

Essays

Images of Justice

Dennis E. Curtis† and Judith Resnik††

DEDICATION

Bob Cover often talked about what is inherent in the role of judge and about the relationship between judges and sovereigns. In addition to giving us his insights and his wisdom, Bob invariably enriched our views by offering us texts with which we had not been familiar. In that tradition, we provide the following essay on the images of justice—for Bob Cover.

I. INTRODUCTION

Bob wrote the following:

The principal icon of justice suggests a myth and the myth may provide a clue to the ambiguities of procedural postures. Justitia—sword and scales with blindfolded eyes. There is a critical ambiguity to the blindfold of Justice—which no end of explanation in terms of “impartiality” can illuminate. Surely, Justitia is blindfolded so that she may be impartial, but just as surely her blindfold cannot function on that level alone. Any icon carries with it the ambiguity of the concrete. As the lack of sight renders favoritism impossible, it opens up the manifold potential expressed in the Biblical story of Isaac’s blessing.

Consider, a moment, a possible myth that might lie behind our well-known icon. Each God’s hand is set against her neighbor. The

† Professor of Law, University of Southern California Law Center.

†† Professor of Law, University of Southern California Law Center. Our thanks to the University of Southern California Law Center for support for this project, to Jennifer Montagu and Elizabeth McGrath of the Warburg Institute of the University of London for their hospitality and much-needed help, to Jutta Brandt, Claude Klein, and Dorothy Resnik for assistance in translations, to the ever-energetic, able, and patient USC law library staff, and to many of our colleagues, especially Ron Garet, Barbara Herman, Mickey Morgan, Kelyn Roberts, Avi Soifer, Ruth Weisberg, and Steve Wizner, who have discussed this essay with us. Research for this essay was supported by the University of Southern California Law Center.

Gods, amidst heated disputes leading to a cosmogenic crisis, search for the route to peace and with it the end of the cosmic travail. The obvious solution, an impartial arbiter to the various differences, is proposed but is dashed on the rocks of personalities as each and every applicant for the job is put to a test. One young, strong God comes forward and seems fearless and undaunted before threats but is seduced from his vocation by a beautiful nymph. An old and wise man is impervious to chicanery and immune to the allures of sex, but quivers before the fist of the strong. The tests go on until Justitia steps forward. Self-consciously, she ties her scarf to her eyes and with that effort of will she sees not. Seeing not, she fears not. No form attracts her. Her very invention of the gesture has a superficial attractiveness about it. She is obviously attuned to the need to keep much from herself and the very fact that she is cognizant of the import of keeping out information makes her a more suitable candidate than one who rashly or stupidly tries to overcome.

Justitia is chosen as their judge and her story portrays the "paradigmatic gesture" repeated by all judges who are worthy of the name. It is a tale of purposeful interposition of a makeshift screen between reality and decision, an interposition which obstructs direct knowledge.

The richness of the concreteness of our icon lies in its incapacity to be reduced "merely" to an idea like impartiality. Justitia in our tale has put on the blindfold to avoid the pitfalls of fear or favor; she has rendered it necessary to produce by indirection. If she has removed the possibility of even the subtleties of unconscious favor, she has also removed the possibility of less than conscious insight.

Our icon, however, is Justitia blindfolded, not Justitia blind, and therein is suggested a critical dimension for procedure. Political cartoonists have often seized upon this dimension of the icon and portrayed Justitia "peeking" in order to illustrate the willful failure of impartiality. The blindfold (as opposed to blindness) suggests an act of self-restraint. She *could* act otherwise and there is, thus, an ever-present element of choice in assuming the posture. The temptation to raise the blindfold may not be the temptation to cheat. Indeed, the strongest temptation for persons of quality is the temptation to *see*—to overcome the elusiveness of indirection.

Procedure is the blindfold of Justice.¹

In creating this myth, Bob relied upon familiar imagery of justice to tell a story rich in meaning about the relationship between knowledge and fair judgment and about the role of constraints in enabling acceptable

1. R. COVER, O. FISS & J. RESNIK, *PROCEDURE* ch. 5 (Foundation Press, forthcoming). When we discussed this essay with Diane Cover, she told us that Bob's interest in the iconography of justice was sparked by the Talmudic phrase: *חתימתו של הקב"ה אמת* (roughly, "The signature of God is truth"). THE BABYLONIAN TALMUD, *Tractate Shabbat* 55A.

judgment. Bob drew, for this "folktale of justice,"² upon an iconographic history replete with images of Justitia, of judges, and of the act of rendering judgment. In this essay, we provide a brief overview of the imagery associated—over centuries and across national boundaries—with justice.³ For us, the endurance of Justice as a recognizable image, the consistent use of the imagery of Justice by sovereigns, and the relationship of this imagery to the problems of exercising judicial power all have an intriguing history and substantial didactic power.

The image of Justice herself is one of remarkable longevity. For more than 2000 years, people have looked at images of Justice, drawn meanings from them, and written about them. More than simply an artifact of Western culture, Justice stands as a quasi-religious, quasi-political icon.

Of course, Justice is not a solitary icon in the Western tradition. Rather, she is one of a series of images, most in the female form,⁴ associated with powerful concepts of virtues and vices. Justice, like many of these images, traces her ancestry to goddesses. Her forerunners seem to have been Ma'at in Egyptian culture,⁵ Themis and Dike in ancient Greece,⁶ and then Justitia under Roman rule.⁷ When goddesses lost currency as the Church grew in power, Justice appeared in Christian imagery—used not as a goddess but as a personification of the ancient vir-

2. Much of Bob's work relied upon folktales and myths of justice as vehicles for understanding the roles of judges, the function of justice, and the meaning of law. See, e.g., Cover, *Violence and the Word*, 95 YALE L.J. 1601 (1986) [hereinafter *Violence and the Word*]; Cover, *The Folktales of Justice: Tales of Jurisdiction*, 14 CAP. U.L. REV. 179 (1985) [hereinafter *Folktales of Justice*]; Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983) [hereinafter *Nomos and Narrative*].

3. We do not consider here the work of caricaturists, such as Daumier and Spy, who portrayed lawyers, judges, and other court functionaries.

4. See generally M. WARNER, *MONUMENTS AND MAIDENS: THE ALLEGORY OF THE FEMALE FORM* 63–87 (1985) (chapter on "Engendered Images"); S. Pfeifferberger, *The Iconology of Giotto's Virtues and Vices at Padua* ch. 4 (1966) (Ph.D. dissertation, Bryn Mawr College) (available at University Microfilms No. 67-3811). On the attitude of medieval society toward women, see Kraus, *Eve and Mary: Conflicting Images in Medieval Woman*, in *FEMINISM AND ART HISTORY* 77–99 (N. Broude & M. Garrard eds. 1982).

5. See W. FORMAN & H. KISCHKEWITZ, *DIE ALTÄGYPTISCHE ZEICHNUNG* ("Ancient Egyptian Drawing") plates 48, 51 (1971); O. KISSEL, *DIE JUSTITIA: REFLEXIONEN ÜBER EIN SYMBOL UND SEINE DARSTELLUNG IN DER BILDENDEN KUNST* ("Justitia: Reflections on a Symbol and Its Representation in Sculpture") 19–22 (1984).

6. See J. HARRISON, *THEMIS: A STUDY OF THE SOCIAL ORIGINS OF GREEK RELIGION* 198, 480 (1927); J. JONES, *THE LAW AND LEGAL THEORY OF THE GREEKS* (1956); H. LLOYD-JONES, *THE JUSTICE OF ZEUS* 50 (1971); H. NORTH, *FROM MYTH TO ICON: REFLECTIONS OF GREEK ETHICAL DOCTRINE IN LITERATURE AND ART* (1979). According to Professor North, among the Virtues, only Dikaosyne (Justice) had a recognizable "type" in ancient art. North cites Aulus Gellius as emphasizing Justice's "stern appearance and keen gaze." H. NORTH, *supra*, at 178 n.3. Michael Evans states that Aulus Gellius provided the Middle Ages with the only information about how Justice was portrayed in antiquity. Evans, *Two Sources for Maimed Justice*, 11 NOTES ON THE HISTORY OF ART 12, 12 (1982).

7. O. KISSEL, *supra* note 5, at 23–26; Lichocka, *Justitia sur les Monnaies Imperiales Romaines*, 15 TRAVAUX DU CENTRE D'ARCHÉOLOGIE MÉDITERRANÉENNE DE L'ACADÉMIE POLONAISE DES SCIENCES 11–123 (1974).

tue.⁸ In medieval traditions, Justice achieves a place as one of the four cardinal virtues; the others are Prudence, Temperance, and Fortitude.⁹ Joined by the three theological virtues, Faith, Hope, and Charity,¹⁰ the cardinal virtues battled with the seven vices in various depictions of the contest between good and evil.¹¹ During the Renaissance, Justice images abounded. Justice continued to appear with frequency during the seventeenth and eighteenth centuries, when allegorical subject matter was still in favor.¹² But she is not only a relic of the past. Justice stands atop Old

8. See A. KATZENELLENBOGEN, ALLEGORIES OF THE VIRTUES AND VICES IN MEDIAEVAL ART 28 (1939) (Justice appears in Christian art as early as fifth century in dome fresco in El Bagawat); see also S. EDGERTON, PICTURES AND PUNISHMENT: ART AND CRIMINAL PROSECUTION DURING THE FLORENTINE RENAISSANCE 23, 38, 52 n.38 (1985); M. EVANS, MEDIEVAL DRAWINGS plates 34-35 (1969) (images of Virtues linked to biblical scenes); R. TUVE, ALLEGORICAL IMAGERY: SOME MEDIAEVAL BOOKS AND THEIR POSTERITY 66 (1966). Tuve believes that the integration of the classical with the Christian virtues was "effortless." R. TUVE, *supra*, at 76. See generally J. Shaw, Images of Justice in Mediaeval Art (1980) (unpublished manuscript on file with authors).

9. According to S. Pfeifferberger, *supra* note 4, the cardinal virtues (Prudence, Temperance, Fortitude, and Justice) are linked to the Platonic characteristics of wisdom, temperance, courage, and justice, taken by Aristotle to be moral virtues. Pfeifferberger traces the references from Aristotle to Cicero to St. Ambrose, who "was the first to term the 'Moral Virtues' 'Cardinal.'" *Id.* ch. 4, pt. 1, at 2-3. See generally H. NORTH, *supra* note 6 (study of theme of Temperance); *id.* at 229-38 (discussing regional variation in iconography of virtues and occasional blurring or sharing of attributes).

10. See 1 Corinthians 13:13 (letter from St. Paul); S. Pfeifferberger, *supra* note 4, ch. 4, pt. 1, at 2.

11. Early Christian writers created lists of sins or vices. Over time, ideas of virtues in opposition to corresponding vices developed, although different vices and virtues were paired (in the various texts) in battles between good and evil. See S. Pfeifferberger, *supra* note 4, ch. 4, pt. 1, at 6-11. The vices (or sins) have varying translations, often including Despair, Envy, Infidelity, Injustice, Greed, Inconstancy, and Gluttony. *Id.* ch. 4, pt. 1, at 13-15; see M. BLOOMFIELD, THE SEVEN DEADLY SINS ch. 12 (1952). A contemporary list includes Lust, Pride, Anger, Avarice, Envy, Sloth, and Gluttony. A. POWELL, THE KINDLY ONES 97-98 (Berkeley Medallion ed. 1965); see also E. PANOFSKY, STUDIES IN ICONOLOGY: HUMANISTIC THEMES IN THE ART OF THE RENAISSANCE 224 (1962) (Gluttony, Lechery, Avarice, Luxury, Wrath, Envy, and Sloth). For an analysis of one depiction of the vices, see Shapiro, *The Virtues and Vices in Ambrogio Lorenzetti's Franciscan Martyrdom*, 46 ART BULL. 367 (1964).

Three important sources for depictions of virtues and vices are the *psychomachiae*, the writings of St. Thomas Aquinas, and the *Sommes le Roi*. Prudentius' influential *psychomachia*, or "battle of the soul," was written "as early as the fifth century." A. KATZENELLENBOGEN, *supra* note 8, at 4. The combatants are personified in many *psychomachia* manuscripts. St. Thomas Aquinas, writing in the thirteenth century, interpreted Aristotelian virtues in the context of Christian theology and contrasted virtues and vices. THOMAS AQUINAS, SUMMA THEOLOGICA (Dominican fathers trans. 1947) 819-989 (Treatise on Habits); *id.* at 1169-1385 (Treatise on Faith, Hope, and Charity). See generally Pfeifferberger, *supra* note 4, ch. 4, pt. 1, at 16-20. Around the same time, *Sommes le Roi* (vernacular compendiums of the "elements of the Christian faith with special emphasis on the virtues and vices") appeared and provided variations on the iconographical portrayals for the virtues and vices. See E. Kosmer, A Study of the Style and Iconography of a Thirteenth-Century *Somme le Roi*, Introduction at 1-4 (1973) (Ph.D. dissertation, Yale University) (available at University Microfilms No. 74-11). See generally A. KATZENELLENBOGEN, *supra* note 8, at 31-36; Tuve, *Notes on the Virtues and Vices* (pts. 1 & 2), 26 J. WARBURG & COURTAULD INSTS. 264 (1963), 27 J. WARBURG & COURTAULD INSTS. 42 (1964) [hereinafter Tuve, *Notes Part One or Part Two*]. Over time, authors and artists varied the numbers, translations, and opposites of virtues and vices. The role of these depictions as mnemonic devices is explored in F. YATES, THE ART OF MEMORY (1966); Roberts & Weisberg, *Medieval Drawing and the Arts of Memory*, 10 CORANTO 28 (1975).

12. H. NORTH, *supra* note 6, at 260.

Bailey in London¹³ and the City Hall in New York. See Figure 1. Early in this century, Gustav Klimt executed a highly unconventional and controversial version of her for a university mural in Vienna.¹⁴ Although not ubiquitous in the United States today, Justice can be found in courtrooms around the country.¹⁵

Justice's longevity prompts our second area of inquiry. Most of the other monumental images of virtues, vices, and comparable concepts have long been out of fashion. Few of us can even recognize the many images catalogued in Renaissance iconography¹⁶ and in the European emblem books popular from the sixteenth through the eighteenth centuries.¹⁷ A woman looking into a mirror does not speak to all of us as Prudence.¹⁸ A woman with a lion skin or a broken column does not call Fortitude to the contemporary mind,¹⁹ nor is a woman carrying a bridle and a pitcher understood in this society as Temperance.²⁰ Yet show us a hulking woman with scales, blindfold, and sword, and the association is immediate: Justice. See Figure 2.

Why can so many of us so easily recognize Justice? Because, over the centuries, members of diverse societies have been taught repeatedly to

13. Photographic Archives of the Warburg Institute (copies of excerpts on file with authors).

14. *Jurisprudence* was one of a series of paintings about medicine, law, and philosophy that Klimt executed during 1903–07 for the University of Vienna's Great Hall. The paintings attracted public criticism and were not hung at the University. Klimt repurchased the commission. Subsequently, the paintings ended up in private collections; the three eventually were destroyed in the last days of World War II. K. VARNEDOE, VIENNA, 1900: ART, ARCHITECTURE AND DESIGN 153, 232 (1986); C. SCHORSKE, FIN-DE-SIÈCLE VIENNA 248–49 (1980) (figures 47, 48); see *infra* text accompanying note 91. The photograph of *Jurisprudence* was provided to the authors for research purposes by Galerie Welz in Salzburg.

15. See, e.g., COURT HOUSE: A PHOTOGRAPHIC DOCUMENT plate 69 (R. Pare ed. 1978) [hereinafter COURT HOUSE] (Pitkin County Court House, Aspen, Colorado (1890–91)); *id.* plate 133 (Monterey County Court House, Monterey, California (1937–38)); *id.* plate 235 (Merced County Court House, Merced, California (1874–75)); *id.* plate 243 (Belmont County Court House, Saint Clairsville, Ohio (1885–88)); *id.* plate 264 (Stained Glass Window, Courtroom in La Porte Court House, Indiana (1892–94)).

16. Consider, for example, the virtues depicted in C. RIPA, BAROQUE AND ROCOCO PICTORIAL IMAGERY (E. Maser ed. 1971) [hereinafter C. RIPA (Maser ed.)]. The first edition of Ripa was published in Rome in 1593. *Id.* at ix.

17. See H. NORTH, *supra* note 6, at 250. An example of such books is Andreas Alciatus' treatise, first published in 1531. 1 A. ALCIATUS, THE LATIN EMBLEMS (P. Daly trans. 1985); 2 A. ALCIATUS, EMBLEMS IN TRANSLATION (P. Daly trans. 1985).

18. See C. RIPA (Maser ed.), *supra* note 16, at 179 (Prudence "looks into a mirror which she holds in one hand."); see also Figure 2 (*Justice and Prudence*).

19. For the lion's skin, see S. Pfeiffenberger, *supra* note 4, ch. 2, pt. 2, at 21 (description by Giotto). For the broken column, see H. NORTH, *supra* note 6, at 85, plate 3 (Francesco Pesellino's *Fortitude and Temperance*, ca. 1460).

20. C. RIPA (Maser ed.), *supra* note 16, at 149 ("The personification of Temperance is a woman . . . who holds a bridle. . . . As a bridle restrains a horse, so does temperance hold appetites in check."); see also H. NORTH, *supra* note 6, at 201–02 (discussing pitcher and iconography of Temperance generally). The associations between object and concept were not always constant across time and region. See, e.g., Albrecht Dürer's *Fortuna* (with bridle), reproduced in THE COMPLETE ENGRAVINGS, ETCHINGS AND DRYPOINTS OF ALBRECHT DÜRER 76, plate 37 (W. Strauss ed. 1972) [hereinafter DÜRER].



Figure 1. Justice on top of the City Hall, New York. The building, designed by Mangin and McComb, was built between 1803 and 1812. Reproduced with permission of Mathew Bender & Company, Inc.

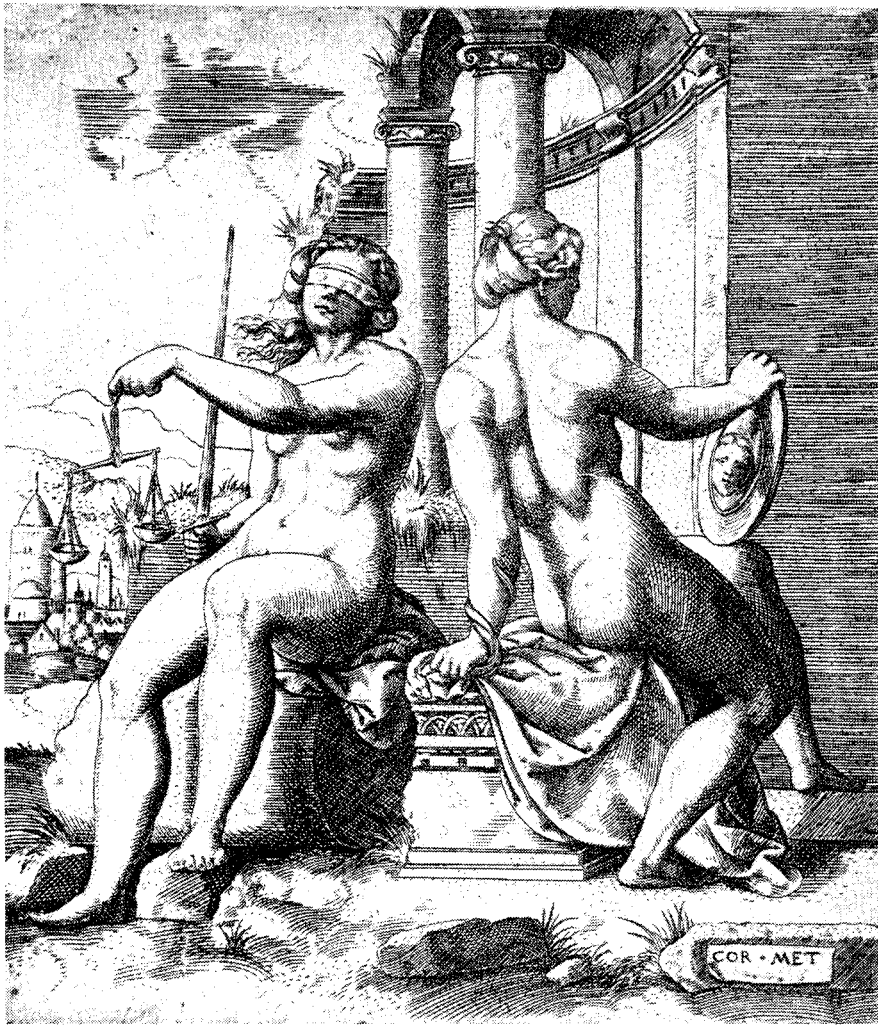


Figure 2. Unknown, from the sixteenth century (*see* 9 A. BARTSCH, *LE PEINTRE GRAVEUR* 45 (Cor-Met, B.2) (ed. 1970, reprint of 1920–1922 Würzburg ed., reset of edition Leipzig, 1854–1870). Reproduced by the permission of the Warburg Institute of the University of London, England.

recognize this image. The lesson inherent in the image has advanced the interests of political configurations. While rulers throughout the ages have sought to associate themselves with all the virtues,²¹ sovereigns have evidenced a special interest in aligning with and appropriating unto themselves the particular virtue of Justice. See Figure 3. In this essay, we provide examples of such deployments of the image of Justice, as sovereigns have attempted to assert that they acted in her name or in accordance with her divine guidance.

All sovereigns claim (notwithstanding evidence to the contrary) that their violence goes forth in the name of Justice.²² While the other cardinal and theological virtues—Temperance, Prudence, Fortitude, Faith, Hope, and Charity—would be desirable attributes of any polity, none is essential to the state in its functions as lawmaker and law enforcer. During ages in which faith in a god's judgment was pervasive, the state linked its judging to that of the divine. In ages historians have described as those "of reason" or "enlightenment," states still attempted to claim that their rule was something other than that of limited mortals, that the government was one "of laws, and not of men."²³ Appropriately nervous about the implications of the judgments rendered by all-too-mortal judges, states have attempted to disassociate their justice from human fallibility—especially because, in the name of that justice, governments have applied force, restricted liberty, and even executed their citizens.

An analysis of the history of the uses of justice imagery is made more complex by the fact that, while the image of Justice has enduring qualities, some of the attributes of Justice have changed over time. Although the images and attributes currently associated with Justice are those of an imposing woman with sword, scales, and blindfold, other, less appealing images and attributes of Justice and of judgment have been deployed in the past. For example, during the sixteenth century, a town hall in Geneva was adorned with a picture of judges with their hands severed.²⁴ Other pictures, of handless Justices and of the gruesome punishments visited upon corrupt judges, appeared elsewhere.²⁵ See Figures 4, 5a, and 5b.

21. H. NORTH, *supra* note 6, at 223–34.

22. See, e.g., E. ROPER & C. LEISER, *SKELETONS OF JUSTICE* (1941) (descriptions of courts in Nazi Germany).

23. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

24. Deonna, *Les Fresques de la Maison de Ville de Genève*, 13 *REVUE SUISSE D'ART ET D'ARCHÉOLOGIE* 129 (1952); see *infra* notes 87–90 and accompanying text.

25. Mundy, *A Preparatory Sketch for Gerard David's "Justice of Cambyzes" Panels in Bruges*, 122 *BURLINGTON MAG.* 122 (1980) (flaying of corrupt judge Sisamnes painted by Gerard David for Town Hall of Bruges); see *infra* notes 82–86 and accompanying text.



Figure 3. Verrio, *Queen Anne as Justice*, from the Hampton Court Palace, painted between 1702 and 1704. Reproduced with permission of the Royal Commission on the Historical Monuments of England.



Figure 4. Detail from *Les Juges aux Mains Coupées* from the Town Hall of Geneva, Switzerland from the late fifteenth century. Reproduced with permission of the Musée d'Art et d'Histoire of Geneva.



Figure 5a. Gerard David, *The Judgment of Cambyses*, Panel 1 (the seizing of Judge Sisamnes) (1498). Reproduced with permission of the Groeninge Museum, Bruges, Belgium.

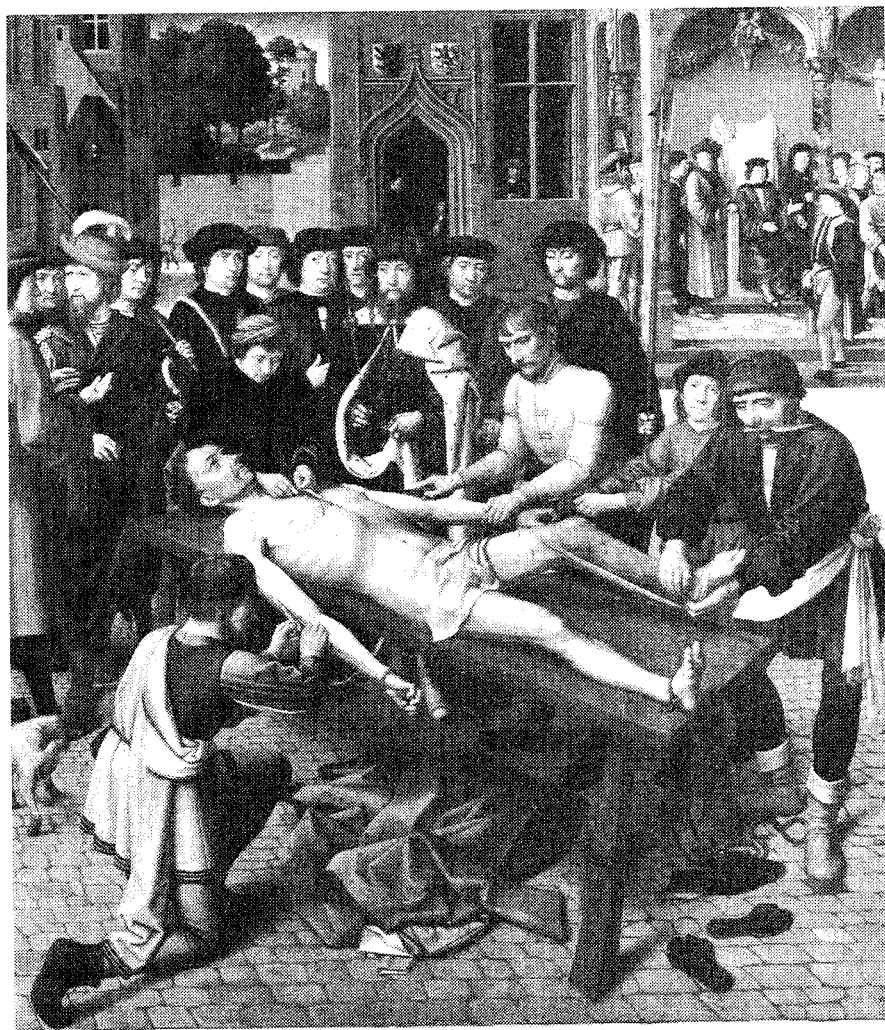


Figure 5b. Gerard David, *The Judgment of Cambyses*, Panel 2 (the flaying of Judge Sisamnes) (1498). Reproduced with permission of the Groeninge Museum, Bruges, Belgium.

Why were there such displays of “maimed” judges and Justice?²⁶ To remind the polity of the possibility of corrupt judging? To warn judges of the penalty rulers might exact if judges acted in a manner that displeased? To evoke the notion that human judges can err? Whatever the derivation of and intent behind the commission or execution of these images, the decorators of contemporary civic buildings no longer find such images appropriate. A more serene Justice appears today, instead of what are (to us) powerfully disquieting and aggressive images.

Even the calmer images presented today retain some ambiguity, which leads us to our third inquiry. What is the relationship between justice imagery and the act of judging? As Bob Cover’s myth demonstrates, the blindfold (a relatively recent and far from ubiquitous attribute of Justice) is particularly intriguing in this regard. See Figure 6. Does the blindfold represent impartiality? Freedom from the corruption of the senses? An assumption that insight and wisdom come from within? Can the blindfold sustain the mythic qualities with which Bob invested it, or is the blindfold more readily seen as a criticism of Justice, easily corrupted or lead astray because she is unable to see? Can we ascribe to the sightless Justice the rectitude of one who receives information only through the filter of the law, or shall we distrust her as one who cannot take into account human experience? These tensions are inherent, even in the relatively placid depictions of Justice in the current era. The images mirror the problems that the law has in determining what knowledge is permitted and what is forbidden to those who judge.

Finally, in the ambiguities of the image, we see reflected the uncertain position that judges inevitably hold. As employees of their sovereigns, judges are always, at some level, beholden to their sovereigns. But, as Bob’s folktales remind us, to judge is to “speak[] truth to power,”²⁷ to seek to hold and, on occasion, to exercise some form of jurisdiction beyond that given by or belonging to the sovereign, so as to have a measure of critical independence from the sovereign.²⁸ Although governments attempt to use judges and justice imagery to legitimate sovereign acts, we look also to the imagery for reminders of that critical distance between judge and sovereign. Perhaps the images—despite rulers’ ambitions to the contrary—do not always equate judge with sovereign.

One caveat is in order. Although we do speculate, we cannot specify the many meanings of justice imagery for those who commissioned, made, or saw the images—and, of course, for all of us who now consider them. As Rudolf Wittkower put it:

26. See Evans, *supra* note 6, at 12; see *infra* notes 87–90 and accompanying text.

27. *Folktales of Justice*, *supra* note 2, at 190.

28. *Id.*



Figure 6. Albrecht Dürer, woodcut illustrating Sebastian Brant's *Ship of Fools* (1494). Reproduced with permission of the Beinecke Rare Book Collection of Yale University.

Is the 16th-century personification of Justice above the entrance to the Town Hall or in the Magistrate's Court an allegory befitting the character of the place, a simile of the activity there performed, a moral and edifying lesson to judge and jury, a quasi-magical symbol revealing the mysterious quality of the abstract concept "Justice"? or is it line, form and colour to enliven a bleak wall? . . . [I]t may be found that our personification of Justice served all these purposes.²⁹

In addition, recovery of all the depictions of a particular subject is impossible, as is knowledge of even a fraction of the current deployments of any given image. The political and aesthetic context in which an image functioned is similarly difficult to ascertain, especially given our interest in crossing from country to country and century to century. Finally, we, like others, "are not making any attempt so foolhardy as to outline the development of the idea of Justice."³⁰ With these limits in mind, we offer our speculations on the imagery of justice.

II. THE POLITICAL DEPLOYMENT OF JUSTICE

For much of the Western world's history, Justice has been depicted as a large female figure, sometimes draped, sometimes naked, holding or surrounded by a series of props identified as her attributes.³¹ Commonly, she carries a scale³² and/or a sword.³³ Occasionally, Justice has a cornuco-

29. R. WITTKOWER, *ALLEGORY AND THE MIGRATION OF SYMBOLS* 186-87 (1977). Many of the images of history have been lost to us. Wooden, woven, ceramic, and painted figures, if not discarded, have now been eroded by time. Gold and silver objects have been melted down for coin.

30. R. TUVE, *supra* note 8, at 68.

31. Our sources are primarily European, British, and North American. Many of the references to imagery in this essay come from the Photographic Archives of the Warburg Institute in London. (photocopies of excerpts on file with authors). When possible, we provide references to reproductions in published materials. The most comprehensive collection of images of Justice of which we are aware is found in O. KISSEL, *supra* note 5.

32. The scales seem to have been used as a symbol of a decisionmaking device since earliest times. In the Egyptian "Book of the Dead" (ca. 1400 B.C.), the soul of a dead person is shown being weighed in a balance. One pan holds a heart-shaped vase symbolizing all of the actions of the dead person; the other pan contains a feather, symbolizing Right and Truth. The Old Testament refers to scales: "Let me be weighed in an even balance, that God may know mine integrity." *Job* 31:6. Weighing as a symbol of Divine Judgment is also found in the Koran. Daube, *The Scales of Justice*, 63 *JURID. REV.* 109, 116-17 (1951). In the *Iliad*, the gods weigh to foretell the results of human events: "Then Jove his golden scales weighed up, and took the last accounts of Fate for Hector. . . ." HOMER, *THE ILIAD* ch. xxii, (R. Fitzgerald trans. 1974). In early Christian representations, the "weighing of the soul" occurs in numerous Last Judgment scenes, often with Saint Michael holding the scales. For these and many other examples, see Perry, *On the Psychostasis in Christian Art* (pts. 1 & 2), 22 *BURLINGTON MAG.* 94, 208 (1912-1913); Daube, *supra*; see also Raphael's *Justice* from 1508, in the Vatican's Stanza della Segnatura, Rome, reproduced in O. KISSEL, *supra* note 5, at 37, plate 24; A. KATZENELLENBOGEN, *supra* note 8, at 55 (balance as symbol of Justice "from very early times").

33. See M. WARNER, *supra* note 4, at 146-76. Other examples include Peter Paul Ruben's *Justice* from the seventeenth century, in a private collection in London (photograph on file with authors), and a painting prepared in 1744 by Joshua Reynolds for a stained glass window in New College, Oxford, reproduced and discussed in REYNOLDS plate 120 at 147, 290-91 (N. Penny ed. 1986); see

pia³⁴ or fasces (a bundle of rods).³⁵ Sometimes Justice stares evenly at us, at other times her eyes are in shadows,³⁶ and in some depictions, she is blindfolded³⁷—although sometimes the blindfold has open spaces through which her eyes appear.³⁸ Upon occasion, an ostrich stands next to Justice;³⁹ in a few instances, a crane is present.⁴⁰

The image of a large imposing woman, draped in Grecian robes, blindfolded, and holding scales and sword is still commonplace in Western Eu-

also Figures 1,2,3,6 & 7.

34. See J. Shaw, *supra* note 8, at 8. The cornucopia imagery may come from a Herculean myth. Hercules fought the river-god Achelous, who in the course of battle changed himself into a bull. Hercules prevailed and broke off one of the bull's horns, which he presented to the beautiful Deianira, over whom the fight had taken place. The bull's horn was the first horn of plenty, which has since become a symbol of fertility. OVID, *METAMORPHOSES* 9:1 (B. More trans. 1978).

35. See Battista de Lutero, *Dossi, Justice with Fasces and Scales* (1544), Dresden, reproduced in O. KISSEL, *supra* note 5, at 13, plate 4. In this image, as in others, an axe blade protrudes from the rods. The fasces were emblematic of the authority of Roman magistrates, and subsequently, of government in general. See Valesio, *The Beautiful Lie: Heroic Individuality and Fascism*, in *RECONSTRUCTING INDIVIDUALISM: AUTONOMY, INDIVIDUALITY, AND THE SELF IN WESTERN THOUGHT* 163 (T. Heller, M. Sosna & D. Wellberg eds. 1986).

36. Compare S. Pfeifferberger, *supra* note 4, ch. 2, pt. 2, at 13-14 (Justice looking at Temperance) with Joshua Reynolds, *supra* note 33 (Justice's eyes shadowed by her upraised arm).

37. See *infra* notes 114-42 and accompanying text; e.g., Virgil Solis, *Justitia* (ca. 1550), Photographic Archives of the Warburg Institute, London, reproduced in O. KISSEL, *supra* note 5, at 66, plate 52; see also Mathias Gehrung, *The Allegory of Justice Asleep* (1543), reproduced in O. KISSEL, *supra* note 5, at 59, plate 45.

38. Justice is depicted with a diaphanous blindfold in several of the designs for stained glass windows in Northern Europe, in the collection of the Victoria and Albert Museum in London [hereinafter V & A]. See C. KAUFFMANN, *SWISS STAINED GLASS DESIGNS OF THE REFORMATION* (exhibition catalogue 1986) (V & A photographs, Nos. 60108, 65099, 65872) (on file with authors); 3 W. STRAUSS, *THE GERMAN SINGLE-LEAF WOODCUT 1550-1600*, at 1381 (1975) (Christoph Murer, *Justice*); see also Jost Amman, *Justitia, Sitting Atop the World* (ca. 1564), reproduced in O. KISSEL, *supra* note 5, at 45, plate 31; Hans von Steenwinkel, *Justitia* (ca. 1576), stained glass in town hall of Emden, West Germany, reproduced in O. KISSEL, *supra* note 5, at 111, plate 89. All of the see-through blindfolds of which we are aware come from Northern Europe.

39. See, e.g., Luca Giordano, *Justice* (1681), Palazzo Riccardi, Florence, Italy (available at Photographic Archives of the Warburg Institute, London (copy on file with authors)); Prints after Raphael, *Justice*, Stanze di Raffaello (Sala di Costantino, 1517-1524), Vatican, Rome, available at V & A printroom and Photographic Archives of the Warburg Institute (on file with authors).

According to B. ROWLAND, *BIRDS WITH HUMAN SOULS* 112-15 (1978), the ostrich was known in the Renaissance for its odd dietary habits (eating anything, including metal) and was sometimes linked with the sin of gluttony. On the other hand, the ostrich's assumed ability to eat metal led some to note its "valor or endurance." *Id.* at 112. One Renaissance iconographer stated that the ostrich was an emblem of Justice because "the ostrich ruminates its food as Justice should the testimony put before her." *Id.* at 115 (translating Ripa, discussed *infra* notes 77-81 and accompanying text). Because the ostrich put its head in the ground, others used the ostrich to indicate forgetfulness and stupidity. A more flattering association is provided by Horapollon: "[T]he feather of an ostrich symbolized a man who distributed justice impartially, 'for this bird has the feathers of its wings equal on every side, beyond all other birds.'" *Id.* at 114.

40. See, e.g., Albrecht Dürer, *Justice with Crane* (between 1495-1499), reproduced in O. KISSEL, *supra* note 5, at 43, plate 29; prints after Dürer, in Photographic Archives of the Warburg Institute, London (copies on file with authors). The crane is shown standing on one leg, with a globe held in an upraised claw. According to B. ROWLAND, *supra* note 39, at 32, the crane had a reputation for "vigilance." The crane held a pebble in its foot, indicating "watchfulness and prudence," in turn "often associated with Justice." *Id.* at 32-33. (Presumably if the bird dozed, it would drop the pebble, causing the bird to awaken.) Moreover, "Ripa regarded the crane in flight as the emblem of an inquisitive man investigating sublime things at a distance." *Id.* at 34.

rope and the United States; advertisements and cartoons draw upon our familiarity with this image to make their points.⁴¹ As noted above, however, Justice is the only one of several aspirational images of virtues and vices widely used in allegorical depictions that survives as a popular image today. We assume that the survival of her image is related, at least in part, to the conscious use of justice imagery by governments seeking to legitimate their exercises of power by associating themselves with the concept of justice implicit in the imagery.

We cannot provide a comprehensive history of the many polities from Athens to Washington in which depictions appeared of Justice, of idealized impersonal judges, and of the process of judgment. Rather, we provide a few examples (drawn primarily from Italy and Northern Europe) of occasions on which sovereigns seem deliberately to have displayed Justice, judges, or judgments, in efforts to teach, inspire, pacify, or otherwise influence viewers. From what we know of the displays, we can speculate on the political aspirations of those who showed us, and taught us to read, justice imagery.

One early example comes from Roman coins. According to Barbara Lichocka, Roman emperors represented themselves as embodiments of the four Platonic virtues of courage, wisdom, temperance, and justice. Although images of Justice on Roman coins were relatively rare,⁴² Lichocka believes that emperors used Justice imagery to popularize themselves by linking their names (and sometimes stylized versions of their images) with those of Justice (as well as with other virtues) on one of the few forms of official documents of the age—coins.⁴³

Medieval examples of justice imagery include more than Justice herself. Images of judgment and of the figure of the judge were also displayed in public places. When Justice appears in early medieval depictions, she often joins the other virtues in depictions of Christian themes.⁴⁴ For example, in illuminated manuscripts that have survived, Justice is often seen as one of the virtues doing battle with the vices in the struggle for souls.⁴⁵

Justice also appears in some civic buildings—apparently in an effort to

41. For example, the advertisement for the movie *From the Hip* depicts a "young maverick lawyer" opening his shirt to show a T-shirt underneath decorated with a dancing Justice, scales afloat. L.A. Times, Feb. 13, 1987, § 6, at 17, col. 1; see also Conrad, *The Onion Field II*, L.A. Times, Jan. 1, 1987, § 1, at 5, col. 1 (cartoon depicting robed fleeing man, labeled "California Justice System," leaving blindfolded, murdered Justice, scales and sword strewn about her, in reference to former Chief Justice Rose Bird's defeat in the November 1986 elections).

42. Lichocka, *supra* note 7, at 54–61. For an example of such an image, see O. KISSEL, *supra* note 5, at 24, plate 11 (Roman coin depicting Justitia, with scales, from reign of Marcus Aurelius).

43. Lichocka, *supra* note 7, at 62–66.

44. M. EVANS, *supra* note 8, plates 20, 34 & 35. See generally A. KATZENELLENBOGEN, *supra* note 8, at 31–36.

45. See *supra* note 11.

suggest that the sovereign embodied this virtue. A particularly good example is in Ambrogio Lorenzetti's well-known fresco, *Allegory of Good Government*, in Siena's Palazzo Pubblico.⁴⁶ In the picture, the central figure is Buon Commune—the common good. The theological virtues of Faith, Hope, and Charity are represented by female figures above the head of Buon Commune, who seems to be a mixture of Jesus and emperor.⁴⁷ Other virtues—Peace, Fortitude, Prudence, Magnanimity, Temperance, and Justice—surround Buon Commune. Unlike the other virtues depicted, however, Justice appears twice in this scene, and once in a size much larger than the other virtues.⁴⁸ Each of the two Justices bears a label. On the left, the larger Justice figure is called both Distributive Justice and Commutative Justice—apparently in reference to St. Thomas Aquinas' descriptions of Aristotelian concepts of justice.⁴⁹ According to Professor Edgerton, Distributive Justice is Ambrogio's attempt to allegorize the community's obligations to reward or to punish citizens who excel or fail in their public duties, while Commutative Justice represents “‘mutual giving and receiving, as in buying and selling, and in other kinds of intercourse and exchange.’”⁵⁰ Above the larger Justice's head is Wisdom, who holds a scale, and below this Justice is Concord. To the far right sits the smaller Justice figure, who is labeled “Vindictive Justice,” and who holds a sword. On her knee lies a severed head. Below her are a group of people, held together by a rope.⁵¹ The fresco is not simply an example of the “golden age” of Sienese art; the subject matter, organization, referential quality, labeling, and site of the *Allegory of Good Government* demonstrate that it was intended to have an inspirational and educational effect upon those who visited Siena's Town Hall.⁵²

Such depictions of the cardinal virtues in secular scenes in civic buildings were part of a trend in Italy and elsewhere.⁵³ Helen North believes that political efforts to incorporate the ancient virtues were evident as

46. See S. EDGERTON, *supra* note 8, at 36, plate 7.

47. *Id.* at 37.

48. *Id.* at 38. The second depiction of Justice may refer to the Platonic notion of Justice as the virtue required by and superior to the others.

49. *Id.*

50. *Id.* (quoting Rubenstein, *Political Ideas in Sienese Art: The Frescoes of Ambrogio Lorenzetti and Taddeo di Bartolo in the Palazzo Pubblico*, 21 J. WARBURG & COURTAULD INSTS. 179, 182-83 (1958) (Aquinas' description of Commutative Justice) (footnote omitted)).

51. Edgerton believes these people to be prisoners. S. EDGERTON, *supra* note 8, at 39. On Ambrogio Lorenzetti, see Tuve, *Notes Part One*, *supra* note 11, at 290-92; M. WARNER, *supra* note 4, at 154-57.

52. On the didacticism of later Sienese painting, see B. COLE, *SIENESE PAINTING IN THE AGE OF THE RENAISSANCE* 166 (1985).

53. H. NORTH, *supra* note 6, at 223. There was also a mixture of the secular in the sacred. For example, in St. Janskirk in Gouda, Netherlands, Justice (and other virtues) appear in some stained glass windows installed after the Reformation. Society for the Study of Gouda Windows, *The Stained Glass Windows of St. Johns Church, Gouda 1-2, 17-18* (pamphlet, undated, on file with authors).

early as Charlemagne's era, but that in the fourteenth and fifteenth centuries, political leaders of the city-states in Italy were particularly intent upon prominent display of and association with both cardinal and theological virtues.⁵⁴ We have found a parallel interest extant in the sixteenth century in other regions. For example, Justice and the other virtues graced the designs for coats of arms of many burgher states in middle Europe.⁵⁵

During the later Middle Ages, scenes of the Day of Judgment and of earthly instances of judging also began to adorn the walls of civic buildings. Ruling polities showed scenes of judgment, both divine and secular, in an apparent effort to link the two.⁵⁶ In these pictures, Jesus often takes the position of judge; in some instances, the Virgin Mary is blurred with Justice.⁵⁷ In these Last Judgment tableaux, the judge condemns the sinners to hell and raises the virtuous to heaven.

By the time of the Renaissance, such pictures became increasingly common. As Professor Edgerton relates, while such depictions were occasionally placed in communal buildings in Italy, "[d]uring the fifteenth and especially the sixteenth century in northern Europe it became standard practice to have a *Last Judgment* painted on the wall behind the judges' bench."⁵⁸ One fifteenth century painting showed a municipal court below with Jesus and his heavenly court directly above.⁵⁹ Craig Harbison comments that "the most noteworthy feature of the Last Judgments located in Town Halls is their position in a totally profane environment."⁶⁰ Further, such images appeared not only in secular rooms, but also in books of town

54. *Id.* at 223, 225-27.

55. See C. KAUFFMANN, *supra* note 38, catalogue no. 28 (describing Stocklin, Design (ca. 1625-30) (arms of City of Basle supported by two cockatrices)); *id.* catalogue no. 13 (describing Plepp, Design (ca. 1557-97) (arms of City of Basle supported by two lions rampant)).

56. See S. EDGERTON, *supra* note 8, at 22-23. Often, two scenes were depicted, with divine judgment above and earthly justice below. Sometimes, a single image combines the divine and the secular. One of Dürer's best known prints is *Sol Justitiae*, executed around 1500, in which a male figure, often described as Jesus, appears as a judge. See O. KISSEL, *supra* note 5, at 39, plate 26; DÜRER, *supra* note 20, at 52-53, plate 25. According to Strauss, the editor of *Dürer*, the print's source was Petrus Berchorius' *Repertorium Morale*. DÜRER, *supra* note 20, at 52 ("The Sun of Righteousness shall appear ablaze when he will judge mankind on the day of doom . . .").

57. S. EDGERTON, *supra* note 8, at 22-23, 38. In some Italian communal buildings, images of the Virgin Mary were accompanied by the inscription, "Odi l'altra parte!" (Hear the other side!). *Id.* at 52 n.38; cf. Shorr, *The Role of the Virgin in Giotto's Last Judgment*, 38 ART BULL. 207 (1956) (painting "emphasizes in a particular way her close relationship to mankind and the intimate role that she plays in its salvation at the Day of Judgment"). See generally P. GOLD, *THE LADY AND THE VIRGIN* (1985) (relationship of iconography of Virgin Mary and of secular "dame" of romance literature to societal role of women). Injunctions mandating impartiality were not restricted to Northern Italy. In the Town Hall of Gouda, Holland, built between 1448-1459, the Latin inscription *Audite et Alteram Partem* (Hear also the other side) appears above the entry door.

58. S. EDGERTON, *supra* note 8, at 32-33.

59. *Id.*

60. C. HARBISON, *THE LAST JUDGMENT IN SIXTEENTH CENTURY NORTHERN EUROPE: A STUDY IN THE RELATION BETWEEN ART AND THE REFORMATION* 52 (1976).

laws and regulations.⁶¹ In Harbison's view, "[t]he use of Last Judgments in town council and judgment chambers should be considered in conjunction with a related but more widespread development—the use of justice pictures in general as prototypes or archetypes for a more earthly, contemporary, and immediate adjudicating act."⁶² While noting some of the differences between the Last Judgments designed for secular rather than sacred locations,⁶³ Harbison argues that the depictions were efforts to legitimate and elevate secular activities by suggesting an association with the sacred.⁶⁴

What else might explain the placement of Justice and judgment scenes in many public places? Edgerton's theory is that the increasingly secular societies of the city-states in Italy sought "spiritual affirmation that their urban way of life was just as God-annointed as the old feudal vision of society."⁶⁵ Harbison suggests that in Northern Europe, the Reformation and secularization gave impetus to a need for propaganda to reassure members of society that earthly decisions paralleled heavenly ones.⁶⁶ As the world was moving away from the equation of rulers with the divine, rulers nonetheless sought to persuade their citizens that they, the rulers, embodied qualities associated with the divine, and that the ruling polity could render justice as did God.

What is important—but difficult from a twentieth century perspective—to appreciate is the power that all these images may have had for contemporary viewers. In a world without printed books, a world in which few were literate, a world with few images, what was it like to look at such pictures? Medieval and Renaissance art was intended to be didactic and to transmit a vivid message,⁶⁷ and images were elements of a mysticism quite at odds with the subsequent ages of rationality.⁶⁸ In the eighth century, one commentator stated: "Images speak, they are neither mute nor lifeless blocks . . . Images open the heart and awake the intellect, and, in a marvelous and indescribable manner, engage us to imitate the persons they represent."⁶⁹ And, according to Professor Gombrich, while allegorical pictures were translations of intellectual messages into

61. *Id.* at 54.

62. *Id.* at 60.

63. *Id.* at 62.

64. *Id.* at 62–64.

65. S. EDGERTON, *supra* note 8, at 22.

66. C. HARBISON, *supra* note 60, at 61–64; *see also* Harbison, *Introduction* to SYMBOLS IN TRANSFORMATION: ICONOGRAPHIC THEMES AT THE TIME OF THE REFORMATION 15–16 (1969) (exhibition catalogue of Princeton University Art Museum).

67. *See* Roberts & Weisberg, *supra* note 11, at 28.

68. *Id.* at 33–37. *See generally* E. KANTOROWICZ, *THE KING'S TWO BODIES: A STUDY IN MEDIAEVAL POLITICAL THEOLOGY* (1957).

69. Sir John Damascenus, *quoted in* 1 A. DIDRON, *CHRISTIAN ICONOGRAPHY* 3 (E. Millington trans. n.d.); *see also* Roberts & Weisberg, *supra* note 11, at 33.

visual form, these pictures were something more: The symbolic import was connected to, and to some extent merged with, reality. In other words, the viewer would have experienced a correspondence between the picture and the abstract idea depicted. According to Gombrich, the onlooker would perceive the concept directly rather than by a pattern of interpretation dependent upon sequential thought. Thus, the visual symbol not only represented but somehow became interchangeable with what it represented.⁷⁰

While one cannot recover all that an image might have conveyed,⁷¹ a consistent theme emerges: a political community holding out the image of Justice or of divine judgment in the places in which officers of the polity made their judgments and conducted civic business. Moreover, although sovereigns once allied themselves with all of the cardinal and theological virtues, over time Justice moved to a more prominent position than that of the other virtues. In Ambrogio's fresco in Siena, Justice appears twice and is in both instances larger than her sisters. In the Vatican, Raphael depicts her repeatedly.⁷² In the Netherlands, statues of Justice can be found on seventeenth century town halls, including those of Haarlem and Delft. And, as one moves forward in time, allegorical depictions of the other virtues diminish while images of Justice continue to be commissioned. In Hampton Court Palace in England, a painting by Verrio, dated approximately 1704, shows *Queen Anne as Justice*,⁷³ a sign that the English monarchy appropriated Justice as its own. See Figure 3. After the monarchy lost its authority, Parliament maintained a proprietary interest in Justice, who was placed atop London's criminal courthouse, Old Bailey. In many parts of Europe and in the United States, Justice stands as the lone virtue depicted. Several courthouses built in the United States during the nineteenth and, to a lesser extent, the twentieth centuries include Justice as part of the decor.⁷⁴

More than happenstance has led rulers continually to claim a connection with Justice, while slowly relinquishing their identification with and

70. E. GOMBRICH, *SYMBOLIC IMAGES: STUDIES IN THE ART OF THE RENAISSANCE* II 123-91 (3d ed. 1985).

71. See generally S. LANGER, *PHILOSOPHY IN A NEW KEY* 53-78 (1942).

72. See *ALL THE FRESCOS OF RAPHAEL* pt. 1, plate 7, pt. 2, plate 158a (E. Camesasca ed., P. Colacicchi trans. 1963).

73. Verrio's painting in Hampton Court Palace, described in R. NASH, *HAMPTON COURT* 145 (1983) (apparently Verrio was never compensated for the work); see also Rubens, *The Felicity of the Regency* (1625), Louvre, Paris (depicting Queen Marie de Medici holding scales of justice), reproduced in F. BAUDOUIN, *PIETRO PAOLO RUBENS* 227, plate 60 (1977); Pierre Paul Prud'hon, *Justice and Divine Vengeance Pursuing Crime* (1808), Louvre, Paris (commissioned to hang behind judges' bench in criminal court of Palais de Justice in Paris). For a discussion of the artistic genesis and history of the Prud'hon painting, see Weston, *Prud'hon: Justice and Vengeance*, 117 *BURLINGTON MAG.* 353, 353-57 (1975).

74. See, e.g., *COURT HOUSE*, *supra* note 15.

deployment of the other virtues. The imposition of judgment, with its requisite violence,⁷⁵ is an essential, inevitable aspect of governance. How convenient, how distancing from human subjectivity and fallibility, if such decisions go forth in the name of Justice. As kings lost their claims of divinity and as countries lost their kings, governing bodies nonetheless insisted on maintaining an affiliation between their states and the imagery of justice. A picture or sculpture of a woman with sword and scales and a painting of the Day of Judgment suggested that a sovereignty could rightfully pronounce judgments.

For twentieth century observers, the idea of such pictures as powerful, or even didactic, is problematic. In a generation comfortable with indeterminacy and with the intricacies of semiotic interpretations, claims that pictures "mean" anything are to be approached with caution.⁷⁶ But medieval and Renaissance texts suggest that both artists and viewers of those eras looked with different sensibilities upon allegorical and metaphoric imagery. For example, Cesare Ripa, the sixteenth century compiler of the iconography of his era,⁷⁷ produced an encyclopedia, *Iconologia*, to provide a "description and classification of images."⁷⁸ Ripa's *Iconologia* was popular,⁷⁹ and scholars believe that it captured for the period the "fairly common agreement on the way in which ideas, often very abstract ones, could be intelligibly and effectively represented visually."⁸⁰ According to one translation, Ripa tells us that:

The personification of Justice is a blindfolded woman robed in white and wearing a crown. . . . She supports a pair of scales in her lap with one hand. Her other hand holds a bared upright sword, and rests on a bundle of lictors' rods [fasces], from around which a serpent is unwinding. A dog lies at her feet. On the table are a scepter, some books, and a skull.

She is robed in white, for the judge must be without moral blemish which might impair his judgment and obstruct true justice. She is blindfolded, for nothing but pure reason, not the often misleading evidence of the senses, should be used in making judgments. She is regally dressed, for justice is the noblest and most splendid of concepts. The scale, used to measure quantities of material things, is a

75. *Violence and the Word*, *supra* note 2, at 1608.

76. See generally M. BAXANDALL, *PATTERNS OF INTENTION* (1985).

77. See Maser, *Introduction* to C. RIPA (Maser ed.), *supra* note 16, at viii-xix (explaining *Iconologia*). The full text of the original version of the *Iconologia*, first published in 1593, has not to our knowledge been translated into English. The earliest English version we have found is G. Richardson's 1777 edition, which, like the Maser translation, is a selective rendition. Our thanks go to Jennifer Montagu for some impromptu translations of one of the early seventeenth century Ripa editions.

78. This definition of "iconography," applied by C. RIPA (Maser ed.), *supra* note 16, at viii, is from E. PANOFSKY, *MEANING IN THE VISUAL ARTS* 26 (1955).

79. C. RIPA (Maser ed.), *supra* note 16, at x-xi; see also H. NORTH, *supra* note 6, at 250.

80. C. RIPA (Maser ed.), *supra* note 16, at vii.

metaphor for justice, which sees that each man receives that which is due him, no more and no less. The sword represents the rigor of justice, which does not hesitate to punish. The same meaning is embodied by the lictors' rods, the Roman symbol of the judge's power to punish and even execute. The snake and the dog represent hatred and friendship, neither of which must be allowed to influence true justice. The scepter is a symbol of authority; the books, of written law; and the skull, of human mortality, which justice does not suffer, for it is eternal ⁸¹

We turn in the next sections of this essay to alternative interpretations of some of the attributes that Ripa describes. For now, in Ripa's description we find a Justice that all governments might well hope would be equated with the rulings they impose.

III. THE TWO TRADITIONS: THE IDEAL AND THE GROTESQUE

While most of Ripa's discussion is directed towards the heroic, positive aspects of Justice, there are elements of his description that imply a darker side and suggest a Justice gone awry. The dog and the snake are, Ripa explains, reminders that both friendship and hatred could corrupt judgment. But there are visual reminders more graphic than the inclusion of a dog and a snake in a picture. The pictorial history is rich with frank acknowledgements of the problematic posture of real judges and even of idealized Justice. Yet, unlike the inspirational images of Justice found in public buildings of the nineteenth and twentieth centuries, much of the negative imagery of prior centuries has been relegated to archives.

Consider, for example, the myth of Cambyses, translated with some regularity in paintings, drawings, and prints from the fifteenth through seventeenth centuries.⁸² See Figures 5a and 5b. Herodotus tells us that when Cambyses ruled Persia, he had the corrupt judge Sisamnes flayed alive. Cambyses then appointed Sisamnes's son, Otanes, to succeed his father as judge. Cambyses required that Otanes sit upon a seat made of his father's skin.⁸³ In the late fifteenth century, when the Flemish artist Gerard David was commissioned to paint panels for the Bruges "Hall of

81. C. RIPA (Maser ed.), *supra* note 16, at 120. Because there were multiple "original" editions of Ripa, and because we have heard oral translations of other editions, we wish to underscore the impact of the translator on the text. For a description of the many editions, see *id.* at ix–xix. For references to attributes not described in the Maser edition, see, e.g., B. ROWLAND, *supra* note 39, at 114–15 (citing Ripa's inclusion of an ostrich as an attribute of Justice).

82. See, e.g., Plepp, Design, *supra* note 55 ("on the left, King Cambyses with the son of the unjust judge, whose flayed skin hanging above his seat acts as a warning to other judges") in C. KAUFFMANN, *supra* note 38; see also Cambyses medal (1550), described in Gans' and Kisch's exchange in *The Cambyses Justice Medal*, 29 ART BULL. 121 (1947).

83. See HERODOTUS, THE HISTORIES bk. V, at 349 (A. de Sélincourt trans. 1972).

Sheriffs," he painted the "horrific" *Flaying of Sisamnes*.⁸⁴ These two large panels are vividly colored and visually powerful. The black and white reproduction cannot transmit the stomach-churning impact of the flaying. In that panel, a near life-sized Sisamnes, his face contorted in agony, stares upward as his skin is peeled away to reveal the bloody flesh underneath. The story and images were of sufficient currency to be cast in sixteenth century medals⁸⁵ and to be included as part of a discussion of *Injustice* in one of the several translations of Ripa.⁸⁶ But the images the tale conjures up have been lost to popular discourse.

Les Juges aux Mains Coupées (The Judges with Hands Cut Off), a late fifteenth/early sixteenth century fresco from the Geneva Town Hall, is another startling image.⁸⁷ See Figure 4. Such a depiction—of judges, and occasionally of Justice herself, without hands—is not unique to the town hall of Geneva. Plutarch spoke of the judges of Thebes who had no hands; his story might have been a source for the Geneva painting.⁸⁸ Sixteenth century designs for Swiss stained glass windows include a Justice accompanied by two putti (cherub-like figures), one of whom has its hands cut off.⁸⁹ See Figure 7. Further, Professor Michael Evans has found a blind Justice, with arms amputated below the shoulder, in German manuscripts of the fifteenth century.⁹⁰

Comparable images do not seem to appear in public buildings in the

84. See Mundy, *supra* note 25, at 122–23. We do not know whether the artist or those who commissioned the work chose its theme. One can look at the pictures as reminders of kingly power and authority. Some commentators have suggested a link between Bruges' conflict with Maximilian (in approximately 1488) and the decision to depict the Cambyes story. Bruges' officials had imprisoned Maximilian in 1488, thereby incurring the enmity of that monarch. Some art historians believe that the painting is a reference to this incident, while other art historians have rejected the theory, in part because by the time the painting was completed and paid for (1498), the political situation had changed, and in part because other Cambyes portrayals appear, around the same time, in other town halls. See D. DE VOS, BRUGGE MUSÉES COMMUNAUX CATALOGUE DES TABLEAUX, 15e et 16e Siècles 121–25 (1982); see also D. DE VOS, GROENINGE MUSEUM 25–27 (Vermeersch & Duvosquel eds. 1983).

85. See Gans, Kisch, *supra* note 82, at 121.

86. See C. RIPA (Maser ed.), *supra* note 16, at 117. Maser selected the engravings from the Hertel edition of Ripa, dating from the mid-eighteenth century. *Id.* at xv–xix.

87. See Deonna, *supra* note 24.

88. See PLUTARCH, *Isis and Osiris*, in 5 MORALIA 27 (F. Babbitt trans. 1926) (no. 10). In Deonna's view, the Geneva judges are a reference to Plutarch's discussion of the judges of Thebes—that the judges had no hands, and that the chief judge had closed eyes—"c'était faire comprendre que la Justice ne doit ni accepter de présents, ni laisser approcher personne jusqu'à elle" (It was to make clear that Justice is not influenced by gifts or by intercession.). Deonna, *supra* note 24, at 141.

89. Murer, Design (1586), reproduced in C. KAUFFMANN, *supra* note 38, catalogue no. 17 (Justice depicted holding sword and scales with two cupids in upper corner: "[T]he one on the left holds a crown and sceptre, symbolising the sovereignty of Justice, the other is blinkered and has his hands cut off at the wrist. This is an ancient if relatively rare attribute of Justice, symbolizing the refusal to take bribes.").

90. See Evans, *supra* note 6, at 12–14. According to Evans, Plutarch's discussion of Thebes' judges who were without hands was probably not accessible at the time when the idea of a maimed Justice re-emerged in the 1530's. *Id.* at 14–15.



Figure 7. Christopher Murer, Design for Swiss stained glass window (1586). Reproduced with permission of the Victoria and Albert Museum, London, England.

nineteenth and twentieth centuries. Indeed, in this century, attempts to portray Justice in other than a purified manner have met with controversy. For example, Gustav Klimt painted—with “bony specificity” and “severity”—a woman he called *Jurisprudence*, floating high above a punishment scene populated by three naked women and a naked, bowed, aged man caught in the tentacles of an octopus.⁹¹ Klimt’s portrayal of *Jurisprudence* never was displayed on the walls of the University of Vienna, for which it had been commissioned. Although full of ambiguities, Klimt’s vision is a harsh one—at odds with the bland, inspirational Justices that we see today. Those who have commissioned the portraits of Justice during recent centuries seem generally to have had little interest in renditions of handless figures, of depictions of judges sitting on their father’s skins, or of the miseries of punishment that flow from judgment.⁹²

What are we to make of the placement of the *Flaying of Sisamnes* and *Les Juges Aux Mains Coupées* in civic buildings? One possibility is that we read these images as being more aggressive than did those who saw them originally. As Professor Edgerton documents, what today may seem to be brutally painful images of punishment—in Last Judgment paintings and elsewhere—were common from the fourteenth to the sixteenth century in Florence.⁹³ Further north, Hieronymus Bosch painted similarly harsh (to our eyes) images of the *Last Judgment* and of the *Deadly Sins*.⁹⁴ Perhaps sensibilities have changed over time; what we register as grotesque imagery today may not have been understood contemporaneously in the same way.

Edgerton’s view, however, is that harsh paintings of punishment were intended and received as such, and that such pictures were explicitly didactic efforts of the state.⁹⁵ But if the images of Sisamnes and the handless judges were read as harsh, why were such painful pictures—reminders of corruption and of possible weakness—placed in town halls? Why show judges who are prevented both from receiving bribes and grasping for favors only because they lack hands? We do not know the full account of the commissioning or the painting of these pictures. Perhaps in each locality, some story lost to us today explains the images.

But there are other possibilities. These images were painted at a time when secular courts were developing and when judges were becoming a group of employees somewhat distinct from the sovereign. Perhaps these images are parallels to the “folktales” Bob Cover told—of Simeon ben

91. See K. VARNEDOE, *supra* note 14, at 153–55 (with photograph).

92. Not only the grotesque has slipped from view. The ostrich and the crane, portrayed occasionally beside Renaissance Justices, have also disappeared. See *supra* notes 39–40.

93. See S. EDGERTON, *supra* note 8, at 88–95.

94. See C. LINFERT, *HIERONYMUS BOSCH* plates 1–6, 68–69 (J. Spencer trans. 1959).

95. See S. EDGERTON, *supra* note 8, at 59–90, 126–64.

Shetah and King Yannai, of Lord Coke and King James I, of Judge Stern and the State Department, of judges being threatened by governments that sought to coerce acts in accordance with the sovereign's wishes.⁹⁶ In each of these stories, a confrontation between sovereign and judge requires a judge to attempt to stand separate from his sovereign, to call a sovereign to judgment, or to disagree with the judgment preferred by the sovereign.

Unlike Bob's narratives, however, of heroic judges who stand up to a sovereign's pressures even in the face of bodily harm or loss of their jobs, we find medieval and Renaissance images of judges warned, limited, and curbed by their kings. Cambyes had the judge flayed and then made the son take the judgment seat fashioned from his father's skin. An inscription on one of the mid-sixteenth century medals that depicts the Cambyes story states: "Cambyes maintained the law and administered it justly, as one can perceive here from the punishment."⁹⁷ While Herodotus' description of Cambyes suggests a king gone mad,⁹⁸ a Renaissance reinterpretation is of a king in appropriate control of the judiciary. Sovereigns of that era may well have found utility in reminding the populace of their power (and perhaps, their willingness to use it) or in warning their judges of the retribution that would follow if judges displeased them.⁹⁹

Yet another possibility is that, in a world in which one had confidence in Divine Justice and had faith in the fabulous justice of a God who would provide ultimate fairness, one could afford to admit the possibility that earthly justice was fallible.¹⁰⁰ Both the paintings of Sisamnes and of the handless judges are of judges, not Justice. Further, the Geneva Town Hall also had Justice on its walls; she is regally enthroned, with sword and scales—and with arms and hands.¹⁰¹ Indeed, while Professor Evans reports that a few armless Justices exist, he describes them as "anomalies among medieval representations of Justice."¹⁰²

But we do not want to press the judge-not-Justice theory too far. Although not common, armless and handless Justices do exist, and the idea of showing a judge without hands is an ancient one. The physical disfigurement is aimed at moral enlightenment. Accompanying one handless

96. *Folktales of Justice*, *supra* note 2, at 184, 187–88; *Violence and the Word*, *supra* note 2, at 1619–21.

97. Gans, Kisch, *supra* note 82, at 121. The medal was struck in Germany.

98. HERODOTUS, *supra* note 83, at 217–19, 229; *see also id.* bk. III, at 1–66.

99. In the encounter between Simeon Ben Shetah and King Yannai, the fear of displeasing the earthly king is compared with the penalty exacted by the divine king. After all the other judges had failed to stand up to the King, the "courageous judge" Simeon Ben Shetah said, "Let the Master of thoughts come and call you to account." Instantly, Gabriel came and smote them all and they died." *Folktales of Justice*, *supra* note 2, at 184; *see also infra* notes 126–127 and accompanying text.

100. *See* E. PANOFKY, *supra* note 11, at 109 n.48 (1972) (early edition of Ripa limits use of blindfold to Worldly Justice). *See generally* J. Shaw, *supra* note 8, at 31.

101. Deonna, *supra* note 24, at plate 44 (following 136) (figure 10).

102. Evans, *supra* note 6, at 12.

Justice is the inscription: "She has no hands so that she shall not be too gentle or too harsh."¹⁰³ Hence, the aspiration (on the textual surface) is to a fair judgment, but the disquieting image reminds all who face judgment that fairness has not always been achieved, that the missing hands may have held bribes or have punished too brutally. These images are powerful because they allude not only to Justice but also to the act of judgment and to the pain that accompanies it.¹⁰⁴ As Professor Tuve well explained: "With Justice, matters are yet more complicated, for it is the most interesting virtue, the one most related to metaphysics and the definitions of Deity, most caught up in double entendres during centuries . . . when every Western man . . . conscious of the Vulgate [Bible] uses translated iustitia: righteousness."¹⁰⁵

While the ability to recognize a figure as Justice when she is portrayed according to the specifications of Ripa has endured, most of us are not familiar with images of handless judges. What might be signified by the current absence of these painful images? Does our government have little use for a grotesque Justice, with her vivid cues about the very human defects of the justice system? That the United States does not wish to remind us or its judges of their vulnerability to a powerful sovereign? That judges are no longer vulnerable to powerful sovereigns? Or is it simply that the time for allegorical imagery has passed, that in a world in which everyone can be "famous for fifteen minutes,"¹⁰⁶ and in which images abound and bombard, icons can no longer exist?

IV. THE VISUAL CUES TO A PROBLEMATIC JUSTICE

A first question is whether justice imagery has been drained of all that is painful, has been so sanitized that only benign or sympathetic aspects remain. Do the attributes that are standard today—sword, scales, and blindfold—bring forth only positive associations? Commentators of our generation cannot claim that only a single interpretation is "correct" or even cognitively possible.¹⁰⁷ The sword need not only represent, in Ripa's words, the "rigor of justice," but may also mean cruelty or an unwillingness to reach compromises. Remember, after all, the tale of Solomon, who offered to use the sword to cut the child in half, to give each claimant her share.¹⁰⁸ Contemporary critics of adjudication in the United States be-

103. *Id.*

104. *Violence and the Word*, *supra* note 2, at 1607.

105. R. TUVE, *supra* note 8, at 66.

106. Andy Warhol, Catalogue of Photo Exhibition (1968), Stockholm, *quoted in* J. BARTLETT, *FAMILIAR QUOTATIONS* 908 (15th ed. 1980).

107. See generally R. GEUSS, *THE IDEA OF A CRITICAL THEORY* (1981).

108. See Minow, *The Judgment of Solomon and the Experience of Justice*, in R. COVER & O. FISS, *THE STRUCTURE OF PROCEDURE* 447 (1979).

moan what they perceive as the rigidity of court-based remedies and argue for alternatives to adjudication to provide for greater justice. For them, the sword may represent only the limitations of formal Justice.¹⁰⁹ Similarly, while the scales may be the mechanism by which, again according to Ripa, a person “receives that which is due . . . no more and no less,” the scales can also prompt other associations. The scales, like the sword, have potential for absolute rather than compromised outcomes; souls are weighed and sent to eternal life or damnation.¹¹⁰ The scales were associated classically with the Greek goddesses of opportunity, victory, and retribution as well as with Justice.¹¹¹ Sword and scales need not only remind us that Justice can be powerful and correct; they can also be interpreted as indications of Justice as harsh, unsympathetic, and unyielding.

Consider also the many meanings possible for the blindfold. The blindfold is a relatively late addition to the imagery of Justice. Although Plutarch wrote about the Chief Judge of Thebes whose eyes were closed,¹¹² most images of Justice before the sixteenth century did not include blindfolds. Hundreds of images—statues, illustrated manuscripts, paintings—depicted Justice with eyes open.¹¹³ The images began to change during the sixteenth century; thereafter, some depictions showed a wide-eyed Justice while others depicted her blindfolded. By the time of Ripa, the blindfold was sufficiently common to be included in his iconography. Ripa’s claim about the blindfold is a positive one; his instructions would have us understand that Justice is blindfolded to avoid the “misleading evidence of the senses.”¹¹⁴ Unlike ordinary individuals, Justice must not be led astray by information that could undermine her judgments. Bob Cover used the blindfold to construct his own folktale of justice, a story of a volitional act of constraint to enable better judgment. Bob’s blindfolded Justitia captures both the aspirations of mythic judges and the problems

109. See generally Menkel-Meadow, *For and Against Settlement: Uses and Abuses of the Mandatory Settlement Conference*, 33 UCLA L. REV. 485 (1985); Menkel-Meadow, *Toward Another View of Legal Negotiations: The Structure of Problem Solving*, 31 UCLA L. REV. 754 (1984) (criticizing zero-sum approach to dispute settlement).

110. See Daube, *supra* note 32, at 113–15; Perry, *supra* note 32; see also Wormald, *The Crucifix and the Balance*, 1 J. WARBURG INST. 276 (1937–38) (tracing imagery of Crucifix as balance upon which sins are weighed).

111. Daube, *supra* note 32, at 114.

112. Evans, *supra* note 6, at 14 (chief justice represented with closed eyes to signify that “justice is inaccessible to persuasion”); cf. E. PANOFSKY, *supra* note 11, at 109 n.48 (Plutarch’s chief justice “shown eyeless in order to illustrate his impartiality.”).

113. Many examples can be found under the “Justice” category in the “Virtues” and “Vices” files of the Warburg Institute’s Photographic Archives. See also O. KISSEL, *supra* note 5, at 82–92. Regional style may also affect the depictions. See *supra* note 38.

114. C. RIPA (Maser ed.), *supra* note 16, at 120. It would be interesting to learn whether all the editions of Ripa included references to blindfolds, an attribute that was relatively late in becoming associated with Justice and is not ubiquitous—either at the time when Ripa was writing or now.

of judging. But there is another side (of which Bob was well aware) to the blindfold imagery.¹¹⁵

The blindfold in iconography appears not only on Justice but also on other figures. In these other contexts, the blindfold was used not only to signify the distance at which the blindfolded entity stands from the cares, pleasures, and complexities of humanity, but also to signify a failure to see the truth. For example, medieval statues of Synagoga (representing the Old Testament) depict that female figure as blindfolded—interpreted by some commentators as meaning that she is blind to the light of Christianity.¹¹⁶ Similarly, images of romance and love employ blindfolded cupids, again read not as positive attributes but as indications of the foolishness and confusion generated by love. Eros himself is upon occasion blindfolded—in a possible reference to the misguided course of love.¹¹⁷ Another Ambrogio Lorenzetti fresco, *Good Government in the Country*, painted in approximately 1337 as a companion piece to the *Allegory of Good Government*, shows a blindfolded hanged man, with his coat blowing in the wind.¹¹⁸

In short, medieval and Renaissance imagery paid attention to light and darkness, and many scholars of the period believe that images of darkness and blindfolds were intended to be read as signifying the profound limitations of the wearer of a blindfold.¹¹⁹ Further, our own associations with blindfolds are by no means all benign, for the image of a person facing a firing squad is of a person being blindfolded to meet her or his fate. And different interpretations of this gesture are possible. The blindfold may not only be placed upon the condemned individual to ease the pain of the last few moments of life, but the blindfold may also incorporate a remnant of the medieval censure, blaming the wearer for past inadequacies.

There are two well-known blindfolded Justices from the early Renaissance. The first appears in a late fifteenth century woodcut by Dürer to illustrate a book by Sebastian Brant. Justice is shown being blindfolded

115. Bob's myth itself admits the tensions in blindfold imagery. Note the reference to Isaac's blessing; the blind Isaac mistakenly blesses Jacob instead of Esau. *Genesis* 27:27.

116. See O. KISSEL, *supra* note 5, at 31, plate 17 (blindfolded Synagoga with broken lance in Bamberg, ca. 1230–1240). Synagoga (the representative of the Old Testament) and Ecclesia (the New Church) sometimes stood at either side of a cross. See J. Shaw, *supra* note 8, at 11; see also Master of the Ursula Legend, *Panels of the Legend of St. Ursula, the Church and the Synagogue* (Synagogue blindfolded), reproduced in D. DE VOS, GROENIGE MUSEUM, *supra* note 84, at 32; E. PANOFKY, *supra* note 11, at 110–12 & plate 79; D. PANOFKY & E. PANOFKY, *PANDORA'S BOX* 44–47 (1956) (blindfold on Vice in Mantegna's *The Fall and Rescue of Foolish Humanity* meant to indicate temporary absence of sight); J. SCHRADER, *A MEDIEVAL BESTIARY* 38 (1986) (Metropolitan Museum of Art Bulletin) (owl symbolizes darkness and hence those who rejected light of Christianity).

117. See E. PANOFKY, *supra* note 11, at 95–128.

118. S. EDGERTON, *supra* note 8, at 130.

119. *Id.*; see also J. Shaw, *supra* note 8, at 5–7.

by a fool; we are told that the image is meant derisively, to indicate the attempt to lead Justice astray by taking away her sight.¹²⁰ See Figure 6. The second, dated approximately 1554, is Pieter Brueghel's *Justice*, in which a blindfolded Justice is in the middle of a large, crowded scene. In different parts of the picture, various kinds of punishment, including hanging, burning, scourging, and beheading, are being imposed. In the foreground, a man is being stretched on a rack while a fluid is poured through a funnel down his throat. Justice, accompanied by a retinue of armed men, holds a raised sword and carries scales.¹²¹ Is the blindfold a celebration of Justice's inner wisdom or a satiric addition? Is she blindfolded not to see the many injuries imposed in her name?

The growth in popularity of the blindfold merits discussion. Why did this attribute come down to us, while others, such as the crane and ostrich, have been left behind? And why today are the positive associations of the blindfold, such as those set forth in Ripa, so prevalent, rather than the more critical interpretations?¹²² One iconographical explanation is suggested by Professor Evans. Sometime in the 1500's, Renaissance culture recovered many ancient writings, including those of Plutarch, whose description of the sightless Chief Judge of Thebes may have provided a source for artistic depictions of Justice's eyes.¹²³ During the 1500's and 1600's, one finds not only blindfolded Justices, but also Justices with eyes visible behind a mask.¹²⁴ The Plutarch reference, coupled with Ripa's description, may have provided touchstones for such images.

A political explanation is offered by Judge Otto Kissel, who notes that the blindfold became a popular attribute of Justice during the sixteenth and seventeenth centuries. Kissel argues that inclusion of the blindfold in Justice imagery coincided with the establishment of professional, independent judges, who stood apart from the sovereign and were not simply acting at its behest.¹²⁵ Justice blindfolded cannot see the signals a sovereign

120. See O. KISSEL, *supra* note 5, at 39, plate 27; J. Shaw, *supra* note 8, at 15-17; Simmonds, *The Blindfold of Justice*, 63 A.B.A. J. 1164 (1977).

121. Brueghel's work hangs in the Royal Library, Brussels. See O. KISSEL, *supra* note 5, at 67, plate 53. The Latin inscription under the engraving reads: "The aim of the law is either through punishment to correct him who is punished, or to improve the others by his example, or to protect the generality by overcoming the evil." M. WARNER, *supra* note 4, at 158; see also D. KUNZLE, *THE EARLY COMIC STRIP* 162-63 (1973).

122. See Simmonds, *supra* note 120.

123. Evans, *supra* note 6, at 14. Evans notes that, in 1564, a Latin translation of Plutarch was published in Louvain, and he agrees with Deonna, *supra* note 24, at 141, 143, that the description of the judges of Thebes was a source for the frescos in the City Hall of Geneva. See also J. Shaw, *supra* note 8, at 15.

124. C. KAUFFMANN, *supra* note 38 (some designs show Justice with eyes visible beneath blindfold).

125. Kissel believes that the blindfold's popularity after 1500 was related to the replacement of lay judges by judges with legal training and to the developing distinction between the state and the judiciary. He sees the blindfold as signifying the need for the employee, the judge, not to decide cases

might send on how to decide a case. This approach parallels Bob Cover's discussion of King Yannai and Simeon ben Shetah. The story grows out of attempts to explain the Talmudic phrase: "The king does not judge and we do not judge him."¹²⁶ Bob recounts, from the Babylonian Talmud, that judges of the Sanhedrin initially called King Yannai to testify. However, with the exception of Simeon ben Shetah, the judges were cowed in the King's presence and refused to make demands upon him.¹²⁷ A blindfolded Justice cannot see who comes before her, and hence cannot be impressed by the power of the litigants or witnesses who might seek to intimidate her. Had the judges of the Sanhedrin worn symbolic blindfolds, had they the means (and the power) to stand apart from the sovereign, they might not have been so frightened by the presence of King Yannai.

This "no fear or favor" theory might explain why the blindfold imagery endured. As notions of equality gained currency in the eighteenth and nineteenth centuries, it made sense to imagine a blindfolded Justice as more fair than a Justice with sight.¹²⁸ Perhaps jurisprudential assumptions of natural law aided the imagination; if justice could be known from within, insight and wisdom were not dependent upon what was perceived. But the issue of how to decide fairly, and the relationship between that issue and the imagery of Justice, predates the emergence of the blindfold as one of the standard attributes of Justice. The concept of equality before the law has roots more ancient than the "Age of Enlightenment." Bob enjoyed a passage from the *Code of Maimonides*, a twelfth century compilation of Jewish law, in which Maimonides explains the phrase from *Leviticus*: "In righteousness shalt thou judge thy neighbor."¹²⁹ Maimonides asks:

What is meant by a righteous judgment? It is a judgment marked by perfect impartiality to both litigants . . . not to show courtesy to one, speaking softly to him, and frown upon the other, addressing him

to please the employer, the state, and he explains the subsequent popularity of the blindfold in Northern Europe as a constant reminder of the need for impartiality (vis-a-vis the state) of the newly-independent judiciary. O. KISSEL, *supra* note 5, at 82-92.

126. *Mishneh Sanhedrin* 2:3, quoted in *Folktales of Justice*, *supra* note 2, at 183.

127. According to the story, Simeon ben Shetah, Chief Judge of the Sanhedrin, called upon King Yannai to testify in a case involving the King's slave. The King challenged the court; he would only testify if all 71 of the judges would so command him. All except Simeon ben Shetah declined to order the King to testify. After King Yannai left, Simeon called upon God to call the weak judges into account; the Angel Gabriel responded by killing them all. *Folktales of Justice*, *supra* note 2, at 184.

128. See E. PANOFSKY, *supra* note 11, at 109 ("[T]he figure of blindfold Justice in particular is a humanistic concoction of very recent origin."). According to O. KISSEL, *supra* note 5, at 92, ambivalence about the blindfold persisted. In 1907, the Prussian Minister of Justice was joined by the Minister for Public Works in ordering that, in new courthouses, justices not be blindfolded. Cf. *Justice, Unblindfolded*, *Raises Newark Row*, ART DIG., Dec. 15, 1935, at 17 (reporting criticisms of unblindfolded statue in Newark, N.J. courtroom).

129. *Leviticus* 19:15.

harshly. . . . If one of the parties to a suit is well clad and the other ill clad, the judge should say to the former, "Either dress him like yourself before the trial is held, or dress like him, then the trial will take place."¹³⁰

Echoes, albeit faint, of the assumption that with sight may come impermissible associations can be found in contemporary law. The United States Supreme Court has declared it unconstitutional to require a criminal defendant to be tried in prison garb.¹³¹

Interpretations of the blindfold as representing separation and distance, as a sign of the judge apart, connote a justice somehow barred from receiving some kinds of information. The blindfold prevents the judge from acquiring some of the knowledge that the unblinded possess. But to judge requires knowledge, some kind of sight. How effective is a judge who is unable to perceive the context in which the dispute arises? Will outcomes be more fair or will such a judge be insensitive to human needs? What should be the response to the tension between the needs of judges to know and the fear that the knowing will corrupt the fairness of judgment? A blindfold? Adding slits in the blindfold, as some sixteenth century artists did?¹³² A Janus-faced Justice, one face with eyes covered, the other with eyes open?¹³³

The pictorial diversity and theoretical complexity are reflected in the law. Like the variations in the treatment of Justice's eyes, the law's rules have changed. In earlier times, jurors from the vicinage, individuals with extrajudicial knowledge of the people and the events, were permitted to judge disputes.¹³⁴ Today, those very persons are disqualified as impermissibly tainted, although exceptions are sometimes made when a juror's impartiality is challenged after the trial.¹³⁵ Other procedural rules reflect many different approaches for responding to the problems of knowledge. Some jurisdictions insist upon changing judges whenever a decision of the initial judge is reversed. Such rules are designed to avoid both the fact and perception of judicial bias—stemming from a person's adherence to a

130. *Code of Maimonides* (Mishneh Torah), bk. XIV, Book of Judges, Laws of Sanhedrin, c. xxi, paras. 1–2 (Hershman trans., Yale Judaism series).

131. *Estelle v. Williams*, 425 U.S. 501 (1976) (while recognizing constitutional right of defendant to be tried in civilian garb, Court held that defendant's failure to demand change of attire constituted waiver of right). But compare the potential visual impact sanctioned in *Illinois v. Allen*, 397 U.S. 337 (1970) (gagging disruptive defendant constitutionally permissible).

132. See *supra* note 38.

133. O. KISSEL, *supra* note 5, at 120, plate 100 (Janus-faced Justice with sword and scale; illustration by Jodocus Damhouder in *Praxis Rerum Civilium* (Antwerp 1596)).

134. Kershen, *Vicinage*, 30 OKLA. L. REV. 1, 75–76 (1977).

135. See *Rushen v. Spain*, 464 U.S. 114, 120–21 (1983) (*per curiam*) (upholding verdict returned by juror who was childhood friend of victim).

prior ruling or view of the facts, or from resentment at being corrected.¹³⁶ Other jurisdictions believe that the advantages of a judge's knowledge about a case mandate using the same judge throughout the life of a lawsuit—whether or not appellate courts reverse judgments rendered by that individual.¹³⁷ Indeed, one federal district judge recently claimed that higher courts are constitutionally forbidden to take a case away from him.¹³⁸

Like the blindfolding and the removal of the blindfold, some of the most powerful stories about judges of our era relate to issues of sight and insight, permissible and impermissible knowledge.¹³⁹ Courts struggle with implausible distinctions in their efforts to draw lines between the impermissible "extrajudicial knowledge" and the permissible information a judge obtains during the course of a lawsuit.¹⁴⁰ When Chief Justice Rehnquist was nominated for that position, much of the debate about his confirmation turned upon the nature and extent of his prior, partisan involvement, as Assistant Attorney General, with a lawsuit that he subsequently judged as Associate Justice of the United States Supreme Court.¹⁴¹ When the current Chief Justice of the California Supreme Court was first considered for the position of Associate Justice on that court, he was examined by a committee about his past record as a federal district court judge. When asked if he had any preconceived ideas about any issue that might go before him, he answered that he had none.¹⁴² A silly question, a predictably silly response. At such times, efforts to emulate the image of a blindfolded Justice go so far as to deny the connection between judging and the experience of life.

We look at the blindfold and we remember these stories—of a society hoping to legitimate its judges, of judges reminding us that they are all too human, of the need for judges to have knowledge of and sensitivity to the

136. See generally Ratner, *Disqualification of Judges for Prior Judicial Actions*, 3 How. L.J. 228 (1957).

137. Note, *The Assignment of Cases to Federal District Court Judges*, 27 STAN. L. REV. 475 (1975).

138. See Kendall, *U.S. Judge Real Refuses to Give Up Case*, L.A. Times, Jan. 13, 1987, § 1, at 3, col. 1 (pertaining to *United States v. Sears, Roebuck & Co.*, 785 F.2d 777 (9th Cir. 1986), and *In re Real*, 107 S. Ct. 604 (1986)); see also Murphy, *Court Tries To Gracefully Take Judge Real Off Case*, L.A. Times, Apr. 23, 1987, § 1, at 3, col. 1.

139. See, e.g., *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 138 (1803) ("Those then who controvert the principle that the Constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law.").

140. See, e.g., Leubsdorf, *Theories of Judging and Judge Disqualification*, 61 N.Y.U. L. REV. (forthcoming 1987).

141. The case with which Rehnquist was involved was *Laird v. Tatum*, 408 U.S. 1 (1972). See *Laird v. Tatum*, 409 U.S. 824 (1972) (mem. of Rehnquist, J.); see also Letter from Professor Geoffrey C. Hazard, Jr. to Senator Howard Metzenbaum (1986) (discussing legal ethics of the Justice's decision not to disqualify himself from participating in *Laird v. Tatum*) (copy on file with authors).

142. Morain, *Lucas Sworn In as High Court Justice*, L.A. Times, Apr. 7, 1984, § 2, at 1, col. 1.

pains and joys of life, of the impossibility of knowing enough and the need to render judgment in the absence of adequate information or insight. We derive some comfort—and amusement—from knowing that we are not the first to see these tensions, the gaps between the images and the reality.

Consider therefore a late fifteenth-century fictitious dialogue written by Battista Fiera, an Italian doctor and humanist, about how to depict Justice.¹⁴³ Fiera imagined a dialogue between Andrea Mantegna (then a recently deceased Renaissance painter, who had in fact painted a virtues-and-vices scene and who today is considered one of the leading artists of his time)¹⁴⁴ and the allegorical figure, Momus, “born of Night,” often cast as a carping critic.¹⁴⁵ In *De Iusticia Pingenda* (*On The Painting of Justice*), published around 1490,¹⁴⁶ Fiera explores the relationship between the pictorial and the jurisprudential. The conceit is that Mantegna has been commissioned to paint Justice, and “as [he] heard so many conflicting accounts of Justice,” he consulted a series of “philosophers.”¹⁴⁷ The following exchange takes place:

Mantegna: I began with Saxus Hippolytus. He said Justice should be represented with one eye; the eye being rather large and in the middle of the forehead; the eyeball, for sharper discernment, deep-set under a raised eyelid.

Momus: Suppose something happened behind her back? might she not be taken in the rear? will she be safe enough with only one eye in front?

. . . [I]f she had an eye at the back as well, she'd be still more queenly and majestic.

. . . .

Mantegna: Erasmus the Stoic [said] . . . [t]hat she ought to be shown seated, and holding scales in her hand.

. . . .

“But . . . make her one-handed.”

. . . .

143. B. FIERA, *DE IUSTICIA PINGENDA* [ON THE PAINTING OF JUSTICE] (J. Wardrop trans. 1957). The editors of *The Yale Law Journal* have not been able to reach the translator, Wardrop, in order to secure permission for the lengthy reprint from this translation. However, the *Law Journal* believes that the contribution of this piece to legal scholarship nevertheless merits its reprinting here.

144. D. PANOFSKY & E. PANOFSKY, *supra* note 116, at 43. See generally E. TIETZ-CONRAT, *ANDREA MANTEGNA* (1923).

145. Cast, *Marten van Heemskerck's Momus Criticizing the Works of the Gods: A Problem of Erasmian Iconography*, 7 *SIMIOLOGUS* 22 (1974) (“My name is Momus, born of Night, without a father, the comrade of Envy. I enjoy criticizing each individual thing.”).

146. B. FIERA, *supra* note 143. According to Wardrop's translation, *id.*, the Latin text was published in 1515. S. EDGERTON, *supra* note 8, at 222, states that the pamphlet was published in 1490.

147. B. FIERA, *supra* note 143, at 27–28. Wardrop's annotations, *id.* at 43–50, comment on the real and the fictitious characters cited by Fiera.

"So that she couldn't throw in a makeweight, of course."

[Marianus] instructed me to depict her standing, and with eyes all over her as Argus was of old. . . . And brandishing a sword in her hand to ward off robbers, and to protect the innocent and the unfortunate

Astallius said she should be depicted sitting on a square marble chair with a slightly curved back, such as there was once at Lesbos, and measuring with a leaden rule.

Momus: To be sure, his was a milder image of Justice, since he left out the menacing sword; and he had good reason to fear she might have a fall. But why the leaden rule? Did he mean that Justice is sometimes twisted? For is not the common herd, remembering her waxen nose,¹⁴⁸ loud in proclaiming that she is?

Mantegna: No, he didn't mean that she is twisted; but he said she was to govern with equity—now and then to slacken the reins.

Momus: What did Fiera say?

Mantegna: [H]e enjoined me to depict her covered with ears as well.

Momus: Why? Was he afraid that she might become deaf?

Mantegna: He was . . . [and Astallius and Fiera also said] that Justice was to put on the habit of a penitent

Momus: So, they want her to be mortified! But didn't it occur to them to give her wings?

Mantegna: No one thought of that.

Momus: I am not surprised: They were afraid that she, fearing nakedness, might fly away again

Mantegna: [The Carmelite] has always maintained that Justice cannot be depicted at all.

Momus: And there he is certainly right. If all these different opinions of philosophers were so, I also agree with him. For how can you represent Justice both with one eye and many eyes; and how can you

148. According to Wardrop's notes, the reference is to "[a] proverbial usage, e.g. 'Justice is made a nose of wax warmed, and wrought according to all mens pleasures.'" B. FIERA, *supra* note 143, at 49 n.30 (translator's footnotes) (quoting T. LODGE, A MARGUERITE OF AMERICA 40 (London 1596)).

Images of Justice

depict her with one hand only, and yet measuring, and at the same time weighing, and simultaneously brandishing a sword?—unless, of course, they are all raving mad. Flatly, the thing can't be done

Mantegna: Justice [the Carmelite said] is the will of God

Momus: [W]hat about human Justice?

Mantegna: He spoke about human Justice too, and no less to the point. Man, within the limits of his frail and fallible nature, is not unaware of Justice, and is subject to her laws; nor can he, by any deviation, however slight, escape them. . . . He did say that [Justice] was imprinted; from the outset so fixed in the core of our nature that Justice and Life might be reckoned sisters. For, he said, everyone is born with the instinct of self-protection, and with the desire to avoid pain. But why should someone impose upon another what he dislikes himself; and why should he grudge to others what he himself desires?

. . . .

Momus: [D]id [your theologian] ever mention any decree of this divine justice that is so perfect and entire, whereby all men alike should be put on their guard . . . ?

. . . .

Mantegna: Death, Momus, for everyone the last necessity, to be avoided by none. Sooner or later, we die, Momus; Death levels us all, the lowest and the highest: so sacred and stern is Justice.

. . . .

Momus: . . . Now, Mantegna, I would no longer consider you a painter, but rather a very great philosopher and a consummate theologian, had you not portrayed Death instead of Justice.¹⁴⁹

Is this satire, as Professor Gombrich suggests?¹⁵⁰ Irony? An insider's joke? A more serious attempt at philosophy? Some of the references are obvious. For example, by choosing to use Momus, Fiera evoked associations with the darkness of the night and with a highly critical perspective;¹⁵¹ Momus, a nit-picking fault-finder, was surely a difficult person with whom to explore how to achieve the ideal embodiment of Justice. If Momus could have been satisfied, others likely would have agreed. But

149. B. FIERA, *supra* note 143, at 29–41.

150. E. GOMBRICH, *supra* note 70, at 175–76.

151. See Cast, *supra* note 145.

Momus, in the end, dissented. His last comment was that Mantegna had "portrayed Death instead of Justice."¹⁵²

How might the reference to death be understood? One possibility is that in death there is unerring justice. Equality results because no one can escape death. Alternatively, Momus' critique might be that, by substituting Death for Justice, Mantegna has taken an easy out; he has trivialized the ideal of human justice. By turning to Death to depict Justice, Mantegna has relied upon God, at the Last Judgment, to resolve all the ambiguities that earthly justice cannot.

While we cannot know how the dialogue was intended or read in its time, readers in the twentieth century can enjoy Fiera as he tells us about the problems of depicting the concept of justice. Fiera makes plain the ambiguity we see in the blindfold, and he invites us to think about how artists might have used ears or hands to evoke similar tensions. In the dialogue we can find our hopes that justice, as depicted, simultaneously be attuned to individual nuances and be evenhanded; that objectivity and subjectivity both be present; that justice know all that is needed but not know that which might corrupt or unfairly influence; that justice be rigorous in its equality yet "now and then" relax in compassion.

The problems that the painter faces mirror the problems of life; justice is a complicated ideal. One eye, two eyes, eyes all over. Sitting, standing, brandishing a sword, weighing, measuring, naked, dressed. Perhaps, in the words of Momus: "Flatly, the thing can't be done"—not by philosophers, painters, or lawyers.

V. OF SOVEREIGNS AND JUDGES

The imagery of justice reflects the tensions inherent in defining what is just and what stance judges should take vis-a-vis their sovereigns. A blindfolded Justice not only may suggest the problematic relationship between judgment and knowledge but also may raise the possibility of the judge as an actor apart—and the question is: apart from what? If blindness—even willful blindness, as Bob reminds us—creates distance or independence, then from what is Justice distant?

One response is that judges must always remain at some distance from their employers, sovereigns, because of the intrinsic dependence of judges upon their employers. Distance may insulate judges from the understandable desire to please those from whom they receive their livelihood. The distance protects not only the judge but also the sovereign, who can claim

152. B. FIERA, *supra* note 143, at 41. The Latin phrase in the original is "*nisi fortassis olim pro Iusticia Mortem.*" *Id.* at 25. An alternative translation would substitute the words "for" or "in place of" for the words "instead of."

that the judgments issued are the legitimate product of an independent voice.

The blindfold is not the only indication in justice imagery of the complex relationship between judge and sovereign. The scales have relevance here as well; the scales may suggest that an objective standard, independent of the whim of any ruler (as well as of the judge), governs the outcome. The king's thumb is poised to tip the scales, but Justice's firm grip provides some security. Similarly, the sword might be understood as giving Justice an independent base of power, a strength beyond that given to her by her sovereign-employer.¹⁵³ And since judges were rarely if ever women, the use of a female figure suggests a justice removed from actuality.

The complexity of the relationship between judge and sovereign was central to Bob's work. In *Violence and the Word* and in the Procedure casebook,¹⁵⁴ Bob told a third "Folktale of Justice"—that of the trial of Hans Tiede and Ingrid Ruske, both accused of hijacking a plane from Eastern Europe to West Germany.¹⁵⁵ At the time of the hijacking, the Western Allies had signed an anti-hijacking treaty. The Allies felt obliged to prosecute Tiede and Ruske, despite the fact that the hijackers had been greeted warmly upon their arrival in "free Berlin."¹⁵⁶

The United States, as occupier of West Berlin, assumed responsibility for the trial. The State Department asked Herbert Stern, then a federal district judge for the District of New Jersey, to sit as the first judge in the "United States District Court for the District of Berlin" and to preside at the trial. Upon his arrival in West Berlin, Judge Stern learned that the State Department held the view that the Executive branch, rather than the United States Constitution, was the final authority on the rights to be accorded the defendants at trial.¹⁵⁷

What ensued was a conflict between the State Department and Judge Stern. Despite the strenuous, and threatening, objections of the State Department, Judge Stern granted the defendants' motion for a jury trial,

153. THE FEDERALIST No. 78 (A. Hamilton) (R. Fairfield 2d ed. 1966):

The Executive not only dispenses the honors, but holds the sword of the community The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

Id. at 227.

154. R. COVER, O. FISS & J. RESNIK, *supra* note 1, ch. 6; *Violence and the Word*, *supra* note 2.

155. *Violence and the Word*, *supra* note 2, at 1619–21. The events are described in detail in H. STERN, JUDGMENT IN BERLIN (1984), and in *United States v. Tiede*, 86 F.R.D. 227 (U.S. Ct. for Berlin 1979).

156. H. STERN, *supra* note 155, at 26–28.

157. *Id.* at 102–06.

called prospective jurors, and began the trial.¹⁵⁸ He dismissed the charges against Ruske on constitutional grounds, and the trial of Tiede proceeded. The jury convicted Tiede but, in part because the State Department claimed to be free from constitutional constraints, Judge Stern sentenced Tiede to time served.¹⁵⁹

While the hijacking case was nearing completion, a second, civil lawsuit was filed in the District Court for Berlin. This case arose out of a conflict between West Germans over the building of a housing project for United States troops.¹⁶⁰ Although the United States was not a party, its permission was needed for the lawsuit to proceed in the West German courts, and the United States declined to give its approval. The West German plaintiffs then filed in the federal court for the District of Columbia; they claimed that the United States was depriving them of a right of access to the courts. After losing at the trial level, the West Germans brought their complaint to Judge Stern.¹⁶¹ Once again, the State Department instructed Judge Stern on how to decide the case. In contrast to the position Stern took on the hijacking case, Stern declined to issue a ruling on the housing case; rather, he adjourned his court.¹⁶² His actions prompted the State Department to fire him¹⁶³ and to terminate the session of the United States Court for Berlin.

One interesting aspect of this conflict is why the State Department chose a sitting federal judge, instead of one of its employees or a member of the military, to preside at the first trial held in the United States Court for the District of Berlin. The State Department might have thought that Stern, a former federal prosecutor, would have been sympathetic to the Department's views, but once the Department found him difficult to control, why keep him on? This conflict reveals a good deal about the relationship between sovereign and judge. The State Department held a highly visible trial and sought the legitimacy of a person already garbed in judicial robes. When the judge took the robes seriously and claimed his allegiance to a law independent of the State Department, the sovereign was unhappy. Yet, given the nature of the conflict—a politically significant criminal trial held as the world watched—the sovereign dared not fire its judge. On the other hand, when sovereign and judge battled over a more mundane civil lawsuit, the sovereign was less restrained.

Sovereigns need judges. Sovereigns would like judges to do their bidding but rely upon judges to appear independent. The deployment of justice

158. *United States v. Tiede*, 86 F.R.D. 227, 261 (U.S. Ct. for Berlin 1979).

159. H. STERN, *supra* note 155, at 370.

160. *Id.* at 340.

161. *See Dostal v. Haig*, 652 F.2d 173 (D.C. Cir. 1981); H. STERN, *supra* note 155, at 340-42.

162. H. STERN, *supra* note 155, at 353-73.

163. *Id.* at 374.

imagery—of a regally-robed, coolly impersonal, blindfolded woman holding sword and scales—bespeaks the effort by sovereigns to make us accept the judgments of their judicial employees.¹⁶⁴

But judges also need sovereigns. When taking his stance in the criminal hijacking case, Judge Stern reflected on his own security as he fought with his sovereign. He understood that, in his other role as United States District Judge for the District of New Jersey, he sat as an Article III judge, safe from the fear of being fired. Stern wondered whether he would have been so willing to battle, had he not had his other, protected, judicial role.¹⁶⁵ Further, to make his grand gesture—to insist upon a jury trial and then to refuse to sentence the hijacker to any further time in the custody of a sovereign who declined to recognize that it was constrained by the Constitution¹⁶⁶—Judge Stern needed recognition as a judge to wield the power given him by the sovereign. He needed power to carry out the heroic tasks of disagreeing with and defying his sovereign.

Bob's tale of Justitia with a blindfold raises the interesting question: Who placed the blindfold on Justice? Bob created a mythic heroine, the powerful judge, who deliberately distances herself from the fray. Bob's article, the *Folktales of Justice*, made plain his appreciation for the power of the gesture he invented, for he knew it would have been plausible to imagine the gods placing the blindfold on the one they chose as their judge. When Bob wrote of alternative versions of the conflicts between judges and kings, he contrasted the heroic mythic versions (in which judges stood up in the face of power to speak their truths) with claims of historical truths (in which, at least according to some accounts, judges were not brave but begged their kings to preserve their judicial offices and even their lives).¹⁶⁷ As Bob wrote: "History corrects for the scale of heroics that we would otherwise project upon the past. Only myth tells us who we would become; only history can tell us how hard it will really be to become that."¹⁶⁸

The reality of the judicial role may mean that the attributes of justice—the blindfold, scales, and sword—have importance for both the judge

164. Cf. *Ex parte Quirin*, 317 U.S. 1 (1942) (approving action of ad hoc military tribunal appointed by President to try alleged German saboteurs who landed in United States). See generally R. COVER, O. FISS & J. RESNIK, *supra* note 1, ch. 6.

165. H. STERN, *supra* note 155, at 370–73. Not all judges in the United States have such a luxury. See generally Resnik, *The Mythic Meaning of Article III Courts*, 56 U. COLO. L. REV. 581 (1985). In California, the recent retention election resulted in the defeat of three justices. See, e.g., Endicott, *Bird Lovers, Haters Get Set for '86*, L.A. Times, Jan. 27, 1985, § IV, at 1, col. 1; Ingram, *Prosecutors' Association Urges Defeat of Justice Bird*, L.A. Times, Mar. 1, 1985, § I, at 3, col. 6; Lindsey, *Deukmejian and Cranston Win as 3 Judges Are Ousted*, N.Y. Times, Nov. 6, 1986, at A30, col. 1.

166. H. STERN, *supra* note 155, at 370.

167. *Folktales of Justice*, *supra* note 2, at 184–90.

168. *Id.* at 190.

and the sovereign. Both may choose the same symbols but draw different meaning from them. We might imagine that the heroic judge imposes her own blindfold, and we also might imagine that the sovereign imposes the blindfold. The blindfold need not only indicate a judge removed, deliberately self-constrained, but also a judge dependent upon a sovereign and yet needing to be walled off from that sovereign—in order for the sovereign to claim the validity of the justice rendered. Similarly, scales and sword may enable the judge to claim a law independent of the sovereign, but may also enable the sovereign to assure its subjects that the independently powerful judges are making objective decisions.

VI. IMAGES OF THE FUTURE

In the United States, divisions of power have lessened the absolute authority of the sovereign and strengthened the independence of the judiciary. Federal judges have structural protections, guaranteeing them salaries and jobs, even when they defy the will of the executive.¹⁶⁹ With such institutional arrangements, do we need anything else to legitimate judicial decisionmaking? Folktales of justice, which Bob taught us? Images of justice?

It is not only institutional arrangements that have been altered since medieval and Renaissance times; allegory is not as popular as it used to be. Perhaps the advent of public education, the printing press, the photograph and television have decreased the need or the market for paintings and statues of the didactic, allegorical kind. Perhaps the art of Justice became so abstract that it ceased to instruct.¹⁷⁰ Perhaps the explosion in the sheer number of images that now crowd our consciousness has made it impossible for any set of representations to achieve enduring national recognition. For some, John Wayne is iconic,¹⁷¹ but for others his image is already faded and diffused by warriors of more recent vintage. Abstraction has shown us what kind of painting and sculpture can be created when the need for representation is fulfilled by other media.¹⁷²

One might be tempted to claim that iconography is dead, but just as post-modern art tells us that representation remains relevant, current po-

169. See Resnik, *supra* note 165, at 589 (current Supreme Court interpretation of Article III comports with view of judiciary needing protection to do combat with executive).

170. E. GOMBRICH, *supra* note 70, at 183 (in the eighteenth century, "[a]rtists began to think that the more generalized was the concept they had to symbolize the paler and more etiolated should be the image. . . . [But the images] acquired the faculty of making themselves as invisible as the abstractions they were supposed to symbolize.").

171. See, e.g., Jules Feiffer, Cartoon, L.A. Times, Dec. 21, 1986, Calendar section, at 60 (Ronald Reagan consulting with his "maker," the "Duke").

172. See generally R. HUGHES, *THE SHOCK OF THE NEW* (1980); R. KRAUSS, *THE ORIGINALITY OF THE AVANT-GARDE AND OTHER MODERNIST MYTHS* (1985).

litical events indicate that sovereigns continue to have use for the deployment of images. We have recently witnessed wholesale governmental exploitation of iconography. During 1986, the Statue of Liberty permeated our consciousness.¹⁷³ She was everywhere. The celebration of the statue's hundredth anniversary culminated in a binge of patriotic expression and media attention. In 1986, as in the sixteenth century, a government tried to send forth a message, this time linking its rule to liberty. As in times of old, the image presented was of an imposing female form, this time with an odd spiked headpiece and a torch.¹⁷⁴

The timing of governmental efforts to market the Statue of Liberty had unintended effects. There was powerful irony in watching the celebration of "Lady Liberty" within weeks of the conviction of church members who had attempted to help refugees find sanctuary in this country.¹⁷⁵ Just as our generation is rarely shown images of "Maimed Justice," we learn little of the detention centers run by the Immigration and Naturalization Service—jails for those "huddled masses, yearning to be free," celebrated in the poetry of Emma Lazarus.¹⁷⁶ In her idealized form, the Statue of Liberty worked to soothe our concerns, to proclaim a national commitment that the government's behavior often belies.

As Justice was not the only medieval and Renaissance image, the Statue of Liberty is not the only national symbol. Federal statutes protect the flag, the "Great Seal," and even "Smokey Bear" and "Woodsy Owl."¹⁷⁷ The Supreme Court has recently told us that the Constitution permits municipalities to display the "Nativity scene" as long as it serves the "secular purpose" of using the imagery to "celebrate the Holiday and to depict the origins of that Holiday."¹⁷⁸ According to the majority, "[t]he display engenders a friendly community spirit of goodwill in keeping with the season."¹⁷⁹ Unintimidated by the nuances and ambiguities of semio-

173. See Hall, *Liberty Lifts Her Lamp Once More*, NAT'L GEOGRAPHIC, July 1986, at 2; President's Remarks on Signing H.J. Res. 407 and Proclamation 5400, 21 WEEKLY COMP. PRES. DOC. 1308 (Oct. 28, 1985) (Centennial Year of Liberty in United States); 22 *id.* at 191 (Feb. 6, 1986) (President receiving gifts of replicas of statue); President's Radio Address to the Nation, *id.* at 913 (July 5, 1986) (Independence Day and Centennial of Statue of Liberty).

174. See M. WARNER, *supra* note 4, at 8-9.

175. *United States v. Aquilar*, *appeal docketed*, No. 86-1211 (9th Cir. 1986). The United States Government prosecuted eleven religiously-affiliated workers. In the spring of 1986, eight were convicted; sentencing took place July 1-2, 1986. All received terms of probation. See Curry, *INS To Study Claims of Abuse as Sanctuary Sentencing Ends*, L.A. Times, July 3, 1986, at 4, col. 1.

176. E. Lazarus, *The New Colossus* (1883) (unpublished manuscript available at American Jewish Historical Society, Waltham, Massachusetts).

177. 18 U.S.C. §§ 711, 711a, 713 (1982). In the nineteenth and early twentieth centuries, "Columbia" was used as a symbol of the United States, and "Uncle Sam" continues to function in a similar manner. See C. PRESS, *THE POLITICAL CARTOON* 213-31 (1981).

178. *Lynch v. Donnelly*, 465 U.S. 668, 681 (1984) (capitalizations of "Holiday" and "Nativity" in the original).

179. *Id.* at 685.

tics, the Supreme Court is prepared to stipulate a positive symbolic meaning and to authorize government deployment of pictorial and sculptured images.¹⁸⁰

Where does Justice fit in all this? Although no federal statute recognizes or protects her, she is still found on courthouses and public buildings—including some constructed in the twentieth century.¹⁸¹ However, she may be drained of content, reduced to little more than a logo. Although the flag salute says “with liberty and justice for all,” the two concepts, together with their images, may have become indistinct. Justice’s image has already begun to blur with that of Liberty. Over the last few decades, the Statue of Liberty has occasionally appeared with a blindfold or scales.¹⁸²

Why might Liberty now assume a place more prominent than that of Justice? Perhaps because Justice is stateless. Many of the continental European countries, Great Britain, and the United States use her image but she is synonymous with none. In contrast, despite her French origin, the Statue of Liberty has become strongly identified with the United States.¹⁸³ Perhaps because Justice is a complex concept—remember that Ambrogio needed to paint her twice and label her three times, as Distributive Justice, Commutative Justice, and Vindictive Justice.¹⁸⁴ Perhaps because at some level of generality, the concept of liberty is simpler than that of justice. Or, perhaps because liberty is an idea with more surface appeal today than justice.¹⁸⁵ Perhaps, in a world of compromise and relativity, a

180. All of those Justices who wrote opinions were prepared to stipulate to the meanings of the crèche. For the majority opinion, written by then Chief Justice Burger, the crèche was a “passive” symbol. *Id.* For Justice O’Connor, concurring, “[t]he evident purpose of including the crèche in the larger display was not promotion of the religious content of the crèche but celebration of the public holiday through its traditional symbols.” *Id.* at 691. Justice Brennan, in a dissent joined by Justices Marshall, Blackmun, and Stevens, explained that “[t]he essence of the crèche’s symbolic purpose and effect is to prompt the observer to experience a sense of simple awe and wonder appropriate to the contemplation of one of the central elements of Christian dogma—that God sent His Son into the world to be a Messiah.” *Id.* at 711 (citations omitted). For Justice Blackmun, who wrote a separate dissent, the majority’s approval of the display of the crèche would “encourage use of the crèche in a municipally sponsored display, a setting where Christians feel constrained in acknowledging its symbolic meaning and non-Christians feel alienated by its presence.” *Id.* at 727. This represented, for Justice Blackmun, a misuse of a “sacred symbol.” *Id.* For one critique, see Dorsen & Sims, *The Nativity Scene Case: An Error of Judgment*, 1985 U. ILL. L. REV. 837.

181. See, e.g., TIME, July 21, 1986, at 13 (photograph of Att’y Gen. Meese announcing his anti-pornography campaign at Department of Justice before statue of nearly-nude woman).

182. See, e.g., NEWSWEEK, Mar. 8, 1971 (cover picture of Statue of Liberty holding scales of justice).

183. See, e.g., S. HOFF, EDITORIAL AND POLITICAL CARTOONING 359 (1976) (reprint of cartoon appearing in *Le Canard Enchaîné*, in France, of Statue of Liberty wearing gas mask and inscription “Of course, in France they do know America has pollution. But doesn’t everybody?”).

184. See *supra* text accompanying notes 46–52.

185. Exactly how much appeal depends upon whose liberty is at stake. Compare the enactment by Congress of preventive detention provisions based upon the dangerousness of an indicted defendant, The Bail Reform Act of 1984, 18 U.S.C. §§ 3141–3156 (Supp. II 1984); see also *United States v. Salerno*, 107 S. Ct. 2095 (1987) (upholding constitutionality of preventive detention against facial

Images of Justice

Justice with sword, scales, and blindfold can no longer be emblematic of the application of law.¹⁸⁶

To understand the complexities of the exercise by a sovereign either of its justice or of its dedication to liberty, we must attend carefully. We must see the quotas, the deportations, the detention centers of the INS as well as the welcoming flame of our "Lady of Liberty." We must ask *whose* liberty is protected. We view it as a loss that we know little about the images of "Maimed Justice"—that, absent education, we could not recognize the skin of Sisamnes when we stumbled across a print of the story of Cambyses; that the Klimt version of *Jurisprudence* was rejected as too controversial to grace a University's halls; that in the 1930's, a mural of a non-classical Justice was similarly rejected in the United States;¹⁸⁷ that the blindfold is commonly understood as a positive attribute rather than as a profound limitation. While imagery of justice may be less important to the state than in the past, the images have a powerful evocative potential worth preserving.

The idea of justice exists not only on the pages of books, but also, on a deeper level, in present day psyches. Heroic images and mythmaking touch upon our understanding of this abstract concept in a manner different than do expository texts. While the forms may change, efforts continue to create a world better than the one we inhabit today.¹⁸⁸ Sovereigns continue to need judges to authorize and to organize the imposition of violence,¹⁸⁹ and judges, litigants, and spectators continue to need to imagine judgment free from bias and from political motivation. Society's dependence upon images and myths thus continues, and the example of the celebration of the Statue of Liberty shows that governments will continue to exploit their icons.

The imagery, like Bob's folktales, can help show us that justice has a mythic power that the state hopes to use. At the same time, judges struggle to liberate that power from their sovereigns' grasp. To be effective, the

challenge).

186. See Daube, *supra* note 32, at 128-29. Further, as Bob reminded us, a single judge, even a "Herculean" one, is not an accurate image. Not only do judges often work in concert rather than alone, but the implementation of judicial decisions also depends on other actors. See *Violence and the Word*, *supra* note 2, at 1625.

187. K. MARLING, *WALL-TO-WALL AMERICA: A CULTURAL HISTORY OF POST OFFICE MURALS IN THE GREAT DEPRESSION* 64-71 (1982) (description of controversy engendered by mural of *Justice as Protector and Avenger* in courthouse in Aiken, South Carolina in 1938: Justice is pictured, according to newspaper quotation of an unhappy spectator, as a "mulatto").

188. This is reflected in the recent growth of interest in communitarian approaches, "civic virtues," and "Republicanism." Michelman, *The Supreme Court, 1985 Term—Foreword: Traces of Self-Government*, 100 HARV. L. REV. 4 (1986).

189. As Bob wrote in *Violence and the Word*, *supra* note 2, at 1628, the imposition of violence by sovereigns who do not rely upon the organization implicit in the judiciary is more frightening than judicially-based violence.

myths and the images must remain vital and immediate. We fear that, should Justice simply be a courthouse logo, a marker drained of mythic meaning, our attentiveness to the problematic relationships between judgment and knowledge and between sovereign and judge might fade. When we lose the ambiguities and the grotesqueries in the images of Justice, when we lose either the history or the mythic versions of the folktales, we may be lulled into misunderstanding both justice's power and its limits.