

The Naked Truth: A Pictorial View of Justice

RUTH HERZ

Ruth Herz studied law in Geneva, Munich and Cologne where she earned her doctorate in law. She was a judge at the court of Cologne, Germany since 1974 until 2006. She introduced the 'victim offender mediation and reparation' scheme as an alternative sanction for juvenile offenders to the German legal system for which she received the Medal of Merit (*Bundesverdienstkreuz*) of the Federal Republic of Germany in 1998. From 2001 – 2005, while on leave from her judicial position, she played the part of the judge in a daily fictional court series on German television. She has taught criminology at the University of Toronto and at the Hebrew University of Jerusalem. From 2006 – 2010 she was

Associate Researcher at the Centre for Criminology of the University of Oxford and was a visiting fellow at Princeton University in 2010-2011. She is currently a visiting professor at the School of Law, Birkbeck College, University of London. She is interested in law and popular culture especially in law and images. She is working on the role and the everyday practice of judges through drawings produced by a judge while sitting on the bench as well as on the portrayal of justice on television. She has published extensively. Her latest book *The Art of Justice: The Judge's Perspective* was published by Hart Publishing, Oxford in 2012.

THE IMAGE OF the blindfolded *Justitia* holding the scales and a sword is deeply rooted in our Western culture and represents fair and unbiased justice. The image has long performed an important symbolic role, legitimising justice and state power. Accordingly, judges' decisions, publicly pronounced in court, are largely accepted and respected by the populace. However, few people ever witness a judicial process. They are generally only exposed to second-hand accounts from the courtroom via mediated texts and images. These reports have the potential to boost or undermine public confidence in the justice system.

The practitioners in the courts profess to know better – only they ensure the consistency, integrity and impartiality of the judicial process. They believe they can uphold the image that has been cultivated over time. Judges protect their anonymity and deliberately avoid any exposure of their thinking or inner feelings. They have therefore been reluctant to put pen to paper and to express their private thoughts on their profession and its practices in autobiographies and memoirs. This reticence explains why we are still faced today with the same enigma of how judges feel, see and think as was shrewdly expressed by John Selden (1584–1654): ‘We see the judges look big, look like lions, but we do not see who moves them.’¹

In an age of performativity, fluidity of identity and otherness, the judiciary can no longer remain untouched. Due to judges' reticence to reveal more than their legal way of thinking in their writings, judicial stability and continuity must be questioned through new methods. W.J.T. Mitchell has long argued that there has been what he calls a “pictorial turn” in contemporary culture and theory, in which images, pictures and the realm of the visual have been recognized as being as important and worthy of intense scrutiny as the realm of language.² It is well known that lawyers privilege text in relation to images by assuming the precision and transparency of language as opposed to the simplicity and opacity of images. However, deciphering, decoding and interpreting images reveal their complexity and deeper meanings. Applying such an approach to the practice and theory of law may indeed provide a key to the anatomy of judgecraft. A fortuitous discovery of a hitherto unknown wealth of vivid, fascinating

1. J. Selden. *Judge. Table Talk*. 1689.

2. See the ground-breaking book by W.J.T. Mitchell. *Picture Theory: Essays on verbal and visual representation*. Chicago. University of Chicago Press. 1994.

and unique drawings of courtroom scenes sketched by a judge while sitting on the bench alerted me to such a possibility. The images are saturated with clues as to the judge's way of thinking and habitus, and shed light on the factors that shape, motivate and move him in the process of reaching judgment.

Judges are educated and trained to 'think like lawyers', enabling them to interpret and apply the law, and so to end up with a cogently formulated decision. The legal method, however, leads judges to 'skeletonise' real-life stories. Judgecraft is therefore, to a great extent, an exercise in stripping stories of their many personal aspects and paring them down, so that they fit neatly into the judge's way of applying the law. The gatekeeping function of their way of thinking keeps judges in their safe space. Although the system does give judges discretion to make personal choices, based on observations and interrogations in court, they would be sure to emphasise that those choices are grounded in the law and are barely related to their own personalities.

Judges' fascination with rules becomes part of their persona. Neither in their studies nor in their practical training are judges led towards compassion and care. These have been rooted out of the 'legal imagination'.³ The ideology of interpreting and applying the law objectively does not necessarily mean that judges have no empathy and no likes or dislikes towards the people in the courtroom. However, they are reluctant to admit those feelings even to themselves, in order to maintain their objectivity and fairness. Hubris and remoteness may, after all, only be a façade behind which judges hide their own inner conflicts, which they must quietly take home with them.

Entering the judiciary, however, entails more than the lawyer's way of thinking. Appointment as a judge marks an initiation into a prestigious guild which bestows dignity and honour on its members, distinguishing them from other members of society. Judges acquire their habitus by incorporating past experiences, socially produced in their peer group, into the self which becomes their second nature.⁴ Consciously and unconsciously, judges gradually adopt a certain aura and gravitas. Educated to believe that they embody the key values and virtues of the justice system, judges acquire this identity and expect the public to fix its gaze on their professional façade. The values not only form the basis of judges' social identity, but also help to forge the bonding between them and their common judicial culture. Court rituals, architecture, language and the judges' formal attire all reinforce this. Entering through a door reserved for judges alone, they sit on an elevated chair, swathed in their robes, concealing their body and soul from the outside world. And yet, unwittingly, factors other than the legal way of thinking and judicial habitus seep into their judgments. History, social background and gender are attributes of the judicial process.⁵ These are the ingrained personal elements of the judges' human experience.

Throughout his career in northern France, from 1929 to 1969, Judge Pierre Cavellat produced hundreds of uncensored, lively, colourful drawings of courtroom scenes as they unfolded before him. They depict the courtroom space and architecture, as well as the actors in the courtrooms where he presided. They reveal in a candid and immediate fashion the deeply hidden thoughts, ambiguities, emotions – if not indeed the fantasies – of a judge going about his profession.⁶ The uniqueness of the drawings is that they literally capture an ephemeral moment in court, which by definition

3. J. B. White, *The Legal Imagination*. Boston. Little Brown. 1973.

4. P. Bourdieu. *La noblesse d'état. Grandes écoles et esprit de corps*. Paris. Les Éditions de Minuit. 1989.

5. C. Thomas with N. Balm-
er. *Diversity and Fairness in
the Justice System*. London.
Ministry of Justice. 2007.

6. R. Herz. *The Art of Justice*.
Oxford. Hart Publishing.
2012.

7. L. Moran. Every Picture speaks a thousand words: Visualising Judicial Authority in the Press. P Gisler, S Steinert Borella and C Wiedmer (eds.). *Intersections of Law and Culture*. Basingstoke. Palgrave Macmillan. 2012.

8. M. Foucault. *Discipline and Punish: The birth of the prison*. London. Penguin. 1977.

would disappear without a trace. Cavellat brought his pens and pencils into the courtroom hidden in the sleeve of his robe. He did not carry sheets of paper (which might have detracted from his dignity) and therefore used any scrap of paper to hand on the bench. On the surface, the drawings may seem to convey realistic and objective renderings of courtroom scenes, but they reveal the way in which his mind was working, what he was seeing and what he chose to ignore. After all, we see with the tools we ourselves have constructed. The pictures, therefore, not only give insight into the workings of his judging, but also into the connections between the inner and outer worlds in which it is embedded. While drawing, Cavellat was discovering the physical characteristics, feelings and individualities of the people before him in court, but was possibly also attributing certain qualities to them. In his drawings, his 'seeing' thus becomes visible.

Depictions of proceedings in a court of law are well known. In the absence of cameras in the courtroom they usually form the pictorial part of court reporting by the media. Although they purport to be objective renderings of the hearing they clearly have their own agendas accommodating the needs of the media.⁷ Unlike other court artists, who are onlookers, Cavellat the judge, who is the main actor in the courtroom, takes for granted his own perspective, which is reversed from that of the other participants. His perspective allows him to oversee the whole courtroom, giving him the kind of control exercised by power and knowledge, through his mere presence.⁸ This perspective corresponds with his self-perceived role in court – that of the ideally independent, unbiased and fair judge in his quest for the truth, who has shed his own identity.

The images convey how the judge feels at home in the courtroom and in his chambers, among his books and files. He is, of course, also familiar with the court building, with its stairways, vestibules and corridors. He can measure his steps and use his voice effectively, knowing the acoustics of the spaces. Cavellat's pictures likewise reveal that the judge's lead role in the theatrical show of a court trial mutates to an even bigger role: that of the director. The judge indeed is not merely listening to the people before him: he has read what can be regarded as the script – the file containing the investigation. When reading and listening to narratives, the judge imagines them; he pictures them. The event unfolding in court – an event at which he was never present – inevitably and perhaps even unconsciously evokes images in his mind. Indeed Cavellat's preparatory notes on a case included small sketches of the events. With this experience and knowledge, he becomes the *metteur en scène* typecasting the other roles in the drama, or rather in the re-enactment of a drama.

Judges feel that their role compels them to stand above normal mortals and to repress their own temptations. This lifestyle stands in contrast to that of the lawyers, who have chosen a career that provides them with money rather than power. Cavellat's drawings therefore represent the vain, self-satisfied lawyers, comfortable in the courtroom, showing off to one another and sustained by mutual solidarity. Occasionally he spots their insensitivity to the suffering of their clients and the human tragedies they face. He has watched them grow into their roles and habitus. He is, after all, privy to their legal, as well as their rhetorical, abilities, deficiencies and weaknesses, and often

also to their personal secrets. He appropriates the lawyers' gestures of passion and involvement in their fight for the rights and the freedom of their clients in court, only to empty them of meaning and ridicule them.

Cavellat depicts the 'lower half' of society, mostly accused of petty crime. Many of these drawings date from the dire days of unemployment and the economic slump of the 1930s. Cavellat sees the labourers, peasants and fishermen as often miserable, stooped, embarrassed and fidgeting in court. He focuses on their hands, which often reveal what they try to conceal in their facial expressions. He presents them in their ill-fitting clothes that they probably only wear to weddings and funerals, and holding their caps submissively in their hands. Responding to his authoritative gaze, many of them seem to accept their place in society and the injustice of poverty. Resigned in their 'docile bodies', they do not even display anger or revolt towards the social injustice. Does he resent them for this? It seems, on the contrary, that he empathises with them. An example of this is the drawing of the '74 year old accused of theft of an old coat'. It demonstrates that Cavellat considers it cynical to blame this poor old man for



Fig. 1

having stolen a coat, when it was probably the only way for him to survive the cold (fig. 1). Here he displays his attitude towards the state and the law, symbolised by the guards and the book of law, neither of which surely is adequately equipped to deal with the tragedy of the old man.

In the best liberal French tradition, Cavellat manifests his loathing of the hypocritical bourgeoisie, which has much to conceal. In a picture of an elegant, self-confident accused, he expresses his distaste on paper by noting: 'the colonel who sleeps with his daughter-in-law and beats his daughter'. In the drawing, the colonel appears relaxed and comfortable, confident that he has nothing to fear, being among his own class. He is therefore oblivious to the effect his behaviour has on the judge, in the face of the serious accusation (fig. 2).

When it comes to women, Cavellat's drawings highlight their feminine curves, slender waists, stylish clothes, lipstick, rouge and even nail polish. It seems he is resorting to the so-called 'chivalry' of male judges towards women in court, which allegedly affects their judgments. It supposedly protects women from the full rigour of the law, so long as they adhere to their traditional role.⁹ It is most likely, though, that the images exposing the paternalism of the male judge towards women in court was Cavellat's way of coping with female seduction – a danger which could threaten his judicial integrity and professional standing. However, taking a closer look at Cavellat's gaze on women, it is not as homogeneous as it seems at first sight. He sees far beyond women's beauty and charm. Some of his images represent independent, strong women, returning his gaze



Fig. 2

9. O. Pollak. *The Criminality of Women*. Philadelphia. University of Philadelphia Press. 1950. This controversial work was heavily criticised by, among others, F. Heidensohn. *Women and Crime*. London. Macmillan Press. 1985.

10. I discussed the artistic sources of Cavellat's images with the leading art historians Caroline Elam, London, and Marilyn Aronberg Lavin, Institute for Advanced Study, Princeton.

11. K. Fisher-Taylor. *In the Theater of Criminal Justice: The Palais de Justice in Second Empire Paris*. Princeton. Princeton University Press. 1993.

12. J. Resnik and D. Curtis. *Representing Justice*. New Haven. Yale University Press. 2010.

13. See the insightful L. Mulcahy. *Legal Architecture*. London. Routledge. 2010.



Fig. 3

He clearly places the public in the lower class of society, distanced spatially from authority, by confining them to a tight space far away from himself. By including the sign '*Défense de cracher*' (Do not Spit) on the wall behind them, he makes it clear that he regards the public as threatening and 'dirty'.¹¹ This is a far cry from the conventional perception of the public gallery as a space where observation and debate take place. For Cavellat, the public is associated with danger, which must be contained.¹²

Cavellat provides another visual contribution to the discussion of the politics of courtroom space¹³ in his drawing of an 'attempt at reconciliation' meeting. In French family law, this is a step in the divorce procedure which takes place in the judge's chambers prior to the formal divorce proceedings in the courtroom. Cavellat acknowledges the problems that such a meeting in an atmosphere of intimacy entails for the litigants, as well as for the judge (fig. 4). He feels the need to shield himself from exposing himself as all too 'human' and too 'accessible' to the parties. Although the judge is not physically elevated in the setting of his office, Cavellat keeps his judicial perspective raised above the couple. He further establishes a distance between himself and the parties by turning his desk into a moat of protection from the wife and the husband. He draws a clear pencil line around his desk to mark the boundary between his space and that of the parties. The desk is testament to his judicial role, strewn with books of law and legal papers, as well as his large blotting pad and inkwell. Wearing his judge's robe, he is holding his pen, signifying that it is he who must and will make a decision. The couple is already divorced from one another mentally and physically, sitting far away from each other. The distance between them and their incompatibility, demonstrating that life has taken them in different directions, are obvious. The judge is facing the couple and is allegedly trying to appreciate their different points of view; but he does not conceal that he is mostly intrigued by the woman, who gives the impression of being in control, perhaps even trying to lure the judge into seeing her point of view. He therefore positions her as far away from him as possible, defining her as virtuous and unattainable for him, thus preventing him from getting carried away. In this drawing, Cavellat discloses that he does not confine himself to the strictly legal aspects of the case – an interpretation that is corroborated by subsequent paintings of this scene, in which Cavellat gives free rein to his fantasies.



Fig. 4

The inner world and meanings of Cavellat's courtroom drawings become more explicit, yet also more ambivalent, ironical and symbolic, in his paintings. In contrast to the immediacy of the drawings, his paintings seem to be a reflection of his thoughts and emotions, which he let flow freely at home. Looking back on his career, he is cognisant of the complex and unresolvable nature of many of the conflicts he had to cope with as a judge.



Fig.5

A good example is his reflection in a retrospective painting of a mysterious stranger in the public gallery who caught his eye during a trial. Here Cavellat shows a different attitude to the public in court, exposing the complexity of his attitude to the subject. He places the stranger in the central axis of the courtroom, in the middle of the front row of the elevated public gallery, where he first noticed her. She seems to symbolise the transparency of the court, being dressed in pellucid virginal white (fig. 5). I believe she is more than that and represents the judge's conscience, his *superego*. She is overlooking his actions in court and is aware that he is living out his fantasies while seeking the naked truth that

is so often shocking. The inside of the courtroom space below, where the action is taking place, has a policeman in uniform – representing the state, with its controlling presence and power – who remains stiff, impersonal and devoid of feeling while the judge interrogates a beautiful woman. Inspired by a *Venus* by Lucas Cranach,¹⁴ she is naked except for a red hat. If we look at the diagonals of the painting, the mysterious transparent white virginal lady is in line with the head and face of the nude. Another diagonal connects the leering, lascivious lawyer with the nude's erotic pubic hair and points to her mound of *Venus*. Is Cavellat uncovering his own desire? Expressing desire is shocking for a judge, whose image must remain that of a serious, modest man of justice performing his judicial role.

The painting, I believe, alludes to his commitment and heavy responsibility to uncover the truth – the naked truth. This aim sounds simple and straightforward, but as soon as he is confronted with the problem on the bench, the simplicity mutates into complexity. Divesting the body of clothing is a well-known metaphor for the truth being exposed. Much of our life is hidden by costume, which is custom or code; but when our bodies are uncovered, the naked truth is discovered – and it is often shocking.¹⁵ Pictures of clothed men observing the nude bodies of women evoke the ritual of power: while remaining fully clothed, they evaluate the naked female bodies. But Cavellat does not share power with the lawyers in the courtroom. On the contrary, he fashions the lawyer into a voracious animal and gives him the features of a pig. Uncovering the woman he is questioning neither debases her nor renders her defenceless. Rather, he sees her nudity as a state of grace.¹⁶ The nude has her own dignity and power: she looks directly at the judge, and so at the viewer of the painting, thus implicating both into the painting. The nude herself becomes simultaneously the observer and the observed.

14. I discovered Cavellat's drawing attached to a reproduction of Cranach's painting.

15. See the pioneering, original and philosophic book about the relationship between dress and the law by G. Watt. *Dress, Law and Naked Truth*. London. Bloomsbury. 2013.

16. G. Agamben. *Nudities*. Stanford. Stanford University Press. 2011.

17. C. Valier. Looking daggers: A psychoanalytical reading of the scene of punishment. *Punishment and Society*. 2(4). 2000. pp. 379–94.

I now return to Justitia who, as we know, is portrayed as pursuing crime in order to punish fairly. Cavellat alludes to her in a subversive way by turning the theme into its opposite in his painting *La Justice consolant le crime* (Justice Consoling Crime) (fig. 6). Cavellat's Justitia looks human and motherly. She descends to the dark cell to console the criminal, who is feeling guilty and dejected by his own worthlessness. She warmly embraces the criminal she herself has sentenced. Cavellat's Justitia is not blind. She closes her eyes because it pains her to see the man suffering. Justice and crime meet, both wishing to repair the damage they have caused. Far from painting an abstract concept or an allegory, Cavellat is dealing with his own personal experience of punishing. The act of punishing is a practice that may entail pleasure or enjoyment, satisfying the sadistic impulses of man, denied and overridden by a sense of guilt. Punishing may, however, also cause suffering – not only to the accused, but to the judge as well. Little is known about how the act of inflicting punishment affects either judges' emotions or their reason.¹⁷ This is where the burden of being a judge and the loneliness of making a decision is most distressing. Cavellat, though, does not shy away from dealing with his own inward gaze, reflecting the loneliness, the pain and the guilty feelings of a judge.

Increasingly Pierre Cavellat narrated the *comédie humaine* from a bitter angle. And yet he never lost his light touch and humour, a reflection of his humanist beliefs and *bon vivant* personality. His unique and rare pictures certainly transcend the time, place and culture in which they were produced. Far from providing a simple picture, the drawings and paintings present an intricate one, embodying the conflicting



Fig. 6

thoughts and emotions which judges have to juggle when judging. Far from confirming the notion of the impersonal and remote judge, Cavellat's art illustrates the complexities of judging, allowing a *coup d'oeil* into 'what moves the judge'. The dilemma, however, is that while demystifying the judicial image, and perhaps even leading to fairer judgements, it is likely to be carried out at the risk of undermining the myth of the unbiased judicial authority.