



Nachleben der Antike, Time, and Restitution: Notes for a Nocturnal Jurisprudence of the Image

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Abstract

Justice is usually represented as a feminine figure holding a pair of scales and a sword. The history of that image is relatively recent and has attracted a great deal of attention. However, a different appreciation of it may come from a “nocturnal” jurisprudence seeking to foreground its presence and effects in the transmission of modern culture and so also of law. In this essay, I take my cue from Aby Warburg and the *Pathosformeln* that, he suggested, can be glimpsed through certain material objects inherited from the past—specifically, Dürer’s *The Death of Orpheus* and other related visual art. I then consider what Giorgio Agamben calls ‘the image of the image’ emphasising the timely quality of those images and I ask, with Georges Didi-Huberman, whether it might not be high time to “return” that which those images ostensibly show. The associations established in this essay between those different insights may help to recognise the extent to which the innumerable images to do with justice found at the four corners of the world can make the cognitive and emotional experience of those encountering them a rather more complex and potentially problematic affair than it may be at first supposed. What, on closer inspection, can those images give us to see? Are the ancient configurations they sometimes transmit not made up of crystals of historical memory carrying dormant energies that could be suddenly reignited in unpredictable ways? Should the task ahead not be, in some cases, one of restitution—the inapparent gift that turns the “blotted-out” into something striking that can be then handed over and known? These, I argue, are some of the questions a “nocturnal” jurisprudence of the image can be about.

Keywords Nocturnal Jurisprudence · Presence · Allegories of Justice · Scales and swords · Warburg · Dürer · *The Death of Orpheus* · Agamben · Didi-Huberman

Dedication This essay is dedicated to Adriana Gra.

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Ivstitia

1. Towards the end of his definitive treatise on images of justice produced along the shores of the Mediterranean Sea—miniature illustrations (*enluminures*), paintings, engravings, prints, sculptures, buildings, and any other combination of materials, volumes, forms and colours that visual memory firmed up and consciousness associated to a certain idea of justice—Robert Jacob shifts his attention to the image that, for him, syncretises and transcends them all (*synchrétise et transcende toutes les autres*). This familiar image of a goddess holding scales, sword, and sometimes a blindfold, is today, he argues, a universally and immediately understood allegory for what justice is and represents. It is also an image that, though widely studied, is, for Jacob, still far from having revealed all its mysteries. Such an intriguing statement seems an expression of Kantian wonderment and reverence rather than an invitation to create, dissolve, liberate, or even examine as an interpretative practice or form of life the image of justice bequeathed by tradition. As its particular instantiations are simply too many and not yet exhaustively explored, Jacob then warns us that one must cautiously feel one's way (*progresser à tâtons*) when approaching such images and that, inevitably, more questions will be raised than it will ever be possible to answer. For him, the very linearity of the image each time offered to our eyes must mask the endless complexity of social relations and juridical constructions it has the purpose of reducing to symbolic unity. As a consequence, it is an image requiring constant re-reading (Jacob 1994, pp. 219–242).

Ironically, Jacob's sense of wonderment and mystery at the image of justice inherited from tradition articulates well the *strangeness* the art and other objects associated with it will have once transmitted—and it is this strangeness that I wish to highlight first in the following pages. The origins of the image are themselves obscure. Its history, Jacob recalls, seems to go back to Roman numismatic. The first coins to bear it show the effigy of Livia, Augustus' widowed wife and Tiberius' mother, with the legenda 'Ivstitia'—the Latin word for justice or equity. While Jacob's reading seems to be that the coins were meant to signal that justice or equity should be a mark of the powerful, the more interesting question, I would argue, might be how did justice or equity come to be associated with Livia? Was the image the visual translation of a pre-existing concept of justice or equity (as Jacob implies) or might it be instead one of the many *places* where the concept and its referents—not just the figure or personification of justice—was set to emerge? This is probably not the moment to tackle such a complex question head-on. Yet, one might speculate for example whether the silhouette of an aristocratic and widely admired Roman matron visually coupled with the word 'Ivstitia' (from *iustus*, righteous, lawful, justified, proper etc.) might not be intended to warn reluctant Romans of the irrevocability of Augustus' otherwise stringent matrimonial policy strongly promoting *iusti coniuges*—resulting in the *lex Iulia de maritandis ordinibus* (18 BCE), *lex Iulia de adulteriis* (probably, 18 BCE), and *lex Papia-Poppaea* (9 CE)—or, alternatively, of the permissibility, if not the legality, of Livia's widely rumoured influence on the public life of Rome



Fig. 1 Hunefer, The Judgement of the Dead in the presence of Osiris, *Book of the Dead* (c 1275 BCE). Source: Wikimedia

(Scandaletti 2017, pp. 176–177 and p. 192; Grubbs 2002, p. 83; Treggiari 1991, pp. 37–80; Cantarella 1987, pp. 122–124). Whatever its use, it is certain that, by the reigns of Vespasian and Titus, the image had become more detailed—the feminine figure now holding a pair of scales and occasionally leaning on a long stick and carrying a horn of plenty (*circa* 80 CE). This, of course, might well be a development in the direction presumed by Jacob—towards, that is, the establishment of the image of justice as we know it. Yet, one might also muse whether such a development might not, in fact, be somewhat fortuitous and, on the other hand, whether it really helps to clarify the origins and provenance of the image Jacob seems to be so interested in establishing. The Greeks, after all, had bestowed on *Themis* and *Dike* feminine silhouettes but no scales (though scales were nonetheless in use in certain judicial rituals). As to the Romans, they knew no personification of justice—at least not, as Jacob following Kissel and others recognises, in the way Greek language allowed them to conjure (Jacob 1994; Kissel 1984). In short, seeking the image in the concept, as Jacob does throughout his otherwise important treatise, seems to leave many interesting questions by and large unanswered.

One might add that going further back in time does little to dissipate the sense of mystery that remains around the origins of the image of justice. The scholarly consensus, as recorded and relied upon by Jacob, seems to point into the direction of ancient Egypt. Yet, such fascinating and popular thesis is no less questionable, and Jacob offers little in his book to account for the ensuing riddles. To begin with, Maât, the Egyptian goddess of justice, does *not* dispense justice as such but simply partakes to the moment when the soul of the deceased is weighted out—by laying on some scales the ostrich feather that one day would come to symbolise her (Fig. 1). Secondly, there were, in fact, *two* Maât in ancient Egypt, not one—the cosmic goddess and the judicial goddess. Thirdly, Maât does *not*, in fact, hold the scales of justice as in the image we are now familiar with. Instead, it is as if the judicial Maât mirrors the cosmic Maât in a ritual marked less by a supposed justice

more romano than by the physical and social gesture of weighting out the past life of the deceased—through the use, one might add, of a widely spread and recognisable instrument of everyday life. This was a pivotal moment in the Egyptian imaginary as the afterlife of the deceased depended upon whether the feather would leave the scales undisturbed or not—and legal historians have long been intrigued by such an unusual image (Daube et al. 1991, pp. 447–464). Still, it is not terribly clear how justice and scales came to be routinely associated in the Mediterranean world—as they did over time. How did it happen that, far and away from Egypt, the relationship between the cosmic and the judicial goddesses, as well as the relationship with the scales of justice, were transformed in the way they did?

One might suppose, for example, that ancient Egyptians, new-on-the-scene Romans and then medieval Europeans developed a variety of notions of “justice” that co-existed, communicated, mixed-up, and contended with one another in different ways and to different extents. Yet, for Jacob, the link between Egypt and Rome has a different explanation. Specifically, the ‘Ivstitia’ showing on the Roman coins as a mark of the powerful should be understood first and foremost as an imperial attribute—*aequitas Augusti*—rather than a reference to an earlier and distant and obscure Egyptian goddess or to a later, more familiar and Christian, personification of justice. Such imperial attribute would then come together with other similar attributes such as Happiness and Peace. Like them, ‘*elle se situe dans le registre de la prospérité... participe de la divinité de l’empereur, de son numen... manifeste sa capacité à dominer la course des événements, à transcender l’histoire pour imposer la sécurité d’un ordre sociale*’ (Jacob 1991, p. 223) [she belongs to the register of prosperity... partakes in the divinity of the emperor, in his *numen*... manifests her capacity of governing the course of events, transcending history to assure the safety of a social order].

Accordingly, what appears on Roman coins would have nothing odd about it. Instead, it would be offered as a desirable trait of all rulers perfectly coinciding with their will—for rulers do and should want to be “just” and “fair”. Once again, the origins of the image of justice Jacob is so interested in are scouted out and found within its pre-existing legal definition—a familiar disposition, one might add, whereby the poetic and the visual can only be admitted into the polis as servants of the same (Stramignoni 2011). An image is thus born which, Jacob continues, was to outlast imperial Rome coming across as a feminine figure that should be perpetually re-read and perpetually called into new life. The next stage in this trajectory, then, is easily accounted for. As we are reminded, the coins will continue to circulate and to be treasured even after the fall of the Roman Empire, and the feminine silhouette holding scales in her hands would be increasingly viewed as the perfect representation of justice—now, a Christian justice. By the Carolingian age, this stage is completed and the image of justice is now firmly established for centuries to come.

So, Jacob continues, the image of justice thus outlined and “baptised” spreads, during the Middle Ages, and becomes progressively stereotyped (Fig. 2). The *scales* remain the most frequent and recognisable mark with the *sword* appearing at some point during the thirteenth century and the *blindfold* and other distinguishing marks such as *mirrors* appearing between the fifteenth and sixteenth centuries.

Fig. 2 Portable altar, Welfenschatz. Source: FondiAntichi Unimore



The sword first appears in a *bas-relief* decorating the tomb of pope Clement II in the Cathedral of the town of Bamberg, in Southern Germany (*circa* 1250). It then shows up more and more regularly in miniatures, paintings, sculptures, and frescos throughout Europe (Robert 1998). While *prima facie* referring to the public exercise of force as opposed to private vengeance, by now largely outlawed, such reading, Jacob warns us, may be misleading. In the Middle Ages swords could, in fact, denote martyrdom (*martyre*) rather than political power (*puissance*) and were often an attribute of other allegorical figures—such as *Fortitudo*, one of the seven virtues articulating the moral order of the Church, or *Veritas*, one of the four “daughters” of God—rather than justice, typically shown as unarmed. It is therefore uncertain which idea—political might or martyrdom—the sword might at first visually translate for the medieval world. Nevertheless, the sword is now there and it is there to stay.

Irrespective of the appearance of the different attributes of justice, the image still refers to a personal virtue or even the virtue of a good Prince rather than something

delivered by a particular set of conflict resolution mechanisms. Always shown together with the other cardinal virtues (*Prudentia, Fortitudo, Temperantia*) or the other “daughters” of God (*Misericordia, Veritas, Pax*), justice is, just as importantly, never alone—just as a good person or a good ruler can never be only (if crucially) just. In short, justice is neither the principal actor nor the object of special attention or deference by her companions, at this time. While there is no doubt that sometimes Christian virtues, divine justice and human justice can be visually associated—consider, for example, certain images of the Last Judgement whereby Saint Michael and even the Christ might be shown to hold a sword together with the scales of justice, or else think of the images of the Last Judgement whereby Justice takes the place normally occupied by Saint Michael—such associations remain, at this stage, exceptional. The famous and influential frescos by Ambrogio Lorenzetti found in the *Sala del Consiglio dei Nove, o della Pace*, in the *Palazzo Pubblico* in Siena and realised between 1338 and 1339 (known as *Allegoria ed effetti del Buono e del Cattivo Governo*), still show princely justice intent on governing social relationships—and so, by extension, legal controversies—as part and parcel of the larger political task of ensuring the good government of the *città*. In those frescoes, justice sits a little removed from the prince—though not a lot. As such, Jacob compellingly argues, the familiar figure holding a pair of scales and a sword has not yet formed what could have been otherwise perceived, at that moment, as nothing short of a jarring interference (*écran*) between Creator and creation disturbing the simple reflection of gazes (*réflexion des regards*) that constituted the heartland of medieval justice (Frugoni 2019, 1983; Jacob 1991; Rubinstein 1958).¹

All of a sudden, however, the modern allegory breaks into the medieval contemplation of justice. This is the third stage in the historical evolution of the image of justice as Jacob understands it. The embodied promise of an invisible, imagined future justice becomes, we might say, the visible, objective, and eventually printed spectacle of the eye to be shown and circulated at will. In the process, justice is completely transfigured. She acquires the sword as a permanent feature putting on a blindfold at the same time as she proudly (or perhaps arrogantly) turns away from the other Christian virtues in order to feature as the now absolute ruler at the forefront of the judicial spectacle (Jacob 1994, pp. 226–228).

This is a momentous shift. If, during the Middle Ages, imagining justice had been generally a matter of finding meaning as a way of embodying law and morality, by the end of the fifteenth century such works as *The Judgement of Cambyses* by the Dutch artist Gerard David had acquired the rather different aim of putting judicial deontology on display. Thus, *The Judgment* combines, for Jacob, the power of judicial precedent and legal rules with the power saintly figures emanated during the Middle Ages. As an image, moreover, such image operates on two levels—as something you look *at* and as something that looks over, authorises and controls *you* and the other actors of what has now become the great drama of justice. Indeed,

¹ On the forgotten republican tradition in Lorenzetti, see Skinner 1986, pp. 1–56; 1999, pp. 1–28. *Contra* (Skinner), cfr Boucheron 2005, pp. 1137–1199.



Fig. 3 Wolgemuth, *Justitia* (late fifteenth century). Source: Warburg Institute London

[L]e dernier siècle du Moyen Âge a multiplié les images de ce genre. En elles, l'institution judiciaire avait appris à chercher, au-delà du lustre dont elle croyait devoir s'entourer, les signes immanents de sa nécessité, les sources de son inspiration, les garde-fous dont elle bornait son pouvoir. Elle ne se concevait pas sans elles. Elle leur reconnaissait une part de son essence. (Jacob 1994, p. 243) [the last century of the Middle Ages multiplied images of that kind. In them, the judicial institution had learned to discern, beyond the splendor by which it found necessary to surround itself, the immanent signs of its indispensibility, the sources of its inspiration, the safeguards

by which it shielded its power. It could not conceive itself without them. It extended to them a part of its essence.]

Thus, the definitive delineation of ‘Iustitia’ in early modern Europe as a feminine figure holding in her hands a pair of scales and a sword is, by now, finally achieved (Fig. 3). One needs only be reminded of Andrea Alciato’s *Emblematum quattuor fontes*, published in 1531, and Cesare Ripa’s *Iconologia*, published in 1593. From its presumed first manifestation on the shores of ancient Egypt, to its re-appearance on Roman coins alluding to the *aequitas Augusti*, to its subsequent incarnation as the flesh and blood of the Christian moral order, and then to its modern (dis)articulation into a series of immanent—and, I would add, *exchangeable*—marks of judgement, power, and withdrawal from the *mêlée* of everyday life, the image of justice has now achieved her final configuration, it is everywhere by and large the same and it is widely recognised and normally uncontroversial (Goodrich 2014; Resnik and Curtis 2011; Prosperi 2008; L’Engle 2001; Toubert 1990; Gombrich 1963, 1960, 1948).

Nachleben der Antike, or the Murder of the First Legislator

2. Over and above legal-political and art-historical concerns to do with the visual appearance of the attributes of justice and their final articulation into the modern allegory we have become so accustomed to, Jacob’s influential account betrays a central tension lying at the heart of the many modern images of justice that, since the *Quattrocento* and the *Cinquecento*, have become so ubiquitous throughout the planet. Such tension, no doubt, is not unique to the images of justice explored on these pages. It also shows up through other visual artefacts such as, for example, the famous frontispiece of Thomas Hobbes’ *Leviathan*—spelling out, rather unceremoniously, both the threat and the promise signalled by the ordered operation of the sword and of the pastoral as apparently they stand guard over the modern social contract (Bredenkamp 2012). Rarely noticed and even more rarely discussed, such tension mobilises early modern images of justice in ways that are nonetheless both palpable and intriguing. It is also what makes them so *odd*. On the one hand, it is as if the antique stillness of the image—the unhurried feminine figure holding in her hands a pair of scales with both steadfastness and poise—is now unexpectedly ticked into motion by the startling appearance of the sword. On the other hand, one might wonder whether the sudden animation at the threshold of modernity of the image of justice handed down by tradition may fully account for the strangeness such image can still convey.

At first, this shift may not be immediately obvious—and it might be simply if somewhat hastily put down, for example, to the different styles of the artists concerned. Still, the appearance and increasingly frequent reappearance of the sword does seem to operate in such a way as to put more and more images of justice in motion despite their apparent formalisation into the visual allegory we know—in a way that, over time, will gradually yet steadily help bring about a new order to the visible organising or perhaps perfecting what could and could not be seen rather than simply putting into pictures extant ideas of political power or justice—as implied by Jacob’s account. On reflection, this is hardly surprising—order, after all, must



Fig. 4 Piero del Pollaiuolo, *Giustizia* (1470), Galleria degli Uffizi (Firenze). Source: Ministero dei Beni Culturali, Italia

be grasped and imagined, both literally and figuratively (Daston 2019). Without the mighty rebound of the sword—like in the earlier images formulated by tradition—justice might now be taken for granted or even dismissed as no longer able, in an age of great turmoil, to secure dependable decisions. Without the scales, on the other hand, the sword might be rejected as unthinking and unfeeling regulatory brutality—like for example in the rather more austere oil entitled *Giustizia* attributed to Piero dal Pollaiuolo, brother of Antonio dal Pollaiuolo, and composed in 1470 (Fig. 4).

It is, then, only through the combination of *both scales and swords* that the image of justice could be seen to be working again—albeit, one should immediately add, at the ultimate and ultimately incalculable cost of descending into history and, in the process, slowly turning from what was believed to be higher justice to what would come to be increasingly understood as human, all too human, law.

Initially, the appearance of the sword may have been something of an accident, a familiar visual object more or less casually thrown in as an ornament to a traditional image that did not necessarily require it. Later on, however, the repetition of such practice led to a veritable re-invention of the image. Justice is imagined again, and it is imagined in a distinctively different way.

This is all very well and good. On closer inspection, however, there seems to be more to the visible and so to the legible or figurable mechanism of justice slowly developing throughout early modern Europe than meets the eyes—whose effects might be thought of as akin albeit not perhaps identical to those of Michel Foucault's *dispositif*, Gilles Deleuze's elaboration of it as a mobile field of vectors or tensors, or perhaps Giorgio Agamben's own re-interpretation as anything apt to capture living beings and bring on a subject out of their quite literal hand-to-hand combat with it (Agamben 2006; Deleuze 1989; Foucault 1994, 1976, 1975).

Going beyond questions of visibility and legibility, then, recent research in visual studies has begun to investigate the extent to which images *think*—although such thinking may *both* concern us deeply *and* go largely unnoticed (Boehm 1994).² At stake, here, are not so much the form, the content or even the meaning of a particular image (although these remain all-important in their own way) as questions, for example, to do with the image as a total anthropological phenomenon, with the range of objects that might count as images, and with the extent to which form, content and meaning can be, strangely, *both* open-ended *and* context-bound.³ Put it otherwise, it is now increasingly understood that images are artefacts that can touch us through their *presence*—as well as through the verbal, written or visual language we may be more accustomed to recognise and decipher—and that such presence makes those artefacts complex objects rather than simply art, function or fetish.⁴ In an environment of heightened imaginal remediation, presence suggests that images, our approach to them and their effects on and for us are a matter requiring careful consideration.

² Trailblazers in this novel disciplinary space include Bredekamp 2015; 2010; Joselit 2007; Dikovitskaya 2005; Elkins 2003; Didi-Huberman 2002; Mitchell 1994; Freedberg 1989.

³ Recent statements seeking to update research in visual studies are both numerous and compelling. See for example Davis 2017; Iversen and Melville 2010; Elkins 2003.

⁴ On the absorption of mythos by logos and on 'pictoriality', see Mitchell 1994. Cfr Emmison et al. 2012. On the 'iconic turn' and on presence, Gumbrecht 2004; Moxey 2008; Belting 2001; Boehm 1994.

Such presence, then, may well be what the strangeness of so many early modern images of justice and the tensions that seem to traverse them might be about. It is therefore to such presence and its operations that we must now (slowly) turn—beyond, that is, any particular form of thought this or that specific image may and will nonetheless still delineate. Each time, such presence flickers throughout significant images linking the future to the past and contributing—silently, fugitively and largely immeasurably yet no less effectively and compellingly for that—to the creation of the worlds we live by, respond to, and are eventually responsible for (Stramignoni 2022).

In the following pages, I wish to begin this complex journey, firstly, with a foray into the extraordinary work of the German cultural historian Aby Warburg. Throughout his life, Warburg insisted that significant cultural artefacts may carry deep ancient affects apt to elicit obscure, unpredictable and often uncontrollable responses as we happen on them and they on us. Such work is hugely important, relevant and expansive for a more informed and nuanced appreciation of the role visual art and other such objects may have in the transmission of culture—and much else beside that. It also suggests that such works and, as I argue on these pages, their presence in history should not be summarily dismissed as the sole concern of art historians. For example, anyone interested in probing the very boundaries of our understanding of what the law is and how the law works might find it useful to reflect on the kind of images and dynamics Warburg was in many ways the first to identify and study so thoroughly and persuasively. Furthermore, it is fair to say that Warburg's pioneering work—somewhat overshadowed by that of his brilliant successors, especially Erwin Panofsky and Ernst H. Gombrich—has recently formed the object of much renewed attention across the humanities and social sciences as well art history itself (Forster 2018). For all those reasons, then, it is well worth beginning our journey from a key moment in the development of Warburg 'science without a name' (Klein 1970, p. 224) seeking to show how visual culture can play out in ways that go beyond representation itself.

In a lecture delivered in Hamburg on 5 October 1905, prepared for the Congress of German Philologists and Teachers and attended by some of the leading German scholars of the age from both the humanities and the natural sciences, a thirty-nine-year-old Aby Warburg attempted to tie together the results of many years of painstaking inquiry into the European Renaissance under the startling new concept of 'the afterlife of antiquity' (*Nachleben der Antike*). In the lecture, entitled 'Dürer and Italian Antiquity', Warburg argued that, contrary to the current doxa as held by archaeologist Johan Joachim Winckelmann, 'Italian artists had seized on the rediscovered antique treasure of forms just as much for its emotive force of gesture as for any tranquil, classic ideal'. Such search for antique gestures, Warburg suggested, is precisely what would one day soon be lost in the North as Albrecht Dürer, impressed though he had been by those forms as a young artist, first 'instinctively countered the pagan vigor of Southern art with a native coolness that touches his gesticulating antique figures with an overtone... of robust composure' and, then, 'lost interest in the antique as a source of agitated mobility in a Baroque or Manneristic sense' (Warburg 1999).⁵

⁵ For the full lecture, cfr. Warburg (1906).

This is an important yet relatively little-known lecture that has long remained unavailable to the larger public. It is therefore worth looking into it at some length. Warburg argues that an eventful shift began to take place upon the Nuremberg artist's sobering appreciation of the art and culture of the ancient Mediterranean world. Dürer's turn to what we might call perhaps 'representation', however, would soon seriously backfire. Just at the time when Leonardo and Michelangelo in their equestrian battle pieces 'canonised the emotive rhetoric of conflict', Dürer's work came to feel, at least to many in the South, like an increasingly 'arid experiment' devoid of any 'decorative and emotive rhetoric'. Far from suggesting any winners or losers, all this, Warburg concluded, rather highlighted 'the interchange of artistic culture, in the fifteenth century, between past and present, and between North and South' (Warburg 1999).⁶

Warburg's address, extending to nearly 50 pages and held in the *Theatersaal bei Ludwig* (or *Konzerthaus Hamburg*) to a packed audience, had been long in the making and it had been conceived as what we might perhaps call today an "installation" of sorts rather than a traditional lecture.⁷ To begin with, Warburg had planned to borrow from the *Hamburger Kunsthalle* three artworks—an engraving attributed to Francesco Squarcione, a drawing by Dürer entitled *Death of Orpheus* (1494), and a smaller engraving probably made in Ferrara by an anonymous Italian artist of the same subject as Dürer's engraving. Having subsequently changed his mind, Warburg eventually decided to leave the first artwork behind while, at the same time, adding three engravings and drypoint by Andrea Mantegna—*Bacchanal with Silenus*, *Battle of the sea-gods*, and *Bacchanal with a wine press* (all realised between 1475 and 1480)—and a woodcut and three engravings by Dürer—*Ercules* (c. 1496), *Hercules at the Crossroads* (c. 1498), *Nemesis* (c. 1501), and *Melancholia I* (1514). Finally, about 50 slides were to be shown at the lecture which Warburg, somewhat optimistically, had hoped to be able to deliver within the 30-to-45-min slot allocated to him by the conference organisers.

For our purposes, it is important to notice that Warburg's address was to be centred around Dürer's drawing *The Death of Orpheus* and other artworks referring to the same theme (Fig. 5). The choice was key to Warburg's argument and, I would suggest, helps explain the impact early modern images of justice may have had then and may still have on us today. The subject matter of this pen and brown ink drawing 289 × 225 mm was relatively uncontroversial. It referred to a central myth of the Mediterranean world—as recounted, in this case, by the Roman poets Vergil—in his *Georgics* (c. 29 BCE)—and Ovid, in his *Metamorphoses* (8 CE). It is worth recalling the story here. According to tradition, Orpheus had lost his much beloved Eurydice as she trod on and was killed by the bite of a snake in her flight from the unwanted attentions of Aristaeus. Utterly inconsolable, Orpheus first restlessly wanders hoping to find solace by devoting himself to his lyra, and then resolves to descend into the realm of the dead in the attempt to win Eurydice back. There, his voice and his

⁶ Cfr Aikema and Brown (2000), Olds et al. (1971).

⁷ Warburg's "installation" was recently revived in a variety of key cultural institutions. For this and much else, cfr. Hurrting (2013).



Fig. 5 Dürer, *The Death of Orpheus* (1494), Hamburger Kunsthalle. Source: Wikimedia

music attain the unthinkable: 'he began to play, and the shades crowded round him as birds to a leafy tree at evening or in time of storm' (Guthrie 1993, p. 31). The Eumenides and even Kerberos are softened, Ixion's wheel comes to a standstill, and Orpheus obtains permission to take Eurydice, once more, back up, into the realm of the living (Guthrie 1993; Colli 1990; Segal 1989; Burkert 1985; Dodds 1951).

What happens next is a matter of controversy among both the ancients and the moderns. However, the tradition relevant to the artwork in question has it that Orpheus *fails* to bring Eurydice back out of the realm of the dead and, as a consequence of this unsuccess, he casts aside all love for other women, consecrates himself and his music to Apollo the Sun-god, and succeeds thereafter to win everyone else over with his music and voice.

Yet, one day, Orpheus will die at the hands of the women of Thrace. In the dramatic tradition established by Aeschylus and classically discussed by W. K. C. Guthrie, Orpheus dies after incurring into the anger of Dionysus who was set on winning Thrace to his own wild religion. Thus, Dionysus sends the Maenads, his women

converts, to murder Orpheus who, then, dutifully ‘tore him in pieces, as in their orgies they were accustomed to dismember animals and as in the *Bacchae* of Euripides they tear Pentheus’ (Guthrie 1993, p. 32). While Vergil seems thus to follow Euripides in treating the murder as an act of Bacchic frenzy, he, however, explains the fury in terms of the disdain with which he had treated them following the death of his beloved Eurydice. Ovid, on the other hand, will opt for the second tradition putting the appalling violence of the Maenads down to jealousy (Guthrie 1993, p. 33).⁸

In Augustan Rome, Orpheus’ plight was bound to carry considerable political significance (VerSteege and Barclay 2003; Segal 1989, pp. 54–72). However, Horace, in his *Ars poetica*, goes as far as seeing in Orpheus as well as in Amphion nothing less than the very founders of human society—and this, of course, is what makes that ancient myth so very relevant still today. Orpheus—*sacer interpresque deorum*—was able to tame tigers and lions alike, and to talk or perhaps sing humans, still wild and in the woods, out of their violent demeanour towards one another. Amphion, on his part, could build Thebes and, with his lyra, rouse stones and move them along. For this, Horace adds, was really what the ancient wisdom was able to secure: ‘*Fuit haec sapientia quondam, publica privatis secernere, sacra profanis, concubitu prohibere vago, dare iura maritis, oppida moliri, leges incidere ligno, sic honor et nomen divinis vatibus atque carminibus venit*’ (1926, pp. 482–483) [‘In days of yore, this was wisdom, to draw a line between public and private rights, between things sacred and things common, to check vagrant union, to give rules for wedded life, to build towns, and grave laws on tables of wood; and so honor and fame fell to bards and their songs as divine’].

For Horace and the other Augustan poets, in other words, Orpheus and Amphion had the extraordinary power to create worlds and to transform them. This is a really important point that it is often lost outside the relatively narrow circles of classical and literary studies.⁹ The music and voice of Orpheus and Amphion had, quite literally, brought the world into existence. As such, they had been nothing less than the first legislators of human society. They had, quite literally, laid down the law, the Law of the word (Ziogas 2016; Balsley 2011, 2010, p. 15; Segal 1989; Kenney 1969).

If the ancient myth—recounting the plight of Orpheus, *sacer interpresque deorum* and first legislator—is thus relatively straightforward, the origins of the Dürer drawing referring to that myth have always been, by contrast, something of a puzzle.

While Warburg had followed Charles Ephrussi in believing the drawing to be after the Italian anonymous engraving also shown at the lecture (Fig. 6), the art historian Joseph Meder readily disagreed and it is now widely accepted that engraving, drawing and probably other works of art related to them are in fact based on a lost prototype by Mantegna—for reasons going beyond style and the distinction of the invention (Hurttig 2013; Aikema and Brown 2000; Ekserdjian 1998, pp. 144–149).¹⁰

⁸ For a contemporary take on the myth, see Cantarella (2015).

⁹ Orpheus is one thing and orphism is another (Colli 1990; Dodds 1951). However, a beautiful and far-reaching recent meditation on “orphism”, its centrality to European culture and its continuing appeal in the modern world well beyond its supposed boundaries can be found in Cheng 2022.

¹⁰ On Mantegna’s status as a printmaker, see Aikema and Brown 2000, p. 145; Christiansen 1993; Boorsch 1992.



Fig. 6 Anonymous, *La morte di Orfeo* (Ferrara, fifteenth century) Source: Wellcome Collection

Be as it may, Warburg had been occupied by the Dürer drawing for years. Crucially, he had become interested in the drawing not so much as a specific artwork or even as a particular art form as something else altogether—that is, as an inroad into deep human emotions antiquity transmitted to modernity and into the critical tensions such transmission generated.

Specifically, Warburg was intrigued by the drawing in so far as it staged the death of Orpheus ‘in an entirely authentic, antique spirit’—as a comparison with multiple Greek vase paintings, another drawing attributed to Antonio del Pollaiuolo (brother of Piero), a dinner service, a *plaque* and further artwork also showed (Warburg 1999, p. 553).

Warburg insisted that a woodcut in the 1497 Venetian edition of Ovid’s *Metamorphoses* showed such image particularly well. In the woodcut, stemming from.

‘the same antique original... [t]he true voice of antiquity, which the Renaissance knew so well, chimes with the image. For the death of Orpheus was more than a studio motif of purely formal interest: it stood for the dark mystery play of Dionysian legend, passionately and knowingly experienced in the spirit and through the words of the ancients’ (Warburg 1999, p. 554).

The image Warburg evoked for his Hamburg audience as pulsating through the Dürer drawing and the other objects he reviewed in the lecture, gets named here for the first time. He calls it *Pathosformel* (emotive formula)—an inseverable ‘knot’ of intensely emotional experience and iconographic convention especially conveyed

through the representation of gesture (Didi-Huberman 2002; Agamben 1984). At stake, here, are not only works of art—much as these objects continue to offer a viable and enjoyable inroad into Warburg’s new concerns. As Warburg rejected Gotthold Ephraim Lessing’s distinction between the literal and the figural in art, *Pathosformeln* can include all kinds of visual artefacts (Woldt 2018, pp. 136–137). Nor is it simply something that could be readily read, visualised or remembered, as in the art of memory unforgettably pieced together by Frances Yates in her *Art of Memory* (Weisberg 2012; Yates 1966).¹¹ While the Dürer drawing and the other artworks are identified by Warburg as significant instances of the sort of *Pathosformel* he wanted to talk about, the image itself is not showing in that drawing nor in those other artworks alone. The same image, Warburg continues, appears elsewhere in the early modern European world—expressing something at once comprehensive, widespread, and peculiarly open or unsheltered. Just think, for example, of Angelo Poliziano’s *Fabula di Orfeo*, the first Italian drama written in Italian and first performed in Mantua in those years.

‘The *Death of Orpheus* engraving drew added emphasis from that tragic dance-play, the earliest work of the famous Florentine humanist: for it set Orpheus’s sufferings, acted out and vigorously expressed in melodious, native Italian, before the very same Mantuan Renaissance society to which the unnamed engraver showed his image of Orpheus’ death. Mantua and Florence here meet, bringing true, antique formulas of intensified physical or psychological expression into the Renaissance style of depicting life in motion’ (Warburg 1999, p. 555).¹²

There is no need, here, to follow Warburg’s evidence any further. For our purposes, it is rather important to note how such evidence showed for Warburg both the indebtedness to the past of someone who was to become the most popular and influential Northern artist of the age—in 1494, Dürer made a copy of Mantegna’s *Bacchanal with Silenus* and his *Battle of the Sea-gods*, and a copy of a now lost work by Antonio del Pollaiuolo that he used in 1495 as a model for his *Men abducting women* (Adam von Bartsch named it *Jealousy*, and Warburg agreed it was a better designation)—and, more importantly for our own concern with early modern images of justice in Europe, how ‘[a]ntiquity came to Dürer by way of Italian art, not merely as a Dionysian stimulant but as a source of Apollonian clarity’ (Warburg 1999, p. 556). If the former comment has a narrower art-historical flavour, the latter one opens up the study of European art and other visual artefacts to broader considerations—and yet it was the latter, not the former, comment that, to Warburg’s mind, was to set apart Dürer’s momentous re-interpretation of the ancient iconography.

We might argue that a slow shift begins to take place, here, from life to form, from emotion to reason, or even from strife to order. Warburg’s studies help us see that especially well—inviting us, as they implicitly do, to ask ourselves: *whose*

¹¹ I wish to thank Professor Boris A. Uspenskij for directing me, many years ago, to this truly exceptional piece of the finest and most expansive scholarship.

¹² Warburg thought the drama was first played in 1471 but it may not have been performed until 1480 (Pirrota 1969).

form, reason or order? As Warburg puts it, Dürer's 'Faustian tendency to brood on questions of measure and proportion' was there to stay, and eventually led him to assume 'his rightful place among the opponents of the Baroque language of gesture, toward which Italian art had been moving since the mid-fifteenth century' (Warburg 1999, pp. 556–557). At this point, we also might add, Northern art begins to part company from the "rest"—in search of the 'extremes of gestural and physiognomic expression, stylized in tragic sublimity' (Warburg 1999, *ib.*). Needless to say, this shift was to have profound consequences for European culture going well beyond the realm of art history alone.

That said, whether such shift from emotion to representation was ever truly and fully successful—whether, in other words, the "moderns" would ever become completely free, in their infinite and infinitely repeated artistic but also legal-political and social constructions that were made possible by that shift, from certain returning antique and obscure energies chasing them ever since their first artistic efforts by the likes of the young Albrecht Dürer—that is, on closer inspection, the open and bold and expansive question implicitly raised by the young Warburg before his astonished Hamburg audience.

3. Why did Warburg select Dürer's *The Death of Orpheus* as the focus for his Hamburg lecture? An answer to such question is by no means a straightforward matter—as Warburg seemed generally ambivalent about the 'silent revolution' traversing the early-modern world of which the Dürer drawing seemed to constitute such an early and telling exemplar.

Intriguing though it is from an art-historical perspective, this question ceases to be a problem for art history alone—becoming instead a broader cultural concern to do with the boundaries of the European imagination at the dawn of modernity—the moment we consider how, in fact, Warburg's life-long project—summarised by the ultimately untranslatable question *Was bedeutet das Nachleben der Antike?* (an untranslatable question, I would submit, in so far as we cannot easily assign meaning to something that does not principally travel through meaning)—was, as E. H. Gombrich perceptively noted, to reflect on the significance of the classical heritage for Western civilisation and so, by extension, the value of this tradition for human civilisation—regarded by Warburg as a precarious and most vulnerable achievement. The relevance of Warburg's project for a more nuanced archaeology of modernity—an archaeology that, I would suggest, might surprisingly fold into a veritable ontology of images such as the allegories of justice populating courtrooms and other spaces across the planet—is, therefore, very considerable.

Warburg sought to contribute to the solution of such an important ethical and historical problem—the unexpected return of antiquity in and through images that can always be accessed, anachronically, by anyone who might happen on them as *they* happen on their viewers—by means of the close examination of the different *Pathosformeln* appearing and reappearing (mainly) in early modern European art—'primordial forms' crystallised as 'engrams' often in connection with certain orgiastic rituals or triumphal processions of the past, preserved in human memory as the equivalent concept (*Begriff*) and later turned into effective symbolic pathos gestures (Woldt 2018; Semon 1904). Such *Pathosformeln* remained, for Warburg, both a danger and a boon—apt as they could be to work as 'a potential threat to

human values, but also as a potential guide towards their expression' (Gombrich 1970, p. 79). From this perspective, individual objects become the inroad into a broader concern—a 'cultural-historic' (*kulturhistorisch*) concern rather than, more narrowly, a concern with artistic form and style or even with iconology understood, in the manner of Erwin Panofsky, as the study of artistic content worked out from textual sources—and I would suggest the Dürer drawing becomes something of a framework for that larger inquiry.

This approach highlighting the special significance of the Dürer drawing—as an artwork, as an image, as an analytical framework, and as a *Pathosformel* for the emergence of European culture—seems to me to be supported by a number of considerations which we must briefly note here.

To begin with, there is the lecture itself—the first of its kind by Warburg.¹³ In it, Warburg made it immediately clear that the choice of the artworks had been intentional—as he felt the significance of both the Dürer drawing and the smaller anonymous engraving from Ferrara had not yet been properly grasped. Secondly, there is the subject matter of the Dürer drawing—a central myth of the ancient Mediterranean world telling the story of the murder of the first legislator. Thirdly, there is a visual artefact by someone who was to become the most prominent and popular artist of the German Renaissance. At the same time, Dürer appears to have been influenced, among others, by Antonio del Pollaiuolo, Giovanni Bellini (1430—1516), Mantegna, Sandro Botticelli (c 1445—1510), and the broader Italian and Venetian artistic milieu—where his works, particularly the early engravings, also went from hand to hand and were being copied (Aikema and Brown 2000; Wolf 2006; Panofsky 2005; Olds et al. 1971). In other words, the Dürer drawing displayed a popular image and it became itself very popular as a drawing—offering, as Warburg declared, a solid starting point for his thesis. Fourthly, Warburg makes immediately clear that the drawing is indeed decisive in so far as it provides compelling evidence for the reentry of the ancient *Pathosformeln* into the modern world. However, fifthly, Warburg's somewhat clerical observation on re-entry—setting out the boundaries between what was within and what was without modernity—is followed and integrated by a further intriguing comment. For Warburg then goes on to say (as we have seen) that nothing less than the 'voice of antiquity' itself 'chimes' with the image the Dürer drawing epitomises if (obviously) it does not extinguish.

What was Warburg trying to convey by resorting to such an unusual language? It is of course possible that he was simply adding rhetorical emphasis to his argument by recourse to some slightly flowery turn of phrase, although this would be probably out of character (Forster and Britt 1996). A more interesting thought would be that Warburg was trying to show how the Dürer drawing 'gives us to see' something somewhat unexpected and it is precisely before *this* kind of work that antiquity could be seen most distinctively as making its fateful reappearance into the modern world and its art.

While some of the above suggestions could be made across a whole range of other Renaissance artefacts, there is, however, little doubt that the Dürer drawing and associated art carried special *gravitas* for Warburg in his history of the European

¹³ Above, s 1.

modernity (not just European art history) and, by extension, its role vis-à-vis history at large.

The implication seems to be twofold. On the one hand, Warburg must have felt the image flashing through and reflected into the Dürer drawing to lie, if only metonymically, at the heart of the early modern European world. On the other hand, the drawing must have felt to him as showing the ensuing *strain* with particular intensity. Indeed, it is only against this more complex background—both the great significance and special intensity of the artwork in question—that, to my mind, the critical notion of *Pathosformel* Warburg introduced here for the first time becomes fully intelligible.

Needless to say, the reappearance or return of the antique image—the *Nachleben der Antike*—into the modern world would not have been a straightforward matter. Implicit in Warburg's observations seems to be the realisation that the *Pathosformel* associated to the myth of Orpheus and handed down from the past could only possibly unfold as something of a multiple “imaging” within early modern Europe—a kind of ongoing diffraction, unfurling, or metamorphosis of the image itself as and when it re-emerges from antiquity—upsetting, in the process, the pre-existing balance between the audible and the visible. It is almost as if Warburg—strangely mirroring in this respect the opinion of his old examiner Ludwig Justi according to whom the young candidate possessed a special *eye* to *hear* the deepest signals emanating from the historical processes he observed (Forster 2018, pp. 17–18)—had suddenly realised how, at the end of the *Quattrocento*, the Italians may have responded very differently to the voice chasing them from antiquity—reminding them that things can go suddenly and horribly wrong—in the specific sense that they (like Warburg) would be able to *see* what they *heard* (the impending catastrophe) and then be moved by *it*.

Here, the response would be akin to that of the *Fabula di Orfeo*, Poliziano's paradigmatic and tragic first dance-play in the Italian vernacular; or it could be also found in some of the artwork by Antonio del Pollaiuolo or by Mantegna, different though that obviously is in most other respects. With Dürer, by contrast, Northern artists had begun to rationalise—and so distance themselves from—what the Italians responded to somewhat more directly and emotionally, sitting down to transform in their own way what they saw that Italians saw, precisely, to transform it into a carefully examined artwork marked, like the exact and exacting mechanism of an imaginary clock, by an air of ‘robust composure’.¹⁴

Warburg's observations assumed the existence of a link between individual or collective memory and cultural expression in all its varieties—a link he looked for all his life and was trying to elicit by means of his spectacular *Mnemosyne Bilderatlas* when he suddenly died (Fig. 7).

Nevertheless, it seems undisputable that Warburg must have felt Dürer's *The Death of Orpheus* to carry a particularly powerful trace of the tremendous tensions he was so keen to address—tensions that could never be fully resolved or, at least, were always at risk of exploding. While Antonio del Pollaiuolo, Mantegna and

¹⁴ Above.



Fig. 7 Aby Warburg, *Bilderatlas*, penultimate version, Table 49. Source: Warburg Institute, University of London

Poliziano still *see* with the *ears* so that their work *ipso facto* partakes in the action as staged, Dürer is rather drawn, with his Northern sensibility and more melancholic disposition, to turn the tensions he observed in the Italian artworks into a resource,

if never into a proper *tabula in naufragio* (that might have not been possible)—as his early work already intimates.

More speculatively, might Warburg not have meant the shift or metamorphosis slowly and painfully becoming visible through certain objects such as the Dürer drawing, to constitute the very cipher of the difficult yet inevitable encounter between the moderns and their images—not least, we might add, their images of justice?

Even more speculatively, perhaps, might such unfolding not point out, in Warburg's astonishing scholarly discipline that 'unlike so many other ones, exists but has remained unnamed' (*qui, à l'inverse de tant d'autres, existe, mais n'a pas de nom*) (Klein 1970, p. 224), to the hidden hologram of modernity itself?

The Nymph of Justice

4. It does not seem futile, therefore, to wonder whether, in Dürer's *The Death of Orpheus*—that is, in the image of the momentous murder of the first legislator—Warburg might not have seen something not only particularly significant and pregnant as an artwork but, also, something else, something genuinely critical, even *decisive*, about the emergence of modern culture in Europe in all its forms—or, at least, about what precisely may have lingered on among the moderns of the ancient *Pathosformel* he had identified in the drawing as well as in the other artwork selected for his lecture.

One possibility is that Warburg felt artefacts such as the Dürer drawing to carry—with varying degrees of intensity—something of the very character of an age intent on confronting widening and deepening social and political conflicts through the projected construction of a new world order. If true, this would have been the case of innumerable other artefacts, too, such as, for example, the images of justice that had been meanwhile crystallising in the visual allegories we know. They, too, might shelter something approaching a *Pathosformel* returning from antiquity and carrying ancient energies that could be reignited at any time and whose immediate, medium and long-term effects could hardly be predicted—let alone regulated or otherwise controlled.

It is not just that such artefacts may (or may not) stage or signify conflict at an iconographic or even strictly iconological level. Going beyond otherwise legitimate art-historical concerns with matters of form, content or meaning specific to each object, Warburg seemed to be struck by the very affects—particularly, the *suffering*—transmitted through the myth and surviving in the artworks in question—*pace* Plato's timeworn comment comparing Orpheus unfavourably to Alcestis as a mere 'cithara-player' (Cantarella 2015, pp. 27–29; Plato 1997, p. 464). To my mind, it is precisely at this point that Warburg's work on the image becomes critical for a wider and more open-ended appreciation of the entangled ways material and cultural worlds are created and transformed over time and so, too, for an early recognition of the *signa pronostica* ultimately heralding, despite the inevitable evidence to the contrary, what might be called a 'cosmopolitanism of the difference' (*cosmopolitismo della differenza*) (Marramao 2009, pp. 253–269).

Empathy (*Einfühlung*) of course is entirely central to Warburg's project. Beyond that, however, it is worth noticing how Orpheus' recoiling from the blows he receives is not the only gesture the Dürer drawing and the other artworks exhibit. Just as astonishing, it seems to me, is the violent gesture of the Maenads themselves—again, over and above the iconography or even the iconology of the myth itself. Although perhaps implicit in situations whereby someone suffers a great deal at the hands of others, it is nonetheless interesting that Warburg seems to take slightly less notice of the striking of the Maenads than he does of the suffering of Orpheus. Yet, the violent blows by the Maenads are undoubtedly there together with Orpheus' recoiling and pain. Thus, the full *force* of the *Pathosformel* Warburg identifies in such artworks—ultimately, nothing less than the human struggle for survival—cannot be properly grasped, I would suggest, in the absence of one or the other of those two opposite polarities.¹⁵

Accordingly, it is not unreasonable to wonder whether Warburg may not have felt the artworks he exhibited in Hamburg in 1905 to be especially relevant not only in terms of their significance and intensity as artworks but, decisively, in terms of the overall formidable effect the *Pathosformel* surviving through those artworks would have had on patrons, artists, historians, scholars, onlookers and anyone else who might happen on them whether by chance or by design—as the objects through which that *Pathosformel* survived had wide circulation in Europe and further afield. In other words, the *Pathosformel* identified in the artworks in question conveyed gestures of extraordinary violence going beyond, as it were, the visual language employed to show it.

The question, then, is what precisely the *Pathosformel* gives us to see even before we come to realise it. Indeed, does it not give us to see an alarming energy emanating from the literally *unspeakable* combination, in the artwork, of the ferocity and the pain? Where might that energy come from? Might the blows of the Maenads over a recoiling and suffering Orpheus not be the trace—neither really verbal nor really visible as such—of ancient *sacrifices* whose archaic, intolerable and probably no longer imaginable violence the moderns might have since forgotten while being nonetheless always already exposed to its return?

At one level, then, the power of the *Pathosformel* seems to lay in the deep and obscure memories it might unleash. At another level, however, its power might lay in the *future* such image could portend. Indeed, is it not the case that—in and through the Dürer drawing, associated artefacts and other such objects—moderns would be given to hear the very voice of antiquity in the process, as it were, of being 'blotted-out' by the moderns themselves? Would the strange force of the image—warning of the opportunities *and* the risks associated with the building of a new world order—not lie, just as much, in the startling reckoning that making room for it would require a suffering and a violence that might always come back to haunt the moderns, just

¹⁵ According to Woldt, 'fight' or struggle is an ancient figurative structure 'preserved in human memory in the form of a concept' whereby 'the concept causes the image and the emotions to which it refers to be transferred into the cultural artefact where the formula becomes part of collective memory' (2018, p. 148).

as antiquity itself had been haunted by the murder of the first legislator? In that case, the ferocity and pain transmitted by the image Warburg was so obsessed by—the *Pathosformel* emerging in and through artworks exhibiting the death of Orpheus at the hands of the Meneads—would be a stark intimation not only of the suffering and violence that could be overcome (like Orpheus had initially succeeded to do upon establishing the Law of the word) and might nonetheless suddenly come back (like the Maenads had subsequently done with Orpheus) but also, and even more radically, of the suffering and violence that *will* come back to haunt those who brought it about through their apparently industrious and pacific machinations and constructions.

Finally, in that case, might the early modern images of justice, too, not operate—as new ‘images of law’ (Stramignoni 2022)—in a similar way? Do such images not seem so very strange, even scandalous, because of the dim and lingering presence they harbour of deep and archaic memories that may have been forgotten but could always be brought back to life whenever and wherever we might happen on them and they on us? Furthermore, do such images not give us to see that—the carefully designed and constructed legal-political mechanisms and inventions of modernity notwithstanding—the pain and violence of old might and will come back, sooner or later, to haunt the moderns in other ways? What else might such artworks and other objects *do* and *transmit* as they ostensibly show us the overlapping ways, in early modern Europe, of the vanishing image of antiquity (the feminine figure, the poise, the pair of scales etc.) and of the looming new law of modernity (the sword, the blindfold, the qualified promise etc.)?

These are difficult questions to pose and reckon with. Meanwhile, we may next ask where the extraordinary force of the Dürer drawing and other early modern artworks like it might come from—not least the new images of justice whereby, at some point, the sword and other modern attributes had begun to appear next to the traditional scales following the many and diverse challenges of the age.

According to Giorgio Agamben, nothing is closer to the *Pathosformel* Warburg introduced for the first time in his Hamburg lecture than the *phantasmata* Domenico da Piacenza (known as Domenichino), the most celebrated choreographer of the *Quattrocento*, lists, in his treatise on dance entitled *Della arte di ballare e danzare*, as one of the six fundamentals of the art—together with measure, memory, agility, style (*maniera*) and spatial measure (Agamben 2007).

Domenichino’s invitation was to ‘dance through *phantasmata*’ (*danzare per fantasmata*). This is the ‘sudden arrest between two movements such that the measure and memory of the whole choreographic series becomes virtually contracted in its inner tension’ (*un arresto improvviso fra due movimenti, tale da contrarre virtualmente nella propria tensione interna la misura e la memoria dell’intera serie coreografica*) (Agamben 2007, p. 12). As such, dance is best grasped as the momentary stilling of memory and choreography. This may be unexpected yet it is hardly surprising. The *Quattrocento* was deeply influenced by Aristotle’s theory of memory according to which time, memory and imagination are strictly linked. To remember, for Aristotle, is to perceive time, and to both perceive time and remember is to reach out for an image—Domenichino’s *phantasmata*—which is ‘an affect, a pathos of the senses or of thought’ (*un’affezione*,

un pathos della sensazione o del pensiero) (Agamben 2007, p. 13). Dance, in other words, is imagination charged with energy and memory—it is *time*, not movement alone.

Phantasmata—Domenichino’s image—is charged with energy and memory the moment one encounters it—or one encounters it again. Whether or not Warburg had read Domenichino’s treatise, Agamben notes a close similarity between *Pathosformel* and *phantasmata* as they both capture energy and memory upon an artist’s attempt to express life in movement—as Renaissance artists were keen to do—or, we might add, upon anyone else happening on such artwork. No less importantly, such similarity pertains to their ‘spectral, stereotypical fixity’ (*spettrale, stereotipa fissità*) making of them, like all formulas like them, hybrid quantities whereby matter and form, creation and performance, original and repetition, can no longer be properly distinguished (Agamben 2007, pp. 15–16).

Agamben does not discuss the Dürer drawing and associated artworks yet he gives us two important hints here to appreciate the force they will have had for Warburg.

The first suggestion points to what might be described as the latent quality of those images. If the dance of the Maenads, the violence of the blows and the recoiling of the victim can seem to animate, in different yet formidable ways, the artwork Warburg showed in Hamburg—it is because those coming into contact with it will have loaded the *Pathosformel* it transmitted with their energy and memory—switching it, as it were, in operation.

However, and this is the second point we can take away from Agamben’s study of Domenichino’s *phantasmata*, the image in question should not be taken merely to *coincide* with any one particular artefact nor, indeed, to be entirely different from it.

Take, for example, Panel 46 of Warburg’s *Bilderatlas* (Fig. 8). This Panel is dedicated to the Nymph—an especially symptomatic figure for Warburg in so far as, during the Renaissance, such image reappears in entirely different settings—suggesting how the energies of the past carried through the same form may well re-emerge as entirely polarised expressions of sense (Bordignon 2004; Gombrich 1970). However, Agamben points out, it is interesting that none of the 26 pictures contained in this Panel are, in fact, the original of the *Pathosformel* in question—and *nor* is any of them a copy. Rather, the Nymph is an *indiscernible*—just as, we might consider, Justice is an *undiscernible* (e.g. none of the images shown on these pages is Justice and *nor*, however, are they copies of the original). Yet, ‘a being whose form normally coincides with matter and whose origins are indiscernible from its becoming is what we call time... The *Pathosformeln* are made up of time, they are crystals of historical memory... around which time writes its coreography’ (*un essere la cui forma coincide puntualmente con la materia e la cui origine è indiscernibile dal suo divenire è ciò che chiamiamo tempo... Le Pathosformeln sono fatte di tempo, sono cristalli di memoria storica... intorno ai quali il tempo scrive la sua coreografia*) (Agamben 2007, p. 18).

The Nymph, then, is made up of energy, memory and time. So, too, are other images such as the Nymph—they are made up of energy, memory and time which, over time, will have hardened into something spectral that Warburg’s nameless discipline or even messianic science seeks thus to return to life (Agamben 2007, p. 22).



Fig. 8 Aby Warburg, *Bilderatlas*, Table 46, Source: Warburg Institute, University of London

How, then, to grasp the kinetic potential that historically survives in such images as well as in the eye? Along with the “physiological” *Nachleben* to do with the persistence of the retinal image, this posthumous life, or survival, of the images transmitted through our historical memory is what interests Warburg most. This is important—for historians must accordingly be capable of restoring energy and temporality to the posthumous life of the *Pathosformeln*—just as cinema needs to

grasp the retinoic survival of the image in order to work. It is only, then, through such an activation by the historical subject that the past—the images transmitted by those who came before us—will open up and move for us again, becoming possible again (Agamben 2007, p. 26).

It is not therefore that images—such as *The Death of Orpheus* or, we might add, the innumerable allegories of justice found everywhere since the *Quattrocento* and *Cinquecento*—are evidence of a past now dead. Rather, the past *is* the images we discover as and when successfully reactivated thus making that past possible again.

Once again, the form, content or meaning of the artwork in question is emphatically *not* what is principally at stake here. Understood, instead, as what Walter Benjamin in his theory of historical knowledge called “dialectical images”, the life of those images will accordingly consist in the pause full of tension between mere immobility and subsequent movement—specifically, the unresolved oscillation between an emptying out of sense and a new sense event (Agamben 2007, pp. 29–30).¹⁶ Warburg’s *Pathosformel* is similarly available as ‘unpolarised latent ambivalence’ (*umpolarisierte latente Ambivalenz*) waiting to be reactivated upon its encounter with us (Agamben 2007, p. 35).

In a key passage, Agamben explains the full significance of this key insight:

‘[l’] atto di creazione, in cui il singolo—artista o poeta, ma anche lo studioso e, al limite, ogni essere umano—si misura con le immagini, ha luogo in questa zona centrale... fra i due opposti poli dell’umano—zona di «indifferenza creatrice» ... Il centro... qui... non è una nozione geometrica, bensì dialettica: non il punto mediano... ma il passaggio attraverso di esso di un’oscillazione polare... immagine immobile di un essere di passaggio’ (Agamben 2007, pp. 35–36) [the act of creation whereby a single being—an artist or a poet, but also a scholar and even every human being—confronts images, happens in this central zone... between the two opposite polarities of the human—a zone of “creative indifference”... The centre... here... is not a geometrical notion, it is a dialectical one: it not the median point... but the way-through of a polar oscillation... still image of a passing being].

Thus, creation—everyday creation, we might say, as well as artistic, poetic or scholarly creation—takes place, for Agamben building on Warburg, at the point of indifference between immobility and movement whereby, for a moment, images of passing inert, living, or human beings come to an unexpected standstill.

At this point, Agamben goes on to suggest how the story of the relationship moderns have with their images is the story of their ambiguous connection with the *nymphaea* as the object of love. Quite literally invented by Boccaccio, the *nymphaea* is the place where image and the ‘possible intellect’ (*intelletto possibile*) meet. More specifically, imagination is—*pace* Averroes—an essentially aporetic discovery of mediaeval philosophy where we do not yet think and, at the same time, thought becomes strangely possible precisely through such an impossibility to think (Agamben 2007, p. 52).

¹⁶ In Benjamin, we encounter ‘Bild’ primarily in language.

Ultimately, Boccaccio's *nymphaea* may help to clarify Warburg's project to collect the *Pathosformeln* of Western civilisation into his *Bilderatlas*—such as in Panel 46. Despite its constituent ambiguity as an image, Warburg's Nymph shifts the work of the image onto the historical and collective plane. Dante had already observed in *De monarchia* that, if man is defined by the possibility of thought, not by this or that actual thought, then this can only be realised by a multitude of people, not by this or that single individual. Similarly, for Warburg, the image works not only at the threshold between the corporeal and the incorporeal but, also, at the threshold between the individual and the collective. In that sense, Warburg's Nymph is 'the image of the image, the cipher of the *Pathosformeln* transmitted from one generation to the next on which humans tie the possibility to collect themselves or lose themselves, to think or not to think' (*l'immagine dell'immagine, la cifra delle Pathosformeln che gli uomini si trasmettono di generazione in generazione e a cui legano la loro possibilità di trovarsi o di perdersi, di pensare o di non pensare*) (Agamben 2007, pp. 53–54).

Images are, therefore, historical quantities—they are images, and, at the same time, they are this or that particular artefact or other specific image. Following Benjamin, images are or can also be *live*—in the precise sense that they need to be assumed by a subject who will have thus joined them, albeit at the risk of failing to suspend and invert the charge of what we might call their habitual spectrality. As such, Warburg's *Pathosformeln* as well as Domenichino's *phantasmata* are, first and foremost, *time*—the time of the image each time encountered and brought back to life, therefore, the time each time the image in question always already *is*.

However, this is not the end of the story. As Warburg noted, humans tend to project their passion for images onto the celestial sky and its constellations. As such, they must be able to suspend and invert their charge if they are to turn destiny into good fortune. Celestial constellations, then, are, Agamben points out, the original text where the imagination reads what has never been written. Giordano Bruno, another steady influence on Warburg, had already realised how the cosmos is best grasped as *mundus imaginalis* and human history as a history of phantasms and images. Put it otherwise, it is in the imagination that the separation takes place between the single individual and the impersonal, the multiple and the one, the sensible and the intelligible—as well as the 'task of its dialectical reconstitution' (*il compito della sua dialettica ricomposizione*) (Agamben 2007, p. 57).

For Agamben, this is why Warburg's historiography is so interesting—because it concerns itself *both* with the tradition and memory of certain significant images—for example (as I have proposed), the image of the murder of the first legislator or even many early-modern images of justice—and with the human effort to let go of those images in order to unfold a space *without* images. Warburg's *Bilderatlas* is, Agamben concludes, precisely this. It is 'the without-image as well as both the farewell and the refuge of every image' (*il senza immagine, che è il congedo—e il rifugio—di tutte le immagini*) (Agamben 2007, *ib.*).

We can now recapitulate my proposed reading of Agamben's compelling meditation of the timely nature of the image as follows. Certain images handed down

by tradition are—and this has been the first suggestion—always already historical beings—traces of prior hopes, desires, fears, and removals—preceding us into the future yet, crucially turning back to us as a strange *presence* if and when we happen upon them and they upon us (this has complex implications that will have to be discussed on another occasion). Meanwhile, we can nonetheless already propose that, secondly, Warburg’s study of Dürer’s *The Death of Orpheus*—the murder of the first legislator—both shows and perhaps even epitomises the startling discovery that visual art objects such as our early modern images of justice may need to be taken more seriously than is sometimes customary outside art-historical circles. My third suggestion, then, has been that we may need to make the effort and go *beyond* any otherwise legitimate concern with representation if we are fully to grasp the broader impact certain images may have on our emotional and cognitive experiences and the worlds we have created as a consequence of those experiences. Fourthly, such key images may call for careful consideration especially by anyone interested in a less sheltered and more expansive appreciation of the place of the visual in the transmission of law’s culture(s) and, more specifically, the extent to which the visual can shape worlds by *resisting* our repeated attempts to know it and therefore to control it. Building on both Warburg and Agamben, then, my final suggestion here has been that, on closer look, our early modern allegories of justice might unfold as nothing less than out-and-out historical beings still harbouring the strange presence of ancient sacrifices susceptible to be suddenly reactivated as we come up against them—with literally unimaginable consequences.

For is it not through the imagination that, each time, history is encountered and decided again—so that, ironically, something like history becomes possible at all?

Images of Justice and the Ethics of Restitution

5. Once we combine in this way the cues provided by Aby Warburg’s little known Hamburg lecture of 1905 on the obscure energies certain culturally significant images might still carry with themselves and by Giorgio Agamben’s pioneering study of the ‘image of the image’ that, on closer inspection, animates the early moments of modernity, the history of the allegories of justice so thoroughly and persuasively presented by Robert Jacob in his book begins to reveal some troubling “fissures” that may have initially gone unnoticed pointing to the social and political place such allegories will have had in the transmission of culture and so of modern law. On closer inspection, these allegories seem quite strange and the tensions they seem to communicate—*beside* and *before* any subsequent consideration ostensibly to do with their form, content or meaning—may well turn out to be the enigmatic mark of an unequal history that will have been ‘blotted-out’ (Stramignoni 2002) and may now need to be recognised and accounted for as we are otherwise busy paying the requisite attention to procedure and law (Marramao 2009).

As I have argued, the moral order such images had once embodied—a moral order Giorgio Vasari sought to adapt and update, for example, in his *Allegoria*



Fig. 9 Giorgio Vasari, *Allegoria della Giustizia (Giustizia Farnese)* (1543), dipinto, Museo di Capodimonte, Napoli. Source: Ministero dei Beni Culturali, Roma

della Giustizia (Giustizia Farnese) (1543)—seems to register a new dynamics (Fig. 9) as such images travel into modernity. This may well be the mark of the age so that art, function or fetish remain all-important considerations in this matter. Here, however, I have endeavoured to go beyond art, function or fetish to emphasise *presence*—what, each time, those images give us to see *as images*. Turning to presence, then, need not happen at the expenses of representation and may not be to everyone's liking. Yet, the advantage of this move is the intriguing realisation that such images may be complex objects—complex *things*—that are best handled with care as they can touch us in unexpected ways even before we are able to stop, reflect and finally know what they are about. Firstly, is it not the case that the ancient gesture of appraisal associated with previous images of justice—'quietened' down the centuries into the now strangely motionless symbol of the scales—as well as the historical time that made that gesture possible, are now compelled however awkwardly to reckon with the numerous and unexpected revolutions of the age? Secondly, might the appearance of the sword and of the other attributes of justice not be what may have set those modern images in motion again—after their final metamorphosis into the allegories we know? Thirdly, in that case, what can those multi-layered images be seen to do? Taken alone, the scales had come to imply both the futurity and the eternity of the judgement. The irruption of the sword, by contrast, disturbs the established economy of the image in a particular way. It reveals how, from now on, customary forms of appraisal will only be the uncertain *opening gesture* triggering one and only one related act—the ambiguous and potentially disastrous *decision* seeking, quite literally, to cut through the expected finality of the judgement by forcefully reforming the situation in new and different guises. The shift from appraisal to decision was not without consequences. The etymology of "decision" carries with it the image of the primordial gesture of cutting down something, splitting it into parts, carving it up, transforming it and turning it into a clearing or a sacrificial surface or

precinct. Thus, the decision implied and foregrounded by the appearance of the sword cannot but evoke, variously, the domination and submission—the foundational violence and pain—that are the real the modern social contract attempts continuously to transform into the fictions of obligation and obedience (Foucault 1994); or alternatively, the site of resistance and angry shouting (*vocifération*) (Derrida 2007); or even the spectre of ancient forests and no longer tolerable practices and customs out of which the new law, now (the age of the web) as then must urgently re-emerge (Serres 2015).

What are *we* to do, then, when we happen on such images—when we stand in front of them or sit down with them on our laps—aware *both* of their strange openness, apt as they always are suddenly to bring about the return of antiquity so clearly articulated by Aby Warburg, *and* of their ultimate quality, emphasised by Giorgio Agamben, as nothing more than time, specifically, historical time? What are we to do, in other words, when the images we happen on unexpectedly engage us in many more ways than one? What are we to do, for example, when we happen on one of the innumerable allegories of justice that can be found at the four corners of the world—as such artworks seem at once to reassure and to alarm us in a strange way, reminding us, presumably, of the decision that, like clockwork, will inevitably follow the computation (however formally correct it might appear to be), the blade that will in all likelihood fall after the verdict? How are we to orient ourselves in the face of the disappearance of old images and certainties, in the face of the unpredictable afterlife of antiquity so often cropping up through the new, and in the face of the ultimate indiscernibility of the image—that is, the image each time lying before all images, before all decisions, before all law, even before the Law of the word?

Georges Didi-Huberman adds a further layer to our history of the modern image of justice as part and parcel of the mobilisation of the image as the quintessential yet still largely enigmatic gesture—enigmatic because of the unrelenting presence it can harbour—of the early modern world.

It seems to me that for Didi-Huberman, like for Warburg and Agamben, images should be held, not rejected. Specifically, a vigorous approach to images would require going beyond mimetic rationalisation to avoid *both* any certainty images might seem to provide—following Vasari’s iconographic principle of the imitation of the visible—and Panofsky’s iconological principle of the imitation of the intelligible (Didi-Huberman 1990). The problem with Vasari and Panofsky is the extent to which the first turns art into mere *adaequatio* between the visible and the intelligible, while the latter’s reliance on the Kantian promise of pure reason rather than his aesthetic philosophy dissociates the genius of art from the spirit of mimesis whereby the imitation of nature becomes the imitation of the intellect. Together, Didi-Huberman points out, those two moves do away with what he calls the ‘visual’ whereas artistic images are, by contrast, always paradoxical—they are always co-present compossibilities that, he adds, can and often are mutually exclusive (Didi-Huberman 1990).

To be sure, for Didi-Huberman, the elision of the unseen or unthought had a specific function—it enabled art history to establish itself as a discipline. However, such an elision also led to the discipline’s current crisis—ultimately, a crisis concerning not only art historians but also anyone else who is interested in images at large. The symptoms of such crisis (as he calls them) are hidden in plain view, and, we might add, seem to play a similar role to Warburg’s *Pathosformeln* or Agamben’s *phantasmata*.¹⁷ Their appearance is related to a certain notion of embodiment—also a key term in Didi-Huberman’s parlance. To begin with, such notion refers to the watershed brought about by the Christian notion of incarnation. Secondly, the notion of embodiment refers to something like a cultural phantasm linked to the desire stirring those occupied with the visible objects that reify it. Thus, the embodiment of the discipline—art history made flesh, we might say—has produced a crisis whose symptoms must be readily acknowledged and dealt with if we are to be able to free the visual and the figurable (i.e. our imagination) from the tyranny of the visible and the legible (the images as shown). For the power of representation lies, precisely, in the process of *figuration*—the intricate play between resemblance and dissemblance that inevitably collapses any conventional boundaries between the artwork, the image and its operations. Figuring out justice, for example, might require working through the power of the modern image of justice as a particular case of embodiment or cultural phantasm—by no means a straightforward or predictable endeavour to undertake (Stramignoni 2022).

Ultimately, images are nothing less than *time* endlessly appearing and disappearing before our eyes. As such, Didi-Huberman points out, multiple temporalities go to form the memory of the image—not least, the memory of the historians who are inevitably drawn into them as they engage with them and are engaged by them (Didi-Huberman 1990, *ib.*). Thus, the image can never be memory in the usual sense. Rather, it must be approached as highly dynamic social energy engendering, as Warburg had already comprehended and Agamben clarifies, the organ of transmission between emotions and order that creates consciousness as well as the will to achieve the mental balance that constitutes the hallmark of the forces of modernity.

All this implies that, once again, we proceed with caution as we undertake the otherwise increasingly inevitable task of confronting the images we live by.

In an essay on Harun Farocki, Robert Bresson, Jean-Luc Godard, and others, Didi-Huberman points out that images are mobilised for a reason—so that we must always begin by asking a few preliminary questions: what precisely is an image the image of? How is that image? Who owns that image?

The starting point, for the French critic, is the changing status of the *imago* from the Roman Republic to the world of today. In Rome, the *imago* amounted to an intrinsically political act. To take the image of the deceased entailed the creation of an object of private worship that would double as an object of public deference—the taking of images depended on the position occupied by the family ancestors within the Roman society, while the subsequent exposition of those images called for the gathering of a public. Today, by contrast, images are privatised and, as Didi-Huberman building on Vilém Flusser points out, they are accessed from the comfort of a private space so that, in a

¹⁷ Panofsky (1972) was probably the first to talk about artworks as symptoms.

way, nothing happens (*se passe*) in the world that has not already happened on television—and, we might add, social media and so on (Didi-Huberman 2010).

The challenge, then, becomes that of returning certain images to the public sphere—‘instituting the rests: taking away from the institutions what they do not want to show—the unused, the unwanted, images forgotten or censored’. Here, the work of Harun Farocki seems exemplary. He first goes in search of material regarded as uninteresting by those who possess it. He, then, *turns* it into something thoroughly striking thus *returning* it to the other. This is an act of *overturning* rather than one of *détournement*. It is a dialectical rather than interpretative gesture seeking to *take* images not to own them or possess them but to get to *know* them to be able to *hand* them *out* so that they can be known—so as, in other words, to emancipate them.

Such is, for Didi-Huberman, the critical question of *restitution*. The centrality of this notion is already clear from the famous debate between Martin Heidegger and Meyer Schapiro regarding the picture by Van Gogh ostensibly showing a pair of peasant shoes—showing, for the former, how matter and form, as well as the distinction between them, must go back to more distant origins; and yet showing, for the latter, Heidegger’s own mental image of the artwork Van Gogh had made by the same theme (Shapiro 1968; Heidegger 1950). Jacques Derrida rejected both attempts to assign the picture to anyone in particular preferring instead to highlight the obverse question of the debt both Heidegger and Schapiro seem to have and wish to discharge by returning (as it were) the shoes either to the peasant or to the painter (Didi-Huberman 2010; Derrida 1967, 1972, 1974, 1978). Why did they want to do that? Ultimately, Didi-Huberman endorses Derrida’s analysis of the notion of restitution avoiding the double snare of apprehension and appropriation. Images must neither be taken nor appropriated but, more radically, they must be returned.

Like Derrida, Didi-Huberman prefers to think of restitution as *gift*—beyond the opposite readings of Kant and Heidegger. However, restitution as gift requires to investigate firstly the ethics of debt and gift. Might restitution—discharging a debt by giving away, donating the image—be a matter of generosity and humbleness? The answer, for Didi-Huberman, is clear. Generosity alone—the generosity of giving away before any debt—risks being poisonous, making things more difficult, as Mauss had already indicated. However, restitution can also be *humble*, as well as generous. It can operate quietly, without being noticed—so that the gift before any debt can be an *inapparent gift*, something that is not perceived as a gift. For Farocki, at least, returning images is indeed required, politically and knowledgeably (not necessarily morally), as images constitute a common good. In that sense, Farocki is only the medium (*passeur*)—so that the images he returns in his artwork come back to us only because *they had always concerned us*. Nonetheless, Farocki’s gesture is akin to what Agamben, referring to the ancient Roman law, calls ‘profanation’ (*profanazione*)—the gesture of returning something to the free use by people (Agamben 2005). Ultimately, the task is to probe the powerful images we live by and are immersed in on a daily basis—such as, we might say, the ubiquitous allegories of justice found at the four corners of the world—so as to return (*re-turn*) them and ultimately reject the pain and the violence of the world that made them possible.

This is an essay on art and on film and Didi-Huberman focuses on artists and filmmakers throughout. Those he discusses are, for Didi-Huberman, unparalleled archaeologists of images. They collect and organise images in extraordinary

montages. They do so in different ways. In Farocki, Didi-Huberman recognises Aby Warburg's humbleness surfacing through his *Bilderatlas* and its panels—the great tableaux of early modern European culture which not only show the images but, just as importantly, tackle at the same time the question what an image is an image of. As a result, those approaching those tableaux are not overawed by all the knowledge of the images for which they possess little or no interpretative key. Instead, the images of those tableaux are returned to those happening on them not as common places but, rather, as the *place of the common*.

Could the images of justice that shaped up in Europe during the early modern age—haunted as they are by the disturbing past of a promise we must nonetheless be able to hold on to, despite everything—not be returned to all in the way Didi-Huberman proposes for other significant images? What might that require? Might imagination and courage, generosity and humbleness, not be what is required of the future archaeologists of the visual in law?

ENVOY: A Nocturnal Jurisprudence of the Image

Oh Mensch! Gib Acht!
Was spricht die tiefe Mitternacht?
[Friedrich Nietzsche].

Visse das Bild.
[Rainer Maria Rilke].

*Ici, mille lueurs nocturnes éblouissent le penseur;
ici, les clignotants chaotiques et fluides des lueurs possibles
ouvrent mille et une voies.*
[Michel Serres].

6. As Horst Bredekamp has recently put it, '[i]t is now indisputable that one is no longer in a position to address the contemporary world without first attending to the question of images (Bredekamp 2021, p. 3). However, what is an image? What do images give us to see? What place do images have in the transmission of European culture and so of its law? To answer such questions is not easy. What interests me most is that certain objects may hide deep tensions potentially making the cognitive and emotional experience of those who happen on them a complex affair whereby form, content, meaning, matter and time are inextricably linked.

As previously argued, the passage from *Quattrocento* to *Cinquecento* amounts to an especially significant moment in the history of the visual in law (Stramignoni 2022). Yet, the complex and concrete *presence* of certain key images such as the images of justice that became popular at such time has been generally overlooked in legal studies. In this essay, I have sought to tie together insights drawn from the work of Aby Warburg, Walter Benjamin, Giorgio Agamben, and Georges Didi-Huberman to take some steps towards what I propose to call a “nocturnal” jurisprudence of the

image. In particular, I have focused on a small drawing by Albrecht Dürer entitled *The Death of Orpheus* and ostensibly referring to the ancient myth of the plight of Orpheus—*sacer interpresque deorum* and first legislator. On closer look, that drawing can offer valuable clues as to what other images, such as the images of justice found today at the four corners of the world, may want from us and how we might possibly relate to them. As I have pointed out, somewhat ensconced in the Dürer drawing is an image whose status seems to place particular demands on historians if they are to succeed in the difficult task of making sense of the place of images in history by reviving the imagination that once produced them to their full if inevitably double-edged possibilities. In turn, such an inquiry about the status of certain significant images in history might lead on to further fascinating and sometimes pressing questions, as I have also concluded. Might one, for example, be able to *overturn* them as the inapparent gift that seeks to redress the pain and violence that, in some cases, would have made them possible in the first place? In short, the suggestion here has been to hold what is shown in order to let the affects hidden in it emerge, foreground the multiple temporalities of the image and even possibly figure out an ethics seeking to return what was overshadowed so that it can then be handed over and known. Attending to such presence will allow us to make some progress in the direction indicated by Bredekamp and by others as well as gain a more nuanced appreciation of the significance of images in the development of European culture and its law, their anachronic accessibility and the creation and metamorphoses of the cultural worlds they yield and sustain.

Seeking to go beyond the visible and the legible—that is, beyond preliminary questions of perspective or art history—a “nocturnal” jurisprudence of the image might well give us a sense of the many different ways the *presence* of certain significant images will have shaped and can still shape who we are, whether individually or collectively, whether sustainably or not. It might even help to make sense of the ‘bone structure of reality’ (*l’ossature du réel*) and what this could entail (Descola 2021). Finally, it might also be one way of approaching the ‘thousand nocturnal flashes that dazzle thought’ (Serres 2015) through the fabric of the worlds we are always already enmeshed into, and even reinventing something like justice out of the images we live by.

Confronting the ‘blindest of all possible worlds’, Elias Canetti once pointed out, the mission of the writer is to become a ‘custodian of metamorphoses’, in the attempt of avoiding the double trap of silent resignation and illusory hope (Canetti 1982).

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