A CALL TO THE ARTS: EXPLORING NEW MEANS OF JURISPRUDENTIAL EXPRESSION

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On January 25, 1996 at five minutes to five, my telephone rang. It was Laura Eng, the Acquisitions Editor for the *Cardozo Arts and Entertainment Law Journal*. She called because I sent her a picture of a painting, which seemed to her to have something to do with domestic violence. There were several questions which she felt duty bound to ask. Putting it most delicately, she began by asking if there was a mix-up and had I meant to send an article. That was easy. There was no mix-up, the picture *was* the submission. The harder question was to explain my audacity in submitting this picture for publication. That explanation follows below.

Origin of the Painting: The origin of this painting is as interesting as the painting itself. The artist, Nancy Meyers, a third year student from Fordham Law School who completed her degree as a visiting student at the University of Cincinnati College of Law, submitted the painting for a grade in lieu of the final exam in Antitrust, her last course in law school; it is her attempt at original jurisprudence.

While law students typically complete a work of original jurisprudence as part of their course work,[1] the use of art as a medium is somewhat novel. In some cases, the jurisprudential piece is designated an "independent research project," with loose guidelines mutually agreed upon by the student and professor, whom the stu-

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* ©1996. Associate Professor of Law, University of Cincinnati College of Law. B.A., 1978, University of Chicago; M.A., 1982, J.D., 1983, University of Michigan. In the usual acknowledgment, an author expresses gratitude for the assistance of those who contributed to the final product. Here the acknowledgments are special because the work and insights of others are the final product, for which I serve as a conduit. Thus, this essay speaks to the credit of Nancy Meyers, the artist who painted *Naked Restraints of Trade* and Laura Eng, Acquisitions Editor of the *Cardozo Arts and Entertainment Law Journal* who directed the writing of the accompanying pieces for the painting and who shared our vision concerning the possibilities of art to express jurisprudential themes. Finally, I am grateful to Taylor Fitchett, Head Law Librarian, University of Cincinnati College of Law for introducing me to the intersectionality of law and art, and for her review of this work from draft to completion. Of course, the views expressed in these pages accompanying the painting are solely the views of the author.

1 The Harvard Law School pioneered the third year paper, a writing requirement designed to stimulate the student's jurisprudential scholarship. Harvard allows some room for creative leeway in fulfilling the writing requirement—for example, students can submit their work in the form of an *amicus curiae* brief for the Supreme Court or a proposal for legislative reform—but no one ever has proposed art in lieu of written expression. Telephone Interview with Todd Rakoff, Assistant Dean, Harvard Law School (Feb. 6, 1996).

dent selects to sponsor the independent research. This painting, which comes under the heading of original jurisprudence, was not done as a floating "independent research," but rather as research in the study of Antitrust, a regular course and one of the most rigorous law school course offerings.[2]

In the fall of 1995, Nancy Meyers was not only a graduating student for whom career decisions were close at hand, she was also a young artist who was beginning to wonder whether a life in law would be fulfilling and worth the sacrifice. She was looking for ways to apply her legal skills to the arts, her true love. She came to me with an odd request. She wanted to paint a picture depicting an antitrust theme in lieu of a final exam. The difficulty in devising standards to grade art work, the lack of precedent, and the responsibility to ensure that real substantive learning was transpiring were just a few of the problems her proposal presented. However, two thoughts worked in her favor: first, was the desire not to discriminate against artistic expression. After all, art history is an especially rich and venerable intellectual tradition. Second, antitrust is sometimes mistakenly perceived by the uninitiated as dealing with complex business crimes which can only be explained with mind deadening economic analysis. A painting would be just the thing to reach new audiences and liven things up.

Since I consider Antitrust to be the first truly multi-disciplinary

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[2] Because many of my Antitrust students have a specialized interest in the field of antitrust or possibly have secured post law school employment in which they will specialize in antitrust, I invite students with such focus to undertake an independent research project in lieu of the final exam. Although these students must attend every class, they are allowed to tailor their work product for the class to their budding professional or intellectual interests. I expect that students selecting the independent research option produce a work of original jurisprudence, or at a minimum, delve into the problems of applying the law to a specific area.

It is not unusual for graduating students to experience a waning interest in law and the entire legal profession. Many such students experience anxiety brought on by pending graduation, accentuating the perception of dissonance between law school and the real world of the law, the legal profession, and life itself. In a capitalistic society, the value of a person is measured by the value of his or her labor, as determined in the market place. This means that each person must choose between doing what he or she most enjoys or what society values most—those services that society will pay the most to receive. As rational maximizers of utility, we do what society values most because there is greater utility to be had from the money paid for valued services than from indulging personal pleasures. The sacrifice is worthwhile if we earn enough money to command the necessary resources to better our own lot and that of our loved ones. While reason dictates choices, such decisions can be emotionally hardening. Awareness of these growing pains makes the law professor who teaches third year courses especially mindful of the desirability to be as inclusive as reasonably possible to attract and retain the intellectual interest of young adults as we shepherd them through the final stages of formal academic development. Nancy Meyers was a graduating student for whom the real world was close at hand. As a visiting student with but one pass/fail course left, the classroom window needed widening to become a meaningful learning experience for her.

course in law school, drawing strongly on economic analysis, history, and political developments for explanatory power, it was only fitting that Antitrust usher in the integration of a new discipline, namely art. Actually, art is not so new to antitrust.[3] Professors already subject students to simplistic, two-dimensional graphs of supply and demand curves, which despite best efforts are too often drawn with an unavoidable sense of comic tragedy. Nancy Meyers's project presented a chance to see real art. Further, perhaps the most compelling reason for permitting the painting was the sheer gall of the student who proposed it and the insatiable curiosity of the law professor who wanted to see antitrust on canvas.

The Painting: Naked Restraints of Trade is an acrylic painting, which depicts a lesson on antitrust from the case of *United States v. Addyston Pipe & Steel Co.*[4]

The artist's abstract reads as follows:

> In this symbolic painting, William Howard Taft, representing both himself and the federal courts, brandishes a cast-iron pipe against a naked woman, who represents one of several restraints of trade assembled for evaluation by the courts. In *United States v. Addyston Pipe and Steel Co.*, the future Supreme Court Chief Justice's decision developed the rule of ancillary restraints, which meant that the court would strike down all naked restraints of trade, but that restraints clothed in the guise of procompetitive effects—represented here by athletic apparel and equipment—should be sustained. This rule is the precursor to the rule of reason. As the rule of ancillary restraints is being applied, the Rule of Reason can be discerned, on the verge of materializing, in the background of the painting (which represents the future).

Antitrust Background of the Portrayal: Addyston Pipe & Steel involved an association of manufacturers and vendors of cast-iron pipe formed to prop up prices in the heavy metal pipe market. On December 28, 1894, four companies previously associated as the Southern Associated Pipe Works joined with Addyston Company and Dennis Long & Co. Their combined capacity accounted for

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[3] Neither is art new to the law. We frequently refer to symbols and visual images to explain legal concepts. One example of this is the use of Justitia, the Roman Goddess of law, who is pictured in sacred robes and blind-folded as she holds the scales of justice. I call this image to mind in my first year course on criminal law. I explain that the presumption of innocence weights the scale of justice in the defendant's favor at the beginning of the trial. However, as the trial progresses, the countering weight of the prosecutor's evidence may tip the case in favor of conviction if the evidence is weighty enough to sink beyond the hypothesis of innocence so that only a hypothesis of guilt remain.

[4] 85 F. 271 (6th Cir. 1898) (Taft, J.), *aff'd as modified*, 175 U.S. 211 (1899) (ancillary restraint test of legality).

sixty-five percent of the cast-iron production in the northeast region of the country and over seventy-five percent of the nation's cast-iron supply. The purpose of the combination was to suppress competition so prices would rise. Their plan consisted of a pooling arrangement that fixed prices for each contract involving a member of the association. Except in so-called reserved cities, contracts went to the member who agreed to give the highest bonus to those companies in the association not granted the contract. In effect the pooling arrangement provided a scheme whereby local vendors in selected markets could induce non-local competitors who were members of the association by paying a high enough bonus to make it worth their while not to compete. The pooling arrangement and bonus plan was not very successful in restricting competition, but it did succeed in landing the association in a lawsuit waged by the United States Department of Justice, which alleged the pooling arrangement violated the newly passed Sherman Antitrust Act (the "Act").[5] The appeals court sustained the verdict for the United States, striking down the pooling arrangement; in light of the formative state of antitrust jurisprudence, the court's legal analysis was as important as the result.

At issue in *Addyston Pipe & Steel* was the meaning of section one of the Act, which stated (in relevant part): "*[e]very* contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."[6] The very breadth of the text of the statute gave rise to an ambiguity: since every contract binds parties and therefore restrains complete freedom of trade to some degree, did Congress mean to ban *every* contract? In the preceding year, the Supreme Court, in *United States v. Trans-Missouri Freight Ass'n*[7] grappled with the question of whether to read words of limitation into the Act. That case yielded two extreme views. Justice Rufus W. Peckham, writing for a 5-4 majority in *Trans-Missouri*, construed the Act literally, finding that Congress indeed meant to ban "*every*" combination in restraint of trade.[8] At the other extreme, Justice Edward White asserted for the dissent that even significant restraints on competition do not violate the Act if they have redeeming social goals that counterbal-

[5] The Sherman Act, ch. 647, § 1, 26 Stat. 209 (1890) (current version codified at 15 U.S.C. §§ 1-7 (1994)). The Sherman Antitrust Act, passed on July 2, 1890, was the first great exercise of Congress's Commerce Clause power to expand the scope of the federal government.

[6] *Id.* (emphasis added).

[7] 166 U.S. 290 (1897).

[8] *Id.* at 312.

ance the restraint's inherent harm to competition.[9] Both views lacked meaningful analytical clarity. The Act could not be read literally to ban *every* restraint of trade, but neither could it be read to allow for selective enforcement on a rationale as amorphous as redeeming social value.

It was against this background that then Judge Taft, writing for a unanimous three judge panel of the Sixth Circuit, entered the judicial debate with his opinion in *Addyston*. Judge Taft argued that congressional intent in passing the Sherman Antitrust Act was to codify the existing common law against anti-competitive restraints of trade. Taft posited that the common law principles of antitrust, which embraced the tenets of competitive free market capitalism,[10] provided workable distinctions for selectively striking down anti-competitive restraints of trade while upholding pro-competitive restraints of trade. Judge Taft's opinion is a masterful dissertation that reviews the common law cases dealing with restraints of trade, from which he extracted a principle of selection known as the ancillary restraints test. Under this demarcation, naked restraints of trade, unclothed by a legitimate business purpose would be struck down; restraints not primarily motivated to limit trade, but which were merely ancillary to legitimate business objectives and practices, would survive antitrust scrutiny and be upheld under the Act.

Thirteen years later, in 1911, the Supreme Court granted certiorari in the case of *Standard Oil Co. of New Jersey v. United States*,[11] a case involving an association of oil companies led by John D. Rockefeller. In *Standard Oil*, the Court again undertook to articulate an interpretation of section one of the Sherman Antitrust Act. By this time, William Howard Taft had been elected President and had appointed five of the sitting justices. Most importantly, Taft had appointed Edward White, the lead dissenter in *Trans-Missouri*, as Chief Justice. In *Standard Oil*, Chief Justice White delivered the opinion for the Court. The *Standard Oil* opinion produced the

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9 *Id.* at 351.

10 *See, e.g.*, HANS B. THORELLI, THE FEDERAL ANTITRUST POLICY (1955). Legislative history supports the view that one major theme of the antitrust legislation was a desire to improve the free market system in order to head off direct regulation or Marxist solutions. Senator Sherman said in a speech proposing the bill: "[y]ou must heed their [the voters'] appeal or be ready for the socialist, the communist, and the nihilist. Society is now disturbed by forces never felt before. . . . These combinations already defy or control powerful transportation corporations and reach State authorities." 21 CONG. REC. 2460 (1890), *cited in* THORELLI, *supra*, at 180; *see* Harlan M. Blake, *Conglomerate Mergers and the Antitrust Laws*, 73 COLUM. L. REV. 555, 575-76 (1973); ROBERT H. BORK, THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF 50-89 (1978).

11 221 U.S. 1 (1911) (White, C.J.).

"rule of reason" test, which remains one of two dominant jurisprudential doctrines guiding antitrust law to this day.[12] Under the rule of reason, business practices challenged as restraints of trade in violation of the antitrust laws are evaluated for their effects on competition. Under the rule of reason, restraints whose pro-competitive effects outweigh the anti-competitive effects would pass muster under the law, but restraints whose anti-competitive effects outweigh the pro-competitive effects would be deemed to be in violation of the Sherman Antitrust Act.[13] While the rule of reason is a

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[12] The other being the *per se* rule. The *per se* rule was born in *United States v. Trenton Potteries Co.*, 273 U.S. 392 (1927) (Stone, J.). In *Trenton Potteries*, the Court struck down a price fixing arrangement by a cartel of corporations engaged in the manufacturing of vitreous pottery, having an aggregate of about 82% of the market share. The Court refused to permit the jury to consider the reasonableness of the fixed prices finding that the practice of price fixing itself to be inherently anti-competitive and without pro-competitive effects. After some deviation from the *per se* rule of *Trenton Potteries*, the Court solidified the *per se* approach in *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940) (Douglas, J.) (affirming *Trenton Potteries' per se* analysis concerning price fixing regardless of market share). In *Northern Pac. Ry. Co. v. United States*, 356 U.S. 1 (1958) (Black, J.), the Court affirmed *Socony-Vacuum's per se* economic approach and observed that the *per se* rule was merely a special case of the rule of reason: "[t]here are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." *Id.* at 5. This principle of *per se* unreasonableness not only makes the type of restraints which are proscribed by the Sherman Antitrust Act more certain to everyone concerned, but also avoids the necessity for a complicated and prolonged economic investigation into the history of the industry involved, as well as related industries, in an effort to determine whether a particular restraint has been unreasonable. Finally, in recent years, the Court has made explicit the close relationship between the *per se* rule and the rule of reason. *See, e.g.*, *National Collegiate Athletic Ass'n. v. Board of Regents of the Univ. of Okla.*, 468 U.S. 85 (1984) (Stevens, J.) (striking down an NCAA rule which limited television appearances by college football powers). In *NCAA*, the Court stated that "there is often no bright line separating *per se* from Rule of Reason analysis." *Id.* at 104 n.26 (1984). Some commentators have argued that the Supreme Court in the last several years has been moving toward a "middle-tier" or "quick look" analysis, involving rule-of-reason analysis that does not necessarily require detailed market analysis or proof of actual anticompetitive effect, and *per se* rules that require analysis of market conditions to justify a presumption of anticompetitive effect. *See, e.g.*, Lynn Pasahow, *Erosion of The Per Se Rule: Trend in the Law of Horizontal Restraints*, 2 ANTITRUST 22 (1987); Harvey J. Goldschmid, *Horizontal Restraints in Antitrust: Current Treatment and Future Needs*, 75 CAL. L. REV. 925 (1987). This "new analysis" has been expressed most explicitly in horizontal restraint cases, notably *NCAA* and *Vogel v. American Soc'y of Appraisers*, 744 F.2d 598 (7th Cir. 1984); *see Healthcare, Inc. v. Healthsource, Inc.*, 986 F.2d 589, 594-95 (1st Cir. 1993). *But see Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2 (1984), which emphasized that a concrete showing of market power, forcing the foreclosure of a substantial volume of commerce, must be made before a tying arrangement is condemned under a "*per se*" analysis. In her concurring opinion, Justice O'Connor commented that the majority's required showing was tantamount to a rule-of-reason analysis. *Jefferson Parish*, 466 U.S. at 34.

[13] Most scholars accept the proposition that antitrust laws either have or should be treated as having the sole goal of consumer welfare or efficiency. *See, e.g.*, PHILLIP AREEDA & DONALD F. TURNER, 1 ANTITRUST LAW §§ 103-113 (1978); BORK, *supra* note 10, at 50-89; OLIVER E. WILLIAMSON, MARKETS AND HIERARCHIES: ANALYSIS AND ANTITRUST IMPLICATIONS (1975); RICHARD A. POSNER, ANTITRUST LAW: AN ECONOMIC PERSPECTIVE (1976). *But see* Robert Pitofsky, *The Political Content of Antitrust*, 127 U. PA. L. REV. 1051 (1979); F.M. Scherer, *The Posnerian Harvest: Separating Wheat from Chaff*, 86 YALE L.J. 974 (1977) (review-

synthesis of Taft's ancillary test and White's redeeming social value criteria, the rule of reason reflects far more of Taft's early interpretation than White's. The ancillary test looks solely to the competitive benefit of the challenged business practice to validate a restraint of trade. The rule of reason essentially limits the universe of socially redeeming characteristics for judicial scrutiny to an evaluation of pro-competitive economic effects.[14] Under both tests, the judiciary relinquishes the task of sustaining restraints on the basis of redeeming social value to the legislature where it belongs.

Antitrust and constitutional law scholar Robert Bork called *Addyston Pipe & Steel* the best antitrust decision ever written.[15] The author of *Addyston Pipe & Steel* was William Howard Taft, the only man to serve as President of the United States (1909-1913) as well as Chief Justice of the United States Supreme Court (1921-1930). Although President Theodore Roosevelt's administration initiated a frontal assault against oil, railroad, steel, and other barons of industry, and captured the imagination of the public as a "trust buster," Taft's contribution to antitrust law was at least as great as Roosevelt's.

Art as a Medium of Expression for Legal Jurisprudence: *Naked Restraints of Trade* may be criticized in the way that all art is criticized, but the antitrust themes are conveyed in ways that words cannot express.[16] The painting captures the origins of the rule of reason

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ing POSNER, *supra*) for a discussion of the political goals of antitrust, namely the diffusion and decentralization of power as an end itself. As Senator Sherman said in the principal speech supporting the bill: "[i]f we will not endure a king as a political power we should not endure a king over the production, transportation, and sale of any of the necessaries of life. If we would not submit to an emperor we should not submit to an autocrat of trade, with power to prevent competition and to fix the price of any commodity." 21 CONG. REC. 2457 (1890) *quoted in* Scherer, *supra*, at 980.

14 *See, e.g., Nomination of Stephen G. Breyer to be an Associate Justice of the Supreme Court of the United States before the United States Senate Comm. on the Judiciary*, 103d Cong., 2d Sess. (1994). Senate Judicial Committee Chairman Joseph Biden (D-Del.) pronounced the senate confirmation hearings considering the fitness of Judge Breyer to be an evaluation of the law and economics approach as much as it would be a hearing on Judge Breyer. During Breyer's Senate confirmation hearing, while fielding questions from Senator Metzenbaum (D-Ohio), Breyer explained that the role of the courts when reviewing a restraint of trade is limited to weighing the pros and cons of its economic effects. He suggested it was for Congress to carve out exceptions to the law on the basis of redeeming social values. *Id.*

15 BORK, *supra* note 13, at 26-30. *Addyston Pipe & Steel* has received 96 favorable citations in reported appellate antitrust case law under a LEXIS/NEXIS search conducted January 1996.

16 Perhaps the best indication of the antitrust jurisprudential learning captured by the symbology of the painting is to refer back to my course objective as set out in my antitrust syllabus:

> To develop an understanding of the role of the marketplace in maximizing consumer welfare from commerce. The purpose of classroom discussion in this course is to engage in a disciplined inquiry into how challenged economic arrangements and court solutions actually serve or impair competition. The fundamental goal of antitrust law is to promote competition in the marketplace

lodged in the ancillary restraint test as well as the goal of antitrust law, which is to promote competition in the market place. The use of athletic figures to symbolize fair competition coincides with the increasing interest in applying antitrust law to professional sports. The rule of reason materializes in the background as a rule of interpretation, which strikes down only those restraints of trade whose anti-competitive effects outweigh their pro-competitive effects. The use of naked women as naked restraints—unclothed by legitimate business reasons—shows the intellectual debt that the rule of reason owes to Taft's formulation. The limited role of the judicial branch is reflected by Judge Taft, who represents himself as well as the federal courts; Taft acts in conformity with the law, symbolized by the law book that he holds in his hand. Art not only captures the interest of students, who by their third year are chafing at the case method, but also brings new interest into the field.

Cardozo Arts & Entertainment Law Journal: My reasons for submitting this artwork to the *Cardozo Arts & Entertainment Law Journal* are no less varied than any other set of reasons which motivate one to exchange ideas in public fora. First, I want to showcase my student and her pioneering work. Second, I want to encourage students of law and students of art to think expansively about the possibilities of the study of law and art.[17] The art history of law is

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for goods and services. The economic rationale for relying on competition is that competition maximizes consumer welfare in the allocation of precious resources (*i.e.*, allocative efficiency). The political rationale is that competition prevents concentration of economic power and its abuses. The social rationale is that competition promotes the virtues of character upon which our species depends for its betterment, indeed survival. Somewhat surprisingly, the present day influence of economic analysis in antitrust law is rather late in coming. Thus as a matter of historical development, we will spend a good deal of time on the social and political underpinnings that shaped antitrust law. However, our primary engine of analysis will be economics. The statutes studied in this course are: The Sherman Antitrust Act § 1 (combinations in restraint of trade); and § 2 (monopolies) [15 U.S.C.A. §§ 1-11, generally]; the Clayton Act § 2 (price discrimination) as amended by the Robinson-Patman Act of 1936; § 3 (tying and exclusive dealing contracts); § 7 (stock acquisitions) as amended by the Celler-Kefauver Act of 1950; § 8 (interlocking directorates) [15 U.S.C.A. §§ 12-27, generally]; the Federal Trade Commission Act § 5 (unfair competition).

[17] For the past decade the University of Cincinnati College of Law has hosted an annual art exhibit featuring the works of local, national, and international artists. Artists with established reputations and artists struggling to establish a reputation have shown their works side-by-side at the College. A new exhibit which greets students each fall semester transforms the interior brick walls of the building into mosaics of color, form, texture, and meaning. Over the years the shows have included works on topics related to law, ethics, human rights, environmental issues, and other thought provoking themes, as well as pieces that are light or pure whimsy. While the tenor of the various exhibits has never been racy, a number of pieces have proven controversial.

Unlike visiting an art gallery where one can leave at will, students must learn to *live* with the art show at the College for an entire academic year. The positive side of having

practically nonexistent.[18] While churches and museums house an assortment of originals and reproductions such as Leonardo da Vinci's *The Last Supper* or Emanuel Leutze's *Washington Crossing the Delaware*, expressive of religious and political themes, students walking law school halls make do with portraits of important judges past. As law is the medium in which society regulates itself, there should be more to the intersection of law and art than a society of dead jurists. Law itself is an art form. The intersection of law and art can do more than chronicle legal history; it can be used to examine the present and shape the future. Finally, in a fast paced, technology driven world, art remains as timeless as it is beautiful. The visual arts reflect society, as does the law, providing another medium to study ourselves and to experience our legal system.

The phenomenology of art is exhilarating. Language is often imprecise because words lose their connectivity to concepts of their origin. For example, the Court initially interpreted section one of the Sherman Antitrust Act as literally banning all restraints on trade. Later, the Court imposed an interpreted gloss, which limited the ban to restraints which were anti-competitive, while upholding restraints which were clothed in legitimate business reasons and whose pro-competitive effects outweighed their anti-competitive effects, if any. Subsequent decisions have applied this test with varying degrees of economic understanding and frequently less success. The painting, *Naked Restraints of Trade*, is a constant reminder that the Sherman Antitrust Act was designed to promote free market competition, even if the antitrust players do not always agree on what activity is competitive on balance and how solutions can be structured to ensure a working market as free of

the artwork for an extended stay is that the show can be studied over a period of time. As is appropriate in an institute of higher learning, much of the work is selected because it explores social issues of our times. Some of the art is so powerful that it is difficult to live with on a daily basis. One show, entitled *Homelessness in America*, brought paintings of faces of homeless people to the school; artists went to homeless shelters for their models. The *Homeless* pieces were provocative enough that several requests were made to relocate works to areas of less prominence. Similar requests were made concerning pieces that depicted bride burning in India, tire burnings in South Africa, and police brutality in Los Angeles.

[18] Legal art, defined broadly to include portrayals of events related to law with political or social significance, is exemplified by the Norman Rockwell painting of the National Guard officer escorting a young, black girl to a desegregated school under *Brown v. Board of Ed. of Topeka*, 347 U.S. 483 (1954). *See, e.g.*, Norman Rockwell, *The Problem We All Live With* (1963), *published in* LOOK MAG., Jan. 4, 1964, at cover, *reproduced in* MORRIS COHEN, LAW: THE ART OF JUSTICE 109 (1992). There are numerous examples of symbols expressive of legal principles, such as the Roman Goddess Justitia. However, legal art as defined in the stricter sense intended here refers to the use of art as allegory to express a legal doctrine or jurisprudence. After an extensive library search, I was not able to come up with a single example of canvas art using the art medium as allegory to express legal doctrines or jurisprudence. The dearth of prior examples is what makes *Naked Restraints of Trade* a pioneering work.

regulation as is possible. The meaning of the words must change to accommodate a changing society and our changing understanding of ourselves. In visual art, we have a medium where ideas vividly touch reality and expand the contours of its meaning. The canvas at once captures legal relationships in society, but allows for change as society and the sensitivity to problems in society change. It is my hope that the pages of a law journal may one day serve as the vehicle for a symposium on the medium of art to express jurisprudential themes and the appropriate place of art in the legal curriculum for artists who love the law and for lawyers who love the arts.