting Rights Act. The passing of the Voting Rights Act into law and the Judicial enforcement of that law were intended to bestow upon Black Americans the thereto withheld formal power of "one person, one vote." Proportional voting, a concept originating in the work of constitution-framer James Madison, is an electoral theory Guinier has proposed through a body of essays published in a number of law journals. Proportional voting is designed to overcome the nagging racial and class inequalities enshrined within and perpetuated by the American electoral process. Although the Voting Rights Act has supposedly extended the form of electoral powers to Blacks, Black representation is still statistically nonexistent, and the representation of Black interests is still an unachieved goal, particularly at the national, Congressional level. Guinier writes:

My scholarly project as a lay professor has been to answer the question raised by cases I had litigated: why is it that in many city and county governing bodies, especially in the South, the interests of blacks still often lose? I wrote as a legal scholar about ways to remedy racial discrimination; I also wrote as a political theorist. Inspired by the work of James Madison, I explored ways to ensure that even a self interested majority could work with, rather than "tyrannize," a minority. As a matter of political philosophy, I imagined a more consensus, deliberative, and participatory democracy for **all** voters, despite religious, political, racial or sex differences.

In simplest outline, "proportional voting" is a collection of electoral procedures, all theoretical, which Guinier has suggested as a way to overcome the historical domination of a "majority" racial bloc (Whites), which has successfully muscled out the presence and interests of scores of other interest blocs (Blacks, women, Latinos, etc.). Minority interests could be better represented if everyone recognizes and admits the reality of group interests and

the dominance of a single group, called the "majority," which has been successful in constructing a system which supports, represents, and maintains its own dominance.

Since people BEHAVE in blocs, rather than in the ideal sense as individuals, Guinier asks why shouldn't the electoral process contain the possibility, at various places along the spectrum of electoral politics--and at least for a time--a means of bloc voting? Rather than being mindlessly true to the simple PATTERN of "one person, one vote," we ought to look deeper than that, into the very intention and nature of the FORM of "one person, one vote," as the lynchpin of democracy. If the INTENTION of "one person, one vote" is to achieve for each voter a net gain of, say, one degree of representational power, and if blocs of single voters (Black, for instance, or women) are consistently denied that net gain, then perhaps each individual voter ought to be allowed several votes each, which she can cast for one politician or, if she wished, spread amongst a bloc of politicians.

Such a system could perhaps make for a greater diversity of choice and certainly would increase the diversity of electoral outcome. Form, to Guinier, is merely the servant of content. The Voting Rights Act, which Guinier supports wholeheartedly, was intended to bestow upon Blacks the previously denied representation (denied via poll taxes, terrorist White violence to suppress Black voter registration, legal denial of Black voting rights, etc.)

While the above analysis of "proportional voting" is but a partial explication of but one of her ideas, it does serve to demonstrate the complexity of Guinier's work. She distinguishes between simple patterns of "doing things," and the deeper objectives which forms are supposed to serve. When forms are not fulfilled, Guinier asserts, then patterns of "doing things" ought to be refined, shifted, even changed. The ultimate FORM of democracy is not to be jettisoned, but more fully realized by changing the petty PATTERNS of the electoral process.

Rather than come to grips with the complexity of her thinking, the media and the racist, sexist male elite of Congress merely maligned, degraded, and insulted Guinier. President Clinton, meanwhile, refused to support Guinier, and even distanced himself publicly from her legal writings, thus furthering bigoted media distortions and mistranslations of her ideas. During the two-month period of public abuse she suffered, a *Wall Street Journal* headline referred to her as a "Quota Queen," while other media called her "divisive," "undemocratic," "anti-constitutional," and "race obsessed."

But most despicable was the *New York Times*' and *Newsweek*'s practice of printing personal insults uttered by White senators against Guinier's intelligence, competence, gender, and body features -- even her hair. These men smugly denied their own ignorance and shallowly refused to engage ideas, displaying an unrestrained racism and sexism horrific not only for its portrayal of the still potent rule of bigotry in public life, but also for revealing the emptiness of Bill Clinton's "liberal" credentials.

3. Taking Turns

In disturbing ways, Guinier has been subjected to the displacement of

White anger and hostility toward its own sense of powerlessness and inadequacy in the face of Blacks who challenge the logic of White supremacy. Like many Black figures before her, she found herself forced into the role of "the shadow": a Platonic scapegoat figure which signifies darkness, evil, irrationality, and aggression. The truth, of course, is that these characteristics are located within those who attacked her, and are not contained within her ideas, nor in her own intentions. "The shadow" is simply the dumping ground for these negative impulses--the place where those who actually possess these characteristics can relieve themselves of their own collective anxieties while blaming the target of their aggression.

Certainly, the reaction to Guinier's nomination and to her ideas are a reflection, too, of the deep-seated aversion Americans still have for women who think, speak, and act independently, women who circumvent the public's expectation that women will pose no ideational threat to male supremacy--the virtues of male supremacy being, of course, embodied within the very political forms whose logic Guinier sought to challenge. But ultimately, the nation's refusal to deal honestly and fairly with Professor Lani Guinier signifies something even more sinister than its ongoing racism and sexism.

It also signifies the deeply rooted hostility toward the equality and egalitarianism Ms. Guinier strives for in her work. Indeed, American society enshrines competition, factionalism, hierarchy, and inequality. It is, one suspects, Guinier's core aim of achieving electoral equality which most repelled the very public and political institutions--the media, Congress, the Academy, and the White House -- which ought rather to have engaged her ideas.

The essence of America's attitude toward social democracy, it seems, is a vulgar, anti-humanist devotion to the principle of "winners and losers." That someone must win and someone must lose is, of course, a cornerstone of Capitalist political economics, as Angela Davis has charged.

By contrast, the essence of Guinier's subtle and challenging ideas lies in the story she tells of how she began to think seriously about her concept of proportional voting. She and her son had been discussing the concept of "voting." He pointed out that though one group of children had outvoted another smaller group regarding what game the children ought to play, the answer to the conflict ought not to be that one group "wins" and the other "loses," but that BOTH games be played. The winners of the vote would play their game first, then the losers of the vote would play their game as well. The two groups would take turns.

Guinier challenges us to have as much wisdom and sense as children.

Rayfield Waller