

# scottish justice 'matters

Volume 4 | Number 1 | March 2016

ISSN 2052-7950



## REIMAGINING PUNISHMENT AND JUSTICE

# scottish justice matters

Scottish Justice Matters is a publication of the Scottish Consortium of Crime and Criminal Justice (SCCCJ). The Consortium is an alliance of organisations and individuals committed to better criminal justice policies. It works to stimulate well informed debate and to promote discussion and analysis of new ideas. It seeks a rational, humane, constructive and rights-based approach to questions of justice and crime in Scotland.

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ISSN 2052-7950 (Print)

ISSN 2052-7969 (Online)

Scottish Consortium on Crime and Criminal Justice is a registered charity [SC029241]



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# BLIND JUSTICE

## What does that mean?

Bill Munro

**‘The blindfold over Justitia’s eyes does not only mean that there should be no assault upon justice, but that justice does not originate in freedom.’**

*(Adorno and Horkheimer, 1979:17)*

**DURING** the early Renaissance a number of engravings produced outside of Italy (Dürer (1498) and Bruegel (1561-62)) represented allegories of Justice that offered a very different reading from the later and more familiar Enlightenment interpretations of Justice. What was distinctive about these engravings was the appearance of Justice wearing a blindfold. However, instead of symbolising the impartiality of Justice, as the blindfold commonly does from the C17 onwards, these engravings represent Justice as being blind to its own origins in legal deception and arbitrary violence. Not only in these engravings is Justice made blind to its obscene and violent origins but, it may be interpreted, that these negative attributes are also hidden from us. We are in a sense blind to them.

This article will seek to explore both the relationship of Justice to the history of its representations and its ‘unseeing’ relationship to the political order. It will examine the shifting historical conceptions of Justice as a way of reimagining the hidden relationships which bind the individual to the law and to the state.

### Early Renaissance Representations of Justice (Divine Justice)

Panofsky (1972) writes that the blindness of Justice which was meant to assure her impartiality is foreign to both classical and mediaeval thought and that the figure of blindfold Justice is a humanistic invention of more recent origin. Before the 16<sup>th</sup> century, illustrated manuscripts, paintings, and statues usually depicted her as being able to see. Giotto’s Justice fresco of 1305 in Padua; Lorenzetti’s ‘Allegories of Good and Bad Government’ of 1338/39 in Siena, and Justitia by Rafael in 1511, all depict Justice as being able to see.

Panofsky (1972) suggests that the blindfold over Justitia’s eyes only became a common motif during the 17<sup>th</sup> century with the emergence of the idea that the judiciary should stand apart from the sovereign. Justice blindfolded cannot see the signs that a sovereign might send to direct the ruling in a particular case. Panofsky however, argues that the blindness of Justice has an earlier origin and appears to originate in an Egyptian allegory transmitted by Plutarch in which the chief justice was shown eyeless in order to illustrate his impartiality, while his colleagues had no hands with which to take bribes. This rather brutal image did not appeal to classical antiquity which, on the contrary, imagined Justice with an awe-inspiring and piercing gaze.

### Blind Justice (Worldly Justice)

Justice with eyes bandaged occurs in Sebastian Brant’s *Narrenschiff* (1494) a satirical narrative on the theme of the Ship of Fools, illustrated by Albrecht Dürer and shown opposite. In Dürer’s wood block print the fool bandages the eyes of Justice in order to deceive and to defeat her true purpose. The blindness of Justice here puts her on the wrong side of the moral order and follows an iconological tradition that associates blindness - whether narrowly interpreted as ‘unable to see’ or as ‘incapable of being seen’ or as ‘preventing the eye or mind from seeing’ - with what is dark, hidden, secret or even evil.

In the Middle Ages we find an established association of day (ruled by the sun) with life and the New Testament, and of night (ruled by the moon) with death and the Old Testament. These connections are emphasised in numerous representations of the crucifixion where the various symbols of good, including the personification of the church, appear on the right side of Christ while the symbols of evil, including the personification of the synagogue, are on his left. Blindness during this period came to be denoted by a new symbol: the bandage or blindfold. This mediaeval motif differs from the attributes of classical personifications in that it gives a visible form to a metaphor, instead of indicating a function. The bandage first made its appearance around 975 in a mediaeval miniature, where night is represented as a blindfolded woman. This motif later came to be transferred first to the blindfolded representation of the synagogue, again like Justitia represented in the form of a woman, and then to such personifications as infidelity, and to death. A powerful depiction of the blindfolded figure of the Synagogue can be seen at Reims Cathedral ca. 1236-41. In this sculpture, which represents the synagogue, with its broken spear and the book of law falling from her hand, we already begin to see the future form of the blindfolded Justitia. Thus blind Justice had her origins in the night, synagogue, infidelity and death: all mediaeval personifications that were represented by the blindfold.



Bruegel's engraving of Justice (Justitia) from his Seven Virtues of 1561-1562 (right) has the familiar classical symbols of sword and the scales but again, as in the Dürer wood block we see the figure of Justice blindfolded. In this engraving we have justice being led through scenes of torture and execution. Justice in this representation is blindfolded to avoid seeing the violence that is being carried out in her name. Not only is Justice here seen as the negation of Justice, but as the origin of injustice.

Both Dürer and Bruegel created allegories of Justice that offered a very different reading from the earlier Renaissance representations. Technologically both Dürer and Bruegel's allegories were represented in the medium of print, outside the systems of patronage necessary for the art of fresco. Both situate Justice in the real world; the realism of a German townhouse in the Dürer; the terrifyingly real flesh and blood of the carnival of punishment in the Bruegel. However, in contrast to the new technical advances and audiences of both artists and the emergence of greater realism in the depiction of their subjects, both turn to the medieval past as a way of reimagining the previously clear sighted classical figure of Justice. A reimagining that borrowed the blindfold to expose the violence and un-freedom of Justice's origins. One hundred years after Bruegel's engraving of Justitia, Pascal (1966) in his *Pensées* (1662) follows a similar theme when he writes of the imaginary justice and the 'mystifying' power behind the Law. He argued that because the truth could only threaten the political order, then the people must be deceived and not allowed to see the inaugural violence in which law is rooted. Law must therefore be perceived as authoritative and eternal (see Bourdieu, 2000). For Pascal, at the base of any legal system is something which is not law, something which is pre-legal.

The question arises as to why then at the time of Pascal's *Pensées* - if the emergence of the representation of blindfolded Justice should expose the entanglement of Justice with, violence, the night and worldly power - should that same symbol offer the contrary interpretation of Just impartiality? It may well be, as has been suggested, that this later interpretation was established with



the Enlightenment idea that the judiciary should stand separately from the sovereign. However, another explanation may lie in the ideological investment involved in bringing about this separation between Justice and the sovereign and in the necessity in doing so, to overlook, not only the injustices carried out in her name, but also the distance between Justice as an ideal and how it is realised, or very often not, in the work of law and the process of the trial.

The separation of the judiciary from the sovereign expressed a shift from traditional forms of authority, forms which rests on the belief in the sanctity of immemorial traditions, to modern legal forms of authority, where legitimacy is guaranteed by legality alone. For Weber (1978), legality legitimated something in the legal system upon which legality was founded but which was not law. The something which is not law, the something which is pre-legal was the threat of physical force or coercion. In modern societies based on legal authority this pre-legal form of violence often appeared to those subject to it, in a masked or more 'innocent' form. The close binding of legality and legitimacy in modern legal forms masks the distance between the 'innocent' ideal of Justice and those spaces at 'the dark side of these processes', which Foucault (1991: 222) found the tiny, everyday, physical mechanisms [...] non-egalitarian and asymmetrical that we call the disciplines.' It is in making visible this blindness concealed that both Dürer and Bruegel struggled for in their reimagining of Justice.

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