

## A CLASH OF SYMBOLS

By DR. PETER JONES

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DR. PETER JONES:

**I**N company, no doubt, with many who have spoken before this Society, I wonder at this moment at my rashness in offering a paper on a subject of personal interest when it is all too apparent to me now that it might not be to the taste of one's fellows. One man's meat is another man's poison.

Yet as two of the oldest professions, each has chosen to symbolize its origins and aspirations, in one way or another, over the centuries. It is the origin, meaning, and use of these symbols which I would like to examine tonight.

Man lives with and thinks in symbols for they provide a form of shorthand. When displayed pictorially, we may aspire to them, or abhor them, emulate or shun them, share them, perhaps without much thought, as members of organizations which have chosen them, and some are granted permission to use their own as a mark of achievement or personal distinction.

To be quite precise it is necessary to distinguish two categories: emblems and symbols.

An emblem is a device which basically identifies an object or a commercial enterprise, a mark of identity, or the fact of ownership, while a true symbol is more esoteric. The word is derived from the "sym"—together, and "bolein"—to throw and comes from the Greek practice of jointly throwing into or contributing to a fund, money or materials for the construction of an object of commemoration or veneration, that is, the expression of a common interest which in time became the symbol of the contributors.

Goethe said—

"Symbols transform phenomena into ideas and ideas into images in such a way that the idea always remains infinitely effective and unattainable in the image."

At its best, a symbol is not fully definable in rational terms, and is something to be experienced rather than explained. I am

talking now, of course, in psychiatric terms. In fact, if it can be made fully comprehensible, it ceases to be a symbol and becomes a mere allegory.

A further and final definition of a symbol is a device which represents something else, not merely itself but a visible expression of an idea or quality, either by reason of natural aptitude or the association of ideas.

The foregoing refers almost exclusively to a special and comparatively rare form of symbolism which concerns ideas and ideologies. For the most part symbols are much more mundane and based on geographic, national or local allusions signifying the origins, affiliations, or even tools of trade of the person or an organization.

The symbols found in coats of arms are of both kinds, and designing them is one of the means left to us today by which we can signify our aspirations, which is my reason for introducing heraldry into the discussion.

It is of course true that symbols and emblems, between which a nice distinction has just been drawn, have been inextricably mixed in the past as marks of personal identity.

These are probably as old as organized society itself, and the earliest identifiable marks of personal identity are the discoid and cylindrical seals of Akkad and Sumer of the 4th millenium B.C. Their principal purpose was to authenticate documents in personal and civil affairs, antedating almost all forms of writing, and serving a purpose which has continued almost unbroken for over 6,000 years to the present day.

At the highest point in Greek art in the 3rd century B.C. seals were carved in quartz, and plaster positives reveal their fluid grace, their relaxed, realistic style, and the technical mastery of the period.

The Romans used seals for the same purposes but they fell into disuse after the fall of Rome, to be revived by the Popes in the fifth century A.D. Their seals were impressed on little balls of lead called bullae, whence the term "papal bulls". The ball was pressed into a disc with St. Peter and St. Paul on one side, and the Pope's style and title on the other.

This practice moved westward and was adopted by the Merovingian kings and the double-sided seal was introduced in England by Edward the Confessor who was also the first to fasten his own Great Seal to documents by means of a cord or ribband.

It was at just this time, early in the eleventh century, that heraldry became established in western Europe. The initial steps are obscure, but it must have provided a practical answer to current needs for it spread so rapidly as to seem to have sprung up fully formed in an era wracked with enmity, when distinguishing friend from foe was of great importance, in fact a matter of survival. Whether it was primarily welcomed for its military usefulness is still debated, and there can be no doubt that heraldic designs were equally useful in parades and tournaments, for personal display, the decorative embellishment of buildings, and for its oldest purpose, as seals to authenticate documents. The cliché "signed, sealed and delivered" speaks for itself, but is concerned with the relatively few who could write; most, including King John at Runnymede were content to seal not sign.

It is a sad reflection on the mass production methods of today that an object with a long tradition of artistic design has today degenerated into a small corrugated disc of red adhesive paper, at 10 cents per 100, a travesty of the craftsmanship of its precursors and surely a second descent into barbarism.

Before describing legal and medical heraldry it might be helpful to spend a moment identifying the various components of a coat of arms and their origins.

It is almost certain that heraldic designs and colours first flew on banners carried on lance or spear, later on the surface of a shield, and later still on the short coat or "jupon" which was the first true "coat" of arms and the derivation of the term.

What is believed to be the earliest representation of an armorial shield is a copy in enamel on copper plate, of the shield given to Geoffrey Plantagenet by Henry I of England on the occasion of the marriage of his daughter in 1127. There were probably three lions on the shield, and a further lion as a badge on his cap.

It is perhaps surprising to learn that as an accoutrement of war, as opposed to jousting, the shield was only in general use from about 1130 to 1430. It was usually made of wood, not metal, though strengthened by bands, bars or bosses of metal which probably foreshadowed the subdivisions of the shield, later rigidly systematized for the purposes of record and to allow a multiplicity of designs.

The pot-helm came into general use in about 1190 and this completely investing helmet brought with it the need for a more obvious indication of the identity of the wearer, now

thoroughly obscured, hence the arms were emblazoned, back and front, on a light cloth coat or jupon, as worn by the sad looking fellow, John Wantley, who died in 1424 and lies buried beneath a brass in the village church of Amberly, Sussex.

One can readily imagine that when abroad in time of war, or even at home during periods of civil unrest and rebellion, the most practical purpose of heraldry was to determine, from as far away as possible, whether a chance encounter was with friend or foe and so to determine whether one's subsequent course should be convergent or divergent, as a matter of survival.

The mantling, which is the piece of cloth attached to the back of the helmet, was probably introduced for the same reason as cloth covers on tin hats. It is said that during the crusades, when body armour became too hot to touch, a piece of light fabric was attached to the back of the helmet and held in place by a twisted scarf or torse, as a protection from the sun.

Some believe the invected edges of the mantling were simply current fashion, but the romantics say that the tattered and slashed relics of battle were treasured as keepsakes or mementoes of the crusades.

Supporters were introduced because of the supposedly unstable shape of the shield. In early paintings, the shield was depicted as having fallen to one side with the helm perched on the upper corner. Later a single supporter behind the shield was introduced, and in British heraldry there are traditionally two supporters one on either side, or none at all.

The supporters are of a very wide variety, animals real or mythical, and human figures mythical or real.

Apart from grants of arms to lords, nobles and knights, the first grant to a corporate body was to the Worshipful Company of Drapers of the City of London in 1439, some 50 years before the founding of the College of Arms by Richard the III in 1484.

The arms of the Pepperers (1180), Grocers and Spicers (1368) and the Apothecaries (1617) have been recently redrawn by Heather Child, one of the most distinguished heraldic artists today,<sup>1</sup> and these represent some of the most historic and beautiful designs, for many authorities believe that the 15th century was the heyday of heraldry which only recently has returned to a purer style.

There was a natural distinction between the artisan and the

<sup>1</sup> *The Armorial Bearings of the Guilds of London*, Frederick Warne & Co. Ltd., London, 1960.

scholar, i.e. "town" and "gown", from early medieval times, and while physicians and lawyers were "gown", barbers and surgeons, in company with the other craftsmen, were definitely "town". Communities of physicians and lawyers banded together to further their interests, in the Royal College of Physicians in the one case, and as the Societies of the Inns of Court in the other. There were originally 17 Inns, and all at one time or another used coats of arms which were unauthorized or unregistered. As recently as 1949 *Richmond Herald*, an officer of the College of Arms, obtained a concession by which the arms used by the remaining four Inns could be recorded officially for the equivalent of one fourth of the cost of a new grant by Letters Patent. Only one took advantage of the offer.

Each of the four surviving Inns, Inner Temple, Middle Temple, Lincoln's Inn and Gray's Inn, displays a coat of arms and none carries a motto, an unusual mark of restraint when one considers the temptation of a pithy Latin tag to the legal mind. There has been an equal reticence on the part of the surgeons in the use of a scalpel—at least in heraldry. The Royal College of Surgeons of Edinburgh is the only College whose arms bear such a charge, more graphic than artistic. They included several other instruments for good measure, a most peculiar coat of arms. I am unable to account for this apparent lack of good taste and strict observance of the rules which is the tradition of the Lyon King of Arms, the controller of Scottish heraldry. A hand with an eye on the palm; a nude and presumably permissive body, and a daunting array of instruments, including a scalpel and a sword; a graphic design, I think you will agree.

The arms of the Pepperers (1180), Grocers and Spicers (1368) from the Christmas Revels of 1562 during which 24 gentlemen were dubbed "Knights of the Order of Pegasus". The reason for choosing the symbol is not certain but in the words of a 17th century heraldist the pegasus connotes "exceeding activity and energy of mind whereby one may mount to honour". A less ambitious, possibly more accurate, and certainly more ancient derivation is from the badge of the Knights-Templar which showed two men riding one horse, supposedly representing a knight assisting a wounded and indigent pilgrim on the road to Jerusalem, a responsibility which was the original *raison d'être* of the Order. There are many well documented misrepresentations of charges which would support the possibility that the outline of

two riders might at a later date have been corrupted to and misinterpreted as a pegasus.

The Middle Temple retains the original arms of the Order founded in 1118. They moved from Holborn to the bank of Thames in 1185, there to build the famous Temple Church. The Order was suppressed and its property confiscated by Edward II in 1312. The Temple Church and its precincts were given to the Earl of Pembroke who willed them to the Knights of St. John of Jerusalem and it was they who first leased premises to doctors and to students of law in the 14th century.

The arms of the Middle Temple date from the reign of Elizabeth I, and bear the cross of St. George on a white field with a golden pascal lamb in the centre.

The home of Henry de Lacy, Earl of Lincoln, became in 1518 Lincoln's Inn, and in 1580 the freehold was purchased by the Society chiefly at the instigation, and with the financial assistance of Richard Kingsmill, a prominent benchman of the day. Since 1615 the arms of Lincoln's Inn have been scattered mill rinds on a blue field with a purple lion rampant in a gold canton.

A mill rind is a locking nut on the axle bearing two mill stones, the device of the Kingsmill family and an example of canting arms, that is, a straight out heraldic pun.

The purple lion on the gold canton is for Lacy.

Gray's Inn is derived from Reginald de Grey, first Lord Grey of Wilton, the original owner of the Portepoole Manor which was built in 1308. During the 16th century the Inn used the arms of Grey, but in 1600 the present arms were chosen: a golden griffin rampant on a black field.

A griffin, half eagle, half lion, is the symbol of vigilance and courage, combining the individual attributes of each animal. The historical association is further continued in the arms of the Borough of Holborn, granted in 1906, which include as supporters the Lion of Lincoln's Inn and Griffin of Gray's Inn.

While the Inns of Court provided communal facilities and regulated day to day practices, these functions, for the surgeons, were served by one of the earliest of the liveried Companies, The Worshipful Company of Barbers.

The barbers' first field of operations was in medieval monasteries, in which one of the monks was customarily employed as a barber to keep the tonsures in shape, and possibly by reason of his sharp instruments, he fell heir to the surgical emergencies of the day. Others performed these functions for the laity, and with

the influx of dispossessed monks after the suppression of the monasteries in 1438, banded together and were granted arms as an incorporated Company in 1451, one of the original 28 granted arms between 1439 and 1500. The unincorporated Guild of Surgeons had no arms but were granted a "cognisance" and a badge by Henry VII in 1492:

A red Tudor rose on a spatter (spatula) flanked by the patron saints of Surgery, St. Cosmos and St. Damien, the first two Christian physicians, brothers (possibly twins), who were martyred by Diocletian in c. A.D. 303 in Aegina.

In 1540 the Barbers and Surgeons united as the Company of Barber-Surgeons and their arms were two lynx as supporters with a golden opincus, half lion-half eagle, as the crest, quartering the fleam of the barber and the spatter and rose of the surgeon, augmented by the Cross of St. George and a Royal lion of England.

The spatter we know better as its diminutive: "spatula", used for mixing and dispensing ointments; the fleam, a phlebotomy knife used in bleeding and later stylized as a heraldic charge, is also in the arms of the Royal College of Surgeons of Ireland. The Irish, with fine eclecticism, took the fleam from the London Barbers, the crowned harp from the Dublin Barbers and their motto from the College de St. Cosme founded in Paris in 1286—the oldest College of Surgeons in the World. The supporters are Irish elks and, curiously, the eagle and the serpent in the crest are the same as the Arms of the United States of Mexico, based on an Aztec legend concerning their capital city, Tenochtitlan.

The Company of Barber-Surgeons was dissolved in 1745; the Company of Surgeons also broke with the City of London and was granted a Charter by George III which created The Royal College of Surgeons of London in 1800.

The present arms of the College include an augmentation granted in 1822 on the occasion of the gift of a mace, a mark of Royal favour, by George IV. Further changes were added to the shield, a portcullis from the arms of the City of Westminster in which the College stands, two anchors signifying its official function in examining prospective surgeons and surgeons' mates for the Royal Navy, a duty imposed by the Charter of Charles I. in 1629, and a crown and mace added to the eagle in the crest.

The official version of 1822 typifies the "gas-bracket school" of heraldic art; the helm is omitted, so the crest-wreath hangs suspended like Mahomet's coffin, the beards of the supporters are

strictly contemporary, the lions are, by comparison, cuddly children's toys, and the over-ornate grace notes are in keeping with the worst taste of 19th century heraldic design.

In 1931 the Royal Australasian College of Surgeons was granted arms, which were designed in some haste so that they could be incorporated in a mace presented as a gift from the Royal College of Surgeons of England.

The serpents encircled were chosen in their own right and as a variation of those knotted (knowed) in the arms of the parent College, with two black swans for Australia and lymphads from the arms of the Dominion of New Zealand. The supporters are Chiron and Apollo of which a little more later.

The arms of the Royal Colleges of Physicians and Surgeons are displayed side by side in mutual respect at the entrance of the Royal Cancer Society in Lincoln's Inn Fields, but there were times when this was otherwise. The College of Physicians was founded in 1620 and its arms, celebrating Harvey's recently announced discoveries concerning the circulation, show one hand emerging earthwards from a cloud taking the pulse of another wrist.

In the decorative border of a Diploma issued in 1665, the other central charge in base, a golden pomegranate, is repeated. This goes back to the myth of Demeter and Persephone who ate part of a pomegranate and doomed us all to three months of Winter—the fruit being the symbol of Spring, fertility and hence, of life itself.

The Royal Australasian College of Physicians also has a pomegranate—this time on a shield supported by an emu and a kiwi, for the sister Dominions.

If one were to select one symbol for each of our professions, there would be small argument against choosing the serpent and the sword, and the title, "A clash of symbols", was primarily chosen because in each of these there is a metaphysical clash derived from their ambivalent significance.

First then, the serpent: The earliest depiction is upon a libation vessel of Gudea, King of Lagash, dated about 3,500 B.C., a caduceus in a primitive form, which possibly evolved through Assyrian and Egyptian art to become the symbol of Asclepius.

Robert Graves' account of Apollo's affair with Coronis, who bore him Asclepius, is the typical Grecian gamut of unbridled emotions and crimes against the person—lust, seduction, infidel-



ity, jealousy, vengefulness, conspiracy to murder, remorse, post mortem caesarian section and child abandonment—with a happy ending in which Chiron the Centaur became Asclepios' foster father and tutor in the art of surgery and in wisdom.

It is believed that the word "surgeon", from *chirurgion* in an early form, is derived from Chiron—not to be confused with Charon, who plied his trade of ferryman on the River Styx.

The rod of Asclepios marks the beginning of the Hellenic contribution to medicine and the harmless adder, *colubex longissimus* is the serpent concerned. This snake was a natural resident of hot springs and health resorts in ancient Greece, and ignoring for the moment its phallic connotation to the psychiatrists among us, it may be that its association with health came from the medicinal spas so dear to the Greeks and Romans, and the source of its benign implications.

Adders, it seems, were encouraged in the temples of healing or Asclepiions, wherever they were established.

In a sculpture on the wall of many of the "Asclepia" was to be found the serpent, the staff, and Hippocrates' most quoted line beginning "Life is short, art is long. . . ."

The adders were fed with saucers of milk and perhaps welcomed for their function in keeping the buildings free of rodents. The shedding of their skin was taken as a sign of regeneration, renewal of life, and immortality—but their lethal side also appears in Greek literature; snakes were sent by the gods to punish and kill.

The Romans gave the staff, with two snakes now, to winged Mercury, the messenger of the gods, who seems to have fulfilled a role in communications rather than retribution. The serpent is found in the majority of corporate medical arms, for example the Colleges of General Practitioners of Great Britain, and of Australia.

In the crest of the former, Athena's owl holds a gavel made from the wood of a plane tree on the island of Cos, Hippocrates' birthplace, and the serpent is twined about it. The unicorn is from the Royal Arms and also those of the apothecaries, the lynx from the the Barber Surgeons, the gentian and the poppy for pharmacy, and Florence Nightingale's lamp for the nursing profession.

The College of General Practitioners of Australia has the same motto; a kangaroo replaces the lynx; a wattle tree in full

bloom represents its medicinal extracts, and a rod with a serpent is the central charge.

The malignant side of the serpent has been overborne; its ambivalence, typified by Kali in Hindu mythology, as both the creator of life and the slayer, has faded; and the benign aspects have over the centuries prevailed.

Not so the sword—for the opposite is perhaps more true. It seems probable that even in the bronze age the sword was costly and sought after—a mark of substance, authority and leadership from its inception.

In Britain, the earliest official link between the sword and justice is to be found in the reign of William Rufus who appointed Ranulph Flambard, his chaplain, to the new role of Justiciar to preserve the peace of the realm during the king's absences in Normandy.

From 1170 onwards there were Justiciars, initially members of the clergy, often bishops with a knowledge of canon law.

In the reign of Henry II, England was divided into regions, and the King's Justiciars travelled the circuit to hear causes and give judgment. Before each, in procession, went a sword-bearer carrying, point erect, the symbol of the king's authority—a tangible commission embodying the power of life and death.

Roger, Bishop of Salisbury, was the last to bear the honorific title, "Justiciarius et Procurator Angliae". The power of the office was weakened in 1204 by the loss of continental possessions for thereafter the king stayed at home and the office lapsed in 1261, never to be recreated.

At Naval Courts martial, the accused officer knows the verdict before judgment is pronounced. His sword is laid crossways before him on the table during the proceedings and, on returning to hear his fate, it is already turned appropriately—pommel towards him to take up again if exonerated. There is no mistaking the double significance of the two-edged sword and the power of life and death, for retribution was one of the first fruits of justice. The sword is also symbolic of surrender in defeat and of graduation to knighthood.

Is it only significant of submission, I wonder, that the kneeling position for the ritual dubbing of a knight is an attitude quite suitable for decapitation? The granting of titles and honours by the victor on the battlefield and the summary execution of captured opponents followed one another alternately in the

immediate aftermath of battle, as related on more than one occasion in history.

The ancient arms of the City of London have a sword in the quarter of honour, possibly related to no less than five swords in their regalia, one of which is the Sword of Justice, and one explanation is its treasured privilege of administering its own justice within the city's boundaries, a function antedating the Courts of Law.

The "Old Bailey Sword" is still carried with ceremony and placed above the Chair of the Lord Mayor when he sits in the Central Criminal Court.

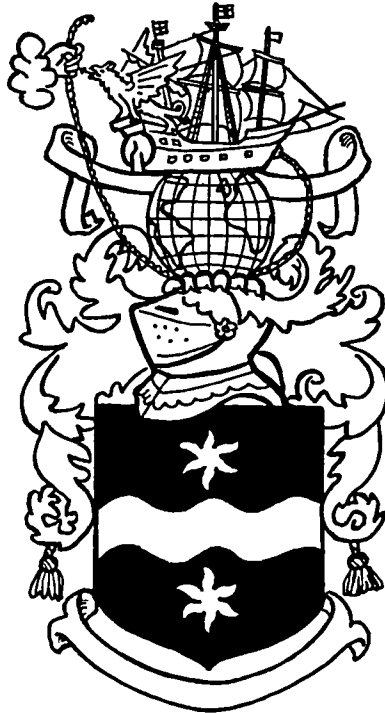
Appropriately, the sword is the central charge in the arms of the Worshipful Company of Solicitors, flanked by a Roman lamp and a deed; the crest includes the fasces of the Roman magistrates, on which stands the silver owl of Athena, the symbol of wisdom.

The well-upholstered lady with a sword, a pair of scales and a blindfold with her foot on a legal tome, is well known. On the Old Bailey she stands with sword erect held high. In Melbourne she is seated, the sword inverted, perhaps for mercy, and with eyes uncovered. There is a story, perhaps apochryphal, that Sir Redmond Barry's edict that there should be "nothing blind about Justice in Victoria" was carried into effect in the design of the original statue now removed and replaced by another, also with eyes uncovered and reflectively downcast.

But in the arms of the Law Institute of Victoria she is blindfolded. To free one hand to support the shield, the scales appear as a central charge between two quills, and the tome is elevated by a hand in the crest. The other supporter, Liberty, is depicted with the rooster cap of the French revolution, surely a period which at its worst represented total abrogation of law and order, but perhaps later made more respectable by Delacroix's famous painting.

A prolonged search for the origins of the Lady of Justice has been fruitless. As such, she has no place in classical mythology and I hesitate to suggest that the only related precursor I could find is the Roman goddess Fortuna in similar vestments, with her eyes blindfolded, holding in one hand a cornucopia, and in the other a wheel signifying inconstancy. Dare one suggest that Justice, as we know her best, is nothing more than Lady Luck lightly disguised, and in legal usage, an innovation probably no older than the eighteenth century?

There are two further minor clashes of symbols, one of which, concerning taste, fashions and style, has already been mentioned. Styles have altered greatly over the centuries with high and low points in design.



Arms of Sir Francis Drake

One disaster which can overtake a perfectly presentable coat of arms is to do with augmentations, that is extra honours awarded the recipient, either initially or subsequently. Two people with the most famous names in English history suffered in this regard. Sir Francis Drake, on his return from the voyage around the world, was granted one of the most extraordinary devices in the annals of heraldry. The shield is very appropriate—a wavy band of silver, the ships wake, between two pole stars on a black field for the night sky. But the crest is preposterous, bearing in mind that the rules require that it could theoretically, be actually worn on a helmet: The Golden Hind, fully rigged, under full sail, is depicted as drawn around a globe by a golden

cable held in the hand of God, which emerges from a suspended cloud; a dragon of "firedrake" is perched on the stern castle. Even in his own day there were unkind comments on this concoction, and rumour says that Queen Elizabeth I herself had something to do with it.

In modern times, one of the most unusual grants, which seems at first to be wildly inappropriate is not so, after all. The College of Arms must have been aghast at the suggestion of Sydney Hospital that they should be granted as a crest a bird of prey, an eagle holding a keg of rum in its talons. Much pressure and correspondence followed before this was finally permitted.

The lymphad marks the First Fleet, the scallops are, supposedly, from the arms of Governor Macquarie who signed the Hospital's original grant of land. The keg of rum refers to the source of finance for its construction and operations, and local lore relates that in a tree on the original site was the nest of a white-breasted sea eagle. To this day all formal toasts to the Hospital are drunk in rum.

Lord Nelson's first (unexceptionable) arms bore a simple black cross flory. The first augmentation was a red bend charged with three grenades or bombs in flames. After the Battle of Aboukir Bay the second augmentation was a scene depicting a dismasted ship, a palm tree, and a shore battery in ruins—bad enough in black and white, but in colour, resembling a travel poster for a Winter vacation in Algiers supplied by the Tunisian Chamber of Commerce.

The third and posthumous augmentation, a wavy transverse band bearing the word "Trafalgar" in gold which almost obscured the original cross, was too much even for his family.

The last clash of symbols is that heard during classic skirmishes between opposing counsel when Coats of Arms become the subject of litigation. Concerning the very first, a most famous case, I shall mention only the historical details, and leave the points of law to my colleague, Mr. Balmford, who is so much more able than I to comment upon them.

It happened that two unrelated knights, Sir Richard Le Scrope and Sir Robert Grosvenor, on an excursion under arms over the border into Scotland, encountered each other at some point in the campaign, and were no doubt stunned to find that they bore identical arms, namely—"azure a bend or". The immediate sequel is unknown, but on the 27th August in the year 1385 Sir Richard Le Scrope hailed his brother knight before

the Court of Chivalry claiming that—"He had borne these arms and his ancestors before him, from the time whereof the memory of man runneth not to the contrary".

John of Gaunt and Geoffrey Chaucer both gave sworn evidence in support and the Court, finding in his favour, confirmed to him the right to bear these arms and granted to Grosvenor the same arms within a border of silver (Azure a bend or within a plain bordure argent).

Scrope appealed directly to the King, Richard II, who agreed with Scrope that while such similarities were permissible "between cousin and cousin in blood", they were not a sufficient difference between "two strangers in blood in one kingdom." The King expunged the grant of the Court to Grosvenor who then assumed the arms "azure a garb or", i.e., a golden sheaf of wheat on a blue field which is borne by the Grosvenors, Dukes of Westminster, today.

This early ruling established a precedent, observed ever since, as to what constitutes sufficient distinctions between "differencing" and "cadency"—i.e., greater distinctions between different families and lesser distinctions indicating the lineage of younger sons and cadet lines in an armigerous family.

Richard the Second's decision was reached in 1390, just five years after the suit was first brought—perhaps a comparatively expeditious conclusion in the light of "the law's unconscionable delay".

It should be, but is not, a rule that at least one of the ingredients to be included in designing a corporate coat of arms is truly symbolic of a function of the organization.

In those of the Royal Children's Hospital, Melbourne, the pelican fulfils this purpose for the pelican was thought to peck its breast to produce drops of blood with which to feed its young, a typical heraldic ornithological fallacy, but it signifies the epitome of devotion to the young.

I trust that I have not wearied you with too many details, like the grandfather who gave his grandson a large and beautifully illustrated book on elephants. A week or so later he had heard no enthusiastic thanks—in fact, the book had not been mentioned—so he said, "Didn't you like that book I gave you?" "Oh, yes, Grandpa," said the boy, "it was a fine book, but it told me more about elephants than I really wanted to know."

I would like you to conclude that heraldry is something more than one of the decorative arts, and that there must be other

good reasons for its survival for nearly 500 years after it was last used in wars or tournaments.

One of these reasons may well be that it still provides us with a means of symbolizing the links our professions have with a long and sometimes illustrious past, and serves as a reminder, if we should need it, of our better motivations.

MR. PETER BALMFORD: The law of arms has been part of the law of England for a very long time and that has been recognized by statutes and by the decisions of the common law courts. But the law of arms does not form part of the common law. It forms part of the so-called civil law, and in this context that expression is not being contrasted with the criminal law. The law affecting matters such as probate, matrimonial affairs and maritime affairs was also part of the civil law and the whole was administered by the civil lawyers or civilians as they were called.

The common law of England is no more than the law which was held to be common to the inhabitants of that country. The civil law as administered in England was an attempt to cover matters generally affecting persons in all countries and to cover situations specifically involving persons from countries other than England in a way that would be internationally acceptable. It was based on Roman law and on ecclesiastical law and was thought to operate generally in the countries of the civilized world. So, in the examples I have given, probate and matrimonial matters were in origin the concern of the church—probate because it affected a man at the time when he was about to meet his Maker and matrimonial matters because of the Sacrament of Marriage. The maritime or admiralty jurisdiction was concerned with matters on the High Seas and as foreigners were frequently involved, the civil law was regarded as being applicable.

So it was with the law of arms. War as it was known in medieval times and preparations for war, jousts, tournaments and the like, methods of the identification of friend from foe, the way wars should be conducted, questions of ransom and other matters dealing with prisoners, the interpretation and enforcement of contracts for the engagement of mercenary soldiers—all these matters were the subject of the law of arms and because of their frequently international flavour the law of arms was held to be part of the civil law. The two chief officers of the army, apart from the King himself, were the Constable and the Marshal and it was to the holders of those two high offices that the administration of the law of arms was committed—the Court of

the Constable and the Marshal or the Court of Chivalry as it was often called.

Now I referred, and Mr. Jones referred, to the question of identification of friend from foe and this, of course, was how Heraldry started. In course of time Heraldry ceased to be useful for that purpose and it became what has been described as "the purely decorative art-form that we know today".

The grant of arms is of course the prerogative of the Crown, as the fountain of all honour, and is a matter delegated by the Crown to the Kings of Arms, who act on the warrant of the Earl Marshall. Together with the heralds and pursuivants, these officers constitute the College of Arms which has a very considerable antiquity. It is commonly said that the College of Arms began with a Charter from Richard III in the first year of his reign. He did in fact grant such a Charter but after the Battle of Bosworth when Henry Tudor ascended the throne as Henry VII this among other acts of Richard III was declared void. The College of Arms in its present dispensation began with a Charter of 1554 issued during the reign of Philip and Mary. The Charter throws little light, however, upon the function of the granting of arms and for that one has to look rather to the letters patent issued on the appointment of a King of Arms and there one finds the "authority power and licence with the consent of the Earl Marshal of granting to and appointing to eminent men letters patent of Arms and Crests".

You will have noticed that the Earl Marshal appears in a dual capacity. Like that other great officer of state, the Lord Chancellor, he has both executive and judicial functions—he issues or withholds a warrant for a grant of arms and he sits alone or with the Constable in the Court of Chivalry to adjudicate upon questions relating to the law of arms. The office of Constable has for all practical purposes been vacant since the execution of the then Duke of Buckingham in 1521 and since that time the Marshal alone has constituted the Court of Chivalry. The office of Marshal has been hereditary for some centuries in the family of the present Marshal, the Duke of Norfolk who it may be remembered came to Australia with an English Test cricket team some years ago, and who officiates at such matters as a Coronation.

The lawyer is, of course, accustomed to gather his knowledge of the law on a particular topic from statutes, from the reports of decided cases and from the writings of other lawyers. But in



this field of the law of arms there is a dearth of materials of that kind, for reasons which are clear enough and not without an interest of their own.

There are a couple of statutes but they are very early—in the time of Richard II—and they did not promulgate detailed rules of law but only operated to restrict the field in which the Court of Chivalry had jurisdiction. It seems that the Court had asserted jurisdiction in contracts, trespasses and other matters which were dealt with in the common Law Courts and this was prohibited by the Statutes.

Now the civil lawyers never relied very much on precedent and certainly did not regard their Courts as bound by it until the end of the eighteenth century. The first reports of cases in the civilian courts appeared in 1809 and the reporter, Dr. Phillimore, states that he encountered a great deal of opposition from his professional brethren to his project. There were never any reports of decided cases in the Court of Chivalry at any rate until 1956 when Mr. G. D. Squibb Q.C. produced a series of reports covering the period from 1623 to 1732.

Those reported are not, however, reports in the usual sense of containing a statement of facts and reasons for the decision. They merely indicate the nature of the proceedings and give some details of steps taken. In addition there were a number of cases taken on appeal from the Court of Chivalry which are reported. One of the most famous of these was the case of *Scrope v. Grosvenor* in 1389, to which Mr. Jones referred but which is not reported in the ordinary way. The reference usually given for the case is to the Calendar of Close Rolls (as opposed to Patent Rolls) in Richard II's reign. A copy of this was very kindly found for me by the National Library at Canberra, but there is only a brief mention of a minor aspect of the case. Sir Harris Nicolas, however, produced a full account of the proceedings, based on contemporary sources, which was published in 1832 under the title "The Scrope and Grosvenor Controversy" but which unfortunately I have been unable to find in Melbourne. There was only a limited edition of 100 copies, but whether it was in two volumes or three I do not know. The Dictionary of National Biography states that only two volumes were published. There is a footnote to one of the Ingoldsby Legends—"The Lay of St. Cuthbert" which refers to the third volume of Sir Harris Nicolas' work. That I took to be a joke, but looking at a 1965 number of the magazine "Coat of Arms" I came across an article

by a Mr. Scrope, who claimed to be, and no doubt was, a descendant of the Scrope who figured in the controversy. He states that he had read all three volumes of Sir Harris Nicolas' work.

It appears, however, that both Sir Richard Scrope and Sir Robert Grosvenor wore the same arms, namely, "Azure a bend or" and after a lot of evidence the claim of Scrope was upheld. In 1965 we still find a descendant of Scrope writing on the question. In the last century the Dukedom of Westminster was conferred on one of the Grosvenors and those members who are knowledgeable on questions relating to the turf will remember that the Duke won the Derby in 1880 with a horse called "Bend Or".

Those who have read the amusing reminiscences published in 1962 of Loelia, Duchess of Westminster, the third wife of the Derby-winning Duke's grandson, will remember that her husband was known to his intimates as "Bendor"—so these things still exercise people's minds.

Going back to the subject of written materials on the law of arms there was practically nothing written on the Court of Chivalry itself until 1959 when Mr Squibb Q.C. wrote a book called "The High Court of Chivalry" to which, as you may imagine, I am greatly indebted for much of what I am putting before you tonight. He also published a study entitled "The Law of Arms" which drew a good deal of criticism, but to me is convincing.

Halsbury's Laws of England is a publication running into forty volumes or more which appeared at intervals over a number of years. It is interesting that Volume 9, published in 1954, refers under the heading "Courts" to the Court of Chivalry as not having sat since 1737, which was then true, but that Volume 29 published in 1960 under the heading "Peerages and Dignities" deals with the Court quite differently.

You will not be surprised, Mr. President, when I tell you that the latter article was written by Mr Squibb Q.C., and the reason for the difference was that in the meantime the Court had been constituted to deal with the case of *Manchester Corporation v. The Manchester Palace of Varieties Ltd.*<sup>2</sup>

The facts of that case can be stated quite shortly. The defendant theatre had used as a decoration on the pelmet above its stage curtain and on its common seal a representation of the Arms granted to the Corporation in 1842. The Corporation called on

<sup>2</sup> 1955 p. 133.

the theatre to desist from this use but met with a refusal and the Corporation took steps which resulted in the Court of Chivalry being convened. The Court consisted of the Earl Marshal, who said nothing, and the Lord Chief Justice as his surrogate or deputy who did most of the talking.

You will already have guessed, Mr. President, that Counsel for the plaintiff Corporation was none other than our old friend Mr. G. D. Squibb and he succeeded in obtaining for his client an order requiring the theatre to cease displaying the Corporation's arms. Had the display been confined to the theatre pelmet it seems that the Court might not have made any order because that use was merely decorative. The use of the arms in the seal, however, was held to be a legitimate ground of complaint. Counsel for the theatre unsuccessfully argued that the Court had no jurisdiction by reason of the statutes of Richard II which I mentioned earlier, and by reason of certain earlier decisions.

I will turn now for a few moments to consider the position relating to these matters as it may be in Victoria. Those who have been in the Law Institute Library may have seen the grant of arms that was issued to the Institute a few years ago. I take this grant merely as an example of grants issued to persons or bodies in Victoria. It begins with greetings from the three Kings of Arms and recites that the President of the Institute has represented to the Earl Marshal that the Institute is a proper body to bear arms. It recites the date of the Institute's foundation, its incorporation, its objects and how it is managed. The grant also recites that the Institute is desirous of having armorial bearings assigned to it and has requested the Earl Marshal to issue a warrant for the grant of arms, which warrant was issued. It then goes on to say that the Kings of Arms, in pursuance of that warrant and by virtue of the letters patent of their several offices, grant unto the Law Institute of Victoria the arms following—and then it describes them—"to be borne and used forever hereafter by the Law Institute of Victoria on seals or otherwise according to the law of arms." The grant is executed by the three Kings of Arms.

How does it come about that their authority reaches as far as Melbourne? By virtue of an English Act of 1828 familiar to all law students as 9 Geo. IV c. 83, all laws and statutes in force in England at the time of the passing of that Act became applicable, in what is now Victoria, so far as they could reasonably be applied in the then circumstances of the colony. I am prepared

to suppose that the then existing law of arms might reasonably have then been applied here in Victoria.

The Crown as fountain of honour has delegated to the Kings of Arms power to make grants upon the warrant of the Earl Marshal. In the absence of anything to the contrary, and so far as I can find, neither the Commonwealth nor the State of Victoria has interfered, that power then would extend to Victoria. Just what the power is depends, I think, upon the letters patent issued to the Kings of Arms.

It is difficult to find these things but I have seen what purports to be a copy of the warrant for the preparation of letters patent relating to the appointment of Norroy King of Arms in 1894. There are words in it which cast some doubt on whether his authority extends to persons outside England—he is appointed “a King of Arms and a principal Herald of the North Parts of that part of our said United Kingdom of Great Britain and Ireland called England” but that may be only an indication of his title rather than a limitation of his jurisdiction. Certainly, it is usually said that Clarenceux King of Arms and Norroy and Ulster King of Arms have separate jurisdictions in England, one south and one north of the Trent respectively. The jurisdiction of Garter King of Arms is usually said to be not limited territorially. Halsbury Volume 29 specifically states that Garter has an Imperial jurisdiction extending to persons not domiciled in England but quotes no authority for this. I must confess that I have not established to my entire satisfaction that these officers do have authority extending to Victoria, but certainly they act as though they have and I will assume in the rest of what I have to say that they are acting lawfully.

Assume then that in 1967 the Melbourne City Council finds the Tivoli Theatre displaying on its pelmet and using on its seal a representation of the Arms of the City Council. What action could be taken by the Corporation to put an end to this display, apart from the obvious step of retaining Mr. Squibb Q.C.? In the absence of facts sufficient to found a common law action of “passing off” the claims could only be brought, I think, under the law of arms. The law of arms, I think, only protects arms which either have been used since time immemorial (which cannot be the case so far as the Melbourne City Council is concerned) or have been the subject of a grant from the Kings of Arms. The Melbourne City Council is one of the few municipalities in Victoria, I understand, to whom arms have been granted by the

Kings of Arms so that the Council would, at any rate, get to first base.

It is clear from various authorities that the common law Courts of England had no jurisdiction to deal with matters of that kind arising in England and I think it follows that the Supreme Court of the State of Victoria would have no jurisdiction to deal with my supposed case of the *Melbourne City Council v. Tivoli Circuit Australia Pty. Ltd.* I can see nothing in those sections of the Supreme Court Act defining the jurisdiction of the Court that provides to the contrary.

The only suggestion that I can offer is that the Corporation should proceed as did the Manchester Corporation in 1954—petition the Earl Marshal to award process against the theatre to appear and answer the Corporation's claim in the High Court of Chivalry. If the grant of arms by the Kings of Arms to a Victorian Corporation was a good one, I think the Court of Chivalry might well have jurisdiction over a dispute in relation to the arms granted. The fact that the Court's early jurisdiction frequently involved matters arising outside England would no doubt be put forward in reply to any defence based on the fact that the matter arose outside England. Perhaps the Earl Marshal would even appoint a surrogate to deal with the matter here in Melbourne.

Assuming that the Court did sit and make the order sought by the Corporation, the question then arises as to how its order could be enforced. In the Manchester case the Lord Chief Justice had doubts as to whether the decision given in that case could be enforced in England. I do not, therefore, propose to elaborate my speculations any further by considering whether a decision favourable to the Melbourne City Council in my imagined case would be any real use to the Council.

DR. PETER JONES: The blank shield, "plain white", which Judge Norris mentioned, would be blazoned by the single word "argent". This may well have been somebody's coat of arms, at a very early stage, for the earlier they were granted, the more simple the design.

The question concerning two serpents in the medical badge of the R.A.A.F. is the later form of caduceus introduced, it is said, in Roman times and later than the Greeks' single serpent entwined about Asklepios' staff. The double serpent is the symbol of Mercury with wings added for his function as a messenger. There is an interesting theory that the horned moon, the graphic

sign of Mercury, was mounted on a staff and decorated with ribands which became the tails of the serpents when their upper portions were made up from the horned moon.

Dr. Springthorpe has described the troubles the College of Psychiatrists has had with its motto, and the objections of the Officers of the College of Arms are difficult to understand. Successive Garter Principal Kings of Arms have interpreted their functions rather differently; some have been helpful and permissive—others more dictatorial. But even so, dissension concerning a motto must be most unusual for it does not constitute an ingredient in a coat of arms. Their usage is not restricted, for you can adopt someone else's motto or elect to have one, none or several. As a practical matter, a motto is usually inscribed on the scroll beneath the arms in the Letters Patent, but it is not immutable.

The extent to which a commercial enterprise can be prevented from depicting arms on such things as ash trays or book ends is in some doubt. In the Manchester case the Lord Chief Justice found no objection to the use of the arms on the Theatre's proscenium, only in the seal.

It would be impracticable to try to prevent persons using arms other than their own in such a way, and for example, souvenirs of Brighton with Brighton's arms thereon must be numerous and not subject to any feasible control.

Dr. Lawrence Stokes has asked about the pelican as the crest of the Royal Children's Hospital, and having been involved in the negotiations I am able to tell its story.

The pelican is the heraldic symbol of devotion to the young, based on an ornithological fallacy which is part of the charm of heraldry. There is a species of European stork which develops pink feathers on its breast during the nesting season. These were misinterpreted as drops of blood, from self-inflicted injuries, with which to feed her young. For reasons if any now lost, this was transferred to the pelican who is depicted on a nest "vulning" (wounding herself), to feed her nestlings. This design is known as "a pelican in her piety" and was the crest figure requested for the Hospital. The reply was that it had been granted in various forms and was not permissible. The next request was for a pelican plain and simple. This too was rejected because a pelican had been granted as the crest of the University of the West Indies. Further research showed that this was the Caribbean pelican (*pelecanus occidentalis*) not the distinctive Australian pelican (*p.*

*conspicillatus*). When this was pointed out to the College of Arms, Blumantle replied that the outline was the same and the distinctive colours were not always used, so it was still not allowable.

Finally we said if theirs is standing, may we have our's swimming or vice versa. The reply was, in effect, "Theirs is standing, you may have yours swimming"; so ours is "naiant".

I am grateful for Professor Derham's suggestion that the lady of Justice may be Decae, a goddess of Justice related to one of the Muses. I was unable to find any trace of her in my sources and wrote to Sir Charles Bellew, sometime Garter King of Arms. He wrote to say he too had been unable to find her origins, but he had a faint recollection that a Chief Justice in the 18th century had been granted such a figure as a supporter in his arms. This, too, he was unable to locate or confirm.

Mr. Balmford is indeed correct in his assumption that cases in the Court of Chivalry are brought by the Officers of the College or Arms. In earlier times the cases were brought on by the Officers of the College who received large sums as fees. Perhaps you will recall some details of the funeral of Sir Winston Churchill for which the College went to great lengths to provide funeral hatchments and other insignia for the lying-in-State. These included the original grants and decorations borne by Spencer and Churchill. They were very beautiful and several articles have been written about them.

Even before the College of Arms was founded there were "visitations", visits by Heralds who travelled the country to hear claims, determine rights by succession, and complaints concerning embellishments on buildings and the right to bear arms. They were inquisitorial proceedings because the verdict if unfavourable, was immediately carried into effect—for example by taking hammers to windows, carvings, etcetera, to destroy the arms if disallowed.

Today a grant of arms begins at £250 sterling for a corporate body, 85 guineas more for supporters (if granted and subject to a second petition) and another 34 guineas for a badge; all told approximately \$850.

A legal man well known to you, Menzies by name, was recently made a Knight of the Thistle, a title with arms at the discretion of the Lord Lyon, the head of the independent heraldic Court for Scotland, and his fees are much less.