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# What We Didn't See Before

Allison Anna Tait\*

On February 3rd and 4th last year, an impressive and diverse group of legal academics, judges, art historians, sociologists, and historians gathered at the Yale Law School to attend a symposium celebrating the publication of Judith Resnik's and Denny Curtis's book, *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms*. The symposium was held in multiple locations—including the Whitney Humanities Center and the Yale University Art Gallery as well as the Yale Law School—to mark its interdisciplinary framing and aspirations. The broad range of panels gave substance to this aim of approaching the visual and architectural depiction of justice through multiple channels in order to get a more comprehensive perspective. The papers addressed topics as wide-ranging as Ancient Egyptian sites of justice and color-field art. Ultimately, however—like *Representing Justice* itself—the papers shared a set of related concerns, demonstrating the trans-historical relevance of questions regarding figuration, space, visibility, and the profoundly resilient connection of these qualities to the deployment and execution of justice.

Building on that symposium, the essays in this Issue concentrate on a primary, and crucial, cluster of analytic concerns about the ways in which governments, artists, and architects have chosen to represent the concept of justice. Responding to the ways in which cultures have, historically as well as currently, depicted justice, the papers fall generally into two categories. The first category implicates notions of *seeing Justice* while the second category elicits debate about *siting justice*. These two categories are, of course, not mutually exclusive—anyone can see a courthouse just as anyone can puzzle about the location of an artwork—but the distinct queries of *seeing* and *siting* represent the two most important vectors of interpretation.

The first category is constituted by papers that analyze visual

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\* Yale Law School, J.D. 2011; Gender Equity and Policy Postdoctoral Associate, Yale Women Faculty Forum. Many thanks to Judith Resnik and Denny Curtis for inviting me to write this Introduction and for all the discussions about *Representing Justice* that led to that point. My thanks also to Luke Norris for his conversation and comments.

representations of the allegorical female figure of Justice—that is, the personification of Justice as a historical and political Virtue. As the diversity of images invoked by Resnik and Curtis demonstrates, Justice has historically served as an easily accessible allegorical figure, giving shape and form to abstract notions of fairness and judicial deliberation, even if Justice’s various attributes and appearances have been contested. While Justice has served as a particularly legible symbol of the virtue of justice, so have courthouses. As such, the second category of papers seeks to explore the physical architecture of justice and how the space of the courthouse has developed in conjunction with changing demands related to the administration of justice and the evolving needs of the state. Courthouses demarcate the literal space of justice and have been built, as the contributors to this Issue tell us, both to glorify the processes and outcomes of adjudication as well as to cover the fractures that threaten justice’s precepts.

Whether the essays concern seeing Justice or siting justice, however, they all make the connection between the physical presence of a justice symbol—in the form of art or architecture—and the desire of diverse governments to signal political and judicial values. That is to say, both categories of inquiry connect material representations of justice to the ways in which these objects are deployed by the state, adding a third dimension—*appropriating* justice—to the discussion. Brick and mortar instantiations of justice, as well as any artwork adorning these buildings, have a significant and, before Resnik’s and Curtis’s book, underexplored connection to the architecture of procedural fairness and adjudicative democracy. Consequently, the colloquium papers all consider, in one way or another, particular exemplars of justice imagery in tandem with the history of public judgment processes and the impact of democracy on adjudication. In this vein, William Simon remarks on these dual concerns, saying that “[Resnik and Curtis] value *Justitia* as an expression of the virtues of disinterested individual justice, and they value the traditional courtroom design for its contribution to the transparency of the trial.”<sup>1</sup> In diverse ways, the papers within this volume all respond to this proposition.

#### I. SEEING JUSTICE: THE ALLEGORICAL FEMALE FORM OF AN ANCIENT POLITICAL VIRTUE

As Resnik and Curtis point out, Justice represented as a female figure is nothing new. J.G. Manning tells us in his essay that the “Egyptian term

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1. William Simon, *Courthouse Iconography and Chayesian Judicial Practice*, 24 YALE J.L. & HUMAN. 419, 422 (2012).

that can be translated as 'justice' is *Ma'at*, which is also embodied as a female deity depicted always with an ostrich feather in her hair."<sup>2</sup> *Ma'at* was a persistent presence; as Manning explains, "one of the most durable, and most visible, concepts of the Egyptian state."<sup>3</sup> Manning notes that the importance of *Ma'at* can be traced to the Roman Empire, and Resnik and Curtis remark that "*Ma-at's* female form served as a predecessor to a series of Greek and Roman goddesses."<sup>4</sup> Justice as an allegorical female form lived through the Greek and Roman empires and flourished in the medieval period in Western Europe. In medieval engravings and paintings, the Virtues were often pitted against the Vices in Psychomachean battles for the human soul, and an elegantly bellicose Justice was flanked by her companion virtues, including Prudence, Temperance, and Fortitude. Resnik and Curtis note that by "the late Medieval period, Church leaders were using these images to school a wide and diverse audience on the moral and religious obligations embodied in various Virtues."<sup>5</sup> These images of Justice were equally in circulation to inculcate diverse audiences with the notions of political virtue that Justice embodied.

That Justice embodied certain political virtues became even clearer by the Renaissance, when Justice was defined not so much by the company she kept but rather by her set of attributes. Ruth Weisberg, confirming the role of Justice's attributes in propagating a complex set of abstract principles, observes: "Figures such as Justice have traditionally been accompanied by significant props or material attributes that identified them and elucidated their meaning . . . [creating an] elaborate conceptual system of values."<sup>6</sup> Justice's sword and scales were two attributes that persisted over time, while other attributes, like the ostrich, fell by the wayside. The most complicated and controversial attribute has always been Justice's blindfold. Bennett Capers refers to the blindfold as Justice's "most enigmatic"<sup>7</sup> attribute. Resnik and Curtis destabilize more modern readings of the blindfold as purely positive by reminding us of the derisive, anti-Semitic, and generally problematic nuances associated with the blindfold pre-Enlightenment. Approaching the question of the blindfold from another angle, however, Peter Goodrich suggests that the

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2. J.G. Manning, *The Representation of Justice in Ancient Egypt*, 24 YALE J.L. & HUMAN. 111, 114 (2012).

3. *Id.*

4. Judith Resnik & Dennis Curtis, *Re-presenting Justice: Visual Narratives of Judgment and the Invention of Democratic Courts*, 24 YALE J.L. & HUMAN. 19, 41 (2012).

5. *Id.* at 45.

6. Ruth Weisberg, *The Art of Memory and the Allegorical Personification of Justice*, 24 YALE J.L. & HUMAN. 259, 259 (2012).

7. I. Bennett Capers, *Blind Justice*, 24 YALE J.L. & HUMAN. 179, 179 (2012) (internal quotation marks omitted).

blindfold may serve the purpose of containing the ineffable and sacred component of justice. Goodrich states that the “blindfold on Justitia is a forgotten reference to exclusion and to the accompanying though inarticulate mythology of law, of divine origin and hidden sources.”<sup>8</sup> Where Resnik and Curtis suggest that the blindfold represents an attempt to denote not only impartiality but also governmental separation of powers, Goodrich has another form of separation in mind, arguing that “the blindfold marks a separation, a cleavage, that holds apart the human and the divine, the economic and the iconomic, the mundane and the glorious.”<sup>9</sup>

Goodrich concludes, nonetheless: “enough with the political theology that separates transcendent from immanent, acclamatory from practical, eyes from sight.”<sup>10</sup> Goodrich proposes instead that Justice exist “to encourage participation, critical play, entry into rather than exclusion from the oeconomics of administration and government.”<sup>11</sup> To illustrate his point, Goodrich offers up the Banksy sculpture that depicts Justice in thigh-high boots and wearing a garter belt stuffed with bills. Apart from Banksy’s blatant association of Justice with sexual commodification, Justice has engendered critical play and creative borrowing in instances of appropriation. Appropriation, like allegorical representation, is a time-honored tradition. Referencing Venice in the Renaissance, David Rosand reminds us that Justice “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 . . . .”<sup>12</sup> Kristin Collins follows this lead and gives us the story of how and why the figure of Justice was appropriated by the suffragettes. Collins remarks that “[p]recisely because Justice was a legible, ubiquitous symbol of law’s legitimacy, she was ripe for appropriation by suffragists.”<sup>13</sup> But it was not just Justice’s legibility that made her a prime target for appropriation; it was also Justice’s plasticity that allowed the suffragettes to change Justice’s attributes to their liking while still retaining her legibility. Justice was “sufficiently pliable and thus could serve multiple purposes within suffrage propaganda and spectacle.”<sup>14</sup>

Critical play is also exactly what Resnik and Curtis showcase as they

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8. Peter Goodrich, *The Foolosophy of Justice and the Enigma of Law*, 24 YALE J.L. & HUMAN. 141, 178 (2012).

9. *Id.* at 175.

10. *Id.* at 178.

11. *Id.*

12. David Rosand, *The Color of Justice and Other Observations: A Response*, 24 YALE J.L. & HUMAN. 305, 306 (2012).

13. Kristin A. Collins, *Representing Injustice: Justice as an Icon of Woman Suffrage*, 24 YALE J.L. & HUMAN. 191, 192 (2012).

14. *Id.*

detail the innovation as well as contestation that surrounded the images created by Stefan Hirsch's mural of the "mulatto" Justice in South Carolina<sup>15</sup> and Jan Mitchell's *Lady Justice* in the Virgin Islands.<sup>16</sup> Creative and critical play organized the debate that unfolded around each piece of art, and, in both cases, the combination of racial discourse and allegorical Justice was fraught with disruptive impact and unintended meaning. Perceptions of race, in the South Carolina example, made the work in question objectionable because it destabilized traditional iconography and made all too real the uneasy relationship between racial status and legal rights. In the case of Jan Mitchell's sculpture, the portrayal of race was softened and legitimized by an evocation of stereotype: "[T]he mix of classic Justice iconography and darker skin was made comfortable through associations with roles, such as service providers and caretakers, once assigned specially to black women."<sup>17</sup> Taking note of the racial intervention, David Rosand writes about the "Color of Justice"<sup>18</sup> and Bennett Capers says, referring to the troubled relationship between underrepresented minorities and justice administration in the carceral state, "All of this is color-coded, and this is the final blindness."<sup>19</sup>

Capers ends his essay by imagining the day when "we could de-sex [Justice], de-race her, and remove her blindfold."<sup>20</sup> In her stead, Capers proposes a "mirror in which we can see ourselves. A mirror in which our eyes are wide open. A mirror in which justice is, finally, just us."<sup>21</sup> Many of the papers in this collection are sympathetic to Capers's desire to re-imagine Justice as they witness Justice's deficiencies. Contributors suggest that figurative representation may have lost its power not only to represent a diverse population of rightsholders but also to aptly and accurately signal the daunting challenges inherent in the modern administration of justice. John Leubsdorf, for example, underscores significant dimensions that Justice as allegorical representation is not able to capture.<sup>22</sup> Tying the concept of justice to the conventional female form precludes us, he suggests, from understanding the temporality, the plurality, and the locality of justice. Lost are the complexities of timing in judicial proceeding, the participation of numerous actors, and the locales beyond the governmental buildings where justice matters every day.

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15. Resnik & Curtis, *supra* note 4, at 70-72.

16. *Id.* at 74-75.

17. *Id.* at 77.

18. Rosand, *supra* note 12.

19. Capers, *supra* note 7, at 187.

20. *Id.* at 188.

21. *Id.* at 189.

22. John Leubsdorf, *Justice Unrepresented*, 24 *YALE J.L. & HUMAN.* 247 (2012).

Invoking this changing landscape of adjudication, William Simon proposes that Justice might be better represented by the “Andon and other graphical displays in Toyota design” that allow a court to “prominently display images that aggregate information about its own practices.”<sup>23</sup>

This question of what Justice fails to capture subsequently prompts Rosand to ask “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.”<sup>24</sup> Ruth Weisberg’s answer to that question is a resounding “yes.” She contends that the “persistence of the figure of Justice as an emblem for the rites of judgment reveals a small portion of what could be a much richer visual inheritance.”<sup>25</sup> Stephen Fraade, conversely, suggests that that the violence of the law may not be captured in visual representations and writes that “we must ask of all figurations of law and justice, what does the ocular occlude?”<sup>26</sup> Resnik and Curtis explore how the difficulties inherent in figural representations of Justice have pushed artists and their government patrons to prefer abstract art. Justice art that may have been “formerly considered avant-garde . . . is, ironically, now a conservative response to the complexity of Justice iconography in democracies.”<sup>27</sup> In this volume, prime examples of the use of abstraction are the Ellsworth Kelly color panels, which, as Resnik and Curtis point out, “avoid the questions of what Justice might, could, or does look like.”<sup>28</sup> The Honorable Douglas Woodlock takes this interpretive openness even further, proclaiming that the “Kelly panels can fairly be read . . . as an invitation to future litigants, lawyers, jurors, and judges to inscribe their own meanings on the walls of the courthouse.”<sup>29</sup> Brian Soucek observes in his reading of the Kelly panels, however, that “treating Kelly’s monochromes as potential portraits or landscapes gets abstraction exactly backwards. Monochromes like Kelly’s are spare because the extraneous has been pared down, not because they await completion.”<sup>30</sup> Even though the move to abstraction may obviate some of the most blatant questions about race and gender in relationship to justice, abstract images nonetheless offer their own interpretive puzzles.

23. Simon, *supra* note 1, at 429.

24. Rosand, *supra* note 12, at 307.

25. Weisberg, *supra* note 6, at 266.

26. Steven D. Fraade, *Violence and Ancient Public Spheres: A Response*, 24 YALE J.L. & HUMAN. 137, 138 (2012).

27. Resnik & Curtis, *supra* note 4, at 80.

28. *Id.*

29. Douglas P. Woodlock, *Communities and the Courthouses They Deserve. And Vice Versa.*, 24 YALE J.L. & HUMAN. 271, 283-84 (2012).

30. Brian Soucek, *Not Representing Justice: Ellsworth Kelly’s Abstraction in the Boston Courthouse*, 24 YALE J.L. & HUMAN. 287, 294 (2012).

Seeing Justice, consequently, is a historically embedded proposition that is made increasingly complex by the changing institutional facets of justice as well as the changing face of who is encompassed within the ambit of justice. Resnik and Curtis, along with the other contributors to this volume, teach us that seeing Justice is a subtler endeavor than previously imagined because of the range and semiotic instability of her attributes. They also highlight for us that part of the complexity in seeing Justice is being attentive to what is unseen in the picture, and offer new ideas about how to represent Justice visually beyond the iconic allegorical female form that is our historical inheritance.

## II. SITING JUSTICE: BUILDING MONUMENTS TO CELEBRATE A POLITICAL INSTITUTION

While artistic representations of Justice have been standard markers of governmental aspiration, so too have the buildings dedicated to judicial work. These two things—art and architecture—do not inhabit mutually exclusive domains. Rather, justice art has almost always been sited in justice buildings. Nonetheless they are two separate forms of value-driven, material expression. Constructing buildings to house, institutionalize, and glorify the processes of justice shares an equally illustrious tradition with figurative representation, and the undertakings of law and architecture can be intimately related. Speaking to this entanglement, Kim Scheppele proposes that: “law and architecture are twinned disciplines in which architecture has provided not only a site for the operation of law but also insight into law’s practices.”<sup>31</sup> Scheppele’s essay provides a sustained argument for a deep connection between law and architecture, and she concludes by stating that “[l]aw and architecture are joined through their common specification of a more general social relation between design and ways of life.”<sup>32</sup> Norman Spaulding, speaking more broadly about the association between place and practice, remarks that “the history of the local practice of justice teaches nothing if not that the space in which justice is done shapes what we think it means.”<sup>33</sup>

Providing a backdrop against which to understand Spaulding’s statement, Kathryn Slanski, J.G. Manning, and Adriaan Lanni demonstrate the deep tie between historical legal practice and the siting of justice. Slanski analyzes the law stele of Hammurabi, which, she explains, was “intended to carve out an enduring public space for the contemplation

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31. Kim Lane Scheppele, *Judges as Architects*, 24 YALE J.L. & HUMAN. 345, 347 (2012).

32. *Id.* at 396.

33. Norman W. Spaulding, *The Enclosure of Justice: Courthouse Architecture, Due Process, and the Dead Metaphor of Trial*, 24 YALE J.L. & HUMAN. 311, 343 (2012).



of justice.”<sup>34</sup> The law stele, replete with carvings that explicated the legal code, dominated the central public space, “providing citizen petitioners with a lasting *public* resource for obtaining justice, and, simultaneously, . . . providing Hammurabi with an enduring memorial to his rule as a divinely sanctioned righteous king.”<sup>35</sup> A royal monument, the stele was also a public good, educating the populace about both their rights and responsibilities. Not only was the stele a public site of justice. Slanksi adds that “legal procedures took place in public spaces, before a city gate, within a temple, even, perhaps, in public portions of the palace.”<sup>36</sup> Public participation existed in “the practice of the town assembly or elders sitting to hear a case along with the wide inclusion of witnesses.”<sup>37</sup> Similarly, in Ptolemaic Egypt, Manning explains how judicial proceedings were public business. Trials usually took place, according to Manning, at the temple gate because the temple was a “living embodiment of order, of *Ma’at*.”<sup>38</sup> Reinforcing the importance of public place, “not only did priests dispense justice at local temples in the presence of state agents, but public decrees were also read out at temple gates.”<sup>39</sup> Bringing the story of place to ancient Athens, Lanni reinforces the deeply entrenched connection between public and judicial space. Lanni describes how laws were “inscribed on large stone blocks in various public areas of Athens”<sup>40</sup> and how “[m]ost of the courts were in the agora, the bustling market center of the polis.”<sup>41</sup> Like in the Mesopotamian setting Slanski depicts, in Athens the public place of trials meant that “the presence of spectators at trials was extremely common”<sup>42</sup> and juries may have been composed of as many as 501 men.

Despite the fundamental importance of the precedents set by these ancient cultures, their judicial domains were “without the solid architecture of courtrooms, single-use facilities dedicated to the execution of justice, which accrued visual and architectural markers signaling continuity of judicial tradition and raising the judicial discourse from the everyday to the iconic.”<sup>43</sup> Woodlock and Spaulding take up this thread and analyze the history of the courthouse in the United States, paying

34. Kathryn E. Slanksi, *The Law of Hammurabi and Its Audience*, 24 YALE J.L. & HUMAN. 97, 109 (2012).

35. *Id.* at 102.

36. *Id.* at 100.

37. *Id.*

38. Manning, *supra* note 2, at 117.

39. *Id.* at 118.

40. Adriaan Lanni, *Publicity and the Courts of Classical Athens*, 24 YALE J.L. & HUMAN. 119, 121 (2012).

41. *Id.* at 122.

42. *Id.*

43. Slanksi, *supra* note 34, at 100.

special attention to core national, judicial, and political values implicated in the buildings. Spaulding claims that “the American concept of due process of law is itself intimately bound up with the location, design, and use of law’s administrative space.”<sup>44</sup> Woodlock delves into the “centrality of the open and accessible courthouse to America’s narrative,”<sup>45</sup> and, when describing the Boston courthouse that he had a great hand in seeing through the building process, Woodlock makes specific mention of courtroom design. The decorative and design scheme of each courtroom is such that “[e]ach of the participants—juror, witness, spectator, and judge—is equally ennobled. They each have different job descriptions, of course, but they are engaged in a collective community undertaking reflected in a design that requires each to contribute to the process and reflects how they do so.”<sup>46</sup> The courtroom, Spaulding argues, is of particular importance because “[d]octrinally, the dominant, indeed controlling, metaphor for the constitutional guarantee of procedural due process is a courtroom trial.”<sup>47</sup> The Honorable Nancy Gertner adds that the space for the jury is equally important, both practically and imaginatively, and that “architects of the modern courthouses have striven to make room for the jury with ever larger spaces to accommodate the more expansive pool from which jurors are chosen . . . . In most federal courthouses, there is one jury room per judge, often a comfortable and airy space for deliberation.”<sup>48</sup>

Gertner also remarks, however, that these spacious jury boxes are “sadly, too often empty.”<sup>49</sup> Resnik and Curtis document this phenomenon, capturing the trend of “moving some forms of adjudication offsite, to administrative tribunals and to procedures that have come to be known by the acronym ADR—alternative dispute resolution.”<sup>50</sup> Hazel Genn recounts in great detail the move away from adjudication in England and Wales and remarks that “we have witnessed in England over the past decade the decline of the civil justice system and official pressure to divert civil disputes to private dispute resolution, accompanied by a troubling anti-adjudication rhetoric.”<sup>51</sup> Spaulding names this the “enclosure” of justice, using a term that evokes earlier movements that privatized and commodified what was once public and free to all.

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44. Spaulding, *supra* note 33, at 315.

45. Woodlock, *supra* note 29, at 272.

46. *Id.* at 280.

47. Spaulding, *supra* note 33, at 315.

48. Nancy Gertner, *From “Rites” to “Rights”: The Decline of the Criminal Jury Trial*, 24 *YALE J.L. & HUMAN.* 433, 437 (2012).

49. *Id.*

50. Resnik & Curtis, *supra* note 4, at 24.

51. Hazel Genn, *What Is Civil Justice For? Reform, ADR, and Access to Justice*, 24 *YALE J.L. & HUMAN.* 397, 397-98 (2012).

“Enclosure,” Spaulding writes, “offers control, efficiency, and rationality in the administration of justice.”<sup>52</sup> Invoking another type of historically closed space, Lanni laments that “[c]ourts today are run by a cloistered lawyer-elite and operate largely out of sight of the ordinary citizen.”<sup>53</sup> As Spaulding also points out, however, “cultural and political tolerance for other even more enclosed practices (preemptive warfare, indefinite detention, torture, and most significantly, targeted killing) has increased dramatically.”<sup>54</sup> Alexandra Lahav explores these extremely enclosed practices in her essay about military tribunals.<sup>55</sup>

What this set of essays allows us to see, then, is that questions of siting and constructing justice implicate not only questions of architecture—the opulent, award-winning designs of modern federal courthouses or renovations to historical buildings—but also questions of public access to the space, “off-site” justice, and the move to enclose the space of justice. Implicit in the questions of location and accessibility are also questions of legal equality and the creation of civic engagement. These contributors, inspired by Resnik and Curtis, ask us to look beyond architecture, and assess the operation of justice according to site, selective access, and the presence of supra-legal processes. Location, as real estate professionals say, really is everything.

### III. APPROPRIATING JUSTICE: PUBLICITY, LEGITIMACY, AND FAIR PROCESSES

Whether the material object is a painting or the courthouse in which it hangs, what we are given to understand through reading the papers collected in this Issue is that material representations allegorizing or promoting the notion of justice share common qualities. Both sculptures and courthouses (or monochromes and tribunals) are state-sanctioned expressions of judicial values and governmental aspirations. As Soucek, taking up the challenge of reading Kelly’s monochromes, clarifies for us, “Questions about what Justice *looks* like are really questions about what the state wants to *communicate* about it.”<sup>56</sup> The state, deploying symbols that are intimately linked with its power, uses visual indicators to make public statements about public values. Justice artifacts are, consequently, closely tied to publicity, which is simultaneously a tool, a goal, and a value of the state. Publicity is instrumental in realizing certain judicial and

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52. Spaulding, *supra* note 33, at 340.

53. Lanni, *supra* note 40, at 134.

54. Spaulding, *supra* note 33, at 342.

55. Alexandra D. Lahav, *Rites Without Rights: A Tale of Two Military Commissions*, 24 YALE J.L. & HUMAN. 439 (2012).

56. Soucek, *supra* note 30, at 290.

governmental aims. Soucek, referencing Bentham, mentions that “the presence of a viewing public promotes civic education, reduces the chance that witnesses will lie, increases confidence in judicial decisions, and, especially in the criminal context, allows for community catharsis.”<sup>57</sup> Publicity is more than just a medium through which to effect practical goals, however; publicity is also message. Publicity, as our contributors suggest, communicates the legitimate, democratic, and normative quality of a state’s power.

Speaking to the concept of legitimacy, Genn tells a story about rule of law that connects law with both social order and good government: “In societies governed by the rule of law, the courts provide the community’s defence against arbitrary government action; they promote social order and facilitate the peaceful resolution of disputes.”<sup>58</sup> Even the look of the courts and the dress of the judges, Oscar Chase and Jonathan Thong tell us, may have enough signaling power to create in observers a sense of security and authority.<sup>59</sup> And even in the earliest cultures, this idea of the rule of law—and its link to legitimacy—held sway because publicity was a strategic tool used by rulers and governments to articulate broadly state legitimacy and power. The law stele of Hammurabi represented a “vital relationship between the king’s divinely mandated obligation to provide just ways for his people and the opportunity of his people to have access to the written and public account of what constituted those just ways.”<sup>60</sup> The law stele communicated not only the glorious and divine law-giving power of the ruler, but also provided a forum for civic education and engagement. Lanni offers a similar account, stating that “public trials provided a form of democratic education vital to the functioning of Athens’s direct, participatory democracy. . . . [P]ublicity helped to ensure that court sessions were a form of democratic practice that fostered a sense of civic identity.”<sup>61</sup> Above and beyond being indicators of legitimacy, as Resnik and Curtis point out, courts—replete with the art that adorns them—have been recognized as democratic sites, even if they were not originally conceived as such: “[A]djudication is proto-democratic, in that courts were an early site of constraint on government.”<sup>62</sup> Reinforcing this point, Manning notes that while the Ptolemaic dynasty was by no stretch of the imagination a democratic regime, the idea of connective justice was a forerunner to “later democratic developments that transformed the hierarchical idea of

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57. *Id.* at 301-02.

58. Genn, *supra* note 51, at 397.

59. Oscar G. 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).

60. Slanski, *supra* note 34, at 109-10.

61. Lanni, *supra* note 40, at 119.

62. Resnik & Curtis, *supra* note 4, at 20.

‘connective justice’ to the horizontal idea of ‘justice for all.’”<sup>63</sup>

This is the same transformation that Resnik and Curtis have in mind when they observe that “[r]ites’ turned into ‘rights,’ imposing requirements that governments provide ‘open and public’ hearings and respect the independence of judges.”<sup>64</sup> In their essay, Resnik and Curtis link courts to democracy, defining democracy as “aspirations for lawmaking through egalitarian methods that foster popular input into governing norms and impose robust constraints on both public and private power.”<sup>65</sup> Hazel Genn, striking a similar note, writes that the “role of law and the rule of law are fundamental to liberal democracies which emphasize liberty and promise justice and equality before the law. Under the rule of law, law stands above all people and all people are equal before it.”<sup>66</sup> Woodlock, writing about courthouse design, adds that a courthouse can ennoble and equalize all participants in the judicial process, and that design is also a means to “reinvigorate the conversation and discourse necessary to give content to civic life.”<sup>67</sup> Modern legal guarantees entitle all individuals to equal treatment and dignity, and the development of these guarantees was both the cause for and the result of conflicts about the roles played by judges and adjudication. Moreover, these developments in democratic access to courts were reflected in disputes about what colors and shapes of faces and bodies ought to be offered up as iconic in increasingly monumental courthouses.

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Ultimately, the essays in this Issue all seek to answer one question: what has the work of Resnik and Curtis taught us to see that we didn’t see before? The seminal work of Resnik and Curtis has, as all the contributors note, sparked creative discussion about the relationship between art, architecture, and the work of courts. Similarly, their work has anchored the field of study examining visual representations of justice and their connections to both procedural fairness and democracy in adjudication. Because of Resnik and Curtis, a courthouse is no longer just a courthouse. The material objects that represent and situate justice are no longer univalent symbols that speak to an unexplored notion of state power and judicial grandeur. One of the major contributions of Resnik’s and Curtis’s work is to persist in interrogating the relationship between material object and governmental objective in multiple settings and contexts, finding subtle

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63. Manning, *supra* note 2, at 118.

64. Resnik & Curtis, *supra* note 4, at 21.

65. *Id.* at 26.

66. Genn, *supra* note 51, at 411.

67. Woodlock, *supra* note 29, at 279.

and subversive meaning. Resnik and Curtis identify and investigate the moments and monuments that uncover celebrations of and fractures within the execution of justice, searching for intersections between the role of the state and related representations of justice. Through their work, they teach us to train our critical eye to do the same. As a result, we do, in fact, see things when we look at a courthouse or a justice image that we may not have seen prior to their timely intervention.



# Representing Justice



