
THE SYMBOLS OF NATIONHOOD

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Introduction

- 1 The famous American Supreme Court Justice, Oliver Wendell Holmes said “[w]e live by symbols”.¹ Symbols perform a vital function in any nation. They can help to provide a sense of national unity and purpose. They can nourish a sense of belief about the ideals of the nation and give people a sense of aspiration, even destiny. The symbols of government are of particular interest to constitutional lawyers because they provide some of the cement that keeps a country on the virtuous path that the New Zealand Constitution Act 1852 attractively described as the “peace, order and good Government of New Zealand”.

Symbols and Government

- 2 My favourite constitutional analyst is Walter Bagehot, the legendary editor of *The Economist*, who wrote a book first published in 1867 entitled “The English Constitution”.² The essence of the system of Cabinet government we have in New Zealand now has never been better articulated than it was by him 140 years ago. But in some ways Bagehot’s views are dated. He was fearful of too much democracy. One of the reasons for his attraction to a constitutional monarchy was that the monarch was a symbol:³

[The monarchy]...acts as a *disguise*. It enables our real rulers to change without heedless people knowing of it. The masses of Englishmen are not fit for elective government; if they knew how near they were to it, they would be surprised and almost tremble.

- 3 In Bagehot’s view, the “bovine stupidity” of the masses was the problem. They could see the Queen on ceremonial occasions with all the pomp and pageantry of monarchy and thereby feel a sense of identity with the nation and government: “The use of the Queen, in a dignified capacity, is incalculable.”⁴ The Queen made the process of government understandable, allowing people to identify with it.

¹ OW Holmes *Collected Legal Papers* (Harcourt, Brace & Co, New York, 1920) 270.

² Walter Bagehot *The English Constitution* (with an introduction by R H S Crossman MP) (C A Watts & Co, London, 1964).

³ Ibid, 97.

⁴ Ibid, 82.

4 Bagehot wrote in another passage, “[t]he elements which excite the most easy reverence will be the theatrical elements – those which appeal to the senses, which claim to be embodiments of the greatest human ideas, which boast in some cases of far more than human origin”.⁵ Bagehot argued that this mystical element of the monarchy was a good influence in that it ensured that people had a positive belief in the system of government, even if they did not understand how it was conducted. It helped to ensure they remained deferential. All of this, of course is unabashedly elitist. But we can easily enough dismiss Bagehot’s fears concerning mass democracy without necessarily concluding that the symbols of government have no important work to do in a modern liberal democratic state.

5 In the United States, the Yale law Professor Thurman Arnold wrote a book, first published in 1935, called “The Symbols of Government”.⁶ Arnold thought that the institutions of Government, which bind groups of individuals together, achieve a sort of separate personality. The institutions developed different habits; Arnold wrote that “[b]y the symbols of Government, we mean both the ceremonies and the theories of social institution”.⁷

6 Arnold tried to explore law and economics as areas of symbolic thought and conduct which condition the behaviour of people in groups. A subtext to the book was the stresses that both communism and fascism were causing the world at the time it was written. Arnold wanted to ensure that there was a new public attitude to both law and economics that would remove ideological divisions and concentrate on competent practical government. The painful dislocations of the type that were going on in Europe at that time would have been avoided. The issue explored by Thurman Arnold was:⁸

whether the science of government, by understanding the function of symbols and ideals, can make men as enthusiastic about sensible things as they have been made in the past about mad and destructive enterprises.

⁵ Ibid, 64.

⁶ Thurman W Arnold *The Symbols of Government* (Yale University Press, New Haven, 1935).

⁷ Ibid, iv.

⁸ Ibid, 252. Arnold later became a Federal Judge and founded the famous Washington law firm, Arnold, Fortas and Porter.

- 7 Arnold felt that social institutions required faiths and dreams to give them substance. Yet, they needed to escape from those faiths and dreams in order to progress. To actually govern, politicians had to constantly violate the principles of symmetry, moral beauty and logic.⁹ Arnold's considered that "[a]lmost all human conduct is symbolic....The symbols are everywhere inconsistent. Society is generally more interested in standing on the sidelines and watching itself go by in a whole series of uniforms than it is practical objectives."
- 8 Arnold was interested in the study of the symbolic domain of governance. Attitude towards, and belief in, institutions was important. Feelings and emotions about government and its institutions could not be ignored. The world was not governed by reason alone. To be an effective reformer, it was necessary to understand the symbols of government, but also not to be beguiled by them, since some were essentially empty.
- 9 It seems impossible to deny that politics and government have a symbolic dimension.¹⁰ But analytical treatments of the subject are not numerous. Symbols stand for something other than themselves and, in the view of some, can be understood as curtains that obscure the reality of what is happening. Of course, language constructs much of the reality about government. Both symbols and language define the State, the public problems to be resolved, and the mechanisms for their resolution. Professor Murray Edelman argues that symbols, myths, ritual, and language are all used to create the world of government and politics. The views of the public are moulded by government, as much as government is moulded by the public.¹¹ News media accounts of government are interpretations, not factual presentations. Observers interpret what they see and construct thereby a new reality.

Symbols of New Zealand

⁹ Ibid, 229.

¹⁰ Detysa Burnier "Constructing Political Reality: Language, Symbols and Meaning in Politics" 47 Political Research Quarterly 239 (1994), and the books cited therein.

¹¹ Murray Edelman "Constructing the Political Spectacle" (University of Chicago Press, Chicago, 1988).

- 10 It is worth pausing to ask, what is the content of the idea that has been constructed of New Zealand as a nation or political community, rather than as a geographical expression? As a geographical expression, we know New Zealand is defined by the New Zealand Boundaries Act 1863, an enactment of the Imperial Parliament at Westminster that is still in force in New Zealand.
- 11 Behind the idea of New Zealand as a nation are concepts relating to the national character of New Zealanders as a people, our collective historical experience, and some notion of the relationship between the State and the people. Collectively, such concepts add up to what some political science scholars have called “the Civic Culture”.¹² Surely it is this civic culture that contributes to the stability of New Zealand and its enduring sense of identity and nationhood. The elements of the culture are often communicated by symbols.
- 12 A nation to some degree is a system of symbols.¹³ The symbols of New Zealand, for example, are different from those of Australia. New Zealand symbols of nationhood must illuminate the experiences of what it is to be a New Zealander.
- 13 For Americans, their constitution is not only an instrument, but also a symbol.¹⁴ Unfortunately, due to our unusual and rather primitive constitutional arrangements, such a claim cannot be made in New Zealand. Our constitution is neither readily accessible nor easily understood. The New Zealand constitution is flexible, and to a large extent uncodified and fluid. It is an iterative constitution in a state of constant and silent evolution. It does not function effectively as a symbol in our civic culture. The notions of equality and democracy, however, are a powerful part of New Zealand’s constitutional landscape and political ethics. They amount to important symbols.
- 14 The civic symbols of New Zealand as a nation may occasion some discussion. The Governor-General is an important part of New Zealand’s symbolism. The Governor-General is the symbol of unity rising above political differences, which

¹² Gabriel A Almond and Sidney Verba *The Civic Culture: Political Attitudes and Democracy in Five Nations* (Princeton University Press, Princeton, 1963).

¹³ Lowell Dittmer “Political Culture and Political symbolism – Towards a Theoretical Synthesis” (1977) 29 *World Politics* 552.

provides a sense of national unity and identity. The Governor-General's attendance at civic functions, openings and matters of that sort, all reinforce the feeling of unity. The Governor-General's sense of total restraint about expressing political preferences is another signal of it. The Governor-General also symbolises the fact that New Zealand is a constitutional monarchy.

- 15 The Governor-General no longer wears a plumed helmet as the colonial Governors did. It survived until Sir Denis Blundell, who discarded it.¹⁵ The fact that the Governor-General these days is invariably a New Zealander sends a message of significant symbolic importance. People my age can remember when the office was held by British aristocrats.
- 16 The New Zealand Coat of Arms constitutes an important symbol, although some may regard it as somewhat dated. Sheaves of wheat are not exactly central to New Zealand identity today. The New Zealand flag is an important symbol. Whether our current flag is the correct symbol these days is something that has been questioned. Nevertheless, the flag has such symbolic importance that some people who wish to say disrespectful things about the State do so by attacking the flag.
- 17 In the United States, there is substantial constitutional law on this issue. Flag burning and flag desecration are reasonably common forms of protest in many democratic societies, including New Zealand. The Supreme Court in the United States held in 1989 that a conviction for burning the American flag in a political protest violated the defendant's first amendment rights to free speech. There was a public uproar as a result. The United States Congress enacted a Federal Flag Protection Act that the Supreme Court held to be unconstitutional in 1990.¹⁶
- 18 New Zealand has attempted to protect its flag from desecration by provisions in the Flags, Emblems and Names Protection Act 1981. A person commits an offence who "In or within view of any public place, uses, displays, destroys, or

¹⁴ ES Corwin "The Constitution as Instrument and as a Symbol" (1936) 10 American Political Science Review 1071.

¹⁵ Gavin McLean *The Governors – New Zealand's Governors and Governors-General* (Otago University Press, Dunedin, 2006) 292.

¹⁶ Ute Krudewagen "Political Symbols in Two Constitutional Orders: The Flag Desecration Decisions of the United States Supreme Court and the German Federal Constitutional Court" (2002) 19 Arizona Journal of International and Comparative law 679.

damages the New Zealand flag in any manner with the intention of dishonoring it.” But a recent case illustrates that freedom of expression as guaranteed by the New Zealand Bill of Rights Act 1990 restricts the scope of this provision.¹⁷ In that case, the accused was protesting in Parliament grounds against Australian support of United States action in Iraq. The Australian Prime Minister was visiting at the time. The accused attached a New Zealand flag upside down to a pole, doused it with kerosene and lit it. It was consumed in a fireball. No member of the public was harmed. The High Court gave the language of the Act a narrow construction. It held that the accused’s conduct did not amount to dishonoring the flag because one permissible interpretation of that term was that the flag had to be vilified. These cases illustrate how symbols can be used for several purposes.

- 19 The Courts are full of ritual and symbolism: Judges wear robes;¹⁸ Lawyers bow to the Judges and the Judges return the bow to the bar. On ceremonial occasions, wigs are worn. All this symbolizes the ancient habits of the law, the reliance on precedent and the reliability of the administration of the law in the courts. And since the Judiciary is the third branch of government, their rituals and symbols are as important as those that belong to the other branches of Government. The call in the superior courts to “be upstanding for His Honour, the Queen’s Judge” symbolizes the monarch as the fountain of Justice and all that means in historical terms.
- 20 The opening of Parliament is another occasion which is highly symbolic of government and nationhood. During this occasion, the Queen’s speech is read in Parliament, our central democratic institution. The ceremony that goes with the opening is replete with symbols of many constitutional struggles that occurred long ago in England.
- 21 Parliament in New Zealand exhibits many important symbols. Perhaps the most important is the mace. In the Speaker’s procession, at the beginning of each sitting

¹⁷ *Hopkinson v Police* [2004] 3 NZLR 704.

¹⁸ Jerome Frank *Courts on Trial* (Princeton University Press, Princeton, 1949) 254. In this chapter on “The Cult of the Robe”, Frank argued that an important deterrent to public comprehension of the human characteristic of judges is the curious way in which they dress.

day, the Mace is carried in by the Sergeant-at-Arms and placed on the Table.¹⁹ The Mace is a symbol of authority, which was apparently used by clergy in battle as they were not permitted to shed blood, so could not use swords.²⁰ A Bishop who was a half brother of William the conqueror apparently fought with a mace at the Battle of Hastings in 1066. The Mace was conveyed to the House with a ceremony to signify the King's approval of the sitting. Many symbols of government are of ancient origin.

- 22 Flora and fauna have afforded for New Zealand some potent symbols. The silver fern as an emblem seems universally regarded as a New Zealand icon. It is used on sporting jerseys for all manner of sports. The koru is another potent symbol, and is related to the fern. The tuatara is another iconic species representing the uniqueness of New Zealand's geomorphological origins. As well as being the name of an indigenous flightless bird, the term "kiwi" is often used abroad to refer to New Zealanders. Pictures of mountains such as Mount Taranaki, Mount Aspiring and Aoraki are also important symbols of New Zealand, representing its rugged geographical features and scenic landscape.
- 23 No doubt our military forces are important conveyors of symbols. For a start, military uniforms are highly symbolic. The traditional lemon squeezer hat of the New Zealand infantry is a well known symbol still preserved on ceremonial occasions. Military decoration is also a symbol of particular bravery. New Zealand has always taken tremendous pride in those members of its armed forces who have been awarded the Victoria Cross. Anzac Day, with its poppies, is full of symbolism. It is a symbol of sacrifice, death, and patriotism. As a symbol, Waitangi Day contains many cross-currents, giving it ambivalence; ambivalence is very much a New Zealand characteristic. Is Waitangi Day New Zealand's national day or not? We cannot really decide.
- 24 The National Anthem is an important symbol for New Zealand. The fact that it is now usually sung in Maori as well as English is itself symbolic. These things have changed drastically in my lifetime. I well remember going to the pictures in

¹⁹ *Standing Orders of the House of Representatives* (2005) SO 59.

²⁰ Silvio A Bedini *The Mace and the Gavel – Symbols of Government in America* (American Philosophical Society, Philadelphia, 1997) 1.

Nelson on Saturday afternoons in the early 1950s when we all stood up while God Save the King was played, before the movies began.

- 25 It is not easy to convey what these symbols say to New Zealanders, but it seems to me that they provide something unique. Other nations do not have these symbols because they are ours. It should be noted that symbols can be both official and unofficial. The kiwi, the silver fern, and the “black” theme in sports teams do not result from government decisions.
- 26 Symbols come and symbols go. I remember as a child listening to the chimes of Big Ben over 2YA (as the radio station was known) when they repeated the BBC news. This was supposed to suggest we were all part of the British Empire, or as it soon became, the Commonwealth. These feelings of universality have fallen away from the New Zealand we now know.
- 27 One hundred years ago, the conferring of Dominion status upon New Zealand was a new and powerful symbol. Now it has slipped away, largely unnoticed. When I was first in a law office, Dominion Day was a holiday; but no longer. In another hundred years it may be almost forgotten. Yet, in 1907 on September 27, the General Assembly Library Building was extravagantly lit by electricity with the signs “Advance New Zealand – Colony 1840 – Dominion 1907.”²¹ Dominions, of course, were British. Today, although we remain steadfast internationalists, we are more interested in deciding who we are, rather than identifying with something bigger.
- 28 Symbols surround us. They have been added to enormously by the advertising industry, which is intent upon branding products. But, the brand “New Zealand” has not been marketed with as much concentrated determination as many other products. I do not suggest we should engage in hype about the symbols of our nation. We could perhaps do with some more symbols, but it is no use trying to manufacture them. They will develop by themselves, springing from the feelings of the people who live in these islands.

²¹ Peter Shaw *Why Go to the Riviera – Images of Wellington* (Random House, Auckland, 2003) 58-59. It will be lit again on 25/26 September 2007.

- 29 What is happening when people see symbols? It is not so easy to explain in a rational sense what people understand by symbols and symbolism – these are emotional rather than rational matters. Yet, emotion is part of life, although I might observe legal training does its best to suppress feelings. What meanings are we to extract from these symbols? Certainly they say something.
- 30 The All Blacks are both real and symbolic. They are real rugby players, a real rugby team, but also they are more than that, carrying with them hopes and aspirations of a nation that is devoted to the sport of rugby. Rugby might be interpreted symbolically as a commentary on the nature of New Zealand society – team play, bravery, skill, physical strength, excellence and determination are important qualities in wider society, just as they are in rugby. The haka, which is performed by the All Blacks before a test match, is rich in symbolic value. It is a sign of respect for the opponents, but it is also a challenge that involves standing up to opponents rather aggressively. It says something about the uniqueness of Maori culture in New Zealand.
- 31 When the All Blacks win, New Zealanders celebrate; when they lose, they are sad. Why is this so? Do New Zealanders feel their collective identity is bound up with the fate of the All Blacks? The black jersey and the silver fern are symbols of New Zealand. Powerful, evocative and they certainly mean something to us. Indeed, sports generally are full of symbolism with which New Zealanders readily identify. Great sports people are role models and heroes. When New Zealand plays other countries at rugby, netball or indeed almost anything else, there seems to be more than a game at stake. The Americas Cup is another example.

Conclusion

- 32 In a sense, symbols can support many messages, including messages of nationalism, although nationalism is a matter to be dealt with gingerly. It is not so much universal and humanitarian as it is particularistic and exclusive. Many wars have come from nationalism.²² We must not think of New Zealand in the way that Pericles thought of Athens – unique in value so that nothing else matters. But it is

²² Hans J Morgenthau *Politics among Nations* (4th ed, Alfred a Knopf, New York, 1967) 242 ff.

healthy for citizens of a country to believe in its values and aspirations and to have a sense of collective hope for the country. New Zealand needs a civic culture so it can believe in itself. We need a modest public philosophy to which everyone of all political and religious persuasions can subscribe.²³ We need civility and we need tolerance for others and their views. We need an articulated and firm commitment to the values of a liberal democracy in which we are all equal. We need to believe in the rule of law. Symbols can play a part in all of this, and no doubt they do. In New Zealand, we are humble about our symbols as we are about many things. Perhaps we should devote more attention to them as part of refurbishing our civic culture. We need to be less diffident about who we are.

²³ Walter Lippmann *The Public Philosophy* (New American Library, New York, 1955).