



Images of Law

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In this essay, I offer some initial thoughts about what may be roughly called a visual history of law or, more precisely, a history of the visual in law. To put it simply, I am interested to turn to what may be generally called early modern “images of law” – broadly, constellations of artefacts to do with law – with the purpose of taking them seriously. What may those images suggest if taken on their own terms rather than as merely impassive historical evidence of the particular process of conceiving law intellectually or, alternatively, as codes for certain pre-existing messages to be subsequently decoded? In order to answer this question, I start from a particular and relatively little-known picture, moving on to a related literary tract, and then on again to a few of the more familiar early modern visual representations of justice. The point of this exercise is simply to highlight certain alternative ways of approaching artefacts to do with law that may add to those that may come more readily to mind – that is, as objects illustrating or demonstrating the long-standing process of modernisation and written rationalisation of law after the Middle Ages. On approaching those artefacts differently, we discover that they often resist our analyses or interpretations forcing us to engage with them in interesting ways.

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‘Pour savoir, il faut s’imaginer’
Georges Didi-Huberman

‘Injustice is clear, justice is obscure’
Alain Badiou

1. In the following pages, I would like to offer some initial thoughts about what may be roughly called a visual history of law or, more precisely, a history of the visual in law.

To put it simply, I am interested in this essay to turn to what may be generally called early modern “images of law” – broadly, constellations of artefacts to do with law – with the purpose of taking them seriously. What may those images suggest if taken on their own terms rather than as merely “passive” historical evidence of the particular process of conceiving law intellectually or, alternatively, as codes for certain pre-existing messages to be subsequently decoded?

To be credible, a visual history such as the one I wish to consider here would need to start somewhere within what may be called the “visual archive”, as opposed to the “paper archive”. Accordingly, in this paper, I will begin by discussing a specific picture found in London today.

This is not a picture by a particularly famous painter. Nor, one might be justified to observe, is it an especially memorable one to care for, as a picture. Fame and quality, however, are not what interests me on this occasion. Instead, the picture is interesting in so far as it introduces us to an important if half-forgotten early modern debate concerning the difficult question how to portray justice at difficult times. Not only that but, as an image, the picture comes across as something rather more perplexing, and it is mainly around that innermost core that I wish to reflect in the earlier part of the paper.

However, we will not stop at that one picture. Instead, we will also review a different artefact – this time, a small literary tract that is nevertheless related to the picture – as well as some of the earliest, more explicit, and therefore better-known visual representations of justice in early modern Europe. Many other artefacts to do with law could be flagged up for discussion, but, for present purposes, the point of starting from a particular and relatively little-known picture, moving on to a related literary tract, and then on again to a few of the more familiar early modern visual representations of justice, is certainly not to review or to propose a classification of those or any other artefacts in any way. Rather, the aim is simply to highlight alternative ways of approaching artefacts to do with law that may add to those that may come more readily to mind – that is, as objects illustrating or demonstrating the long-standing process of modernisation and written rationalisation of law after the Middle Ages.

In one approach, we discover that the artefacts in question may compel us to confront them rather than merely study them or read them. In another case, those artefacts may act with us in unexpected ways. Either way, such artefacts often resist our analyses or interpretations forcing us to engage with them in interesting ways.

I. IN SEARCH OF JUSTICE: LONDON, *circa* 2019



Image 1. Lorenzo Costa - Portrait of Battista Fiera (circa 1507-1508). Source: Wikimedia Commons

2. On the northern wall of Room 6 in the National Gallery in London hangs a picture showing a man in an elegant Renaissance garb (Image 1). The man seems to be sat down, probably within the folds of an armchair, as he is being skilfully portrayed. He appears relaxed and at ease with himself. He smiles almost imperceptibly, as if slightly bemused, perhaps because of the attention he is getting, or because of something the artist, who is there to depict him, is telling him or doing. He wears a black hat, bright orange and floppy long hair, and a purple dress over a white shirt. Nothing precisely seems to be on his mind besides, perhaps, the question how long it will be until the job is done.

Such reading, of course, reflects what we have learned of the Renaissance since Jacob Burckhardt, Jules Michelet, John Ruskin, Robert Browning, and many other 19th century scholars lovingly and beautifully defined that period of time as the age of a new born 'individualism' and unfolding 'modernity'.¹

In the Middle Ages, human consciousness... lay dreaming or half-awake beneath a common veil... Man was conscious of himself only as a member of a race, people, party, family, or corporation – only through some general category... [In

¹ Burckhardt, *Civilisation of the Renaissance in Italy* (1860).

Renaissance Italy, however] this veil first melted into air... man became a spiritual individual, and recognised himself as such.²

Nowhere would we expect the newly born individualism to show more than in the Renaissance portrait. Indeed, it was precisely at that moment that, John Wyndham Pope-Hennessy declared, the modern portrait was born reflecting a renewed interest in human personality.³ While this vision of the Renaissance man, as exemplified by the portrait, may have been since complicated by those who have alerted us to the wider role of language and its diffracting effects on personal identity,⁴ scrutinising portraits in search of their ‘inward truth’,⁵ remains, it is fair to recognise, the most common way of approaching such works of art. We continue, in spite of all, to be interested in the way Renaissance men and women understood themselves, for example, in the value they placed on inwardness⁶ and in the importance they gave to sincerity and prudence as ways of being that allow to connect thoughts and feelings to words and actions.⁷

Yet here, the picture now in the National Gallery in London interests me less for what it may tell us than for what it seems to *do*. Indeed, something startling may be noticed when one stops in front of it in Room 6. What could that be? Surprisingly, perhaps, it is not easy to provide a straightforward answer to that question.

At first, the picture will come across as a fine period portrait like many other ones that circulate today in art galleries and market squares around the world. The composition, too, suggests something relatively straightforward that is both minimal and exemplary. As a portrait, it is minimal, in so far as, for example, there is nothing in the background suggesting anything about the place where the sitter might come from – whether he lives and moves in an urban environment or in the countryside; whether he spends his time alone or together with other people; what his daily occupation might be; and so on. Even the figure of the sitter is not shown in its fullness, but only half way up. We cannot tell, for example, whether the man was short or tall, small or large, ill or healthy. As a genre, however, the composition can be safely taken to exemplify the purported concern of the age for identity and difference, rather than sameness.⁸ The overall effect of both those aspects of the composition – the way the sitter is portrayed and the total absence of context – is to induce viewers to focus directly on the sitter as represented rather than the man himself. Nevertheless, neither the upper body nor even

² Burckhardt cit.

³ Pope-Hennessy, *The Portrait in the Renaissance* (1966). For an imaginative take on this perennially fascinating topic, see Loh, ‘Renaissance Faciality’, in *Oxford Art Journal* 32.3 (2009) 341 – 363.

⁴ Greenblatt, *Renaissance Self-fashioning from More to Shakespeare* (1980).

⁵ Summers, *The Judgement of Sense: Renaissance Naturalism and the Rise of Aesthetics* (1987). On the ideological work making portraits possible, see Berger, ‘Fiction of the pose: Facing the Gaze of Early Modern Portraiture’, *Representations* (1994), 87 – 120. On the evolving status of the portrait, Wilson, ‘The Renaissance Portrait. From Resemblance to Representation’, J J Martin (ed.), *The Renaissance World*.

⁶ Eisaman Maus, *Inwardness and Theater in the English Renaissance* (1995).

⁷ Martin, *Myths of the Renaissance Individualism* (2004).

⁸ Belting, *Likeness and Presence: A History of the Image before the Era of Art* (1994).

the head, turned slightly over to the left and onto the unseen artist who is at work to portray him, appears to signal anything particularly unusual.

Put it otherwise, there seems to be nothing explicit about the sitter's head, posture, or background, that is likely to produce the strange sense of surprise that can be experienced in front of the picture, as it appears before our eyes in the National Gallery. Still, the feeling is there, and it is far from being an unheard-of experience.

Let us return to the portrait, then, and consider this time the facial expression worn by the sitter. Again, there seems to be nothing particularly unusual in it. The sitter seems to be perfectly relaxed if intent on holding himself to the assigned posture. Notice, however, the eyes. Is there not something slightly impatient or perhaps a touch defiant in them when, by contrast, the figure as a whole seems to project a rather calmer sense of self-confident, unhurried outlook on life? The apparent incongruity between the barely perceptible tension found in the eyes and the manifest composure of the remaining elements of the picture is intriguing. What is it really going on here, one might ask? Is the sitter at ease, as he seems to be, or is he in trouble? Is he collected and focused, or is he distracted? Is he flattered by the attention he is receiving, or is he suspicious of it? Does he want to be portrayed in that way, or does he not? In short, is the man in the picture *accepting* or is he *rejecting* the portrait being made of him, mocking the exercise as he subjects himself to it? The eyes in a portrait are only a small detail, of course. However, we know that details matter more than we might not be prepared to concede at first, especially in works of art such as this one.⁹

Still, nothing is guaranteed here. No matter how closely we might look at the picture, the eyes of the man in the picture come across as something that is simply impossible to decipher and impossible to decide once and for all. This may well be one of the reasons why, in turn, the plight of the man in the picture is not as certain as one may have initially believed it to be, based on the apparent sense of graceful composure conveyed by the figure in front of us. That is also why what the narrative of the picture seems to tell us cannot be, alone, what had actually troubled us in the first place.

There is no doubt, then, that the picture hanging today in the National Gallery in London is an enigmatic picture generating an unexpected tension. The sitter seems both to solicit our attention and, at the same time, to elude us. As he does so, we are left to wonder whether the story the picture seems to tell us is one of tranquillity or restlessness, confidence or doubt. What else is happening here?

Let us turn back to the portrait one last time, and take a different tack. As noticed, the apparent tension between the sitter's gaze and the rest of the composition tells something about the man that we cannot fully comprehend. In fact, it is quite possible that the sitter may not be as self-confident or self-absorbed as one may have initially thought, even expected him to be, and the circumstances of our reading may have contributed to suggest. On further consideration, however, the uncertainty in the narrative appears to be associated to something else that is rather more troubling and that may be quite independent of the narrative itself.

⁹ Arasse, *Le détail: pour une histoire rapprochée de la peinture* (Paris: Flammarion, 2009).

3. Let us now pause for a moment. Is there not something odd going on in the picture? What may that be? Is there not something in it that seems to *exceed* the picture itself, as it were, something that seems to be “opening it up” to its viewer allowing it to reach *out* of itself, out of its material constraints, *and* toward the world? Once again, but in a different way, it is difficult to pin-point exactly what this particular and almost imperceptible movement within the picture may be really about. It is almost as if something is *forcing* us to pay attention to the picture, at a minimum, forcing us to investigate it in more detail, firstly, who the man in the picture might actually be, when and where he lived, and what was his actual story, bringing him out, as it were, of the shadows.

In other words, the picture seems to *want* something. This demand that is placed on the viewer should not be dismissed as a fugitive impression of an unprepared or naïf passer-by. All to the contrary, a significant line of critics from Aby Warburg to Gottfried Boehm to W.J.T. Mitchell (and beyond) have indeed repeatedly suggested that pictures may, in fact, “want” something of their viewers that often goes unnoticed and, yet, it is important to recognise.¹⁰ Indeed, something within our picture seems to testify to an odd kind of twist out of the picture itself, as it were, and towards the viewers.

Let me suggest here a possible inroad into what may be somewhat troubling within the picture as we come across it in the National Gallery in London.

Consider again the background of the man in the picture. As noticed, the background is presented as an empty *black* space where any further information about the sitter is explicitly denied to the viewer. At first, this may come across as nothing more than a black background.¹¹ On one level, such background, one might argue, might amount to a rather straightforward stylistic choice by the relevant artist who, presumably, would have wished to put the sitter’s head and upper body in greater relief. Close-up, however, one seems to be confronted with something quite different. The black background, close-up, may now appear to be *less* of a surface against which the profile of the sitter can be better appreciated *than* a deeper sort of darkness within which the man in the picture seems to be moving, and out of which, one reckons, he seems to be trying to emerge.

What may that darkness be about, we are now bound to ask? A number of different answers may come to mind. Symbolically, the darkness could be, for example, something to do with a private, existential blackness, a kind of *melancholia* that we know was a characteristic of the age, and that the painter may have intended to associate to their sitter, or may have unintentionally projected upon him.¹² Alternatively, the darkness could be something to do, for example, with a certain lack of social recognition the

¹⁰ Warburg, *Gesammelte Schriften* (1932); Boehm, *Was ist ein Bild?* (1994); Mitchell, *Picture Theory* (1994).

¹¹ For a recent take on this theme, see Badiou, *Le noir. Éclats d’une non-couleur* (2016).

¹² On melancholia in sixteenth century art, see Panofsky and Saxl, *Dürers “Melencolia: Eine quellen-und typengeschichtliche Untersuchung* (1923); and Klibansky, Panofsky, and Saxl, *Saturn and Melancholy: Studies in the History of Natural Philosophy, Religion, and Art* (1964). For an interesting examination of the differences between northern European and Italian attitudes to melancholia, see Britton, ‘Mio malinconico, o vero... mio pazzo’: Michelangelo, Vasari, and the Problem of Artists’ Melancholy in Sixteenth-Century Italy’, *Sixteenth Century Journal* XXXIV/3 (2003), 653 ff.

painter probably knew to have affected his client, and so wished to signal in his portrait.¹³

Nevertheless, could the black background in the picture be not just an intentional or unintentional pictorial statement about a man enfolded in existential shadows, nor simply a statement about somebody that had been overlooked or misjudged as a man of his time, a man of the Renaissance? Could there be something *more* to the black in the picture that we may simply not normally be able to see? To ask this sort of questions is emphatically *not* to deny that, on one level, the portrait today on show in London may speak of a self-confident and unhurried man in an elegant Renaissance garb. That is probably accurate enough as a reading. Nor it is to deny that the seemingly restless eyes would seem to be at odds with the gravity of the moment, producing an unexpected contrast in the picture that would be quite independent of the apparent narrative and might be put down to the picture's overall structure. Instead, the point is that, over and above all that, the picture seems, in fact, to *resist* us, as an image, in unexpected ways.

Put it differently, a looming *opacity* seems to threaten the legitimacy, and the transparent and straightforward quality, of the picture's narrative. On the other hand, the opacity within the image does not leave us unmoved. All to the contrary, it demands us to take it seriously and possibly to revise our existing thoughts and knowledge (as casual passers-by, critics, historians, etc.) of the world the picture alludes to, however indirectly. The picture, in other words, is as disorienting (we do not know what to make of the various incongruities associated with its narrative) *and* alarming (it seems as if the darkness within the picture could spill over at any time), as it is, on first sight, corroborating and even exhilarating. Questions now arise that we may have not expected we might need to raise in front of the portrait – questions that, again, seem to be quite independent of its apparent pictorial narrative and the knowledge we may or we may not have had of it. Ultimately, they could query the received doxa of the Renaissance as a period of positive creative impetus given to the peaceful if somewhat eccentric study of the classical world and of the figurative arts.¹⁴

For one, then, the darkness within the picture could induce us to reconsider (for example) the enigmatic smile of the sitter. Is it because he is amused, or irritated, or is it because he is concealing, beneath the smile, something that may or may not be specific to him and that, so far, we may or may not have realised? In that case, what may something like that smile be concealing that we, and perhaps even the sitter, might be unable to realise?

Secondly, what may be the point of the portrait? Is it to assuage, for a fee, the sitter's own vanity (as one may suspect)? Is it in exchange of services rendered? Is it for the man to be noticed, presumably in spite of the dislike, or indifference, of his patrons, or of the ruling prince and his acolytes? Or is it, in addition or in alternative to that,

¹³ See below, s 4.

¹⁴ Beside Burckhardt, cit., see Batkin, *Ital'janske gumanisty: stil' žizni i stil' myšlenija* (1978). The image of Renaissance and Humanism as traditionally held by historians is rapidly changing. See Ciliberti, *Rinascimento* (2015). On the "myth" of the Renaissance, see Burke, *The Renaissance* (1987; 1997), esp. ch. 1.

something like a “mark of the age”, something that would need to be carefully considered, and, if possible, considered on its own terms?

Lastly, if a tense opacity should crop up in some of the artefacts of the period (such as this one), thus somehow belying their initial apparent message, what *force* may such objects be found to project that, so far, may have gone unnoticed?

In sum, is the picture there to do merely what we may have expected it to do and what it seems to be doing on first approach (that is, portraying a particular individual; providing pictorial evidence of his existence; confirming our expectations about a specific historical period; etc)? Or is it, at the same time, simulating or dissimulating something else, something unexpected that, to paraphrase Paul Ricoeur, *may set us seeing and thinking* in a different way, perhaps even clashing with the received knowledge of the times? In the latter case, what may this perplexing opacity do that the portrait’s literal and pictorial languages conceal, calling for attention? How may the people of the time have responded to that? Would they have merely read it to signify what it seems to signify – in my examples, melancholia or social rejection – or, in alternative or in addition to it, may they have responded otherwise to the picture, for example, by starting to notice (slowly, at first) that it is possible to overcome the tensions and obscurities of the moment, after all? Which way may they have responded to the mark of the age?

4. The unseen artist who, at the time, would have been in front of the man in the picture so as to be able to portray him, was Lorenzo Costa (1460 – 1535), a then relatively well-known painter from the Italian city of Ferrara. It is important to identify the unseen artist, for what we see of the sitter today, we see it, partly, through his eyes.¹⁵

Costa’s family had left Ferrara for Bologna in 1483, in all likelihood, in order to escape the consequences of a war against Venice and a plague that, in 1482, had killed 12.000 people. In Bologna, Costa had begun to develop his own distinctive style by freeing himself of the artistic influences of his native Ferrara and becoming, together with Francesco Francia, a key player in the splendid cultural scene promoted by the Bentivoglio family – at the expenses, Machiavelli notes, of more strictly political endeavours that might have spared them from becoming an easy prey of the ambitions of others. Indeed, the subsequent descent of Charles VIII upon the Bologna broke the spell somewhat, living behind not only the infamous “Gallic disease” (*sjfilide*) but also a meandering sense of uncertainty and doom, within and beyond the relatively protected environment of Bentivoglio court.¹⁶

At around the time of the picture, Lorenzo Costa had just had the opportunity of a lifetime. Having moved to Mantua and succeeded in persuading the all-powerful Marchioness Isabella d’Este to let him make a portrait (*retracto*) of her, Costa had been asked to replace the great Master Andrea Mantegna at the court of Francesco Gonzaga, a year after the Master’s death on 13 September 1506.¹⁷

¹⁵ See Negro e Roio, *Lorenzo Costa* (Artioli: 2001).

¹⁶ *Ibidem*, p 16.

¹⁷ The precise date of the portrait is uncertain. While it has been always thought to have been composed in Mantua around 1510, it is just possible that it was in fact painted a few years earlier

We do not know for certain the reasons why Costa had agreed to produce the portrait that is today on view in London. At one point, though, the artist had become ill, suffering from the “Gallic disease”. It is therefore not impossible that the picture might be intended as a gift to, or perhaps as payment in exchange for services rendered by, the man whose figure he had now sat down to portray, and to whom we now need to return.¹⁸

Until now, not much attention has been paid to the sitter in the picture, and it is now time to turn to him in more detail. The Jesuit Saverio Bettinelli (1718 – 1808) tells us that Battista Fiera (1465 – 1540), the man portrayed in the picture, was a humanist, an erudite man (*uomo dottissimo*) with a passion for medicine, poetry, philosophy, and theology.¹⁹ Relatively well-known and prosperous enough as a physician, Fiera, however, had not been as successful as a humanist. Although Fiera’s first essay, entitled *Coena* (The Supper), had been published in 1490 by E. Silber in Rome, where he had moved from his native Mantua, his work on the whole did not encounter at home the favour it found abroad, where it was published in 1508 (Paris), in 1522 (Basle), and in 1530 and then again in 1571 (Strasbourg).²⁰ Overlooked at home – Bettinelli himself complained that Fiera wrote much too much, had an ‘enigmatic style’ (*stile enigmatico*), and disseminated his inscriptions on anything he might help to set up²¹ – and soon forgotten abroad, today Fiera nevertheless offers a significant clue into a key moment of the legal history of Europe *circa* 1500.

What did Battista Fiera do – not by design, not single-handedly, and yet crucially – to help legal history come along the way it did? The answer given by those few who have ever taken any notice of this rather obscure humanist is that Fiera is the author of the earliest known literary tract staging the attempt to portray justice visually.²²

However, may the tract not be approached in a different way? We often take literature and visual art to illustrate prior ideas or, else, to support or demonstrate existing or newly found historical evidence patiently dug out of the “paper archive”.

However, I wonder whether widening the process by taking certain objects seriously may not offer fresh and different take on the history we already know approaching, by contrast, something not too dissimilar from a history of the “tradition of the oppressed” (*Tradition der Unterdrückten*), in Walter Benjamin’s parlance, or even from a history of the “blotted-out”.²³

(1507-8). See Romano, ‘Verso la maniera moderna: da Mantegna a Raffaello’, *Storia dell’arte italiana*, II/2 (Torino: 1981); Martineau, *Splendours of the Gonzaga* (London – Milano: 1981).

¹⁸ Martineau cit. At one point, however, Costa wrote a letter to the Gonzaga prince referring to one Antonio da Grato as his physician. See Brown-Lorenzoni, ‘Lorenzo Costa in Mantua. Five Autograph Letters’, *L’Arte*, 11 -12 (1970).

¹⁹ Bettinelli, *Delle lettere e delle arti mantovane* (Mantova, 1774), 54, 59.

²⁰ Asor Rosa, ‘Fiera, Battista’, *Dizionario Biografico degli Italiani* (1997), vol. 47, 415 - 416. In Italy, the *Coena* will be republished only in 1515 and in 1537, in collective works edited by Fiera himself, and then in 1649, edited by Carlo Avanzi da Rovigo.

²¹ Bettinelli *cit.*

²² Below, s 6.

²³ Benjamin, *Über den Begriff der Geschichte*, in *Gesammelte Schriften*, vol 1, n 2, 701; “Theses on the Philosophy of History”, *Illuminations* (Pimlico, 1999), 245 – 255. Stramignoni, ‘At the Margins of the

More specifically, is there something to be gained from treating Fiera's tract as another surviving attempt to voice (this time, in the literary rather than pictorial form, like in the previous case of the portrait now in the National Gallery in London) a particular effort of the imagination not yet formalised or, else, revised in intellectual terms, and that would have been a *collective* and so *dispersed* effort to boot?

In other words, may Fiera's tract be approached as something other than the effort of imagining justice literally or pictorially, that is, without reducing it to mere conceptual, hard, or textual evidence of that effort? May such a tract be part of something like a more fundamental "dynamic experience"? In that case, may *both* the tract *and* (some) early modern visual representations of justice not be approached as all traces of something transitory, namely, some sort of *multiple experience of law* that, on the one hand, no longer perfectly corresponds to the now declining natural justice of the Judeo-Christian tradition, and, on the other hand, has not yet become the uniform law of modernity? In short, might those artefacts not be understood not only in the normal way, but, also, as part of something else, in particular, a radically multiple effort of imagination that, *still undecided*, would therefore carry within itself the full force of the tension produced by the passage from lower to higher concerns, from the past to the future, from disappointment to hope, otherwise so characteristic of those difficult times? The precise status of such startling transformation would require further clarification.²⁴ Additionally, the question would arise whether our modern artefacts to do with law might still carry the same ancient force, or not.



Image 2. Antonio Pollainolo – *Battle of the Nudes* (circa 1489). Source: Wikimedia Commons

History of English Law: The Institutional, the Socio-Political, and the "Blotted-out", *Legal Studies* (2002).

²⁴ See, for example, Wortham, *Hope* (2020).

To think of Fiera's role in the history of Europe in the terms in which it is usually put, then, may be somewhat reductive. Undoubtedly, Fiera's role may not be immediately evident or compelling, for he was neither a man of great power nor a man of particular influence. That, though, was simply not the point of Humanism, as Leonid Batkin reminds us in what remains one of the best classic essays on the subject.²⁵ Instead, Fiera was a physician and a humanist, that is, someone passionate about *antiquitas* and the rich and open-ended vision of life that, for him as for countless other humanists like him, the ancient world signified and supported. Indeed, Fiera himself would have probably found it hard to imagine that, one day, his work may be given some of the recognition it did not achieve in his lifetime. And nor, on the other hand, is there any evidence to suggest that the Gonzaga prince – an austere, even ascetic *condottiero* – would have taken too much notice of, or have any direct personal influence on, the life and work of his erudite yet somewhat eccentric and cryptic subject.²⁶ Neither the man of letters nor the prince, in other words, could be convincingly described as *key* players in the collective effort of imagining justice in Europe after the Middle Ages. That is not to say, however, that Fiera, and his literary tract, did not play an invaluable role in that process – beginning to unfold, I will now suggest, upon his chance encounter, one day, with Andrea Mantegna (1431 – 1506), working in Rome at the time.

For we know that the little-known humanist and the great Master, who would shortly return to Mantua after unsuccessfully attempting to make his mark in Rome, soon became close friends.²⁷

5. Those were increasingly difficult times in Italy, and Mantegna, whose place the artist of the picture found today in London went on to occupy before undertaking to portray Battista Fiera, had been feeling the crisis down to his bones. The republican ideal – democracy as a form of government – seemed to be in serious danger. In 1469, Lorenzo de' Medici, the son of Piero de' Medici and grandchild of Cosimo de' Medici, had taken over Florence. Soon to be known as Lorenzo *il Magnifico*, the new ruler's personal demeanour and political ambitions turned out to be a great deal different from the sort of leader one might have expected, based on the ideals of earlier years. In Rome, things did not look any better. The conclave of 1484 had been marked by bitter controversies and violent unrest in the streets, and the new Genoese Pope Innocent VIII had soon proved as contentious as his own elevation to the throne of St Peter had already been – not least for being key to the decision by Charles VIII of France to

²⁵ Batkin, *Ital'janske gumanisty* cit.

²⁶ In fact, it seems that, while in Mantua, Fiera's incessant work was still directed by the hope of being recognised in Rome (rather than elsewhere), where, meanwhile, Giovanni di Lorenzo de' Medici, the second son of Lorenzo de' Medici, the ruler of Florence, had become pope as Leon X (from 1513 to his death in 1521). The pope, however, did not like the twelve *Hymni Divini* the physician and humanist dedicated to him, as Fiera himself acknowledged in an epigram contained in the 1537 edition of his works. See Asor Rosa, 'Fiera' cit.

²⁷ Asor Rosa, 'Fiera' cit.

descend on Naples and carry out the fateful Italian war of 1494-1498.²⁸ Beyond Rome, absolutism had been gaining grounds over feudalism, political centralisation within states had triggered complex processes of legal uniformization, and the spreading technology of printing had begun to stabilise the law in wholly unexpected and unpredictable ways.²⁹

Mantegna's life had been long and successful. In 1487, only a few years before the start of the war, Mantegna had been called by the Pope to decorate his private chapel in the *Palazzo del Belvedere* in the Vatican. This was a prestigious commission – and Francesco Gonzaga had agreed to it, knowing that Mantegna would have made a fine ambassador for his city and sophisticated cultural programme. However, the great Master spent in Rome what turned out to be two rather unhappy years. He, of course, had fallen deeply in love with antiquity ever since his early apprenticeship in the atelier of Francesco Squarcione – where he had discovered a vast collection of ancient and modern sculptures, medallions, and drawings. However, the sojourn in Rome turned out to have little apparent impact on his work, although it may have intensified his somewhat melancholic disposition, having to submit to a demanding patron, falling ill several times, and having to be a witness to much corruption and civic strife. Modern Rome, it seemed, had no longer very much in common with the luminous city of antiquity.

The chapel and its frescoes in the *Belvedere* have since disappeared, adding mystery to this story, but for the moment we can leave that particular development aside, and consider instead something else. Vasari recounts how Mantegna had worked on those walls with 'diligence and love' (*con diligenza e con amore*), and – one contemporary adds – he had drawn many fine scenes, including images of the cardinal virtues and, decisively for us, the image of justice herself.

What, then, may have justice looked like to Mantegna? How may he have imagined it? To which extent did Mantegna's image of justice conform to the accepted conventions of the time, or to his own later rendition – on the top right corner of his *Trionfo della Virtù*, which he was to compose around 1502? Alternatively, did it amount perhaps to a new invention, an image never seen before, based on a different perception of that most crucial of relationships, that between the tangible and the intangible, the artefact and its "world"?

These are intriguing questions, for a number of different reasons, not least the fact that Mantegna would have discussed his ideas with the Pope, the head of the Church and one of the most powerful monarchs in Europe. Yet, we simply do not know what Mantegna's justice may have looked like in the chapel of the *Belvedere*. The papal walls,

²⁸ Italy was to remain a hotly contested theatre of war until 1559. Several Italian princes sought to unite the peninsula by fighting one another off, while France and the Germanic Empire attempted to drive one another out by turning the turmoil to their own advantage. For their part, Spain was keen on protecting its own long-standing interests in the South of Italy by extending its influence to the North, while the protestant princes of Northern Europe and the Turks joined in at a later stage in what were later to be known as the "Italian wars". See Mallet and Shaw, *The Italian Wars: 1494 – 1559* (2012).

²⁹ See generally G Ruggiero, *The Renaissance in Italy: A Social and Cultural History of the Rinascimento* (2014); Piano Mortari, *Gli inizi del diritto moderno in Europa* (1982).

the great Master's own image of justice, and indeed all of those who were able to see it for themselves, have since all but vanished.

6. What we *do* know, however, is that in 1515, just a few years *after* the great Master's death, the sitter in the portrait now hanging in London confided to a small book entitled *De Iustitia pingenda* a dialogue between Mantegna, whom he had known so well, and Momus, the mythological "child of the Night", a familiar voice from antiquity.³⁰ This is an unassuming tract, like many others of the time. Yet, it is also a crucially interesting dialogue. In that strange, distant conversation between a deceased artist and a creature of the darkness that had since reclaimed him, the Master wonders just how one might possibly go about the impossible job of portraying justice.³¹

The question was not merely academic. At the start of the 16th century, justice had to be reimaged within the context of a tumultuous social and political situation marked by the rapid disintegration of all that had been hoped for, and created before.

First, the status of our literary tract. The conversation between Mantegna, a historical figure, and Momus, a mythological one, takes place in Rome, near the church of San Crisogono. This was a real site next to a real church along a real river, in Rome, a real city. Fiction and reality, then, mix immediately and inextricably together in Fiera's tract – written, quite literally, in the shadows of power. As a result, the status of the resulting conversation is, like the portrait of its author hanging today in the National Gallery in London, a troubling one, for it is somewhat uncertain, and raising more questions than it seems able to answer.

We treat the pamphlet as pure fiction, an entirely invented exchange, a *scherzo*, a figment so to speak of Fiera's imagination, something that has never actually taken place. However, might this not be evidence, accurate or approximate, of a real dialogue actually occurred when Mantegna was still alive, perhaps the record of an exchange with a perplexed or sceptical friend to which Fiera, the physician and humanist, would have been something of an accidental witness? Or might the physician have been privy to some sort of private rumbling by the great Master that he could not possibly have openly consigned to a diary or any other document, and attributed to him, without the risk of incurring in the wrath of the Pope, or the Mantuan prince, or indeed anybody else who might have had wind of it, at a time of multiple wars and political intrigue? Where does

³⁰ In this essay I have broadly followed the 1957 edition of the dialogue published in London by Lion and Unicorn Press in 1957 carrying the Latin text of 1515, together with a useful translation, an introduction, and some notes by James Wardrop. In places, I have modified the translation according to my own understanding of the Latin original. The precise date of the tract suggested by Wardrop has been questioned by Edgerton, *Pictures and Punishment: Art and Criminal Prosecution during the Florentine Renaissance* (1985). For an early interpretation of the tract as making plain the ambiguities of justice, see Curtis and Resnik, 'Images of Justice', in 96 *Yale LJ* (1987), 1727 – 1772, at 1761 – 1764.

³¹ During the Renaissance, Momus amounted to a popular personification of satire allowing critics to voice their discontent with the ways of contemporary politics or society. It was therefore the perfect personification to employ in a literary work discussing how to represent justice. Further, it is interesting that Leon Battista Alberti wrote a famously enigmatic political novel entitled *Momus or the Prince* (1446). See Simoncini, 'L'avventura di Momus nel Rinascimento. Il nume della critica tra Leon Battista Alberti e Giordano Bruno', in *Rinascimento* 38 (1998), 405 – 455.

fiction end and history begin here? Might there have been a different yet equally dangerous risk – that of offending the memory of the great Master himself? In that case, would it not be a more cautious course of action, for Fiera, to simulate a fictional dialogue dissimulating the historical fact of a real conversation concerning the messy question how to do justice to justice, how to render it visually when even the concept of it was no longer clear, indeed, when it had become altogether obscure?

Like elsewhere in this affair, it is hard to answer such questions in a definitive way. Paraphrasing Pascal, one may suppose that history, including legal history – *especially* legal history – seems more often than not to emerge from something of a void, a blank space to which we must inevitably return.

There is yet another possibility, however, that is not about the endless play of fact and fiction that seems to be somewhat inescapable in history and fiction alike. Does the dialogue in the small book under scrutiny here not offer some kind of *resistance* requiring further consideration? In that case, could it not be that, rather than by fact or fiction, we are confronted here by something else, something like an “imaginative record”, even by what the great German historian of culture Aby Warburg might have called *Leitfossil*, or, in alternative, by what I will for the moment describe as the symptom of a past event or, else, the elusive *matrix* of a new one?

In short, the question here (as in the case of the picture on show in London) is whether we could not be confronting something like a veritable trace between lower and higher concerns, between past and future possibilities, that is, between a particular instance of the ever-fleeting encounter of history and event.

Let us step back from the dialogue recorded in Fiera’s tract. Over and above its apparently straightforward considerations about how to portray justice, and its not uncommon satirical style, one quickly comes to feel that this is something of a bizarre conversation for more than one reason.



Image 3. Andrea Mantegna - *The Battle of the Sea Gods (the Left Half)* (circa 1475). Source: Wikimedia Commons

7. Andrea Mantegna, one of the great Masters of the age, seems disoriented, even confused, about the otherwise relatively simple technical task of representing justice. 'I see you are in a hurry and distraught' (*et festinum et attonitum pariter te conspicio*), Momus tells him immediately upon meeting him on that evening. Just so, replies Mantegna. The reason? He had just been to see the philosophers seeking to establish how to represent justice, and instead of helping him, they had dragged him into a thick web of intricate considerations (*et quando a philosophis venio, quibuscum de pingenda Iusticia verba feci, audi quaeso in quae involucre me involverint*).

Momus is perplexed. Why even bother to make an image of justice when nobody any longer even cares about her (*tam paucis... curae sit*). 'Well,' Mantegna replies, 'this is what he who is all-powerful has ordered' (*sic iussit qui omnia potest*), probably referring to the Pope, and orders cannot be ignored. Momus concedes that. There is a job to do, and the great Master needs to get it right. At least, Momus adds, the great Master had steered clear of the lawyers (*leguleios*), for 'nothing could be more inane or longwinded than they; nobody more needlessly contentious' (*nihil enim illis inanius verbosisque est, nihilque temere iurgiosius*).

Mantegna concurs. Moreover, he also observes, the problem seems, in effect, to be a philosophical one, not a legal one. The reason for this is easily shown. Indeed, at the heart of what he has been tasked to do lies something of a conundrum. Why is that? The answer is clear. Mantegna is a Christian, and as such he believes in only one God, and not in 'all those many gods of yours, about whom silly stories are told' (*nec plures illos tuos, quos fatue fabulanter teneo*). That is no small matter, not least because the Christian God is a Trinity – both One and several.

Here is where Mantegna's real problem apparently lies. Portraying justice as the classical world would have her would be wrong (after all, *Iustitia* was a goddess) and so, one supposes, might expose the great Master to the wrath of his patron. Nor, on the other hand, could she be thought of as one of the Persons of the Trinity, the Father, the Son, or the Holy Spirit. Thus Christianity poses Mantegna a problem that, he feels, only philosophers might be able to solve, that is to say how to imagine justice in a world where God is professed to be One – albeit a Trinity – and therefore justice could no longer be presented as an autonomous goddess with her own specific characteristics.

Be what it may, Mantegna now shares his concerns with Momus. He is pressed with time, he says in a telling detail, 'my brush calls me' (*ad penicillum enim trabor*). How, then, should he portray justice?

'I am uncertain about the appearance of Justice' (*de Iusticiae forma anceps adhuc sim*), Mantegna insists, confirming he really cannot decide how best to represent her. The views of the philosophers he consulted are now related to Momus. Firstly, one Saxus Hippolitus for whom Justice would have to be represented with one eye (*monoculam pingendam dixit*). Then, one Erasmus the Stoic, for whom Justice 'ought to be seated, and holding scales in her hand' (*sedentem pingendam dixit, manu libram tenentem*). Thirdly, one Marianus, for whom Justice should be represented as standing, 'with her eyes all over her' (*undecumque oculatam*), brandishing a sword against robbers, and in defence of the innocent and the unfortunate (*manu ensem vibrantem ad raptos arcendos et insontes et miseros servandos*). Finally, Mantegna recalls Astallius, whom, he recounts, he found disputing

keenly (*acriter*) with Fiera about medicine. Astallius suggested Justice should be depicted ‘sitting on a square marble chair with a slightly curved back, such as there was once at Lesbos, and measuring a leaden rule’ (*sedentem quidem et quadrato marmoreo sedili, et rotundo minime, et quails olim fuit Lesbi, plumbea regula metientem pingi iussi*) signifying that Justice is to govern with equity. For his part, Fiera, Mantegna adds, thought Justice should be ‘covered with ears’ (*auriculatam insuper*) – on one interpretation, so that she could hear all sides of the case.³²

The philosophers, however, did agree on *something*. In terms of how Justice should be dressed, Mantegna concludes, the advice was that she should wear the ‘habit of a penitent’ (*et tolerantis et patientis habitu induenda*) like members of the mendicant order of the Poor Clares. Secondly, Momus reminds Mantegna, Justice had to be a woman.

That was the philosophers. However, Momus learns, Mantegna had also met with a theologian. Contrary to the advice of the philosophers, the theologian claimed that Justice could not be represented at all, or perhaps only ‘in a minimal way’ (*Iustitia minime posse pingi*).³³

Such opinion made perfect sense, Momus immediately observes. Clearly, Justice could not be possibly endowed with too many attributes at the same time. Still, Mantegna replies, that was no what the theologian would have meant. The point, rather, is that from a theological point of view ‘Justice is the will of God’ (*voluntatem Dei Iusticiam dicebat*). Thus, God wills justice, and ‘nothing resists the will of God, nothing opposes it or can oppose it’ (*nihil obvium it, nihilque adversatur adversary ve potest*). Justice, one might say, is not a separate Substance. Rather, it is an attribute of It, or, perhaps, one of Its effects.

In sum, the dialogue seems to suggest, neither philosophy nor religion had been very helpful to Mantegna in his effort of clarifying how one should imagine justice. For philosophy, there are just too many considerations that would need to be kept in mind. For theology, on the other hand, the very idea of portraying justice would be simply a non-starter. One cannot represent the will of God.

Mantegna’s problem is a big problem. Divine Justice, it would seem, is impossible even to imagine, let alone represent it, visually or (it would seem) otherwise.

It is at this point that the dialogue takes a different approach. How about representing *human* justice? How would that be different from divine justice?

The main elements are rapidly identified. Man is fallible, but ‘not unaware’ (*inexpers not est*) of justice, and is subject to her laws. In fact, justice is ‘impressed’ (*exaratam*) on the human mind and ‘from the outset so fixed in the core of our nature that justice and life might be reckoned sisters’ (*et in ortu ipso immo intra alvum sic naturae insitam ut eam et vitam uterinas sorores dicas*). Thirdly, justice requires that nobody imposes upon others ‘what he dislikes himself’, and ‘grudge to other what himself desires’ (*at cur quod noluerit aliquis alteri iniungat? Curque quod velit ipse alteri invidet?*). Finally, things are good or bad depending on whether the people themselves are good or bad.

³² Lomazzo, *Trattato dell’arte della pittura* (1584).

³³ Interestingly, the term *minime* carries an ambiguity that is left to the reader to resolve.

All that is (fairly) clear. We are, after all, still in the world of Aquinas and Dante. But is that all? What is it that really shows what human justice might be all about? Above all, Mantegna and Momus resolve, what marks out human justice most of all is *death*, specifically, the circumstance that ‘death levels us all, the lowest and the highest: so sacred and stern is Justice’ (*morte aequamur omnes; imi summi, tam sancta severa Iusticia*). If divine justice is impossible or, at least, very difficult to articulate, then human justice is, like law, ‘on the side of death’.³⁴

This would have been quite a scandalous discovery for many to make, a fundamental obstacle hard to overcome. Further, it would have been a very dangerous thought to entertain. It is perhaps for those reasons that, at this point, the dialogue between Mantegna and Momus – as if something of a nightly dream, or a passing thought suddenly risen in the course of a sleepless night (but is there a difference here that would be worth drawing?) – comes suddenly, even abruptly, to an end.

It is, however, something of a surprising end. Momus remains admiring of the great Mantegna, in spite of the many challenges he had thrown at him throughout their nocturnal conversation. For Momus, in other words, Mantegna remains a great artist because he has been able to evoke Death (not, note, Justice) so brilliantly. Let us take a look at this last passage in its entirety:

But stop scaring me. It is enough to be having to die once. Truly, my dear Mantegna, I would no longer consider you to be a painter, but rather a very great philosopher and a supreme theologian, had you not portrayed Death in the place of Justice.’ (*Sed me ne ultra perterreas enecesque. Satis superque est semel mori. Verum mi Mantynia, iam mihi pictor ultra non habebis, nisi fortassis olim pro Iusticia Mortem pinxeris*).

By the end of their conversation, Momus has finally understood the great theological and philosophical difficulties of representing justice, visually or otherwise. For those considerations would have been indeed very hard to appreciate for anybody, let alone someone who, like him, would have not been raised in a Christian world. However, what, in Momus’ eyes, confirms Mantegna as an exceptional artist is that, by contrast, he has been able to portray *death* so well.

This is a quite extraordinary passage. The suggestion, in other words, seems to be that to imagine justice at difficult times requires indeed a strong creative effort. However, to conceive of it conceptually or theologically might not be the only possibilities. Other avenues, this early modern literary tract seems to point out, are *always* open. Which ones are they?

In a disconcertingly radical move of the imagination, the physician and humanist Battista Fiera had the great Master Andrea Mantegna portray justice as coinciding, ultimately, with the finitude of life in general. Just as human existence is limited, so is human justice. It is that finitude, then, that justifies the search for justice, however human and, so, limited, bounded, and finite, that search may turn out to be.

³⁴ Badiou, *St Paul* (1997).

8. Once again, this whole conversation seems to me quite strange. On close examination, the odd thing about such conversation is that Mantegna is perfectly able to paint, and could do so both easily and wonderfully – and yet, at the same time, the great Master *hesitates*, reluctant to take up the brush. Why is that? Why was he finding it so difficult to recur to the classical image of *Iustitia*?³⁵ What was the scandal? Was it because he did not feel particularly inspired due to personal or to political circumstances? Was it because, he had now realised, he was philosophically confused and theologically in the dark, as he seemed to signify to Momus, his interlocutor?

On the other hand, what are we to make of Momus' responses? As we have seen, Momus suggests, even insists, that the great Master should not bother at all. For nobody cares about justice anymore. Is that just something of a barbed remark fitting the satirical style of the tract? Does even Momus, the "Son of the Night", find it difficult to imagine justice? To the extent that Momus may be evoked by Fiera as the placeholder of something like Mantegna's own crepuscular pondering, may Momus' mirroring opinion indicate that, at some point, Mantegna entertained the thought of renouncing his important commission, and even his whole career as an excellent artist?

As in the case of Fiera's own portrait, then, the first artefact we encountered in London and examined in this paper, the *strangeness* in the tract could be read "literally" as something to do with Mantegna's concrete predicament; or, secondly, as something to do with his psychological disposition (as diagnosed by the physician Fiera); or, thirdly, as something to do with the pressure and potential dangers of conforming to a convention the Master feels compelled to respect but unable to warm up to. Or it could be something else altogether.

Both Mantegna and Momus, I would like to suggest, may indeed be responding to something else – something that neither Fiera himself nor his characters may be fully able to recognise or acknowledge.

What may that be? The tract does not (cannot) say, and no amount of conventional research would probably succeed if it attempted to answer that question. However, could the scandal, the *unthinkable obstacle*, that looms large in Fiera's tract not point to a vague or, better, *diffuse* sense that justice is or has become *obscure*, that justice is or has become something that, at most, can be evoked by resorting to certain existing stereotypes while, on the other hand, a complete "picture" of it could no longer be possibly achieved, whether visually or conceptually?

I am intrigued by the unthinkable obscurity emerging from the conversation between the Master and Momus, the "son of the Night". Justice, the tract seems rather inadvertently to conceal, is something of a *fugitive event*, making at best some fleeting appearance before fast disappearing again.

One should not be surprised by the possibility of discerning this fleeting event into the literary tract on hand (or indeed into the picture in London). The ancients after all knew that well, and Christianity had brought that insight to an altogether different level by seeking to replace, as Peter Brown has shown, the cult of the pagan with the devotion

³⁵ Burckhardt, 'Die Allegorie in den Künsten', *Gesamtausgabe* (1933).

to the holy or the angelic.³⁶ However, the situation seemed different now, and Christianity could no longer be safely relied upon to provide any guarantees. For what it had promised seemed to be, by now, hopelessly compromised.³⁷ The moment had passed, and the ghosts of the old seemed to be back. Again, people seemed to be fighting mindlessly and mercilessly with one another. Again, justice seemed to have vanished away, possibly, this time, for good.

To my mind, this is the heart of Fiera's literary tract. Contrary to current and past readings of it, this is not – or not mainly – a tract about justice. Clearly, after all, Fiera knew from the beginning that justice is impossible to represent, visually or otherwise, and he could not have possibly had Mantegna hear or say anything different on that score.

What may this tract be about, then? My suggestion is that Fiera's little, satirical tract may be best understood as something different, something like the trace of a deep if unexpected insight, possibly, the startling reckoning that justice may not be what the *doxa* of the age would hold it to be. Put it otherwise, justice may be justice, but it nevertheless cannot rise above the *vanitas* of our worldly concerns.

Further, my sense is that the portrait, the literary tract, and the innumerable other artefacts to do with law that can be found in the "visual archive" may still carry within themselves other possibilities, in spite of all. In other words, it may be just possible that "justice" may come again, but in a new and different guise – or, perhaps, in many different, new and different guises.

For this to happen, however, "justice" must be, first, *imagined afresh*, before it could be thought, said, and one day, perhaps, even represented again. Two different ways of imagining justice interest me here. In one case, the argument is that it must be always possible to catch glimpses of justice through the fabric of the world. In an alternative possibility, it must be just as possible patiently to assemble something like "justice" out of that same world.

Needless to say, this is no small matter, and it must be cautiously taken care of.

³⁶ Brown, *Religion and Society in the Age of Saint Augustine* (1972); *The Making of Late Antiquity* (1978); *Society and the Holy in Late Antiquity* (1982).

³⁷ Zoja, *Giustizia e bellezza* (2007).



Image 4. Andrea Mantegna – *Battle of the Sea Gods (Right Portion of a Freeze)* (circa 1485-1488). Source: [Images.metmuseum.org](https://images.metmuseum.org)

II. BEYOND HISTORICISM AND AFTER THE TEXT: FOR A HISTORY OF THE VISUAL IN LAW

9. We live in an increasingly media-saturated world populated by an incalculable number of images. However, a *visual* history of law – *recte*, a history of the visual in law – continues to be strangely neglected. What may such a history amount to? What may it add to the routinely accepted narrative focusing on the modernisation and written rationalisation of law?

According to such narrative, Humanism marks the beginning of a long-standing process of secularisation of the existing medieval culture and corresponding emancipation of the rational individual.³⁸ Thus J. M. Kelly, for example, writes of ‘the secularisation of public life and the emancipation of the lay individual from spiritual authority’ as key features of the ‘new age’ finding expression ‘in its legal theory as elsewhere’.³⁹ Key in this development was the intellectual effort, spearheaded by Machiavelli *and* by his otherwise fierce opponent Tommaso Campanella, to conceive human justice as something wholly separate from both morality and religion, custom and divine reason.⁴⁰ Such effort, then, is usually understood to have taken its time to develop, and to have been amplified and strengthened by the newly invented technology of the press.⁴¹ The legal and political aspects of that process were to be fully

³⁸ Grossi, *L'Europa del diritto* (2007).

³⁹ Kelly, *A Short History of Western Legal Theory* (1992), 158.

⁴⁰ Garin, *La giustizia* (1968).

⁴¹ Ruggiero, *Rinascimento* cit.

accomplished in France, in Germany, and in Britain.⁴² Those northern lands of Europe thus become the western “kernel” of the modern world, a sort of “western west” for the “rest” of Europe, and for the “rest of the rest”, to emulate and follow.⁴³

It seems, therefore, only too apposite to take time to reflect on the fate of the worlds of “images of law” that has been obscured by the effulgent rise of the written rational form of law.⁴⁴ The “visual archive”, however, has been sparingly consulted by those legal scholars who have focused on the narrative of the slow progression of the legal form from its earlier, supposedly anomic status to a subsequent, supposedly strong and rational, tool of government. However, there is a significant archive that is wide and deep, and that we continue to ignore at our peril.

Humanism, as Paolo Grossi has put it, always had ‘two souls’ (*due anime*), two quite different attitudes to law that he qualifies as the more rationalist stance and the more historicist one.⁴⁵ Hence, the invitation here is not to worry too much about leaving, temporarily, the more familiar realm of *ratio scripta* for the wider and undoubtedly more disparate world of images and the imagination. As Gaston Bachelard once noted, reason is entitled to dream as much as it needs to.⁴⁶ Indeed, reason itself may be something of a dream, and hardly more successful than other modalities in sheltering the fragility of life from all kinds of terrible delusions and fateful mistakes. Why not accept, then, the challenge of overcoming our intense cultural reluctance to venture, however provisionally, beyond the apparently neater and safer boundaries of the written text?

A number of considerations come immediately to mind when one turns one’s attention from the “paper” to the “visual” archive. To start with, the great variety of “images of law” to be found within it is in itself truly remarkable. This is not to say that the purpose of a history of the visual in law (as I am considering it here) would be to classify or reclassify those images in any particular way. Instead, the purpose would be, first of all, simply to notice such variety and, in so doing, hopefully encourage similar examinations of any artefact one may be interested in, broadly to do with law.

A second consideration would be that the variety found in the “visual archive” suggests a stark contrast to do with the now dominant and somewhat narrower narrative holding tight on the singular idea of the progressive evolution of the written rational form of modern law. This is, too, worth bringing to the fore.

However, the variety of “images of law” found in the “visual archive” and the obvious contrast they offer vis-à-vis what we already know of the process of secularisation and rationalisation of modern law, can rapidly become a cause of unease as well as marvel. What is one to make of such lively plurality emerging from the “visual archive” when one otherwise learns from our legal history books that modernity as a whole was intent on shaping our image of law in one, and only one, way?

⁴² Stein, *Legal Evolution* (1980); Kelly, cit,17.

⁴³ For an influential take on this line of reasoning, see Chakrabarty, *Provincialising Europe* (2000).

⁴⁴ See above, s 1.

⁴⁵ Grossi, cit.

⁴⁶ *Le droit de rêver* (1943).

The main purpose of this part of the essay, then, is simply to highlight the sense of unease that may quickly surface during one's perambulations along the "visual archive" and that seems to have been largely ignored by the existing literature on the subject. We have already noted something along those lines in connection with Battista Fiera's portrait now in the National Gallery in London, and then in connection with *De Iustitia pingenda*, the literary tract composed by the sitter in that very portrait. Now (as then), the question is: what may such sense of unease be due to?

Again, I can only offer, here, some prefatory thoughts about such a startling experience of the "visual archive" of modern law. On the one hand, the answer could be quite straightforward. The sense of unease could be put down to a variety of different reasons such as a particular craftsman's or artist's hand, the adverse political circumstances of the day, or else to the modernisation process that, by now, had begun its course. Here, for example, the great iconological tradition that began during the Italian *Rinascimento* is uniquely placed to help one start to make sense of what a particular work of art may seek to present or to signify. Cesare Ripa's *Iconologia* (1603) would be an obvious and ever-fascinating starting point, though one may also consult, for example, Gabriele Paleotti's less widely known *De sacris et profanes imaginibus diuiso in cinque Libri* (1582), defining the role and content of art from the viewpoint of a *doctor in utroque iure* in the aftermath of the 1563 decree on images of the Council of Trent, with equal profit.⁴⁷

On the other hand, the sense of unease or tension noted above is not unique to the "visual archive" of modern law. As Panofsky already admitted in 1920,

It is the curse and the blessing of the science of art [*Kunstwissenschaft*] that its objects necessarily lay claim to an understanding that is not exclusively historical... This demand is... both a curse and a blessing. A blessing, because it keeps the science of art in constant tension, ceaselessly provoking methodological reflection, and, above all, continually reminding us that a work of art is a work of art and not just any historical object. A curse, because it must introduce into scholarship an uncertainty and a rift that are difficult to bear, and because the effort to uncover general precepts has often led to results that are either irreconcilable with scientific method or seem to violate the uniqueness of the individual work of art.⁴⁸

Thus, for Panofsky, works of art both submit to the historian's gaze, and defeat it at the same time. Something within them is so powerful that, he almost painfully observes, one can never fully reach a work of art. This is of course a mixed blessing for historians of art, and, one might infer, for historians in general, including historians of law. For, as

⁴⁷ Prodi, *Il Cardinale Gabriele Paleotti (1522-1597)* 2 vols. (1959; 1967); Bianchi, *La politica delle immagini nell'età della Controriforma: Gabriele Paleotti teorico e committente* (2008). Another instructive iconography of the period is Joannes Molanus' more polemical *De picturis et imaginibus sacris, pro vero earum usu contra abusum* (1570).

⁴⁸ Panofsky, 'Der Begriff des Kunstwollens', in *Zeitschrift für Ästhetik und Allgemeine Kunstwissenschaft*, XIV, pp 321 – 39 (1920).

a result, historians are constantly challenged by their objects, and yet their attempts to respond to the challenges seem set to be often unsuccessful.

Nevertheless, I would suggest, the awkwardness that is palpable in certain regions of the “visual archive” of modern law might be about something more specific that requires our attention.



Image 5. Albrecht Dürer - *The Death of Orpheus*, pen and ink drawing (1494). Source: Wikimedia Commons

10. We began our inquiry in this essay with the striking portrait of a relatively little-known humanist who was also the author of an engaging literary tract constituting our earliest available trace of a debate, taking place at the dawn of modernity, about the problematic matter of imagining justice when nobody else any longer bothers, as Momus bluntly put it to Mantegna in *De Iustitia pingenda*.

One may be surprised by the coupling of a picture and a literary tract under the broad rubric of “images of law”.⁴⁹ Shaping the world in image engenders a world that is different from the world instituted by the word. Nevertheless, the visual and the literal often interact, as, for example, in the great tradition of the Renaissance emblem initiated by the rather unorthodox jurist Andrea Alciati (1492 – 1550) on the spur of the age’s passion for sight, different forms of representation, and Egyptian hieroglyphics, shows only too well.⁵⁰ Even more radically, the sort of constellations of artefacts to do with law that may be discovered by a history of the visual in law may enable us to perceive

⁴⁹ See above, s 1.

⁵⁰ Alciati, *Emblematum libellus* (1531). See Goodrich, *Legal Emblems and the Art of Law* (2014).

something quite unexpected vis-à-vis our established historical or textual knowledges of the past.

Here, we detected (in both cases) something awkward that, however, could not be immediately identified. When looking at the portrait found in the National Gallery in London, a looming *opacity* struck us even before we could actually focus on the picture itself, showing an otherwise poised and confident man in an elegant Renaissance garb.⁵¹

In the case of the literary tract, on the other hand, we experienced, over and above the satirical and so undoubtedly light-hearted tone of the dialogue between a great Master and “the son of the Night”, what could only be described as something akin to an unthinkable *obscurity* cutting across the dialogue and the tract in our hands.⁵²

We can now turn to another and perhaps more obvious finding to be made in the “visual archive” of law as we attempt to venture beyond the master narrative of modern law. This is provided by some of the early modern visual representations of justice.

Clearly, such images are not found for the first time in a Renaissance *bottega* or within a Humanist *milieu* alone. As Robert Jacob has amply shown, earlier representations concerning the power to adjudicate, the responsibility of judges, and the autonomy of the judicial function date back at least to the twelfth century. They can be found beautifully inscribed on juridical manuscripts, or featuring in impressive pictures hanging off courtroom walls, or else delicately carved on the judicial buildings themselves.⁵³ However, the odd sense of awkwardness noted above seems to emerge in early modern representations of justice, not before.

One could approach early modern representations of justice from a variety of interesting angles. A lot of engaging work has been already done, and continues to be done, demonstrating the iconology, iconography and semiotics of justice in ever fresh and fascinating ways.

I do not wish to review here the whole range of that valuable and ever-interesting work. The particular question guiding my considerations in these pages is a different one, at once more “elementary” and more “transversal” than many of the other questions that, so far, have been asked in this respect.

Again, what is it that strikes as unwieldy, at least, in some of the representations of justice that can be found in the “visual archive”? Or to put it in another way, what do certain early modern representations of justice make us feel that the political, intellectual, and even artistic debates of the day might normally conceal?

It seems to me that the sense of awkwardness noted here may be due to what I want to describe as the preliminary and very real scandal of imagining justice in the first place, let alone doing so at difficult times such as the end of *Quattrocento* and beginning of *Cinquecento*. After all, “preliminary” is etymologically that which lies before the *limen* or threshold or opening into something, and *skandalon* (σκανδαλον) is the word for a snare, for a very material stumbling block one may encounter on one’s way. So, then, what may

⁵¹ See above, s 3.

⁵² See above, s 8.

⁵³ Jacob, *Images de la justice* (1994), 12 – 14.

be the scandal of imagining justice when nobody cares? In fact, what may be to imagine justice, in the first place?

This question has received relatively little attention within legal-historical circles, and yet, on reflection, it may be a decisive question to ask. We may, for example, routinely repeat that justice should not only be done but, also, be seen to be done. However, how did we come to believe that justice could ever be possibly *seen*? The common answer is that justice became representable when it became thinkable (as a concept, a goddess, a cardinal virtue, and so on). I do not wish to dispute that here. Or, at least, I do not dispute that justice came to be represented in a certain way when it came to be thought *in that way*. However, I am interested here in tackling the question from a different angle.

My starting point, accordingly, is quite straightforward. Writing things down and printing them off partakes to a process of secularisation and rationalisation that is undoubtedly the hallmark of modernity.⁵⁴ This may or may not be looked upon with a certain anxiety by historians.⁵⁵

Moreover, there is also a large and important literature that has variously highlighted the concomitant dangers of an intensified “oculocentrism” as a distinctive predicament of modernity, including modern law.⁵⁶ Accordingly, such literature urges us to consider, might the modern attempt to “purify” the law not be another, if more subtle, instance of our obsession with vision? Indeed, might such obsession not be paradoxically reinforced by the prohibition to resort to art except as a comment to the singular visual form to which early modern law is quietly committed and that is only apparently denied by the insistent advancement of the written rule of law?

These are important concerns. Nevertheless, my question, again, is: what may be to imagine justice at difficult times? Were the many representations of justice produced in early modernity just another aspect of the broader and better-known processes noted above – secularisation, rationalisation, obsession with what hits the eyes – that may or may not illustrate, prove or encode a particular meaning for them? Or could they also point to something else that may have been (perhaps, inevitably) neglected in the history of modern law, and yet may be no less powerful for that?

If, on the other hand, the legibility of early modern representations of justice should be reconsidered to an extent, might such sort of inquiry not be likely, amongst other things, to bypass the concomitant charge of oculocentrism?

Specifically, could the awkwardness found in the “visual archive” not be due, in this case, to such works of art being not so *decided* yet? Could we be dealing with, I shall venture to add, something like *potential* images of justice concealing (in plain view) something else – namely, the sheer multiplicity and distribution of the different *visual*

⁵⁴ McLuhan, *Understanding Media: The Extensions of Man* (1964); Havelock, *The Literate Revolution in Greece and its Cultural Consequences* (1981); Ong, *Orality and Literacy* (1982).

⁵⁵ Chakrabarty, for example, highlights the necessity of owning up to certain important aspects of European modernity, thus going beyond the obligatory rejection of European historicism as a whole (*Provincializing Europe*, cit.).

⁵⁶ Key contributions to the debate range from Levin, *The Opening of Vision* (1988) to Jay, *Downcast Eyes* (1993), and beyond. In legal studies, see Douzinas and Nead (eds.), *Law and the Image* (1999).

experiences those artworks may be a neglected trace of, rather than the ostensible and supposedly convenient, if nonetheless restricted, uniformity of a particular set of historical or textual artefacts?

Further, should we assume that, in that case, it would be (ironically) *less* difficult to appreciate such a process as it unfolded at the dawn of modernity rather than within the media-saturated world of today where, some understandably might fear, such experiences may no longer be commonly or, at any rate, readily available?

Put it in even more precise terms, are we, today, finally unable to see how a key turning point in the long-standing process summarised by Heidegger at the end of his work on Nietzsche,⁵⁷ and going further back than modernity, may have led us where we are? Or is it still possible, by contrast, even today, to catch some *glimpses*, however rare and fugitive and sparse they may be, of that history, or, in yet another possible if *obverse* scenario, invent new and multiple vistas in spite of the media-saturated world of today?

In the remaining part of this essay, I wish merely to *ask* the specific question whether something may not be gained from approaching those early visual representations of justice in a different way from the one we may be used to. Specifically, I wonder whether they may not be approached as so many *symptoms*, or else (in the obverse scenario) *matrixes*, of the variety of different experiences those attempting to image justice at difficult times may have sustained.

The emphasis, then, would be *less* upon the direct evidence such artefacts may provide, as Carlo Ginzburg's hugely erudite work has long argued,⁵⁸ *than* upon what may be provisionally described as the *response* they may afford. Similarly, the emphasis would be *less* upon a history of law understood as history of facts or, else, a recapitulation of the meanings, or "tradition", pertaining to certain artefacts,⁵⁹ and their relationship with the dominant legal discourse, *than* upon a history understood as a particular form of *ethical testimony* in respect of "images of law" we have learned to ignore, or to dismiss as subordinate to other forms of thinking and seeing. What may the experiences of encountering those images each time be for those who did so at a difficult time for European history?⁶⁰ May those experiences still be open to us, albeit in a different form, perhaps, less intense than in the past? If so, how? What effects may they have upon us? And how may we be able to account for them?

Specifically, I would like here to consider two different approaches to artefacts representing justice that remain largely unexplored and may be worthwhile if we are to learn something different from what we may have already apprehended from law's early modern archive.

Ultimately, both approaches may help us consider, on the one hand, how engaging with those artefacts in those ways may result in something very different to what we would be accustomed to expect when approaching them in the normal way.

⁵⁷ Heidegger, *Nietzsche*, vol 2.

⁵⁸ Ginzburg, 'Clues' (1979); *Paura reverenza terrore* (2015).

⁵⁹ Panofsky, *Studies in Iconology; Humanistic Themes in the Art of the Renaissance* (1939).

⁶⁰ See Nancy, *L'expérience de la liberté* (1988).

On the other hand, we should be able to see the extent to which engaging with “images of law” may amount to a very different matter to the more familiar activities associated with the “discovery of Nomos”, as Donald R Kelley has once brilliantly described them.⁶¹

How, in particular, may such “images of law” relate to our existing knowledge? How may they *regard* us? Do they engage us in unsuspected ways? Is there within them something that *both* touches us *and* resists our inquiries? How may this induce people encountering those images to respond to them, with the result of making something like “human justice” real, *and so conceivable*?

Approaching representations of justice in terms of the visual experiences they may afford requires undertaking a number of preliminary steps that, in this essay, will have to remain in the background. However, a history of the visual in law must start, it seems to me, from a certain *materiality* of those artefacts in the effort of establishing what may or may no longer happen when one encounters them, what *force* they may or may no longer exert,⁶² in short, what those representations may or may no longer do *as images*.

11. Philosopher and art historian Georges Didi-Huberman offers a first inroad into precisely such sorts of questions. Didi-Huberman has become a household name in his native France where he has published more than 50 books to-date on the history and theory of images (mostly through the much loved *Éditions de Minuit*). His work has been translated widely, including in Italy, Germany, Spain, and Portugal. Didi-Huberman has curated exhibitions in Paris, Madrid, Karlsruhe, Hamburg, Rio de Janeiro, and Beijing, and has received multiple awards including, in 2005, the Theodor W. Adorno Award. In 2016, he was one of the highly distinguished scholars invited to speak at a truly memorable three-day conference on ‘Aby Warburg 150’, organised by the Warburg Institute in London and drawing an unexpected number of attendees from all over the world. Until now, however, only a few of his publications in French have been translated into English. Didi-Huberman’s work, then, remains relatively little known to the Anglo-American public.⁶³

Attempting to provide a sense, however minimal, of such a long-standing and wide-ranging body of work is, of course, a haphazard enterprise. Nevertheless, it is possible to suggest that a first distinguishing trait traversing Didi-Huberman’s oeuvre lies in the fascinating contention that the entire trajectory of the modern Western knowledge about art – from Giorgio Vasari (1511 – 1574), who thought of art as a way of imitating nature, to Erwin Panofsky (1892 - 1968), for whom history had to be the preferred way into artworks and their multiple meanings – has been marked by a fundamental equivocation. According to Didi-Huberman, modern Western art has been understood to be either about nature or else about culture, and this stark way of approaching art has contributed

⁶¹ Kelley, *The Human Measure* (1990).

⁶² Freedberg, *The Power of Images* (1989).

⁶³ See however Lesniak, ‘Images Thinking the Political’, *Oxford Art Journal* 40.2 (2017), 305 – 318; and the Special Issue published in *Angelaki, Journal of the Theoretical Humanities*, vol 23, number 4 (August, 2018).

to de-sensitise ourselves from the considerable *strangeness* of the art-image (*image de l'art*) with which earlier ages, by contrast, were entirely familiar.

It is precisely my hypothesis that the history of art, a “modern” phenomenon par excellence – because born in the sixteenth century – has wanted to bury the ancient problematics of the *visual* and the *figurable* by giving new ends to artistic images, ends that place the visual under the tyranny of the *visible* (and of imitation), the *figurable* under the tyranny of the *legible* (and of iconology).⁶⁴

How may one grasp again what may be strange about any particular work of art? And why should we? A discussion of the wider implications of Didi-Huberman’s interest in the strangeness of what could be called the modern Western canon must be postponed to another occasion. Here, however, it can be noted that such strangeness – not unlike the striking opacity emerging from Battista Fiera’s portrait or the obscurity looming large over the literary work Fiera had penned – becomes more apparent if one is able to approach artworks in general as so many *images*, not, therefore, simply as the artworks (architectures, sculptures, frescos, pictures, woodprints, engravings, printed matter, etc.) that they nevertheless are. As images, it becomes immediately clear that works of art exhibit an anthropological element pertaining to their “efficacy” (*efficacité*) that must be taken in due account if one is to appreciate the differences, for example, between the circumstantial character of Christian art and, on the other hand, what Charles S. Peirce would call “icons”, that is, objects that produce resemblance with what they signify. In other words, Didi-Huberman argues, images are multiple, heterogeneous, and complex. That is why it can be misleading, even at times dangerous, to casually embrace or intentionally insist on the familiar thesis that things like works of art must be either just about *mimesis* or, in the alternative approach favoured by modern art, just about their history or text.

In addition to emphasising the potential strangeness of a work of art, and the importance of shifting from the object to the image, Didi-Huberman deploys a series of further epistemological strategies that seek to confront images by putting them in motion via thorough if emphatic *ad hoc* exercises of the imagination. For Didi-Huberman as for Baudelaire, Benjamin, or Arendt before him, imagination is indeed key to knowledge.⁶⁵ As such, imagination is best approached as neither subordinate to knowledge nor “other” than knowledge, that is, something likely to be dismissed as irrational and feared capable of creating *monstra*.

What then is imagination, according to Didi-Huberman? Imagination as the French critic conceives of it, is a power that belongs to the thinking subject, a “power of thought” (*puissance de la pensée*) that is common to poets and thinkers. This power has nothing to do with individual fantasies, nor, for example, with what was propounded by Surrealism, in particular, Dali and Lacan. Instead, it is a question of the gaze (*regard*), of

⁶⁴ Didi-Huberman, *Confronting Images* (2005), trans. John Goodman (Pennsylvania State University Press, 2005) 8.

⁶⁵ Didi-Huberman, *Images malgré tout* (2004).

the capacity of remaining open to the images we encounter, sensitive to what they *do*, and to what they do to *us*. For images in the sense that interests Didi-Huberman across his many writings are always something untimely, something that is apt, for a moment, when they appear before our eyes, to suspend or even interrupt our existing knowledge (structured by law) in fresh and unpredictable ways.

Bearing in mind the singularity of modern art and the image quality of the artefacts we encounter on our way, the exercise of our capacity for openness must then lead to what Didi-Huberman calls, following Warburg but also a host of other artistic and intellectual voices of the 20th century, a *montage*.

Needless to say (perhaps), *montage* should not amount to a reckless combination of a variety of occasional “citations”. Nor, on the other hand, it should ignore the reality of what has been suggestively called “mediamorphosis” of its materials.⁶⁶ Instead, it should always aim to consist in eye-widening, productive associations that would be analogous, Didi-Huberman suggests, to the characteristic core of an event, and that would be seeking to overcome an actuality without past, and a past without effects on the present.

Summarising on this point, it is precisely through *both* analysis *and* interpretation, in particular, by exercising *both* critical judgement *and* poetic imagination – and so, here, by making what could be called “poetic comparisons” among different artefacts constituting what I have called “images of law” – that, according to Didi-Huberman, one could hope to achieve what Goethe, in his scientific works, so precisely and beautifully referred to as “tender empiricism” (*zarte Empirie*).⁶⁷ Put it otherwise, such a way of approaching works of art could let a form of critical knowledge to emerge that, on the one hand, would exceed the literal or visual language of the images already available to us, thus ultimately integrating it in a consequential way, and, on the other hand, it would be always incomplete and tentative yet no less valuable for that. In short, works of art would be allowed to “unclose” to the viewer engaging what factual historical knowledge or meanings those confronting those artefacts might already feel to be in possess of.

It is fair to say that, so far, Didi-Huberman has shown relatively little interest in confronting law as such.⁶⁸ Nevertheless, it is also clear that his work is firmly centred on the “tradition of the oppressed”,⁶⁹ and, in that sense, his work is generally and yet unquestionably relevant to our inquiry into the “visual archive” and what I have called “images of law”.⁷⁰

⁶⁶ Fidler, *Mediamorphosis* (1997).

⁶⁷ Goethe, *Scientific Studies* (1988). On “poetic comparisons of law”, see my early considerations in Stramignoni, ‘The King’s One Too Many Eyes: Language, Thought, and Comparative Law’, *Utah LR* (2002); and ‘Meditating Comparisons: Or the Question of Comparative Law’, in *San Diego Int’l LJ* (2003).

⁶⁸ See however Didi-Huberman, ‘The Molding Image’, in Douzinas and Nead (eds.) *Law and the Image* cit. For a variety of early appearances in law, see Haldar, ‘On the Question of Dissemblance in Medieval Political Theology’, in *Law and Critique* (1996); Stramignoni, ‘Review Essay: Mapping Maps in Western Legal Thought’, in *International Journal of Law in Context* (2005), pp 411 – 422.

⁶⁹ Benjamin, *Über den Begriff der Geschichte* cit.

⁷⁰ See above, s 1.

As such, Didi-Huberman's work provides, in my view, a lot of food for thought when seeking to approach those artefacts in the way suggested by this essay, that is to say, in a way that may still afford glimpses of the kind of visual experiences those who encountered those artefacts may have had.

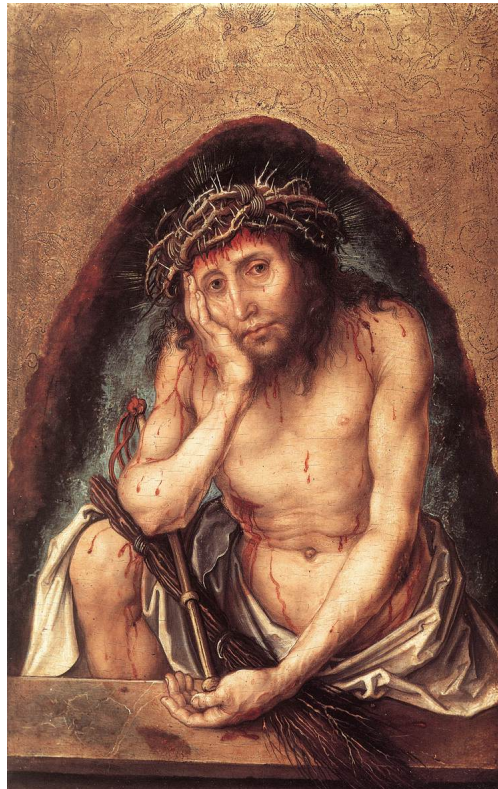


Image 6. Albrecht Dürer – Christ as the Man of Sorrows (circa 1493). Source: Wikimedia Commons

12. Take for example the work of Albrecht Dürer (1471 – 1528). Born in Nuremberg of an immigrant Hungarian goldsmith, Dürer produced a huge corpus of works including some 2000 drawings, more than 70 paintings, 250 woodcuts, and over 100 engravings, displaying a vast array of religious, courtly, and other artefacts, as well as three books on theoretical subjects.⁷¹ The sheer variety and popularity of such oeuvre makes it a good case to tackle here.

⁷¹ Strauss (ed.), *The Complete Engravings, Etchings, & Drypoints of Albrecht Dürer* (1972). See also Harthan, *The History of the Illustrated Book – The Western Tradition* (1981). The classic reference here is Panofsky, *The Life and Art of Albrecht Dürer* (2005).

We know that Dürer's contemporaries were endlessly fascinated by Dürer's woodcuts, engravings, altarpieces, portraits, and self-portraits, marked as they were by constant experimentation with technique, colour, perspective, and proportion.⁷²

Two sets of works can be singled out as especially significant in order to appreciate the popularity of Dürer's art with his contemporaries. Firstly, a series of extra-large woodcuts illustrating the Revelation of St John the Divine. Here, it is important to emphasise that this was the first book to be both illustrated and published by an artist making the text subordinate to the pictures, and so, therefore, making the book itself just unlike anything else seen before in both concept and execution.⁷³ Secondly, we can also mention three of the engravings by Dürer – *Knight, Death and Devil* (1513), *St Jerome in His Study* (1514), and *Melancholia I* (1514) – that demonstrate the great importance the German artist attached to 'the art of measurement' as key to become 'a true artisan',⁷⁴ something that could result in *Vergleichlichkeit*, an 'equality or harmony of all parts in relation to the whole'.⁷⁵ In other words, not only did Dürer's impressive amount of work enjoyed a hitherto unparalleled success across audiences in Northern Europe and beyond, as Walter L. Strauss has noted, but it can also be taken to have promoted, visually, a sense of overall harmony as projected by at least some of his most popular artefacts.

However, I am interested here in the possibility of recovering something of the visual experience overshadowed by the rise of the written form of law in early modern Europe. Therefore, a second reason for turning to what has been called the "genius of the German Renaissance" is that Dürer also created a variety of unforgettable representations of justice.⁷⁶

A number of legal scholars have not failed to notice and variously reflect upon one particular representation of justice attributed to the great German artist. This is an early woodcut illustrating Sebastian Brant's popular book entitled *Ship of Fools* (1494). Interest in the woodcut has been justified by the consideration that, in this as in other artworks of the time, a blindfold suddenly appears on the eyes of *Iustitia*, together with the more familiar symbols of the balance and the sword.⁷⁷

There is no doubt that Sebastian Brant's woodcut became very popular, however incomprehensible that may seem today, and that its popularity has lasted a long time.⁷⁸ However, other representations of justice produced by Dürer are, I would suggest, just as critical once we begin to follow Didi-Huberman's approach in his evocative

⁷² Strauss, cit.

⁷³ Strauss, cit.

⁷⁴ Dürer, *The Painter's Manual* (1977), 37.

⁷⁵ Panofsky, cit. 276. Cfr. Elkins, *On Beautiful, Dry, and Distant Texts* (2000).

⁷⁶ Wolf, *Albrecht Dürer 1471-1528 the Genius of the German Renaissance* (2006).

⁷⁷ For an early engagement with the blindfold of *Iustitia*, see Kissel, *Die Justitia: Reflexionen über ein Symbol und seine Darstellung in der bildnen Kunst* (1984). The blindfold has since become the focus of a huge interest in the Anglo-American world: see, for example, Curtis and Resnik, 'Images of Justice' cit.; Jay, 'Must Justice be Blind?', in *Filozofski vestnik*, XVII (2/1996), 65 – 81; Goodrich, 'Justice and the Trauma of Law', in 18 *Studies in Law, Politics, and Society* (1998) 271 – 279; and again Resnik and Curtis, *Representing Justice* (2011), esp. 91 – 105. Interestingly, the blindfold is absent from the otherwise rather important iconographical tradition of Italy: Prosperi, *Giustizia bendata* (2008).

⁷⁸ Prosperi, cit., 8.

endeavour, *open to all*, aiming to go beyond iconography in order to gain a glimpse of some of the innate capacity works of art have of touching those who come in contact with them. What may be learned from attempting to open up our “gaze” and approach Dürer’s artefacts as images?

Clearly, those works of art were produced by someone who enjoyed a privileged position in the society within which he moved, and Nuremberg was itself an important centre of power in Northern Europe at the times. We also know that Dürer, at some point, was introduced to Emperor Maximilian I who later took him under his protection. Nevertheless, it is possible to ask questions about Dürer’s vision of justice, and continue the inquiry by asking what kind of response those coming into contact with those artefacts – and there would have been a very high number of them across Europe – may have had.⁷⁹

At an iconographical level, it would not be too far-fetched to suggest that those images would have been likely to reinforce, through *Vergleichlichkeit*, a certain political sense of harmony.

However, besides that, all kinds of further exciting questions could be asked here. What may one have imagined when casting one’s eyes on Dürer’s innovative, diverse, and striking representations of justice? Indeed, what is so *striking* about them? Is there anything those artefacts may do that, by contrast, their more obvious literal or visual languages may conceal? For example, which memories might those representations sediment? Which memories might they suppress? And finally: does all *that* not belong to a different, and potentially divergent, realm of experience vis-à-vis the apparently brighter and self-confident realm of the secular, rational written law (and *its* art) developing in Europe at that time?

Didi-Huberman suggests something interesting about Dürer’s oeuvre, specifically, a small oil on panel entitled *Christ as the Man of Sorrows* (Image 6) held in the Staatliche Kunsthalle Karlsruhe, that is worth considering when approaching the artefacts that concern us here.

As we know, Erwin Panofsky admired Dürer for his unparalleled scrutiny of the human body and its proportions. Indeed, Panofsky went a great length to demonstrate in his writings just what he meant by that.⁸⁰ In Panofsky’s now classical view, then, the strength of Dürer’s *Christ as the Man of Sorrows* lies – precisely – in its nearly impeccable structure of the human body it projects. However, for Didi-Huberman, there is more to that image than that.

To start with, Didi-Huberman points out, on approaching Dürer’s *Christ as the Man of Sorrows* it becomes immediately clear how the picture before our eyes seems to be literally traversed by the full weight of the inner *conflicts* that can be taken to be characteristic of the Christian faith, in particular, the doctrine of the incarnation and the

⁷⁹ Curtis and Resnik, by contrast, base their otherwise pioneering and informative research about images of justice on what seems to me the too pessimistic assumption that nothing much of the past can be recovered and only mere speculations are possible, such as those they concede they themselves advance in their own work. See for example Curtis and Resnik, ‘Images of Justice’ cit., 1739 and 1741.

⁸⁰ For example, in Panofsky, *Meaning in the Visual Arts* (1955).

crucifixion and death of Jesus. Secondly, and just as importantly, the representation of a man, overwhelmed by the events and resigned to his fate, cannot, in fact, capture, Didi-Huberman argues, the full force of the *Christ as the Man of Sorrows*. To realise that, a very different approach is recommended.

For Didi-Huberman, the picture in effect centres around the presence of Jesus' *stigmata* allowing it not so much to speak of a human body, however skilfully depicted (as Panofsky believed), as to exhibit the human *flesh* itself. None of this, however, is what those happening on that picture would be likely to experience. Instead, something entirely different occurs whereby the stigmata and the flesh turn the picture into a *symptom* that opens itself up to the onlooker in the gap between the figure one will see and the picture one can only *watch* dissolving or *disfiguring* before one's eyes. The picture now becomes nothing more than mere *appearance* inviting *either* a philosophical inquiry about the essence of the image, *or*, alternatively, a historical inquiry into the traces and the symptoms of "figurability" (*figurabilité*) of the pictures in question.

Let us then return to Dürer's representations of justice. Is there anything like a common if perhaps tenuous thread among those artworks, beside the shared motif of justice?



Image 7. Albrecht Dürer – *Allegory of Justice* (1498), image sourced at: [WikiArt.org](https://www.wikiart.org/en/Albrecht-Durer/Allegory-of-Justice)

To my mind, a first characteristic of those further representations of justice lies in their striking variety as between themselves. In a drawing on ink and paper dated from 1498 and kept in the State Hermitage Museum of Saint Petersburg (Image 7), Dürer conceives of

justice as a youthful and rather ethereal woman abandoned, rather than sitting, on a wooden bench. She holds the conventional sword and scales, her legs otherwise crossed and her gaze turned gently to the right, as if distracted by something else.

In a better-studied engraving of a year later, found in the National Gallery of Art in Washington D.C., U.S.A., and known as *Sol Justitiae* (Image 8), justice has now become a 'nimbed man with the attributes of justice' sat crossed-legged on a lion 'patterned after those which Dürer had sketched in Venice'.⁸¹ Panofsky loved this particular engraving. The whole posture, he comments, denotes 'a calm and superior state of mind... actually prescribed to judges in ancient German law books'.⁸² Nevertheless, he also notes (seemingly without being aware of what could come across as a telling paradox),

the face of the man is surrounded with a quivering halo, his eyes burst into flames... and his features show a fierce, yet woeful expression, strangely akin to that of his fantastic mount.⁸³



Image 8. Albrecht Dürer – *Sol Iustitiae* (circa 1499/1500). Source: Wikimedia Commons

⁸¹ Panofsky, *Dürer* cit 78.

⁸² *Ibidem*.

⁸³ *Ibidem*.

The visual model of the sun, here, is an important iconological clue, for it exemplifies the appropriation and transformation of the Roman *Sol Invictus* into a *Sol Iustitiae* – ‘thereby displacing the natural force of a life-giving and death-dealing astral divinity by the moral power of Christ’.⁸⁴

In all likelihood, Dürer took this image from the widely consulted *Repertorium morale* by the Pierre Bersuire, the Franciscan (later Benedictine) monk who had become a friend of Petrarca in Avignon, first, and then again in Paris.⁸⁵ For present purposes, it is important to reproduce here the passage in the *Repertorium* that Panofsky identifies as the direct source of inspiration for Dürer’s engraving:

The Sun of Righteousness shall appear ablaze [*inflammatus*] when He will judge mankind on the day of doom, and He shall be burning and grim. For, as the sun burns the herbs and flowers in summer-time when he is in the Lion [*in lione*], so Christ shall appear as a fierce and lion-like man [*homo ferus et leoninus*] in the heat of the Judgment, and shall wither the sinners.⁸⁶

We will have to return to Dürer’s model for his *Sol Iustitiae*. Here suffice to say that, although the overall impression of the engraving is of a more powerful and certainly more threatening justice than the one shown in the earlier drawing, here too the judge represented in the picture seems strangely at odds with the composure he is supposed to project, with his gaze turned to his left while the lion, on which he sits and which symbolises his might, looks somewhere to the right.⁸⁷

And in a woodcut, also kept in the National Gallery of Art in Washington D.C., that Dürer created at the end of his life and entitled *Justice, Truth, and Reason in the Stocks with the Seated Judge and Sleeping Piety* (Image 9), justice has now become a sorrowful and disconsolate defendant in a trial presided by a pedantic judge gesticulating, with a stick in his hands, at her. Here, Justice is entirely indistinguishable from the other two female figures representing Truth and Reason sat next to her in the dock (were it not for the inscriptions placed above them and identifying them for their past roles), hands and feet secured as common criminals or disgraced members of the *civitas*.

⁸⁴ Ibidem.

⁸⁵ Ibidem. The *Repertorium* was printed first in Cologne (1477) and then in Dürer’s Nuremberg (1489).

⁸⁶ Ibidem.

⁸⁷ Here, one might imagine that the Christ-figure of the judge is looking to his left (right for the viewer) because he is holding the sword with the right. Had the judge looked to his right (that is, in the same direction as the lion), he would have come across to viewers as unduly menacing. I am grateful to Prof Boris A. Uspenskij for suggesting this alternative reading of the image.



Image 9. Albrecht Dürer – Justice, Truth and Reason in the Stocks with the Seated Judge and Sleeping Piety (1527).
Source: Wikimedia Commons

Besides the rather different character of the representations of justice that Dürer composed, a second characteristic of those representations is what Strauss describes as their sheer contrast from anything seen before – or, if you like, their novelty or eccentricity, the way they stand out from the *doxa* of the times. Why, then, are those representations so different? Is it only because of the undisputable creativity of their maker? Is it because of the new and different demands the taste of the age placed on the contemporaries of Dürer, and so on Dürer himself? What else?

Apart from the diversity of those artefacts as between themselves, and their contrast vis-à-vis previous ones, I would like briefly to suggest something else, inspired *inter alia* by Didi-Huberman’s work.

Dürer’s representations of justice, of course, have a history and a meaning clearly conveyed, in this case, by their allegorical status. For example, we know that the young Dürer was very much influenced in a number of different ways by the social and artistic milieu in which he moved. While the considerable influence of Italian artists such as Antonio del Pollaiuolo (1433 – 1498) (Image 2) and the less-known Lorenzo di Credi (1459 – 1537), and of German humanists such as the powerful lawyer and close friend Willibald Pirckheimer (1470 – 1530), are well known,⁸⁸ it is interesting for current purposes to record that Dürer’s initial apprenticeship in the workshop of Michael Wolgemut in Nuremberg from 1486 to 1490 meant that, as Bernard Aikema and Beverly Brown have suggested, the young Dürer was able to see, study, and indeed, become fascinated by, some of Andrea Mantegna’s own work, for example, the *Battle of the Sea Gods* (above, Images 3 and 4) held today in the Metropolitan Museum in New York City, as well as by a silver-point drawing of a nude by Sandro Botticelli.⁸⁹

⁸⁸ Schleif, ‘Albrecht Dürer between Agnes Frey and Willibald Pirckheimer’, in Silver and Chipps Smith (ed.), *The Essential Dürer* (2010) 85 – 205.

Moreover, once we look at Dürer's representations of justice as a whole, it seems almost as if they should mirror something of an inner anxiety cutting across the artist's own life going all the way from an early and youthful curiosity about justice, through to a more mature and defined understanding of it, and, finally, onto a wholly disillusioned and ironic conclusion that law and justice must be separate and often opposed concerns whereby the former, not the latter, is poised to prevail.

These are all valid lines of interpretation that, depending on one's personal disposition, may be seen to be merging or else conflicting with one another.

A further consideration, however, is in order. At first, this may appear to be somewhat more speculative. Nevertheless, it is an observation that, it seems to me, confronting Dürer's representations of justice along the lines suggested in this essay, and supported by Didi-Huberman's work, makes entirely possible.

Quite apart from what these artefacts may or may not illustrate or demonstrate, what is striking is that, on reflection, they seem to be capable of moving us even before we know them. This is a startling discovery.

Once we notice that, however, it becomes tempting to pause and consider the possibility of drawing something of a loose connection – “make palpable” (*rendre sensible*), in Didi-Huberman's nevertheless precise parlance⁹⁰ – between Fiera, Costa, Pollaiuolo, Mantegna, Botticelli, Dürer, and many others.

It is not only that some of Dürer's artefacts date from the time when Mantegna worked in Mantua and, as we know, befriended Fiera providing him *inter alia* with the inspiration to write *De Iustitia pingenda*. It is also that one may legitimately ask whether Mantegna's early and powerful impression on the young Dürer may not have constituted in itself something of an ancient “survival” that would need to be further discussed.

Here, suffice to say that the presence of such “survival” may be precisely what is in common and indeed so strange about his images of justice – as well as in some of his other artworks, above all, perhaps, the celebrated pen and brown ink drawing known as *The Death of Orpheus* (Image 5).

Further, one may also ask whether such strange impression may not have contributed to set, *then* as *now*, many more people beside Dürer himself ‘seeing and thinking’.⁹¹

Just as Mantegna's work, after all, reappears as a survival of sorts in the fictional tract – but, as we noted above, was it fictional? In what way?⁹² – penned by the neglected physician and humanist Battista Fiera, whose portrait in the National Gallery in London by the little-known painter Lorenzo Costa set us on our journey into the dimmer and half-forgotten corners of the “visual archive” of early modern law.

⁸⁹ Aikema, Brown, and Sciré, *Renaissance Venice and the North: Crosscurrents in the Time of Bellini, Dürer, and Titian* (2000).

⁹⁰ See above, s 11.

⁹¹ See above, s 3.

⁹² See above, s 6.

Indeed, looking again at Dürer's representations of justice as a whole, and putting them next to some of Mantegna's own early engravings, do they not seem to have something in common that might go unnoticed if one were to treat them as "just" art illustrating or demonstrating the outcome of our historical inquiries in the modern form of law? What may the status of that something "in common" be?

I am not suggesting here to compare in any obvious way the iconology or iconography of those artefacts as such – this is not the point of my considerations here. Instead, I am asking what the *force* of those artefacts, whether taken individually or as an element in a wider constellation of other artefacts, may have been on those who encountered them across the four corners of early modern Europe.

Would those images have not felt like something of a sudden, extraordinary, and vigorous stream of half-forgotten emotions pouring, as it were, into the extant "theatres" of a more composed, and austere, and perhaps remote justice of old? Would they have not brought with them, in that case, a sense of elation, no doubt, but also, together with it, a great deal of uncertainty and confusion? And is this not what those artefacts may allow us today to get a *glimpse* of – something that neither the official history of the time, nor the artefacts alone, taken (at best) as mere evidence of that history or as codes to be decoded, would normally be able to disclose?

One could almost see, here, what Baudelaire, defining imagination as something that had nothing to do with an individual's fantasy or sensitivity alone, called 'the intimate and secret relationships of things, the consonances and the analogies' (*le rapports intimes et secrets des choses, les correspondances et les analogies*).⁹³

Indeed, with Mantegna's and Dürer's artefacts, the promised equilibria of previous artistic programmes seem to me to be irredeemably lost. While one should not conflate the distinctiveness of the styles of the two Masters or the works they produced, it seems to me that justice is now openly *questioned* by those images in more than one way – and certainly in ways that would have felt, at the very least, hugely disturbing and disruptive in previous centuries compared to the apparently enthusiastic impact they appear to have had in the days of Fiera, Costa, Pollaiuolo, Mantegna, Botticelli, and Dürer.

Furthermore, the variety, diversity, and dramatic appearance of those artefacts – just as the portrait by Lorenzo Costa or, indeed, Battista Fiera's (then) largely ignored *De Iustitia pingenda* – may allow to catch a glimpse of something even *more obscure*.

In all likelihood, they present us with the deep and often worrisome transformations of the times – a new course in European history that would have been undoubtedly enticing and potentially rewarding, but, at the same time, one that would have been felt by many to be fundamentally uncharted and dangerous, both unknown and unknowable – most certainly, at any rate, by means of the old and now seemingly inadequate instruments on hand.

⁹³ Baudelaire, *Oeuvres Complètes* II, p 329.

II. CONCLUSIONS

13. A combined historical and philosophical inquiry working out “images of law” – constellations of artefacts to do with law – is what the work of Didi-Huberman can help us carry out in interesting ways.⁹⁴

This, I have suggested in this paper, may afford significant glimpses of the sort of rich and wide-ranging experiences that tended to be overshadowed by the rise of the written rational form of law in early modern Europe (but one could very well extend the enquiry beyond that particular moment in time, however fundamental it may be felt to have been in many respects).

This would be an interesting result in itself. Ultimately, it could help unearth something akin to what Kurt Forster has so accurately described as the underlying mechanisms of rejection, distortion, and reversal that shape memory.

Specifically, Didi-Huberman’s work encourages, in my view, to *engage* with any artefact to do with law one may encounter, rather than just looking at these as if impassive repositories of historical analysis or, in the other one of the two main alternatives that have prevailed so far, as little else than texts to decode. Here, what is meant by “engaging” with such artefacts is *confronting* them – in the specific sense of taking them seriously, paying attention to them, seeking to take in what they may or may not *do* as images, and to those standing before them.

Finally, engaging with extant artefacts in the way I have described may allow us to appreciate and “make palpable” what Didi-Huberman calls the “time of the gaze” (*le temps du regard*).

Such inquiries need not necessarily be limited to *one* particular artefact, although each artefact may well be found to confront us in its own particular way. Nor, indeed, would such inquiries have to be necessarily limited to the artefacts bestowed upon us by the art-historical tradition – much as that tradition remains, in my view, all-important, not least because the study of modern law may even have occasionally referred to such tradition, but, one feels, it has seldom taken it entirely seriously (when it has not altogether ignored it, or actively sought to belittle it).⁹⁵ Hence my preferred way here of describing the artefacts reviewed in this paper as all “images of law” (many more, of course, could be mentioned).

Instead, the effort would be to take care of *both* well-known *and* neglected artefacts to do with law, *both* art *and* non-art objects, in order to help restore temporality and rediscover their force as “dialectical images” (*images dialectiques*). In so doing, one may be able to help those artefacts back in the position they would have had as essential vectors of the deep historical complexity resulting from the different historical times co-existing in the images.

Through such inquiries, then, one could trace and confront artefacts concerned with “survivals” (*Nachleben*) in the sense that Aby Warburg was the first to appreciate and

⁹⁴ See above, s 1.

⁹⁵ There are of course notable exceptions to this, such as those mentioned here.

search for. That is to say, one could set out to reckon with those artefacts *less* for their multiple and (clearly) weighty compositional elements and meanings *than* for what one may call the “gaze of law” – or even the “gaze of justice” – they may sometimes return, and sometimes want us to respond to. How did the early moderns imagine justice? What may those images have wanted *of* them? What may they want of *us*? What may have wanted of them that they may no longer be able to demand of us, and what may they want of us that they may have not wanted of them?

One may or may not wish to follow Didi-Huberman on his path entirely.⁹⁶ Nevertheless, inquiries informed by his work may significantly contribute to “open up” our established ways of seeing and thinking about the *past* – allowing each time for a relationship with it that could be less sheltered, as it were, more expansive, and, why not, more attentive and compassionate.

In short, such approach may help us write histories that may be able to reanimate experiences that have been destroyed or forgotten, or simply ignored as experiences undeserving of serious consideration on account of “having nothing to do with law”.

⁹⁶ Others tread both parallel and divergent paths, for example, Deleuze and Guattari, *What is Philosophy?* (1991) and Badiou, *Handbook of Inaesthetics* (2004). On the latter, see Stramignoni, ‘Seizing Truths: Art, Politics, Law’, in Ben-Dor (ed.), *Law and Art – Justice, Ethics, and Aesthetics* (2011), pp 73 – 92.