

Book Review

Judith Resnik and Dennis Curtis, *Representing Justice: Invention, Controversy, and Rights in the City-States and Democratic Courtrooms*, New Haven, London: Yale University Press, 2011, pp. 668, \$75.

Reviewed by Amy Widman

In a county courthouse in Grand Marais, Minnesota, there hangs a framed corduroy jacket. This jacket was worn by a public defender named James Sommerness, a lawyer who practiced in this courthouse for decades. Known for his informality of dress, the memorial is a celebration of access. It is also seemingly unique among courthouse plaques in its confrontation of the reality that resources can affect justice and the corresponding need to provide legal assistance to the poor (372-75).

This is one of the many stories of how we celebrate and perceive the role of courts throughout the world in *Representing Justice*, by Judith Resnik and Dennis Curtis. The book contains an extensive collection of images alongside its text and is a visual treat, rare among works of legal academia. But beyond the art historical contributions provided by tracing images of justice throughout time and geography lies a deeply relevant exploration of the role of courts in a democracy and contemporary threats against both institutions. The book's main premise treats justice, and specifically the development of the modern court system, as part of a triptych (alongside the postal service and the press) of modern developments that sustain democratic governance. These three developments share the commonality of communication, and so it is through communication that democracy is sustained. As Jeremy Bentham put it, courts, the press, and the postal service created a "tribunal of public opinion" (14).¹ All three developments are currently facing profound structural challenges (335-36).²

Drawing on recurring themes of participation, voice, the power of public perception, and access to courts, the authors catalog visual portrayals of

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1. Citing Jeremy Bentham, *Constitutional Code* in 9 THE WORKS OF JEREMY BENTHAM 41 (John Bowring, ed., 1843) and FREDERICK ROSEN, JEREMY BENTHAM AND REPRESENTATIVE DEMOCRACY: A STUDY OF THE CONSTITUTIONAL CODE 26-27 (1983).
2. Citing JODY FREEMAN & MARTHA MINOW, GOVERNMENT BY CONTRACT: OUTSOURCING AND AMERICAN DEMOCRACY (2009).

justice in courthouse settings around the world in order to explore various understandings of the role of law in society. By examining the architecture and iconography of justice over time, the authors trace the evolution of the judiciary and judicial process as becoming a governmental role of necessary transparency. The authors describe this development as a metamorphosis of "rites" into "rights" (288-305). The public's participation and education in the judgment process, through open courts, through a focus on reason-giving, and the obligation of hearing both sides, flourishes alongside the creation of an independent judiciary. The court, with its attendant role of dispensing justice, over time became a place of communication by and for the people and a constraint on governmental authority.

But this is not the end of the story, and Resnik and Curtis offer a narrative that is also critical. How does the visual representation of Justice, seen throughout the world, capture these democratic developments? Can Justice as a virtue stand alone? What happened to her sister virtues from Renaissance times and the cohort of Justice with Prudence, Temperance and Fortitude? Why did Justice survive into modern translations and renderings while the other three fell off?

The authors posit that Justice survived and thrived as a legitimizing aspect of state power (7, 8). In this way, Justice gave a stamp of legitimacy to the state in its judgments; she became a valuable marketing tool, so to speak.³ The authors question the role of this iconography: Should governments only uphold lofty portrayals of Justice; does the representation of justice do more than signify legitimacy? Does the visual silence regarding the more difficult problem of representation's relationship to power undermine the democratic value of the court system?

In this spirit the authors continue to unpack the marketing of Justice, asking whether it is consistent with society's current valuing of justice. Are the visual signals in line with a system aiming to afford access for all people? Have the democratic values of open courts and information dissemination been realized or co-opted through marketing campaigns and sensationalism, causing justice to bend toward public perception rather than evidence and facts in a particular case? Does the iconography of Justice in our courthouses and popular culture have a role to play in this disconnect? The authors give equal time to exploring these tensions as well, suggesting that in order to sustain a democracy, the architecture and iconography must address the dark side of justice's past, too.

3. For more on how marketing shapes the development of legal norms, see, e.g., JOHN A. QUELCH & KATHERINE E. JOCZ, GREATER GOOD: HOW GOOD MARKETING MAKES FOR BETTER DEMOCRACY (2007); Sara Sun Beale, *The News Media's Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness*, 48 WM. & MARY L. REV. 397 (2006) (examining criminal law doctrinal developments); Jane Schacter, *The Pursuit of "Popular Intent": Interpretive Dilemmas in Direct Democracy*, 105 YALE L.J. 107 (1995) (examining literature used to promote ballot initiatives); Amy Widman, *The Rostrum Principle: Why the Boundaries of the Public Forum Matter to Statutory Interpretation*, 65 FLA. L. REV. 1447 (2013) (suggesting that the public marketing of legislation be applied toward its subsequent interpretation).

In order for justice to enhance democracy, it also must reflect the people. Describing how popular resistance to culturally insensitive representations of justice in court buildings reflects the public's ongoing dialogue with imagery, the authors also note how rare it is for Justice to appear other than as the traditional white woman with a blindfold. Their exhaustive catalog of representations of Justice in governmental buildings around the world reveals merely one depiction of Justice as a woman of color that remains in plain view (121).⁴ How does Justice translate as a democratic ideal when it is not reflective of the people who will be judged?

The institutional architecture of courthouses also speaks to the dominance of power and the status quo, which can be in tension with access and openness. In America, a twentieth-century building boom produced large centralized buildings housing courts, impressively enshrined and stable (154-168). This time period coincided with an expansion of the role of courts in protecting rights, the birth of a Legal Services Corporation to provide representation to those who could not afford a lawyer, and the development of a cohesive procedural law built on ideas of access. Thus we see a democratically developed body of law focusing on rights and access to be judged inside buildings designed to be monumental, central, and stable. In contrast, we see early twenty-first-century buildings focusing on different themes: security, isolation of judges from the public by enlarging private chambers and assigning judges to particular courtrooms, and less adjudication generally taking place in the courthouse buildings. Art has long been a feature of these types of buildings, but provocative representations of justice are often quietly provocative, if present at all. The authors examine recent installations in courthouses by artists like Tom Otterness and Jenny Holzer for their questioning of how well justice currently meets its ideal (184-191). But these works are referential and require background knowledge that might reduce their potency, features that the artists imply might also have been by design.⁵

Is Justice under threat as a virtue and, correspondingly, are the courts threatened alongside the vulnerabilities currently being experienced by the press and the postal service? The twenty-first century is uncovering a widening gap between the lofty ideals and architecture of the court system and the modern development and evolving doctrine of our courts.

Turning toward privatization models of justice, like various forms of arbitration and alternative dispute resolution mechanisms, as well as the

4. The 1993 statue of Justice at the entry of the federal courthouse in St. Croix in the Virgin Islands remains in full view. However, the authors reveal that even this depiction is a compromise from the original statue proposed, a nine-foot-tall depiction of Justice as a "Moco Jumbie," an African folklore figure (121-124). The authors also tell the story of a 1937 mural in a South Carolina federal courthouse that drew controversy for its portrayal of Justice as a "mulatto" woman, and eventually was hidden behind a velvet curtain (110-113).
5. The installations examined are *Law of Nature*, by Tom Otterness, a group of small sculptures on a terrace of the federal courthouse in Portland, Oregon; and *Installation for the Sacramento Courthouse*, by Jenny Holzer, a series of 99 engravings of quotations on granite pavers in the federal courthouse in Sacramento, California (184-191).

siphoning off of many cases into administrative adjudications, the authors continue to explore the architecture of such alternative dispute settings while questioning the values portrayed and reinforced by these shifts. For example, administrative adjudications occur in nondescript offices, without the grace and lofty architecture and art supporting an institutional commitment to Justice as a virtue. Such adjudication proceedings are often hard to find; the proceedings themselves contain fewer procedural protections, and there is correspondingly less access to the decisions (317-318).⁶ Similar themes of restricted information and access abound in mandatory arbitration proceedings, which are premised upon confidentiality as a tool to promote open discussion—it is thought that confidentiality is needed to resolve disputes in these forums.⁷ This has the effect of removing the more mundane dispensations of justice from the public sphere, a move the authors posit weakens norm development and public education of adjudication's role in a democracy, and which ultimately undermines the democratic nature of the court system entirely. Although the architecture of most modern courthouses aspires to signal permanence and importance, the authors point to similar institutions, with grand architecture and nods toward institutional permanence (the postal service and the press, of course, but also schools, the military, and prisons) as harbingers of what might befall courts in the twenty-first century—a privatization that brings with it a strong blow to democracy and access (336).⁸ It is the behavior of the courts in the everyday matters that most truly represents its democracy, and threats to remove the role of courts in these more routine matters under the guise of efficiency strike to the heart of this value.

It's not only the more mundane dispensations of justice that are being removed from Bentham's tribunal of public opinion, however. The authors include "Camp Justice" at Guantanamo Bay as another compelling instance of the visual marketing of justice, portrayed in this case by glimpses of individuals branded terrorists through barbed wire surrounding the detention facility and images of rooms modeled after typical courtrooms (328-331). These visual cues of justice, their portrayals of criminality and process, stood a vast distance from the reality of the tribunals at Guantanamo, which turned away from modern developments of courts as open and independent and as valuing both sides of the dispute.⁹ While many have claimed that Guantanamo and its processes were isolated examples, the authors' main point is that courts are

6. See, e.g., Christopher B. McNeil, *The Public's Right of Access to "Some Kind of Hearing": Creating Policies that Protect the Right to Observe Agency Hearings*, 68 L.A. L. REV. 1121 (2008) (discussing generally the procedural differences between court trials and administrative adjudications, especially procedures for creating access and participation).
7. Richard C. Reuben, *Confidentiality in Arbitration: Beyond the Myth*, 54 KAN. L. REV. 1255 (2006) (offering a descriptive and normative analysis of confidentiality policies in arbitration).
8. See FREEMAN & MINOW, *supra* note 2.
9. See, e.g., Marc D. Falkoff, *Back to Basics: Habeas Corpus Procedure and Long-Term Executive Detention*, 86 DENVER U. L. REV. 961, 989 (2009) (describing in detail why "[t]he story of Guantanamo is the story of a failure of process").

made up of many isolated practices and procedures and must function openly both to safeguard the litigants' rights and also to allow for continuous public evaluation and education of the development of legal norms. In this sense, the authors group Guantanamo alongside the other examples of privatization and administrative adjudication as developments that together serve to weaken adjudication's role in democracy.

Switching from a historical focus, the authors begin to sketch what a "democratic iconography" of courts might look like, focusing both on architecture and function. First, there must be room in the new iconography for an accessible discussion of oppression and recognition of the possibility of injustice. An honest representation of the powerless can have great ripple effects in advancing the dominant understanding of courts, like the building of the South African Constitutional Court on the remnants of the jail that held many of Apartheid's resistors (350-356). On a more pragmatic level, they advocate for the inclusion of social spaces in courthouses—here the authors point to courthouses with educational programs, lecture spaces, and even performance venues—as having both architectural and functional significance to the development of democracy, expressing value to the public fitting for a democratic house. Specialized courts with their attendant programs conjoined (like family courts with spaces for social workers, children's play spaces, and other services relevant to the issues facing family court litigants) (343) also exemplify a renewed focus on a democratically focused role for courts. The architecture itself removes the resonating theme of punishment and instead projects a more integrated government service.¹⁰

The authors circle back to Justice as a virtue ultimately, concluding that by cutting Justice off from her sister virtues, virtues that can bring an iconography of humility, reflection, and other less celebrated aspects of judging, we may have become myopic in our view of the role of the courts. The tattered corduroy jacket hanging in the county courthouse symbolizes a more honest image of Justice, one to which we should aspire. Rather than merely a blindfold and a scale, the jacket incorporates humility and humanity, bringing Justice into truly full relief.

Professors Resnik and Curtis have charted a visually impressive and deeply thought-provoking course through the art and architecture surrounding justice as well as a history of the development of justice in popular opinion and ultimately as a backbone of democracy. What's more, they pose challenging questions about the future of both justice and the court system. Their point, that the future can be altered through a critical understanding of the iconography and architecture surrounding our legal system, is ultimately an inspiring one. While themes common to law professors and other legal scholars echo throughout—the importance of transparency, accountability, voice, and participation in law and representations of the legal system—the

10. Along these lines, the authors discuss the use of glass as a building material (341-42). Glass has obvious resonance of transparency, but also can signal more punitive associations, like surveillance.

presentation of these themes in a comprehensive art history is innovative and enlightening. The subject matter transcends legal academia as well. Political philosophers, art historians, cultural critics, and all those with a deep interest in the role architecture and art can play in shaping democracy will find much delight and insight in *Representing Justice*. And we can all take inspiration from the idea that law is dynamic and that the people play a role in shaping what happens to justice, and our courts, as we seek greater understandings of how law is marketed to us, how law is seen and experienced by those in power and by the powerless, and how the public needs to be able to interact with law to keep it democratic.