

Fly on the Wall



Petronius is quoted as saying 'primus in orbe deos fecit timor.' This, according to Lewis and Short, means 'It was fear that first brought gods into the world.' Recent atheistic bestsellers have apparently been inspired by Petronius. Fly's daily bread is not metaphysics. Yet he has his own gods in his chosen sphere, and they are, indeed, if not created by, then certainly wisely approached with, fear. They are, of course, Those-Fly-Must-Endeavour-to-Persuade. Or, if the newspapers are anything to go by, Those-the-Government-Wishes-to-Control. Yes, my learned friends, they are the judges.

It's difficult for Fly to talk about them. Fear is everywhere. After all, rule number one in Fly's chosen sphere is that they are the gods, and what they say is law. If Fly had known this during his days at varsity, he would have realised that those American realists had a thing or two going. Kelsen and Dworkin tend to forget that, in practice, the question 'what is the law' is irrelevant and useless to anybody who needs to know what the law is; far more useful is insight into answers to



the question 'what is the judge likely to say the law is here?'

Anyway. Olympus, like any mountain or community, is peopled with what Tacitus called elegant variety. (Fly has been digging around in his classics works and needs to demonstrate that at some point.) This is the last resort of all lawyers – don't blame me; don't blame our case; don't blame your wickedness – blame the judge, and fate for allocating him to us. Or her, of course.

Hence many of these deities tend, at some time or other, by some lawyer or other, to be referred to as 'Old Necessity.' Because Necessity knows no law.

Funny though that may be (or was the first time someone said it), it does not really help the fresh Young'un in approaching the temple on any given occasion. Here, then, due allowance being made for treading

with prudent dollops of Fear, accompanied by its first cousin, Respect, is Fly's guide to the Young'un on whom he or she may encounter:

You may be from Venus; I am from Jupiter

This is not really a Venus-Mars thing (like 'what is a pretty little thing like you doing in a court like this?'), although that does still sometimes happen. It's more a flash of realisation, at some crucial point during the persuading exercise, that planetary systems divide your co-ordinates from those of Him-Who-Must-be-Persuaded. 'But, Mr Fly, isn't this really all a matter of determining whether the exceptio non adimpleti contractus ought to apply here?' If your understanding of the matter entailed a complete absence of any speck of relevance for any doctrine remotely like the exceptio, you have reached a critical solar-system moment. Time for very quick thinking. You are on Venus; he is on Jupiter. Ok. First possibility: you should be on Jupiter; get off Venus. Second: You need somehow or other to get him to Venus. Third: Jupiter is actually Venus, if you look at it properly. Many tend instinctively to go for Option 3. Petronius would say that's a bad idea. Best advice: either get to Jupiter as quickly as you can, or try your hardest to make Venus an attraction. If you are at cross-purposes, don't stay there.

Prima Facie you are talking Drivel

Sometimes you will find your alter pars not being given much of an audi. 'Are you seriously considering advancing what prima facie appears to be the most ludicrous submission that nature hath ever suffered to issue from the lips of counsel?' tends to create a critical moment again. First, ask yourself whether this is a solar-system moment, and refer to discussion above if yes. Most important, however, is immediately deciding (here accuracy is key) how decisive the relevant ludicrous submission is to the case you have been briefed to advance. If decisive, then you hunker down and go something like 'Yes, My Lord, but, with your Lordship's leave, I intend to demonstrate that the submission is in fact, albeit at first sight ambitious, thoroughly entrenched by centuries of precedent endorsed to the highest level of courts in this country.' If not, then something like 'I must apologise, my Lord, for retaining that line in my heads of argument, as it cannot really be advanced with any degree of conscience, with respect My Lord.'

I am constant as the North Star, for Always I am Granite

This member of the Pantheon would have appeared to be asleep but for the intense stare. He or she is very much awake. And listening. And apparently thinking. But what? You wished this were a poker partner in a hustling scheme, as bluffing would be a breeze. A nod, some three hours into your address, may mean anything from 'yes, I have now heard about as much of this nonsense as any human being can stand,' to 'of course! How could it be any different?' Advice is very difficult here. One sure thing is to say enough, in case you need to, and to prepare for a long day. Maybe you could try skilfully to move to an interrogative tone, 'I could, if your Lordship wished to hear submissions on that issue, demonstrate how a line by line reading of the 900 page affidavit, with appropriate comments, clarifies this point?' Bear in mind that, if that kind of thing does not work, lines of retreat are often closed off.

The Scrumhalf

This tends to be, but is not always, more a matter of mood than of person (or god). He or she Does Not Want to Decide the Issues. Respondents who want time love this. They move quickly to demonstrating how a decision on the issues in this matter would require reading six weeks' worth of law and the division of the allegations in the affidavits into fourteen columns, each under a very important heading. You may, if the ball is not to be passed, but to be run with, wish to demonstrate how it is purely coincidental that the papers comprise twelve lever-arch files including expert evidence on the law of the ancient Mayans; since proper determination of the issues requires nothing more than deciding, with reference to paragraph 8 of the founding affidavit and paragraph 10 of the answer, whether there was a contract or not. Some tell-tale sign that the fly-half is falling back for that drop-kick include early questions asked with some anxiety such as 'Mr Fly, can you tell me, if I were to rule in your favour on this last question, would it then really be necessary for me to consider all the disputes about the contract?' Here, Fly should warn the Young'un that, although it sometimes helps gleefully to assist in sending the ball far into the grand-stand, the matter often requires showing even the most reluctant scrumhalf that there's a gap between flanker and eighth man that is there for the taking.