
From the Managing Editor - The Judicial Gown Does Matter

By Philip Langbroek

One of the most astonishing aspects of justice is the magic of the judicial gown. It seems far from everyday reality and it seems far away from the rationality that is so familiar and self-evident for lawyers. Yet for the authority of the judge, the gown is important.

In the court ritual, the gown plays a major role. All players wear a gown. It makes them equivalent in the roles they have to play, albeit not equal. According to Antoine Garapon¹, the gown is a derivative of the royal mantle. The black of the gown refers to distraction from daily life; it symbolizes chastity and purity. The gown makes the person of the judges disappear and transform them into disinterested speakers of the law. At the same time, the judicial gown shows and confirms the judge as a recognizable institute in society. The gown shows that the appearance of the speaker of the law is more important than the person of the judge. It represents that the person of the judge has no meaning; it shows that the bearer of the gown holds an office and that the person holding the office strives for truthfulness.

Lior Barshack describes the court ritual in anthropological terms.² The judicial gown symbolizes a depersonalization of the judges. Not their subjective rationality, but the rationality of the law will be used to reach a decision that binds the parties. In that sense, it also symbolizes judicial impartiality. According to Barshack, adjudication is a part of 'civil religion'. A judge does not represent the law but speaks the law. In the ritual of the court hearing, positions of parties in their mutual relations can be redefined. That ritual takes place in the presence of the judge who administers the ritual. The judge is merely a totem, an animated symbol. As a totem, judges are powerless and sexless, like the inhabitants of monasteries, withdrawn from worldly affairs, and sacred in terms of civil religion. The judge may not be touched, that would be desecration. In the ritual of the court, relations between parties are disconnected from the existing. Moreover, as an outcome of the ritual, relations between parties are redefined. Adjudication therefore is a magic act of the totem itself. Part of the judicial magic is that the law is supposed to be based on a higher truth and the judge should be able to refer to a higher truth in order to justify the decision. This implies law as a higher truth exists independent of the judge or the parties. The judge only has to speak that truth.

Benjamin Woodson, James L. Gibson and Milton Lodge presented a paper at the Annual Meeting of the American Political Science Association, last September. In the paper, they reported on an experiment on the effects of visible justice symbols on the legitimacy and authority of court decisions.³ Different groups of similar level of education, classified according to 'having had exposure to the Supreme Court' and 'having had no or little exposure to the Supreme Court' by experience or training, were asked to read a text containing arguments on a controversial case (the presence of a cross at a national monument; the treatment of an asylum seeker with a permit to stay, who had committed a crime). The experiment was repeated several times, so that different groups of persons with exposure to the Supreme Court and different groups of persons without exposure to the Supreme Court were exposed to pictures of judicial symbols or to neutral pictures, while reading the arguments on a case. The judicial symbols consisted of pictures of a gavel, Lady Justice, or the Supreme Court justices in their gowns. After the reading and the exposure to pictures, the judgment in the case was given (with neutral pictures or with pictures with judicial symbols), and the judgment was consistently contrary to the preference previously indicated by the reader.⁴

The outcome of the experiment was that the group without exposure to the Supreme Court and exposed to pictures of judicial symbols during reading and judgment had a significant higher acceptance of the judgment compared with the group without exposure to the Supreme Court and exposed to neutral pictures.

This outcome supports the basic notion that wearing a gown in court enhances judicial authority, especially for parties who are not familiar with legal procedure.

The court ritual and the symbols in the courtroom may have a highly irrational and even magical status. Nonetheless, they can make a difference. Of course, this symbolic function of judges and their gown can only work if other state powers respect that position. Redefining the law, for example, by legislation into context-ignoring, automated decision-making

¹ Antoine Garapon, *Bien Juger*, Essai sur le Rituel Judiciaire, Paris, éditions Odile Jacob, 2001, p. 71-91.

² Lior Barshack, *The Totemic Authority of the Court*, *Law and Critique* 11: 301–328, 2000.

³ Benjamin Woodson; James L. Gibson; Milton Lodge, *Judicial Symbols and the Link between Institutional Legitimacy and Acquiescence*, March 25, 2011 Annual Meeting of the American Political Science Association, Seattle, Washington Sept. 1 - Sept. 4, 2011.

⁴ The set-up of the study was (much) more complicated than I can explain here.

only to be affirmed by judicial consent turns the judge into an instrument of dehumanizing exercise of power. Symbols are more powerful than we mostly are aware of, but they do not protect us against their abuse. Still, without those symbols, justice would be less effective and less trusted. The judicial gown is a symbol and it does matter.

