The Art of Justice or Queen for a Day

Edward Gordon

The Department of Justice Building in Washington is home to a vast array of 1930s art, including, notably, eighteen larger-than-life mural panels depicting "Great Codifiers of the Law." Painted between 1935 and 1937 by Boardman Robinson (1876-1952), one of the leading American artists of his day, the panels are located in a high ceiling hallway with a grand staircase, called the Ceremonial Entrance, which leads to an auditorium on the second floor known as the Great Hall.

The choice of any individual or group of individuals as "great codifiers" is bound to be arbitrary, or to depend upon the meaning one attaches to word-concepts such as "great" and "codifier." Even when, as in this case, the choices are made or influenced by an advisory group that includes such eminent lawyers as Harlan Fiske Stone and Roscoe Pound, the suitability of some of those honored, or demeaned by exclusion, is certain to evoke criticism, if not outright incredulity.

Those shown in the panels are Moses, Hammurabi and King Menes (who in ancient times unified Lower and Upper Egypt into a

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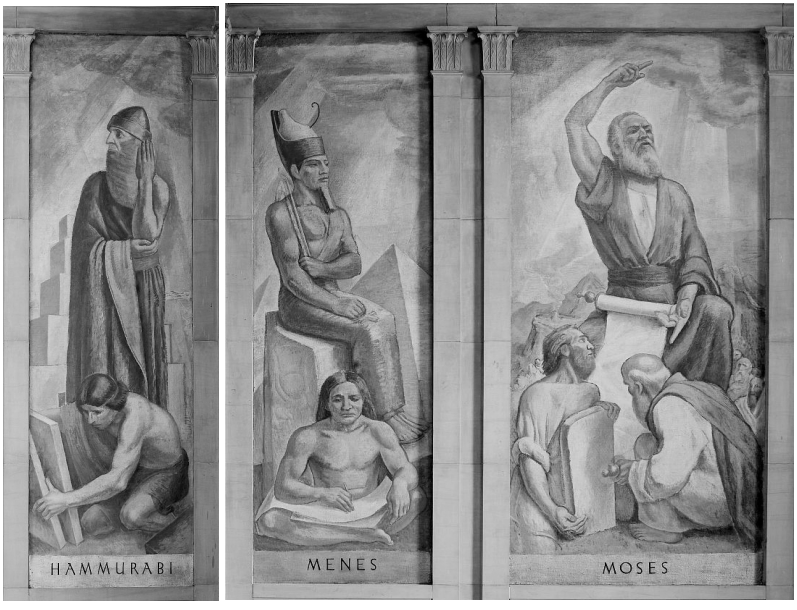

Above (left to right): Hammurabi, Menes, and Moses.
Below (left to right): Papinian, Solon, and Justinian.

Magna Charta.

single kingdom), depicted in a tryptich at one end of the lobby; a Greco-Roman group representing Solon, Justinian and Papinian, displayed across from it; Thomas Aquinas, Edward Coke, Blackstone, Holmes, Kent and John Marshall, all nearby; and Jesus and Socrates, portrayed in smaller panels located in rotundas adjoining the staircase. Two panels show the signing of the Constitution and Magna Carta, respectively. The remaining two figures, adjoining one another at the top of the staircase, are Hugo Grotius (1583-1645), often described as the "father of international law," and

Grotius (left) and Vitoria (left), with Socrates (center) in the background.

Francisco de Vitoria (1483?-1546), the Spanish Dominican whose defense of the legal rights of natives of the Americas has earned him a place at the forefront of human rights law.

As questionable as some of these selections may be, only that of Vitoria actually sparked a controversy, one occasioned, when all was said and done – which was pretty quickly – not by its inappropriateness, but by a case of mistaken identity. More about this in a moment.

Robinson portrayed Vitoria as a man of late middle age, a parenthesis of white hair bordering his baldness, his jaw square but the rest of his features soft. He is dressed in a Dominican habit, gazing benignly upon a globe, books resting against the stand which holds it, a slightly rumpled sheaf of white paper lying mischievously at his feet in the lower right hand corner of the canvas. Although indistinctly, the part of the globe that is visible appears to show the Americas.

Vitoria may well have looked something like this, though we really don't know. Nor did Robinson, who, while diligent in researching his subjects (reportedly spending as much as seven months in research before proceeding to paint a subject), had been especially hard-pressed to find a likeness of Vitoria. In the end, he never did, even after he turned for help to James Brown Scott, one of the most influential figures in international law in the first half of the 20th century, especially in America, at least in part by virtue of two books, *The Catholic Conception of International Law* (1934) and *The Spanish Origin of International Law* (1934), which almost by themselves had elevated Vitoria to a prominence in international legal history he had not previously enjoyed here.

Scott had been dean of two law schools and a professor at a third when, in 1906, in anticipation of the Second Hague Peace Conference, he was named solicitor of the Department of State (the position known as "The Legal Adviser" was established later). He remained at State for four years, afterwards serving the Department for over a decade as technical advisor at a number of important international conferences. When he left the Department, in 1910, it was to rejoin Elihu Root, under whom he had served at State and who Andrew Carnegie had recruited to head the new Carnegie Endowment for International Peace. For the next thirty years, Scott was a trustee of the Endowment and its Secretary – which in practice meant its operational chief – as well as the general editor of its acclaimed series of *Classics of International Law*. For good measure, he had been one of the founders of The American Society of International Law, its third president, and the first and long-time editor of its flagship publication, the *American Journal of International Law*. His stature in the field was such that no less an authority than Professor Manley Hudson, noting that it had only been in the course of the last generation that international law had come to be dignified as a field for the serious efforts of lawyers and jurists, said that the change was "in no small measure due to Dr. James Brown Scott."[1]

[1] Harvard Alumni Bulletin (January 1931).

The idea of consulting him probably appealed to Robinson for personal reasons as well. Both men were natives of Canada and the children of immigrants from Britain; Robinson's own brother was named Scott; and perhaps most aptly, Scott was an art collector, specializing in prints and engravings, and his sister Jeannette Scott, herself a portrait artist, had chaired the Department of Painting in the College of Fine Arts at Syracuse University. If anyone could locate a contemporaneous likeness of Vitoria, it was James Brown Scott.

He certainly tried, "ransack[ing] every available collection of books and drawings," as an admirer wrote in a memorial to Scott that appeared in the (Washington) *Evening Star* after his death in 1943.[2] But in the end Scott, too, came up empty-handed.

The dilemma of how to portray Vitoria in the absence of a reliable likeness of him was ultimately solved by an unlikely intermediary: Doris Stevens, a leader in the movement to extend voting rights to women, who had come to know both Scott and Robinson by virtue of the support each had given to the cause. Stevens suggested to Robinson that he use Scott's likeness as a substitute for Vitoria's. The artist agreed, using the occasion of a visit to Scott's home to make a five-minute pencil sketch of him that became the model for the face and head of "Francisco de Vitoria."

Exactly when Scott became aware that he was going to become the public face of his hero Vitoria is not certain. But among his personal papers at Georgetown is a typed letter to Robinson, dated a few weeks after the murals' opening, in November 1937, in which Scott writes: "Words fail me to express my appreciation of the magnificent mural of Francisco de Vitoria . . . . [F]rom the bottom of his heart the unworthy one whose likeness Vitoria bears on the walls of the Department of Justice thanks you for the most perfect portrait he has ever had."[3]

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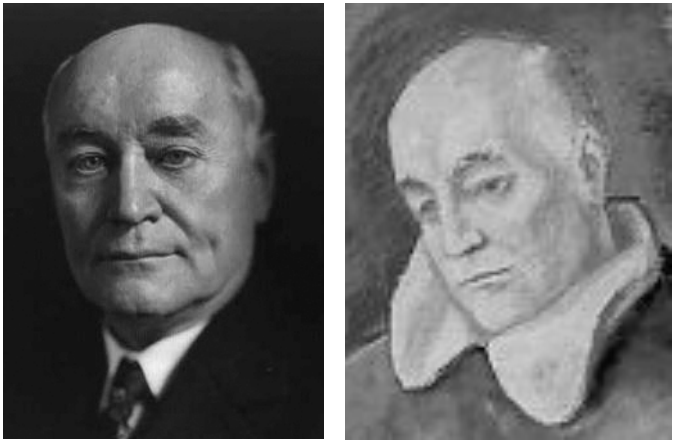
[2] James Waldo Fawcett, "Dr. James Brown Scott's Death Reveals Solution of Art Mystery," *Evening Star*, June 28, 1943.

[3] Letter from James Brown Scott to Boardman Robinson dated December 8, 1937, *Papers of James Brown Scott,* located in the Lauinger Library at Georgetown University.



Dr. James Brown Scott (left) and Vitoria detail (right).

As it happens, the mistaken identity I mentioned earlier was not the result of Robinson's substitution of Scott's likeness for Vitoria's. Rather, it seems to have been due to hasty reporting, poor editing and an unseemly rush to criticize. The culprit: the *New York Times.* A column-length story ("Mural Panels Ready in Justice Building") appearing in the *Times* the day after the opening identified the portrait of Vitoria as being that of a certain 19th century British monarch with a similar name.[4] Two days later, the paper's Sunday editorial column ("Topic of the Times") picked up the beat, questioning whether, after all, the Queen deserved to be included as a great lawgiver. "Some people may wonder that Queen Victoria is included," the editorial said. "She is the only head of State on the list since ancient Egypt and Babylonia. Perhaps it was Mr. Robinson's idea that in the great Victorian reign the British democracy made big strides forward, and the self-governing dominions got their Constitutions."[5]

[4] *New York Times*, November 19, 1937, at L 5. Evidently, the unnamed reporter had not seen an item that had appeared in the Times less than a week earlier ("Robinson Murals Placed"), which correctly identified Vitoria as one of the subjects of the murals. *New York Times*, November 14, 1937, sect. II, 9:1.

[5] *New York Times*, November 21, 1937, sect. IV, 8:4.

By the time its Sunday edition had hit the newsstands, if not before, the *Times*' editors must have realized their mistake – the Washington papers had gotten the story right – no doubt anticipating, as well, the snickering reaction it was likely to evoke among those uncompassionate souls who take pleasure whenever egg appears on the face of even the most humble of newspapers. Still, the *Times* said nothing, until nearly three weeks later it all but buried, at the bottom of the letters to the editor page, a short note from Robinson calling attention "to a slight error of identification." "Though he wore skirts," the artist wrote, Vitoria "resembled the Queen in no other way."[6]

Robinson's letter also gives a hint that what had caused the unnamed *Times* reporter to jump to conclusions was the spelling of Vitoria's name on the metal plate Robinson inserted at the bottom of the panels to identify their subject. "Victoria [*sic*] in my mural," Robinson's letter notes, "is not a portrait of the late Regina, but of Francisco de Vittoria [*sic*] . . . , a Dominican monk of Salamanca. . . . I use the English spelling, perhaps inadvisedly – in conformity with the general custom."[7] Spell his name as you will, though, even a cursory glance at the portrait dispels the notion that the person it portrays is a woman.

In piecing this story together a few years ago, I checked the index to the *Times* to see what had happened next. Apparently, nothing did. In fact, as far as I can tell, in the nearly three quarters of a century that has passed since Robinson's letter appeared, the *Times* has never again mentioned Francisco de Vitoria. A coincidence, surely, although one cannot entirely rule out the possibility that it is the *Times*' way of saying, "We are not amused."

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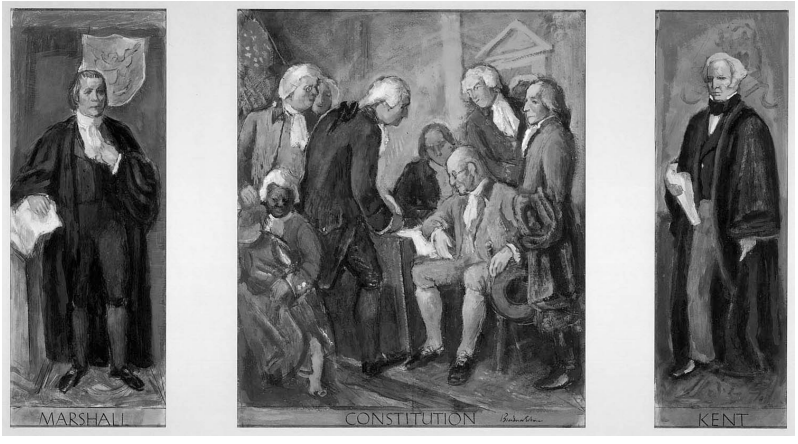
[6] Letter from Boardman Robinson dated November 29, 1937, at 24:7. The caption provided by the *Times* to Robinson's letter read "Mr. Robinson Excepts".

[7] Id. In the opening page of his book, *The Catholic Conception of International Law* (Washington: Georgetown University Press, 1934), Dr. Scott notes that when Vitoria's full name is used, the Spanish spelling (Vitoria) is employed, but that "when the last name only is given the Latinized (and Englished) form, Victoria, has been adopted, as being more familiar to the English-speaking world." I have not seen any other reference to this custom.



Above (left to right): Marshall, Constitution, and Kent.
Below: Jesus.