

# The Color of Justice and Other Observations: A Response

David Rosand\*

I begin with a personal anecdote, my first courthouse experience. In the spring of 1968, as a young member of the Columbia faculty, I witnessed the student uprising that disrupted the campus for several weeks until the misguided administrative decision to call in the police—a decision that, inevitably, led to violence and bloodshed. Earlier that year I had been called to jury duty; like most academic colleagues receiving that call, I had postponed service until the end of the semester. Arriving at Manhattan criminal court in early June, I found the jury panels filled with members of the Columbia faculty. The corridors, on the other hand, seemed to be filled with our students, appearing to face charges of various counts of trespassing and resisting arrest.

The experience was equally memorable for another reason: the racial imbalance of the entire occasion. Not only in the case of my *voir dire*, but more generally, all of the accused seemed to be black, which brings me to the relevance of my experience to a discussion on representing justice—and specifically to the paper *Blind Justice* by I. Bennett Capers. My first courthouse experience took place in what I believe is the central courtroom in Manhattan criminal court, where the judge sits under a mural depicting the figure of Justice. In this 1893 painting by Edward Emerson Simmons, she is pictured as a beautiful woman, blond and without the expected blindfold.<sup>1</sup> Kneeling before her are two beautiful children, a boy and a girl, also blond. Each presents an object on a pillow to Justice: he a sword, she a lily. However the iconography of this painting may symbolize justice tempered by mercy, its most powerful impression on me was made rather by the Caucasian blondness of its figures, by its promise of exclusively white justice in a court in which the defendants were predominantly black.

As an art historian, I naturally was interested in the painting behind the judge. The absence of a blindfold struck me as anomalous. Many years

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\* Meyer Schapiro Professor of Art History Emeritus, Columbia University.

1. See *Open-Eyed Mural Irks Courtroom*, N.Y. TIMES, Oct. 26, 1956, at 30.

later, reading *Representing Justice*, I wondered if this was the painting that Resnik and Curtis cited as arousing public objection precisely over the open eyes of Justice.<sup>2</sup> My own research on the figure of Justice had concentrated on her image in the late Middle Ages and the Renaissance, particularly in the Republic of Venice—that is, before her blindfolding. There she had been co-opted to represent the highest virtue of the State. Her figure, sword and scales in hand, became the personification of Venetia herself; her identity was significantly inflected through reference to a range of other female figures, including the goddess Roma, the Virgin Mary, and even Venus. Venice claimed Justice for and as herself. As the very personification of the state, she hardly could be blindfolded, for vigilance was one of her responsibilities. Second to Justice as an attribute of the state came Charity—a theological virtue, perhaps, but her distributive justice balanced the retributive justice of her cardinal sister. Both found early precedent in the political iconography of ancient Rome.

Prominently featured on the great staircase of the Doge's Palace in Venice is a representation of Astraea, the ancient goddess of justice, she who reigned in the Golden Age of Saturn but departed upon seeing the iniquities of man in the Iron Age, the last of the deities to abandon Earth.<sup>3</sup> Her return would signal a new golden age, whether under Augustus, as Virgil celebrated,<sup>4</sup> or the republic of Venice that claimed to be the divinely appointed Christian successor to ancient Rome.

The presence of Astraea on the Doge's Palace added a further, classical confirmation of the building as a palace of justice (*ad ius reddendum*). That identification was declared by the prominence of Venetia/Justitia over the entrance and was more actively narrated at the corner of the palace in a sculpture of the Judgment of Solomon. Interestingly, that ancient Hebrew avatar of the wise judge has so far received little attention in our discussion of courthouse iconography. I am not sure just how much a modern sense of courtroom justice, ideally governed by the principle of separation of church and state, might willingly invoke the Solomonic example. I suspect, however, any such overt reference might be found constitutionally suspect as a representation of the Ten Commandments.<sup>5</sup>

How then shall Justice be represented in a contemporary courthouse? Judge Woodlock has raised the issue with his introduction of Ellsworth Kelly's monumental pictorial construction in the modern Boston federal courthouse: eight variously colored monochromatic panels surrounding a

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2. JUDITH RESNIK & DENNIS CURTIS, REPRESENTING JUSTICE: INVENTION, CONTROVERSY, AND RIGHTS IN CITY-STATES AND DEMOCRATIC COURTHOUSES 93 (2011).

3. OVID, METAMORPHOSES 1.149-50.

4. VIRGIL, *Ecloga IV*, in ECLOGUES (Robert Coleman ed., 1977).

5. Cf. *McCreary Cnty., Ky. v. ACLU of Ky.*, 545 U.S. 844 (2005); *Van Orden v. Perry*, 545 U.S. 677 (2005).

central panel of black.<sup>6</sup> Despite the abstract anonymity of its panels of pure color, Kelly's construction may actually come close to those forbidden tablets of the law simply in the strict geometry of the panels and their arrangement. Symmetry itself plays an important role in creating a sense of "measure and balance," as the artist himself declared. Given the context of the installation, however, we are invited to interpret such qualities in terms other than purely aesthetic. We will tend to bring to this abstract configuration the values we associate with justice, the reigning virtue of the courthouse. In an interview, Kelly recalls presenting a model of his project to his judicial clients, including then-Chief Judge Stephen Breyer. Asked about the meaning of the work, Kelly recalled, "I said it's a bunch of colors; the black panel in the center holds it all together just like you Judge in your black robe. And they laughed and liked that answer."<sup>7</sup> The black robe and its implications became a most interesting topic for discussion at the symposium, stimulated by the paper of Oscar Chase and Jonathan Thong.<sup>8</sup> Clearly, Kelly had responded to a central icon of courtroom ceremony and decorum, the chromatic neutrality of black symbolizing the legal neutrality of judgment.

The question arose early in our discussions of whether the virtue of Justice still could be validly personified in our time—that is, whether such an abstract concept, one so deeply scarred by modern experience, can still be figured in the formal language(s) of contemporary art. *Representing Justice* illustrates a range of such responses, but the most interesting of these may well be less modern visual re-conceptions than visual commentaries on that traditional iconic figure, caricatures or parodies alluding to travesties of Justice, to her failure to live up to the ideals she is supposed to uphold.<sup>9</sup> Perhaps Kelly's response, abstracting the values, is the more eloquent model for the moral vision of the twenty-first century.

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6. RESNIK & CURTIS, *supra* note 2, at 124-26; *cf.* U.S. GEN. SERV. ADMIN., THE BOSTON PANELS: ELLSWORTH KELLY-U.S. COURTHOUSE (1998).

7. ELLSWORTH KELLY: THUMBING THROUGH THE FOLDER: A DIALOGUE ON ART AND ARCHITECTURE WITH HANS ULRICH OBRIST (Hans Ulrich Obrist ed., 2009).

8. Oscar J. Chase & Jonathan Thong, *Judging Judges: The Effect of Courtroom Ceremony on Participant Evaluation of Process Fairness-Related Factors*, 24 YALE J.L. & HUMAN. 221 (2012).

9. Consider, for example, the logo of the Judicial Council of the National Bar Association, inspired by the Langston Hughes poem "Justice," RESNIK & CURTIS, *supra* note 2, at 103 fig.76, or Jeff Danziger's cartoon, *id.* at 129 fig.94, both playing on the hypocrisy of the blindfold.



# **The Architecture of Justice**

