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# Figuring out justice in dark times: on law, history, and the visual

Igor Stramignoni

LSE Law School, London, UK

## ABSTRACT

What happens when we approach certain objects heuristically as images? How is one to orient oneself through such images? Might those images challenge our existing knowledge of the history of modernisation and written rationalisation of law after the Middle Ages? In this essay, I begin with certain early modern European artworks - paintings, engravings, woodcuts, and drawings - as well as some other less obvious objects - a striking black background in the portrait of a little-known physician, a compelling account of a nocturnal attempt to figure out justice at critical times, the gripping intensity permeating Dürer's allegories of justice, and so on - and investigate the force those objects may have as images. Overall, the intention is to go beyond treating such objects as impassive historical evidence of the particular effort to conceive law intellectually or, alternatively, as codes for certain preexisting messages to be subsequently decoded. On approaching them differently, we may discover that such objects can sometimes resist our analyses or interpretations forcing us to engage with them in unexpected ways.

**KEYWORDS** Early modern European art; images of law; visual studies; ontology; Didi-Huberman; *visibilité*; *figurabilité*; *imagination*

Kunst gibt nicht das Sichtbare wieder,  
sonder macht sichtbar.

(Paul Klee)

1. This essay proposes a journey through the early modern European world that starts in a London picture gallery today and goes on to engage, directly or indirectly, with some of its better-known and some of its lesser-known artworks and other objects, broadly to do with justice or with law. Thus, our first port of call will be certain paintings, engravings, woodcuts, drawings on ink and paper, and allegories of justice by artists such as Antonio del Pollaiuolo, Sandro Botticelli, Andrea Mantegna, Lorenzo Costa, and Albrecht Dürer. Together with them, however, we will be also approaching other objects

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**CONTACT** Igor Stramignoni  [i.stramignoni@lse.ac.uk](mailto:i.stramignoni@lse.ac.uk)

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such as a portrait's striking features and black background, a nocturnal conversation between a dead artist and a 'figure of the Night', a painter's brush inviting his rightful owner to do his job, the flesh exhibited in a painted Christ's *stigmata*, the 'quivering halo' and 'eyes burst into flames' of a 'man with the attributes of justice' whose social role might have otherwise required to show more poise, or the largely ignored work of a Mantuan physician named Battista Fiera, including a small tract tackling the difficult question how to depict justice in a time of crisis. While some of those objects may not necessarily exhibit obvious artistic features, reaching out beyond the visible object – whether understood as evidence of the past or as something to be figured out – may result in interesting ways of making sense of the time-honoured problem of the relationship between art and law. What precisely may certain early modern artefacts or other objects do with justice or with law transmit that the doctrinal, political, social, or even artistic debates of the day might otherwise conceal? To go some way towards answering this first overall question, we will consult the extraordinary work of Georges Didi-Huberman foregrounding 'imagination' – in his parlance, something very concrete that is however neither about mimesis nor about history or text alone.

My starting point is straightforward. According to recurrent narratives, Humanism marks the beginning of a long-standing history of secularization of the existing mediaeval culture and corresponding emancipation of the rational individual.<sup>1</sup> The world of law did not remain untouched by the change – far from it. 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'.<sup>2</sup> Key in this development is said to be the intellectual effort, spearheaded by Machiavelli *and* by his otherwise fierce opponent Tommaso Campanella, to conceive human justice intellectually as something wholly separate from both morality and religion, custom and divine reason.<sup>3</sup> Such effort, then, is understood to have taken its time to develop, and to have been amplified and strengthened by the newly invented technology of the press.<sup>4</sup> The legal and political aspects of that process were, according to such narratives, to be fully accomplished in France, in Germany, and in Britain.<sup>5</sup> 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.

The larger paradigm presiding over such narratives has been both strengthened and impugned in many more ways than it is necessary or

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<sup>1</sup>Grossi, *L'Europa del diritto* (2007).

<sup>2</sup>Kelly, *A Short History of Western Legal Theory* (1992) 158.

<sup>3</sup>Garin, *La giustizia* (1968).

<sup>4</sup>Ruggiero, *The Renaissance in Italy* (2014).

<sup>5</sup>Stein, *Legal Evolution* (1980); Kelly (n 2) 17.

possible to account for here. One important challenge, one might observe, is broadly anthropological. It seeks to expose just how much the emergence of modernity as a focus for legal studies may have largely overlooked the role art may have had in shaping it.<sup>6</sup> In particular, a wealth of extraordinary scholarship has for some time now begun to address the precise extent to which such role has been obscured by the effulgent rise of the written rational form of law, and the results of such studies are innovative, exciting, and forward-looking.<sup>7</sup>

On the other hand, a concern with the *visual* – what certain objects including art may give us to see<sup>8</sup> – continues to be at best latent in most of the existing work focusing (whether from a conventional, critical or cultural point of view) on the slow progression of the legal form from its earlier, supposedly anomic status to a subsequent, supposedly strong and rational and then national, means of government, domination or resistance.

A visual inquiry into the past of law, then, can hardly be limited to art per se – music, architecture, visual art, literature, photography, film, and so on. That said, artistic and other cultural artefacts can still offer some initial or more ‘ready-to-hand’ lines of investigation into the visual. The question, of course, is how.<sup>9</sup>

Accordingly, certain artworks to do with justice or with law are going to be, as mentioned, my entry point into the visual. However, the intention is to go beyond any attendant discussion on representation – which I take to be essentially a concern with artifice and power. Instead, the recent visual and material ‘turns’ support the contention that such objects can be heuristically employed to engage with the larger and sometimes disconcerting worlds of *images* – with their presence and ‘ontological demands’ and with their connections and mutual relations.<sup>10</sup> Here, I am interested both in particular artefacts approached as images as well as in what I would call early modern ‘images of law’ – that is, ecologies of images to do with justice or 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

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<sup>6</sup>The cultural critique of law was and continues to be inspired by the hugely influential work of Stuart Hall, Raymond Williams, Tom Mitchell, Frederick Jameson, and Nicholas Mirzoeff (among others) targeting the once dominant iconological and semiological traditions in art history. The field has since been in a constant flux: Mitchell, *Picture Theory* (1994); Latour and Weibel, *Iconoclash* (2002); Dikovitskaya, *Visual Culture* (2006); Moxley, ‘Visual Studies and the Iconic Turn’ (2008) *Journal of Legal Culture*; Mitchell, *Cloning Terror* (2011); *Seeing Through Race* (2012); Elkins, *Theorising the Visual* (2012).

<sup>7</sup>For a variety of different approaches to art and architecture from within legal studies, see Douzinas and Nead (eds), *Law and the Image* (1999); Resnick and Curtis, *Representing Justice – Invention, Controversy, and Rights in City-States and Democratic Courtrooms* (2011); Manderson, ‘Blindness Visible: Law, Time, and Bruegel’s Justice’ (2018) *Law and the Visual*; Vismann, ‘Image and Law – A Troubled Relationship’ (2008) *Parallax* 14; Goodrich, ‘Specters of Law: Why the History of the Legal Spectacle Has Not Been Written’ (2011) 1 *U C Irvine Law Review* 779.

<sup>8</sup>Boehm, *Was ist ein Bild?* (1994).

<sup>9</sup>Elkins, *The Domain of Images* (1999); Bredekamp, ‘A Neglected Tradition?’ (2003) *Critical Inquiry*.

<sup>10</sup>Moxley (n 6). Cfr Gell, *Art and Agency* (1998); Latour, ‘What is Iconoclash?’ in Latour and Weibel (n 6); Mitchell, *What do Pictures Want?* (2005).

of the particular effort of conceiving law intellectually or, alternatively, as codes for certain pre-existing messages to be subsequently decoded?

Thus, my interest here is with images rather than words or with art as such. However, moving in one go from generic objects to artworks to images and then to 'images of law' may prove too much. Accordingly, in this paper, I begin by approaching an apparently straightforward portrait found in the National Gallery in London and painted by the *Ferrarese* artist Lorenzo Costa.

This not a work by a particularly famous painter. Nor, one might be justified to observe, is it an especially memorable one, as a portrait (Costa himself produced other portraits not too dissimilar from this one, including a self-portrait). Nonetheless, this portrait is particularly intriguing – for one, as it relates to the important if half-forgotten early modern debate concerning the difficult question how to portray justice. However, the further point I wish to make here is that pictures such as this portrait are not only art – i.e. either reproductions of something or somebody, or *mise en scène*, or even performance. They are also *images* – in Horst Bredekamp's parlance, *bildakts*.<sup>11</sup> As such, their status matters over and above representation – for example, the precise relationship between *eidōs* and *eidōlon*, the extent to which putting something into an image may help to institute its own object rather than merely go with it, or else what images do or want as we happen on them, and they on us. Moreover, how is one to orient oneself through the image? This second overall question, also formulated by Didi-Huberman in his work, is another key backdrop against which I began to conduct the following inquiry – starting with the suggestion that the portrait found in London today can come across as something rather more perplexing and disorienting than one might have not initially anticipated.<sup>12</sup>

Having begun to draw a little nearer to the visual through Costa's portrait, I then review a different kind of artwork – this time, a small literary tract written *circa* 1515. What might this tract show? A productive answer to this question requires us to connect together the portrait, the tract, and many other early modern objects to do with justice and with law. Do the portrait and pamphlet in question not present us – together with other related artefacts – something like a significant visual ecology of the ever-fleeting encounter of history and event? Clearly, words and images conjure up different worlds and are initially approached each on their own terms.<sup>13</sup> Nonetheless, they can naturally combine in surprising ways, as already and authoritatively noticed by Aby Warburg, Walter Benjamin, and a number of other critics after them.

I turn then to the better-known allegories of justice composed by Albrecht Dürer at around the same time as the portrait and the literary tract. If portraits

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<sup>11</sup>Bredekamp, *Theorie des Bildakts* (2010). Cfr also Mitchell, *What Do Pictures Want?* (2006).

<sup>12</sup>Didi-Huberman, *Devant l'image: Questions posée aux fins d'une histoire de l'art* (1990).

<sup>13</sup>Boehm (n 8).

are mainly about pictures and literary works are mainly about words, then visual allegories sit somewhere in-between words and pictures. While by now the problem of portraying justice in dark times may have been successfully resolved, the status of the images the Dürer allegories convey is not so straightforward as it might appear at first. Something obscure if largely undetermined now seems to be quite explicitly looming over those allegories – very much at odds with the supposed exuberance of the age. Might the visual *pressentiment* seeping through those allegories – as well as, less obviously, the portrait and the tract already encountered – and confronting our otherwise generally unsuspecting historical approach to the age not point, in fact, to something like a hidden and less straightforward hologram of modern law as a whole?

Many more objects to do with justice or with law could be flagged up for discussion (some of them briefly considered here). However, the main reason for concentrating on a little-known portrait, a literary tract rarely considered on its own terms, and some better-known allegories of justice – is to attempt provisionally to discern, through them, alternative ways of approaching those and other objects that may (or may not) complement those that might come more readily to mind, that is, as objects merely illustrating, demonstrating or codifying the long journey towards modernization and the written rationalization of law after the Middle Ages. As it turns out, such objects as images – and even the ‘images of law’ they may foreground – might rather bafflingly end up resisting our comments, analyses or interpretations (however well-intentioned they might be), forcing us to engage with them in unexpected ways.

What, then, is one to make of such objects today when modernity, according to the received *doxa*, was by contrast intent on shaping – or reshaping – our notion of law in one, and only one, way (law is rational, law is written, law is one)? Might that claim not need to be at least partially reviewed? Was it ever fully sustainable at all? Might a new ‘natural contract’ be needed finally recognizing, as Michel Serres suggested,<sup>14</sup> the lively plurality we once left out and that now so often seems to press beneath the somewhat fragile surface of modern law we took, perhaps a little too hastily, to be firmly based on human nature and reason alone?

The next level in this essay, then, is to raise a third and final question – whether, at critical times, such modern objects may not have played an unexpected role as they transformed themselves, and us with them. For example, might a secularized concept of justice as merely ‘law’ not have been itself precipitated (to some extent) by the breaking down of a continuum of earlier images relating together the visible and the invisible, the private and the public, the social and the political? If so, what other ‘images of law’ may have prevailed and had consequences for the modern covenant?

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<sup>14</sup>Serres, *Le contrat naturel* (1990).

In summary, my interest – in this essay – is in artworks and other objects as images that engage with us as we engage with them in unexpected ways. I am also interested in moments of real crisis – such as, precisely, the passage from the Middle Ages to the Renaissance and Modernity. To which extent does the new ever leave the old entirely behind? Might significant ‘images of law’ not linger on in unsuspected ways? Finally, I am interested in the tension between such images and modern law in bringing about the world we think we know.

## I. In search of justice

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 (below, [Image 1](#)). The man seems to be seated, 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.

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

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 Renaissance Italy, however] this veil first melted into air ... man became a spiritual individual, and recognised himself as such.<sup>15</sup>

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.<sup>16</sup> 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,<sup>17</sup> scrutinizing portraits in search of their ‘inward truth’ remains the most common way of approaching such works of art.<sup>18</sup>

<sup>15</sup>Burckhardt, *Civilisation of the Renaissance in Italy* (1860).

<sup>16</sup>Pope-Hennessy, *The Portrait in the Renaissance* (1966). See also Loh, ‘Renaissance Faciality’ (2009) 32(3) *Oxford Art Journal* 341.

<sup>17</sup>Greenblatt, *Renaissance Self-fashioning from More to Shakespeare* (1980).

<sup>18</sup>Summers, *The Judgement of Sense: Renaissance Naturalism and the Rise of Aesthetics* (1987). On the ideology of portraits, see Berger, ‘Fiction of the Pose: Facing the Gaze of Early Modern Portraiture’ (1994) *Representations* 87. On their evolving status, Wilson, ‘The Renaissance Portrait. From Resemblance to Representation’ in J J Martin (ed), *The Renaissance World*. On inwardness, Eisaman Maus,



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

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.

At first, the picture will come across as a fine period portrait like many others. The composition, too, suggests something relatively straightforward. As a portrait, it is minimal, in so far as, for example, there is nothing in the background providing any details. Even 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.

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 immediately on the sitter. Even so, there seems to be nothing in it likely

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*Inwardness and Theater in the English Renaissance* (1995); Martin, *Myths of the Renaissance Individualism* (2004).

to produce the strange sense of surprise experienced as we happened on it. Neither the upper body nor even the head, turned slightly over to the left and onto the unseen artist who is at work to portray him, signal anything unusual.

Consider now the facial expression. It seems relaxed as if intent simply on keeping the assigned posture. Now, notice the eyes. Is there not something slightly impatient, even a touch defiant in them while the rest of the body, by contrast, projects a more self-confident, unhurried outlook on life? The contrast between the barely perceptible tension found in the eyes and the otherwise calmer composure is intriguing. What is it going on here? Is the sitter at ease, or is he in trouble? Is he collected and focused, or is he distracted? Is he pleased for the attention he is receiving, or is he suspicious of it? The eyes are only a small detail, of course. However, details often matter a great deal.<sup>19</sup>

Still, nothing is guaranteed here. The portrait comes across as an enigmatic and disorienting picture. The man peering out of it seems 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 is one of tranquillity or restlessness, confidence or doubt. What else is happening here?

**3.** On closer look, something seems to *exceed* the picture itself opening it up to those happening on it and allowing it to reach *out* of its apparent material constraints and into the world. Once again, it is difficult to pinpoint exactly what this almost imperceptible movement within the picture might be about. The effects of this, however, are palpable. It seems as if something is *forcing* us to pay attention to the picture calling us to find out about the man shown in it – bringing him out, as it were, of the shadows.

In other words, the picture seems to *want* something. This strange demand should not be dismissed as a fugitive impression of a somewhat naïf passer-by. Instead, a significant line of critics from Aby Warburg to Gottfried Boehm to W.J.T. Mitchell to Hans Belting to Horst Bredekamp (and beyond) have indeed repeatedly suggested that artworks can elicit responses that go often unnoticed and, yet, it is important to recognize.<sup>20</sup>

Notice again the background of the man in the picture. This is presented as an empty black field. Like elsewhere, this could be simply the result of a fairly straightforward pictorial choice to put the sitter's head and upper body in greater relief. Alternatively, it could refer (for example) to a sort of existential disposition, or *melancholia*, the painter may have wanted to associate with the sitter, or else a certain lack of social recognition he knew to be attached to his client.<sup>21</sup>

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<sup>19</sup>Arasse, *Le détail: pour une histoire rapprochée de la peinture*. Another detail would be the grey green bar at the bottom of the portrait which could be interpreted as the sitter being on some sort of "trial" (I am grateful to Peter Goodrich for suggesting this reading).

<sup>20</sup>Warburg, *Gesammelte Schriften* (1932); Boehm (n 8); Mitchell, *Picture Theory* (1994); Belting, *Bild-Anthropologie* (2001); Bredekamp, *Thomas Hobbes: Der Leviathan* (2006).

<sup>21</sup>On melancholia in sixteenth-century art, see Panofsky and Saxl, *Dürers "Melancholia": Eine quellen-und typengeschichtliche Untersuchung* (1923); and Klibansky, Panofsky, and Saxl, *Saturn and Melancholy*:

However, might not there be something else to the black field beyond a mere artistic choice or beyond a possible pictorial statement about a man enfolded in existential or social shadows? On closer look, it seems as if any immediate information about the sitter might be somewhat challenged from within by an undetermined force evoked by the portrait as an image. The black background, in other words, seems to point to a wider sort of darkness the sitter seems to be entangled with – something extending beyond his personal or social predicament, whatever that might be.

Put it differently, a looming *opacity* seems to compromise the apparent legibility and therefore legitimacy of the portrait's various narratives. Such opacity does not leave us unmoved. Rather, it demands of us something – perhaps, that we simply pause and acknowledge it, or perhaps that we take it more seriously, even at the risk of having to revise our existing knowledge (as casual passers-by, critics, historians, etc.) of the world it apparently shows or alludes to, however indirectly. Put it otherwise, the image is as disorienting *and* alarming as it may have, at first, seemed to be corroborating and exhilarating. It (quite literally) *resists* us. We do not quite know what to make of its various narrative layers, *and* it seems as if the darkness within might spill over at any time. As an object, the image yields an unexpected force – as do other similar artefacts whenever such tense opacity might unexpectedly crop up. The image thus *touches* us and, to paraphrase Paul Ricoeur, sets us *seeing and thinking* in a different way. New questions may now arise complicating 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.<sup>22</sup>

4. The unseen artist that would have been in front of the figure before us so as to be able to portray him, was Lorenzo Costa (1460–1535), a then relatively well-known painter from Ferrara. What we see of the sitter today, we see it, partly, through his eyes.<sup>23</sup>

Costa's family had left Ferrara for Bologna in 1483. There, he had begun to develop his own distinctive style becoming a key player in the splendid cultural scene promoted by the Bentivoglio family – at the expenses, Machiavelli notes, of more strictly political endeavours that could have spared them from becoming an easy prey of the ambitions of others. As it turned out, the descent of Charles VIII upon the Bologna broke the spell indefinitely, living behind a meandering sense of uncertainty and doom.<sup>24</sup>

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*Studies in the History of Natural Philosophy, Religion, and Art* (1964); Britton, "Mio malinconico, o vero ... mio pazzo": Michelangelo, Vasari, and the Problem of Artists' Melancholy in Sixteenth-Century Italy' (2003) XXXIV(3) *Sixteenth Century Journal* 653 ff.

<sup>22</sup>Burckhardt (n 15). Cfr Batkin, *Ital'janskije gumanisty: stil' žizni i stil' myšlenija* (1978); Kristeller, *Renaissance Thought* (1964). On Renaissance as myth, see Burke, *The Renaissance* (1987; 1997), esp. ch 1. For a re-reading, see Ciliberti, *Rinascimento* (2015).

<sup>23</sup>See Negro e Roio, *Lorenzo Costa* (2001).

<sup>24</sup>Ibid 16.

At around the time of the picture, Costa had just had the opportunity of a lifetime. Having moved to Mantua and persuaded the all-powerful Isabella d'Este to let him make her a portrait (*retracto*), 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.

We do not know for sure why Costa had agreed to compose the portrait now hanging in the National Gallery in London.<sup>25</sup> Not much attention has ever been paid to his sitter. The Jesuit Saverio Bettinelli (1718–1808) tells us that Battista Fiera (1465–1540) was a humanist, an erudite man (*uomo dottissimo*) with a passion for medicine, poetry, philosophy, and theology.<sup>26</sup> While relatively well-known and prosperous enough as a physician, Fiera had not been as successful as a humanist.<sup>27</sup> Overlooked at home – Bettinelli himself complained that Fiera wrote much too much, had an 'enigmatic style' (*stile enigmatico*), and disseminated his inscriptions wherever he could<sup>28</sup> – and soon forgotten abroad, Fiera nevertheless offers a significant clue into a key moment of the history of Europe *circa* 1500.

What did Battista Fiera do – not by design, not single-handedly, and yet crucially, in my view – to help legal history come along the way it did? The answer is usually that Fiera is the author of the earliest known literary tract staging the attempt to portray justice.

We often take art and literature to illustrate prior ideas or, else, to support or demonstrate existing or newly found historical evidence patiently dug out of the archive. Alternatively, we might think of art and literature as codes to be decoded. Yet, widening the scope of our inquiry by taking certain otherwise apparently unremarkable objects somewhat more seriously may offer a fresh and different take on the history we may already know – taking perhaps some of its cues (on the one hand) from Walter Benjamin's 'tradition of the oppressed' (*Tradition der Unterdrückten*), or Michel de Certeau's 'history of solitudes' (*histoire des solitudes*), or Gilles Deleuze's and Félix Guattari's 'becoming minoritarian' (*devenir-minoritaire*), and (on the other hand) from the nineteenth-century tradition of the 'science of art' (*Kunstwissenschaft*), Bredekamp's 'image science' (*Bildwissenschaft*), or Didi-Huberman's anthropology of sense events (*anthropologie des évènements sensibles*).<sup>29</sup>

<sup>25</sup>Martineau, *Splendours of the Gonzaga* (1981); Brown-Lorenzoni, 'Lorenzo Costa in Mantua. Five Auto-graph Letters' (1970) *L'Arte* 11.

<sup>26</sup>Bettinelli, *Delle lettere e delle arti mantovane* (Mantova 1774) 54, 59.

<sup>27</sup>Asor Rosa, 'Fiera, Battista' (1997) 47 *Dizionario Biografico degli Italiani* 415.

<sup>28</sup>Bettinelli (n 26).

<sup>29</sup>Benjamin, *Über den Begriff der Geschichte*, in *Gesammelte Schriften*, vol 1, n 2, 701; 'Theses on the Philosophy of History' (1999) *Illuminations* 245. Certeau, *La solitude* (1967). Bredekamp, (9). Didi-Huberman, 'Rendre sensible' in *Qu'est-ce qu'un peuple* (2013). Cfr Stramignoni, 'At the Margins of the History of English Law: The Institutional, the Socio-Political, and the "Blotted-out"' (2002) *Legal Studies*.

More specifically, is there something to be gained from tackling Fiera's tract – more precisely, the nocturnal dialogue it returns – as an image of sorts to do with a particular effort of the imagination that, still *undecided*, would have been a *collective* and so *dispersed* effort to boot? Indeed, could *both* portrait and dialogue *and* other early modern objects to do with justice or with law not be approached as images partaking in something like a *multiple experience of justice or 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 recognizable and uniform law of a later modernity? In short, could those objects amount to *both* significant artefacts to be interpreted *and* images or even 'images of law' whose presence and ontological demands might still carry the full force of the tensions produced by the passage from traditional to contemporary concerns, from the past to the future, from disappointment to hope – tensions (the growing remnants of a disappearing world, the petty opportunisms of the new one, the shattered dreams, and so on) otherwise so characteristic of those difficult times?

Fiera could hardly be thought of as a key player in the collective effort of imagining justice or law 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.

For we know that the little-known humanist and the great Master, who would shortly return to Mantua after unsuccessfully attempting to make Rome his home, soon became close friends.<sup>30</sup>

5. Those were increasingly difficult times in Italy, and Mantegna, whose place Lorenzo Costa 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 peril. Lorenzo de' Medici, the son of Piero de' Medici and grandchild of Cosimo de' Medici, had come to power in Florence in 1469. However, his personal demeanour and political ambitions had turned out to be otherwise than initially expected. In Rome, things did not look much 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 – not least for being key to the decision by Charles VIII to descend on Naples and carry out the fateful Italian war of 1494–1498.<sup>31</sup> Beyond Rome, absolutism had been gaining grounds over feudalism, political centralization within states had triggered

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<sup>30</sup>Asor Rosa (n 27).

<sup>31</sup>Italy remained a theatre of war until 1559. Several Italian princes fought one another off seeking to unite the peninsula while France and the Germanic Empire attempted to drive one another out by turning the turmoil to their own advantage. Spain was keen to protect her interests in the South of

opaque processes of legal uniformization, and the spreading technology of printing had begun to stabilize matters in wholly unexpected and unpredictable ways.<sup>32</sup>

Mantegna's own life so far had been long and successful. In 1487, only a few years before the start of the war, he had been called by the Pope to decorate his private chapel in the *Palazzo del Belvedere* in the Vatican. However, Mantegna 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 – he had to submit to a demanding patron, cope with illness several times, and personally witness much corruption and civic strife.

The chapel and its frescoes in the *Belvedere* have since disappeared, adding some mystery to this story. Still, 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, an image of *Justitia* herself.

How, then, did justice look to Mantegna, at such difficult times? Did his rendition conform to the accepted conventions of the time, as seen on the top right corner of the *Trionfo della Virtù* (1502)? Or did it amount, instead, to a new invention, a new image never seen before?

These are intriguing questions – not least because Mantegna would have discussed his ideas with his powerful patron. Beyond questions of power and art, however, one might consider how such objects might live in their own media like we do in our bodies – we hardly anticipate what they want from us when we happen upon them, or they on us.<sup>33</sup> In short, we simply do not know what effects Mantegna's image of justice may have had upon those venturing into the chapel of the *Belvedere*. The papal walls, the great Master's creation, and indeed all of those who were able to stand before 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 the National Gallery in London confided to a small book entitled *De Iustitia pingenda* a dialogue between Mantegna, whom he had known so well, and Momus, the 'child of the Night', a familiar voice from antiquity.<sup>34</sup>

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Italy by extending her influence northwards. The protestant princes and the Turks joined in at a later stage in the 'Italian wars'. See Mallet and Shaw, *The Italian Wars: 1494–1559* (2012).

<sup>32</sup>See Ruggiero (n 4).

<sup>33</sup>Boehm (n 8); Mitchell, *Iconology: Image, Text, Ideology* (1986); Belting, *Bild-Anthropologie* (2001).

<sup>34</sup>I have relied on the standard Latin edition of 1515 (Lion and Unicorn Press, London, 1957) with introduction, translation, and notes by James Wardrop – but I have modified the translation in places. The date of the tract suggested therein has been questioned: see Romano, 'Verso la maniera moderna: da

This tract is like many others. Its dialogue, however, is really interesting. In that strange, distant conversation between a deceased artist and a creature of darkness that had since reclaimed him, the Master wonders just how might one possibly go about the seemingly impossible job of putting justice into an image.<sup>35</sup> This question was far from being academic. At the start of the *Cinquecento*, justice had to be radically reimagined 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.

The conversation is as disorienting as Costa's portrait of Fiera. It takes place near the church of San Crisogono in Rome and it is about the messy question how to do justice to justice, how to render it visible when the very concept of it is no longer clear – indeed, when it had become altogether obscure.

We might regard the conversation as pure fiction, an entirely invented exchange, a *scherzo*, something that has never actually taken place. Alternatively, we might treat it as evidence, accurate or approximate, of a real dialogue or even a private rumbling to which Fiera might have been a casual witness. Whichever way we go, fiction and reality mix immediately and inextricably together in this tract written, quite literally, in the shadows of power.

The endless play of fact and fiction seems to be somewhat inescapable in history and fiction alike. Beyond that, does the dialogue not offer some kind of unexpected *resistance* requiring further attention? Might we be confronted, here, by something that, neither fact nor fiction, we could provisionally describe as a *Leitfossil*, or perhaps as an 'imaginative record' of things past, or even (reversely) the elusive *matrix* of a world still to come?

In short, the question – here as in the case of Costa's elusive portrait – is whether we might not be in the vague presence of something quite different and unanticipated requiring us to handle it otherwise than as a basic question of fact or fiction – more precisely, as something like another singular instance of the ever-fleeting encounter of history and event.

Back to the dialogue, one quickly comes to feel that this is something of a bizarre conversation.

7. Mantegna is disoriented, even confused. 'I see you are in a hurry and distraught', Momus tells him immediately. Just so, replies Mantegna. The reason? He had just been to consult the philosophers. Instead of helping

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Mantegna a Raffaello' (1981) II(2) *Storia dell'arte italiana*; Martineau (n 25); Edgerton, *Pictures and Punishment: Art and Criminal Prosecution during the Florentine Renaissance* (1985). An interpretation of the dialogue as making plain the ambiguities of justice is formulated by Curtis and Resnik, 'Images of Justice' (1987) 96 *Yale Law Journal* 1727 at 1761–64.

<sup>35</sup>Momus was a popular personification of satire allowing critics to voice political or social discontent – making it the perfect stratagem in a literary work discussing justice. Leon Battista Alberti had paved the way in *Momus or the Prince* (1446). See Simoncini, 'L'avventura di Momus nel Rinascimento. Il nume della critica tra Leon Battista Alberti e Giordano Bruno' (1998) 38 *Rinascimento* 405.

him to decide how to represent justice, they had dragged him into a thick web of intricate considerations (*audi quaeso in quae involucre me involverint*).

Momus is not surprised. Why bother about justice when nobody else does (*tam paucis ... curae sit*). 'Well', Mantegna replies, 'this is what the all-powerful has ordered' and orders cannot be ignored. Momus concedes. At least, he quips, he had steered clear of the lawyers, for 'nothing could be more inane or longwinded than they; nobody more needlessly contentious' (*nihil enim illis inanius verbosisque est, nihilque temere iurgiosius*).

Mantegna agrees. Be what may, the problem does indeed seem to be of a philosophical nature. Mantegna is a Christian and, as such, he believes in only one God – not in 'all those many gods of yours, about whom silly stories are told' (*nec plures illos tuos, quos fatue fabulanter teneo*). At the same time, such God is a Trinity – both One and several. If to portray justice in the secular manner of the classical world would expose him to the wrath of his patron, how, on the other hand, could justice be portrayed as a Trinity – Father, Son, and Holy Spirit? How could anything be both one and many at the same time? Christianity thus posed the artist a problem philosophers could not solve.

Mantegna is pressed with time – 'my brush calls me' (*ad penicillum enim trahor*), he quips, interestingly. Might Momus be able to help? Pray say, he insists, how should one portray justice?

Here is what he had heard from the philosophers. One thought justice should be portrayed with one eye. Another one thought it 'ought to be seated, and holding scales in her hand'. A third, by contrast, argued justice should be represented as standing, 'with her eyes all over her', brandishing a sword against robbers, and in defence of the innocent and the unfortunate. Finally, a fourth one – whom Mantegna had caught disputing keenly (*acriter*) with Fiera on all things medical – suggested instead that 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'. As to Fiera, he thought justice should be 'covered with ears' – on one interpretation, so that all sides of a question could be heard.<sup>36</sup>

The philosophers did however agree on something. Namely, justice should be modestly dressed wearing the 'habit of a penitent' – and would need to be a woman, Momus reminds his confused and disconsolate friend.

That was the philosophers. Matters had not proved better with the theologians. The problem, for them, is not so much what attributes justice should have as, more radically, that justice cannot be pictured at all – or perhaps only 'in a minimal way' (*Iustitia minime posse pingi*).<sup>37</sup>

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<sup>36</sup>Lomazzo, *Trattato dell'arte della pittura* (1584).

<sup>37</sup>The term *minime* presents an ambiguity left for readers to resolve.

Of course, Momus quips. Too many attributes at the same time! No, Mantegna replies, that was not at all what the theologians meant. Rather, the problem was that, for them, justice is the will of God. It is the way things are, have always been, and always will be. How could one possibly paint such unimaginably omnipotent act?

Nothing, then, seemed to work - not the philosophy, not the theology, not the law. In fact, one cannot even come near to putting justice into an image. For when one attempts to do so, one needs to account for so many variables that the effort will end up in failure. The fundamental obstacle encountered by any attempt to describe and depict justice could not be evoked more clearly than that.

At this very point, the conversation suddenly changes. What about *human* justice?

Yes, of course! The main contours of human justice are rapidly identified. Justice is a sentiment faintly present within all human beings, it is the rule we live by, and from which we cannot escape. That said, divine justice is reflected in human justice through *death* – making us all equal, the lowest and the highest: that is what is holy and severe about justice (*tam sancta severa lustricia*). Justice, in other words, is impossible to imagine and, yet, it is precisely through our finitude that we may nonetheless be able, occasionally, to catch a glimpse of it, however indirectly or apophatically.

At this point, the dialogue – something of a nightly dream, or a passing thought suddenly risen in the course of a sleepless night – comes rapidly to an end. Momus' final observation is nonetheless intriguing. While he has now understood how difficult it is to figure out justice in dark times, he remains admiring of the artist as he has been able to portray *death* so well:

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.

**8.** There is a strange and intense quality to the nocturnal dialogue returned by our small literary tract.<sup>38</sup> Mantegna *hesitates*. He is reluctant to take up the brush. Why is it so difficult to turn to the tradition he knows so well?<sup>39</sup> Where is the scandal? To the extent that Momus could be evoked by Fiera as the placeholder of something like Mantegna's own crepuscular pondering, might Momus' mirroring opinion indicate that, at some point, Mantegna entertained the thought of renouncing his commission or even his career?

As in the case of Fiera's own portrait, then, the *strangeness* transmitted by the tract could be read literally or metaphorically as something to do with

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<sup>38</sup>Cfr Ankersmit, *Sublime Historical Experience* (2005).

<sup>39</sup>Burckhardt, 'Die Allegorie in den Künsten' in *Gesamtausgabe* (1933).

Mantegna's own history, or with his existential qualms (as diagnosed by the physician Fiera), or else with the pressure and potential dangers of conforming to a convention he feels compelled to respect but unable to warm up to.

Beyond that, however, the tract might be about something else – something that neither its author nor its characters might have necessarily recognized.

What might *that* be? The dialogue does not (cannot) say and no amount of conventional research would probably succeed in answering that question.<sup>40</sup> However, does the unthinkable obstacle that seems to loom large in the strange nocturnal conversation between Mantegna, Momus and Fiera (both the author and a party to the conversation) not present us with something like an *obscure pressentiment* that justice had become unimaginable – something that could still, perhaps, be evoked while a fuller articulation of it could no longer be possibly achieved?

I am intrigued by the *unthinkable* feeling traversing the dialogue from one side to the other. Justice, the tract seems almost inadvertently to show, is something of a *fugitive event* – making, at best, some fleeting appearance before fast disappearing again, becoming unimaginable again.

One should not be surprised by the possibility of discerning this strange fleeting moment running through the surface of the literary tract on hand. Christianity could no longer be safely relied upon to provide any guarantees. For what it had promised seemed to be, by now, seriously compromised.<sup>41</sup> The moment has passed, and the ancient ghostly have returned to hunt the holy or the angelic away.<sup>42</sup> Once again, people seem to be fighting mindlessly and mercilessly with one another. Once again, justice seems to have vanished away, possibly, this time, for good.

To my mind, this fugitive moment is the vanishing point in Fiera's otherwise rather conventional literary tract – what it 'gives us to see', one might say.<sup>43</sup> Contrary to extant interpretations, then, this is not only a tract about the artistic, conceptual, or even doctrinal articulation of justice. Over and above that, *De Iustitia pingenda* 'gives us to see' the occurrence of a fleeting, unexpected event – the startling reckoning that justice may not be, after all, what the *doxa* would have it to be. Justice might be justice, yet it could hardly rise above the *vanitas* of our worldly concerns.

And yet, might not the reckoning we are presented with here, however indirectly and fugitively, help us at the same time imagine something like 'justice' again, albeit in new and different forms – before justice could be precisely thought, said, and one day, perhaps, even represented again? How did

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<sup>40</sup>Ankersmit (n 38).

<sup>41</sup>Zoja, *Giustizia e bellezza* (2007).

<sup>42</sup>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).

<sup>43</sup>Above Boehm (n 8).

interpretation and presence combine together to help bring about the modern order of things? Two obverse ways of imagining something like ‘justice’ interest me here. On the one hand, it must always be possible to catch glimpses of it through the fabric of the world. On the other hand, it must always be possible patiently to assemble something like it out of that very same world.

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

## II. Beyond historicism and after the text: for a history of the visual in law

9. We began our inquiry with the striking portrait of a relatively little-known humanist who was also the author of an engaging literary tract discussing the awkward matter of imagining justice at a time of crisis.

One might be surprised by the coupling of a picture and a literary tract under the broad rubric of ‘images of law’. As a long tradition going at least as far back as the nineteenth century has already shown, images engender worlds that may be taken to be quite different from those instituted by words. On the other hand, visual and literal worlds often combine, as, for example, in the tradition of the Renaissance emblem initiated, interestingly enough, by the jurist Andrea Alciato (1492–1550) on the spur of the age’s passion for sight, multiple forms of representation, and Egyptian hieroglyphics, shows only too well.<sup>44</sup> Beyond interaction, however, a history of the visual in law might enable us to discern ecologies of objects to do with justice or law that might show something quite unexpected vis-à-vis other more familiar knowledges of the past, including the past of modern law.

In both portrait and tract, we detected something unwieldy. For the portrait, 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. Apropos *De justitia pingenda*, on the other hand, we experienced what could only be described as something like an *obscure presentiment* cutting across the length of the tract as a whole.

We can now turn to another and perhaps more explicit find in the early modern visual field as we attempt to venture beyond the master narrative, we are so familiar with – Albert Dürer’s allegories of justice.

Clearly, artworks to do with justice are not found for the first time in a Renaissance *bottega* or within a Humanist *milieu* alone. Earlier representations to do with the power to adjudicate, the responsibility of judges, and the autonomy of the judicial function date back at least to the twelfth century.<sup>45</sup> They can be found beautifully inscribed on juridical manuscripts,

<sup>44</sup>Alciati, *Emblematum libellus* (1531). See Goodrich, *Legal Emblems and the Art of Law* (2014).

<sup>45</sup>Jacob, *Images de la justice* (1994) 12–14.

or featuring in impressive pictures hanging off courtroom walls, or else delicately carved on the judicial buildings themselves.<sup>46</sup> A lot of engaging work has been already done demonstrating the iconology, iconography or semiotics of justice in ever fresh and fascinating ways.

Nevertheless, the particular question guiding my considerations in these pages is a different one – at once more ‘elementary’ and more ‘transversal’ than many other questions that have already been asked.

What is it that strikes as unwieldy in many early modern artworks and other objects to do with justice as it does in Costa’s portrait and in Fiera’s literary tract? Might this have gone relatively unnoticed – buried beneath the doctrinal, political, social, or even artistic debates of the day? My suggestion here is that the awkwardness transmitted by certain early modern objects to do with justice might be due to the preliminary scandal of figuring out justice anew, let alone doing so at difficult times such as the dawn of modernity. However, where might the difficulty lie?

Such inquiries do not usually receive much attention, perhaps on account of their apparently speculative nature. Yet, they could be decisive questions to ask. We might, for example, routinely repeat that justice should not only be done but, also, *seen* to be done. However, how did we come to believe that justice could ever be possibly seen? Furthermore, what precisely is there to be seen, in such cases? One common answer is that justice became visible 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 might have come to be represented in a certain way when it came to be thought *in that way*. Early modern images of justice, however, might conceal something else altogether.

Writing things down and printing them off partakes to a history of secularization and rationalization that is undoubtedly the hallmark of modernity.<sup>47</sup> This history may or may not be looked upon anxiously by certain historians.<sup>48</sup> 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.<sup>49</sup> Might the modern attempt to ‘purify’ the law not be another, if more subtle, instance of our obsession with vision? Might such obsession not be paradoxically reinforced by the prohibition to resort to art except as a comment to the singular form to which

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<sup>46</sup>Ibid.

<sup>47</sup>McLuhan, *Understanding Media: The Extensions of Man* (1964); Havelock, *The Literate Revolution in Greece and its Cultural Consequences* (1981); Ong, *Orality and Literacy* (1982).

<sup>48</sup>The obligatory rejection of European historicism could be usefully bypassed by owning up to certain aspects of Europe’s modernity (Chakrabarty, *Provincializing Europe*).

<sup>49</sup>Key contributions to the debate range from Levin, *The Opening of Vision* (1988) to Jay, *Downcast Eyes* (1993), to Douzinas and Nead (n 7).

early modern law is quietly committed and that is only apparently denied by the incessant advancement of the written rule of law?

Thus, some early modern objects to do with justice may be shown to amount to just another aspect of such broader and better-known efforts assecularization, rationalization, obsession with what hits the eyes – illustrating, proving or encoding what we take to have gone to build legal modernity as we know it. In the remaining part of this essay, however, I wish to consider whether something else might not be gained from approaching those early modern allegories of justice in a different way. Specifically, I wonder whether such artworks might not be approached *both* as so many traces, *and* (in the obverse scenario) as *matrixes* of the variety of different experiences those attempting to figure out justice at difficult times might have one day sustained.

The emphasis, then, would be *less* upon the direct evidence such artefacts might be apt to provide, as (for example) in Carlo Ginzburg's meticulous work,<sup>50</sup> *than* upon the response they might afford and what might perdure in them. Similarly, the emphasis would be *less* upon a simple straightforward history of facts or, else, upon a recapitulation of the meanings, or 'tradition', pertaining to certain artefacts,<sup>51</sup> and their relationship with the dominant legal discourse, *than* upon a history understood as a particular form of *ethical testimony* in respect of forms we have learned to ignore, or to dismiss as subordinate to other forms of thinking and seeing. What then might the effect have been of encountering those images at a difficult time for European history?<sup>52</sup> Might that experience still be open to us, somewhat – albeit perhaps less intensely than before? If so, how?

Specifically, might the awkwardness we noted not be due to such artworks being not so *decided* yet – something like *potential* images concealing (in plain view) something else, namely, the sheer multiplicity and distribution of the many different visual experiences those objects might be neglected icons of, rather than the ostensible and supposedly convenient, if nonetheless restricted, uniformity of a particular set of historical or textual artefacts to come? How might that have affected those encountering those images, with the result of making something like 'human justice' – should we now call it 'law' – finally real, *and so conceivable*?

Further, how might such potential images relate to *our* existing knowledge? How might they *regard* us? Might they engage with us in unsuspected ways? Does something of those images not touch us *and* resist our inquiries?

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<sup>50</sup>Ginzburg, 'Clues' (1979); *Paura reverenza terrore* (2015).

<sup>51</sup>Panofsky, *Studies in Iconology; Humanistic Themes in the Art of the Renaissance* (1939).

<sup>52</sup>See Nancy, *L'expérience de la liberté* (1988).

Approaching early modern representations of justice in that way would require 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 kind of *materiality* of those artefacts in the effort of establishing what might or might no longer happen when they happen on us (or we on them), what *force* they might or might not still exert,<sup>53</sup> in short, what those images might or might not still do *as images*.

Finally, 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 such experiences may no longer be commonly or, at any rate, readily available?

Put it otherwise, are we, today, finally unable to see how a key turning point in the long-standing process summarized by Heidegger at the end of his work on Nietzsche,<sup>54</sup> and going further back than modernity, may have led us where we are?

Or is it still possible, by contrast, even today, to catch something, however rare and fugitive and sparse it might be, of that particular history, or, in yet another possible if obverse scenario, discover new and multiple trajectories in spite of the media-saturated world of today?

**10.** The work of Georges Didi-Huberman may offer one inroad into precisely such sorts of questions concerning the visual in law.

For him, the entire trajectory of the modern knowledge about art has been marked by a fundamental equivocation. In particular, art has been understood to be either about nature or about culture, and this stark way of approaching it has de-sensitised us from the considerable *strangeness* of the art-image (*image de l'art*) with which earlier ages, by contrast, were entirely accustomed.

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).<sup>55</sup>

How then might one grasp again what may be so 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 the modern Western canon can be postponed to another occasion. Here, it can be noted that such strangeness – not unlike the striking opacity emerging from Costa's portrait or the obscurity looming large over

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<sup>53</sup>Freedberg, *The Power of Images* (1989).

<sup>54</sup>Heidegger, *Nietzsche*, vol 2.

<sup>55</sup>Didi-Huberman, *Confronting Images* (2005) 8.

the work penned by Battista Fiera – becomes more apparent when approaching such objects as so many *images* – not, therefore, simply as the artworks (architectures, sculptures, frescos, pictures, woodprints, engravings, printed matter, etc.) they nevertheless still 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 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 called ‘icons’ – that is, objects producing 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 necessarily about *mimesis* or, alternatively, about history or text.

Further epistemological strategies are then deployed seeking to put images 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 key to knowledge.<sup>56</sup> 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? It is, for Didi-Huberman, a power belonging to the thinking subject, a ‘power of thought’ (*puissance de la pensée*) common to poets and thinkers alike. Such power has nothing to do with individual fantasies, nor, for example, with what was propounded by Surrealism, in particular, Dalì or Lacan. Instead, it is 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 the French critic across his many writings are always something untimely apt, when they briefly appear before our eyes, to suspend or interrupt our existing knowledge (structured by law) in fresh and unpredictable ways.

Interestingly, imagination can lead to what Didi-Huberman calls, following Warburg but also a host of other voices of the twentieth century, a *montage*. This is hardly a reckless combination of a variety of occasional ‘citations’ as it might seem at first. Nor would it ignore the reality of what has been suggestively called ‘mediamorphosis’.<sup>57</sup> Instead, it would consist in eye-widening, productive associations analogous to the characteristic core of an event. Crucially, *montage* would also seek to overcome an actuality without past, and a past without effects on the present.

In short, Didi-Huberman’s approach calls for *both* critical judgement *and* poetic imagination vis-à-vis the images we encounter – an approach not

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<sup>56</sup>Didi-Huberman, *Images malgré tout* (2004).

<sup>57</sup>Fidler, *Mediamorphosis* (1997).

too dissimilar, in my view, from Goethe's 'tender empiricism' (*zarte Empirie*), or else from certain 'poetic comparisons' that could be elicited by, or drawn across, multiple objects to do with justice or with law.<sup>58</sup>

Without needing to embrace Didi-Huberman's suggestion fully, approaching objects to do with justice or law in that way might indeed facilitate a different form of critical knowledge to emerge beyond extant literal or visual language but ultimately integrating it in a consequential if momentary way. Always incomplete and tentative, such 'tender empiricism' or 'poetic comparisons' would be no less valuable for that. To the contrary, such objects might thus 'unclose' to us, and we to them, in interesting ways – ultimately engaging with what historical knowledge or meanings one might imagine to be already in possess of.

It is fair to say that, so far, Didi-Huberman has shown relatively little interest in confronting justice or law-related objects as such.<sup>59</sup> It is nevertheless clear that his work is firmly centred on a visual declination of the 'tradition of the oppressed'.<sup>60</sup> As such, his work is broadly and yet unquestionably relevant to our own inquiry into what we have called the visual field of modern law.

**11.** Take 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.<sup>61</sup> Dürer's contemporaries were endlessly fascinated by such work, marked as it was by constant experimentation with technique, colour, perspective, and proportion.<sup>62</sup> All this makes it a good case to tackle here.

Two sets of works can be singled out in that respect. Firstly, a series of extra-large woodcuts illustrating the Revelation of St John the Divine. Here, it is important to emphasize that this was the first book illustrated and published by an artist in which, as Walter L. Strauss noted, the text is subordinate to the pictures.<sup>63</sup> Secondly, we may mention three engravings – *Knight, Death and Devil* (1513), *St Jerome in His Study* (1514), and *Melancholia I* (1514) – demonstrating the great importance Dürer attached to 'the art of measurement' as

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<sup>58</sup>Goethe, *Scientific Studies* (1988). On 'poetic comparisons of law', see Stramignoni, 'The King's One Too Many Eyes: Language, Thought, and Comparative Law' (2002) *Utah Law Review*; and 'Meditating Comparisons: Or the Question of Comparative Law' (2003) *San Diego International Law Journal*.

<sup>59</sup>See however Didi-Huberman, 'The Molding Image' in Douzinas and Nead (n 7). See also Halder, 'On the Question of Dissemblance in Medieval Political Theology' (1996) *Law and Critique*; Stramignoni, 'Review Essay: Mapping Maps in Western Legal Thought' (2005) *International Journal of Law in Context* 411.

<sup>60</sup>Benjamin (n 29).

<sup>61</sup>Strauss (ed), *The Complete Engravings, Etchings, & Drypoints of Albrecht Dürer* (1972). Cfr Panofsky, *The Life and Art of Albrecht Dürer* (2005); Harthan, *The History of the Illustrated Book – The Western Tradition* (1981).

<sup>62</sup>Strauss (n 61).

<sup>63</sup>*Ibid.*

key to become 'a true artisan',<sup>64</sup> something that could result in *Vergleichlichkeit*, an 'equality or harmony of all parts in relation to the whole'.<sup>65</sup> In other words, not only did Dürer's vast work enjoyed a hitherto unparalleled success across audiences in Northern Europe and beyond but it also managed to promote, visually, a unique sense of overall harmony and poise.

Another reason for turning to the 'genius of the German Renaissance' is that Dürer also created a variety of unforgettable allegories of justice.<sup>66</sup>

A number of scholars have not failed to notice and variously reflect upon one particular artwork 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.<sup>67</sup>

There is no doubt that Sebastian Brant's woodcut became very popular, however incomprehensible that might seem today, and that its popularity has lasted a long time.<sup>68</sup> However, I would suggest, other works by Dürer are just as noteworthy – particularly, once we consider Didi-Huberman's approach in his evocative endeavour, *open to all*, aiming to go beyond the history of the artwork in order to recognize the innate capacity they often have to touch those who come in contact with them. What may be learned from attempting to relax our 'gaze' and approach Dürer's allegories of justice as images?

Clearly, such objects were produced by someone enjoying a privileged position in society, and Nuremberg was itself an important centre of power in Northern Europe at the times. It is therefore possible and relevant to ask questions about Dürer's own perception of justice, and the kind of response they might elicit of those coming into contact with them.<sup>69</sup>

There is little doubt that, at an iconographical level, those images would have been likely to reinforce, through *Vergleichlichkeit*, a certain political sense of harmony. However, 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 it the sheer difference with anything else seen before? Might they be doing anything that their more obvious literal

<sup>64</sup>Dürer, *The Painter's Manual* (1977) 37.

<sup>65</sup>Panofsky, (n 61) 276. Cfr Elkins, *On Beautiful, Dry, and Distant Texts* (2000).

<sup>66</sup>Wolf, *Albrecht Dürer 1471–1528 the Genius of the German Renaissance* (2006).

<sup>67</sup>On the blindfold, see Kissel, *Die Justitia: Reflexionen über ein Symbol und seine Darstellung in der bildenden Kunst* (1984); Curtis and Resnik (n 34); *Representing Justice* (2011), esp. 91–105; Jay, 'Must Justice be Blind?' (1996) XVII(2) *Filozofski vestnik* 65; and Goodrich, 'Justice and the Trauma of Law' (1998) 18 *Studies in Law, Politics, and Society* 271. Interestingly, the blindfold is absent from the iconographical tradition in Italy: Prosperi, *Giustizia bendata* (2008).

<sup>68</sup>Prosperi (n 67) 8.

<sup>69</sup>Curtis and Resnik, by contrast, base their pioneering search for images of justice on the too pessimistic assumption that the past cannot be recovered. Only mere speculations are possible such as those that they concede they themselves advance. See Curtis and Resnik (n 34) 1739 and 1741.



**Image 2.** Albrecht Dürer – *Christ as the Man of Sorrows* (circa 1493). Source: Wikimedia Commons.

or visual languages might conceal? For example, what memories might be sedimented in those artworks? What memories might they be suppressed by them? And would 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, that was developing in Europe at that time? And yet.

Take *Christ as the Man of Sorrows* (Image 2) held in the Staatliche Kunsthalle Karlsruhe.<sup>70</sup> In Panofsky's now classical view, its strength lies in

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<sup>70</sup>For example, in Panofsky, *Meaning in the Visual Arts* (1955).



**Image 3.** Albrecht Dürer – *Allegory of Justice* (1498), image sourced at: WikiArt.org.

its nearly impeccable structure of the human body it projects. For Didi-Huberman, however, there is more to that small oil than that.

In general, the picture 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 crucifixion and death of Jesus. Furthermore, this is a powerful representation of a man, overwhelmed by the events and resigned to his fate. Yet none of that can, in fact, capture the fuller force of the artwork. To capture that, a very different approach is recommended.

In effect, Didi-Huberman points out, the picture centres around the presence of Jesus' *stigmata* allowing it not so much to speak of a human body, however skilfully depicted, as to exhibit the human *flesh* itself. This is not what those happening on that picture would have necessarily noticed. However, something entirely different occurs when 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.

Return now to Dürer’s allegories of justice. Is there not a common if perhaps tenuous thread among those artworks, beside the shared motif of justice?

Clearly, those allegories are strikingly different. In a drawing on ink and paper dated from 1498 and kept in the State Hermitage Museum of Saint Petersburg (above, [Image 3](#)), 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, now found in the National Gallery of Art in Washington D.C., U.S.A., and known as *Sol Justitiae* (below, [Image 4](#)), justice has become a ‘nimbed man with the attributes of justice’ sat crossed-legged on a lion ‘patterned after those which Dürer had sketched in Venice’.<sup>71</sup> 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’.<sup>72</sup> He also writes (seemingly without noticing the 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.<sup>73</sup>

The visual model of the sun is an important iconological clue, exemplifying the appropriation and transformation of the Roman *Sol Invictus* into a *Sol Justitiae* – ‘thereby displacing the natural force of a life-giving and death-dealing astral divinity by the moral power of Christ’.<sup>74</sup> 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.<sup>75</sup> For present purposes, it is important to reproduce here the passage in the *Repertorium* that is for Panofsky the source of inspiration behind 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 Leone*], 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.<sup>76</sup>

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<sup>71</sup>Panofsky (n 61) 78.

<sup>72</sup>*Ibid.*

<sup>73</sup>*Ibid.*

<sup>74</sup>*Ibid.*

<sup>75</sup>*Ibid.* The *Repertorium* was printed in Cologne (1477) and in Dürer’s Nuremberg (1489).

<sup>76</sup>*Ibid.*



**Image 4.** Albrecht Dürer – *Sol Justitiae* (circa 1499/1500). Source: Wikimedia Commons.

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, it is interesting that here, too, the judge represented in the picture seems strangely at odds with the composure he should project, with his gaze turned to his left while the lion, on which he sits and which symbolizes his might, looks somewhere to the right.<sup>77</sup>

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* (below, [Image 5](#)), justice has now become a sorrowful and disconsolate defendant in a trial

<sup>77</sup>The Christ-figure of the judge might be looking to his left (right for the viewer) because he is holding the sword with the right. Had he looked to his right (in the same direction as the lion), he might have come across as unduly menacing. I am grateful to Boris A. Uspenskij for suggesting this reading of the image.



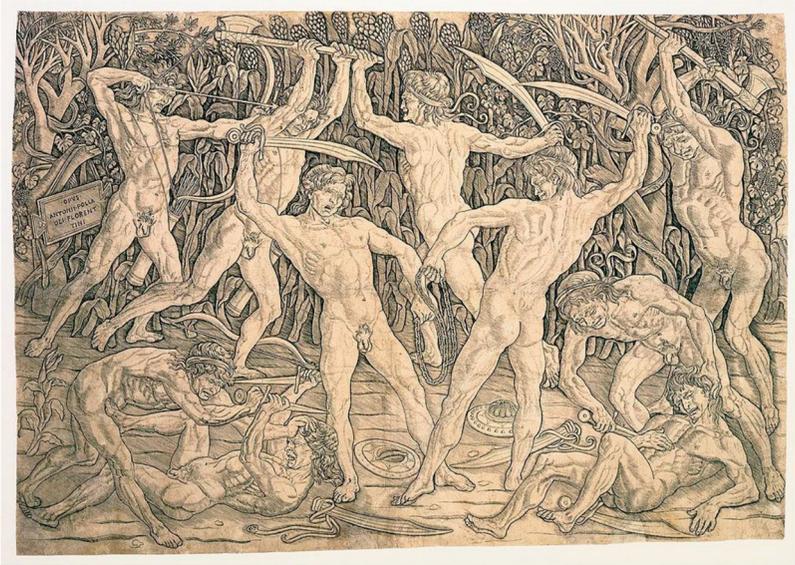
**Image 5.** Albrecht Dürer – *Justice, Truth and Reason in the Stocks with the Seated Judge and Sleeping Piety* (1527). Source: Wikimedia Commons.

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*.

A second point worth making – besides the variety of those allegories – 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 just because of the new and different demands the taste of the age placed on Dürer and his contemporaries?

Dürer's allegories, no doubt, have a history and a meaning. For example, the social and artistic milieu in which he moved mattered. The considerable influence Antonio del Pollaiuolo (1433–1498) (below, [Image 6](#)) and Lorenzo di Credi (1459–1537) had on Dürer, as well as humanists like the powerful lawyer and close friend Willibald Pirckheimer (1470–1530), are well known.<sup>78</sup> Additionally, his apprenticeship in the workshop of Michael Wolgemut in Nuremberg from 1486 to 1490 also meant that – intriguingly, for our purposes here – the young Dürer became fascinated by some of Andrea Mantegna's own work, for example, the *Battle of the Sea Gods* (below, [Images 7](#) and [8](#)) held in the Metropolitan Museum in New York City, as well as by a silver-

<sup>78</sup>Schleif, 'Albrecht Dürer between Agnes Frey and Willibald Pirckheimer' in Silver and Chipps Smith (ed), *The Essential Dürer* (2010) 85–205.



**Image 6.** Antonio Pollaiuolo – *Battle of the Nudes* (circa 1489). Source: Wikimedia Commons.



**Image 7.** Andrea Mantegna – *The Battle of the Sea Gods* (the left half) (circa 1475). Source: Wikimedia Commons.



**Image 8.** Andrea Mantegna – *Battle of the Sea Gods* (right portion of a frieze) (circa 1485–1488). Source: Images.metmuseum.org.

point drawing of a nude by Sandro Botticelli.<sup>79</sup> At the same time, Dürer's allegories can also seem to mirror something of an inner anxiety cutting across the artist's own life – 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, might be poised to prevail.

A separate consideration, however, is in order. While seemingly more speculative, it is an observation that confronting Dürer's allegories of justice along the lines suggested in this essay, makes entirely possible.

What is really striking about those allegories is, quite simply, that they should still move us – and, importantly, they should do so even *before* we are able to sit down and 'take notes' producing, comparing or even critiquing knowledge around them. In other words, it is striking that those artworks move us over and above the work they do as allegories.

That is a startling discovery. It also allows us to pause and consider a variety of unsuspected possibilities now available to us, including something of a loose connection between Fiera, Costa, Pollaiuolo, Mantegna, Botticelli, Dürer, and many others.

Thus, it is not only that some of Dürer's allegories date from the time when Mantegna worked in Mantua and, as we know, befriended Fiera providing him

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<sup>79</sup>Aikema, Brown, and Sciré, *Renaissance Venice and the North: Crosscurrents in the Time of Bellini, Dürer, and Titian* (2000).



**Image 9.** Albrecht Dürer – *The Death of Orpheus*, pen and ink drawing (1494). Source: Wikimedia Commons.

*inter alia* with the inspiration to write *De Iustitia pingenda*. It is also that one might legitimately ask whether Mantegna's early and powerful impression on the young Dürer may have not amounted, in itself, to something of an ancient survival that would need to be further examined. Might *this* not be what is so strange about Dürer's allegories of justice – as well as other artworks, above all, perhaps, the celebrated pen and brown ink drawing known as *The Death of Orpheus* (Image 9)? Further, might this survival not have contributed to set, then as now, many more people beside Dürer himself 'seeing and thinking'?

Just as Mantegna's work, after all, reappears as a survival of sorts in the fictional tract penned by Battista Fiera whose portrait by Lorenzo Costa set us on our journey into the dimmer and half-forgotten corners of the visual field of early modern law.

Indeed, looking again at those allegories and putting them next to some of Mantegna's own early engravings, do they not seem to share something that could go unnoticed if one treated them as 'just' artworks illustrating or demonstrating or representing the outcome of our historical inquiries into the modern form of law? In that case, what might 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 artworks as such. Rather, I am asking what the *force* or perhaps *intentionality* of those artworks, whether taken individually or as elements in wider ecologies of other objects, may have been vis-à-vis those encountering them from across the four corners of early modern Europe, and beyond.

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 a sense of elation, no doubt, but also, together with it, a great deal of uncertainty and confusion?

And could not that be what those images allow us today to get a sense of – something that they might not normally disclose if taken merely as factual historical evidence or as codes to be decoded? Indeed, could *that* not be what Baudelaire, defining imagination as something that had nothing to do with an individual's fantasy or sensitivity alone, might have 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*)?<sup>80</sup>

Naturally, the promised equilibria of previous theological dictates, social and political conventions, and artistic programmes were irredeemably lost with those artworks.

Beyond that, however – and without wishing to conflate the distinctiveness of the styles of the different protagonists or the works they produced – 'justice' now seems to be *transforming* – in some cases, in ways that would have felt hugely disturbing and disruptive in previous centuries compared to the overall enthusiastic effects they appear to have had in the days of Fiera, Costa, Pollaiuolo, Mantegna, Botticelli, and Dürer.

In fact, do the variety, diversity, and dramatic appearances of those artefacts – just like in the case of the portrait by Costa or in the case of the tract by Fiera – not present us with something even more *obscure*?

Do they not present us with some deep fears as well as with the more positive expectations associated to the many social developments of the age – an enticing and potentially rewarding new course in European history that, at the same time, would have been felt to be uncharted and dangerous, both unknown and unknowable – most certainly, at any rate, by means of the old and now seemingly inadequate instruments on hand?

### III. Conclusions

**12.** A combined historical and philosophical inquiry working out 'images of law' – ecologies of objects to do with justice or with law – is what Didi-Huberman's work may help carry out in interesting ways.

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<sup>80</sup>Baudelaire, *Oeuvres Complètes* II, p 329.

Such an inquiry, I have suggested in this essay, might reveal something of the sort of rich and wide-ranging experiences that would have contributed to mold early modern life in Europe but would have been overshadowed and then forgotten by the slow rise of the written rational form of law. Thus, for example, figuring out justice at the beginning of the *Cinquecento* may have been a much more complex affair than initially suspected – something closely related to the teeming visual ecologies of early modernity as well as the legal and political conventions of the age we are more familiar with and we prefer to study. More broadly, such an inquiry could provide significant lines of investigation across the sort of histories of the visual in law that may be called for by today's media-saturated world. Finally, it might help expose in yet another interesting way what Kurt Forster has so accurately described as the underlying mechanisms of rejection, distortion, and reversal that shape historical memory.

One could extend Didi-Huberman's own inquiries to any number of objects to do with justice or with law. To engage with them in that way would be to confront them – in the specific sense of taking them seriously, paying close attention to them, seeking to discern what they may or may not still do as images. Ultimately, it might also help us to appreciate and 'make palpable' (*render sensible*) what Didi-Huberman calls the 'time of the gaze' (*le temps du regard*).

Each object will confront us in its own particular way. Nor, indeed, would we want to limit our inquiries to what has been bestowed upon us by the art-historical tradition – much as that tradition remains clearly all-important. Confronting such objects, as I have done, both on their own terms and as 'images of law' is meant to highlight both *their* position and *its* limits.

Instead, the effort would be to take care of *both* art *and* non-art objects, *both* well-known *and* neglected objects to do with justice or with law, in order (*with* Didi-Huberman) to help restore temporality to them and rediscover their force or even drive as 'dialectical images' (*images dialectiques*), and (*pace* Didi-Huberman) recognize what might be called their constitutive transcendence. In so doing, one might be able to help those objects back into the position they would have had as key vectors of the deep historical complexity resulting from the different times co-existing in the images.

Through such inquiries, then, one might trace and confront certain objects as survivals in a sense I take to be close to *Nachleben* as Aby Warburg described them. Here, one would reckon with them *less* for their multiple and weighty compositional elements and meanings and power *than* for what one might call the unfolding 'gaze of law' they might sometimes return and want us to respond to. How did the early moderns imagine justice or law? What might certain images or 'images of law' have wanted *of* them? What may they want *of us*? What might they no longer be able to demand of us, and what might they want of us now that they may have not

wanted of the early moderns? Finally, did those images form or inform or else cross over to the emerging rational written form of a dawning legal-political modernity?

Eventually, such inquiries might significantly contribute to opening up existing imaginaries associated to our modernity as well as familiar ways of seeing and thinking about our *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.

They could help us write histories able to reanimate experiences now apparently destroyed, forgotten, or simply ignored as undeserving of serious consideration on account of ‘having nothing to do with law’.

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