

**Fine Arts Lunch
Brisbane Club
Thursday 26 April 2001**

Themis and her Themes

The Hon Paul de Jersey AC, Chief Justice of Queensland

Study of the law is unlikely to inspire aesthetic delight, though I am told one Desmond Manderson has recently found sufficient material for an entire book which he has entitled “Songs Without Music: Aesthetic Dimensions of Law and Justice”¹ – I have yet to read it. You may not all be well acquainted with the law or the Supreme Court. But noting the topic of this address, you will almost certainly have visualised Themis. She stands with dignity before the Supreme Courthouse, and is almost nightly displayed in television coverage of legal proceedings. That regular “air time” probably increases her notoriety, but more fundamentally, it reflects her enduring iconic status– an ancient goddess whose influential message still defines modern civil society.

As with depictions of Themis elsewhere, our fine bronze reminds us of fundamental principles underpinning the legal system, our democratic society. The sculptress, Maria Papaconstantinou, based hers on another casting at Chios in Greece. This Themis carries particular added significance, of the Greek contribution to our own community: Mr Angelo Efstathis CBE was the generous donor in 1987. She has stood in her present position since the unveiling on 19 February that year.

Our portrayal of Themis is customized to Queensland – on her belt she bears a casting of the Supreme Court seal. In an apparently misconceived attempt once to emphasise

her female status, she was in the dead of night additionally embellished with a purple pedicure: needless to say what that gender or fashion conscious joker may have considered an improvement was not permanently adopted.

Now the goddess herself... She is, in Greek mythology, the goddess of Justice, the embodiment of the relation of divine justice to the people.ⁱⁱ While in Orphic poetry she was recorded as the offspring of Helios (known for his all-seeing, mystery-penetrating eye), in Hesiodic theogony she was the child of Uranus and Gaea.ⁱⁱⁱ According to legend, the oracle at Delphi was passed by Gaea to Themis, who gave it to Apollo.^{iv} Themis was Zeus' companion and wise counsellor, and her offspring were the Horae and Moirae – the fates.^v

Other civilisations provide cousins for the Grecian Themis. The Egyptians recognised Ma'at, the Romans, Justitia, while in Christian and later, secular imagery, her form was recognised simply as "Justice".^{vi} Under these several names has been portrayed a similar, iconic form – the powerful, dignified personification of justice.

Our Themis stands with eyes firmly focussed, holding sword and scales. This is not the only form in which she has been depicted – the various images of justice throughout history have differed interestingly. Most obviously, while the female form is sometimes blindfolded, it sometimes is not – as with our own; sometimes her eyes are draped in shadow –for example in Joshua Reynolds' stained glass window design, where the goddess' upraised arm shades her eyes^{vii}; and sometimes though

blindfolded, she is yet able to see through eye-holes cut into the shroud – as with several stained glass window designs in Northern Europe^{viii}. In addition to sword and scales, the goddess has at times held a cornucopia, and fasces – a bundle of rods.^{ix} On occasion she has been accompanied by ostrich or by crane.^x

What do these varied, cryptic symbols signify? I begin with the blindfold. A relatively late addition, the blindfold was first deployed in the sixteenth century. Compiling the iconography of that era into the encyclopaedia *Iconologia*, Cesare Ripa suggested the blindfold was “seen” to render Justice incapable of being swayed by the senses.^{xi} A more modern mythical scenario: the gods are being tested to determine which will be able impartially to arbitrate over their disputes. A wise old god fears the strength of the young, while a younger, stronger god fears no god’s strength, but is seduced by beauty. The dispute ends when Justitia voluntarily dons a blindfold before being tested, and by eliminating her own sight renders herself incapable of being intimidated or led astray.^{xii}

But a notion of the blindfold’s enhancing the objectivity of judgment was not necessarily the root significance. Elsewhere in medieval and Renaissance art, the state of being blindfolded, or inability to see light, denoted personal limitation.^{xiii} And two of the well-known early Renaissance images of justice deploy blindfolds in less than complimentary ways. A woodcutting of Albrecht Dürer depicts Justice being blindfolded by a fool^{xiv}, while Pieter Brueghel’s “Justice” features a blindfolded image of justice callously facing offenders brutalized by violent punishment.^{xv}

The sword and scales are two other images still commonly associated with justice. I have mentioned our own Themis carries these props. So, too, does the image of justice atop New York's City Hall. They, too, were accorded meanings in Ripa's *Iconologia*, the sword symbolising "the rigor of justice, which does not hesitate to punish", and the scales suggesting judgment by which "each man receives that which is due him, no more and no less"^{xvi}: a topical thought vis-à-vis mandatory sentencing. Scales alone are, of course, themselves iconic as an image of decision-making: the entrance of Brisbane's Commonwealth Courts building displays them. Our Themis's scales are now firmly welded in place, an expedient necessitated by a degree of souveniring which characterized earlier years – again no doubt in the dead of night.

In a comprehensive analysis of the depiction over time of images of justice, Professors Dennis Curtis and Judith Resnik infer an extension of the symbolism inherent in the sword and scales. They see reflected in those symbols the relationship between Judge and Sovereign – in modern times the Judicial and Executive arms of government. The sword, they argue, suggests a source of strength separate from the power of the sovereign – the latter now in our experience itself largely symbolic; while the scales reflect an emphasis on objective judgment – according to a standard removed from the sovereign.^{xvii}

I have mentioned some features of justice imagery no longer common today – the cornucopia or "horn of plenty", the fasces^{xviii}, and the ostrich^{xix} and crane^{xx}. The

cornucopia is an image still recognised, but a relation to justice might seem tenuous. Its depiction once represented good fortune resulting from good order.^{xxi}

The fasces, or bundle of rods, once a symbol of the authority of Roman Magistrates, over time grew to symbolise broader governmental authority.^{xxii}

Now I will of course not baulk at addressing the issue of the depiction of justice as an ostrich. There are clues in Renaissance views on the bird,^{xxiii} then renowned for a bizarre diet – eating all manner of matter, metal included – apparently not unlike some of this State’s more nefarious sometime prisoners! While on the one hand this on the part of the bird evidenced gluttony, the consumption of metal suggested remarkable endurance: the idea was propounded that justice should emulate the ostrich which “ruminates its food as Justice should the testimony put before her”. While some noted the bird’s stupidity in burying its head in the ground, Horapollo argued its feathers, equal on all sides, symbolised an impartial distributor of justice.

Similarly, the crane may have been depicted in imagery for its reputation as a ‘vigilant’ bird. In flight, it was regarded by Ripa as the “emblem of an inquisitive man investigating sublime things at a distance”.^{xxiv}

It is intriguing that some of the symbolism associated with the figure of justice has been plainly retained, with some no longer immediately recognisable. And according to Professors Curtis and Resnik, the image of justice was once but one of numerous

similar images – it has survived many other depictions of virtues and vices no longer iconic.^{xxv} The powerful, positive image of justice known to us has also survived other negative images of judgment and injustice – for example Gerard David’s “The Judgment of Cambyses”, depicting Herodotus’ tale of the flaying alive of corrupt Judge Sisamnes.^{xxvi} Why, of all these images has the goddess of justice alone been retained for modern recognition?

Curtis and Resnik argue its longevity is explained through manipulative use by rulers over the ages seeking to lend legitimacy to their actions.^{xxvii} They point as examples to Roman coins depicting Justitia^{xxviii}, the display in public places during the middle ages of images of justice and judgment, often linking earthly and divine judgment – for example Ambrogio Lorenzetti’s wonderful work, “Allegory of Good Government”, displayed in the Town Hall at Siena.^{xxix} They point to the work of Verrio (c 1704) in Hampton Court Palace, which depicts “Queen Anne as Justice”, and the positioning of the well-known figure commandingly depicting Justice atop the “Old Bailey”.^{xxx}

Their theory may have merit, though present day display of the image is more a symbolic reminder than a political tool. We are nevertheless fortunate it has survived – Themis’ themes are as relevant today as ever. The separation of judicial and executive power, the rule of law, the provision of objective, unbiased judgment – these concepts we Australians have the luxury of almost taking for granted. But we

will enjoy democratic life only so long as they are jealously guarded. Themis serves as a reminder of values we must strive to preserve.

What the symbolism of the redoubtable Themis fails to make plain, though I would like to think assumes, is that the “justice” she guards is to be determined according to law. The distribution of power in our democracy posits that judges not be legislators. If Themis, notwithstanding her godly status, is to reflect overall temporal justice, then her “justice” is to be achieved across the governmental board.

But Themis is generally associated with the judicial arm of government, and her implicit admonition must accordingly be seen as limited to our Judges’ achieving a ‘just’ result within the constraints ultimately established by the people through their elected representatives in the parliament – that is, the delivery of justice according to law: that is our relevant charter, although critics of the courts sometimes overlook it.

Themis’ portrayal may change over time, her props may alter slightly, she may be referred to as “Justice”, but minutiae notwithstanding, her themes endure; and for western democracies at least, they are definitive. A challenge for those in positions of leadership is to help ensure those themes are properly understood. You aficionados of fine art will surely be doubly drawn to Themis – to the discerning eye she provides both pleasing artistry, and wise counsel.

-
- ⁱ Manderson, D. 2000. *Songs Without Music: Aesthetic Dimensions of Law and Justice*, California: University of California Press
- ⁱⁱ “Themis”, *Encyclopaedia Britannica*, 11th edition, 1911, vol 25-6, p 758
- ⁱⁱⁱ *Id*
- ^{iv} *Ibid*, Field, A. 1997. “Who is Justice?”, *Law Institute Journal*, 71(12), 26-7, p 27
- ^v *Id*
- ^{vi} Curtis, DE and Resnik, J. 1987. “Images of Justice”, *The Yale Law Journal*, vol 96, 1727 – 1772, pp 1729-1730
- ^{vii} Joshua Reynolds’ design for a stained glass window in New College, Oxford, described in Curtis and Resnik, p 1742
- ^{viii} Stained glass window designs collected in Victoria and Albert Museum in London, eg Jost Amman’s “Justitia, Sitting Atop the World” (ca 1564), Hans von Sternwinkel’s “Justitia” (ca 1576), a stained glass window in the Town Hall of Emdan, Germany; described in Curtis and Resnik, p 1742
- ^{ix} Curtis and Resnik, “Images of Justice”, pp 1741-2
- ^x *Id*
- ^{xi} Ripa, C. *Baroque & Rococo Pictorial Imagery* (E Maser ed 1971), at p 120, recorded in Curtis and Resnik at 1748-9
- ^{xii} Mythical tale invented by Robert Cover, see Cover, R et al, *Procedure*. Foundation Press, 1988. Quoted in Curtis and Resnik at 1728
- ^{xiii} Curtis and Resnik, “Images of Justice”, p 1756
- ^{xiv} an illustration in Sebastian Brant’s *Ship of Fools* (1494)
- ^{xv} circa 1554, see Curtis and Resnik at p 1756
- ^{xvi} As above, no xi
- ^{xvii} Curtis and Resnik, “Images of Justice” at p 1765
- ^{xviii} see for example Battista de Lutero, “Dossi, Justice with Fasces and Scales” (1544), Dresden, referred to in Curtis and Resnik at p 1742
- ^{xix} see for example Luca Giordano’s “Justice” (1681), Palazzo Riccardi, Florence, referred to in Curtis and Resnik at p 1742
- ^{xx} see for example Albrecht Dürer’s “Justice with Crane” (between 1495-9), referred to in Curtis and Resnik at p 1742
- ^{xxi} “Themis”, *Encyclopaedia Britannica*, 11th edition, 1911, vol 25-6, p 758
- ^{xxii} Curtis and Resnik, “Images of Justice” at p 1742
- ^{xxiii} gathered from Rowland, B. 1978. *Birds With Human Souls*, pp 112-115
- ^{xxiv} *Ibid*, at 34, and more generally at pp 32-4
- ^{xxv} Curtis and Resnik at p 1729
- ^{xxvi} Herodotus, *The Histories* bk V, at 349 (A de Selincourt trans. 1972), referred to in Curtis and Resnik at p 1749
- ^{xxvii} Curtis and Resnik at p 1734
- ^{xxviii} Curtis and Resnik at p 1743, referring to O Kissel, 1984. *Die Justitia: Reflexionen über ein Symbol und Seine Darstellung in der Bildenden Kunst*, at 24, plate 11
- ^{xxix} Curtis and Resnik at p 1744-6
- ^{xxx} *Ibid* at p 1747