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PAINTING THE LAW

NANCY ILLMAN MEYERS*

INTRODUCTION

The presence of a naked woman in legal art is not a novel one. My painting, *Naked Restraints of Trade*,¹ depicts the holding of the antitrust case *United States v. Addyston Pipe & Steel Co.*,² and belongs to an age old tradition of employing allegory in visual portrayals of the law. In a late eighteenth century oil painting of the trial of a courtesan, Phryne, the defendant is portrayed standing naked before the tribunal. Phryne was charged with profaning the gods because, during the festival of Poseidon at Eleusis, she disrobed and walked into the sea within view of the festival's celebrants. In the face of overwhelming testimony against his client, Phryne's attorney tore the clothes from her body. The judges were so moved by Phryne's beauty that she was acquitted. Such beauty could not possibly have profaned the gods.

The law is perpetually evolving, manifested in the written word. The meaning of our laws is embodied in words and talismanic phrases. Legal jargon celebrates the verbal nature of the law—for example, formal legal education begins with the rote memorization of basic principles known as "black letter law."

Traditionally, it is thought that the law should be taught exclusively in the same medium in which it has been developed and applied—with words. The future Justice Cardozo, writing for the New York Court of Appeals, commented that "[m]etaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it."³ Words can be imprecise, misused, and misunderstood; they can take on connotations that have a limiting influence. But, as the age-old Chinese proverb goes, "a picture is worth a thousand words."

* J.D., Fordham Law School, Jan. 1996. The author is indebted in many ways to Professor Christo Lassiter. I would first like to thank him for his open mind and lively sense of humor, without which I would have had no opportunity to do this painting. Also, I thank him for the tremendous sense of initiative that led him to circulate news of my painting among the legal community and arrange for its publication. I am also grateful for his infectious enthusiasm for teaching the law, and for his help and encouragement with this article.

¹ See *supra* color reproduction.

² 85 F. 271 (6th Cir. 1898) (Taft, J.), *aff'd. as modified*, 175 U.S. 211 (1899).

³ *Berkey v. Third Ave. Ry. Co.*, 155 N.E. 58, 61 (N.Y. 1926), *quoted in* EDWARD N. LEVI, AN INTRODUCTION TO LEGAL REASONING 8 (7th ed. 1961).

Visual images have the capacity to communicate ideas more succinctly, and sometimes more powerfully, than any combination of written words, no matter how eloquent.⁴ A visual image has the power to access virtually every human emotion with extraordinary efficiency. Foreboding, horror, tenderness, mirth—a visual image can elicit any of these in less time than it takes to read this sentence.

Trade schools teach the mechanics of vocations, but law school aspires to be much more than a trade school. It is an intellectual training ground, where minds are trained in a variety of new ways in preparation for a mentally rigorous profession. Visual images cannot train a mind to "think like a lawyer"; neither can they teach law students to argue more persuasively, negotiate more effectively, nor write more succinctly. However, a visual interpretation of the law can present established legal precepts in a new light, and lend a timeless and universal quality to the legal product of a fact specific event. A visual image has the capacity to capture a moment in the law's development and present it to the beholder, disembodied from its attendant facts or circumstances. By separating the law from its practical application, an image invites the lawyer or law student to contemplate the philosophical and ethical underpinnings of that law.

Law students are expected to learn a great many legal cases and to extract from them a host of legal doctrines. The use of paintings to supplement the verbal legal curriculum could aid in grasping new concepts. In the words of Justice Jackson, "[s]ymbolism is a primitive but effective way of communicating ideas. The use of an emblem [or other form] to symbolize some system, idea, institution, or personality, is a short cut from mind to mind."⁵ The less abstract an idea, the more easily it is grasped and retained. Yet the very solidity of the written word can limit comprehension of the idea conveyed. In the alternative, the more expansive art form can facilitate a truer understanding of legal concepts. Also, a striking visual image may impress itself more completely on a viewer's brain than its verbal cousin, remaining longer and more vividly. If the picture delivers an idea in a provocative, moving, or humorous way, its impression may be even more enduring. It follows that the visualization of a legal principle would help in its recollection. Imagine how much more effectively the canons of law

⁴ Since the advent of Court TV, contemporary lawyers are increasingly aware of the power of visual images, and attempt to exploit it whenever possible in court.

⁵ West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624, 632-33 (1943).

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might be stored away in the repository of students' memories if casebooks would present each important case and legal principle alongside its companion painting.

VISIONS OF JUSTICE

There is, and always has been, a strong visual element inherent in the law. The courtroom, a contemporary theater of the law, abounds in visual symbolism. The impression left upon any visitor within its walls depends as much on the sense of sight as it does on the ability to hear and understand any of the words uttered there. Judges sit, specially costumed, enthroned high above all the other participants. In England, the traditional wig and black robe serve to depersonalize judges, thus underscoring that what is handed down from the bench is a legal decision, rather than a personal one.⁶

Elsewhere in courthouses, a symbolic representation of justice invariably is displayed in the form of a woman draped in classical robes, wearing a blindfold, holding scales and a sword. Her image derives from representations of "Justitia," the Roman Goddess of Justice, who in turn is a cross-cultural descendant of "Themis" and "Dike" from Ancient Greece, and of "Ma'at," the Egyptian Goddess of Justice and bride of the god of wisdom, who also symbolized truth, order, and righteousness.⁷ This imposing figure serves as a reminder, an encouragement, or a warning of the ideal to be pursued by the court.

The scales she holds may be interpreted as a reminder that "Justice" produces its result by an objective weighing of the evidence on both sides. Others might read the image as suggesting that each man receives his due, no more and no less.⁸ There are a variety of meanings ascribed to the blindfold, but the most common understanding seems to be that Justice is unaware of, and thus uncorrupted by, the influences of the sovereign, or by any influence outside her own reason.⁹ The sword may be interpreted as representing "the rigor of justice, which does not hesitate to pun-

⁶ Christo Lassiter, *A Call to the Arts*, 14 CARDOZO ARTS & ENT. L.J. 387. Professor Lassiter also suggests that the prosecution sits on the right side because it is the "right hand" of the law. *Id.* at 389 n.3.

⁷ Egyptian representations of *Divine Justice* illustrate the day of judgment on which the souls of the deceased are judged. The heart of the deceased individual is often shown being weighed on scales against Ma'at's ostrich feather of justice, to determine whether the life was true and just, or evil. MORRIS COHEN, *LAW: THE ART OF JUSTICE* 14 (1992).

⁸ Dennis E. Curtis & Judith Resnik, *Images of Justice*, 96 YALE L.J. 1727, 1749 (1987) (quoting Cesare Ripa, *Iconologia* (1593), partially translated in BAROQUE AND ROCOCO PICTORIAL IMAGERY (E. Maser ed., 1971)).

⁹ *Id.*

ish,"¹⁰ or as a "symbol of cruelty, or unwillingness to compromise."

The image of "Justice" has frequently been installed in civic buildings, presumably suggesting that the sovereign embodies the "virtue."¹² Ambrogio Lorenzetti's famous fresco, *Allegory of Good Government*, in Siena's Palazzo Pubblico, is a particularly good example.¹³ The painting depicts Commutative and Distributive Justice, and her counterpart, Vindictive Justice, along with their sister virtues—Peace, Fortitude, Prudence, Magnanimity, Temperance, Faith, Hope and Charity. As scholars have noted, the painting's "subject matter, organization, referential quality, labeling, and site demonstrate that this painting was intended to have an inspirational and educational effect upon those who visited Siena's Town Hall."¹⁴

THE ARTIST AS SCHOLAR

With the advent of the Italian Renaissance (circa 1400), visual art was no longer considered one of the mechanical arts, and artists ceased to be classified as crafts people. For the first time in history, visual art was included among the intellectual disciplines necessary for a thorough education, and artists gained admission into the select company of philosophers, mathematicians, and other scholars whose work comprised the other liberal arts.¹⁵ In accordance with their new station, visual artists revised their conception of themselves and of their role in society. Upon becoming associated with scholars and poets, artists became highly learned, cultured persons, sometimes writing poems, or theoretical treatises.¹⁶ Visual art was regarded in a new way, more as a visible record of the artist's creative mind than a mere manipulation of materials.¹⁷

¹⁰ *Id.* at 1749.

¹¹ *Id.* at 1754.

¹² *Id.* at 1744.

¹³ *Id.* at 1744.

¹⁴ *Id.* This painting is reproduced in COHEN, *supra* note 7, at 40; SARA ROBBINS, LAW: A TREASURY OF ART AND LITERATURE 153 (1990). Legal scholars Dennis Curtis and Judith Resnik have noted that "[d]uring the Middle Ages, scenes of the Day of Judgment and of earthly instances of judging . . ." became popular themes for decorating the walls of civic buildings, in an apparent effort to link divine and secular. "In these pictures," Curtis and Resnik point out, "Jesus often takes the position of judge; in some instances, the Virgin Mary is blurred with Justice." Curtis & Resnik, *supra* note 8, at 1745.

¹⁵ "The liberal arts were defined by a tradition dating back to Plato, and comprised the intellectual disciplines necessary for a gentleman's education—mathematics (including musical theory), dialectics, grammar, rhetoric, and philosophy." H.W. JANSON, HISTORY OF ART: A SURVEY OF THE MAJOR VISUAL ARTS FROM THE DAWN OF HISTORY TO THE PRESENT DAY 379 (2d ed. 1977).

¹⁶ *Id.* at 380.

¹⁷ *Id.*

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The artists who today aspire to emulate the renaissance model of their profession, who endeavor to harness their creative abilities to communicate ideas rather than merely pander to the public aesthetic, are those who can most greatly enhance our understanding and appreciation of the law. When an artist educated in the law sets about committing a landmark case to canvas, she is working in harmony with the goals of legal education. Such a task for a painter can be likened to that of a common law judge. In order to "paint" a legal decision, or common law rule, an artist must first reduce a fact specific case to its legal core before it can be processed creatively in her mind. Then, rather than apply the holding, or distinguish it from another, the artist applies it to canvas, articulating it as an original visual image.

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Every society that has left any enduring record of itself has used art both to record historic events, and to depict daily life. As a result, art provides a window into every culture throughout history, dispensing colorful lessons in values, customs, and laws of the various societies in which they were created. Many works of art reflect the changing concepts of justice and evolving procedures of law employed in different cultures throughout history. Hence art history can serve a useful role in teaching jurisprudential history.

Because human conflict and dramatic crisis are central to the nature of law, artists have always found it a rich source of ideas for their own work. From the expulsion of the biblical characters of Adam and Eve from the garden of Eden, to the spectacle of the O.J. Simpson trial, the law has been a fertile field to be mined by artists wishing to explore vital elements of the human experience, public and personal: innocence and culpability, greed and mercy, righteousness and corruption, liberty, and oppression. But it is not only because of its dramatic aspects that the law has been and may continue to be tapped as a resource for art. Legal events shape society's history, and laws reflect the value systems of the societies that endeavor to live by them.

In antiquity, artists created prodigious pictorial accounts of important battle scenes. In Ancient Rome, military victories were often commemorated in narrative reliefs on monumental altars, triumphal arches, and columns. These narrative monuments serve as a collective indicator that justice used to be determined by military might.¹⁸

¹⁸ See JANSON, *supra* note 15, at 171-73.

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Jewish law, as embodied by the Mosaic Code, dates from the thirteenth century B.C. Its influence on the development of western civilization is reflected in many works by famous European artists, including Giotto, Michaelangelo, Tintoretto, Rubens, and Dore, based on stories from the Old Testament. From the renderings of the famous judgment of Solomon, the trial of Susanna and the Elders, and the story of Cain and Abel, emerge themes emphasizing wisdom and the establishment of truth rather than the meting out of punishment. Depictions of Moses receiving the Ten Commandments¹⁹ raise the law to the level of divinity.

Artists are not only celebrants of the law, they are also among its most eloquent critics. Some of the more shameful chapters in legal history have also been immortalized by artists; the Inquisition (1231-1800's),²⁰ the seventeenth century Salem witch trials,²¹ American slavery,²² and racial segregation²³ have all inspired numerous works of art. Together, these paintings and others like them comprise a visual reminder of the law's dark side, its susceptibility to the forces of irrationality, and its power to subjugate people and suppress ideas.²⁴

Artists have not only served as historians recording these pivotal moments for posterity, but have also influenced the way these events entered the collective consciousness of the Nation. Norman Rockwell, in his 1963 painting *The Problem We All Live With*, depicts a tomato splattering against a wall beside its narrowly-missed target, a little, black girl, escorted to school by four United States Marshalls.²⁵ This powerfully poignant "snapshot" raised public consciousness of the plight of children who bore the brunt of the attacks on desegregation after the landmark United States

¹⁹ There has been enough art produced on this Mosaic theme, in France alone, to fill an entire book. See JONATHAN P. RIBNER, *BROKEN TABLETS: THE CULT OF THE LAW IN FRENCH ART FROM DAVID TO DELACROIX* (1993).

²⁰ See, e.g., Joseph N. R. Fleury, *Galileo Devant le Saint Office (Galileo Before the Inquisition)* (France 1847), reproduced in COHEN, *supra* note 7, at 63; ROBBINS, *supra* note 14, at 104.

²¹ See, e.g., Tompkins H. Matteson, *Trial of George Jacobs* (New York 1855), reproduced in COHEN, *supra* note 7, at 76; See also ROBBINS, *supra* note 14, at 177.

²² See, e.g., Hale Woodruff, *Trial of the Captive Slaves* (Atlanta 1940), reproduced in COHEN, *supra* note 7, at 88-89.

²³ See, e.g., Norman Rockwell, *The Problem We All Live With* (1963), published in LOOK MAG., Jan. 4, 1964, at cover, and reproduced in COHEN, *supra* note 7, at 109; ROBBINS, *supra* note 14, at 356-57.

²⁴ Whether springing from the independent mind of a cartoonist, or flowing from the hired hand of an incumbent statesman, art is an age old and powerful political tool. Practically every political cause or movement has exploited the talent of artists to promote its ideas and slogans, whether in challenging the status quo or in seeking to entrench those already in power.

²⁵ Rockwell, *supra* note 23.

Supreme Court decision in *Brown v. Board of Education of Topeka*.²⁶

Artists' renderings of more private legal events, such as the scene surrounding the reading of a will, or at the signing of a marriage contract, combine moving and instructive glimpses into human nature, revealing the dramatic and emotional elements associated with these somewhat mundane legal documents. Paintings like these not only touch and amuse the lay viewer, but also serve as vivid and useful reminders to viewer-practitioners of the importance of thoroughness, clarity, and meticulous drafting as a defense against human weakness and vice, whether committing a testator's wishes to paper, or drafting a prenuptial agreement.

ART AS RELIGIOUS PEDAGOGUE

Perhaps the most compelling argument for the use of art in the legal curriculum is the fact that art already has been harnessed as an educational tool with splendid effect in other disciplines. The nexus between religion and art is substantial. Since before history began to be recorded, art has been used to serve religious ends, from ritual to pedagogical. The *Venus of Willendorf*, the Egyptian tomb paintings, the Parthenon, Leonardo's *Last Supper*, and Michaelangelo's Sistine Chapel are all famous works belonging to an enormously rich and effective tradition of art created to further religion.

Stonehenge, in England, is one example of the prehistoric "megaliths"—monumental structures that were evidently used for religious observance. Their construction, as commented on by art historian H.W. Janson, "required such sustained and coordinated effort as could only have been compelled by the authority of religious faith—faith that almost literally demanded the moving of mountains."²⁷

Ancestor worship was the most persistent feature of primitive religions, and its artistic expression took many forms. There are no writings to interpret, but experts believe that the giant figures carved from volcanic rock were assembled as guardians to watch over ancestral skulls. According to Janson, "their extreme remoteness from nature—and the abstract tendency of the primitive art generally [was] an effort to convey the society's perception of the "otherness" of the spirit world, to divorce it as strictly as the artist's imagination would allow from the world of everyday

²⁶ 347 U.S. 483 (1954); COHEN, *supra* note 7, at 108.

²⁷ JANSON, *supra* note 15, at 30.

appearances."²⁸

Egyptian art reflects a cultural belief system that required each person to provide for his own happy afterlife—as a sort of extension of the status quo. An Egyptian of means commissioned artists to equip his tomb as a kind of shadowy replica of his daily environment for his spirit, or "ka," to enjoy. From his place at the pinnacle of the society's spectrum of wealth and power, a Pharaoh employed vast numbers of laborers, craftspeople, and artists to build, furnish, and decorate a pyramid, both to honor him and to serve as a luxurious residence for his own royal "ka" and those of his family members (who would be buried alive to provide eternal companionship and service). Arpag Mekhitarian, the Curator of Islamic Art at the Musee Royaux d'Art et d'Histoire in Brussels, argues that where Egyptian art is moving, "it is because it [is] . . . the work of men who had emotions, hopes and fears For all their piety," Mekhitarian adds, "Egyptians enjoyed life and could not bear to be deprived in the next world of the amenities of their earthly existences."²⁹ Professor Janson suggests that "[i]n a sense, then, the [the Old Kingdom] Egyptian tomb was a kind of life insurance, an investment in peace of mind."³⁰

The power of art to glorify and aggrandize has been exploited by virtually every religion (as well as by many governments) throughout history. Phidias, the sculptor, and Pericles, the magistrate, joined forces to transform the ideals of the Athenian city-state into the substance of the Parthenon.³¹ We have irrefutable evidence that the awe inspiring power of this grand edifice transcended time. As noted by Janson, "it is the only sanctuary known to have served four different faiths in succession."³² "In Christian times," Janson commented, "the Virgin Mary displaced the virginal Athena; the Parthenon became first a Byzantine church, then a Catholic cathedral, and finally, under Turkish rule, a mosque."³³

Early Christian artists had to be wary of crossing the line into idolatry. Rather than depict actual historic events, early Christian Mosaics illustrate the "living word" of the Scriptures, emphasizing

²⁸ *Id.* at 42.

²⁹ ARPAG MEKHITARIAN, *EGYPTIAN PAINTING* 152 (1978).

³⁰ *Id.* at 53.

³¹ See *The West Collection* (1986), at X. During the last twenty years, West Publishing has served as a corporate patron of the arts, inviting artists to produce art that "comments on the law" for an annual competition and exhibition in their corporate headquarters in St. Paul. This is an encouraging step from a company traditionally known for publishing much of the "black letter law."

³² JANSON, *supra* note 15, at 118.

³³ *Id.* at 121.

Jesus' divine nature rather than his human nature.³⁴ The pedagogical function of this art is revealed in a famous dictum used to justify the pictorial representation of Christian themes: "Quod legentibus scriptura, hoc idiotas . . . pictura,"³⁵ which, loosely translated, means that pictures were able to convey the word of G-d to the unlettered (since many early Christians were illiterate). The religious art of the Middle Ages (as the the majority of the art of that period is religious in tenor) was deliberately didactic, as a great many people were unable to read.³⁶

From the earliest examples we know of through to the present time, churches, synagogues, and mosques have been filled with grand and elaborate works of art in hope that beautiful decorations, in the form of paintings, sculptures, mosaics, and stained glass windows, will evoke the spiritual splendor of G-d, and inspire worship.

Artists have been commissioned throughout the ages to exalt or even to deify rulers in works of art. Many monarchs justified their authority by claiming a divine right. In many cultures, rulers were actually thought of as deities. As Curtis and Resnik commented, "[a]s 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 G[-]d."³⁷ Egyptian painting also relates to a "theogamy." In a portrait of Queen Ahmose, mother of Queen Hatsepsut, she is visited at night by the god Amun in the guise of her spouse, the king. In due time, the Queen is shown being led to the birth chamber where her child, at once royal and divine, will enter the world.³⁸

The Emperor Justinian, best known for his code of law, was decried by art historian, Morris Cohen, as an emperor that "saw himself as G[-]d's vicar on earth and realized that law and religion were essential to the cohesion of society."³⁹ He commissioned artists from Constantinople to decorate San Vitale, a 6th century church in Ravenna, Italy (526-547 A.D.). The mosaics which adorn the church's interior were clearly designed to reflect the "divine kingship" of the Emperor. A huge mosaic over the apse,⁴⁰ depicting the Emperor, his wife, Theodora, and their attendants invites

³⁴ *Id.* at 201.

³⁵ *Id.* at 191.

³⁶ See Curtis & Resnik, *supra* note 8, at 1746.

³⁷ Curtis & Resnik, *supra* note 8, at 1746.

³⁸ MEKHITARIAN, *supra* note 29, at 26.

³⁹ COHEN, *supra* note 7, at 24.

⁴⁰ *Id.* at 24-25. For a partial reproduction of the Ravenna fresco, see ROBBINS, *supra*

the viewer to see Justinian and Theodora as analogous to Christ and the Virgin (both are shown with halos and positioned in a manner traditionally employed for depicting Jesus and his mother).

CONCLUSION

The link between art and law seems as old as human memory. Yet the majority of their shared history is characterized by a reaching out in only one direction; while art has drawn upon law for its inspiration value, the law has hardly begun to exploit the power of art. A painting of the law can speak volumes, and its voice should be a welcome addition to the legal community.

note 14, at 44-45 (featuring the Emperor); JANSON, *supra* note 15, at 184 (featuring the Empress Theodora).