

# LAW AND THE SENSES



Edited by Andrea Pavoni, Danilo Mandic  
Caterina Nirta, Andreas Philippopoulos-Mihalopoulos

**SEE**



Law and the Senses  
Westminster Law & Theory Lab Series

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# Introduction

Andrea Pavoni

*may I disappear in order that those things that I see  
may become perfect in their beauty from the very fact  
that they are no longer things that I see<sup>1</sup>*

## 1. Law and the Senses

Philosophy tends to relegate senses to the realm of phenomenology, experience or subjectivity. By contrast, critical theory has gradually eroded the holy opposition between knowing and sensing, to the extent that new speculative trends are now seeking to rebuild it. While the social sciences endeavour to frame sensing within socio-historical genealogies, scientific research draws deterministic connections between our sensing the world and the neuro-physics hardware. At the same time, planetary modifications gesturing towards the seemingly unavoidable extinction of humanity, suggest literally ‘post’

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<sup>1</sup> Simone Weil, *Gravity and Grace* (London: Routledge, 2002), 42.



human ways of sensing, with novel technologies that enable us to understand things that escape the human capacity to sense, thus widening perception to inhuman scales and temporalities. Meanwhile, capitalism relentlessly crafts our sensorial immersion into hyperaesthetic atmospheres, mirrored by art's ongoing fetishisation of site-specific sensoriality.

Law is present in all this, and with a complexity that is yet to be addressed in the current sensorial turn in legal thinking.<sup>2</sup> In fact, law and the senses have been mostly explored within the usual *law vs. 'what escapes law'* framework, one that characterises many of the '*law and...*' approaches (e.g. law and space, law and materiality etc.). In other words, the tendency in most cases has been to remain trapped within a phenomenological understanding of senses, oscillating between two sides (law vs. the senses) of an unquestioned opposition, occupying each of the sides of the partition, without fully exploring its promising threshold.<sup>3</sup> This has generated a series of compelling but ultimately limited narratives. Namely, law is assumed to be the anaesthetic par excellence, constantly numbing

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<sup>2</sup> We are not the first to deal with this. See Lionel Bently and Leo Flynn, eds, *Law and the Senses: Sensational Jurisprudence* (London: Pluto Press, 1996); Bernard J. Hibbitts, 'Coming to Our Senses: Communication and Legal Expression in Performance Cultures', *Emory Law Journal* 41, no. 4 (1992): 873-955. See also the ongoing project 'Law and the Regulation of the Senses: Explorations in Sensori-Legal Studies', coordinated by David Howes at the Centre for Sensory Studies, <http://www.centreforsensorystudies.org/related-interest/law-and-the-regulation-of-the-senses-explorations-in-sensori-legal-studies/>

<sup>3</sup> For a recent attempt in this direction see Sheryl Hamilton et al., eds., *Sensing Law* (Abingdon: Routledge, 2017).

the polymorphous realm of the sensorial in order to assert the rational domain of normativity. According to this narrative, the legal project is a systematic attempt to depurate law from any compromise with the sensible and its contingent imprecision. The *violence*, *coldness* and *alienation* of legal abstraction, and its systematic denial of the polymorphous and sensual spontaneity of life, are the *de rigueur* accusations addressed to law, whose failure the critical thinker is quick to point out: senses are not amenable to legal machinations, they always escape its cumbersome and *sad*, to put it *à la* Spinoza, apparatus.

Hence the call to re-materialise, re-spatialise, re-sensitise law: to let law come to its senses, that is. Except that law has never been outside of senses. Its way of making sense of the world is always premised on its sensorial immersion in the world itself. This appreciation requires not only thinking law differently, but also thinking senses differently. This could open a path, we argue, towards exploring the sensoriality of law, both in the epistemological way in which law engages with, and indeed senses the world, and the ontological emergence of law from the sensorial continuum of the world itself. Senses, no longer an anarchic *escape* from law, thus become a way to explore the functioning, limits and possibilities of law, questioning how law works and deals with senses, how law senses, how law makes sense. This series intends to pursue this path through four intersecting conceptual endeavours.

First, to disarticulate the sensorial from its reduction to the phenomenological, the subjective, the personal and the human dimension. This reductionism, of which law is simultaneously responsible as well as in denial, underlies

the majority of approaches dealing with law and the senses, and constitutes the unspoken fissure around which the two realms are split. Disarticulating the senses from their direct subjective and phenomenological relevance may enable them to appear as a gateway to a posthuman and ecological understanding of the spatio-legal, thus repurposing them as a promising tool with which to investigate the materiality of law's relation to the world. At the same time, gesturing towards the inhuman dimensions of sensing that climatic catastrophes, technological innovations, and philosophical and artistic praxis hint at may allow us to think novel ways, subjects and objects of sensing, whose impact on questions of agency, responsibility and politics is paramount.

Second, to dismantle the law/senses separation by widening the fissure into a complex ontology, and thus revealing the necessary but ultimately insufficient critique to law's 'anaesthetising' enterprise. This entails challenging the taken-for-granted presupposition of the law as a systematic attempt to purify itself from any compromise with the sensible and its contingent frictions. This, in fact, is only a part of the story. Law is certainly an anaesthetising *project* aimed at manipulating, governing, and channelling the senses into precise categories, boundaries and definitions, protecting from and numbing the sensorial, the bodily, the libidinal. Yet law is also an emerging *process*, that is, a diffuse normativity emerging out of the intermingling of bodies and senses that constitutes our being-together, and as such inseparable from it. The relation between law and the senses is not one of straightforward oppression or control of the latter by the former, but rather a surface on which sensorial law (law folding into

senses) and legal senses (senses folding into law) are reciprocally affected, and on which surface each fold pursues its own mythology of origin, meaning, direction, teleology. The law-senses assemblage should be thus addressed by fully tackling the consequences of the unavoidable discrepancy between the de-sensitising project of legal control and the multi-sensorial process of legal emergence.

Third, and expanding on the foregoing observation: to expose the role of law in keeping this very dichotomy in place. By suggesting that, beneath law itself, unruly sensorial freedom would lie, the law perpetuates a grand trick, an anarchic illusion apparently offering critique with an easy target (law's supposed denial of senses), which is only a decoy, however, in which critique all too easily ends up ensnared. Law's attempt to manipulate senses should not be underestimated or simplified. In a sense, law is constantly engaged in numbing the senses into common sense by manipulating, channelling and controlling the sensible; inserting properties and forbidding contacts; dissimulating violence, regulating sounds, defining taste. More precisely, law constructs its meaning (its sense, its direction) by orchestrating the senses in three ways. First, the law 'names' the senses, puts them into categories, thereby adding the moral weight of its sensorial judgement. Second, the law controls when senses should be kept apart and when blended, thus encouraging synaesthesia (coalesced sensorial modalities that encourage the attribution of one sensorial stimulation to another sense), or anaesthesia, depending on the way it adjusts its universal teleology to the particularity of the situation. In so doing, the law dissimulates the fact that these senses are

blended or anaesthetised by something other than the individual herself. In other words, the law maintains an illusion of phenomenological perception and evaluation of senses, while on another level, the law works hard to build socio-political and cultural receptacles of sensorial taste construction that dissimulate the fact that the law is behind all this, deftly orchestrating both senses and its very own apparent absence of involvement. Finally, law elevates the phenomenology of senses to the corollary of the liberal individual's sense of personal freedom: what best exemplifies freedom than sensorial taste of food, colouring, odours, materials? The law manages to fool us by allowing us to think that we own our senses in full phenomenological immersion, whilst all along, the law inverts their 'sense', by constructing their origin and facilitating a fake causality from senses to atmosphere, rather than from the legally constructed, preconscious atmosphere *in which* senses come to be perceived as individually owned.<sup>4</sup> This complex interplay of intervention and disappearance obviously requires much more than simply assuming senses as a dynamic excess to law's static numbness. As much as overestimating it, underestimating law is a perilous strategy.

Fourth, to envisage an approach to law beyond these strictures, unfolding alternative strategies and methodologies to which law attuned to *its* senses may open up. We do not simply wish to push legal thinking beyond its comfortable socio-legal and critical methods. This

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<sup>4</sup> Andreas Philippopoulos-Mihalopoulos, 'Atmospheres of Law: Senses, Affects, Lawscapes,' *Emotion, Space and Society* 7 (2013): 35-44.

series rather intends to pursue a constructive endeavour, namely ushering law into a different mode of dealing with the world: one which is tentative, tempting, reflexive and uncertain, a mode of sensing, that is, which sanctions the impossibility for law to avoid its own materiality. This requires emphasising at the same time both the posthuman and the inhuman quality of law, and understanding its relations to senses accordingly. On one level, in fact, law emerges out of the coming together of human and nonhuman bodies, spaces and times. On another level, law pretends to address a purely rational and disembodied, inhuman subject, namely a fully institutionalised subject whose 'humanity' is constructed to the extent that it is useful to the institution. Both dimensions are crucial. The first suggests that law is not a socio-cultural construct that is superimposed over inert matter, but a normativity made of flesh and stones, thought and water streams, cosmic and everyday interaction, human and non-human sensing: a way in which the 'world' is organised. The second points to the fact that law is a force of abstraction and, insofar as abstract, plays a generative role in creating and giving consistency to identity, relations, spaces and worlds.<sup>5</sup> Thinking the post-human and inhuman dimension of senses thus permits rethinking law's sensorial engagement and entanglement with the world, at the same time gesturing towards different ways to use legal abstraction, beyond their absolutisation or dismissal.

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<sup>5</sup> Derek P. McCormack, 'Geography and Abstraction: Towards an Affirmative Critique', *Progress in Human Geography* 3, no. 6 (2012): 717–18.

## 2. Seeing

In the history of Western thought, the sense of vision occupies the height of the sensorial hierarchy. The sense of clarity and purity, it is the one most explicitly associated with knowledge and truth. Whatever the epistemological considerations about the reality which the seer would be able to perceive within, through or beneath the appearance, seeing is configured as the most objective of senses, the one that most powerfully reasserts the ontological separation between subject and object, seer and seen, the perceiving eye and inert matter. Of course, from Gestalt theory to magicians' tricks, vision has been demonstrated as deceiving in many ways. Yet this has been normally assumed to be a localised impairment, a personal myopia, a temporary hallucination. Sight may often be impaired by physical imperfection or the foggy turbulence of a medium; yet, in *theoria* (meaning to look, to see), once the obstacles are removed, the unimpaired vision will allow the observer to fully see and know the object. This implicit understanding grounds the reliance on technological apparatuses, whose inhuman capacities supposedly allow for overcoming human flaws in order to fabricate ever finer approximations to truth.

Truth is to be found beyond the sensible, Plato argued, 'to be apprehended by reason and intelligence, but not by sight'.<sup>6</sup> *Theoria* is the intellectual vision of ideas. Such rational vision would be able to overcome the fallibility of perception, guarantee that transparency would reign, and

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<sup>6</sup> Plato, *The Dialogues of Plato*, trans. Benjamin Jowett (New York: Random House, 1920), 529.

thus reach the ‘*adaequatio rei et intellectus*’, the conformity of things and intellect, that the Scholastics equated with truth. Not so dissimilarly, Newtonian mechanics, today updated by neurological reductionism, assumed human vision as a complex machine to be explained independently from the subjective act of seeing, by turning the gaze to its hidden ‘levers and screws.’<sup>7</sup> Different were the conclusions to which the late Kant came. Sketching the prototype of a phenomenology to come, Kant turned phenomena from *appearances* of ideas to manifestations (*apparitions*), thus putting them in relation to the conditions of possibility of appearing itself. This transcendental move, dislocating the centripetal pretence of the Cartesian *I think*, constructed the subject in the form of a radical passivity, in which the *me* realises (apperceives) the radical *anteriority* of an external *I* which affects it.

The question of self-awareness of one’s own sensing has been a longstanding one in the history of philosophy. Aristotle explored it in some key passages of *On the Soul*, and commenting on it, Alexander of Aphrodisias wrote, ‘for to everyone who senses something there comes about, in addition to the apprehension of the thing that he is sensing, also a certain self-awareness of [the fact] that he is sensing.’<sup>8</sup> A synaesthetic apperception, that is, a term coined by

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<sup>7</sup> ‘The dismemberment of nature ‘with levers and screws’ is a theoretical error because it is an aesthetic error.’ George Simmel, quoted in Éric Alliez, *The Brain-Eye: New Histories of Modern Painting*, trans Robin Mackay (London: Rowman & Littlefield, 2015), 3.

<sup>8</sup> Alexander of Aphrodisias, quoted in Nicola Masciandaro, ‘Synaesthesia: The Mystical Sense of Law’, *The Whim* (blog), 01 November 2016, <https://thewhim.blogspot.pt/2016/11/synaesthesia-mystical-sense-of-law.html?m=1> (accessed 15 May, 2017).



Alexander himself, to capture the sensing-with (*synaisthēsis*) which characterises this peculiar instance of sensing the very act of sensing.<sup>9</sup> This in-built *détournement* of sensation, in a spiralling interplay between perception and apperception, made the Kantian apparatus vacillate. What if, similarly to Arthur Rimbaud's *je est un autre* formula, vision comes from an external, alien *I-eye* which digs inside *me* a crack, and on whose denial the scaffolding which support the subject is constructed?<sup>10</sup> The principle of the transcendental subject helped Kant secure his edifice against the seismic threat of the outside. The I-subject remained the centre, subjecting the sensible matter to the unifying form of its representation. Moreover, with the common sense reached through shared agreement, further ground would be provided to universalise the confusing sensing-with of synaesthetic apperception into an uncontroversial con-sensus.

Phenomenology drew the consequences of the Kantian correlation, denying the 'dismemberment of nature' of mechanicism and the unifying representation of the transcendental subject. The consciousness explodes towards the outside: as Jean-Paul Sartre wrote, it throws us 'into the dry dust of the world, on to the plain earth, amidst things ... rejected and abandoned by our own nature in an indifferent, hostile, and restive world.'<sup>11</sup> Perception

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<sup>9</sup> Masciandaro, 'Synaesthesia'.

<sup>10</sup> "I is another", Rimbaud's famous formula that Deleuze would use to explain the de-subjectivising role of apperception in Kant, in Gilles Deleuze, *Deuxième leçon sur Kant*, Vincennes, 2 March 1978, <http://www.le-terrier.net/deleuze/> (accessed 25 May, 2017).

<sup>11</sup> Jean-Paul Sartre, 'Intentionality: a fundamental idea of Husserl's phenomenology', in *The Phenomenology Reader*, eds. Dermot Moran and Timothy Mooney (London: Routledge, 2002), 383.

means ‘taking in’ (*capere*) reality, ‘entirely’ (*per*). And yet perception, human perception, is always an exception: it takes in an ‘outside’ (*ex*), yet never in its entirety. It includes, by excluding. To the phenomenologist, vision is dependent on the exceptional flashlight of consciousness, which illuminates the world, fleetingly rescuing it from darkness, only to throw around more shadows in the process. As Gilles Deleuze writes,

the whole philosophical tradition ... placed light on the side of the spirit and made consciousness a beam of light which drew things out of their native darkness. Phenomenology was still squarely within this ancient tradition: but, instead of making light an internal light, it simply opened it to the exterior, rather as if the intentionality of consciousness was the ray of an electric lamp (‘all consciousness is consciousness of something’...)<sup>12</sup>

Yet in the same way, perhaps seeing does not come from *my* eye. Perhaps images, before becoming images *of* my consciousness, are images in themselves: a paradoxical oxymoron that could rescue vision from its dependence on a subject, a consciousness, an I-eye. This is how Henri Bergson broke with the common sense: matter is image, image is matter, the world is made of matter-image, beings that are a pure appearing in themselves before being captured into a subjective consciousness.<sup>13</sup> In fact, consciousness itself is an image, a thing of this world. Rather than

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<sup>12</sup> Gilles Deleuze, *Cinema 1: The Movement-Image* (London: Bloomsbury Academic, 2013), 60.

<sup>13</sup> Henri Bergson, *Matter and Memory* (New York: Cosimo Classics, 2007).

being ‘exploded’ into the dry dust of the world, it *is* the dry dust of the world: not a centre of intentionality but a thing among other things, caught into the continuous flux of self-subsistent matter-images.<sup>14</sup>

Things are luminous in themselves without anything illuminating them: all consciousness *is* something, it is indistinguishable from the thing, that is from the image of light. But here it is a consciousness by right [*en droit*], which is diffused everywhere and yet does not reveal its source [*ne se révèle pas*]: it is indeed a photo which has already been taken and shot in all things for all points, but which is ‘translucent’.<sup>15</sup>

So, even when we remove the spotlight of the Leibnizian God, the floodlight of the transcendental subject, the flashlight of the phenomenological consciousness, we are not left in the dark: the kaleidoscope of a multiplicity of points of view emerges. Not *before us*, however, since we are part of them too. Everything is illuminated. Liberated from its dependence on transcendent sources, the light floods the whole ontological plane. In the interaction between light *and* matter, images are thus produced. Pier Paolo Pasolini once wrote that ‘the whole life, in the entirety of its actions, is a natural and living cinema ... an infinite single-take [*piano sequenza*].’<sup>16</sup> ‘What is the real before the human eye comes to relativise it?’ – asks Rocco Ronchi: ‘nothing but cinema, an ensemble of images that exist in themselves, spectacle

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<sup>14</sup> Rocco Ronchi, *Gilles Deleuze* (Milano: Feltrinelli, 2015), 108.

<sup>15</sup> Deleuze, *Cinema 1*, 66.

<sup>16</sup> Quoted in Ronchi, *Gilles Deleuze*, 218.

without spectator.<sup>17</sup> It is a flux of images in which perception is impersonal, diffuse and anonymous, or the perception of ‘an inhuman eye ... that belongs to no one’, of which the human eyes are simply local and temporary crystallisations.<sup>18</sup>

As Eric Alliez explains in his engagement with Goethe’s theory of colour: ‘it is light that contemplates us, in an anonymous percept, as if the Eye were already among things and our own eye immersed in it, a retinal contraction in nature’s general vision.’<sup>19</sup> The Eye of Nature which the *Naturphilosophers* speculated about, is an impersonal eye to which we ontologically belong, since we do not produce or shed light on things: our eye is made of light, our vision dependent on its *encounter* with matter. This already resonated in Plotinus’ famous question: ‘If the eye were not sunny/How could we possibly perceive light?’<sup>20</sup> Thus perception is radically reformulated. No longer a *taking in*, let alone *entirely*, an *outside*, it always emerges in the middle: ‘perception puts us at once into matter’, as a local rarefaction of the flux of images the human eye produces by cutting up a precarious vision from a circumscribed perspective. If the *naturing nature* is an infinite single take, then perception is the editing, the *montage*, performed by and from a body that, as a centre of action, produces *a* world by obscuring the real,

<sup>17</sup> *ibid.*, 110.

<sup>18</sup> Robin Mackay, ‘Preface’ to Alliez, *The Brain-Eye*, ix.

<sup>19</sup> Alliez, *The Brain-Eye*, 5.

<sup>20</sup> Plotinus, quoted in *ibid.*, 6.

perturbing and deflecting the plane of images, letting a point of view surface.<sup>21</sup>

‘Motion and light destroy the materiality of bodies’, claimed the Futurists, thus implying as untenable any separation between objects and people, vision and reality, as Riccardo Baldissoni reminds us in his contribution to this volume. Vision is an action immanent to the world, Ben Woodard suggests in his chapter; not a reflection, but a diffraction, as Jelena Stojković explains, following Karen Barad, in her contribution. A haptic diving into an open materiality, that leaves no chance to obtain a safe, comfortable and distant point of view from which vision would be measured and assessed according to criteria of brightness, clarity and definition.<sup>22</sup> Picpoet’s contribution to this volume diffracts seeing by allowing the textual to open up other simultaneous angles. Thus vision is emancipated from the human in at least two clear senses. First, because it is an emergent property of a post-human assemblage, in which perception surfaces out of the singular point of view that a body *occupies*.<sup>23</sup> Second, because this localised and tentative vision is always an actualisation of a virtual Eye. ‘If from the point of view of the human eye – Deleuze clarifies – montage

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<sup>21</sup> Gilles Deleuze, *Bergsonism* (Cambridge, Massachusetts: MIT Press, 1991), 25; see also Quentin Meillassoux, ‘Subtraction and Contraction: Deleuze, Immanence and Matter and Memory’, in *Collapse, III: Unknown Deleuze*, ed. Robin Mackay (Falmouth: Urbanomic, 2007).

<sup>22</sup> On the haptic quality of vision, see Andrea Mubi Brighenti, *Visibility in Social Theory and Social Research* (Basingstoke: Palgrave, 2010).

<sup>23</sup> See Eduardo Viveiros de Castro, *Metafísicas Canibais. Elementos para uma Antropologia Pós-Estrutural* (São Paulo: Cosa Naify, 2015).

is undoubtedly a construction, from the point of view of another eye, it ceases to be one; it is the pure vision of a non-human eye, of an eye which would be in things.<sup>24</sup> This is not, to be sure, the all-seeing eye of a god, but a virtual, inorganic, inhuman eye by which human perception is not determined but unavoidably exceeded, and thus shaped.

This Eye, in Keith Woodward's words, 'concerns an emerging situation's 'making-available' a multiplicity of viewpoints (potentially) to the bodies (humans, bits of matter, animality, languages and so on) that compose it.'<sup>25</sup> A multiplicity of viewpoints which perception occupies every time. Seeing, in other words, depends simultaneously on the concatenations in which one is taken (a relation), and a virtual multiplicity that always remains excessive to this concatenation (a non-relation). Thus, we move from the external viewpoint of a subjective or objective viewer, to an always-compromised one, immersed within, and co-substantial with, a field of vision, simultaneously exceeded by the virtual viewpoint of an inorganic eye.<sup>26</sup> Seeing is immersed into a post-human and heterogeneous relationality as well as exceeded by the virtual event of its taking place. Thus, Spinoza's maxim resonates in all its might: *we do not know what a body can do*, we do

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<sup>24</sup> Deleuze, *Cinema 1*, 81-3.

<sup>25</sup> Keith Woodward, 'Events, Spontaneity and Abrupt Conditions', in *Taking-Place: Non-Representational Theories and Geography*, eds. Ben Anderson and Paul Harrison (Farnham: Ashgate, 2010), 331.

<sup>26</sup> '[T]he view from the event is the aggregate view, the wordly perspective, of divergent perspectives ... a manifold of changing perspectives, forces and relata. The event is not simply non-representational, it is non-presentational,' *ibid.*, 331.

not know what a body can see, since only the event could, the inhuman ‘eye of matter, the eye in matter.’<sup>27</sup>

Let us qualify, however, that matter is never flat, ‘objective’, neutral or homogenous. Quite the contrary, it is heterogeneous, traversed, twisted and tuned by social, historical, affective, geological and cosmic forces. Power structures and asymmetries are inscribed within matter, shaping the way in which its interaction with light occurs. The surfacing of vision is always tuned by normative trajectories. Every apparatus of seeing is entangled with this complex heterogeneity, and emerges out of it as an attempt to order and control it. In other words, every apparatus of seeing is entangled with the process through which it enacts vision, that is, with the process through which it shapes how visions ought to be *in order to be perceived* as such, or how it builds its own specific regime of visibility, that is, its internal normativity.

### 3. Law and Seeing

Typically ocularcentric, the law is a quintessential optical dispositif that visibilises and invisibilises the social through its normative gaze. Legal perception is always an exception, premised on the Olympian viewpoint from which law would supposedly project its light onto the world, leaving the rest in its shadows. Hence law’s cartographic faith in its capacity to capture the world into a re-presentation, by unifying the multiplicity of its

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<sup>27</sup> Deleuze, *Cinema 1*, 81.

sensorial perception into an exceptional juridified image. Law's perspectival gaze is, however, bound to be betrayed: perception always puts us at once into matter, and the mismatch is unavoidable between the perception and representation of law. Yet although legal representations may thus be inaccurate, they are productive of real effects on the world, and this aspect is easily missed if we stop at pinpointing the said inaccuracy. As Regis Debray puts it, 'the capacity of an idea to put a mass in movement, to modify the balance of a field of power or to induce this or that behaviour is not dependent on its truth-value.'<sup>28</sup>

In this volume, Woodard transversally engages with this aspect through a passionate defence of idealism against its common misunderstanding as a theory that would place at its centre an all-ingesting mind, swallowing the world and reducing it to its own substance. There is another way to understand the mind-like form of the world that idealism postulates, Woodard observes: rather than a reduction of the world to a mere fabrication of the mind, the assumption of both the mind and the world as sharing the same substance. Understood in this sense, idealism would take a rather different form from the caricature to which post-structuralist and post-modern critique has usually reduced it. Not a naïve philosophy equating representation with the represented, but a perspective that assumes representation, and vision, as actions and things of this world. In this sense, the task would no longer be that of denouncing idealism by unveiling representations and

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<sup>28</sup> Regis Debray, *Critique of Political Reason* (New York: New Left Books, 1983), 116–17.



their supposed mismatch with reality. Whether ‘apparently ideal, or purportedly human capacities for regulating, or normalising our experiences, are part of the same world to which nature belongs’, Woodard argues, the question is to understand ‘how does representation, as a part of the world, function as just another thing.’

The significance of this question cannot be underestimated. Law *is* a thing of this world, and representation is the mechanism through which law frames, senses and sees reality. Whilst aware of the limits and the dangers that any enterprise aimed at absolutising and fetishising representations harbours, we may follow this perspective into developing a strategic investigation of the real. In so doing, we must resist simply pretending that legal representations and their effects on the world would dissolve, once revealed, deconstructed, or forgotten. Thus we may approach representations as veritable *presentations* that *take place* and, as Ben Anderson and Paul Harrison write, ‘in their taking-place ... have an expressive power as active interventions in the co-fabrication of worlds.’<sup>29</sup> Likewise, we may understand the very process of legal abstraction – the process through which law supposedly extracts (*abstrahere*) itself from a concrete reality in order to gain an Olympian view of the world – not as a simple illusion, but rather the necessary mechanism through which law sees, senses and makes sense of the world. A mechanism which emerges out of the world, rather than

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<sup>29</sup> Ben Anderson and Paul Harrison, ‘The Promise of Non-Representational Theories’, in *Taking-Place: Non-Representational Theories and Geography*, eds. Ben Anderson and Paul Harrison (Farnham: Ashgate, 2010), 14.

being simply superimposed onto it, in a recursive process of coding, re-coding and over-coding between sensing and knowing, whose 'geological layers,' Woodard continues, sustain 'the capacity of judgement higher up the ladder.'

Thus law appears as the ordering and re-ordering of the field of vision, 'a seeing of ideas as rules and the construction of rules for ideas,' an apparatus that normalises *through* the world as much as it is normalised *by* the world. Or, paraphrasing Stojković, law as photography: an inscription of normative light and shadows onto materials, which is at the same time *made of* materials, and *makes with* materials. It is exactly the normative quality of photography to be what the art of 'abstract photography' engages with, Stojković argues in her chapter, by allowing to *see* 'the entanglement of the photographic image with the technology and material that produce it, but also with the norms and effects that the same technology and material impose on our daily life.' In other words, it is both the *normalising* force of photography as a *dispositif* aiming to control, isolate, 'tame and discipline light,' as well as the coming together of light and material that produces the photographic image out of its immersion in the real. A coming together that is never obvious and smooth. In fact, Stojković places the accent on the frictional quality of the encounter between light and material, assuming vision not as the reflection of an object, but the diffraction and perturbation of a field, a haptic diving into a heterogeneous materiality that produces diffracting waves.

This opens at least two compelling avenues. First, the potential abstract photography plays in questioning the internal normativity of photography itself. What this

branch of photographic art is particularly apt to express, is the role photography plays in *distributing* the sensible, to use Jacques Rancière expression, by reinforcing given (socio-cultural, political, legal) orderings. Abstract photography makes visible this ‘internal law’ of photography. Whether photography is a quintessential instrument of sense-making (as its widespread and often uncritical use within legal praxis testifies), abstract photography thus harbours the potential to *un-make* this (common) sense. In the compelling photographic experiments of Taisuke Koyama and Nihal Yesil that Stojković explores, we find expressed the potential of an abstract(ing) praxis that in contrast to the ‘mechanisms for looking at or looking through ... offer[s] a means for *looking with*,’ thus short-circuiting representation and its inscribed normativity.

Second, the methodological suggestion of Stojković can be carried all the way into the exploration of the ‘photographic’ *dispositif* of law itself, exploring legal abstractions, as suggested above, as a tool to understand how law sees the world and to problematise the material basis of law’s exceptional perception, rather than simply dismissing it in the name of a more authentic, organic, or human vision. Paraphrasing Paolo Virno, it is not by ‘looking for the dirty laundry that lies behind the categories of’ the law, that we are able to account for their ontological force, but rather by exploring the ‘abstract connections ... that pervade society and make it cohere.’<sup>30</sup> Accordingly, a proper exploration of legal vision – in the attempt to both *see* the law and understand how it *sees* – becomes an

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<sup>30</sup> Paolo Virno, ‘The two masks of materialism,’ *Pli* 12 (2001): 167-69.

attempt 'to both reveal how abstraction works and to generate alternative abstractions as part of a necessarily critical praxis.'<sup>31</sup> This is the potential of abstract photography Stojković is able to unfold: by not presenting us 'with anything recognisable but a pattern generated through the play of light and' a material, in fact, abstract photography makes us see the patterns themselves, the abstract connections that make the image cohere. This 'vision without the eye', as her title goes, makes visible the condition of possibility of its very visibility: a glimpse into the inhuman, virtual eye out of which singular points of view or visions contingently surface.

This is something like a darkness that allows for the visibility of a situation to shine, as in Giorgio Agamben's reflection on the *contemporary*, the one 'whose eyes are struck by the beam of darkness that comes from his own time,' a gaze able to neutralise 'the lights that come from the epoch in order to discover its obscurity, its special darkness.'<sup>32</sup> Seeing through this obscurity is not simply a feat in becoming accustomed to the dark, nor imagining what its ambiguous shadows could represent. It is perhaps the ability to penetrate the limits of vision, and imagination, so as to force it to reorient *sur place*. This is the quality of utopian thinking according to Frederic Jameson: not the positive capacity to envisage a better future, but a negative, suffocating force that, by reaching the limits of imagination, and triggering its failure, propels it further.

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<sup>31</sup> McCormack, *Geography*, 722.

<sup>32</sup> Giorgio Agamben, *What is an Apparatus? And Other Essays*, trans. David Kishik and Stefan Pedatella (Stanford: Stanford University Press, 2009), 45.

It is *through* the blindness of vision and the impotence of imagination that ‘the ideological closure of the system in which we are somehow trapped and confined,’ becomes visible: a necessary premise for the imaginative production of alternative realities.<sup>33</sup>

Conversely, the contemporary political imagination is mainly oriented towards the task of producing images of a future world to come, in which present plights will be somewhat overcome. This is what Stacy Douglas explores in her chapter, delving into the muddy rhetoric of the contemporary US political debate. On the one hand is the nostalgia for a great America to be restored, loudly championed by Donald Trump’s rhetoric. On the other, is the progressive projection of a post-Trump America in which individual freedoms would be restored, as produced by the liberal left imagination. Between them, the same mechanism of symbolic projection that situates a political solution in the future, relying on ‘the weird assumption’ – to echo Nicola Masciandaro – that ‘justice might be satisfied in a world that ought to be otherwise.’<sup>34</sup> Yet, as Masciandaro biblically continues, ‘hell is only destroyed by entering it, by staying in it.’<sup>35</sup> That is, following Jameson, by keeping the eyes transfixed on the power-structured rifts and fences and barriers that neutralise the power of imagination itself.

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<sup>33</sup> Fredric Jameson, ‘The Politics of Utopia,’ *New Left Review*, 25 (2004): 46.

<sup>34</sup> Nicola Masciandaro, ‘The Sweetness (of the Law),’ *Non Liquet: The Westminster Online Working Papers Series, Law and the Senses Series: The Taste Issue*, (2013): 45

<sup>35</sup> *ibid.*, 56

Douglas explores the theoretical base of these converging rhetorics by engaging with Drucilla Cornell's theory of legal transformation, which, following Immanuel Kant, emphasises the positive force of 'moral images of freedom' in producing the condition for changing a given situation, by creating platforms for alternative possibilities of meaning to emerge. Positive projections of a future world to come, however, systematically erase the present and its complexity from the picture, providing cloying futures on which to indulge, while the asymmetries of the present are left untouched. This is evident in the two hats which Douglas employs as visual summaries to the right and left rhetorics involved: the red 'Make America Great Again' hat worn by Trump supporters, and the pink knitted 'pussyhats' worn at the national women's march that took place against Trump, on the day after the inauguration. As Douglas observes,

Neither symbol forces an estrangement with the existing political-legal institutional reality via an exposure of the class composition of their context, which might allow for the ideological conditions of the present state of things to be exposed; instead, both rely on the Kantian-inspired deployment of the positive image and its role as a catalyst for transformation.

'A politics of emancipation does not seek the happiness of people but rather seeks universal disquiet', writes Quentin Meillassoux.<sup>36</sup> The disquiet that unavoidably stems from

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<sup>36</sup> Quentin Meillassoux, 'The Immanence of the World Beyond', in *The Grandeur of Reason: Religion, Tradition and Universalism*, eds. Peter. M. Candler and Conor Cunningham (London: SCM, 2010), 475.

the piercing acknowledgement of the inability to produce positive images in the here and now. As Doc Emmett Brown explained at the blackboard to a puzzled Martin McFly, we cannot go back to the future from a distorted present. Unless what makes it distorted is made visible, and thus dismantled, we are condemned to reproduce it. An act of creation, Deleuze reminds us, only 'takes place in bottlenecks ... a creator who isn't grabbed around the throat by a set of impossibilities is no creator. A creator's someone who creates their own impossibilities, and thereby creates possibilities.'<sup>37</sup> This capacity to mobilise a friction within the present, an engagement with the ontological structures of a given reality, is what seems to be lacking in the strategies of symbolic projection that Douglas investigates, where the present remains comfortably in the dark.

An instance of what such a strategy may entail is explored by Riccardo Baldissone in his contribution to this volume. Baldissone deals with the special darkness of past events that still beams its obscure rays into a forgetful present. These are large-scale traumatic events such as South African Apartheid, the Rwandan and the Indonesian genocides, and specifically the question of reconciliation in the face of these collective traumas. In these instances, reconciliation is normally articulated as a revelatory enterprise aimed at exhuming the Truth, implicitly understood as a static, inert and immutable object lying in the obscurity of the past, and which it is

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<sup>37</sup> Gilles Deleuze, *Negotiations: 1972-1990* (New York: Columbia University Press, 2005), 133.

the Commission's task to illuminate with the light of revelation. Reconciliation is expected to occur out of such a quest, recognising guilt, overcoming resentment, and possibly allowing for forgiveness to surface.

Baldissonne proposes a different strategy of reconciliation, one in which the revelatory work of truth-disclosure is substituted by the task of letting memories resurface by re-enacting them *in* the present, that is, putting them at play as agentic matter-images, rather than keeping them confined as inactive postcards of the past. This is what historians do, Baldissonne continues: they communicate with, let speak, and thus give back life to, the dead. In the face of appalling injustices endured by some, Meillassoux argues, justice cannot occur through forgiveness or grief, since these practices, let alone their actual possibility, only concern the living. True justice may only occur by assuming that 'it is not the living who need help but the dead,' recognising 'that some lives are entitled to begin again so as to overcome the atrocious end inflicted upon them.'<sup>38</sup> Evidently, in this peculiar reformulation of the theory of eternal return, there is no space for the all-too-human and moralising questions of guilt, resentment or forgiveness, which are the only options the model of reconciliation-as-truth presents.

This is precisely what Adi, the brother of a victim of the Indonesian genocide, expresses in Joshua Oppenheimer's documentary, aptly titled *The Look of Silence*. Here, Baldissonne explains, Adi is not looking for an impersonal truth, a reconstruction of the past, or an admission of

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<sup>38</sup> Meillassoux, 'The Immanence', 453.



guilt. Instead, he is ‘battling the apparent impossibility to share his present with his brother’s unprosecuted murderers, the surviving bystanders, the other victims’ relatives, and his brother’s memory.’ If justice must also be justice for the dead, then reconciliation can only occur by resuscitating the dead, that is, resuscitating dead memories, by making them alive and visible, and putting them at play into a space that does not exist in the present, and therefore must be collectively constructed. This tentative, performative, and conflictual strategy may be useful to assess, Baldissone continues, ‘whether the authority of truth is used to silence alternative positions, or to make previously invisible stances come to light.’

Michael Taussig observes that witnessing, differently from seeing, is something akin to vision hallucinating on itself. It requires letting a shock remain, rather than looking away, by refusing to allow the abnormal to pass into normality, the horror into banality, the memory into the past: that is to prevent the normativity of vision from normalising itself.<sup>39</sup> Writing from the field of ethnography, Taussig proposes to use *drawing* as an alternative to taking notes or pictures, as a ritual whereby the spiritual forces and special darkness of contingency is captured, generating a vision that, to paraphrase Deleuze, ‘is not surprising that we have to construct [it] since it is given only to the eye which we do not have.’<sup>40</sup> Whether truth-seeking is tied to the questions of forgiveness (or

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<sup>39</sup> Michael Taussig, *I Swear I Saw This. Drawing in Fieldwork Notebooks, Namely my Own* (Chicago: University of Chicago Press, 2011).

<sup>40</sup> Deleuze, *Cinema 1*, 81.

the refusal thereof) and resentment, memory resuscitation is a sorcery which relies on fabulation. This is what the actor or the mime do, Deleuze maintained: they are able to release the possibility of the event by re-enacting not 'what occurs', but what is 'within what occurs'.<sup>41</sup> This happens in Oppenheimer's documentaries, where the perpetrators themselves are put in the situation of 'miming' their past actions, and thus forced to 'look' at their 'silence', dealing with the past event by re-enacting and somehow re-mobilising it into a novel encounter.

Representation in this sense is no longer a means to *reveal* or *reflect* on, but rather a way to *perturb* and *diffract* the past, generating aesthetic effects whose legal potential may spill beyond the pretence of a given Truth, towards a tentative and perilous, collective and constructive, process of truth-making. Thus, Baldissone argues, we may

envisage a double task for legal activities: on the one hand, legal actors at large may relinquish as untenable the claim to the monopoly of memory as a single legal truth, and they may work instead to produce the visibility of the plurality of the past; on the other hand, legal experts may then facilitate the negotiation between the representatives of this plurality in the present.

To be sure, the notion of truth is not in this way necessarily abandoned, but perhaps reoriented. Paradoxically,

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<sup>41</sup> Gilles Deleuze, *The Logic of Sense* (London: Continuum, 2004), 134. If properly 'used', Deleuze continues, representation becomes a vehicle enveloping the event of the past and allowing it to be expressed, 'averting its sclerosis' by releasing the darkness that the light of its historical state of affairs occluded, not to reconstruct the past, but rather to construct it anew. *Ibid.*, 146.

we may argue that it is still concerned with achieving a conformation to reality (*adaequatio*), and yet a reality that is radically different from the stable Order of Being preached by the Scholastics. First, this truth is not beyond, but rather within the sensible, object of a *theoria* that does not erase but is firmly situated within vision itself. Second, reality is not separated from us, but is the radically open materiality of which we are part. In this sense, conformation means to be faithful to this differential, plural and open reality: ‘whereas reflection is about mirroring and sameness – Stojković writes – diffraction attends to patterns of difference.’ Thus the task of pursuing truth through an open conformity to reality becomes the constructive work of sculpting truth in complicity with the anonymous materials at hand. Seeing, just as carving wood,

surrendering to the wood, then following where it leads by connecting operations to a materiality, instead of imposing a form upon a matter: what one addresses is less a matter submitted to laws than a materiality possessing a *nomos*.<sup>42</sup>

As Woodard observes, if we take ‘the force of law as a type of vision’ then this force may be understood as ‘one of collective apparatuses more than a groundless violence’. Whether we reformulate vision from revelation to co-construction, from reflection to diffraction, we are served with another legal praxis, one in which the optical *dispositif* of law is reoriented, and representation is reworked

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<sup>42</sup> Gilles Deleuze and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (London: Continuum, 2004), 408.

away from an exceptional perception of reality, towards a tentative and haptic praxis to 'touch-see' the real.

In this sense, could a blindfold be a tool, rather than an impairment? In his contribution, Marcilío Franca focuses on the iconographic tradition of apposing a blindfold over the eyes of justice. The eye of the law, or the eye of justice, is a 'long-lived cultural constant in the Hellenistic-Roman-Christian world.' It is 'in its eyes' that all citizens are equal, the 1789 *Declaration* spells out. Within these eyes are enshrined the qualities that define the internal normativity of vision: brightness, clarity, definition. A 'crystal-clear, sharp, unblocked sight' is the quintessential prerogative of the all-seeing divine gaze. In the Middle Ages a blindfold began to be applied over the eyes of justice, at first as a mockery, the cunning strategy of a jester aimed at keeping the carnivalistic *bouleversement* of the world out of her judgemental gaze. Yet, from the 16<sup>th</sup> century the blindfold begins to assume a novel meaning, from a means to disorient, to a tool to *orient* justice, by means of guaranteeing her incorruptibility.

Justice, we may argue, was in this way humanised: understood as a corruptible being, she now requires a prop, a blindfold, to be able to impartially decide. As for Oedipus, the blindfold becomes less a negative impairment than a positive tool to see through: 'it is necessary not to see to be able to see better,' Franca writes. What if we push this interpretation further? Justice is to be opportunely blindfolded, not because that which she may see would prevent her from *seeing the truth*, but rather because her task is a paradoxical one: that of making visible the conditions of possibility for her vision, the special darkness of the spatial

contingency in which she is thrown. Justice would be the vision of a world that is not seen by the moralising gaze of the human and its meaning-making projection, but rather the ‘vision without the eye’ of a world that remains not amenable to human sense. Perhaps the blindfold then is a call for constructing a novel optical apparatus for law, one able to reorient its all-appropriating gaze towards a world *not for law*, that is, towards the very event of its encounter with a non-juridifiable world. The focal point then would not be for law to *see* better, but to modify its own idea, and praxis, of *seeing* itself.

Law’s obsessive *iconophilia* is problematic, both in the sense of positioning vision at the height of the hierarchy of senses vis-à-vis its capacity to reveal truth, and in shaping, within vision itself, a normative hierarchy that prioritises brightness, clarity and definition. Deviancy is defined accordingly, pathologising the subject (myopia, astigmatism, blindness), or discriminating the object, as messy, confused, *impressionist*.<sup>43</sup> This is particularly significant in relation to the current image-obsessed capitalist condition, in which a visual economy tied to a logic of *resolution* and exchange value irremediably de-prioritises

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<sup>43</sup> The term *impressionism* was notably used used derisively by critics at the first ‘Impressionist’ exhibition in Paris. Thus, Emile Cardon wrote: “This school does away with two things: line, without which it is impossible to reproduce any form, animate or inanimate, and colour, which gives the form the appearance of reality. Dirty three-quarters of a canvas with black and white, rub the rest with yellow, dot it with red and blue blobs at random, and you will have an *impression* of spring before which the initiates will swoon in ecstasy.” Emile Cardon, ‘The exhibition of the Revoltes’, *La Presse*, 29 April 1874, <http://www.artchive.com/galleries/1874/74critic.htm> (accessed 25 May 2017).

those images that are undefined, blurred, literally poor, almost embodying an inherent myopia that makes them immediately aberrant, either to be treated (enhanced, photoshopped), or erased. Yet the relation between high definition and truth is far from being transparent. See the recent research showing how the use in court of high-quality, slow-motion videos tends to distort understanding of criminal responsibility. By allowing for a vision beyond the human threshold of detectability, slow-motion prolongs the temporality of crime footages, inducing the impression of premeditation on the part of the perpetrator: *slow motion increases perceived intent*.<sup>44</sup> We are reminded of Eyal Weizman's compelling exploration of the use of aerial images in court in order to detect whether a building has been hit by an illegal drone strike. Here, the law imposes a threshold of detectability (the legal resolution of aerial images, established at 50cm/pixel) which is meant to protect individual privacy (a pixel roughly corresponds to the size of one person), but at the same time allows for violence to slip beneath such a threshold (the pixel is also the size of the holes produced by drone strikes on civil roofs). The internal normativity of the digital image (its pixelated ontology) thus intersects the external normativity of Law, determining the use of 'poor images' that indirectly become enablers of violence.<sup>45</sup>

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<sup>44</sup> Eugene M. Caruso, Zachary C. Burns, and Benjamin A. Converse, 'Slow Motion Increases Perceived Intent', *PNAS* 113 (2016): 9250-9255.

<sup>45</sup> Eyal Weizman, 'Violence at the Threshold of Detectability', *E-flux Journal* 64 (2015), <http://www.e-flux.com/journal/64/60861/violence-at-the-threshold-of-detectability/> (accessed 25 May 2017).

Yet what if it is not a human eye, but the inhuman, digital and rhizomatic eye of the web that contemplates images? In this case, a wholly other normativity to which images must approximate emerges. In her essay *In Defense of the Poor Image*, Hito Steyerl reflects on the power that poor images assume in the Web 2.0, as the sheer materiality of their low resolution disarticulates the neoliberal flow of commodified images, releasing ‘another form of value defined by velocity, intensity, and spread’. Fully exploiting the velocity, intensity, and spread of the visual economy of the Web 2.0, in the contribution to this volume picpoet takes pictures with the iPhone, writes the accompanying text on the spot, and then deterritorialises the resulting text-image by uploading it on the author’s Instagram account and website. Picpoetry, the author explains, is meant to be a process ‘of combining iPhoneography and instant text writing’ so as to produce a pic-poem, a mixture of words and picture that hold a strong spatio-temporal relation with the event of its taking place. A work consistent with an understanding of vision that does no longer depend on human demand for clarity but rather on an inhuman demand for levity and portability, to the point of prompting a re-calibration of the visual economy itself, now ready to appreciate these blurred, shaky and indefinite images and footages as provided of a somewhat higher level of truth.<sup>46</sup> Shakiness and low quality in fact may also carry a truth-value that, unlike

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<sup>46</sup> Hito Steyerl, ‘In Defense of the Poor Image’, *E-flux Journal 10* (2009) <http://www.e-flux.com/journal/10/61362/in-defense-of-the-poor-image/> (accessed 25 May 2017).

definition, is associated with risk and danger. As Michel Foucault observed in his discussion on *parrhesia*, ‘in its extreme form, telling the truth takes place in the ‘game’ of life or death.’<sup>47</sup> The raw quality of such images may be said to embody truth in its most visceral form, as if, just like the *parrhesiastes*, such images would speak candidly, with open heart and mind, expressing truth in its most direct form.

If the point of *parrhesia* was to eschew any artifice so as to employ ‘the most direct words and forms of expression’,<sup>48</sup> the use of words by picpoet may be said to perform a curious inversion. Whether there is an undeniable truth that any image carries, and a truth-value that any smart-phoned image conveys, picpoet’s texts seem to hinder and problematise the linearity of this assumption. If these images are not shaky, blurred or grainy, the texts paired to them have the task to shake and blur them. ‘The connection between the textual and the visual is tight and parallel, yet not descriptive’, picpoet writes. Neither accompanying nor overlooking the images, these texts try to pierce them, whilst being flooded and dislocated by them in return. A turbulent back-and-forth that splays out any truthfulness the image normatively holds, refraining from revealing, and rather endeavouring to diffracting the image itself, whilst simultaneously denying to the text any paternalistic pretence to describe it or, worse, explain it away.

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<sup>47</sup> Michel Foucault, *Fearless Speech*, ed. Joseph Pearson (Los Angeles: Semiotext(e), 2001), 15–16.

<sup>48</sup> *Ibid.*



Discussing the traditional art of textual commentary, Masciandaro argues that this does not lie in going beyond, behind or below the text, so as to find its hidden meanings.<sup>49</sup> A true commentary remains faithful to the text by staying within the text and, while avoiding ending up entrapped into its quicksand, holding it open to the other flows with which a text always entertains ‘relations of current, countercurrent, and eddy – to follow Deleuze – flows of shit, sperm, words, action, eroticism, money, politics.’<sup>50</sup> Neither a description, nor an explanation, a commentary is best understood as a praxis of encircling the text, erecting ‘more and more perceptual enclosures, spaces within which the unrepresentable is brought into presence.’<sup>51</sup> We may argue this is what the words do here, generating frictions at the encounter between words and images within each picpoem, as the text keeps chasing and encircling the image, without providing any explanation but rather diffracting their sense into multiple points, their two-dimensional staticity into a three-dimensional atmospherics. These diffractions, the author explains, ‘[allow] questions on the relevance of the law in terms of affective, embodied and spatialised movements to emerge both pictorially and textually, and ultimately left unanswered.’ They allow, that is, the discovery of a way law functions within the visual that is of another kind than

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<sup>49</sup> Nicola Masciandaro, ‘Becoming Spice: Commentary as Geophilosophy’, in *Collapse, VI: Geo/Philosophy*, ed. Robin Mackay (Falmouth: Urbanomic, 2010)

<sup>50</sup> Gilles Deleuze ‘Letter to a Harsh Critic,’ in Deleuze, *Negotiations*, 8-9.

<sup>51</sup> Masciandaro, ‘Becoming Spice’, 30.

the abstraction dissected by Stojković, emergent, confused, blurred.

In this sense, picpoet's attempt is close to what Kathleen Stewart describes as a 'writing and theorising that tries to stick with something becoming atmospheric [...] approaching the thing that is happening by attuning to it'<sup>52</sup> By attuning to the normative tuning of an atmospheric that is present and yet invisibilised by the law, what each picpoem seeks to unfold are the traces of law's own invisibilising work, the unrepresentable pull of the normative tensions holding us together, while ripping us apart. As the words, joining the pictures, let surface to sensoriality the 'summer breeze' of which we are just a 'whiff', or the inhuman scream that the all-too-human vision strives to silence, at times a nostalgic tone transpires, as a murmured mourning the crumbling of humanity, individual agency, the possession and control over one's own senses, releasing a bitter awareness, that 'our happiness was easy, precious and polluted'.

Only that, of course, nothing is lost, because nothing was possessed in the first place. Certainly not seeing. The nostalgia here, rather than the unproductive yearning for a lost authenticity, becomes a productive mood through which the loss is turned into a visible presence, the visible as an ontological surface in which we dive, the text as a matter-image conspiring with the light, sculpting instants of eventful atmospheric in which seeing is infinitely diffracted into post- and inhuman points of views, independent from the possibility of being, at some point, occupied.

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<sup>52</sup> Kathleen Stewart, 'Atmospheric Attunements', *Environment and Planning D: Society and Space* 29, no. 3 (2011): 450.

## References

- Agamben, Giorgio. *What is an Apparatus? and Other Essays*. Translated by David Kishik and Stefan Pedatella. Stanford: Stanford University Press, 2009.
- Alliez, Éric. *The Brain-Eye: New Histories of Modern Painting*. Translated by Robin Mackay. London: Rowman & Littlefield, 2015.
- Anderson, Ben and Paul Harrison, 'The Promise of Non-Representational Theories'. In *Taking-Place: Non-Representational Theories and Geography*, edited by Ben Anderson and Paul Harrison. Farnham: Ashgate, 2010.
- Bently, Lionel and Leo Flynn, eds. *Law and the Senses: Sensational Jurisprudence*. London: Pluto Press, 1996.
- Bergson, Henri. *Matter and Memory*. New York: Cosimo Classics, [1898] 2007.
- Brighenti, Andrea Mubi. *Visibility in Social Theory and Social Research*. Basingstoke: Palgrave, 2010.
- Cardon, Emile. 'The exhibition of the Revoltes', *La Presse*, 29 April 1874. Accessed 20 May 2017 <http://www.artchive.com/galleries/1874/74critic.htm>
- Caruso, Eugene M., Zachary C. Burns, and Benjamin A. Converse. 'Slow Motion Increases Perceived Intent'. *PNAS* 113 (2016): 9250–9255.
- Cooper, Davina. 'Reading the State as a Multi-Identity Formation: The Touch and Feel of Equality Governance'. *Feminist Legal Studies* 19, no. 1 (2011): 3–25.
- Debray, Régis. *Critique of Political Reason*. New York: New Left Books, 1983.
- Deleuze, Gilles. *Deuxième leçon sur Kant*, Vincennes, 2 March 1978. Accessed 25 May 2017 <http://www.le-terrier.net/deleuze/>
- Deleuze, Gilles. *Bergsonism*. Cambridge, Massachusetts: MIT Press, 1991.
- Deleuze, Gilles. *The Logic of Sense*. London: Continuum, 2004.
- Deleuze, Gilles. *Negotiations: 1972-1990*. New York: Columbia University Press, 2005.

- Deleuze, Gilles. *Cinema 1: The Movement-Image*. London: Bloomsbury Academic, 2013.
- Deleuze, Gilles and Félix Guattari. *A Thousand Plateaus: Capitalism and Schizophrenia*. London: Continuum, 2004.
- Foucault, Michel. *Fearless Speech*, edited by Joseph Pearson. Los Angeles: Semiotext(e), 2001.
- Grabham, Emily. 'Shaking Mr Jones: Law and Touch'. *International Journal of Law in Context* 5, no. 4 (2009): 343–353.
- Hamilton, Sheryl, Diana Majury, Dawn Moore, Neil Sargent, and Christiane Wilke, eds. *Sensing Law*. Abingdon: Routledge, 2017.
- Hibbitts, Bernard J. 'Coming to Our Senses: Communication and Legal Expression in Performance Cultures'. *Emory Law Journal* 41, no. 4 (1992): 873–955.
- Jameson, Fredric. 'The Politics of Utopia'. *New Left Review* 25 (2004): 35–54.
- Mackay, Robin. 'Preface'. In Alliez, Éric. *The Brain-Eye: New Histories of Modern Painting*. London: Rowan & Littlefield, 2015.
- Masciandaro, Nicola. 'Becoming Spice: Commentary as Geophilosophy'. In *Collapse, VI: Geo/Philosophy*, edited by Robin Mackay. Falmouth: Urbanomic, 2010.
- Masciandaro, Nicola. 'The Sweetness (of the Law)'. *Non Liquet: The Westminster Online Working Papers Series, Law and the Senses Series: The Taste Issue* (2013), 45. Accessed 20 May 2017 [https://nonliquetlaw.files.wordpress.com/2013/05/law-and-the-senses\\_taste.pdf](https://nonliquetlaw.files.wordpress.com/2013/05/law-and-the-senses_taste.pdf)
- Masciandaro, Nicola. 'Synaesthesia: The Mystical Sense of Law', *The Whim* (blog), 01 November 2016. Accessed 15 May 2017 <https://thewhim.blogspot.pt/2016/11/synaesthesia-mystical-sense-of-law.html?m=1>
- McCormack, Derek P. 'Geography and Abstraction: Towards an Affirmative Critique'. *Progress in Human Geography* 3, no. 6 (2012): 715–734.
- Meillassoux, Quentin. 'Subtraction and Contraction: Deleuze, Immanence and Matter and Memory'. In *Collapse, III: Unknown Deleuze*, edited by Robin Mackay. Falmouth: Urbanomic, 2007.

- Meillassoux, Quentin. 'The Immanence of the World Beyond.' In *The Grandeur of Reason: Religion, Tradition and Universalism*, edited by Peter. M. Candler and Conor Cunningham. London: SCM, 2010.
- Philippopoulos-Mihalopoulos, Andreas. 'Atmospheres of Law: Senses, Affects, Lawscapes.' *Emotion, Space and Society* 7 (2013): 35–44.
- Plato. *The Dialogues of Plato*. Translated by Benjamin Jowett, New York: Random House, 1920.
- Ronchi, Rocco. *Gilles Deleuze*. Milano: Feltrinelli, 2015.
- Sartre, Jean-Paul. 'Intentionality: A Fundamental Idea of Husserl's Phenomenology.' In *The Phenomenology Reader*, edited by Dermot Moran and Timothy Mooney. London: Routledge, 2002.
- Stewart, Kathleen. 'Atmospheric Attunements.' *Environment and Planning D: Society and Space* 29, no. 3 (2011): 445-453.
- Steyerl, Hito. 'In Defense of the Poor Image,' *E-flux Journal* 10 (2009). Accessed 25 May 2017 <http://www.e-flux.com/journal/10/61362/in-defense-of-the-poor-image/>
- Taussig, Michael. *I Swear I Saw This. Drawing in Fieldwork Notebooks, Namely my Own*. Chicago: University of Chicago Press, 2011.
- Virno, Paolo. 'The Two Masks of Materialism.' *Pli* 12 (2001): 167-173.
- Viveiros de Castro, Eduardo. *Metafísicas Canibais. Elementos para uma Antropologia Pós-Estrutural*. São Paulo: Cosa Naify, 2015.
- Weil, Simone. *Gravity and Grace*. London: Routledge, 2002.
- Weizman, Eyal. 'Violence at the Threshold of Detectability.' *E-flux Journal* 64 (2015). Accessed 25 May 2017 <http://www.e-flux.com/journal/64/60861/violence-at-the-threshold-of-detectability/>
- Woodward, Keith. 'Events, Spontaneity and Abrupt Conditions.' In *Taking-Place: Non-Representational Theories and Geography*, edited by Ben Anderson and Paul Harrison. Farnham: Ashgate, 2010.

# Vision Without the Eye: Following the Material of Abstract Photography

Jelena Stojković

‘Because we believe it, we think we are seeing it.’

Vilém Flusser

## 0.0 **Premise** // Vision

Digital vision, Sean Cubitt writes, begins with a withdrawal of the eye.<sup>1</sup> The machine, on which we are ever so increasingly relying for visualising the world, self-evidently, does not and cannot see in the same manner as the eye, and this factual situation determines the status of our now predominant vision. The machine continues to collect, compare and assemble visual data, but the articulating role that the eye performed in the past is now taken over by

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<sup>1</sup> Sean Cubitt, *The Practice of Light: A Genealogy of Visual Technologies from Prints to Pixels* (Cambridge, Massachusetts: The MIT Press, 2014), 108.

entirely automated systems of measurement and statistical comparison.<sup>2</sup> Not only that, but increasingly, our every interaction with the machine feeds precisely that system. As Hito Steyerl warns us, we are becoming accustomed to not seeing anything intelligible, as the processes of filtering, decrypting and pattern recognition replace vision itself.<sup>3</sup>

This is, of course, nothing new. As Gilles Deleuze famously pointed out, the machine evolves together with us; its mutation is our mutation.<sup>4</sup> That we cannot write it out from the manner in which we see is already accepted in the concept of machinic vision, which John Johnston (following Deleuze and his work with Félix Guattari) defined as not only implying a type of seeing that is enabled by the machine but also in relation to it.<sup>5</sup> The complicity of the camera in the historical development of this vision does not need to be reasserted: the apparatus, described as the most extraordinary invention in vision in possibly the whole of human history, was supposed to deliver the promise of technology's ability to enrich and improve human sight.<sup>6</sup> The 'mechanical retina', a term associated with the camera in the nineteenth century, rendered visible what was invisible to the eye – the surface of

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<sup>2</sup> Ibid.

<sup>3</sup> Hito Steyerl, 'A Sea of Data: Apophenia and Pattern (Mis-) Recognition', *E-flux Journal* 72, (April, 2016) <http://www.e-flux.com/journal/72/60480/a-sea-of-data-apophenia-and-pattern-mis-recognition/> (accessed 22 January 2017)

<sup>4</sup> Gilles Deleuze, 'Postscript on the Societies of Control', *October* 59 (1992): 6.

<sup>5</sup> John Johnston, 'Machinic Vision', *Critical Inquiry* 26 (1999): 29.

<sup>6</sup> Martin Jay, *Downcast Eyes: The Denigration of Vision in Twentieth-Century French Thought* (Berkeley: University of California Press, 1993), 124.

the Moon, or the movements of a trotting horse's hooves, for instance – but it also became entangled with the systems for measuring, classifying and the ordering of the world through images. The medium's capacity to offer photographic evidence placed it in the centre of the techniques of representation and regulation that are central to the network of such modern and disciplinary institutions as the police, the prison, the press, the asylum, the family, the hospital, the school or the courtroom.<sup>7</sup>

### 0.1. **Argument** // Material

In 'Some Propositions on Photography' (1965), American photographer, experimental filmmaker and writer, Hollis Frampton, describes photography as a term that brackets a number of activities: an industry, a craft, a technology, a tool, a science, a racket, a hobby, and a national pastime.<sup>8</sup> Last of all, there is an art of photography, an activity that not only consumes the least material and funds, but is also the least noticeable. The main paradox with the art of photography is that regardless of the comparatively small territory that it occupies with regard to the other photographic 'activities', it carries a responsibility for the entirety of this field, or, in Frampton's words, 'its merits and defects, its entire possible manifestations.'<sup>9</sup> Differently said, photography's vast resonance for not only culture

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<sup>7</sup> John Tagg, *The Burden of Representation: Essays on Photographies and Histories* (Amherst: University of Massachusetts Press, 1988), 5.

<sup>8</sup> Hollis Frampton and Bruce Jenkins, *On the Camera Arts and Consecutive Matters: The Writings of Hollis Frampton* (Cambridge, Massachusetts: The MIT Press, 2009), 5-6

<sup>9</sup> *Ibid.*, 6.



but also science and trade, as well as its encompassing of such a diverse range of genres as fashion photography, portraiture, or snapshot, are intrinsic to photography as a fine art practice. Photography is the starting point for, and the necessary restraint of, the art of photography, as the ties between them are too entwined to sever.

It is that practice of photography (as fine art) that will be discussed here in terms of the machinic conditions of digital vision. The digital ‘turn’, just in case the reader might need to be reminded, has brought about a significant discussion since the 1990s about photography’s ontology, or what it might be and do within changed technological parameters. Despite the initial concerns that photography as we know it might become obsolete, the prevailing verdict at the moment seems to be that the ‘turn’ enabled another transformation and proliferation of the medium, which assumed a central role in the computerised networks of image production and dissemination.<sup>10</sup> The fact that this optimism might be at odds with the warnings against the disorienting nature of digital vision brings us back to Frampton’s now fifty years old diagnosis: if we were to look for any radical envisioning of photography’s ability to make or unmake sense of vision as we now encounter it, it is the often marginalised fine art practice that should offer us clues.

Two photographic series, Taisuke Koyama’s *Light Field* (2015) and Nihal Yesil’s *Leaping Field* (2015), will thus

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<sup>10</sup> Alexandra Moschovi, Carol McKay, and Arabella Plouviez, eds., *The Versatile Image: Photography, Digital Technologies and the Internet* (Leuven: Leuven University Press, 2013); Daniel Rubenstein, Jonny Golding, and Andy Fisher, eds., *On the Verge of Photography: Imaging Beyond Representation* (Birmingham: ARTicle, 2013).

provide a focus in what follows, regarding their historical and theoretical contexts as photographic abstractions. However, in addition to looking closely at what we see in those photographs we will also problematise their material basis, as in a recently posed question: what does it mean to 'follow' (and 'act' with) the material?<sup>11</sup> Such a 'following' of the material, clearly, draws from a well-known and often quoted passage from *A Thousand Plateaus: Capitalism and Schizophrenia* (1980), where Deleuze and Guattari assert that matter is always in movement and flux, and that such a 'matter-flow' can only be followed.<sup>12</sup> Jussi Parikka takes up a similar route in his recent study of the 'geology of media' and points at the fact that, seen from this perspective, the historical account of photography can be read as a story of chemicals rather than simply of inventors, experimenters, or, we might add, artists.<sup>13</sup> Within the focus on photography as fine art the task of 'following' the material will here be taken somewhat differently, claiming that photography is not only made of materials but that it also makes with materials, as any other fine art practice does. To act out this claim and point in the direction of a possible way out of digital vision's normativity, we will engage with photographic history and criticism alongside not only media studies

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<sup>11</sup> Petra Lange-Berndt, ed., introduction to *Materiality* (London: Whitechapel Gallery and Cambridge, Massachusetts: The MIT Press, 2015), 13.

<sup>12</sup> Gilles Deleuze and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (Minneapolis: University of Minnesota Press, 1987), 409.

<sup>13</sup> Jussi Parikka, *A Geology of Media* (Minneapolis: University of Minnesota Press, 2015), 55.

but also the area that is still termed new materialism, and especially the writing of Karen Barad.

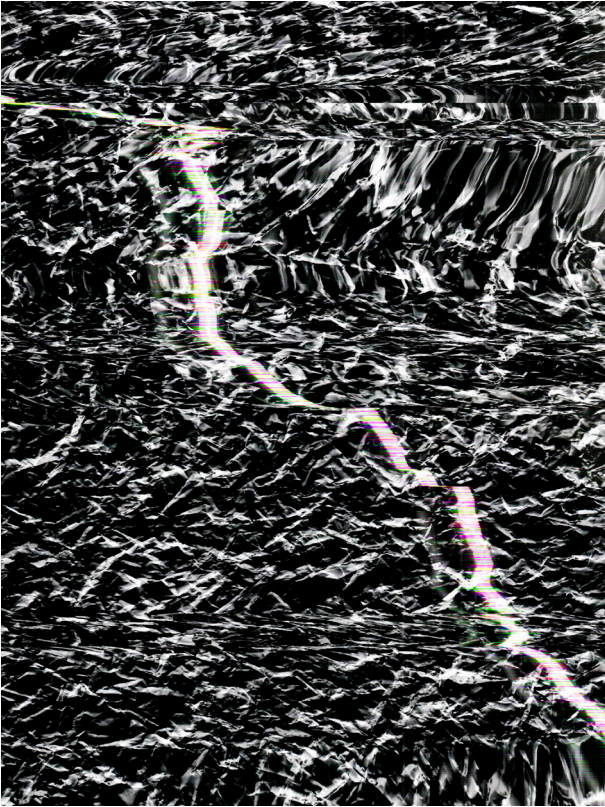
### 1.0 Surface // Light

In *Light Field*, Koyama places crumpled sheets of transparent cellophane on a flatbed scanner and then employs a handheld scanner to document the process of its working, simultaneously redirecting and recording digital light as it passes through the transparent material (**Figure 1**). The transparency of cellophane is read in negative in this process, whereas the movement of Koyama's hand displaces the linear motion of the flatbed scanner's LED lamp into what we see as a zigzagging line intersected by a rainbow of primary colours. The creases of cellophane are rendered into a nondescript mesh, unevenly distributed across the image, while an additional line registers as a coupling, shadow companion to the main, reflecting the body of the handheld scanner.<sup>14</sup>

Light conditions all vision, and as its title indicates, Koyama's series is made both about and from light. But what is digital light, and how is its status manifested in Koyama's work? We know since Isaac Newton's experiments with optics in the seventeenth century that a ray of light is made of colours, that diffuse once they encounter a transparent obstacle – a piece of cellophane for instance – as we can observe in Koyama's series. Early physics believed

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<sup>14</sup> I am grateful to Taisuke Koyama for explaining the details of this series in our e-mail correspondence in April 2016. *Light Field* is published together with *Photons* by Taisuke Koyama Projects in 2015.



**Figure 1:** Taisuke Koyama, *Light Field 012*, 2015.

that light behaves like a stream of solid particles which becomes noticeable in its reflection on a mirror or glass surface.<sup>15</sup> The fact that light would not be blocked by a

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<sup>15</sup> Günter Leising, 'Light and Order', in *Light Art from Artificial Light: Light as a Medium in 20<sup>th</sup> and 21<sup>st</sup> Century Art*, ed. Peter Weibel (Ostfildern: Hatje Cantz, 2006), 57.

transparent object was one of the reasons for early doubts in this theory and the basis for Thomas Young's nineteenth century 'double slit experiment', which proved that light also behaves as a wave.<sup>16</sup> In order to approach the question of digital light, we first need to establish a difference between the understanding of light as a prime carrier of information about the world in a broad sense – as that which we see and the means by which we see – and the optic fibres that carry digital information in the modern world through an electrical process based on the switching between two states (one for on, and zero for off).<sup>17</sup> Digital light, understood in this way, essentially stands for the 'digital control of the emission of light'.<sup>18</sup> The word that needs to be stressed here is 'control', as it is the control of light, and not light itself, that is the actual foundation of contemporary, digital vision.<sup>19</sup>

In this sense, Koyama's series can be understood as the documentation of the working of digital light, or the flat-bed scanner's LED lamp. However, more than simply photography, Koyama's series evokes the process of painting or drawing: it is his operation of the handheld scanner that determines the texture, density and distribution of the LED lamp's light that we see in the image. His work also involves an element of sculpting: the sheets of cellophane are placed between the two scanners in order to construct

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<sup>16</sup> Stephen Jones, 'What is Digital Light?', in *Digital Light*, eds. Sean Cubitt, Daniel Palmer, and Nathaniel Tkacz (London: Open Humanities Press, 2015), 84.

<sup>17</sup> *Ibid.*, 83-87.

<sup>18</sup> *Ibid.*, 90.

<sup>19</sup> Sean Cubitt, Daniel Palmer, and Nathaniel Tkacz, eds., introduction to *Digital Light* (London: Open Humanities Press, 2015), 9.

a multi-layered object for the self-induced and self-contained diffusion, distribution and recording of digital light. In both instances, it is the hand and not the eye that takes the lead in the production of the image; the photographer simply operates the machine in search of the ultimately contingent visual inscription. Before coming back to the figure of the operator, Koyama's series is important to us here for two other, intertwined elements. Firstly, what we see does not fall under the aesthetic category of representation but that of abstraction: we are not presented with anything recognisable but a pattern generated through the play of light and cellophane. However (and secondly), it is precisely this pattern (or the entanglement of light with cellophane) that we see, and it is far from being nothing.

### 1.1 Cellophane // Abstraction

Judith Brown insists that the contemporary eye has lost a capability to empathise with the excitement associated with cellophane in the past, or to read the dated 'semiotics' of the material.<sup>20</sup> 'La Cellophane' (combining the first syllable of cellulose with the final syllable of *diaphane*, for 'transparent'), the company that Jacques Brandenburg set up in Switzerland in the 1910s after isolating transparent sheets of viscose, mostly sustained its business by offering the product as luxury packaging.<sup>21</sup> The 'luxury' embedded in this early history of cellophane connoted

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<sup>20</sup> Judith Brown, *Glamour in Six Dimensions: Modernism and the Radiance of Form* (Ithaca: Cornell University Press, 2009), 145.

<sup>21</sup> Kit L. Yam, ed., *The Wiley Encyclopedia of Packaging Technology* (Hoboken, N.J.: John Wiley & Sons, 2009), 527.

not only its practicality – a convenient means of wrapping, guaranteeing freshness of the product it contained – but also its visual properties, as it offered an entry point for the increasingly consumerist eye into the shape, form, and sheer materiality of what it desired, functioning as an ever-so-slightly thin line of separation. Cellophane achieved its success in the 1930s, when the company expanded its operations in the US by providing a wrapper for cigarette brands such as Camel and Lucky Strike, and the popular Whitman's chocolates. Cellophane subsequently became a ubiquitous household item, in such products as Scotch tape, but was pushed out of the packaging market by readily available alternatives like plastic wrap. The material is completely biodegradable and is therefore a subject of renewed interest, inviting speculation about how its 'luxury', associated with the nascent consumerism on the 1900s, could be reinterpreted in environmental terms.

More to the point, Brown also indicates the resemblance between cellophane and photography: 'cellophane arrests the gaze at its glittering surface, becomes a version of the photograph, emptied of content and form [...], a blank surface that is endlessly appealing, seductive, though it transmits little beyond the wonder of its alchemy'.<sup>22</sup> It is the blankness of this transparent surface that Brown reads as a symptomatic condition of the twentieth century, as a 'nothingness' of a 'formless void', or the terrifying absence of meaning that the consumerist culture ultimately stands for. That this blankness registers in

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<sup>22</sup> Brown, *Glamour in Six Dimensions*, 151.

Koyama's series in negative is one thing. The other is that Brown's binding of photography and cellophane, through their symbolical value to stand in for nothingness, also becomes pertinent to consider vis-à-vis what is broadly associated with the representation of nothingness, or the rendering of abstraction in fine art practice.<sup>23</sup>

Lyle Rexer, in his study of abstraction in photography, highlights the fact that the medium has always had a different relationship to abstraction from painting.<sup>24</sup> Photography's mechanism for recording light forever 'wedded' it to the world, and what is most frequently termed as its 'indexical' nature places it in a specific position: photography is a tension between what is seen and what is understood about that which is seen in an image.<sup>25</sup> No matter how empty an image might seem, or how nothing-like it might appear, through its nuptial relationship to the world, a photograph is always about looking. Rather than mechanisms for looking at or looking through, abstract photographs offer a means for looking with.<sup>26</sup> Going back to Koyama's series, although we are presented with a seemingly unintelligible abstraction, conventionally understood as a representation of nothing, and conveniently rendered visible through a material that brings forth similar associations, where does it take us as a tool for looking with?

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<sup>23</sup> Kirk Varnedoe, *Pictures of Nothing: Abstract Art Since Pollock* (Princeton, NJ: Princeton University Press, 2006).

<sup>24</sup> Lyle Rexer, *The Edge of Vision: The Rise of Abstraction in Photography* (New York: Aperture, 2009), 15.

<sup>25</sup> *Ibid.*, 15-16.

<sup>26</sup> *Ibid.*, 11.



## 2.0 Outside // Patterns

To follow this line of argument a little further, let us consider another photographic series, James Welling's seminal *Aluminium Foil* (1980-1981). The visual similarities with Koyama's *Light Field* are stark, almost to the point of regarding the latter as a direct citation of the former. However, they are essentially very different projects, as Welling is using the simplest of photographic methods – close-up zooming and cropping – to maximise the abstract potential of the photographic surface. The series was produced in the artist's studio over several months after Welling became preoccupied with aluminium foil by noticing how it behaves as a packaging for butter, and was presented in 1981 at his first solo exhibition. As many writers have noted, in the close-up rendering of aluminium foil's creases, these photographs invite an associative viewing experience, something that Steyerl recently wrote about in terms of 'apophenia', or the perception of patterns within random data.<sup>27</sup>

Photography's ability to exactly re-produce patterns, or as Geoffrey Batchen frames it, to visualise mathematical information, was evidenced early on in its history.<sup>28</sup>

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<sup>27</sup> For instance, James Crump notes: 'The *Aluminium Foil* pictures play with the surface of a known material that, when stressed and crumpled and then photographed, is capable of conjuring an image poles apart from the referent object. With surfaces on which he has amassed mesmerising quantities of detail, these photographs hold the possibility of endless readings, and [...] they rely on the beholder to fill in meaning', as per: James Crump, ed., *James Welling, Monograph* (New York: Aperture, 2013), 65; Steyerl, 'A Sea of Data'.

<sup>28</sup> Geoffrey Batchen, 'Electricity Made Visible', in *New Media, Old Media: A History and Theory Reader*, eds. Wendy Hui Kyong Chun and Thomas Keenan (New York: Routledge, 2006), 31.

For Batchen, it is Henry Fox Talbot's experiments with camera-less photography, and the resulting imaging of **pieces of lace** produced in the 1840s, that offer the point of departure for examining the tension between the photographic surface and the material that it presumably only renders visible. In the process of 'photogenic drawing' that Talbot uses, the images of lace become integrated in (rather than just on) the paper that contains them: 'figure and ground, image and support, fibres and tone, touchable reality and optical simulation, are here all collapsed in the same visual experience.'<sup>29</sup> Elsewhere, Batchen explains a range of similar photographic experiments (both historical and contemporary) through two defining characteristics: their embodiment of the duration of the action that they record and their signification of their own coming into being.<sup>30</sup> This definition goes against the widely-adopted understanding of photography as a 'slice of time' that refers to something outside of itself and the result, often an abstract pattern, becomes 'a picture of nothing, that is, but its own capacity to represent anything.'<sup>31</sup>

Batchen's writing helps us to test out the situation that Steyerl describes in photographic terms, as Welling's series deliberately invites and thereby reflects on the experience of 'apophenia'. Such inviting of what is more commonly referred to as 'free associations', is one of the defining characteristics of abstraction and has been integral to this pictorial tradition throughout the twentieth

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<sup>29</sup> Ibid., 30.

<sup>30</sup> Geoffrey Batchen, "'Photography': An Art of the Real", in *What is a Photograph?*, ed. Carol Squiers (Munich: Prestel, 2013), 48.

<sup>31</sup> Ibid., 54.

century.<sup>32</sup> Furthermore, in its registering of mathematical data, photography was not only always digital but was also always able to represent anything.<sup>33</sup> Batchen highlights this intrinsic potential of photography by using inverted commas, terming it ‘photography’, to stress its cultural and material basis. In his view, Rexer’s definition of abstract photography becomes a philosophical question: by asking us to think about how we are seeing, such photography, he claims, ‘asks us to see what is right in front of our eyes.’<sup>34</sup>

## 2.1 Foil // Entanglement

What do we see right in front of our eyes if we continue to ‘follow’ the material of abstract photography in Welling’s series? Talbot’s choice of the material was not divorced from the historical conditions of the machine-made lace industry in England at that time.<sup>35</sup> In Welling’s case, this makes us wonder whether it is only through its abstract rendering of the aluminium foil’s surface that the artist is conveying his postmodernist criticism.<sup>36</sup> As Mimi Sheller showed in her extensive study of aluminium, the material is possibly the richest one to ‘follow’ for a correct

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<sup>32</sup> Varnedoe, *Pictures of Nothing*, 3.

<sup>33</sup> Cubitt, Palmer and Tkacz, *Digital Light*, 11.

<sup>34</sup> Batchen, ‘“Photography”: An Art of the Real’, 60.

<sup>35</sup> Batchen, ‘Electricity Made Visible’, 31.

<sup>36</sup> Welling’s practice is customarily read as an essential part of the so-called ‘pictures generation’ of postmodernist photographers in the US. For a well-known reference to the *Aluminium Foil* as ‘pictures of nothing’ in such a context see Abigail Solomon-Godeau, ‘Playing in the Fields of the Image’, *Afterimage*, 10, 1-2 (1982): 10-13.

understanding of modernist logic. Although iron or plastics had their prominent roles to play in the material culture of the last century, it is aluminium that enabled the lightness and speed of the car, the train, the space shuttle, or the bomb, with which we now associate that century. On the other hand, aluminium also brings to the fore a specific twenty-first century conundrum: although its extraction continues to divide the ‘developed’ from the ‘underdeveloped’ countries and continues to play an essential part in warfare, it is increasingly becoming an essential part in the design of the new sustainable technologies.<sup>37</sup>

By the beginning of the 1980s, this conundrum had already made itself apparent. We can think of the famous décor of Andy Warhol’s first ‘Factory’ (1962-1968), plastered in aluminium foil and silver paint to construct a dazzling, light-reflecting surface, as conveying the tension entangled with aluminium in the 1960s. Warhol saw the décor of his studio both as a futuristic setting – evoking astronaut suits or such comic book characters as ‘Silver Surfer’ – as well as an homage to the ‘silver screen’ of Hollywood.<sup>38</sup> This tension translates into Welling’s series, as it invites the viewers to project their free associations not only into an abstract pattern but into the particular material through which it takes shape; one that has already become emblematic of futurity and progress. What interests Welling is to engage visually with those materials that are in one way or another allegorical of photography (in

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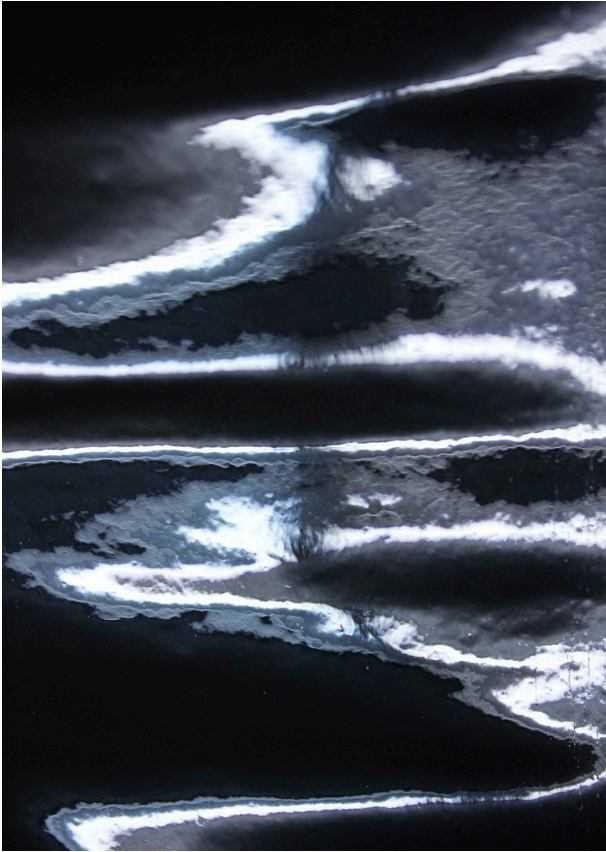
<sup>37</sup> Mimi Sheller, *Aluminium Dreams: The Making of Light Modernity* (Cambridge, Massachusetts: The MIT Press, 2014), 4.

<sup>38</sup> Arthur Danto, *Andy Warhol* (New Haven: Yale University Press, 2009), 93.

the same way that cellophane might be), and this interest is explored in his subsequent work. In this sense aluminium foil not only features a similar versatility and reflectivity to photography, but also, intentionally or not, invites the same type of progressive, futuristic and technocratic free associations as the medium that renders it visible. What we ‘see in front of our eyes’ in Welling’s case is the entanglement of the photographic image with the technology and material that produce it, but also with the norms and effects that the same technology and material impose on our daily lives.

### 3.0 **Inside** // Camera

This detour allows us to realise that Koyama’s series brings into the present much of photography’s historical and cultural baggage, and this makes us question what else we might find entangled with it if we continued to ‘follow’ the material. With this question in mind, let us now come back to Yesil’s *Leaping Field*, in which we encounter the digital camera’s recording of fluorescent light as it bounces around the surface of a piece of wavy PVC (**Figure 2**). Although the image does not appear in the viewfinder in the process of Yesil’s photographing, it reveals itself when stored in the camera’s memory. As an abstraction, it invites similar projections or associative readings as to the cases of Koyama’s and Welling’s photographs. Similar to Koyama’s series, the images are produced autonomously by the apparatus – in this instance the camera – as it is assigned the role of capturing the image through its registering of a contingent, abstract



**Figure 2:** Nihal Yesil, *Leaping Field*, 2015.

pattern. Yesil, again similar to Koyama, does not seem to be photographing in a traditional sense but more to be operating the camera-machine, pointing it in the direction of the light source but letting it assume responsibility for the capture of the abstract pattern.

The figure of the operator has been in use in the photographic jargon for some time now. It is a preferable term for Roland Barthes in his *Camera Lucida: Reflections on Photography* (1981), and features heavily in Vilém Flusser's *Towards a Philosophy of Photography* (1983). In his theory of gestures, the operator is described by Flusser as somebody who takes up an active part in the optical process of photographing, a gesture that Flusser considers to be of looking; this figure searches for and takes up a specific position, cuts through and manipulates the scene, and reflects on every decision as it is made.<sup>39</sup> This operator, on the other hand, can also be related to the gesture of making, as this gesture involves the hand rather than the eye.<sup>40</sup> The gesture of making involves the hand's 'grasping', 'evaluating' and 'informing' of an object, but it is also based significantly on the raw material's 'resistance' to the hand that is attempting to impress it with value.<sup>41</sup> The photographic apparatus, or the camera, is a 'tool' that enables the gesture of photographing, which is also a gesture of making. The tool (the eye) and the body (the hand), for Flusser, are so enmeshed that assigning one or the other a specific function is pointless: defining photography as an improvement or outer-bodily extension of human sight can only be understood as a figure of speech.<sup>42</sup>

The 'raw material' evoked, in both series in question, is undoubtedly that of light, an essential component

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<sup>39</sup> Vilém Flusser, *Gestures* (Minneapolis: University of Minnesota Press, 2014), 72-85.

<sup>40</sup> *Ibid.*, 32-47.

<sup>41</sup> *Ibid.*, 40.

<sup>42</sup> *Ibid.*, 80.

of both photography and vision. It is light that enables and constitutes them, entangling the operator and the recording apparatus in the process of its own entanglement with another material. In both cases, however, the artists seem to be operating the apparatuses through which light is already captured and controlled: the digital emission of LED light but also the camera itself, which is another apparatus that isolates and disciplines light.<sup>43</sup> In such terms, Yesil's artistic intervention not only consists of letting go of the control over the framing of the image but also of her ascribing to the 'field' indicated in the title of the series the kinetic ability of 'leaping'. We can consider this ability of a 'field' for movement and action to be related to the feature of surfaces that Tim Ingold describes as 'leaking'.<sup>44</sup> Ingold's argument departs from the old Aristotelian dichotomy between form and matter in which an agent imposes a form on a passive matter with a particular end or goal in mind. The similarity with photography is here straightforward, with the role of the agent played by the classical figure of the photographer, whereas the photograph can be considered to be a form imposed on the material, or matter that it renders visible. For Ingold, however, who also 'follows' the material in the sense suggested by Deleuze and Guattari posited above, the interest of an artist is not in this imposition but in

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<sup>43</sup> Tim Ingold, 'Bringing Things to Life: Creative Entanglements in a World of Materials', NCRM Working Paper Series. ESRC National Centre for Research Methods, (July 2010) [http://eprints.ncrm.ac.uk/1306/1/0510\\_creative\\_entanglements.pdf](http://eprints.ncrm.ac.uk/1306/1/0510_creative_entanglements.pdf) (accessed 22 January, 2017)

<sup>44</sup> John Tagg, *The Disciplinary Frame: Photographic Truths and the Capture of Meaning* (Minneapolis: University of Minnesota Press), 1.



what he describes as: ‘bringing together diverse materials and combining or redirecting their flow in the anticipation of what might emerge.’<sup>45</sup>

We can also read the ability for ‘leaping’ of (a field of) light in Yesil’s series as evoking a ‘quantum leap’, or a process of change induced by an abrupt movement. In both cases, it primarily indicates an interest in the merging of the materials (light-photography), within the understanding of the photographic medium as a gesture of not simply photographing but also making. However, for us to fully establish how this situation occurs in photography specifically, or how the materials not only entangle in the image but also in the apparatus that produces it, we also need to ‘follow’ the material that Yesil is photographing.<sup>46</sup>

### 3.1 PVC // Display

Poluvinyl chloride, better known as PVC, or just vinyl, is the second largest volume-produced plastic, characterised by toughness, low cost and the ability to modify its physical properties.<sup>47</sup> We would normally encounter it in housing materials or telecommunication wire coatings or in such ubiquitous products as credit cards or plastic

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<sup>45</sup> Ibid., 9.

<sup>46</sup> Yesil’s particular interest in PVC began in 2007, when she bought fourteen rolls of PVC in different colours from a shop in Istanbul located on a street only selling plastic. It was also used in her previous series of images, *Narrow Fields* (2007), in which two layers of PVC sheets were photographed on top of each other under direct sun light. I am grateful to Nihal for explaining her interest in PVC and the details of her work to me in our e-mail correspondence in April 2016. *Leaping Field* is published together with *Murmuring Field* by Even Press in 2016.

<sup>47</sup> Yam, *The Wiley Encyclopedia*, 963.

bottles. The development of PVC, first produced in Germany in the 1930s, is, however, inseparable from the wider history of plastic, the material that came to dominate our everyday life to such an extent that we are considered to be living in the 'Plastic Age'. Plastic has been studied extensively, and the seminal texts include Roland Barthes's writing (1957) as well as Jeffrey Meikle's book about the material's integration with American culture.<sup>48</sup> The most recent research describes the centrality of plastic to the processes of contemporary socio-material living as not only a synonym for environmental degradation but also a catalyst of causal and political reverberations that give shape to the ways we think and act.<sup>49</sup>

In addition, we cannot but notice the role that photographic technology played in the history of plastic's gradual takeover of everyday life, and vice versa. It was the popularity of photographic film, after all, that helped market the early uses of celluloid, regardless of its thermal instability.<sup>50</sup> On the other hand, although analogue photography is conventionally associated with photographic chemicals and photosensitive paper, it is celluloid film and the Bakelite cameras that popularised the technology.<sup>51</sup> The history of photography, undoubtedly, is also a history of plastic. Therefore, that plastic plays a decisive

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<sup>48</sup> Roland Barthes, *Mythologies*, (London: Vintage, 2009), 117-119; Jeffrey Meikle, *American Plastic: A Cultural History*, (New Brunswick, NJ Rutgers University Press, 1995).

<sup>49</sup> Jennifer Gabrys, Gat Hawkins, and Mike Michael, eds., *Accumulation: The Material Politics of Plastic* (Abingdon, Oxon: Routledge, 2013), 2-4.

<sup>50</sup> *Ibid.*, 19.

<sup>51</sup> Stephen Fenichell, *Plastic: The Making of a Synthetic Century* (New York: Harper Business, 1996).

role for not only how images are captured but also for how they are most often displayed and viewed in modern culture – through digital interfaces infused with plastic and often navigated by touching as much as by looking – is another nodal point of entanglement that the PVC used in Yesil's series makes us account for.

#### 4.0 Summary // Field

According to Peter Galassi, the ultimate origin of photography needs to be looked for in the invention of linear perspective in the fifteenth century.<sup>52</sup> Unlike those accounts that establish photography's emergence in the technological development of the camera obscura since the Renaissance, this one insists that photography's coming to being was not divorced from a more general history of seeing. As is well known, this invention brought about the ordering of what was visible in the perceptual field in relation to not only modern science but also emerging capitalism.<sup>53</sup> If we take it that such an ordering – of the field of vision, its digital constitution in light, or its material basis – continues to determine digital vision, we might presume that abstract photography, the 'pictures of nothing' that we encountered here through the work of Koyama and Yesil, suggest an antagonistic or an oppositional intention. In order to accurately understand where precisely these artistic interventions take place, however, we now need to

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<sup>52</sup> Peter Galassi, *Before Photography: Painting and the Invention of Photography* (New York: Museum of Modern Art, 1981), 12.

<sup>53</sup> Jay, *Downcast Eyes*, 57.

turn to what is understood by ‘nothingness’ in quantum physics, as explained to us by Karen Barad.

For Barad, to even start thinking or speaking about nothingness implies asking what is the measure of nothingness according to which we might grasp it.<sup>54</sup> Measurements, however, require specific measurement apparatus and their working cannot be understood in terms of an interaction with what is being measured but rather as intra-action, in that observation is inseparable from what is observed.<sup>55</sup> Importantly for us, it is light that Barad takes as an example of this claim: as the ‘wave-particle duality paradox’ evidences, when the electrons of light are measured using one kind of apparatus they are waves, but when they are measured with another (complementary apparatus) they are particles.<sup>56</sup> In such a manner, it is indeterminacy that lies at the core of quantum physics’ understanding of nothingness, but this indeterminacy signals not an absence, but a radical kind of openness, characterised by an infinity of possibilities.<sup>57</sup>

What does this mean to us? We can regard indeterminacy vis-à-vis photography’s self-entanglement that Frampton helped us to identify – the inability to divorce ‘fine art’ from ‘evidence’ – which is still at the core of the medium’s misinterpretation, even in the digital ‘turn.’<sup>58</sup> Following Batchen, however, we can safely conclude that

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<sup>54</sup> Karen Barad, *What is the Measure of Nothingness? Infinity, Virtuality, Justice* (Osfieldern: Hatje Cantz, 2012), 5.

<sup>55</sup> *Ibid.*, 6.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*, 16.

<sup>58</sup> Martin Lister, ed., *The Photographic Image in Digital Culture* (London: Routledge, 1995), 16.

even when operating at the ‘edge of vision’ – as fine art and abstraction – photography never escapes the ordering and re-ordering of the field of vision, of which it is always a part, and which is always already controlled by the apparatus that tame and discipline light. Indeterminacy, however, has larger implications for us here in terms of the entanglements that we identified to be central to photography’s practice: between the operator and the machine, as well as between the technology and the material. ‘Following’ the material, or beginning to do so (in the cases of cellophane, aluminium foil and PVC but also light), we established that especially the latter entanglement operates on multiple levels in photographic terms. Photography does not simply represent materials but is equally made of them. Furthermore, the materials that photography represent and of which it consists are not only intrinsically unstable and in constant flux, but are sometimes allegorical of each other or literally one and the same. Finally, photography also makes with the material, that of light, and this fact potentially places the medium in an important relation to what Barad terms to be radical openness at the core of all matter.

#### 4.1 **Proposition** // Waves

Barad’s project of agential realism is based on a strong commitment to, what she defines as, ‘accounting for the material nature of practices and how they come to

matter.<sup>59</sup> The first step for the development of this project is a strong critique of representationalism, or a distinction that is customarily made between representations and that which they aspire to represent in Western philosophical thought.<sup>60</sup> Here we find a very potent framework for better understanding the position of our two series, as Barad takes up the working of the scanning tunneling microscopes (STM) to demonstrate her criticism. Although normally associated with the processes of seeing, these machines are essentially based more on the sense of touch than sight and are described as forming images of atoms ‘in a way which is similar to the way a blind person can form a mental image of an object by feeling the object.’<sup>61</sup> Moreover, the STM operator does more than simply ‘push a button’ for an image to appear; the ‘seeing’ of an atom is not simply a process of magnification but involves a series of practices, including complex and detailed preparations of both the microscope and the specimen. This leads Barad to conclude that, ‘images and representations are not snapshots or depictions of what awaits us but rather condensations or traces of multiple practices of engagement.’<sup>62</sup>

For photography, a quintessential instance of the practices of representation, this statement holds significant repercussions that lie beyond the two series of our interest,

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<sup>59</sup> Karen Barad, *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Durham: Duke University Press, 2007), 45.

<sup>60</sup> *Ibid.*, 46.

<sup>61</sup> *Ibid.*, 52.

<sup>62</sup> *Ibid.*, 53.

but which they can be seen to be exemplary of. In terms of those series in particular, they seem to be positioned in the channels of ‘tunnelling’ through which STM functions, as the process allows particles to traverse energy barriers that Newtonian physics imposes on them.<sup>63</sup> STM, in other words, not only requires the apparatus to ‘touch-see’ the object but also the object to come and ‘meet it’, and this point of intra-action, in Barad’s terms, is where both Koyama and Yesil base their artistic interventions: as primarily photographic experiments, they do not take place outside but inside the phenomena that they represent. By doing so, and by functioning as tools for looking with, they push open the door into a possible rethinking of their medium and, implicitly, into the very understanding of digital vision.

Here, it is time for us to come up with a preliminary proposition. As Orit Halpern also suggests, digital vision, in its entanglement with data visualisations that increasingly require haptic forms of interactivity, cannot be taken to be an isolated form of perception but needs to be understood as inseparable from other senses.<sup>64</sup> Barad herself has already demonstrated the limitation of the concept of machinic vision, recognised also by Johnston at the moment of its definition, which becomes ostensible when placed in constellation with such non-human agents as animals.<sup>65</sup> If by this we succeeded in attending,

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<sup>63</sup> Ibid., 52.

<sup>64</sup> Orit Halpern, *Beautiful Data: A History of Vision and Reason Since 1945* (Durham: Duke University Press, 2014), 21.

<sup>65</sup> Karen Barad, ‘Invertebrate Visions: Diffractions of the Brittlestar’, in *The Multispieces Salon*, ed. Eben Kirksey (Durham: Duke University Press, 2014). For Johnston, the limitations of machinic vision become apparent in terms of the inevitability of artificial, or vir-

at least to some extent, to the problem of representation, we are still left with the one of regulation that we started from, and our proposition then requires one final stretch. In order to deliver her critique of representationalism, Barad turns to the principle of diffraction, a phenomenon that is of central importance to her project. She explains diffraction in terms of physics as a particular behaviour of waves, which combine and overlap once they encounter an obstruction.<sup>66</sup> This behaviour is central to all kinds of waves, whether water, sound or light, and differentiates them from particles: unlike particles (material entities occupying a point in space and time) waves are not things per se but rather ‘disturbances that propagate in a medium’ (and that can overlap at the same point in space).<sup>67</sup> Diffraction plays a role in nearly all optical phenomena, and we can observe it in our two series not only through what we come to see but also through how we come to see it, as diffraction poses a limit to the resolving power of a lens or any other visualising system.<sup>68</sup>

Diffraction is not only an optical phenomenon that Barad helps us to understand but also a methodological approach that she adopts from Donna Haraway. Following Haraway, Barad proposes diffraction as an alternative to the optical metaphor of reflection, in that: whereas reflection is about mirroring and sameness, diffraction

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tual reality that the digital image foreshadows. For the resonance of Barad’s writing in this field see: Jane Prophet and Helen Pritchard, ‘Performative Apparatus and Diffractive Practices: An Account of Artificial Life Art’, *Artificial Life* 21, no. 3 (2015): 332-343.

<sup>66</sup> Barad, *Meeting the Universe Halfway*, 74.

<sup>67</sup> *Ibid.*, 75.

<sup>68</sup> Barad, ‘Invertebrate Visions’, 231.



attends to patterns of difference.<sup>69</sup> This suggestion is of huge resonance and offers us with a starting point to re-define nothing less than the very basis of science and ethics. And it appears to indicate that by ‘following’ the material we find ourselves questioning the essential parameters of both vision and ethics. Rather than risking over-simplification and analogy at this point, it seems more appropriate that we leave it at that, in an open ending that also reads as a beginning.

## References

- Barad, Karen. *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning*. Durham: Duke University Press, 2007.
- Barad, Karen. *What is the Measure of Nothingness? Infinity, Virtuality, Justice*. Osfildern: Hatje Cantz, 2012.
- Barad, Karen. ‘Invertebrate Visions: Diffractions of the Brittlestar’. In *The Multispecies Salon*, edited by Eben Kirksey. Durham: Duke University Press, 2014.
- Barthes, Roland. *Mythologies*. London: Vintage, 2009.
- Barthes, Roland. *Camera Lucida: Reflections on Photography*. New York: Hill and Wang, 1981.
- Batchen, Geoffrey, ‘Electricity Made Visible’. In *New Media, Old Media: A History and Theory Reader*, edited by Wendy Hui, Kyong Chun and Thomas Keenan. New York: Routledge, 2006.
- Batchen, Geoffrey. “‘Photography’: An Art of the Real”. In *What is a Photograph?*, edited by Carol Squiers. Munich: Prestel, 2013.
- Brown, Judith. *Glamour in Six Dimensions: Modernism and the Radiance of Form*. Ithaca: Cornell University Press, 2009.
- Crump, James, ed. *James Welling, Monograph*. New York: Aperture, 2013.

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<sup>69</sup> Barad, *Meeting the Universe Halfway*, 29.

- Cubitt, Sean. *The Practice of Light: A Genealogy of Visual Technologies from Prints to Pixels*. Cambridge, Massachusetts: The MIT Press, 2014.
- Cubitt, Sean, Daniel Palmer, and Nathaniel Tkacz, eds. *Digital Light*. London: Open Humanities Press, 2015.
- Danto, Arthur. *Andy Warhol*. New Haven: Yale University Press, 2009.
- Deleuze, Gilles. 'Postscript on the Societies of Control', *October* 59 (1992): 3-7.
- Deleuze, Gilles and Félix Guattari. *A Thousand Plateaus: Capitalism and Schizophrenia*. Minneapolis: University of Minnesota Press, 1987.
- Fenichel, Stephen. *Plastic: The Making of a Synthetic Century*. New York: Harper Business, 1996.
- Flusser, Vilém. *Towards a Philosophy of Photography*. London: Reaktion, 2000.
- Flusser, Vilém. *Gestures*. Minneapolis: University of Minnesota Press, 2014.
- Frampton, Hollis and Bruce Jenkins. *On the Camera Arts and Consecutive Matters: The Writings of Hollis Frampton*. Cambridge, Massachusetts: The MIT Press, 2009.
- Gabrys, Jennifer, Gat Hawkins, and Mike Michael, eds. *Accumulation: The Material Politics of Plastic*. Abingdon, Oxon: Routledge, 2013.
- Galassi, Peter. *Before Photography: Painting and the Invention of Photography*. New York: Museum of Modern Art, 1981.
- Helpert, Orit. *Beautiful Data: A History of Vision and Reason Since 1945*. Durham: Duke University Press, 2014.
- Ingold, Tim. 'Bringing Things to Life: Creative Entanglements in a World of Materials'. NCRM Working Paper Series. ESRC National Centre for Research Methods, (July 2010). Accessed 22 January, 2017 [http://eprints.ncrm.ac.uk/1306/1/0510\\_creative\\_entanglements.pdf](http://eprints.ncrm.ac.uk/1306/1/0510_creative_entanglements.pdf)
- Jay, Martin. *Downcast Eyes: The Denigration of Vision in Twentieth-Century French Thought*. Berkeley: University of California Press, 1993.
- Johnston, John. 'Machinic Vision'. *Critical Inquiry* 26 (1999): 27-48.

- Jones, Stephen. 'What is Digital Light?'. In *Digital Light*, edited by Sean Cubitt, Daniel Palmer, and Nathaniel Tkacz. London: Open Humanities Press, 2015.
- Lange-Berndt, Petra, ed. *Materiality*. London: Whitechapel Gallery; Cambridge, Massachusetts: The MIT Press, 2015.
- Leising, Günter. 'Light and Order'. In *Light Art from Artificial Light: Light as a Medium in 20<sup>th</sup> and 21<sup>st</sup> Century Art*, edited by Peter Weibel. Ostfildern: Hatje Cantz, 2006.
- Lister, Martin, ed. *The Photographic Image in Digital Culture*. London: Routledge, 1995.
- Meikle, Jeffrey. *American Plastic: A Cultural History*. New Brunswick, NJ: Rutgers University Press, 1995.
- Moschovi, Alexandra, Carol McKay, Arabella Plouviez, eds. *The Versatile Image: Photography, Digital Technologies and the Internet*. Leuven: Leuven University Press, 2013.
- Parikka, Jussi. *A Geology of Media*. Minneapolis: University of Minnesota Press, 2015.
- Prophet, Jane and Helen Pritchard. 'Performative Apparatus and Diffractive Practices: An Account of Artificial Life Art'. *Artificial Life* 21, no. 3 (2015): 332–343.
- Rexer, Lyle. *The Edge of Vision: The Rise of Abstraction in Photography*. New York: Aperture, 2009.
- Rubenstein, Daniel, and Jonny Golding, and Andy Fisher, eds. *On the Verge of Photography: Imaging Beyond Representation*. Birmingham: Article, 2013.
- Sheller, Mimi. *Aluminium Dreams: The Making of Light Modernity*. Cambridge, Massachusetts: The MIT Press, 2014.
- Solomon-Godeau, Abigail. 'Playing in the Fields of the Image'. *Afterimage* 10, no. 1–2 (1982): 10–13.
- Steyerl, Hito. 'A Sea of Data: Apophenia and Pattern (Mis-)Recognition', *E-flux Journal* 72 (2016). Accessed 22 January, 2017 <http://www.e-flux.com/journal/a-sea-of-data-apophenia-and-pattern-mis-recognition>
- Tagg, John. *The Burden of Representation: Essays on Photographies and Histories*. Amherst: University of Massachusetts Press, 1988.

Tagg, John. *The Disciplinary Frame: Photographic Truths and the Capture of Meaning*. Minneapolis: University of Minnesota Press, 2009.

Varndoe, Kirk. *Pictures of Nothing: Abstract Art Since Pollock*. Princeton, NJ: Princeton University Press, 2006.

Yam, Kit L., ed. *The Wiley Encyclopedia of Packaging Technology*. Hoboken, N.J.: John Wiley & Sons, 2009.

## Hyperlinks

Aluminium Foil: <http://www.davidzwirner.com/artists/james-welling/survey/image/page/56/>

pieces of lace: <https://www.artsy.net/artwork/william-henry-fox-talbot-lace>



# **The Self-Chasing Instrument: Idealism, Vision, and Judgement**

Ben Woodard

While much phenomenology, particularly in its more theological variants, has made various cases for how we can supposedly perceive the imperceptible, or the invisible, this is often done despite, or in direct confrontation with, the claims of the natural sciences. Some inherent human capacity to perceive or sense (often via a transcendental ego or more general account of the given and givenness) is set against the purported limitations and dangers of the scopic or, more generally, of the very function of representation.

In the following I hope to address how vision, or representation generically construed, can benefit from a conjoined idealist skepticism and a naturalist materialisation by way of F.W.J. von Schelling's work. Schelling's *Naturphilosophie*, rather than being a reductionist naturalism,

or an idealism about nature, attempts to articulate how we conceive of a nature which philosophises and senses *through* us. In this regard, the various senses of the human body, the natural capacities for sensation which phenomenology attempts to de-materialise, function as nature attempting to access itself through the production of experiences, cognitions, and representations. Thus, our various complex capacities to abstract and perceive such abstraction are not in spite of nature, or in phenomenological isolation from it, but because of nature's generative complexity.

By creating a feedback loop between naturalism and idealism, Schelling's work generates a very particular form of second-order empiricism in which apparently ideal, or purportedly human capacities for regulating, or normalising our experiences, are part of the same world to which nature belongs. Schelling therefore resists a form of judgement, or law, which is merely the force of the normative removed from sense. In this way, vision and representation become actions in the world that create as much as they discover things supposedly 'above' it. In this regard, the abstract becomes a function whose morphology is difficult, but not impossible, to determine. If thinking is that form of vision which 'sees' thought, then we can investigate idealism as that form of thought which attempts to track and legislate the ways in which thought attempts to see itself, and importantly judge itself, as thought. In the following discussion we will investigate a narrow instance of this, namely, what the normative becomes which naturalism is broadly expanded.

## 1. Idealism and Vision

As a philosophical tradition, idealism is generally reduced to two related forms, one ontological and the other epistemological. The first strain of idealism is generally taken to mean that what exists, or what is, *is* mind. Or, slightly more specifically, the general thesis of ontological idealism would be that what exists is mind dependent (i.e., what I think *is*, or what god thinks *is*). Various caveats and questions can be raised immediately but, importantly, this is often taken, at least by the numerous critics of idealism, as self-evidentially problematic. The ontological idealist, her enemies assume, believes straightforwardly that reality pours out of the mind of beings (human or otherwise). The second form, the epistemological one, claims that all we can *know* is mind-dependent, or what we know is always constructed by minds without making deeper claims about substance or the ontological constitution of the world.

Some figures have argued for one form and not the other while Berkeley, at least as it is traditionally stated, argued that you could not adhere to one form without adopting the other. This division of idealism into ontological and epistemological variants covers over several problems and complications which are directly relevant for our investigation here regarding the relationship between vision and judgement (which must necessarily pass through vision). Immediately one can notice that the general outline of the ontological and epistemological strands of idealism says nothing about what mind is using to construct the world; whether we admit there is only



my mind, or many minds; how is it that minds communicate if there are only minds; and whether many ontological idealists emphatically state that the world is mind or merely is mind-like?

In relation to the latter point, that the world may be mind-like, this can be taken as a claim following scepticism regarding the role and function of substance, or matter, as having an explanatory role. That is, in saying the world is mind-like, many idealist philosophers are simply claiming that things (or objects, or matter) are potentially secondary while processes, flows, dynamisms, *et cetera* are primary. In this regard, the mind-dependence of the epistemological claim shifts parameters. Mind-dependence does not mean that one claims that the world is constructed entirely out of my, or anyone's, head substance, but that common features of our visible world, or pragmatic world, should not be taken as ready-made, but must be taken as being actively coded by our senses which are themselves not giving us direct relations to the world but are instead producing conceptually overloaded entities that we engage as immediate experience.

An immediate wrinkle in the general critique of idealism, particularly in numerous post-structuralist or post-modern thinkers, becomes apparent. Many of these critiques would assert that idealism equates representations with the represented yet, given the deep scepticism in nearly every form of idealism, a scepticism that maintains a difference between mind-like and not mind-like processes, such an idealism would become a direct realism and could no longer be considered an idealism. The crude caricature of ontological idealism would make it

impossible for either ontological or epistemological idealists to make judgements, even in the most basic sense of things, or processes, being mind-like or minded.

That visual (and all other forms of) phenomena involve our active participation is a philosophical claim most recognised as belonging to Kant, that our faculties build the world out of more rudimentary relations to the world as it is. Traditionally, the general idealist epistemological claim that we actively participate in the construction of the world was taken as one of hubris, when in fact, it was directed against empiricists, as well as objectivists who, in the view of idealism, were attempting to paint an image of experience that was decidedly simple and unproblematic.

In this sense, many idealists (from Berkeley up to Bradley if not after) did not see their form of philosophy as opposed to any kind of realism, but rather to a crude materialism that attempted to dismiss or overly psychologise experience. This is evident in the fact that thinkers such as F.H. Bradley argued that experience was our most direct access (in a realist form) to reality but that, nevertheless, this access was incomplete and required extensive methodological rigor, and the use of sciences such as logic, to widen the ambit of experience in order to better understand the *levels* of appearance which had long settled on the surface of the world undulating beneath it.

For nothing is actually removed from existence by being labelled 'appearance.' What appears is there, and must be dealt with; but materialism has no rational way of dealing with appearance. Appearance must belong, and yet cannot belong, to the extended. It neither is able to fall somewhere apart, since there

is no other real place; nor ought it, since, if so, the relation would vanish and appearance would cease to be derivative. But, on the other side, if it belongs in any sense to the reality, how can it be shown not to infect that with its own unreal character?<sup>1</sup>

Another way of complicating the caricature of idealism as merely fabricating the world in total, which is directly relevant to our goal here, is to examine the general relation between idealism and the sciences. Berkeley, who is often taken as the most subjective idealist (even by other idealists) wrote a tract on vision entitled *An Essay Towards a New Theory of Vision* (1709). While some historical hand-waving has been done to claim that in this initial text Berkeley worked as a scientist while in his later work he functioned as a pure idealist, this lacks any significant proof that I can find. Berkeley begins his text with the idea that while we experience distance we cannot really see distance as such. He follows this up by saying that distance, as an experience, is a judgement that is not given to us by our senses. The great space where we place various objects (apartments, streets, garbage bins) is constructed to orient the space around us which is a judgement our mind makes on our visual experience and not, again in the general idealist tradition, one ready-made.

Berkeley writes:

Now though the Accounts here given of perceiving near Distance by Sight are received for true, and accordingly made use of in determining the apparent Places of Objects, they do nevertheless seem very

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<sup>1</sup> F.H. Bradley, *Appearance and Reality: A Metaphysical Essay* (London: George Allen, 1893), 15.

unsatisfactory: And that for these following Reasons. It is evident that when the Mind perceives any Idea, not immediately and of itself, it must be by the means of some other Idea: Thus, for Instance, the Passions which are in the Mind of another, are of themselves to me invisible. I may nevertheless perceive them by Sight, though not immediately, yet by means of the Colours they produce in the Countenance. We often see Shame or Fear in the Looks of a Man, by perceiving the Changes of his Countenance to Red or Pale.<sup>2</sup>

Several points need to be clarified. First, as Berkeley makes clear, the word Idea he takes to be as generic as the use of the words Thing or Object, but merely with the added emphasis that our mind is coding, or actively adding to, that which we encounter as an instance of individuated experience. Furthermore, while our experience consists of chaining together these ideas to give us perception, or vision, we are still aware of the fact that certain chains of Ideas point to barriers and boundaries which our vision is attempting to shortcut, whether the notion of how distance relates to clarity or obscurity, or whether the expression on someone's face is indicative of a mental or behavioural state.<sup>3</sup> One way Berkeley argues we can parse this difference is by marking a difference between tangible magnitude and visual magnitude.<sup>4</sup> Berkeley believes we need these senses to check, or articulate one another's

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<sup>2</sup> George Berkeley, *An Essay Towards a New Theory of Vision* (London: Classical Reprint, 1709), 13.

<sup>3</sup> We will see below that the very operation of a mind productively chaining together experiences is something the later idealists see as a fatal flaw not only to Berkeley, but to the empiricist tradition as a whole.

<sup>4</sup> Berkeley, *Theory of Vision*, 15.

limitations, because while we may scientifically understand optics or geometry, we also know that we add these formulations after the experiences they explain.

Despite the general treatment of idealism as anti-scientific, Berkeley is not dismissing science as useless at all, as he would not celebrate numerous treatises on optics or studies of the eye if this were so. Rather, Berkeley thinks there are means of explaining vision internal to the experience of it which have a different (not better, or more advanced) way of explaining our articulation of the senses as part of, but not all of, experience. For Berkeley, if the mind adds something to the visual experience, the mind still relies upon the data that vision provides. An experience of vision would be the constructive capacities of the mind combined with the act of seeing.

For instance, Berkeley says it is absurd to think that we experience multiple objects, or that an object (or Idea) has multiple simultaneous forms. Yet our senses give us very different perceptions of the same object. Berkeley gives the example of a coach passing in the street below one's window. The way I see the distance the coach is moving with my vision, and the way I track it by ear it are different for me, yet both give more or less accurate perceptions that the coach is moving.<sup>5</sup>

Berkeley argues that our tactile experience of the world checks and balances out the visual (or for that matter auditory) depictions of it. For instance, Berkeley argues that someone who had just been given sight would not understand perspective or magnitude across distances

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<sup>5</sup> Ibid., 13.

without having moved through the world and interacted with it by grasping, moving, and examining it.

Despite the usual critique and/or dismissal of Berkeley as over-emphasising the visual account taken in the phrase 'to be is to be perceived,' his notion of perception falls closer to that of representation than it does to a particular account of vision, or to even an individual's account of perception. Thus vision, perception, representation and judgement would seem to slide into one another, but Berkeley argues that each sense is a type of perception. Perceptions, when taken together, give the material for experience but this material requires a judgement on our part.

## 2. Vision and Representation

In his *Principles of Human Knowledge*, Berkeley continues the discussion of perception with being, or existence, as he states that it is unintelligible to say that things could have existence without being in a perceptual relation with some spirit, some active representer (which need not be human). Immediately, it would appear that Berkeley is embodying the worst of his stereotypes: that if all the perceivers of the world disappeared then there would be no world. But we must always take care to keep in mind that this is impossible for Berkeley because of his insistence that the two strains of idealism mentioned above, that of the ontological and the epistemological, must be tied together.

In other words, Berkeley does not think the world would disappear without perceivers but that the notion of world is unintelligible without a notion of representation

congealing the various senses in the minds of those perceiving.<sup>6</sup>

This fact is further evidenced by the way in which Berkeley insists that natural order, and natural law, exist and are both distinguishable from imaginary things, or conglomerations of sensed things. Nature imprints on us 'real things' of which images or ideas are only copies.<sup>7</sup> Berkeley then begins listing possible objections to his general theory of the fundamentality of sense, and of the consequences of his immaterialism. To quote at length:

First then, it will be objected that by the foregoing principles, all that is real and substantial in Nature is banished out of the world: and instead thereof a chimerical scheme of ideas takes place. All things that exist, exist only in the mind, that is, they are purely notional. What therefore becomes of the sun, moon, and stars? What must we think of houses, rivers, mountains, trees, stones; nay, even of our own bodies? Are all these but so many chimeras and illusions on the fancy? To all which, and whatever else of the same sort may be objected, I answer, that by the principles premised, we are not deprived of any one thing in Nature. Whatever we see, feel, hear, or anywise conceive or understand, remains as secure as ever, and is as real as ever. There is a *rerum natura*, and the distinction between realities and chimeras retains its full force.<sup>8</sup>

Thus, while imagined fancies and sensed things exist equally in the mind (and here Berkeley is in general

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<sup>6</sup> Berkeley, *Principles of Human Knowledge* (Oxford: Oxford University Press, 1710/1996) 26-27.

<sup>7</sup> *Ibid.*, 37.

<sup>8</sup> *Ibid.*, 38.

agreement with Hume) there is an externally designated, though not necessarily material, order to things, and this order is real. Thus, despite the use of the world essence, Berkeley is not making any strong claims about the ontological or metaphysical claims about the world; to make such claims, again generally following Hume, is simply to add more confusion to human existence, confusion which leads us into sceptical loops and a pervasive sense of unhappiness.

Following this, we could argue that Berkeley's only ontological or metaphysical claims are negative ones: if it is not perceptible it is not useful to speak of it. It remains a debate, then, whether Berkeley carries a strong epistemological idealist position (all we can know are ideas) as well as a weak ontological position (what exist are ideas and minds). The upshot of Berkeley's claim, and one that is common to idealist philosophies in general, is a formalisation of existence that emphasises ontological parsimony. Again, to quote Berkeley:

in this sense, the sun that I see by day is the real sun, and that which I imagine by night is the idea of the former. In the sense here given of reality, it is evident that every vegetable, star, mineral, and in general each part of the mundane system, is as much a real being by our principles as by any other.<sup>9</sup>

The general idea that both reflection and perception merely pick up on a deeper ontological or objective structure in the world is a persistent thread in idealism. Whether Hegel's identity-in-difference, Schelling's Law of

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<sup>9</sup> Ibid., 39.



the World (or *Weltgesetz* where everything is what it is to the extent it is not something else<sup>10</sup>), or Bosanquet's reality principle (everything is real so long as you do not take it for more than it is)<sup>11</sup>, the basic ontological claim of the idealist tradition becomes one of pseudo-holistic preservation: that ontological existence is to be distributed, or at least engaged with as distributed, is a problem which seems at odds with the limited and particular view of a thinking person entering, and at least partially constructing, their world.

It is here that representation becomes as necessary as it is problematic. Not only does it become necessary to explain the means by which ideas are copies of what occurs in reality, as well as being tied to reflection (the rational process by which we separate mere chimeras of the mind from ideas as sensed), but it is necessary to explain how is it that representation functions as part of reality, as part of the real. Even if, following Berkeley, we do not want to admit that representation functions on its own, that is, that all abstractions are merely the abuse of words, the extension of a word's function beyond its useful remit, representation presents us with a specific problem. The question is not only how is it that representation functions in relation to the real things, sensed things, and imaginary things (all being equally existent in the mind)

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<sup>10</sup> F.W.J. von Schelling, *Darstellung der rein-rationalen Philosophie* (SW II/1, 492) quoted in Iain Hamilton Grant, 'The Law of Insuperable Environment: What is Exhibited in the Exhibition of the Process of Nature?', *Analecta Hermenutica* 5, (2013): 3-4, accessed February 19, 2017.

<sup>11</sup> Quoted in Iain Hamilton Grant, 'Everything', *The Monist* 98, no. 3 (2015): 156-167, 156.

but how does representation, as a part of the world, function as just another thing?

Here we return to the question of how representation functions in relation to perception, to how representation is a rarefied form of perception but also its unifying power. Judgement synthesises experience as we know it by combining sense data and our intuitions. But, and this is particularly evident in objective idealism (Schelling and Peirce), we cannot definitively fix the source of either the origin of sensations, their organisation as perceptions, as well as the ultimate source of our intuitions.

This is not to throw up our hands and abandon any progressive or constructive aim at knowledge, or at better explaining our perceptual capacities, or our normative capacity for judgement, but only suggests that generic or axiomatic claims arise when an ultimate ground is deemed impossible or simply hard to find. The way in which these capacities check and bolster, or ground and unground one another, shifts of course from thinker to thinker. While Kant was rather certain regarding the self-grounding nature of judgement, he was far more cautious regarding the source and location (less so the function) of the imagination or the human capacity to schematise. For Kant, such a capacity resided in the depths of the human soul.<sup>12</sup>

Schelling, as well as many purportedly anti-idealist thinkers who would follow him (such as Helmholtz and Oersted) deepen the effect of sense and the external world on the apparatuses of the self and how this intake

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<sup>12</sup> Immanuel Kant, *Critique of Pure Reason*, trans. Norman Kemp Smith (New York: St Martin's Press, 1929), A141/B180-181.

of sensory data is processed and fed into a less and less internalised capacity for mapping, navigating and judging which action to take.<sup>13</sup> In Schelling's thought, as well as Peirce's and other objective idealists, this means that idealism is not simply opposed to naturalism, but that any naturalism adequate to its own foundational explanatory claim must allow for minds and thoughts to emerge.

It is in this regard that the closeness of the ontological and epistemological relation of types of idealism must be questioned *contra* Berkeley. Since, if thought and the logic of the mind emerges from nature this does not, following Schelling for instance, entail that the rules or means of explaining nature's various domains necessarily apply to thought as well. Just as the domains of nature are more or less accurately described according to fields of knowledge (biology, chemistry, physics and so on), so too should the behaviour and function of the mind require a different set of tools and theories (psychology, sociology, mythology etc.).

But beyond merely endorsing the cognitive sciences, Schelling's claim (which of course historically predates cognitive science) is that transcendental philosophy implies a different method, since the object of investigation is also that which is doing the investigation and thus a certain failure is built in to the depth of the examination. This is not because there is something specific about the structure of mind but that, for Schelling, nothing can fully become an object to itself at the level of nature.

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<sup>13</sup> See Iain Hamilton Grant, *Philosophies of Nature after Schelling* (London: Continuum International Publishing Group, 2006).

Furthermore, this is not to simply endorse a defeatist attitude, since Schelling's accompanying claim is that the clues to the mind can be also found in a diagonal manner, in the function and behaviour of non-minded nature.

This in turn complicates the self-regulatory powers of the mind. While Kant is comfortable saying the self-grounding status of natural cognition proves adequate to explain the reach and power of judgement, Schelling's naturalisation of cognition, as well as his assertion regarding the fundamental limit of self-access, provides a messier picture of what judgement could be.

One avenue worth taking, for our purposes here, is to explain how Schelling sees judgement as merely the drawing of conclusions, the temporary isolation of a thing to leap off from it in the form of an experiment.<sup>14</sup> Thus, while we can argue that our various senses and their coordination can give us a crude psychological or sociological picture of the human, it does not clearly give us a ground for the construction of theories, or judgements, within those fields on their own terms. The development of such theories requires a disentanglement of the ontological and the epistemological, since we cannot know, prior to the result of the experiment (whether cognitive or physical) what the consequences will be.

Idealism suspends the claim that such experiments must necessarily have ontological consequences while at the same time attempting to explain how new methods

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<sup>14</sup> See F.W.J. von Schelling, *Ideas for a Philosophy of Nature*, trans. Errol Harris and Peter Heath (Cambridge: Cambridge University Press, 1988), 10-11.

are needed to explain how ideas and concepts behave within theories. This leads us to the second-order empiricism mentioned above. The construction of theories, through reflection and judgement but built upon sensory experience, gives us a different kind of experienceable material from which to develop our theories and make our judgements about the broader picture of the world.

### **3. Judgement and the Morphology of the Abstract**

If, as we have suggested following Schelling, the investigations of mind require a different methodology and engine of investigation (transcendental idealism) then how do we come to terms with seemingly purely ideal functions (such as judgement) when they are made upon a supposedly external world? This is even further complicated if the capacity to judge something to be this or that is ungrounded, unstable, and yet simultaneously a distant relative of more original natural processes. That is, the ideal isolation of an object from its environment seems to remove it twice over. In seeing it as an isolated object one must suspend, or at least limit, questions regarding its origin and effects. Following this, the object is judging according to our (the thinking agent's) criteria thereby dislocating the object from real space altogether.

To get a foothold in experience, to find a rung for our hand to grasp, so to speak, must we formally excise ourselves from experience, and is this excision itself only an excision formally? This would seem merely to exacerbate the problem noted above regarding the failure

of self-access. If nothing can be an object to itself, then jumping 'further' out of the relation via the use of formalisms, such as logic, does not immediately appear as helpful. However, formalisms can be effective when one takes into account exactly what the failure of self-access entails, what logic means for the idealist tradition, and how this feeds into a particular notion of judgement which could be taken to be material or perhaps embodied (following our above appeal to an extended naturalism).

The strange attitude towards formalism is particularly evident in the work of Bradley.

Bradley, and the idealist attitude towards formalism generally (whether logic or of the mental faculties) was that it froze and shattered the world only to reconstruct it in an incomplete manner. Kant's purported unity of the mind was too problematic an assertion for T.H. Green, Bradley, and even earlier in the case of Schelling. A well-known quote by Bradley from his massive text on logic is illustrative here:

Unless thought stands for something beyond mere intelligence, if 'thinking' is not used with some strange implication that never was part of the meaning of the word, a lingering scruple still forbids us to believe, that reality can ever be purely rational. It may come from a failure in my metaphysics, or a weakness of the flesh which continues to blind me, but the notion that existence could be the same as understanding strikes as cold and ghost-like as the dreariest materialism. That the glory of this world is in the end appearance leaves the world more glorious, if we feel it is a show of some fuller splendour; but the sensuous curtain is a deception and a cheat, if it hides some colourless movement of atoms, some

spectral woof of impalpable abstractions, or un-earthly ballet of bloodless categories.<sup>15</sup>

This is not to say that a methodological or formal self-excision from the world does not have its uses, so long as it is not taken for more than it is (again following Bosanquet's reality principle). Similarly, Bradley states that it is nonsensical to claim that appearances can be conjured away, or that they have no use. Appearance is a part of reality for Bradley; the question is how to engage with appearance in a way that does not collapse the limits of our knowing with the limits of reality, either in a way that artificially halts our knowing, or that mystifies the world in such a way that we can be content with its unknowability.

For Bradley, feeling as immediate experience, while insufficient in the forming of an argument or a judgment, carries with it a volition which codes the thoughts and the appearances, and the thoughts on the appearances that follow an experience that is felt. In essence, the immediacy of feeling cannot be removed from our experience but the error lies in thinking that this notion of immediate experience can be expanded to all of reality as such. To do so would either fall into solipsism (all reality is *my* reality) or it would equate thinking with being in a manner such that the difference between the two, between thought and the thing it thinks, would disappear, thereby eliminating both.

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<sup>15</sup> F.H. Bradley, *Principles of Logic* (Oxford University Press, 1922), 533.

This somewhat abstract formulation of feeling and its limited immediacy relates to Schelling's theory of judgement. As Marcela Garcia has brilliantly examined, Schelling's judgement cuts or separates terms to re-unify them into a higher form. But the lower forms are not replaced, nor are they destroyed; they become the geological layers of the ground which sustains the capacity of judgement higher up the ladder.<sup>16</sup>

As Garcia goes on to discuss, judgement, in Schelling's sense, cannot be tied to any notion of immediacy, of vision functioning to give oneself instant knowledge. Judgement involves making explicit the capacity of what has already been represented as ground.<sup>17</sup> Thus the opposition between naturalism and idealism, or between the original and the derivative, brings with it a further complication regarding how one orders (or judges) the relation of the pre-conceptual and the conceptual. As we have already seen, a methodological difference seems required but this does not tell us how judgements treating judgements should be viewed in relation to naturalism, for instance, nor how judgements treating natural processes should be perceived as either natural processes or judgements.

This requires demonstrating the simultaneous additive and subtractive character of vision, of the experience of an image. Quite straightforwardly, the judging of an image would seem to take place after a series of preceding steps which would occur so quickly as to remain invisible in

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<sup>16</sup> Marcela Garcia, 'Schelling's Theory of Judgment and the Interpretation of the Copula', *Schelling-Studien: Internationale Zeitschrift zur klassischen deutschen Philosophie* 3 (2015): 25-49, 27.

<sup>17</sup> *Ibid.*, 28.



the present moment of the perception. The steps of this process are themselves only ordered as such following a latent judgement. The forces of physics, biology, and neurochemistry play an entangled role long before we register an image of anything. But by the time we see this image it has already been pre-processed by our conceptual apparatuses (if we take Sellars' myth of the given seriously)<sup>18</sup> and then we reflect upon the image as if it is free and naked before us, an object just meeting our perception, a perception which is taken generically as 'an experience.'

But these experiences vary in length and seem to seep out of any conceptual definition applied to them. These events, or presents, seem to have a geometry in which the passage of time appears absolutely non-discrete (one could take James' image of the specious present as a saddle as one such example). In other words, I may not take notice of the past seven moments but I fixate on an object before in the eighth moment and it 'seems' to go on forever. Explaining this difference in terms of quantity of time is difficult, given that the measure is taken and experienced by the same 'clock' (my perception). Despite James' pragmatism, his spatialising of experience shares much in common with his idealist forebears and

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<sup>18</sup> Sellars' myth of the given argues that we cannot rely upon experience as given to us fully formed and then analyzed by our cognitive capacities. Rather, if we accept that we are trained to process evidence, that our conceptual capacities are learned not innate, then we cannot assume that evidence presented before us is not taken apart by that mental training before we have consciously decided to evaluate it. See Wilfrid Sellars, 'Philosophy and the Scientific Image of Man', in *Empiricism and the Philosophy of Mind* (London: Routledge & Kegan Paul Ltd., 1963).

contemporaries. James' and Bosanquet's concerns regarding the shape (or morphology) of intentionality, of the directed thinking toward an experience, appear to productively dovetail.<sup>19</sup>

Given the various shapes of experience, which can be ordered and remade based on how much of the above series of moments we grasp, we can determine what form of the time series can be re-inserted (however imperfectly) into one of its contained parts. Or, in other words, how do we recognise 'the pivotal moment from the sense data' and what changes when we 'play back' the memory chosen to be pivotal? Judgement can be said to be one pass across such an experience that is subsequently offered up for collective judgement, whether such acts express, or at least potentially express, a sense or feeling of the greater landscape.

Thus, long-standing critiques of an over-reliance on vision, or on the weight of reflection in post-Kantian thought, generally assume an immediacy or a clarity which those philosophies have never admitted. One of the most central aspects of idealism, and of post-Kantian idealism especially, was that numerous structural issues impeded not only thought but any processes from being simply self-standing or exhaustive. Quite importantly, however, and what has generally been lost in the neglect of idealism, is the particular way it attempted to map the behaviour of ideas in a spatio-historical sense.

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<sup>19</sup> James himself admits this much in his essay 'How Two Minds Can Know One Thing', *Journal of Philosophy, Psychology and Scientific Methods* 2 (7) (1905): 176-181

Again, following Garcia, the complexification of vision and its purported immediacy relates directly to the problem of the functional relationship of the normative and the non-normative, and of the pre-conceptual and the conceptual.<sup>20</sup> Or, in relation to the above discussion, law (as the force of the normative) and non-law (the material which is judged) maps onto the normative and non-normative whereas the distinction between sense and experience maps (albeit difficulty and imperfectly) onto the pre-conceptual and the conceptual. Going back to the opening pages of this essay, these divisions manifest in the problem of the ontological and the methodological, whether any of these divisions can be said to be made from a neutral position, or whether they are made from one side. In other words, many of those thinkers who follow a particular form of Kantianism (P. F. Strawson, Sellars, McDowell, Brandom) suggest that the cut between the non-normative and the normative is made from the position of the normative. Essentially, according to those on the side of normativity, we must say that the normative decides its own beginning in order for us to make sense of the world through patterns, rules, and laws.

The emergence of patterns, rules, and laws is taken to be groundless from the point of view of the non-normative, and a necessary set of judgements from the position of the normative which, since it has only normative standing,

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<sup>20</sup> Karen Barad's consistent claim that reflection is a relatively straightforward process that over-simplifies reality is a prime example of this. See her *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning* (Durham: Duke University Press, 2007).

becomes auto-generating. In the case of law, while precedence can be taken into account for a law's effectiveness and modification, it does not justify the law's existence. Only authority, itself not strictly legal in the same sense, does this.

But can this game be played so that the normative always avoids non-normative grounds, or can the normative always be tainted by what it wishes to keep outside?

#### 4. Conclusion or Vision of Law

While the normative (at times) appears to be made of the non-normative, so, too does sense appear to fully compose the bedrock of experience. The wrinkle is that we do not encounter this relationship in this way; rather, we have to reverse engineer it. In other words, we do not sense *sense* as sense but we instead have an experience which allows us to dig into the functions of sense. The difficulty, again to state the obvious, is to what degree can we strip experience of experience to experience sense without either deluding ourselves to think we can 'get out of our own heads' or to think we can never think the non-conceptual or pre-conceptual?

It is perhaps not surprising that Kant, partially in order to avoid such headaches, wished to hold on to a portrait of reason that operated as its own judge and jury, to argue that only reason can stand as arbiter over reason. As has been frequently noted, Kant was fond of the legal claim, of adding philosophical charge to the question of

justification: *Quid Juris?* (by what right, or, what is lawful) is central to Kant's philosophical project.<sup>21</sup>

One pertinent question would be the difference between the general structure of judgement as merely the capacity to draw conclusions, and the judgment of the court, of the relation between collective normativity and the precedent which functions as the material, as the background, of the judgment. In order to take judgement into question as a form of data, it is required to view the capacities of reason, of which judgment is merely one, as a collection of senses comprising a vision of the mind. How would one construct a vision of the law in this manner?

If the force of law is taken to be not merely autochthonic, or self-grounding, nor as merely ontological, guaranteed by an in-built democratic principle (such as Schelling's *Weltgesetz* or Bosanquet's reality principle taken as totalising), then law becomes a seeing of ideas as rules and the construction of rules for ideas. The ramifications for such a project may be difficult to ascertain at this brief glance but idealism remains the proper tool for a philosophy of law that takes the inscription of normativity into legality as an experiment on the flexibility of a concept as a regulator of space (both ideal and real).

Taking the force of law as a type of vision emphasises its force as one of collective apparatuses more than a groundless violence. Furthermore, and again nodding to objective idealism and its *Naturphilosophical* roots, such

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<sup>21</sup> Immanuel Kant, *The Critique of Pure Reason*, translated and edited by Paul Guyer and Allen Wood (Cambridge University Press, 1998), 219, (A84/B116).

force is only possible according to rules that precede its own rules: the patterns of nature. Thus, while representation and thus appearance seem necessary components of reality, the form of judgement necessary for thought is far from having been effectively, and collectively, articulated.

## References

- Barad, Karen. *Meeting the Universe Halfway: Quantum Physics and the Entanglement of Matter and Meaning*. Durham: Duke University Press, 2007.
- Berkeley, George. *An Essay Towards a New Theory of Vision*. London: Classical Reprint, 1709.
- Berkeley, George. *Principles of Human Knowledge*. Oxford: Oxford University Press, 1710/1996.
- Bradley, F.H. *Appearance and Reality: A Metaphysical Essay*. London: George Allen, 1893.
- Bradley, F.H. *Principles of Logic*. Oxford: Oxford University Press, 1922.
- Garcia, Marcela. 'Schelling's Theory of Judgment and the Interpretation of the Copula'. In *Schelling-Studien: Internationale Zeitschrift zur klassischen deutschen Philosophie Philosophie* 3 (2015): 25-49.
- Hamilton Grant, Iain. 'Everything'. In *The Monist* 98, no. 3 (2015): 156-167.
- Hamilton Grant, Iain. 'The Law of Insuperable Environment: What is Exhibited in the Exhibition of the Process of Nature?'. In *Analecta Hermenutica* 5 (2013).
- Hamilton Grant, Iain. *Philosophies of Nature after Schelling*. London: Continuum International Publishing Group, 2006.
- James, William. 'How Two Minds Can Know One Thing'. In *Journal of Philosophy, Psychology and Scientific Methods* 2, no. 7 (1905): 176-181
- Kant, Immanuel. *Critique of Pure Reason*. Translated by Norman Kemp Smith. New York: St Martin's Press, 1929.

Kant, Immanuel. *The Critique of Pure Reason*. Translated and edited by Paul Guyer and Allen Wood. Cambridge University Press, 1998.

Schelling, F.W.J. von. *Darstellung der reinrationalen Philosophie* (SW II/1, 492)

Schelling, F.W.J. von. *Ideas for a Philosophy of Nature*. Translated by Errol Harris and Peter Heath. Cambridge: Cambridge University Press, 1988.

Sellars, Wilfrid. 'Philosophy and the Scientific Image of Man'. In *Empiricism and the Philosophy of Mind*. London: Routledge & Kegan Paul Ltd, 1963.

# Does Reconciliation Need Truth? On the Legal Production of the Visibility of the Past\*

Riccardo Baldissone

νῦν τὴν καταλλαγὴν ἐλάβομεν<sup>a</sup>

*A truth that's told with bad intent / Beats all the lies  
you can invent<sup>b</sup>*

*My work is not about xxxxxxxx it is after xxxxxxxx<sup>c</sup>*

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<sup>a</sup> [N]yn tēn katallagēn elabomen, now we have received reconciliation, in Paul, *Romans* 5.11. *Katallagēn* originally means change: in the late fifth century BCE it is first attested with the sense of change from enmity to friendship, that is reconciliation, for example in Aristophanes, *Birds* 1588.

<sup>b</sup> William Blake, 'Auguries of Innocence' 53-54, in *The Complete Poetry and Prose of William Blake*, ed. D. V. Erdman (Berkeley: University of California Press, 2008), 491.

<sup>c</sup> Christian Boltanski's correction of his written interview: the twice deleted word is Holocaust. In Christian Boltanski, 'An Interview with Georgia Marsh', in *Reconstitution*, Exhibit Catalogue, Christian Boltanski (London: Whitechapel Art Gallery, 1990), 10.



In the first chapter of *Ulysses*, Stephen Dedalus, probably mindful of Laforgue,<sup>1</sup> complains that history is a nightmare from which he is trying to awake.<sup>2</sup> Stephen, inasmuch as he is the younger alter ego of James Joyce, shares with him the burden of the past as a representation that is frozen and glorified by academies and museums.

Contemporary Italian Futurists feel similarly oppressed by the load of the glorious but cumbersome Classical and Italian artistic legacy. They react to the canon of art by contrasting the static representation of things by traditional painting and statuary with their dynamic work: in particular, they attempt to visually capture motion as a compression of subsequent images of a moving object on the same canvas,<sup>3</sup> as a multiplicity of forms in the same statue, as a visual rendering of sounds with written words, and as a displacement of words and even letters on the written page.<sup>4</sup>

The Futurists claim the power of visual means to operate a reconstruction not only of the world, but, following their taste for hyperbole, of the entire universe.<sup>5</sup> With the

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<sup>1</sup> 'L'histoire est un vieux cauchemar bariolé qui ne se doute pas que les meilleures plaisanteries sont les plus courtes,' History is an old gaudy nightmare who does not suspect that the best jokes are the shortest. In Jules Laforgue, *Mélanges Posthumes* (Paris: Mercure de France, 1903), 279.

<sup>2</sup> James Joyce, *Ulysses* (Oxford: Oxford University Press, 2008), 34.

<sup>3</sup> '[U]n cavallo in corsa non ha quattro gambe [sic]: ne ha venti,' a running horse has not four legs, but twenty. In Umberto Boccioni et al., *Pittura Futurista. Il Manifesto Tecnico* [Futurist Painting. The Technical Manifesto] (Milano: Uffici di Poesia, 1910).

<sup>4</sup> See Filippo Marinetti, *Zang Tumb Tumb* (Milano: Edizioni Futuriste di Poesia, 1914). By striving to express 'the dynamic sensation itself,' the futurists actually also provide us with a more dynamic rendering of the past.

<sup>5</sup> See Giacomo Balla and Fortunato Depero, *Ricostruzione futurista dell'universo* [Futurist Reconstruction of the Universe] (Milano: Direzione del Movimento Futurista, 1915).

Futurist Manifestos, for the first time artists claim their share in ideological leadership inasmuch as they are artists. Moreover, the Futurists' insistence on the political relevance of vision renews the millennial tradition of disputes on the use of images.

In the Christian world, the issue of the public role of images is first raised in the eighth century by Byzantine iconoclasm, and it is then rekindled in the sixteenth century during the Reformation. However, these debates focus on the use of images *tout-court*, whilst the Futurists are rather concerned with the specific quality of images as a contribution to a global transformation of reality.

Though 'painters always showed us things and persons placed before us,'<sup>6</sup> the Futurists contend that objects and people actually compenetrates each other, because 'motion and light destroy the materiality of bodies'<sup>7</sup>: hence, the new art is aimed not at reproducing but at reinventing reality. To this end, it also relies on the dynamism of the new mechanical production, and even on the destructive power of war.

And yet, after the technology-enhanced disasters of the two world conflicts, and the double industrial annihilation of human lives by concentration camps and aerial bombing, the beacon of progress becomes dimmed. Paradoxically, it is in our residual flatland of actually existing consumerism that history may no longer be a burden, and it may even raise us above the eternal present of commodification.

The reconsideration of the past appears to be an even more urgent task outside the mostly pacified West, where

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<sup>6</sup> 'I pittori ci hanno sempre mostrato cose e persone poste davanti a noi,' *ibid.*

<sup>7</sup> '[I]l moto e la luce distruggono la materialità dei corpi.' In *Pittura Futurista. Il Manifesto Tecnico.*

the creeping Third World War does not stop claiming its toll of humans and things. From the perspective of this other world, the Western condition of perpetual economic struggle (and its promise of social mobility) is a mirage of safety and plenty. Western standards – even in their current combination of civil peace and pervasive economic war – are assumed as the reference condition and the normative background for the tribunals that have been assessing large-scale traumatic events and circumstances, such as South African apartheid and the Rwandan massacres. These variously horrifying exceptions are evaluated against Western or Westernised rules, which conjoin economic conflict and political peace.

It is then not surprising that the most relevant attempt at dealing with past traumatic social events was conducted by the 1995 South African Truth and Reconciliation Commission, a name that reveals both Western philosophical and theological legacies. Actually, as early as in 1990, Chilean president and Christian Democrat leader Patricio Aylwin established an investigative body, which was defined as *Comisión Nacional de Verdad y Reconciliación*, National Commission of Truth and Reconciliation. The commission reported on the horrific crimes committed under the military dictatorship led by General Augusto Pinochet between 1973 and 1990.<sup>8</sup>

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<sup>8</sup> By the irony of history (or one of its bad jokes) it was the same Patricio Aylwin who said in an interview with *The Washington Post* on August 26, 1973 (sixteen days *before* the military coup) that if he had to choose between ‘a Marxist dictatorship and a dictatorship of our military, [he] would choose the latter.’

In the case of South Africa, the Anglican archbishop Desmond Tutu, who was the main inspirer and chairperson of the commission, insisted on the closeness of the commission's guiding principles to *Ubuntu*,<sup>9</sup> the African sense of human interconnectedness. Be that as it may, the notion of reconciliation has a distinctively Christian overtone, which harks back to the foundational text of Christianity, Paul's letter to the Romans.

Paul triumphantly claims: νῦν τὴν καταλλαγὴν ἐλάβομεν<sup>10</sup> [*nyn tēn katallagēn elabomen*], 'now we have received reconciliation', as the death of Jesus overcame the long postlapsarian enmity between humans and god. In this context, truth is identified with the word of god, and even with god himself, whom, in the person of Jesus, John makes later declare: ἐγὼ εἰμι (...) ἡ ἀλήθεια<sup>11</sup> [*egō eimi (...) hē alētheia*], 'I am the truth'.

Of course, truth is no longer construed as a divine person, at least not in its current judicial version. And yet, truth continues to share its transcendent quality with its Johannine personification. In the words of Tutu, truth is concealed, and its acknowledgement requires it to be unearthed; truth not only must come out, but it would prevail.<sup>12</sup>

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<sup>9</sup> 'One of the sayings in our country is Ubuntu – the essence of being human. Ubuntu speaks particularly about the fact that you can't exist as a human being in isolation. It speaks about our interconnectedness.' Desmond Tutu, 2008. Ubuntu Women Institute USA (UWIU) with SSIWEL as its first South Sudan Project, <http://www.ssiwel.org> (accessed 20 April 2011)

<sup>10</sup> *Romans* 5.11 (Nestle-Aland).

<sup>11</sup> *John* 14.6 (Nestle-Aland).

<sup>12</sup> '[T]his is a moral universe and truth will out.' In Desmond Tutu, *No Future Without Forgiveness* (New York: Doubleday, 1999), 87.

One may observe that all the previous expressions show no distinctive theological features, and that they are instead commonplaces: apart from Tutu's optimistic and teleological claim of the eventual prevalence of truth, the latter's independence from subjective constructions is widely acknowledged. For example, the Oxford English Dictionary defines truth both as '[s]omething that conforms with fact or reality,'<sup>13</sup> and this very conformity.

If compared with the previous Johannine statement, OED's painstaking mapping of English language appears to register a double substitution: truth is no longer identical to the divinity, but it conforms to reality. Whilst the replacement of god with reality seems to confirm the modern claims of secularisation, the notion of truth as conformity is a restatement of a Scholastic assumption.

In the thirteenth century, the Dominican friar Aquinas quotes Isaac Israeli's definition of truth as '*adaequatio rei et intellectus*,'<sup>14</sup> conformity of things and intellect. More recently, this correspondence is embraced by Bertrand Russell<sup>15</sup> as constitutive of truth,<sup>16</sup> and it is still popular

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<sup>13</sup> '[T]ruth, n. and adv. (and int.)' *OED Online*. Oxford University Press, March 2016.

<sup>14</sup> Thomae de Aquino (Thomas Aquinas), *Summa Theologiae*, Pars 1, Quaestio 16, Articulus 2, <http://www.corpusthomicum.org/sth1015.html> (accessed 11 May 2016). The original statement has not yet been located in Israeli's work.

<sup>15</sup> Bertrand Russell, 'On the nature of truth and falsehood,' in id., *Philosophical Essays* (New York: Simon and Schuster: 1910).

<sup>16</sup> Whilst this approach was supposed to derive from Plato and Aristotle, it probably stemmed from Plotinus' request for the eye to be sun-like in order to see the sun (*Enneads* 1.6.9.31-32), which in turn found a more abstract expression in Proclus' definition of truth as ἐφαρμογή [*epharmogē*], agreement or adjustment between knower and the known (*In Tim.* 2.287.1). *Epharmogē* is already set

with English speaking philosophers,<sup>17</sup> whose belief in this regard seems generally pretty much in line with the wider language use, provided that such use conforms to its representation by the OED.

However, from the specific angle of truth and reconciliation commissions, the notion of truth is concerned with the re-evaluation of past actions and events: hence, it may be worth briefly considering the involvement of Western historical investigations with truth.

In the sixth century BCE, Hecataeus ushers in Western historical discourse with a declaration of disbelief in Greek stories<sup>18</sup>: however, neither he nor most subsequent historians base their claim to validity on the direct appeal to the *notion* of historical truth. For some twenty-four centuries, the work of the historian remains τῶν τέ γενομένων τό σαφές σκοπεῖν<sup>19</sup> [*tōn te genomenōn to saphes skopein*], ‘to investigate the certainty of the events’ (Thucydides), ὡς ἐπράχθη εἰπεῖν<sup>20</sup> [*ōs eprakhthē eipein*] ‘to tell how things happened’ (Lucian), and to show the past

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as the final existential task in Porphyry’s compilation of Plotinus’ *Enneads* (6.9.11.25).

<sup>17</sup> See, for example, the 2009 PhilPapers Survey taken by 3226 respondents (nearly 70% of them from English-speaking countries), including 1803 philosophy faculty members and/or PhDs and 829 philosophy graduate students. An impressive 50.8% of the respondents indicated their preference for a correspondence theory of truth. In David Bourget and David J. Chalmers, ‘What Do Philosophers Believe?’, *Philosophical Studies* 170, no. 3 (2014): 465-500.

<sup>18</sup> ‘Thus speaks Hecataeus of Miletus: I write what follows as it seems to me to be true; for the *logoi* of the Greeks are, as it seems to me, many and ridiculous.’ In *Early Greek Mythography*, ed. Robert L. Fowler (Oxford: Oxford University Press, 2000), Hecataeus fr. 1.

<sup>19</sup> Thucydides 1.22.5.

<sup>20</sup> Lucian of Samosata, *Quomodo historia scribenda sit* 39.

‘*wie es eigentlich gewesen*,’<sup>21</sup> ‘how it really was’ (Ranke). Twentieth-century historians not only generally continue to keep the philosophical constructions of the notion of truth at arm’s length, but, as in the case of Michel Foucault, plainly reject historical universals in general: and during the last forty years, more and more historians (Jenkins, Munslow, Southgate, Bunzl, and McCullagh among others) are embracing their inevitably perspectival construction of the past.

Historians’ acknowledgement of their perspectival (a visual metaphor, again) relation with past events not only demands more sophisticated criteria for assessing historiographical constructions, but it also resonates with some juridical constructions of specifically legal truth. For instance, Hans Kelsen grounds this specificity on the production of legal facts as a result of legal ascertainment, which ‘replaces the fact in itself that in nonjuridistic thinking is the condition for the coercive act.’<sup>22</sup>

More recently, Jack Balkin is adamant in advocating the productive character of law: ‘law *creates* truth – it makes things true as a matter of law. It makes things true in the eyes of the law.’<sup>23</sup> Here the boldness of Balkin’s first statement is somewhat defused by his further specifications,

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<sup>21</sup> Leopold von Ranke, ‘Preface: Histories of the Latin and Germanic Nations from 1494-1514’, in *The Varieties of History: From Voltaire to the Present*, ed. Fritz Stern (New York: Meridian Books, 1956), 57.

<sup>22</sup> Hans Kelsen, *Pure Theory of Law*, trans. Max Knight (Berkeley: University of California Press, 1967), 240.

<sup>23</sup> Jack M. Balkin, ‘The Proliferation of Legal Truth’, *Harvard Journal of Law and Public Policy* 26, no. 1 (2003): 6. <http://www.yale.edu/lawweb/jbalkin/articles/proliferationoflegaltruth1.pdf> (accessed 11 April 2016).

which also recur to a reassuring metaphor of the old, namely, the eyes of the law.<sup>24</sup> However, by hinting to truth as a visual effect, Balkin subordinates both truth and true things to a specific perspective, which, *mutatis mutandis*, may appear to evoke Futurist contentions.

Moreover, in Balkin's sentence the word 'things' may well be understood in an extended sense, as legal constructions also legally define the truth of legal subjectivities: for example, both in Chile and South Africa, different legal approaches can shape the apparently same subject as either a patriot defending his country from the contagion of communism with all available means, or a brutal and insensitive torturer and murderer.

It is not by chance that these alternative subjectivations echo the bifurcation between the prosecution and defence arguments at the Nuremberg trials<sup>25</sup> (and in some way also the Eichmann trial in Jerusalem). Jean-François Lyotard evokes this lack of common ground by recovering the French legal term *différend*,<sup>26</sup> which defines a case of conflict that cannot be equitably resolved for lack of an encompassing rule of judgement.

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<sup>24</sup> The OED dates the first written occurrence of the phrase 'in the eye of the lawe' to 1538. In 'eye,' *OED Online*. Oxford University Press, March 2017.

<sup>25</sup> Probably, the only commonality between all the parts represented by the prosecution and the defence was the perpetration of the same war crime of mass murder by aerial bombing, which was prudently left out of the list of accusations.

<sup>26</sup> See Jean-François Lyotard, *Le Différend* (Paris: Éditions de Minuit, 1983); Eng. trans. id., *The Differend: Phrases in Dispute*, trans. Georges Van Den Abbeele. (Minneapolis: University of Minnesota Press, 1988).



Tutu describes the Truth and Reconciliation Commission as a third way between the Nuremberg trials and blanket amnesty (or national amnesia)<sup>27</sup>: amnesty is offered to the perpetrator in exchange for truth, provided that the applicant makes ‘full disclosure of all of the facts relevant to the incident in question.’<sup>28</sup>

The very wording of the Commission remarks how the access to past events is to be realised as the removal of the obstacles to the unobstructed view of the past itself: the current use of the term ‘disclosure’ is a later<sup>29</sup> figurate sense of the literal action of unlocking, and it well describes the sharing of memories otherwise confined within the perpetrators.

Moreover, the exchange of disclosure for amnesty implies some kind of forgiveness on the part of the victims, generally in the person of their relatives and friends: yet, inasmuch as having *Ubuntu* means participating in a greater whole, to forgive is not just to be altruistic, but it is the best form of self-interest.<sup>30</sup>

Here, African and Christian idealisations clearly overlap, and yet, they may help in achieving the practical task of emotional closure, which the mother of a victim also describes as a double restitution: ‘he [the murderer]

<sup>27</sup> Tutu, *No Future Without Forgiveness*, 30.

<sup>28</sup> Truth and Reconciliation Commission, *Truth and Reconciliation Commission of South Africa Report*, vol. 6 (Cape Town: Juta & Co, 2003), 10.

<sup>29</sup> The OED reports a 1525 written evidence of the figurate sense of the word ‘disclosure,’ which appears in a text presumably composed in 1489. In ‘disclosure,’ *OED Online*. Oxford University Press, March 2017.

<sup>30</sup> Tutu, *No Future Without Forgiveness*, 31.

becomes human again, this man, so that I, so that all of us get our humanity back.<sup>31</sup>

Whilst this restitution risks being offered as a sort of Christian atonement and accepted instead as a profitable transaction, the possible specific imbalance of the exchange is transcended by the more general advantage of a shared political sense, which escapes the pincer of ideal principles and *Realpolitik*. It may even be argued that the transactional practice of these transitional measures immediately produces a shared political dimension.

Of course, not everyone may be inclined to forgive: as dryly stated by Charity Kondile – the mother of another victim – whilst Mandela and Tutu lead vindicated lives, nothing has changed in hers, therefore she cannot forgive.<sup>32</sup> Indeed, Tutu himself describes both his sight of freedom coming and his involvement in the Truth and Reconciliation Commission as a ‘spectacular vindication.’<sup>33</sup>

However, and more important, both Kondile’s and Tutu’s considerations reveal a shift of focus from the past to the present: what appears to be at stake is not simply the recovery of traumatic events, but the role that their memory is allowed to play in the present. If this holds true, here truth is a misleading task, and its pursuit a mere verbal re-enactment of the Western theological-philosophical

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<sup>31</sup> Cynthia Ngewu, mother of the murdered Christopher Piet, quoted in Antjie Krog, *Country of My Skull* (Johannesburg: Random House, 1998), 109.

<sup>32</sup> Charity Kondile, quoted in Antjie Krog, ‘The Parable of the Bicycle,’ *Mail & Guardian*, February 7, 1997, <http://mg.co.za/article/1997-02-07-the-parable-of-the-bicycle> (accessed 10 April, 2016).

<sup>33</sup> Tutu, *No Future Without Forgiveness*, 287.

legacy. Given the actual practices of the Commission, one may legitimately wonder whether the word 'truth' made it justice, and whether a more appropriate definition would instead have coupled reconciliation with memory.<sup>34</sup>

The substitute name of 'Memory and Reconciliation Commission' is not just a retrospective suggestion, as unfortunately the series of crimes against humanity<sup>35</sup> gets longer and longer. If, as I hope, the example of the South African Commission will be further followed (as has already happened), a different definition of its scope may highlight the alternative between the pursuit of truth and the construction of memory. This alternative is not simply theoretical: whilst the emphasis on truth leaves the damaged ones the only choice of a more or less willing acceptance of the past, the active task of constructing memory in the present turns inner and outer transactions into self-empowering opportunities of intervention.

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<sup>34</sup> Tutu himself underlines the essential role of memory whilst describing the condition of the traumatised protagonist of the gripping play *Death and the Maiden*, in which the Chilean writer Ariel Dorfman stages the frightening re-emergence of the experience of politically justified terror, torture and rape. Tutu recalls that 'she was, in a real sense, her memory' (*No Future Without Forgiveness*, 30). The denial of her memory not only challenges her sense of self, but it also forces her to continue to embody this memory, which literally entraps her within her own body.

<sup>35</sup> The legal notion of crimes against humanity was first defined in the paragraph 6(c) of the 1945 London Charter of the International Military Tribunal, which was meant as the legal basis for the Nuremberg trials. It was again by the irony of history that one of the three drafters of the Charter, Major-General Iona Nikitchenko, had presided over some of the infamous Moscow Trials between 1936 and 1938. Nikitchenko was also the Soviet Union's judge at the Nuremberg trials, and he was president for their opening session in Berlin.

On the horizon of truth, the only socially constructive intervention of the damaged ones is an act of forgiveness: this is why a refusal such as Kondile's can only be either discarded as an incident in the process, or exalted as a symptom of the process' general failure. Facilitating the construction of memory would instead help redress resilience as a productive factor, both in inner and outer transactions. And whilst the creation of legal truth is at perpetual risk of clashing with similarly totalising ethical, religious, political, philosophical and scientific truths, the legal production of memory would easily find allies in any conceivable field, including fiction.

On the horizon of the construction of memory, fiction would be a tool as important as supposed non-fictional renderings of the past: and it may be even more effective in producing the visibility of the past itself. For example, when Swiss director Milo Rau staged in Moscow a re-enactment of the trial against the members of the punk-rock band Pussy Riot,<sup>36</sup> the fictional tribunal produced a reconstruction of the facts, a discussion of the motivations, and a final judgement that shamed the previous proceedings of the official Russian court, which had charged the girls with a two-year sentence.

Rau's aptly named Moscow trials underline their rather farcical repetition of the homonymous tragedy,<sup>37</sup> namely the 1936-38 series of trials, during which most surviving Bolshevik leaders pleaded guilty to hyperbolic crimes

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<sup>36</sup> 1-3 March 2013, Sakharov Centre, Moscow.

<sup>37</sup> In *The Eighteenth Brumaire of Louis Napoleon* Marx famously described the vicissitudes of Luis Bonaparte as the farcical repetition of the tragedy of his uncle Napoleon.

against the Soviet state. Regardless of the enormity of the accusations, the Moscow trials shared with the Nuremberg ones not only one of the judges,<sup>38</sup> but also their pre-determined finale. And it may be argued that also in the case of the Stalinist purges, their most relevant treatment was a fictional rendering, namely Arthur Koestler's 1940 novel *Darkness at Noon*.

However, Rau dealt with tragic events too, such as the Rwandan genocide and its catastrophic follow-up, the Congolese civil war. In the first case, the core instigating apparatus of the Rwandan massacres is given a fictional visibility on stage well beyond its actual visibility as a radio broadcasting station.<sup>39</sup> The audience is allowed to watch the otherwise invisible source of the systematic outpouring of broadcasted hate speeches that prepare, prompt, guide and justify the bloodbath.

Rau's screenplay adds a surprising layer to the construction of the past: here the visibility of the events is even enhanced with respect to the actual experience of most direct participants, who were affected by the broadcasted hate speeches as merely acoustic phenomena.

Rau then tackled the terrifying Congolese sequel of the Rwandan disaster with a theatrical enactment, which was modelled on the 1966-67 Russell tribunal on Vietnam. His Congo Tribunal<sup>40</sup> takes further a series of Interna-

<sup>38</sup> See *supra*, note 35.

<sup>39</sup> *Hate Radio: The re-enactment of an RTLM genocide radio show* was first performed on the 2 November 2011 at the Bregenz Kunsthau.

<sup>40</sup> The Congo Tribunal is a film and theatre production of Milo Rau and the International Institute of Political Murder (IIPM). It was staged in two sessions, 29 - 31 May 2015 in Bukavu, Collège Alfajiri (Eastern Congo), and 26 - 28 June 2015, Berlin, Sophiensaele.

tional Criminal Court investigations and prosecutions, and it exposes local and international interests involved in the booming commodity trade in Eastern Congo<sup>41</sup>

It would be difficult to trace a clear-cut boundary between fictional and non-fictional aspects in Rau's trials. However, these acts and their filmed versions iterate the visual representation of the deployment of juridical procedures in the construction of memory. By doing so, they perpetuate and amplify, so to speak, the embodiment of recollection with the sound of words and the image of the performing bodies.

Though in court the re-enactment of the past is supposed to rely on the cognitive function of words, the necessary embodiment of speech acts also inevitably expresses emotions and value judgements. These acoustic and visual components systematically exceed the merely factual rendering of the past as pursued by modern jurisprudence.

Of course, acoustic and visual effects are standard tools of forensic rhetoric: already Aristotle associates this specific kind of rhetorical speech with the investigation of the past that takes place in a trial.<sup>42</sup> This forensic speech can only be either an accusation or a defence,<sup>43</sup> because

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<sup>41</sup> According to the press release (6), '[u]nlike the International Criminal Court or national courts, not only the local players, rebel leaders and low-rank soldiers will be held accountable before the Congo Tribunal but also their international accomplices who provided the supply lines for this atrocious civil war or prevented its cessation.' In [http://www.the-congo-tribunal.com/wp-content/uploads/2015/05/150424\\_Kongo-Tribunal\\_pess-kit.pdf](http://www.the-congo-tribunal.com/wp-content/uploads/2015/05/150424_Kongo-Tribunal_pess-kit.pdf) (accessed 13 May 2016).

<sup>42</sup> Aristotle, *Rhetoric* 1.3.2.

<sup>43</sup> *Ibid.*, 1.3.3.

according to Aristotle a trial is necessarily antagonistic. And yet, the acknowledgement of this basic antagonism, and its expression through the strategies of persuasion of forensic rhetoric, is at odds with the fundamental criterion of the just and the unjust, which the same Aristotle claims as the basis of court judgements.

This contradiction does not escape Aristotle's attention, but it is promptly solved: 'things that are true and things that are just are by nature superior to their opposites.'<sup>44</sup> Despite its naiveté, Aristotle's solution sounds obvious to us moderns, and it even smacks of Panglossian eudemonism,<sup>45</sup> because Christianity endorsed its teleological perspective (and still endorses it, as in the case of Tutu).

The tension between the persuasive intentions of forensic rhetoric and the pursuing of truth is similarly erased whenever a superior necessity inspires the judgement. Such a tragic bottleneck is clearly revealed by the farcical enormity of the accusations (and self-accusations), as it happened in the various cases of medieval Inquisition, early modern witch hunts, and modern show trials: and regrettably, a similar logic informs even the best intentioned international courts.

We no longer need to appeal to Carl Schmitt to acknowledge the juridico-theological derivation of the strongly reductionist approach of modern legal systems. Forty years

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<sup>44</sup> τε τὸ φύσει εἶναι κρείττω τὰ ληθῆ καὶ τὰ δίκαια τῶν ἐναντιῶν [*te to physei einai kreittō talēthē kai ta dikaia tōn enantiōn*], *ibid.*, 1.1.

<sup>45</sup> Leibniz (and his well-intentioned Christian optimism) is notoriously and ferociously depicted by Voltaire in his novel *Candide* as the doctor Pangloss, who teaches that all is for the best in the best of all possible worlds.

of generalised challenge to modernist biases have made us familiar with Schmitt's contention that the omnipotent lawgiver (and the omnipotent judge) re-enacts the omnipotent god in both Roman-derived and common-law jurisprudence.<sup>46</sup> However, though the South African Truth and Reconciliation Commission partially restates this theological legacy with its pursuit of truth, by stressing reconciliation as a task it also acknowledges a plurality of subjectivating paths that cannot be immediately reduced to a common juridical logic.

I would like to be as optimistic as to construct some of the practices of the South African commission as an embryonic claim of a juridical logic of the *differénd*, which would be understood as the general norm of juridical practices rather than their exception. This reversal would imply that an encompassing juridical order *may* be produced as the ongoing result of negotiations between stakeholders, rather than as a postulation of principles, as according to the thousand-year tradition of juridical theology.<sup>47</sup>

Of course, such a *de facto* pluralism of values and practices is still a long way from obtaining a *de jure* recognition. In the meantime, we may well begin not only to reclaim our inherited Aristotelian juridical assessment of the past, but also to reframe it as the contribution of

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<sup>46</sup> See Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge, Mass.: MIT Press, 1985).

<sup>47</sup> I argued for the significance of the notion of juridical theology in my essay 'Mystical Bodies and Bodies of Law: On Juridical Theology and the (Re)Foundations of the West', in *Fables of the Law*, eds. Daniela Carpi and Marett Leiboff (Berlin: De Gruyter, 2016).



juridical practices to the construction of memory in the present. This double shift in time and scope would allow us to immediately recast past and present juridical practices.

It may be objected that a juridical reconstruction of memory requires an already established encompassing legal order: this order provides the legal framework for the activities of whatever ad hoc apparatus which is invested, generally after a political transformation, with the authority to reassess the past, in the perspective of reordering the present. And even in this case, the juridico-political intervention may have to endure the constraints imposed by resilient agents, such as, for example, the Chilean army or the South African economic complex.

The effect of these constraints is well depicted by the South African parable of the bicycle. As reported by Antjie Krog,<sup>48</sup> a boy steals the bicycle of a neighbour, and after a year of consequential enmity, he invites the victim to reconcile. Nevertheless, when asked to return the stolen bicycle, he retorts that his offer is about reconciliation and not bicycles.

One may expect that, just like the South African boy, not many perpetrators would be willing to talk about bicycles, as it were. Worse than that, the very bicycle is but a euphemistic representation of wrongs that unfortunately go well beyond the appropriation or the destruction of objects. And unfortunately, humans cannot afford the luxury of waiting for an epochal transition that will let emerge a new historical sense: the human agenda of

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<sup>48</sup> Krog, 'The Parable of the Bicycle.'

survivors is dictated by the mere urgency of life, which often, to quote Brassens, 'is their only luxury.'<sup>49</sup>

The construction of memory is needed precisely to engage at once with oneself and the others in the present. This need is powerfully expressed by the protagonist of Joshua Oppenheimer's feature film *The Look of Silence*, which calls into question both notions of cinematographic representation and historical revisitation. In the movie, Adi Rukun plays himself and performs his actual conversations with those responsible for his brother's death.

Such conversations make the audience aware of the alarming fact that the killing of Adi's brother was not an isolated act of violence, but it was part of a huge carnage, which in 1965 and 1966 involved a large portion of the Indonesian population. An estimated minimum of a half-million people were massacred with the collaboration of the army in pogroms operated by paramilitary forces, which were instructed to prevent an alleged communist uprising.

To describe Adi's endeavour as a search for truth would be misleading: he is looking for more than something as impersonal as truth,<sup>50</sup> and he is consequently rewarded, at times, with more than a mere reconstruction of the past. Adi is battling the apparent impossibility to share

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<sup>49</sup> 'La vie est à peu près leur seul luxe ici-bas,' life is more or less their only luxury down here. In Georges Brassens, 'Mourir pour des idées' (To Die for Ideas), *Fernande* (1972) Philips 6332 116.

<sup>50</sup> The divergence between the relational priority of Adi's quest and the abstract appeal to truth, as enacted by the director who is dismayed by the reiteration of denial, is staged in the cinematographically daring final scene.

his present with his brother's unprosecuted murderers, the surviving bystanders, the other victims' relatives, and his brother's memory.

The theological vocabulary of truth and justice is simply unable to address Adi's conundrum, which is steeped in his relationship with himself and the others. And whilst Adi may seem only to dangerously confront the still influential perpetrators, he actually tries to engage them in a dialogue that at once makes room again for his brother (and for his murdered fellows), and repositions his interlocutors.<sup>51</sup>

Moreover, whilst the fictional re-enactment of the act of killing<sup>52</sup> for the sake of explication seems just to put the perpetrators again at centre stage, paradoxically it instead makes the killed ones re-emerge, first as mere human bodies, and then as human beings. The killing is re-enacted in the present without the cover of the dehumanising strategy that in the past turned the victims into a less-than-human source of danger: hence, the reappearance of the victims as human beings is now embodied by the perpetrators themselves, whose disconcert becomes sometimes visible.

According to Oppenheimer, visibility – in the literal sense – is not only a powerful aspect of his cinematic involvement with the Indonesian genocide, but also of

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<sup>51</sup> As Oppenheimer himself remarks, Adi's gentle offer of dialogue is only minimally successful, because reconciliation cannot be achieved on a personal basis, but it has to become a political process.

<sup>52</sup> Oppenheimer mostly devoted his previous movie, *The Act of Killing*, to this re-enactment, albeit with a surreal twist. To underline the link between his two works, Oppenheimer presents them as a diptych.

film in general, which can make visible the stories that constitute our identity.<sup>53</sup> Once made visible, these stories can be acted upon again, and indeed they have to be. For example, the visibility of the act of killing, however fictional, inevitably exposes it to the considerations of the viewers, be they perpetrators, bystanders, victims' relatives or simply newcomers.

In general, cinematographic<sup>54</sup> performances that re-enact the past do construct memory by giving the past visibility in the present. More than that, all cinema, regardless of its content, produces memories through audio-visual synaesthesia: and inasmuch as these memories become part of our experience and reshape our horizon, cinema realises on a mass scale the Futurist program of a visual recasting of reality.

We may compare this cinematic<sup>55</sup> feat with another construction of memory, namely the juridical assessment of the past. I have already argued that, at least with regard to forensic rhetoric, the legal re-enactment of the past is not limited to a merely verbal exercise, because it entails the embodiment of the spoken word on the part of the lawyer. However, even if, in truly modernist fashion, we were to deem as negligible the contribution of the literal visibility of performances to the legal construction of

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<sup>53</sup> In the interview *10 Questions for Joshua Oppenheimer*, <https://www.youtube.com/watch?v=MnerL5WBB2M> (accessed 3 May, 2016).

<sup>54</sup> Of course, written narrations and theatrical representations also re-enact the past and construct memory, but they cannot match the iterative mimetic ability of cinematographic fictions.

<sup>55</sup> Here I am also exploiting the old form of the term 'kinematic,' which in English retains the sense of motion of its Greek source κίνησις [*kinesis*], but not its meaning of 'transformation.'

memory, the mere evocative power of the lawyer's speech acts would share with literature at large the effect of metaphorical visibility produced by words.

It may be observed that literary texts, unlike legal ones, do not necessarily owe allegiance to their outside,<sup>56</sup> that is, the referent in the world, be it past or present: in the literary realm, Israeli, Aquinas and Russell's notion of *adaequatio* would be as inadequate as simplistic, because literature is not necessarily bound to *reproduce* in words the world. On the contrary, as the very word 'fiction' reminds us, literary texts are also allowed to produce fictive, that is, non-existent characters, occurrences and worlds. Of course, within this realm, a realistic representation of the world is not at all excluded, but it is just an instance of a wider universe of possibilities.

The range of legal constructions of the past may be ranked somewhere in between the kaleidoscopic array of literary productions and the limited representations of the narrow world of philosophical realism. Legal practices generate a metaphorical visibility of the past that may be better compared to the similar visualisations of the past that are put forth by the historians. This closeness to

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<sup>56</sup> Borrowing Derridean terms, we may conceive of the outside-text (that is, the alleged absolutely objective referent of the text: for example, the past, nature, facts, or god) as an effect of intertextual connections: the more the intertextual links multiply, the more the perception of their role in the construction of their common objects dims, and the more these common objects acquire the objective character of outside-text. Paradoxically, the efficacy of theoretical production is testified by the extent to which its products make themselves autonomous, so to speak: its success thus coincides with its self-erasure. One may wonder whether it is possible to construct a memory that is not subjected to this dynamic of self-effacing success.

historical evocations is even more evident when a wider legal understanding of the past is required to achieve some kind of reconciliation, which makes visible, such as in Adi's conundrum, both the living and the dead.

In Western culture, the visibility of the dead has been long entrusted to historians, who since Hecataeus have competed for this role with the poets.<sup>57</sup> In more colourful terms, despite the later fierce competition of priests, historians are nowadays securely in charge of communicating with the dead. More precisely, historians are not requested to speak to the dead, but rather to make the dead speak. This is not a ventriloquist's trick, because historians do engage with the deeds of the dead through things.

An immense and expanding hybrid network links the dead, the things, their living orderers and variously integrating, overlapping and even conflicting ordering techniques. This network includes a bewildering amount and variety of internal connections, which also perform as cross checks. The vastness and the complexity of the network ridicule the claims of objective historical truth as presumptuous shortcuts.

Regardless of its metaphysical implications, the simplistic notion of objective historical truth performs as a fig-leaf that covers the obscene reduction of the work of

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<sup>57</sup> This historical competition (which is also retrospectively construed by Plato as a feud between philosophers and poets) is generally recast as the passage from *mythos* to *logos*, which is the foundational narrative of Western thought. For a different reading, see Robert L. Fowler, 'Thoughts on myth and religion in early Greek historiography', *Minerva* 22 (2009): 21-39.

the historian to the putting together of a jigsaw puzzle. On the contrary, we may well recover Balkin's contention about the making of legal truth, and say that historians as well make things true in the eyes of history. And yet, in the light of our previous path, and also considering the powerful surge of cinematographic<sup>58</sup> constructions of memory, a single past may not be enough. In particular, if the engagement with the past is part of a process of reconciliation, we may wonder whether it would be enough for historians and legal scholars to produce truth – in the singular – in the eyes of history and law respectively.

As we saw, the juridical contribution to a reconciliation process appears to require more than a single truth. For sure, this requirement may be addressed in fairly different ways. At the risk of oversimplifying, in the language of conflict, reconciliation may be either understood as a mere tactical expedient for dealing with the temporary obstacle of some irreducible other, or it may be construed as a strategic approach to face previous conflicts and try preventing future ones.

This strategic construction of reconciliation may strike a middle path between the mere plurality of the Aristotelian antagonistic legal agents, and the pre-established convergence towards the Aristotelian *telos*, the Christian divine person, and their various modern omnipotent avatars. In this perspective, we may envisage a double task for legal activities: on the one hand, legal actors at large may relinquish as untenable the claim to the monopoly

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<sup>58</sup> Here I include in the category of 'cinematographic' not only movies, but also television and new media video shots.

of memory as a single legal truth, and they may work instead to produce the visibility of the plurality of the past; on the other hand, legal experts may then facilitate the negotiation between the representatives of this plurality in the present.

Whilst such a twofold approach could immediately inform the practices of transitional justice, it may affect an even wider legal horizon if, following Kathleen Daly, we would construct restorative justice as a mechanism of meetings of stakeholders, facilitated by a third party according to 'rules and procedures that align with what is appropriate in the context of the crime, dispute, or bounded conflict.'<sup>59</sup>

However, in both contexts of transitional and restorative justice, the appeal to truth would be likely to resurface over and over during reconciliation processes: it would then be for the facilitating body to help assess whether the authority of truth is used to silence alternative positions, or to make previously invisible stances come to light.

It would be worth clarifying the nature of this emergence to light, though. Since Plato's invention of the ideal dimension, which he fabricated with words borrowed from the lexicon of vision, the depiction of visibility as the disclosure of truth has been endlessly reiterated in Western thought. For example, I recalled how the South African Truth and Reconciliation Commission particularly focused on the full disclosure of facts. And yet, the

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<sup>59</sup> Kathleen Daly, 'What is Restorative Justice? Fresh Answers to a Vexed Question', *Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice*, Special Issue: *The Future of Restorative Justice* 11, no 1 (2016): 21.



visibility of the past well exceeds a single dimension ranging from emptiness to fullness. On the contrary, it may be time, at last, to take responsibility for what we make visible. It would be for each of us to acknowledge that producing the visibility of the past means also producing the past itself as memory, or better, as memories, in the plural: and as different practices produce different memories, it would be for the law to help this plurality not only to take shape, but also to coexist.

## References

- 10 Questions for Joshua Oppenheimer*. Accessed 3 May 2016. <https://www.youtube.com/watch?v=MnerL5WBB2M>
- Baldissoni, Riccardo. 'Mystical Bodies and Bodies of Law: On Juridical Theology and the (Re)Foundations of the West'. In *Fables of the Law*, edited by Daniela Carpi and Marett Leiboff. Berlin: De Gruyter, 2016.
- Balkin, Jack M. 'The Proliferation of Legal Truth'. *Harvard Journal of Law and Public Policy* 26, no. 1 (2003): 6. Accessed 11 April 2016 <http://www.yale.edu/lawweb/jbalkin/articles/proliferationoflegaltruth1.pdf>
- Balla, Giacomo and Fortunato Depero. *Ricostruzione futurista dell'universo*. Milano: Direzione del Movimento Futurista, 1915.
- Blake, William. *The Complete Poetry and Prose of William Blake*, edited by D. V. Erdman. Berkeley: University of California Press, 2008.
- Boccioni, Umberto et al. *Pittura Futurista. Il Manifesto Tecnico*. Milano: Uffici di Poesia, 1910.
- Boltanski, Christian. 'An Interview with Georgia Marsh'. In *Reconstitution*, Exhibit Catalogue, Christian Boltanski. London: Whitechapel Art Gallery, 1990.
- Bourget, David. and David J. Chalmers. 'What Do Philosophers Believe?'. *Philosophical Studies* 170, no. 3 (2014): 465-500.

- Brassens, Georges. 'Mourir pour des idées'. Fernande (1972) Philips 6332, 116.
- Daly, Kathleen. 'What is Restorative Justice? Fresh Answers to a Vexed Question'. *Victims & Offenders: An International Journal of Evidence-based Research, Policy, and Practice*, Special Issue: *The Future of Restorative Justice* 11, no. 1 (2016): 21.
- de Aquino, Thomae. *Summa Theologiæ*, Pars 1, Quaestio 16, Articulus 2. Accessed 11 May 2016 <http://www.corpusthomisticum.org/sth1015.html>
- Fowler, Robert L., eds. *Early Greek Mythography*. Oxford: Oxford University Press, 2000.
- Fowler, Robert L. 'Thoughts on myth and religion in early Greek historiography'. *Minerva* 22 (2009): 21-39.
- Joyce, James. *Ulysses*. Oxford: Oxford University Press, 2008.
- Kelsen, Hans. *Pure Theory of Law*. Translated by Max Knight. Berkeley: University of California Press, 1967.
- Krog, Antjie. 'The Parable of the Bicycle'. *Mail & Guardian*, February 7, 1997. Accessed 10 April, 2016 <http://mg.co.za/article/1997-02-07-the-parable-of-the-bicycle>
- Krog, Antjie. *Country of My Skull*. Johannesburg: Random House, 1998.
- Laforgue, Jules. *Mélanges Posthumes*. Paris: Mercure de France, 1903.
- Lyotard, Jean-François. *Le Différend*. Paris: Éditions de Minuit, 1983.
- Marinetti, Filippo. *Zang Tumb Tumb*. Milano: Edizioni Futuriste di Poesia, 1914.
- OED Online*. Oxford University Press, March 2016.
- Russell, Bertrand. *Philosophical Essays*. New York: Simon and Schuster: 1910.
- Schmitt, Carl. *Political Theology: Four Chapters on the Concept of Sovereignty*. Translated by George Schwab. Cambridge, Mass.: MIT Press, 1985.
- The Congo Tribunal. Accessed 13 May 2016 [http://www.the-congo-tribunal.com/wp-content/uploads/2015/05/150424\\_Kongo-Tribunal\\_pess-kit.pdf](http://www.the-congo-tribunal.com/wp-content/uploads/2015/05/150424_Kongo-Tribunal_pess-kit.pdf)

- Truth and Reconciliation Commission. *Truth and Reconciliation Commission of South Africa Report*, vol. 6. Cape Town: Juta & Co, 2003.
- Tutu, Desmond. Ubuntu Women Institute USA (UWIU) with SSIWEL as its first South Sudan Project, (2008). Accessed 20 April 2011 <http://www.ssiwel.org>
- Tutu, Desmond. *No Future Without Forgiveness*. New York: Doubleday, 1999.
- von Ranke, Leopold. 'Preface: Histories of the Latin and Germanic Nations from 1494-1514'. In *The Varieties of History: From Voltaire to the Present*, edited by Fritz Stern. New York: Meridian Books, 1956.

# **Law's Transformative Power: Ideology, Utopia, and Donald Trump**

Stacy Douglas

## **1. Introduction**

The late American Supreme Court Justice Antonin Scalia was a famed 'originalist'. The term, familiar to legal scholars in the United States, refers to an individual who believes that the Constitution should not be interpreted over time to fit a changing social, political, and economic context, but rather that it should always be read as it was written and signed in 1787. Although metaphors such as 'living' and 'growing' normally abound in discussions of constitutional documents, originalists like Scalia believe otherwise: 'The Constitution that I interpret and apply is not living but dead, or as I prefer to call it, enduring. It means today not what current society, much less the court, thinks it ought to mean, but what it meant when it was

adopted.<sup>1</sup> Scalia's fidelity to the past and to an unchanging vision of the legal text, let alone his a-historical vision of American life, begs fascinating questions about law, temporality and symbolism. For the notoriously conservative judge, the text stands as an immutable directive, to which social and historical context matters not. The US Constitution is an unwavering set of commands and protections that echo steadily from the end of the American Revolution onwards. Interpretation, in this program, stems from authorial intent.

This attachment to authenticity – presumed as locatable in both the authors' intentions and the document's assumed unidimensional meaning – is hard for many to swallow. Indeed, it is not uncommon to hear scoffs amongst liberal audiences at what is assumed to be originalists' naiveté, and to feel a palpable disdain for a shallow thinking that refuses to consider historical context in juridical analyses. But this disposition is not isolated to Scalia and other worshippers of the drafters of so-called American democracy. Such loyalty to universally applied interpretive methods can also be found amongst liberal sceptics. Although deploying a different set of devices, the anti-originalist faction understands the Constitution according to its own creed, one that diminishes the authors' intentions and asserts the importance of a socially-situated lens in all adjudicational situations. In both cases, legal scholars, although with opposing positions on the role of social-determination, hold firmly to a

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<sup>1</sup> Antonin Scalia, "God's justice and ours". *First Things: A Journal of Religion, Culture and Public Life*, 123, (2002): 17-21.

belief in universally appropriate and applicable interpretation, authorised by their own convictions. And, in fact, the specificity of these methods may be much closer than anyone would care to admit.

This chapter investigates these competing claims by looking to the election of Donald J. Trump as the United States of America's 45<sup>th</sup> President in November 2016 and his winning campaign promise to 'make America great again'. It seems that Trump's own nostalgia for 'originalism' – both in his populist sloganeering, as well as his Supreme Court nomination to replace the late Scalia – have resonance with a large swath of the American public. While anti-Trump voters ridicule this nationalist sentimentality, its prevailing popularity cannot be denied and, as such, it is deserving of critical investigation. The question for legal scholars is how to understand the power of originalism and its place in theories of transformation. How does the projection of an unmediated text or image of a 'world to return to', undergird these bold political claims?

It is key to remember, however, that such visions of change animate both originalists' and anti-originalists' imaginations. Indeed, both camps, despite their political divergences, often rely on symbolic projection in their philosophies of renewal. While Trump and his supporters use the image of an old (even if mythological) America, his opposition also deploys imagined visions of the future for inspiring and accelerating a world yet-to-come. In both cases, it is symbolic projection of a better world (with subjective content) that lies beneath the ideology. This chapter seeks to poke at this commonly shared visual strategy of transformation to ask whether or not there is

something important at stake in identifying this commonality, and whether there is not something pernicious about the method (not simply the content) itself.

In order to pursue these questions, the chapter explores a popular theory of legal transformation that depends on visual cues as articulated by philosopher Drucilla Cornell. Cornell, who draws on Immanuel Kant in constructing her theory, is wedded to the role of 'moral images of freedom' in creating positive change in the world. For her, it is such images that provide the space for imagined alternatives to oppressive and restrictive law and regulation; it is the imagination that is the source of freedom and, as such, must be protected. Below I trace the capacities and function of the image in Cornell, as it comes from Kant, to show precisely how and why it is so central for her. It is without doubt true that Cornell is an avowed leftist, deeply committed to creating a world that is more just and humane through this theory of transformation, as well as to ethical behaviour and political struggle. However, this chapter wonders at the common use of image and imagination and their symbolic projections for both left- and right-leaning projects. Of course, one could say that it is not the method that is the problem, but the content. Indeed, nostalgic desire to return to an imagined past has long since been the subject of critique by anti-fascist theorists who have witnessed such desires transform into genocidal practices. To be sure, Cornell and others invested in the role of the symbolic are in no way perpetuating such myths.

In his influential text, *The Political Unconscious*, however, theorist Fredric Jameson suggests that the problem

may indeed be the method and not the content. He asks readers to consider the social and historical context of cultural products. He suggests that tropes articulated in one text cannot be easily transposable to other social and historical times. This is because each product contains its own set of historically determined assumptions and codes that cannot be universalised. As such, Jameson asks after the frame or method of interpretation, not only the content, and is one voice that gives us pause when considering the transplantation of the Kantian technique of 'moral images of freedom' from the German philosopher's social and historical context in 1790, to the present day.

I contend that, ultimately, Cornell and Jameson give us varying but competing theories of transformation that rely on symbolic projection and utopian thinking, both of which are illuminating. Especially helpful about their work is that, when juxtaposed, the futility of attempting to pin the problem on merely the content or merely the form is revealed for the empty exercise that it is. This insight is helpful in contemplating both the resonance of contemporary originalism and Trump's populist revival of its derivation via his claim to return America to its lost grandeur. Ultimately, this political development must be understood for both its form and content, and for what it says about the world we live in and the worlds we imagine we want to live in.

## 2. Cornell & the Image

Drucilla Cornell builds on Virginia Woolf's concept of 'a room of one's own' when she employs the 'imaginary



domain'. For Cornell, the imaginary domain 'allows the imagination to roam freely in the safety provided by the acceptance of play as crucial to sexual pleasure'.<sup>2</sup> In other words, the imaginary domain is the psychic space that should be afforded – and guaranteed – to individuals in order for them to attain their somatic and sexual freedom. Cornell is deeply attached to the role of the imagination in her theory of transformation for two reasons. Firstly, because the imagination is where our 'most primordial sexual formations' take shape (both in ourselves and in the images that others have of us). Secondly, the imagination plays a central role in the acting out and performance of our 'sexuate being' as it is moulded and re-moulded throughout our lives. In short, for Cornell, the imagination links to the 'possible field of play within sexual difference' and is, therefore, a key site of individual and collective freedom, and must be defended as a matter of justice.<sup>3</sup> In this way, Cornell is deeply Kantian.

Cornell draws on Kant's last book, *Critique of Judgment*, in her lionisation of the power of the imagination. Kant's third treatise differs from the previous two in that he no longer focuses on the role of rationality but on the capacity of the imagination. Or that, put better, in the arena of aesthetic judgement, reason is shown to be a deficient tool on its own; judgement requires the imagination.<sup>4</sup> Kant

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<sup>2</sup> Drucilla Cornell, *Moral Images of Freedom: A Future for Critical Theory* (New York: Rowman and Littlefield Publishers Inc., 2008), 13.

<sup>3</sup> *Ibid.*, 15

<sup>4</sup> Immanuel Kant *Critique of the Power of Judgment*. (Cambridge: Cambridge University Press, 2000), 29; Cornell, *Moral Images of Freedom: A Future for Critical Theory*, 29.

contends that conceptualisation (i.e., the use of concepts) has no place in aesthetic judgement, and rather that the recognition of beauty comes from subjective feelings. In other words, we do not, Cornell says, know through learned categories that something is beautiful; we *feel* that something is beautiful: 'for Kant, the powerful role of an aesthetic idea is that it activates the spirit and so as to make these great ideas come alive, irreducible to empty abstraction.'<sup>5</sup> <sup>6</sup> But he does not stop there.

Kant further claims that these mere subjective feelings are not quite enough. Once beauty is observed, absent of or without the assistance of previous schematisation, it must be related to a more general or universalisable ideal of beauty that can transcend the merely subjective experience. According to Cornell, 'Kant calls us to form a universalisable ideal of beauty in each one of us as a guidepost for taste even as this ideal must be developed in each one of us independently.'<sup>7</sup> Kant emphasises

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<sup>5</sup> Cornell, *Moral Images of Freedom: A Future for Critical Theory*, 14.

<sup>6</sup> For Kant, understanding and imagination must exist together in free play, therefore I do not mean to suggest that there is no role whatsoever for judgement, but rather that imagination in the determination of feeling plays a bigger role in *Critique of Judgment* than in the earlier texts: "while it is the imagination that produces the schemata that are to be recognised as exhibitions of what is thought in reflected concept, it falls to judgement to recognise the actual fit between apprehended particular and concept. In other words, judgement is required in order to be able to take what is exhibited by the imagination as instantiating what is thought in a concept", Henry E. Allison, *Kant's Theory of Taste: A Reading of the Critique of Judgment*. (Cambridge: Cambridge University Press, 2001), 47. See also Ian Ward, "A Kantian (Re)Turn: Aesthetics, Postmodernism and Law", *Law and Critique* 6, no. 2 (1995): 257-271, 258.

<sup>7</sup> Cornell, *Moral Images of Freedom: A Future for Critical Theory*, 19.

that this universalisable ideal cannot function as a set of rules (for that would create a set of categories for it to accord to, which he explicitly rejects), and that it can only be attained in a second step, after each individual develops their own subjective ideal of beauty.<sup>8</sup> And yet there is a need to develop a communal ideal of beauty, what he refers to as the *sensus communis*. For Kant, the *sensus communis* means ‘the ability to judge by mere feelings in the absence of any conceptual grounds, and to do so universally *in principle*.’<sup>9</sup> This universalisable ideal of beauty wards off entirely subjective aesthetic judgements, which Kant determines as ‘interested’ judgements, and ensures that these ideals are true judgements of taste.<sup>10</sup> For Kant, aesthetic experience offers the possibility of getting out of one’s self and one’s own subjectivity by participating in the experience of judgement, which for him was necessarily outwardly focused, requiring communication and sense-making with others.<sup>11</sup>

But what does all of this have to do with Cornell’s theory of transformation? Cornell contends that human imagination is necessary for conceptualising alternative possibilities. She draws on Kant’s important distinction between actuality and potentiality to elucidate the reasoning behind her investment in aesthetic ideas. But in

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<sup>8</sup> Kant, *Critique of the Power of Judgment*, 166-167; Cornell, *Moral Images of Freedom: A Future for Critical Theory*, 21.

<sup>9</sup> Cristian Nae, “Communicability and Empathy: Sensus Communis and the Idea of the Sublime in Dialogical Aesthetics”, *Proceedings of the European Society for Aesthetics* 2, (2010): 361–385, 373.

<sup>10</sup> *Ibid.*, 373.

<sup>11</sup> Ward, “A Kantian (Re)Turn”, 262.

order to understand the distinction between actuality and potentiality, and the role of the image, Cornell contends that we must first understand the role of the 'schema' in Kant's work.

In his *Critique of Pure Reason*, Kant elucidates his theory of 'schematism' as he explains his theory on the transcendental faculty of judgement. Here Kant argues that schemas are necessary to make sense of the world; schemas provide the conditions for sense to take place. Significantly, this schema is not an 'image' per se, but rather a general way of conceiving of figures in space.<sup>12</sup> Sabhajit Mishra explains that

a schema enables us to form an image of the concept but is not itself an image. An image is particular whereas a schema is universal. If we think of '1', '2', '3', '4', '5' we get an image of number 5. But if we think of number in general by which we can form an image not only of number five but any number whatsoever, we have a schema and not an image<sup>13</sup>

For example, Kant contends that the conception of a dog can conjure up a general idea of a four-footed animal (schema) without pertaining to an exact empirical example of a dog that may exhibit particular features (an image). He claims that,

the image is a product of the empirical faculty of the productive imagination – the schema of sensuous

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<sup>12</sup> Immanuel Kant, *Critique of Pure Reason* (New York: Palgrave MacMillan 2003), 180-187.

<sup>13</sup> Sabhajit Mishra, "Kant's Schematism of Categories", *Indian Philosophical Quarterly* 7, no. 4 (1980): 489-500, 492.

conceptions (of figures in space, for example) is a product, and, as it were, a monogram of the pure imagination a priori, whereby and according to which images first become possible, which, however, can be connected with the conception only mediately by means of the schema which they indicate, and are in themselves never fully adequate to it.<sup>14</sup>

In other words, schemas assist in the production of concepts that then allow us to think and communicate; schemas mediate humans' knowledge of things. As Kant points out here, these schemas are never fully adequate to the thing, but merely provide a framework from which to build upon. These frameworks or schemas draw upon what Kant assumes are universalisable truths that most people experience:

an image cannot render the universality of a concept possible. It is the schema which does so. Since schema is a rule by which different images are constructed it can realise all the possibilities that a concept (e.g., that of a triangle) may have (whether it is right angled or obtuse angled). An image on the other hand, can realise only one of those possibilities.<sup>15</sup>

In her *Lectures on Kant's Political Philosophy*, Hannah Arendt explains the importance of Kant's philosophy of

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<sup>14</sup> Kant, *Critique of Pure Reason*, 183.

<sup>15</sup> Mishra, *Kant's Schematism of Categories*, 492. Mishra summarises succinctly: "...a schema is a universal procedure of producing objects i.e. images of different kinds. According to Kant, there are three things – concept, schema, and image. It is by means of *schema* that we get the *image* of the *concept*" (ibid., 492 (emphasis mine)). However, there is some debate about this. For an explication of Kant's own murky distinctions between schema, concept, and image, especially regarding whether or not the schema is particular or universal, see ibid., 494-495.

schematism for his ideas of communication and understanding:

What makes particulars communicable is (a) that in perceiving a particular we have in the back of our minds (or in the 'depths of our souls') a 'schema' whose 'shape' is characteristic of many such particulars and (b) that this schematic shape is in the back of the minds of many different people. These schematic shapes are products of the imagination although 'no scheme can ever be brought into any image whatsoever'. All single agreements or disagreements presuppose that we, who are many, agree, come together, on something that is one and the same for us all.<sup>16</sup>

Arendt's summary highlights the way in which Kant's schemas incline towards universalism. However, what both Kant's and Arendt's quotes above point to, is that his endorsement of universalism comes as a result of his prolonged attempt to explain how humans come to know the world. What Kant is explaining is what the empiricists of his time such as Locke and Hume failed to address – humans' increased capacity to move and think in the world as a result of transcendental schematic arrangements.<sup>17</sup> To return to the example of the dog, schemas

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<sup>16</sup> Hannah Arendt, *Lectures on Kant's Political Philosophy* (Chicago: University of Chicago Press 1982), 83.

<sup>17</sup> For example, as Professor Daniel Robinson claims in his lectures on Kant's *Critique of Pure Reason*, when we wake up in the morning to find that our car will not start, we do not immediately think that the laws of the internal combustion have ceased to be in operation. Rather, we presume that our car, and our car only, is broken. We are inclined to think that there is something wrong with *it*, rather than assume the failure of the universe in some more general way. D.N. Robinson, "Just What is Kant's Project?" Lecture One on Kant's *Critique of Pure Reason*" (Faculty of Philosophy, Oxford University 2011): 35".

allow us to think with broad categories of meaning that, in turn, allow us to communicate to each other. These schemas in turn allow humans to make judgements in the world. Without such schemas, we cannot experience phenomena.

Cornell turns to the work of Ernst Cassirer for further elucidation of the power of imagination in her theory of transformation. Cassirer took up Kant's thought on schema, but made an important addition, according to Cornell. For Cassirer, as he elaborates in his four-volume text *The Philosophy of Symbolic Forms*, language itself is a schema. Moreover, not only does language, as a set of symbolic forms, allow us to understand the world; it also crucially allows us to conceive of alternative possibilities to the world as it is presented to us. In other words, language – as a schema – does not just make possible representation through concepts and images but also, and simultaneously, it 'abstract[s] from the reality which [it] seek[s] to represent';<sup>18</sup> language is 'a means to new knowledge *and* indeed allows us to disclose new worlds.'<sup>19</sup> Elaborating on Kant's 'as-if' of the imagination, Cassirer tells us that symbolism always allows for more than just simple representation of actuality; it serves a double-function of serving as a platform for the possibility of understanding, but also as a platform for revealing alternative possibilities of meaning. Cornell explicates Cassirer's thought by drawing on scientific hypothesis and political theory

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<sup>18</sup> Cornell, *Moral Images of Freedom: A Future for Critical Theory*, 14.

<sup>19</sup> *Ibid.*, 85.

that turns on this 'as-if conjectural reasoning'.<sup>20</sup> Both experiments rely on the imaginative technique that allows humans to distinguish between actual and possible objects and is common practice in imagining alternative worlds. For example, 'Cassirer's analysis of Rousseau's famous state of nature defends this state of nature as an imagined object used by Rousseau to vivify what is wrong with the France of the Third Estate' (Cornell 2008, 90). For Rousseau, as for Trump and Cornell, it is the juxtaposition between what is and what could be that creates the platform for imagining alternatives and, thereby, creating change.

This distinction between actuality and possibility, made by Kant and emphasised by Cassirer, is key to Cornell's endorsement of 'moral images of freedom'. For Cornell, this philosophical insight is what authorises a belief in the power of symbolic projection and an attendant investment in imagining otherwise. It is what allows her to be optimistic about the future; for her, the only thing we can be certain of is that we do not know what the future holds.<sup>21</sup> For some, this may sound like a descent into idealism, the worst kind of mind-over-matter thinking materialist Marxists have famously rejected. But Cornell is quick to point out that the distinction between symbolism and materialism is false and that it fails to recognise that materiality is also symbolic.<sup>22</sup> For Cornell, drawing

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<sup>20</sup> *Ibid.*, 89.

<sup>21</sup> *Ibid.*, 33.

<sup>22</sup> Cornell elaborates on Cassirer's rejection of the presumed dualism between symbolism and materialism: "All material reality is always grasped by human beings as always already symbolised. Capital, as



deeply on Cassirer, all phenomena are inextricable from symbolic form. This does not mean that she believes all transformation will come from imagining otherwise. Indeed, she is clear that political struggle and ethical commitment (and she does not shy away from a long history of armed anti-colonial and proletarian struggle) are necessary for change.<sup>23</sup> However, it is symbolic projection, which stems from the philosophy of Kant and Cassirer, that undergirds her commitment to the power of the imagination in changing the world. The question this text seeks to ask is whether such a theory of transformation is always, or universally, relevant and mobilisable.

### 3. The Form of Ideology (Or an Introduction to Jameson)

Cultural theorist Fredric Jameson famously argues that reading and criticism cannot take place in an historical vacuum. Rather, all writing and reading is contingent on the social and historical context in which it takes place: ‘our readings of the past are vitally dependent on our experience of the present, and in particular on the structural peculiarities of what is sometimes called the *société de consommation*’.<sup>24</sup> So for Jameson, contemporary read-

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a symbolic form of life, can only be replaced by another symbolic form of life. This is the significance of Cassirer’s insight that there is no material and ideal dualism for human beings; our material forms of life are always also symbolic”. Ibid.,90.

<sup>23</sup> Cornell, *Moral Images of Freedom: A Future for Critical Theory*, 90.

<sup>24</sup> The “*société de consommation*” is translated in English as “consumer society”. Fredric Jameson, *The Political Unconscious: Narrative as a Socially Symbolic Act*. (London: Routledge, 1981), xi.

ing and writing is deeply influenced by the categories of thinking and horizon of possibilities that correspond with the early twenty-first century and its emphasis on consumerism, and institutionalised liberal-capitalist democracy. But his critique is not limited to the contemporary moment – for him, the historical and social relevance of time and context is important no matter what epoch you are reading or writing in.

Jameson's insight has great import for intellectuals of all sorts. Through his historical analysis of cultural producers from Honoré de Balzac to Joseph Conrad, he demonstrates that the central themes and tropes of these works are historically contingent; they are not 'the result of purely philosophic choices or options in the void, but are objectively determined'.<sup>25</sup> He takes aim at any universalising theory of critique – whether it be psychoanalytic or a crude economical approach – and argues that each suppresses its own historical contingency. He claims that '...in its generic form, a specific narrative paradigm continues to emit its ideological signals long after its original content has become historically obsolete'.<sup>26</sup> Jameson insists then that we must always historicise the cultural products we read, as well as the interpretive devices we use contemporarily, to understand them not as objective, but as products of their time.<sup>27</sup> In this way, Jameson does

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<sup>25</sup> *Ibid.*, 96.

<sup>26</sup> *Ibid.*, 174.

<sup>27</sup> *Ibid.*, ix.

Importantly, Jameson is not suggesting that all cultural texts are simply products of class domination at any one particular time, nor that this is an accurate understanding of a traditional Marxist analysis. He critiques Marshall Sahlins on this point who, according to

promote a universal theory of interpretation – historical analysis.<sup>28</sup>

Jameson's insight begs a question of Kant's, and by association Cornell's, theory of transformation. Can we say that symbolic projection works the same way across social and political context and throughout history? Does the power of the imagination in visualising change function similarly today as it did in 1790? Certainly, there have been many critiques of Kant's turn to subjective, and away from objective, experience in his third book. Notably, Hans-Georg Gadamer and Hannah Arendt claim that Kant's *Critique of Judgment* radically transforms his project from one of seeking out universal values to one of particularity. As Ian Ward explains,

By encouraging the pure subjectivity of individuality, and the total unrestricted 'free play of imagination and understanding', he [Kant] placed the supremacy of freedom above all else, and granted it its own powers of structure. The pure *a priori* principle existed in its most acutely and purely subjective form, and

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Jameson, suggests as much. Jameson responds: "Sahlins is untroubled by the paradox that Marx himself reserved his most brilliant polemic onslaughts for the classical form taken by an instrumental theory of culture in his own time, namely utilitarianism". Jameson, *The Political Unconscious*, 272. For Jameson's further opposition to the hegemony of "materialist critique" (as the new *German Ideology*) see Robert, Kauffman, "Red Kant, or the Persistence of the Third 'Critique' in Adorno and Jameson". *Critical Inquiry* 26, no. 4 (2000): 682-724, 705; and Hayden White, "Getting Out of History". *Diacritics*, 12 no. 3 (1982): 2-13, 4.

<sup>28</sup> For other commentary on this seeming paradox and how Jameson gets around it, see Geoff Bennington, "Not Yet." *Diacritics* 12 (1982): 23-32, 24; White, "Getting Out of History", 5; and Jerry Aline Flieger, "The Prison-House of Ideology: Critic as Inmate". *Diacritics* 12. No 3. (1982): 47-56, 51.

as Gadamer emphasised, Kant thus opened the door to ever more acute relativism in subsequent critical philosophy.<sup>29</sup>

But this criticism is not exactly that of Jameson's. Rather, Jameson emphasises that reading Kant today necessarily involves the transposal and projection of contemporary lenses of morality, politics, and other conceptual understandings. So while Kant's work, according to more acutely Marxist critics, takes after the Young Hegelians and their 'commitment to critical consciousness as the engine of history' up against the Marxist imperative that revolution is the engine of history, Jameson's insight is that, regardless, Kant's contributions cannot simply be translated from the late eighteenth century to today.<sup>30</sup> To make such an interpretive leap is to perpetuate what he calls 'liberal ideologies' and 'their functional utility in the repression of the social and the historical, and in the perpetuation of some timeless and ahistorical view of human life and social relations.'<sup>31</sup> But does this mean that Jameson is saying that there is no room for the role of symbolic projection in transformative change? If so, how else does one so committed to the role of cultural production envision a project of transformation?

Jameson claims that these cultural products need to be read and re-written in a way that exposes their social and historical contingencies. For example, with regards

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<sup>29</sup> Ward, *A Kantian (Re)Turn: Aesthetics, Postmodernism and Law*, 262.

<sup>30</sup> Kauffman, "Red Kant", 692.

<sup>31</sup> Fredric Jameson, Leonard Green, Jonathan Culler and Richard Klein, eds., "Interview: Fredric Jameson". *Diacritics* 12 no. 3 (1982): 72-91, 72.

to psychoanalysis, Jameson explicates how its historical situation, rather than universal supposition, might be revealed: 'the conditions of possibility of psychoanalysis become visible, one would imagine, only when you begin to appreciate the extent of psychic fragmentation since the beginnings of capitalism, with its systematic quantification and rationalisation of experience, its instrumental reorganisation of the subject just as much as of the outside world'.<sup>32</sup> This is the dialectic element of his argument. However, such revelation cannot be experienced by a sole individual subject, because they too will always already be a product of their social and historical conditioning. Jameson compares the individual to the analysand, never fully able to reach pure lucidity of their unconscious. In order to reach such clarity of thought, what is needed is a painful confrontation with a transcendent force, external to individual consciousness, able to expose the historical reality in which the individuals find themselves. For Jameson this transcendental could come in the form of 'a collective unity – whether that of a particular class, the proletariat, or of its 'organ of consciousness,' the revolutionary party'.<sup>33</sup> It is a painful confrontation because it is engaged in a 'decentering' or displacement of the centrality of the individual consciousness and an opening up to an 'unpleasant reflexivity'.<sup>34</sup>

Jameson does not simply dismiss cultural products, even when they are formations of particular contexts,

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<sup>32</sup> Ibid., 47.

<sup>33</sup> Jameson, *The Political Unconscious*, 273-274.

<sup>34</sup> Ibid., 274.

as merely 'ideological'. He productively finds that their hidden ideological element only has legs in so far as it is accompanied by allusions to utopian thinking. In this way, Jameson holds strongly to an advanced conception of agency, one that gives subjects credit for willingly and optimistically participating in their own management. Against the doctrine of mere 'false consciousness', and along with theorists such as Ernst Bloch, he claims that what is happening is not just

... inscribing the appropriate attitudes upon a blank slate, but must necessarily involve a complex strategy of rhetorical persuasion in which substantial incentives are offered for ideological adherence. We will say that such incentives ... are necessarily Utopian in nature.<sup>35</sup>

In other words, for Jameson, ideology is always combined with utopianism, and this is not necessarily a good or a bad thing. For him, we must not deny the 'co-existence of different functions' in a cultural product; ideology and utopian thinking can be divergent and yet occur together.<sup>36</sup> But it is also key to note that for Jameson, utopianism is not necessarily only a product for the left or the right but is always a product of a yearning for collective unity; utopianism is not the formation of the collective *per se* but, rather, the images that animate its imagined togetherness. He claims that:

...even hegemonic or ruling-class culture and ideology are Utopian, not in spite of their instrumental

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<sup>35</sup> Ibid., 278.

<sup>36</sup> Jameson, *The Political Unconscious*, 279.

function to secure and perpetuate class privilege and power, but rather precisely because that function is also in and of itself the affirmation of collective solidarity.<sup>37</sup>

But this does not mean he sees utopian thinking as a thoughtless or irrelevant strategy. He takes it up, especially in later work, as a key potential tool for imagining otherwise, not unlike Cornell's use of Kant's 'moral images of freedom'. The key difference between the two strategies, however, is that where Cornell and Kant see their theory of transformation as universalisable, Jameson insists that all such imaginations are always a product of their social and political context. So utopian thinking itself, regardless of when or where it is conceived, will always 'reflect a specific class-historical standpoint or perspective'.<sup>38</sup> He works against the universalising tendency to treat utopian thinking as if it can be free from such constraints, as if it can rise 'above all immediate determinations in some all-embracing resolution of every imaginable evil and misery of our own fallen society and reality'.<sup>39</sup> And this contextual understanding of utopia is important because it is this context that provides the key to truly transformative change. Rather than merely imagining a better future, as in Cornell and Kant, he insists that the power of utopian-thinking lies in its suffocation in the present moment. In other words, it is its failure that provides hope. Impotence

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<sup>37</sup> Ibid., 281.

<sup>38</sup> Fredric Jameson, "The Politics of Utopia". *New Left Review* no. 25 (2004): 35-54, 47.

<sup>39</sup> Ibid.

of the imagination in a system that seems impossible to change reveals the ideological context within which we live; it reminds us of the social and historical box we find our thinking confined by. Utopia

...is most authentic when we cannot imagine it. Its function lies not in helping us to imagine a better future but rather in demonstrating our utter incapacity to imagine such a future—our imprisonment in a non-utopian present without historicity or futurity—so as to reveal the ideological closure of the system in which we are somehow trapped and confined.<sup>40</sup>

Whereas Cornell uses Rousseau to expound on the transformative moment between imagining what is and what might be (or in a more Kantian formulation, what is and what ought to be), Jameson uses Rousseau's insights to emphasise the importance of the gap between understanding that the world can and is changing, but the system that organises it cannot; utopias occur in these times of frustration.<sup>41</sup> In other words, it is not the positive possibility of the thinking that is the engine for change, but rather its negation; in the negation, the ideological context of the system is exposed.<sup>42</sup> However, the potential for change is not impossible; transformation is a reality that can come about and be inspired by utopian thinking. Even though such visions are not yet realised, this does not mean that they are non-existent: 'utopias in fact come

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<sup>40</sup> Jameson, "The Politics of Utopia", 46.

<sup>41</sup> *Ibid.*, 45.

<sup>42</sup> *Ibid.*, 50.



to us as barely audible messages from a future that may never come into being.<sup>43</sup>

The power of Jameson's contributions comes from his contention that ideology and utopia cannot be separated. This reminds us that, when we think along with Kant, we do not only need to acknowledge the social and historical context that the German philosopher was writing within, but also that any critique of his work as merely 'ideological' must also observe the utopian elements of his work. The same follows with Cornell's theory of transformation. It is not that law is simply an instrument of class oppression but, on the other hand, utopian thinking cannot merely subscribe to the theory of transformation through moral images of freedom. Rather, it is through a frustrated thinking of change, one that recognises that transformation cannot happen through existing juridical institutions, that utopian thinking occurs.<sup>44</sup> Whether or not that leads to change is not certain, but these are the conditions for utopian thinking, according to Jameson.

#### 4. Images of Utopia

Both Cornell and Jameson deploy theories of symbolic projection in their competing theories of transformation. Cornell draws on Kant and Cassirer to contend that images of alternative possibilities have the power to grant us freedom to imagine otherwise, to think a different future and then realise it. Jameson argues that it is

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<sup>43</sup> Ibid., 54.

<sup>44</sup> Jameson, *The Political Unconscious*, 288.

not the fulfilled wish fantasies of such projections that stimulate change but, rather, their butting up against and subsequent revelation of a social and historical context and its attendant ideological trappings. As Kathi Weeks eloquently summarises, Jameson's 'signature contribution to utopian studies involves a shift in focus from the positive content of a utopian vision to its negative function of producing an estrangement from and neutralisation of the present order of things'<sup>45</sup> Certainly, for Jameson, it is still necessary to imagine change, but such visions cannot take on a positive, generalisable form – they must be keenly aware of the class composition and context under which they are imagined, for it is this that stifles transformation and this that must be understood and overcome for change to happen.

Up until now the focus of my engagement with the visual has largely relied on the use of image and imagination in these competing theories of transformation. But, without counteracting Cornell and Cassirer's insistence on the inherent relationship between symbolism and materialism, I want to briefly turn to some more concrete visual incarnations of Trump's project to 'make America great again'. These cues cannot be disassociated from the popular rhetoric; these symbols are what instantiate the grip of the discourse on the collective imagination. They are necessary for the power of Trump and his claims. However, the anti-Trump camp has visual cues of its own. These

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<sup>45</sup> Kathi Weeks "Utopian Therapy: Work, Nonwork, and the Political Imagination," in *An American Utopia: Dual Power and the Universal Army*, Slavoj Zizek, ed. 243-266. (London: Verso. 2016), 245.

competing displays of visuality underscore my claim that both form and content are imperative to consider in theories of transformation, and that neither can be merely translated as universals, or reduced solely to their socio-historical context.

One of the most prominent symbols of the Trump campaign and presidency is the red ‘Make America Great Again’ hat. This visual symbol, adorning the heads of Trump supporters across the United States, uses an all uppercase white embroidered declaration in what looks like Times New Roman font to communicate to those who witness it, in no uncertain terms, the ‘America first’ politics of the person whose head it sits on.<sup>46</sup> Trump’s own website features the hat, declaring that ‘the hat became his symbol’, along with a short video about the proud American workers that make them.<sup>47</sup>

This popular hat may be contrasted with another one, the counter-symbol to Trump’s jingoistic chapeau: the pink knitted ‘pussyhats’ of the national Women’s March that took place in Washington, DC in protest of Trump and his policies, on 21 January 2017, the day after his inauguration. Using the reclamation of production and colour popularly associated with women, marchers knitted, crocheted, and sewed pink hats (the patterns for

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<sup>46</sup> This was a slogan deployed by Trump on his inauguration day and has since found a home in the title of his approach to foreign affairs. For a full transcript of his speech from 20 January 2017 see Cao 2017. To read the “America First Foreign Policy” see. “America First Foreign Policy”, Accessed 25 April, 2017: <https://www.whitehouse.gov/america-first-foreign-policy>.

<sup>47</sup> “Donald J. Trump”, Accessed 25 April, 2017m <https://www.donaldjtrump.com/2017>.

which were widely disseminated via the internet) that included two small ears to make the wearer resemble a cat or kitten.<sup>48</sup> The cat theme was part of the marchers' claim that 'pussies grab back', a retort to the Fall 2016 scandal that revealed a previously audio-recorded conversation in which Trump boasted that he could grab women 'by the pussy' without their consent.<sup>49</sup> But the central aim of the Pussyhat Project was to make 'a powerful visual statement' by having 'a sea of pink' descend on DC (Pussyhat Project). And indeed, this fuchsia-inspired visual reply to Trump's red snap-back was popularised in journalistic photos of the march, and appeared on the cover of *Time* Magazine as well as the *New Yorker* the following week.<sup>50</sup>

It is imperative to consider Trump's red baseball cap in the context of Jameson's critique of universalism. With this visual symbol, Trump – like Cornell, Kant, and Rousseau – wants to pull on the positive imaginative possibilities of the electorate by encouraging them to imagine something better. While the slogan is the key part of this approach, it is given visual instantiation via the hat. A person wearing the hat tells others, not only what their individual politics are, but also that they are

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<sup>48</sup> The knit pattern was originally designed by Kat Coyle, "Pussyhat Project", Accessed 25 April, 2017. <https://www.pussyhatproject.com/faq/>.

<sup>49</sup> According to the Pussy Hat Project website, the hats are also about reclaiming the term as an empowering one: "We love the clever wordplay of 'pussyhat' and 'pussycat,' but yes, 'pussy' is also a derogatory term for female genitalia. We chose this loaded word for our project because we want to reclaim the term as a means of empowerment" (ibid.).

<sup>50</sup> The hat was featured on the cover of *Time* Magazine on Thursday 26 January 2017 and the *New Yorker* on Friday 27 January 2017.

part of a larger movement of hat-wearers. Furthermore, the hat embodies Trump's rhetoric of 'America first' as it proudly dons the stamp 'Made in the USA' on its reverse. The video on Trump's website works hard to embolden this narrative, showing labourers working happily in the hat-making factory, sharing their enthusiasm for Trump's fulfillment of his campaign promise to bring manual labour back to the USA.

And the Pussyhat is not dissimilar. Like the Trump hat, it too serves as a visual cue for observers; those who don the Pussyhat mark themselves as individuals with a particular politic, and as members of a group with a distinct political affiliation. While it does not use Times New Roman to communicate a central slogan, it too mobilises a visual aesthetic. Up and against the factory-made sheen of a generic baseball cap, the pink headwear communicates clear affinities to DIY, anti-corporate, grassroots and feminist principles. Indeed, the popular sharing of the knit pattern, which also allows for individual customisation, is part of the anti-centralisation politics of the Pussyhat Project: 'Part of the joy of the project is connecting to other women and men who support women's rights in a fresh surprising and warm way'. The Pussyhat Project sees their strategy as a caring, empathetic and collective, opposition to Trump-supporting Republicans. But aside from the content, the pink retort to Trump's red works similarly – in their fundamental form, both hats function as an image of universal appeal, with the aim of encapsulating an imagination (via a material symbol) that promotes and prompts transformation. Much like Rousseau's third estate, the hats act as a symbolic gesture to conjure

up and expose a gap between what is and what ought to be, whether that be for the left or the right.

Further, Jameson reminds us that these symbols cannot be removed from their socio-historical context. For example, the red MAGA hat tells a formidable lie about the possibility of revitalising a manufacturing industry in contemporary America. Yet economists have emphasised that the decline in this sector of employment is not primarily the fault of international trade epitomised in the rally cries against the amorphous spectre of 'China', but rather automation. Jobs once held by workers in factories have been increasingly transferred to robots that can complete the work more quickly and for less expense to the employer.<sup>51</sup> As these jobs have disappeared – at an incredible rate of approximately 5.5 million from 2000-2010 – similar paying jobs in other sectors have not opened up, leading to a rise in employment in the service sector industry, which is typically non-unionised and paid significantly less (Muro 2016). And perhaps most telling that this industry is not going to bounce back under Trump's 'America First' policies, is the fact that, during this time of great decrease in employment for the Rust Belt, American manufacturing has actually increased, becoming a more productive sector with a decreased and less expensive labour force.<sup>52</sup>

And, the Pussyhat Project too may be in danger of forgetting its socio-historical conditions. Combining

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<sup>51</sup> Federica Cocco, "Most US manufacturing jobs lost to technology, not trade". *Financial Times* (2 December 2016).

<sup>52</sup> Mark Muro, "Manufacturing Jobs Aren't Coming Back". *Technology Review* (18 Nov 2016).

organisational forces with the National Women's March, the hats and the march sought to demonstrate a collective unity of resistance to the new Trump Administration, but also to catch the attention of representatives of Congress in order to steer their agendas towards social and environmental justice.<sup>53</sup> Although the organising slogans of the approximately 500,000 marchers were clearly diverse, ranging from Indigenous sovereignty to anti-capitalism, the aim of the event mobilised the logic of that aim and correlates representation with democracy, part and parcel of the existing US political machinery. While organising around visibility and increased representation certainly has merit, the march has the danger of serving as a one-off event that sees its aim only as sending an anti-Trump message about personal freedoms for women. Even as Jodi Dean emphasises the power of the crowd to disrupt, she remarks: 'people must self-consciously assemble themselves in settings not determined by capital and the state [...] The challenge consists in changing political actions into political power.'<sup>54</sup> Organisers and participants may see the hats as symbols of hope and struggle, but, ultimately, the pink hats may function much like their myth-promoting rivals if they are not understood within their socio-historical context – a context that has seen the rise of a left increasingly oriented to fragmented individualism, with minimal attention to the sustained governmental attack on unions (a former force in

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<sup>53</sup> "Women's March". Accessed 25 April, 2017: <https://www.womensmarch.com/>.

<sup>54</sup> Jodi Dean, *Crowds and Party* (New York: Verso 2016), 22.

fighting for socio-economic change), as well as the axing of socio-economically-oriented programs such as affordable housing, healthcare, food, and other socially necessary subsidies, since the mid-1970s.<sup>55</sup> As Jameson himself claims, even more sustained and organised movements like Occupy have emerged as *a result of this failure of the left to combat these rollbacks*, but this reality is oft forgot.<sup>56</sup>

Perhaps most importantly, however, both visual cues have failed to operationalise the kind of negative dialectic that Jameson claims is crucial for transformation. Although both hats embody – and arguably help foster – frustration with the current political situation, this anger has been so far translated by optical managers into an endorsement of the existing capitalist democracy of the USA and its two-party system. If you are vexed at the loss of manufacturing in the nation and, as a result, feel threatened when you see immigrants and people of colour with jobs, turn your anger towards the representative candidate of the right – get a hat and vote for Trump. If you are shocked and dismayed at the popular acceptance of misogyny, racism, islamophobia, and climate change denying – as evidenced in the election of Donald Trump – don your Pussyhat to show your repudiation of the new President. This is not to suggest that there is no political merit in marching, but that ‘the task of utopianism today

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<sup>55</sup> Jefferson Cowie, *Stayin' Alive: The 1970s and the Last Days of the Working Class* (New York: The New York Press 2010), 68-74; Dean, *Crowds and Party*, 31-50; Rick Wolff, “Organized labor’s decline in the US is well-known. But what drove it?”. *The Guardian* (2 Sep 2013).

<sup>56</sup> Fredric Jameson, *An American Utopia: Dual Power and the Universal Army* (London: Verso 2016), 42.



[may be] rather to propose more elaborated versions of an alternate social system than simply to argue the need for one.<sup>57</sup> Neither symbol forces an estrangement with the existing political-legal institutional reality via an exposure of the class composition of their context, which might allow for the ideological conditions of the present state of things to be exposed; instead, both rely on the Kantian-inspired deployment of the positive image and its role as a catalyst for transformation.

### 5. A Return to Originalism

As outlined in the introduction, what is interesting about originalism is not the presumed backwardness of its promoters, but rather the theory of transformation that lies behind it, which is also shared by liberal leftists who presume themselves radically distanced to such thinking. Indeed, both project future images of a better world in order to animate and organise their movements. I asked at the outset if the problem was the content of such imagery or in fact the very form. What I have attempted to show is that it is neither, or, rather, that it is both. Here Jameson's contention about the inseparability of ideology and utopia for both the left and the right gives important insight to understanding the commonly held theory of transformation between the two opposing camps. We can understand the call to 'make America great again' as one both steeped in a social and historical ideological context

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<sup>57</sup> *Ibid.*, 43.

of neo-liberalism that also deploys utopian thinking in amassing an imagined collective unity of disenfranchised citizens excluded from 'Washington,' as the campaign rhetoric goes. But we can also analyse Cornell's 'moral images of freedom' as part and parcel of a liberal democratic philosophy that presumes the centrality of the individual subject and its powers of imagination and rationality that sit over and above any class-influenced position. Such symbolic projection pulls on hopeful imaginations of and for bourgeois freedom. In both theories, the ideological and utopian elements cannot be disentangled from each other. In addition, Jameson's focus on the negative potential of utopian thinking, up and against Cornell's holdout for the positive, tells us that both the content *and* the form of the theory of transformation must be considered in its context in order to reveal the ways in which this context shapes and moulds visions of what is possible.

Originalism postulates an immanent relationship with the Constitution. Somewhat similarly, the theory of legal transformation that Cornell relies on displays a belief in an immanent relationship between the self and its historical conditions; it presumes that there is no disjuncture between the two, that moral images of freedom can be accessed by the individual's imagination, unmediated by class-position or class-forces. In contrast, Jameson promotes the role of the transcendental in the necessary revelation between individual subject and the non-ideological reality of their social and historical conditions. Jameson's position corresponds with traditional anti-originalist thought that contends that all juridical reasoning must be

keenly cognisant of context. My intention is not to say that one theory supersedes the other, but rather to point to the differing positions on the role of symbolic projection and utopian thinking in theories of transformation. As the Trump administration embarks on what is a very troubling path to restoring what conservatives imagine as America's lost greatness, it is important to remember that it is not necessarily merely the form or the content of the claims that require analysis – but both. It is not merely allusions to a great return or restoration that must put us on alert, but also the practice of symbolic projection itself. We must also understand that this isolationist and xenophobic rhetoric is not merely ideology, but also utopian in its thinking – the right, just as much as the left, can engage in exercises of imagining collective identity that fulfil these fantasies and encourage ideological adherence. Moreover, it is not only positive utopian thinking that may serve as a helpful tool in comprehending the situation we find ourselves in, but also – and perhaps especially – negative utopian thinking that reveals the limits of what is possible and what we imagine to be possible in the current moment.

## References

- Allison, Henry E. *Kant's Theory of Taste: A Reading of the Critique of Judgment*. Cambridge: Cambridge University Press, 2001.
- Arendt, Hannah. *Lectures on Kant's Political Philosophy*. Chicago: University of Chicago Press, 1982.
- Bennington, Geoff. 'Not Yet.' *Diacritics* 12 (1982): 23–32.

- Cao, Rachel. 'Read President Trump's full, blistering inaugural speech, attacking Washington, promising 'America first''. *CNBC*. 20 January 2017. Accessed 25 April 2017: <http://www.cnn.com/2017/01/20/transcript-of-president-trumps-inauguration-speech.html>.
- Cocco, Federica. 'Most US manufacturing jobs lost to technology, not trade'. *Financial Times*. 2 December 2016. Accessed 25 April 2017: <https://www.ft.com/content/dec677c0-b7e6-11e6-ba85-95d1533d9a62>.
- Cornell, Drucilla. *Moral Images of Freedom: A Future for Critical Theory*. New York: Rowman and Littlefield Publishers Inc, 2008.
- Cowie, Jefferson. *Stayin' Alive: The 1970s and the Last Days of the Working Class*. New York: The New York Press, 2010.
- Dean, Jodi. *Crowds and Party*. New York: Verso, 2016.
- Flieger, Jerry Aline. 'The Prison-House of Ideology: Critic as Inmate'. *Diacritics* 12. No 3. (1982): 47-56.
- Jameson, Fredric, Leonard Green, Jonathan Culler and Richard Klein. 1982. 'Interview: Fredric Jameson'. *Diacritics* 12, no. 3 (1982): 72-91.
- Jameson, Fredric. *The Political Unconscious: Narrative as a Socially Symbolic Act*. London: Routledge, 1981.
- Jameson, Fredric. 'The Politics of Utopia'. *New Left Review* 25 (2004): January-February: 35-54.
- Jameson, Fredric. *An American Utopia: Dual Power and the Universal Army*. London: Verso, 2016.
- Kant, Immanuel. *The Critique of Pure Reason*. New York: Palgrave MacMillan, 2003.
- Kant, Immanuel. *The Critique of the Power of Judgment*. Cambridge: Cambridge University Press, 2000.
- Kauffman, Robert. 'Red Kant, or the Persistence of the Third 'Critique' in Adorno and Jameson'. *Critical Inquiry* 26, no.4 (2000): 682-724
- Matherne, Samantha. 'Kant and the Art of Schematism'. *Kantian Review* 19, no. 2 (2014): 181-205.

- Mishra, Sabhajit. 'Kant's Schematism of Categories.' *Indian Philosophical Quarterly* 7, no. 4 (1980): 489-500.
- Muro, Mark. Manufacturing Jobs Aren't Coming Back. *Technology Review*. 18 November (2016) Accessed 25 April 2017: <https://www.technologyreview.com/s/602869/manufacturing-jobs-arent-coming-back/>.
- Nae, Cristian. 'Communicability and Empathy: Sensus Communis and the Idea of the Sublime in Dialogical Aesthetics,' *Proceedings of the European Society for Aesthetics* 2 (2010): 361-385
- Robinson, D. N. 'Just What is Kant's Project?' Lecture One on Kant's *Critique of Pure Reason*' (2011) Faculty of Philosophy, Oxford University. Accessed at [http://www.philosophy.ox.ac.uk/podcasts/kants\\_critique\\_of\\_pure\\_reason](http://www.philosophy.ox.ac.uk/podcasts/kants_critique_of_pure_reason).
- Scalia, Antonin. 'God's Justice and Ours.' *First Things: A Journal of Religion, Culture and Public Life*, 123 (May) 2002: 17-21. Accessible at: <https://www.firstthings.com/article/2002/05/gods-justice-and-ours>.
- Ward, Ian. 'A Kantian (Re)Turn: Aesthetics, Postmodernism and Law.' *Law and Critique* 6 no. 2 (1995): 257-271.
- Weeks, Kathi. 'Utopian Therapy: Work, Nonwork, and the Political Imagination.' In *An American Utopia: Dual Power and the Universal Army*, edited by Slavoj Žižek, 243-266. London: Verso, 2016.
- White, Hayden. 'Getting Out of History.' *Diacritics* 12 no. 3 (1982): 2-13.
- Wolff, Rick. 'Organized labor's decline in the US is well-known. But what drove it?.' *The Guardian*. 2 September (2013) Accessed 25 April 2017: <https://www.theguardian.com/commentisfree/2013/sep/02/labor-unions-decline-can-turnaround>.

# **The Blindness of Justice: An Iconographic Dialogue between Art and Law**

Marcílio Franca<sup>1</sup>

*'Law without symbols is sad,  
and life flees the barren grounds of sadness.'*

Ruy de Albuquerque

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## 1. Introduction

This essay seeks to listen to the *'muta eloquentia'* of visual arts, in a very specific field, namely, the plastic discourse on the eyes, the blindness and the blindfold of justice – 'the most enigmatic feature of justice'<sup>2</sup> – throughout the last centuries of western art history. Why, over the centuries, has the goddess of justice been so often depicted with eyes open, with eyes closed, with blindfolds, without blindfolds...? What does that mean? What is the reason for these changes? These are the central issues of this text. Images shape powers, knowledge and invisible arguments, making present all which is many times absent<sup>3</sup> – above all in those historical times when printed language was still not available to diffuse ideas.<sup>4</sup> Therefore, the immediate objective of this text is to better understand law and better understand the art that speaks of law.

Many are the juridical themes apprehended by visual arts. Although this writing concentrates merely on the visual representations of justice – or, more precisely, on just one element (the blindfold) of the very same representations –, themes such as law, trials, sentences, courts, judges, lawyers, codes, treaties, juridical institutions or legislators have always been profusely found in arts in general and especially in visual arts. By electing the iconography of justice as an object of investigation,

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<sup>2</sup> Christian-Nils Robert, *Une Allégorie parfaite: La Justice: vertu, courtisane et bourreau* (Genève: Georg, 1993), 13.

<sup>3</sup> Lynda Nead and Costas Douzinas, *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago, Ill.; London: University of Chicago Press, 1999), 37.

<sup>4</sup> Robert, *Une Allégorie parfaite*, 10.

this chapter attempts to capture how it is an abstract concept (justice) that is central to the world of law has been so many times apprehended and visually reproduced in the history of juridical-political thinking. Here, the iconography of justice can represent the pictorial material relating to or illustrating the idea of justice and, thus, is a key element to provide evidences towards identification, description, and the interpretation of the notions of justice throughout the centuries.

As cultural manifestations that show man's 'relationship with that which surrounds him'<sup>5</sup>, art and law have always been close throughout history. Therefore, the use of arguments, narratives and artistic knowledge to better understand arguments, narratives and juridical knowledge is not unusual, nor is it a recent phenomenon. It is fair to acknowledge, however, that, along with modernity, when common sense came to see human reason as the only objective measure of all things (logocentrism), a growing distance between art and law came to exist, which only regained power in the twentieth century. Especially due to juridical positivism, common sense accepted and diffused the idea that juridical science would be, above all, a logical science of Cartesian interpretation of rational and objective texts, with no room for semantic uncertainties, emotions or even some irrationality of art and aesthetics.

As pointed out by Stephan Prinz, for a great period of time law was understood as an exclusively textual science (*Textwissenschaft*) whose strength would reside in the

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<sup>5</sup> Meyer Schapiro, *Mondrian: a dimensão humana da pintura abstrata* (São Paulo: Cosac & Naify, 2001), 8.



purest interpretation of legal texts, with no room whatsoever for art-like conceptual openness, plurivocity, polysemy, anarchy or even some irrationality.<sup>6</sup> To the late Prof. Cornelia Vismann, jurists are really afraid of images: they suffer from imagophobia.<sup>7</sup> This essay is meant to bridge this distance between arts and law, showing the possibilities of an aesthetic discourse of juridical science, which is not only centred around the logocentrism and nomocentrism of positive law, but one discourse that registers its conviction that law is very far from being only '*sola escriptura*'.

## 2. *Jus e(s)t Ars*

For didactic reasons, at least four planes of deep interaction between art and law can be accounted for: 1) law as an object of art, that is, all those instances when justice and law were the subject of masterpieces by great artists of painting, literature, cinema, drama, and so on; 2) art as an object of law, that is, the countless cases when law set itself to regulate, discipline, protect, limit or shape the themes, works, liberties or rights of artists; 3) art as a right, with its many discussions on the right to culture, the right to the protection of artistic heritage, and the exercise of artistic freedom of expression; and, finally, 4) law as art, which gives rise to the classic definition of law as 'the art of goodness and equity' ('*ius est ars boni et aequo*'),

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<sup>6</sup> Stephan Prinz, *Juristische Embleme: Rechtsmotive in den Emblemata des 16. bis 18. Jahrhunderts* (Berlin: Lit, 2009), 1.

<sup>7</sup> Cornelia Vismann, 'Image and Law – a Troubled Relationship,' *Parallax* 14, no. 4 (2008): 1.

according to Celsus) and its occasional relations with the grammars of law as science and law as technology. This essay focuses mainly on the first dimension above.

As can be noticed, such relationships take place in an extrinsic perspective of the dialogue between art and law, and are more directed to the thematic contents of law and art. This quadripartite classification, however, ignores that novels, essays, poems, plays, paintings, engravings, sculptures, movies, music sheets and architecture may always create innovative juridical arguments and contents, even if they do not indicate that law is their major object of reflection. Therefore, there is a fifth plane of interaction between art and law: art that speaks to law even though it does not speak about law. Art and aesthetics – due to their non-dogmatism, dynamic complexity, refined understanding of the world, openness and creativity – always have a lot to say to law, even when words are not used. Not by chance the greatest Roman jurists, for example, were always seeking the *elegantia juris* – an aesthetic sense of juridicity, guided by a component of beauty and elegance for the juridical forms.<sup>8</sup> In addition, novels, poems, plays, paintings, engravings, sculptures, movies and architecture may also create new juridical arguments and contents, as they disorganise convictions, undo certainties, liberate possibilities, and anticipate the future.<sup>9</sup>

It is not a coincidence, then, that the oldest book on the mute eloquence of images, the *Emblematum Liber*

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<sup>8</sup> Jerome Frank, 'Words and Music: Some Remarks on Statutory Interpretation,' *Columbia Law Review* 47, no. 8 (1947): 1259.

<sup>9</sup> François Ost, *Contar a lei: as fontes do imaginário jurídico* (São Leopoldo, RS: UNISINOS, 2007), 13.

(Emblem Book) was published in 1531 by the Milanese Renaissance jurist Andreas Alciatus (1492-1550).<sup>10</sup> The book by Alciatus is considered the milestone of a new discipline, ‘Emblematics’, which gathers literary and image elements. Ever since jurist Andreas Alciatus published his *Emblematum Liber*, in 1531, more than a few scholars – under diverse fundamentals and points of view – have attempted to highlight these relationships between artistic discourses and juridical categories. In fact, one of the first disciplines to care about systematising, organising and exposing such knowledge this way was, undoubtedly, the ‘juridical symbolism’ (or *iurisprudentia symbolica*) which dates back to the work of art of Italian Giambattista Vico, and whose greatest exponents are Germans Jacob Grimm and August Ludwig Reyscher, Frenchmen Jules Michelet and Joseph Pierre Chassan and Portuguese Théophilo Braga. In his work *Essai sur la Symbolique du Droit*, Chassan defines the reasons and the object of this new discipline named ‘juridical symbolism’ like this:

‘Law, in its external manifestations, has not always exclusively coated the form of the word or alphabetic writing. To be understood and retained by the rude intelligence of the uneducated men of primitive times, law needed sensitive images, figurative representations and physical signs to speak to the eyes and to imagination. These real or animated signs were named symbols. Herein we call them juridical symbolism, to better characterise their specialty. The science that teaches the formation and origin of such symbols – and which, using the materials provided by erudition, created on symbols, including law in

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<sup>10</sup> Nead and Douzinas, *Law and the Image*, 7.

use, a body of doctrine, altogether philosophical and practical, a set of rules and precepts that lead to explaining the symbols in general and to knowing each symbol in particular – is called juridical symbolism.<sup>11</sup>

For a very long time law was ‘multimedia’. In many occasions in history, law used symbols and images to be disseminated and understood – especially over a long period when illiteracy was dominant and the press was inexistent, inaccessible or costly. Especially between the Middle Ages and modern times, the dignity and the weight of images were great, so much so that important juridical manuscripts were richly illustrated, forming the relevant set of images now known as ‘*iurisprudentia picturata*’.<sup>12</sup>

In the early twentieth century, the studies on symbols, images, objects and emblems associated with law and justice greatly developed in Germany, with the birth of a new historical-juridical discipline named ‘*Rechtsarchäologie*’ (‘juridical archeology’), founded by Professor Karl von Amira, of the University of Munich. Especially between the 1910s and 1930s, ‘juridical archeology’ provided great contributions in this field, through seminal works to comprehend juridical imagery. Today, the theme still

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<sup>11</sup> Joseph-Pierre Chassan, *Essai sur la symbolique du droit* (Paris: Videcoq fils aîné, 1847), 1-2.

<sup>12</sup> Robert Jacob, *Images de la justice: essai sur l'iconographie judiciaire du Moyen âge classique* (Paris: Léopard d'or, 1994), 11. Two of these manuscripts, the *Decretum Gratiani* (*Decree of Gratian*, twelfth century) and the *Sachsenspiegel* (literarily meaning Saxon Mirror, thirteenth century), contain those which are considered the founding images of juridicity. Great artistic and juridical relevance is also given to the *Hamburger Stadtrecht* collection, 1497.

enjoys the special attention of the *Max-Planck-Institut für Europäische Rechtsgeschichte*, Frankfurt (Germany). After the 1990s, the rise of several versions of the movement 'Law and...' – such as Law & Society, Law & Literature and Law & Humanities – inspired another wave of dissemination of aesthetic-cultural studies on the juridical phenomenon in the English language.<sup>13</sup> At the same time in Europe, the dissemination of historical-aesthetic-cultural studies on justice and law also led to the constitution of a solid French-speaking school of 'juridical iconology'. Strongly influenced by information technologies, juridical informatics and the multimedia character of the contemporary culture, a brand-new discipline started to be shaped in Austria, Switzerland and Germany in the early twenty-first century: '*Rechtsvisualisierung*', that is, 'juridical visuality' (or '*BilderRecht*', or even '*Visuelle Rechtskommunikation*'). This discipline focuses on studying the design of juridical information and the multiple modalities of communication of the juridical phenomenon throughout history – from richly-illustrated medieval manuscripts to contemporary 3-D digital information.<sup>14</sup> '*Rechtsvisualisierung*' is a direct heir to an epistemic-methodological trend that completely spans the whole range of contemporary human and social sciences: the renewed role given to images in current society, which is

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<sup>13</sup> Anna Di Robilant, 'The Aesthetics of Law', *Global Jurist Advances* 1, no. 2 (2001): 2.

<sup>14</sup> Colette R. Brunschwig, 'Rechtsvisualisierung: Skizze eines nahezu unbekanntes Feldes', *MultiMedia und Recht* 12, no. 1 (2009): IX-XII.

described by Boehme-Nessler as ‘iconocracy’.<sup>15</sup> In other words, more and more human and social sciences have used images to understand and explain the world and law is not immune to this trend.

The iconophilia of contemporary human and social sciences is, above all, due to three factors: 1) easy access to ancient images, due to technological improvements in preserving, digitising, storing and researching great image banks; 2) easy production and dissemination of new images, also due to new technologies for production and dissemination (among which are YouTube and Flickr); and, finally, 3) the countless images that are continually produced, consumed and discarded in the most accessible media channels, such as cable TV, newspapers, magazines, websites, blogs, mobile phones, and so on, which has led people nowadays to an essentially visual way of thinking. One more issue can be added to these three factors, which is the fact that communication via images is always faster than communication through text, and speed is undoubtedly a central concern of the world today.<sup>16</sup>

In this scenario of excessive visuality in contemporary culture it is paradoxical that one of the most frequent attributes of iconography of justice is – still today – the blindfold. This is one of the main reasons why this essay is dedicated to the theme of the blindfold and the blindness of justice and not any other of the many controversial and

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<sup>15</sup> Volker Boehme-Nessler, *BilderRecht: die Macht der Bilder und die Ohnmacht des Rechts* (Heidelberg: Springer, 2010), 56.

<sup>16</sup> Boehme-Nessler, *BilderRecht*, 64.

complex aspects of the iconography of justice, for example, the dominant gynecocracy in its representations.<sup>17</sup>

All these theoretical nuances – from the symbolism of law to juridical visuality – are nothing but attempts to comprehend that which Professor Rodolfo Sacco once defined as ‘mute law’, that is, the very important unwritten or unspoken dimension of law.<sup>18</sup> In this sense, contradictory as it may seem, by rescuing very old historical images of art and law – to be seen in the following chapter, this essay – far from fitting into a melancholic *laudatio temporis actii* – matches the most contemporary way of thinking of social and human sciences: the study of the rhetoric of iconosphere (or *Bilderwelt*) in which we are all immersed. Iconosphere (or *Bilderwelt*) is to be understood as the immense and complex network of image meanings which we are submitted to in our ‘Media Age’.

### 3. Blindfold and Eye in the Iconography of Justice

The previous sections demonstrated the long-lasting familiarity between art, image and law. It is now time to examine the juridical iconography throughout past centuries in search of an answer to the central question of

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<sup>17</sup> Robert, *Une Allégorie parfaite*, 45-51.

<sup>18</sup> Rodolfo Sacco, ‘Mute Law,’ *The American Journal of Comparative Law* 43, no. 3 (1995): 455-458, doi:10.2307/840648. ‘In its open texture it is necessary to interpret silence, the unsaid. Law does not always make a sound. Most of the times it just whispers, waves, suggests with a task. Most of the times, sound is reduced to the perception of silence, of that which was half-said” - Mônica Sette Lopes, *Uma metáfora: música & direito* (São Paulo: LTr, 2006), 131.

this text: how, when and why did the iconographic representations of justice start to have a blindfold over the eyes if, for more than 2000 years, clear unblocked sight was one of the main features of justice?

Nowadays, the blindfold is a recurrent element in the iconography of justice. Among the many paradigmatic representations of justice and judiciary power, it is enough to remember the austere and solemn sculpture in granite by Alfredo Ceschiatti, built in 1961, on show at the entrance of the Brazil's Federal Supreme Court in Brasília. However, as pointed out by Erwin Panofsky, the figure of the blindfolded justice is a very recent humanistic creation in the history of art.<sup>19</sup> For many centuries, justice was associated with a crystal-clear view of the facts; after all, sight was essential for justice to manage well the sword and the scale, two other attributes with which it is frequently represented.

Geneva, Switzerland, late eighteenth century: due to a constitutional provision during the revolutionary government of the Republic and Canton of Geneva, between 1792 and 1796, the city's attorney general bore a round badge of golden brass about 10 cm in diameter that reproduced a big open eye in high relief, to refer to the constant and tireless alertness of law.<sup>20</sup> At that time, the winds of

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<sup>19</sup> Erwin Panofsky, *Studi di iconologia: i temi umanistici nell'arte del Rinascimento* (Torino: Einaudi, 1999) 151. In fact, there is no image of justice wearing a blindfold from before the late fifteenth century - Robert Jacob, *Images de la justice: essai sur l'iconographie judiciaire du Moyen âge classique* (Paris: Léopard d'or, 1994), 232.

<sup>20</sup> Here is a description of this item, according to the catalogue written by historian of art Waldemar Déonna, Director of the Museum of Art and History of Geneva at that time: "N. 819 (anc. 86) - Insigne de



'*liberté, égalité et fraternité*' of the French Revolution had started to blow all over the European continent and the omniscient 'eye of the law' was the guarantee of the omnipresent, impartial, secular and objective *Rechtsstaat*.<sup>21</sup> The popular saying '*das Auge des Gesetzes wacht*' – 'the eye of law is watching', was perpetuated by the poetry of Friedrich Schiller.<sup>22</sup>

Much more than a poetic metaphor or a mere saying, the image of a tireless 'eye of the law' was in fact evidenced in the text of article VI of the Declaration of the Rights of Man and of the Citizen, of August 26, 1789:

'The law is the expression of the general will. (...) All the citizens, being equal in its eyes [law's eyes], are equally admissible to all public dignities, places and employments, according to their capacity and without distinction other than that of their virtues and of their talents.'<sup>23</sup>

In his famous painting of 1789, which is an allegory of the *Declaration of the Rights of Man and of the Citizen*, French painter Jacques François Le Barbier depicts the eye of the

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*procureur général sous le gouvernement révolutionnaire de Genève en 1794. Sur une plaque circulaire de laiton, oeil grand ouvert, en relief, symbole de surveillance constante. Diam.: 0,10.* - Waldemar Deonna, *Collections archéologiques et historiques: Moyen Age et temps modernes: Ville de Genève, Musée d'art et d'histoire* (Genève: Musée d'art et d'histoire, 1929), 104.

<sup>21</sup> Michael Stolleis, *L'Œil de la Loi Veille – Histoire d'une Métaphore* (Paris: Mille et Une Nuits, 2006), 38-39.

<sup>22</sup> Verse 301 of the poem *Das Lied von der Glocke* (1800), by Schiller.

<sup>23</sup> "Article 6 - La loi est l'expression de la volonté générale. (...) Tous les citoyens, étant égaux à ces yeux, sont également admissibles à toutes dignités, places et emplois publics, selon leur capacité et sans autre distinction que celle de leurs vertus et de leurs talents."

law in a special position. That painting shows France holding the broken chains of tyranny and the spirit of the French nation holding the sceptre of power, under the bright and severe look of law/reason. It must be said that ‘the eye of the law’ was not a modern invention nor was it a creation of the 1789 Revolution, but rather it is a long-lived cultural constant in the Hellenistic-Roman-Christian world. Long before the French Revolution, ‘the eye of the law’ or ‘the eye of justice’ – alert and controlling – was an image of great symbolic value in Europe, be it in Greek-Latin numismatics and statues or in medieval illuminations.<sup>24</sup>

Nearly two thousand years before poet Schiller and painter Le Barbier, the figure of an observant eye of justice (*dikè's opthalmós* or *iustitiæ oculus*) had been evoked by Greek poet Amiano Marcelino: ‘*Vigilavit Iustitiæ oculus sempiternus*’, or ‘the eternal eye of justice has watched’.<sup>25</sup> In 1515, at the height of Italian Renaissance, the Mantuan humanist Giovanni Battista Fiera published an interesting pamphlet, in the form of a fictitious dialogue between Momus<sup>26</sup> and the painter Andrea Mantegna (who had died nine years before)<sup>27</sup>. In this text, after collecting the impressions of justice on the most varied traditions, and

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<sup>24</sup> The image can be seen here: <http://goo.gl/E2QL9w>.

<sup>25</sup> Stolleis, *L'Œil de la Loi*, 55-56.

<sup>26</sup> In Greek mythology, Momus – Sarcasm – was the god of irony, mockery, and scoff, insistently critical of the works and deeds of others.

<sup>27</sup> Mantegna was commissioned by Pope Innocent VIII to decorate a chapel at the Vatican with an allegory of justice, which made him interested in the theme of painting justice (Battista Fiera and James Wardrop, *De iusticia pingenda: a dialogue between Mantegna and Momus = On the painting of justice* (London: Lion and Unicorn Press, 1957), 10-11 and 28.

conducting a deep philosophical and theological reflection, Battista Fiera tries to demonstrate the best way to depict justice. In this pamphlet titled *De Iustitia Pingenda* or ‘On the Painting of Justice’, Battista Fiera indicates that one of the ways of representing justice is a woman’s body with a huge eye in the middle of her face, or perhaps with a third eye on the back of her neck to amplify eyesight, or even with multiple eyes, similar to the mythological figure of Argus Panoptes, the Greek hundred-eyed giant hound.<sup>28</sup> To Battista Fiera good eyesight was the key to a more precise discernment of justice.

In Cesare Ripa’s classic work *Iconologia*, which collects and describes a number of images in several cultures and contexts, the author writes in harmony with Battista Fiera and refers to justice (according to the indications of Aulo Gellio), as a lady ‘with very sharp eyes.’<sup>29</sup> Following this argumentative line, in his baroque painting *Allegoria della Giustizia*, found at the *Palazzo Bianco* in Genoa, Genoese Giovanni Andrea de Ferrari added a third eye to the image, right in the central upper part of the armour that protects the chest of the goddess of justice – still in the first half of the seventeenth century. Below the sword

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<sup>28</sup> Fiera and Wardrop, *De iusticia pingenda*, 29-31. Adriano Prosperi, *Giustizia bendata: percorsi storici di un’immagine* (Torino: G. Einaudi, 2009), 7. In Greek mythology, Argus was Hera’s hound – whose task was to watch over Io, one of Zeus’ lovers –, and was killed by Hermes by order of Zeus himself. To honour her dog, Hera took the hound’s 100 eyes and put them on the tail of the peacock, an animal consecrated to her. Panoptes means ‘that which sees all’, because during sleep Argus would close only 50 eyes while the other 50 remained vigilant.

<sup>29</sup> Cesare Ripa, *Iconologia* (Roma: heredi di Gio. Gigliotti, 1593) 108.

of justice lies the large book of law, which reads '*inconcussa vigeat*'.<sup>30</sup>

Some decades later in the seventeenth century, the radical opposition between the clear sight of justice and negative biased blindness was the central theme of the drawing *Partiality* by Hubert François Bourguignon (aka Gravelot) and Charles-Nicolas Cochin.<sup>31</sup> As a matter of fact, the lack of sight was an element common to many medieval and Renaissance allegories, all of which with a strong negative connotation: death, ambition, greed, wrath, *impetus*, ignorance and the Synagogue.

The object of a refined and delicate technique of illumination, the eyes of justice are also the core theme of an anonymous eighteenth-century painting, on show at the Rijksmuseum, Amsterdam.<sup>32</sup> Special interest in this Netherlands version of *Justitia* is aroused by the eye-shaped medallion between the fingers of the goddess and the absence of swords or scales in the painting.

Another exuberant eye-shaped medallion, similar to that seen at the Rijksmuseum, Amsterdam, was painted by the Lutheran Scandinavian artist Mathias Blumenthal in his *Justitia Majestata* (1762), currently in the collection of the Bergen Art Museum, Norway.<sup>33</sup> A direct reference

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<sup>30</sup> See the picture here: <https://goo.gl/PBgSTv>.

<sup>31</sup> Drawing by Gravelot (Hubert François Bourguignon) and Charles-Nicolas Cochin published in Charles-Étienne Gaucher, *Iconologie ou Traité des Allégories et Emblèmes* (Paris: Lattré, 1791?, tome 4) 2v. In the City Hall of Basel, northern Switzerland, there is a fresco by H. Bock, where partiality is depicted with eyes wide open. The image is reproduced in Robert, *Une Allégorie parfaite*, 50.

<sup>32</sup> Picture here: <https://goo.gl/E0LhTa>

<sup>33</sup> Picture here: <https://goo.gl/9sAAYd>. Apart from painting the rich *Justitia Majestata*, commissioned by the magistrates of the city of

to this necklace in the shape of a bright eye, as an ornament of justice, is found in the work of historian Waldemar Déonna: '*justice (...) wears a necklace with a sculpted eye around her neck*'.<sup>34</sup>

It must be said that this plastic conception of justice endowed with bright open eyes spread outside the European boundaries. In fact, a remainder of this visual strategy is the sculpture of justice located on top of the roof of the Museu da Inconfidência, Ouro Preto (Minas Gerais, Brazil).<sup>35</sup> The piece, author unknown, is possibly from the eighteenth century, when Ouro Preto was still named Vila Rica and it was the capital of the Brazilian colonial gold rush.

From the classical tradition all the way through the Middle Ages up to the European Renaissance (and up to the French Revolution, in some places), the image of justice was always associated with crystal-clear, sharp, unblocked sight, bound to inspire reverence and fear.<sup>36</sup> Limpid vision was, then, the greatest trait of justice. Representing justice any other way would only be possible in satire or criticism. Acid critique, for instance, was the character of the woodcut ascribed to Albrecht Dürer in the satirical poem 'Das Narrenschiff' (Ship of Fools), by

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Bergen (Norway), Mathias Blumenthal also wrote a detailed manuscript on the symbolism of every bit of his painting. The originals of this precious and unique document (*Beskrivelse og kort Explication over Det Skildrede Emblematiske Stykke til Raad-Stuen*) as well as its version in English may be seen at [www.euarchives.org](http://www.euarchives.org) or at the Library of the University of Bergen.

<sup>34</sup> Waldemar Déonna, *Le Symbolisme de l'Œil* (Paris: E. de Boccard, 1965), 286.

<sup>35</sup> Here: <https://goo.gl/DWPDwr>.

<sup>36</sup> Panofsky, *Studi di iconologia*, 151.

Sebastian Brant, published in 1494; this illustration is the first time in which justice is seen with a blindfold on.<sup>37</sup> In his poem, Sebastian Brant – professor at the Law School of Basel and devoted catholic – describes a few more than a hundred follies and vices of the society of that time, each one ascribed to a fool. During the poem, all these fools are locked into a large vessel – similar to what Noah did with animals in his arc – for an imaginary trip to an island called Land of Fools. In this unique and isolated picture,<sup>38</sup> Albrecht Dürer depicts excessive litigation, abuse of process and the vice of the powerful ‘men of justice’ of hiding the truth in vain subterfuge. Dürer shows one of Brant’s fools – wearing the jester’s traditional hat with rattles and balancing on a sharp tool to card wool – putting a blindfold over the eyes of justice (shown with the traditional sword and scale). Justice, who was supposed to be able to see, cannot see already due to the humiliating obstacle produced by the ‘*Prozeßnarren*’, the cunning ‘process fools’. The picture by Albrecht Dürer illustrates section LXXI (Quarrelling and going to court) of the long poem by Sebastian Brant, that refers to such process fools this way:

I will now speak of the irrational ones who, on any subject, want to file suits (...) Many make more money on a case than their daily pay, and think they can cover the eyes of truth and prevent the judgement

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<sup>37</sup> The first to point out the primacy and the novelty of this woodcut ascribed to Albrecht Dürer in *Das Narrenschiff* was Ernst von Möller, “Die Augenbinde der Justitia”, *Zeitschrift für Christliche Kunst* 18, no. 4, (1905): 107-122. This claim has never been disputed ever since by any iconologist of justice.

<sup>38</sup> See the picture here: <http://goo.gl/D9dSfg>.

to be over shortly. I wish that those who are fond of quarreling in court could have their asses brushed with a heavy rake<sup>39</sup>

Bruno Lacerda adverts that the gesture of putting the blindfold over the eyes of justice, mentioned by Brant and depicted by Dürer, has a special meaning in medieval culture:

‘Covering the eyes of justice was, at that time, easily associated with humiliation, contempt, mockery. The blindfold handled by the jester not only prevents her from seeing, but ‘disfigures her, compromises her identity, leads to a kind of blindness that means losing sense’. May we remember the biblical image of Christ [face covered], insulted and humiliated by the Jews.’<sup>40</sup>

At this point, it is necessary to remember that the buffoons or jesters, insane as they were, were the ironic voice of conscience that, laughing and making others laugh, heavily criticised the institutions around them.<sup>41</sup>

In the same line as Brant’s severe criticism of the lack of sight of justice, an image dated 1550 by Dutch artist Dirk Volkertsz Coornhert, currently at the Achenbach Foundation for Graphic Arts (San Francisco, USA), shows blindfolded justice falling off a restless horse.<sup>42</sup> With her eyes covered, justice is ridiculed, criticised and

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<sup>39</sup> Sebastian Brant, *A nau dos insensatos* (São Paulo: Octavo, 2010), 205.

<sup>40</sup> Bruno Amaro Lacerda and Mônica Sette Lopes, *Imagens da justiça* (Sao Paulo: LTr, 2010), 31. It is also worth remembering that those who were hanged and decapitated had their eyes covered – Robert, *Une Allégorie parfaite*, 92.

<sup>41</sup> Michel Foucault, *História da loucura na idade clássica* (São Paulo: Perspectiva, 1978), 13 and ff.

<sup>42</sup> See the picture here: <https://goo.gl/Jd4cYT>.

humiliated. Another very strong image of social criticism to justice's lack of sight is the work of Danish contemporary Jens Galschiøt, entitled *Survival of the Fattest*, from 2002. This huge copper sculpture<sup>43</sup> – shows justice represented as an enormous obese western-looking lady, with her eyes shut, atop the shoulders of a pitiable African figure. Indifference and social alienation of justice are underscored by her lack of sight and by the imbalance of the tiny scale she has in her right hand.

Justice, many times equipped with a sword and scale, should therefore be able to see, so that freeing her from the uncomfortable blindfold would be the State's duty. In early twentieth-century Germany, the government passed a norm that forbade any and all representations of blindfolded Justice at courts under construction.<sup>44</sup>

The farsighted and alert eye of justice, so many times reproduced in the political-juridical iconography of western art, is nothing but a lay representation of the vigilant 'eye of god' of the major monotheist religions, which, during absolute monarchy, was appropriated and secularised as the 'eye of the king', who was the worldly representative of the power and justice of God. To medieval jurists, justice was (with)in God and, as time passed, God himself delegated justice to his earthly representatives: the monarchs.<sup>45</sup> Through a long process of secularisation

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<sup>43</sup> See the sculpture here: <http://goo.gl/swwuG0>. The United Nations Climate Change Conference – COP15 –, took place in Copenhagen, Denmark, between 7 and 18 December 2009.

<sup>44</sup> *Ministerialerlaß* of January 18, 1907, apud Waldemar Déonna, *Le Symbolisme de l'Œil* (Paris: E. de Boccard, 1965), 289.

<sup>45</sup> Prospero, *Giustizia bendata*, 16-17.



of theological concepts, *'deo est rex'* and *'rex est lex'* from before the French Revolution were followed, after the Storming of the Bastille, by *'lex est rex'*, in such a way that monarchic absolutism was followed by some 'legal absolutism', originating a nearly religious cult of law and justice in the modern states that were starting to be formed.<sup>46</sup>

The magnificent copper engraving by Albrecht Dürer, *Sol Justitiæ*, of 1498/1499, translates this political-theological confluence between the divine and the secular in the representation of a justice that sees all; a justice in which the sacredness of the look of the State-judge mingles with the sacredness of the look of God.<sup>47</sup> This engraving by Dürer also raises an additional interesting argument: justice is sitting on a lion – a traditional embodiment of power – which reminds us that omniscience – of the eye of the law, the eye of God, or the eye of the king – presupposes omnipotence – of law, of God himself or of the king. That painting by Le Barbier on the *Declaration of the Rights of Man and of the Citizen*, mentioned above, also depicts the theological root of the eye of the law, very much so that the French painter included the eye of the law within a Trinitarian triangle, an old symbol of the Christian Holy Trinity.<sup>48</sup>

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<sup>46</sup> Robert, *Une Allégorie parfaite*, 34. All this modern process of secularisation of medieval theological concepts constitutes precisely the central thesis of Carl Schmitt's "political theology".

<sup>47</sup> Here: <https://goo.gl/3mbXiN>. One reference to the "sun of justice" was present at the Bible (Malachi 4,2): "But for you who fear My name, the sun of righteousness will rise" (...) – Déonna, *Le Symbolisme de l'Œil*, 279. The same connection between human justice and divine justice can also be noticed in the painting *Justitia Majestata* by Mathias Blumenthal.

<sup>48</sup> Déonna, *Le Symbolisme de l'Œil*, 285-286.

It can be noted, then, that the presence of the eye that sees all in the modern juridical imagery was not by chance. As a matter of fact, images, myths, and metaphors relative to the eye and sight were always in the spotlight in the culture of humankind: the blind clairvoyant Tiresias; the myths of Narcissus, Cupid and Medusa; the tragedy of Oedipus; the wife of Lot becoming a pillar of salt in the Bible; Orwell's 'big brother' or even the monk Jorge of Burgos, the wise blind librarian of *The Name of the Rose*. Shortly before his death in 1958, French art historian Waldemar Déonna concluded the manuscript of a beautiful and profound study on the symbolism of sight, published posthumously. In that text, an encyclopedic work of research, Déonna points out:

'Of all organs of sense, the eyes are really the most precious. (...) Seeing is getting to know the environment, it is knowledge. It is possessing the world, dominating it; it is 'power' (...)'<sup>49</sup>

From 'windows to the soul' to 'mirrors of the world', the symbolic power of the eye has translated, since classical antiquity, the struggling dichotomy between essence and looks, interior and exterior, superficiality and profundity, empiricism and metaphysics.<sup>50</sup> This tension between positive and negative in what the look means was to have an impact on the image of justice, especially on the contrast between the Anglo-Germanic Protestant world and the neo-Latin Catholic world. It is precisely not to be deceived by the sensitive appearance of things that justice

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<sup>49</sup> Déonna, *Le Symbolisme de l'Œil*, 1-2.

<sup>50</sup> Stolleis, *L'Œil de la Loi Veille*, 54.

will be represented, from the sixteenth century on, with a blindfold, in central urban Protestant Anglo-Germanic Europe, firmly confronting the idea of the 'eye of justice' predominant until then.

The image of blindfolded justice, in the sense that the blindfold is a positive sign of its independence, incorruptibility, critical distancing, proportionality, moderation and impartiality before the parties, was first seen around 1531 in one edition of the *Wormser Reformation*, a popular consolidation of Imperial Germanic municipal laws,<sup>51</sup> originally written in the free Imperial city of Worms, in 1498. In the image taken from the 1531 edition, published in Frankfurt by the printer, engraver, book shopper and editor Christian Egenolph, justice is blindfolded and, apart from the traditional sword, bears a balanced scale between a rich a poor man.<sup>52</sup> It is interesting to notice that that was the beginning of the long process of positivisation and secularisation of the traditional Custom law or Canonical law, greatly influenced by the Protestant Reformation and Humanism. It is in this context of formation of the European *ius commune*, in which law starts to escape the influence of the Pope and of the Holy Roman Empire, that the blindfold on justice's eyes starts to have the positive status of impartiality in European iconography. Interestingly, for its influence in Protestant iconophobia, justice's lack of vision, that for so long had been a sign of inferiority or mockery, started to be interpreted in a positive light: as she is not able to see, justice does

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<sup>51</sup> Franz Wieacker, *História do direito privado moderno* (Lisboa: Fundação Calouste Gulbenkian, 1980), 211-212.

<sup>52</sup> von Möller, 'Die Augenbinde der Justitia', 115.

not risk being seduced, deceived or even corrupted by the appearance of images, and is then able to reach unbiased verdicts.<sup>53</sup> Once an instrument of disorientation, the blindfold is now an instrument of orientation.

As of the publication of that image in the 1531 edition of the *Wormser Reformation*, the blindfold (with a positive connotation) becomes incredibly well-known in a multitude of villages, counties, duchies, and so forth. It also became popular in artistic manifestations, especially in Protestant bourgeois urban areas of central and northern Europe, as a symbol of secularity, impartiality and objectivity.<sup>54</sup> Interesting examples of this period are engravings of the Flemish artisan Cornelis Bos, *Iustitia et Prudentia*, 1537,<sup>55</sup> and Cornelis Matsys, also titled *Iustitia et Prudentia*, 1538.<sup>56</sup> Both works let out the solemn antithesis between justice's obliterated sight and the very sharp sight of prudence – always depicted between mirrors and serpents. The serpent and the mirror are recurrent in the allegory of prudence. The serpent, cunning, silent, discreet, with a penetrating stare, is the symbol of knowledge associated with a model of vigilance and discernment. The mirror, in turn, symbolises self-knowledge, the careful look around, the reflection upon one's own acts.

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<sup>53</sup> Nead and Douzinas, *Law and the Image*, 24. According to Cesare Ripa's description, "executive justice" would be a "*donna, vestita di bianco, habbia gli occhi bendati (...). Si veste di bianco, perche il giudicio deve essere senza macchia (...), tenendosi gli occhi bendati, cioè non guardando cosa alcuna, della quale s'adopri per giudice il senso, nemico della ragione*" – Ripa, *Iconologia*, 108.

<sup>54</sup> von Möller, 'Die Augenbinde der Justitia', 118-120.

<sup>55</sup> Picture here: <https://goo.gl/5ytM97>

<sup>56</sup> Picture here: <https://goo.gl/USZWpl>

In 1549, the idea that the blindfold would represent the judge's incorruptibility and neutrality was assimilated and reproduced in a Spanish edition of Andrea Alciato's *Emblemata*, printed in Lyon by Macé Bonhomme and Guillaume Rouille, and possibly illustrated by Pierre Eskrich or Vase. In the emblem *In Senatum boni Principis*, the figure of a blindfolded prince conducting the discussions at the senate with impartiality translates the idea of the true 'good government'.<sup>57</sup>

As time passed, blindfolded justice stops representing criticism, a joke or mockery and starts to represent a topographic and institutional rupture of the urban Protestant bourgeois iconoclast and pioneer man in terms of the civic organisation of Central Europe with that medieval, extremely personal, subjective, custom-law, agrarian, religious justice, concerned with appearances. New times call for new muses<sup>58</sup> in such a way that blindfolded justice is now a symbol of the temporal and collective power of the borough. Thus, to signal and celebrate this rupture, blindfolded justice is then exposed in many public places, indoors or outdoors, such as markets, city halls, official salons, squares and fountains, however, always away from churches and convents, across an area of land extending from Siena, in northern Italy, to Belgian Flanders.<sup>59</sup>

It is worth mentioning the décor of the justice halls in public buildings, which go through an aesthetic revolution: they lose the 'anachronic' biblical images such as the

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<sup>57</sup> Picture here: <http://goo.gl/K1OVqw>. Prosperi, *Giustizia bendata*, 43.

<sup>58</sup> von Möller, 'Die Augenbinde der Justitia', 110.

<sup>59</sup> Robert, *Une Allégorie parfaite*, 114.

crucifixion of Christ, doomsday or Solomon's judgement and adopt a desacralised iconographical repertoire that associates justice with civic, bourgeois and secular virtue. This new model of allegory can be seen, for example, in the exuberant Fountain of Justice sculpted by Hans Gieng in 1543, installed right in the civic centre of the Swiss city of Bern.<sup>60</sup> Another beautiful representation of blindfolded justice is Pieter Bruegel's engraving *Iusticia*, 1559. In this work, Bruegel created a panel of violent penal punishments and included justice with a blindfold (she is blind to the tortures, as well) in the centre of the borough. The caption is ironic: 'the objective of law is either to correct those it punishes, through a sentence, make other people better, or extinguish evil so that others can live a safe life', which well summarises the secularised punitive philosophies of modern times.<sup>61</sup>

Blindfolded justice – planted in the most visible sites of the boroughs –, now signals, evokes and adverts to the existence of a new European public order, whose jurisdiction is secular, implacable and immune to personal commitments. For this reason, Prof. Christian-Nils Robert

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<sup>60</sup> Picture here: <https://goo.gl/FzbWkY>. Apart from Bern, the centres of Frankfurt, Nurnberg, Solothurn and Aarau also have Fountains of Justice (*Gerechtigkeitsbrunnen* or *Justitiabrunnen*). The fountain in Frankfurt (J. Hocheisen, 1611) has no blindfold, whereas the ones in Nurnberg (B. Wurzelbauer, 1585-1589), Solothurn (L. Perroud, 1561) and Aarau (H. Henz, 1643) are all blindfolded (Robert, *Une Allégorie parfaite*, 30-31, 73-74 and 87).

<sup>61</sup> Picture here: <http://goo.gl/8Ye60B>. Michel Porret, 'Mise en images de la procédure inquisitoire,' *Sociétés & Représentations* 18, no. 2 (2004): 46.

states that this image of martial blindfolded justice is one of the founding images of the modern state.<sup>62</sup>

It is right to say that blindfolded justice may be unbiased and free from the corruption of senses, but it (she) is not necessarily blind.<sup>63</sup> With or without the blindfold, blindness was never believed to be a characteristic of justice. In Phaedrus, Plato proposed the distinction between the ‘eyes of the soul’ and ‘eyes of the body’, to denote the differences between essential or profound knowledge and unfinished or superficial knowledge; justice – be it worldly or divine – is seen as the virtue (in fact, one of the ‘cardinal virtues’, side by side with prudence, courage and temperance) of going further than the mere visible superficiality of facts, of things, of passions and circumstances. Many are the authors, by the way, that register this potentialising approximation between the inability to see and knowledge, underscoring many times that it is necessary not to see to be able to see better:

‘Oedipus, for example, in Sophocles’ tragedy, gives us (...) important elements for this analysis. (...) One of the highlights of this tragedy takes place when, ‘seeing’ that he’d had his own mother after killing his father, Oedipus awfully blinds himself. We might say that he blinded himself because he did not want to see it. However, in Heidegger’s super sophisticated interpretation, Oedipus blinded himself to better be able to see his pathetic situation.’<sup>64</sup>

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<sup>62</sup> Robert, *Une Allégorie parfaite*, 20.

<sup>63</sup> Prosperi, *Giustizia bendata*, 10.

<sup>64</sup> Affonso Romano de Sant’Anna, *O Enigma Vazio: Impasses da Arte e da Crítica* (Rio de Janeiro: Rocco, 2008) 11. Also referring to the blind who see more and better, innovative people such as Michel Reilhac, in France, or Andreas Heinecke, in Germany, have been

Therefore, in order to overcome that dichotomy between blindfolded justice and the eyes of justice, what is visible and what is invisible, the superficial and the profound, some iconographic sources are doubtful as they represent the eyes of justice, as if they were trying to escape a simplifying or Manichaean dichotomy. There are interesting examples, old and new, of such enigmatic, polynomic and bipolar iconography, in which it is possible to affirm whether or not justice is blindfolded<sup>65</sup> or if the blindfold is being put on or taken off, based on the incidence of wind.<sup>66</sup>

Still about duplicity, even though not as an element of doubt but rather an element of certainty, there are three very complex examples in antiquity. The first one is *La Ivstice* by Louis Testelin, possibly between 1680 and 1740.<sup>67</sup> This allegory shows two childlike figures, one with

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organising all around Europe over the past ten years a number of artistic and gastronomical experiences in total darkness, underscoring the tactile, olfactory, auditory and gustative sensations of the public. In 2004, Edouard de Broglie and Etienne Boisrond founded in Paris the restaurant *Dans le Noir?*, famous for serving *haute cuisine* in the dark. The concept of eating in the dark to potentialise taste came about shortly before that, in 1999, with the restaurant *Blindekuh* (German equivalent to Blind man's bluff), in Zurich, Switzerland.

<sup>65</sup> Cover of *Tractatus de iudiciis* by H. Vultejus (Hermannii Vultjeji), 1654 (Cassellis: typis Salomonis Schadewitz: impensis Sebaldi Köleri) (<http://goo.gl/2yA6f8>). *Justitia* by Jost Amman for publisher Sigismund Feyrabend (circa 1564), mentioned in Otto Rudolf Kissel, *Die Justitia: Reflexionen über ein Symbol und seine Darstellung in der bildenden Kunst* (München: C.H. Beck, 1997) 45 (<https://goo.gl/OdTvtM>).

<sup>66</sup> *Ivstitia* ascribed to Flemish painter and engraver Jacob de Gheyn II, 1593 (<http://goo.gl/YkMYyj>).

<sup>67</sup> Picture here: <https://goo.gl/Xks3CK>.



a blindfold and the other without, apparently pictured as a child and his guardian angel. Testelin gave blindfolded justice (the child) the sword, symbol of power and monopoly of legitimate violence of the State that applies the law. The other figure, justice without the blindfold (a calm guardian angel), which inspires, restrains and guides the impetus of the blindfolded child, has a scale, symbol of thoughtful judgement and reflection. Reflection and impetuosity, prudence and violence, reason and passion, Apollonian and Dionysian, all of these antithetical pairs emerge from Testelin's illustration but are far from constituting features typical of childlike figures. Here is another provocative paradox of art: convergent duplicity.

The second example of the affirmative duplicity in the pictorial discourse on justice is the image of the two-faced justice, like the Latin two-faced god Janus, by Joos Damhouder on the cover of the *Praxis Rerum Criminalium*, 1567.<sup>68</sup> In that representation, justice looks to both sides simultaneously (four centuries ahead, Picasso would use this iconographic resource again!). Here again the justice without the blindfold has a sword whereas the one with the blindfold carries a scale.

The positive aspect in all such enigmatic, polysemic, ambivalent and bipolar representations resides in the fact that both this last two-faced representation of justice and those showing two justices – one with a blindfold and the

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<sup>68</sup> Double-faced justice in the book *Praxis Rerum Criminalium*, by Joost Damhoude (Antwerp: Joannem Bellerum ed., 1567, p. 433). See here: <http://goo.gl/w163GP>.

other without – escape a true/false or positive/negative reductionist opposition in the juridical iconography. In this way, they assimilate the very complexity of the task of interpreting/applying law, which, after all, like the Latin Janus, is also a two-faced operation. That is, the person who interprets/applies the law must look at the past with one face – written law, the solidified preceding cases and the consolidated doctrine so far – in order to elucidate the given law up until that very instant whereas, with the other face, they must look to the future ahead and, therefore, seek improvement, reinventing and modernising the juridical order, or else allow law to disconnect from real life and lose its legitimacy and up-to-dateness. This constant relationship between the past, present and future of the juridical text is very well depicted in the last images herein discussed

As a matter of fact, this time continuum is not exclusive of juridicity. Paraphrasing Hans-Georg Gadamer, it may be said that the reality and the power of the enunciation both of law and the work of art ‘cannot be reduced to the original historical horizon’, in such a way that both law and art seem to ‘have their own present’, a ‘timeless present’, always up to date, always simultaneous, always evenly matched.<sup>69</sup> In other words, this is the ‘world’s perpetual novelty’, as stated by Alberto Caeiro (Fernando Pessoa) in ‘O Guardador de Rebanhos’ [The Shepherd] (1914). All in all, this is the difficult task of the

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<sup>69</sup> Hans-Georg Gadamer, *Hermenêutica da Obra de Arte* (São Paulo: WMF Martins Fontes, 2010), 1-2.

contemporary ‘hermenaut’, be it related to law or any of the fields of knowledge and art: to constantly and continually navigate between this dense network of meaning formed by past, present and future, reviewing, reappropriating, deviating, rediscovering, reducing, expanding or transposing contents so it does not lose its references or its up-to-dateness. With the typical wisdom of the great poets, Fernando Pessoa – once again – sums up very well the infinite constancy of this hermeneutical search in his poem ‘A Montanha por Achar’ [The Mountain to be Found], 1934:

*If truth exists at all,  
One shall see it is all about  
The search for the truth,  
Because life is all but half.*

#### **4. Conclusion: Thinking Art; Feeling Law**

Despite all modern and contemporary rhetoric of the blindfold as a sign of impartiality and independence, up to today, the call for a clear and limpid sight of juridical events is still very present in the common sense of the population and in the imagery of justice. Both iconographic models of justice (with and without the blindfold) still coexist and debate in several fields of law: one example is the controversial value of proof that an ‘eyewitness’ still has today in criminal cases. Another particular fact is very eloquent in this regard: only in 2009 did the Brazilian Judiciary admit its first blind judge. He

had been disqualified in the health check phase of a civil service exam twenty years before.<sup>70</sup>

Historically permeating virtue and vice, praise and criticism, wisdom and obtuseness, imagophilia and imagophobia, idolatry and iconoclasm, the blindfold of justice is, without a trace of doubt, an aesthetical element of great complexity. For many centuries justice was always represented with a limpid and sharp sight until the Protestant Reformation and the diffusion of the press in the sixteenth century came to consolidate the image of blindfolded justice. Justice always blindfolded – from then onwards – became the soul of the free city.

From those historical milestones, juridical rationality starts to have a predominantly textual form and to be hostile towards all that produces semantic uncertainty and conceptual openness, which leads to the growing disregard of the artistic image and recourse to nomophilia and nomolatry in positivist juridical rhetoric.<sup>71</sup> As a matter of fact, since common sense started to see human reason as the only measure of all things, the disregard for art only grew. Not by chance, in the French courts of enlightened despotism, was the sad fable of the ant and the grasshopper, immortalised in the verses of Jean de La Fontaine, very popular.

However, nowadays, due to the huge visual appeal of our culture and, especially, due to juridical information

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<sup>70</sup> In 1997, President Bill Clinton nominated blind lawyer Richard Conway Casey as Federal Judge at the District Court for the Southern District of New York, which generated controversy in the whole country.

<sup>71</sup> Robert Jacob, *Images de la justice: essai sur l'iconographie judiciaire du Moyen âge classique* (Paris: Léopard d'or, 1994), 165.

itself, little by little law is becoming once again more pervious to arguments born in the visual, aesthetic or artistic spectrum. The countless forums of academic discussion (institutions, projects and publications) which care about this theme nowadays, and the ever more frequent presence at courts and hearing rooms of highly technological graphic schemes, CCTV camera images, magnetic resonance imaging or CAT scans and even 3D virtual scale models (as evidence or argumentation tools) – all this signals the presence of an ‘iconic turn’ or a ‘pictorial turn’ in our contemporary mediatic law.

After this more general register, one specific consideration on the blindfold of justice must be made: behind all the iconographic alternation seen throughout this text there is another debate, an epistemic-methodological aspect, which is much more relevant. First and foremost, the polysemy of the blindfold of justice throughout history reveals, in fact, that much more important than knowing if the best or most adequate iconography of justice is that with or without the blindfold, the question that matters to jurists and iconologists of law is the phenomenological issue of comprehending justice. The debate on the blindfold is, between the lines, a debate on the very issue of comprehending justice: what is truly understanding justice? How can someone comprehend it? Through sight? Through intellect? Through both? What is the best way to comprehend and feel it? Through the objective visual experience, be it the line or the letter, or through a reflection detached from the senses that deceive, corrupt and pervert us? Which is more relevant: seeing the (in)

justice of things or listening to the (in)justice of things? It is the answer to these methodical-epistemological questions that is in the subtext of the iconographic debate reproduced throughout this text.

All these questions reveal that the precise moment when art and law cross ways is the complex moment of comprehension/interpretation: since they are cultural objects, art and law constantly reinvent, recreate, review and reinterpret the world and only make sense if they are interpreted/comprehended by their recipients. Art and law are the world's inventors and inventions, continuously disclosing the dialogue between man and reality. Therefore, both the work of art and the juridical norm are to be interpreted/comprehended, and are a way of interpreting and comprehending the world around. Law and art require this constant hermeneutical dimension of comprehension and interpretation. This comprehension/interpretation is far from being static: it is inexhaustible, dynamic, alive, plural, reinventing and reviewing itself and updating at each moment.

The images that depict justice in its deepest entirety are those that put aside the mere debate on physiognomy, allegory, blindfold or eye, and underscore the very hermeneutic character and the dimension of comprehension/interpretation/application of the juridical phenomenon.

This is precisely the *intaglio* engraving on the cover of *Leggi e Costumi del Cambio che si Osservano nelle Principali Piazze di Europa e Singolarmente in quella di Livorno*, a book by the commercial law specialist Pompeo

Baldasseroni, published in 1784, in Pescia, by *Stamperia di Gio. Tommaso Masi e Compagni*.<sup>72</sup>

In this figure, with a humble look on her face, justice drops her sword and scale to talk with Hermes, the mythological Messenger of Olympus, about the tortuous paths of law and right. The Latin quote found below the engraving – ‘*qua te ducit uia dirige gressum*’ – is a passage from Virgil’s Aeneid, Book I, line 401, meaning: ‘Just proceed, and wherever the road takes you, direct your step’.<sup>73</sup> This Virgilian appeal quoted by Pompeo Baldasseroni may be understood today, more than anything else, as a call to remain on the hard path of hermeneutics, an undoubtedly laborious track, yet impossible to avoid, be it in law or in art. As Inocência Mártires Coelho says, ‘any interpretation is always on its way (...) Interpretation meets no finish line.’<sup>74</sup>

This hermeneutic approach reminds us of the beautiful fresco painted by Antonio Fedi at the Palazzo Pitti, Florence, 1815.<sup>75</sup> That painting shows the god of justice with no blindfold, a witness of the world’s injustice, next to Hermes, the messenger of Olympus, who – holding a caduceus – seems to guide her through the tortuous path

<sup>72</sup> Picture here: <https://goo.gl/xs6B3K>

<sup>73</sup> In Virgil’s text, it is Venus, mother of Aeneas, disguised as a hunter, who advises her son to follow the path of righteousness and go meet Phoenician Queen Dido and ask her for help.

<sup>74</sup> Inocência Mártires Coelho, *Da hermenêutica filosófica à hermenêutica jurídica – fragmentos* (São Paulo: Saraiva, 2010), 136.

<sup>75</sup> Antonio Fedi (1771-1843), detail of the fresco *Allegoria della Giustizia*, painted in 1815, *Salla della Giustizia*, Palazzo Pitti, Florence (Italy). Here: <https://goo.gl/h3utqP>.

of comprehension/interpretation/application of law. Once again there is constant wandering, no end or beginning.

For enticing and provoking the contemporary ‘hermeneut’ into deepening, refining, reviewing, radicalising, improving and restarting the constant and inexhaustible exercise of interpretation on the fabric of the unsaid, the work of art that has, perhaps, best translated all the complexity of justice so far is displayed precisely in the high relief sculpture *La Giustizia*, by Italian Livio Benetti, on show at the *Museo Valtellinese di Storia ed Arte de Sondrio* (Italy). It is a non-figurative work that, by bewildering the observer/reader, chooses to step away from the easy way of the ‘*prêt à penser*’.<sup>76</sup> Bewilderment starts with the fact that *La Giustizia* is a contemporary work (1975-1976) even though it establishes a dialogue with many baroque elements: the folds and curves, the labyrinthine multiplicity, the fluidity of the mass, the rounded angles and corners, the swirly turbulent shapes, the overflowed matter.<sup>77</sup> Livio Benetti’s *La Giustizia* escapes the traditional and sensible associations with the heroic, mythical or religious themes that commonly represent justice.

What it indeed does – as it is difficult to read and as it deconstructs shared knowledge<sup>78</sup> – is to arouse vigorous sensations, expressions and states of mind: awe, doubt, perplexity, admiration, astonishment, surprise,

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<sup>76</sup> Livio Benetti (1915/1987), *Virtù Cardinali: La Giustizia*, 1975-1976, high-relief plaster cast, *Museo Valtellinese di Storia ed Arte*, Sondrio (Italy). Here: <https://goo.gl/V3rUYJ>

<sup>77</sup> Gilles Deleuze, *A Dobra – Leibniz e o Barroco* (São Paulo: Papirus, 2009) 13-15.

<sup>78</sup> Paulo Ferreira da Cunha, *Filosofia Jurídica Prática* (Belo Horizonte: Fórum, 2009) 359.



uneasiness, disorientation. These feelings that arise from the surprise at the unusual shapes and the expressiveness of the winding curves of the labyrinth-like sculpture – Gadamer collected all these sensations under the concept of *Betroffenheit* – shatter the unshakeable certainties and make us, undoubtedly, remember that which Tobias Barreto – the great Brazilian writer and jurist – used to teach in the mid-nineteenth century: ‘not only is law something that you know, it is something that you feel.’ In addition, in the poetic wording of Justice Carlos Ayres Britto, of the Brazilian Federal Supreme Court, ‘perhaps it is something one feels first of all or even before intelligence, for it cannot be forgotten that the noun ‘sentence’ itself comes from the verb to sense.’<sup>79</sup> Due to this indispensable sensitivity, law is far from being only ‘*sola scriptura*’; law is also the constant search for the emotional intuition of righteousness. This is the lesson of Livio Benetti: prior to being read or looked at, justice must be felt.

## References

- Boehme-Nessler, Volker. *BilderRecht: die Macht der Bilder und die Ohnmacht des Rechts*. Heidelberg: Springer, 2010.
- Brant, Sebastian. *A nau dos insensatos*. São Paulo: Octavo, 2010.
- Britto, Carlos Ayres. *O Humanismo como Categoria Constitucional*. Belo Horizonte: Fórum, 2007.

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<sup>79</sup> Carlos Ayres Britto, *O Humanismo como Categoria Constitucional* (Belo Horizonte: Fórum, 2007) 75. Feeling law is also the *Leitmotiv* of the poem *Law, Like Love*, by the Anglo-American poet W. H. Auden.

- Brunschwig, Colette R. 'Rechtsvisualisierung: Skizze eines nahezu unbekanntes Feldes', *MultiMedia und Recht* 12, no. 1 (2009): IX-XII.
- Chassan, Joseph-Pierre. *Essai sur la symbolique du droit*. Paris: Videoq fils aîné, 1847.
- Coelho, Inocência Mártires. *Da hermenêutica filosófica à hermenêutica jurídica – fragmentos*. São Paulo: Saraiva, 2010.
- Cunha, Paulo Ferreira da. *Filosofia Jurídica Prática*. Belo Horizonte: Fórum, 2009.
- Deleuze, Gilles. *A Dobra – Leibniz e o Barroco*. São Paulo: Papyrus, 2009.
- Deonna, Waldemar. *Collections archéologiques et historiques: Moyen Age et temps modernes: Ville de Genève, Musée d'art et d'histoire*. Genève: Musée d'art et d'histoire, 1929.
- Déonna, Waldemar. *Le Symbolisme de l'Œil*. Paris: E. de Boccard, 1965.
- Douzinas, Costas, and Lynda Nead. *Law and the Image: the Authority of Art and the Aesthetics of Law*. Chicago: University of Chicago Press, 1999.
- Fiera, Battista and James Wardrop. *De iusticia pingenda: A Dialogue between Mantegna and Momus = On the Painting of Justice*. London: Lion and Unicorn Press, 1957.
- Foucault, Michel. *História da loucura na idade clássica*. São Paulo: Perspectiva, 1978.
- Frank, Jerome. 'Words and Music: Some Remarks on Statutory Interpretation.' *Columbia Law Review* 47, no. 8 (1947): 1259.
- Gadamer, Hans-Georg. *Hermenêutica da Obra de Arte*. São Paulo: WMF Martins Fontes, 2010.
- Gaucher, Charles-Étienne. *Iconologie ou Traité des Allégories et Emblèmes* (Paris: Lattré, 1791(?)).
- Jacob, Robert. *Images de la justice: essai sur l'iconographie judiciaire du Moyen âge classique*. Paris: Léopard d'or, 1994.
- Kissel, Otto Rudolf. *Die Justitia: Reflexionen über ein Symbol und seine Darstellung in der bildenden Kunst*. München: C.H. Beck, 1997.

- Lacerda, Bruno Amaro and Monica Lopes Sette. *Imagens da justiça*. São Paulo: LTr, 2010.
- Lopes, Mônica Sette. *Uma metáfora: música & direito*. São Paulo: LTr, 2006.
- Möller, Ernst von. 'Die Augenbinde der Justitia', *Zeitschrift für Christliche Kunst* 18, no. 4, (1905).
- Ost, François. *Contar a lei: as fontes do imaginário jurídico*. São Leopoldo, RS: UNISINOS, 2007.
- Panofsky, Erwin. *Studi di iconologia: i temi umanistici nell'arte del Rinascimento*. Torino: Einaudi, 1999.
- Prinz, Stephan. *Juristische Embleme: Rechtsmotive in den Emblemata des 16. bis 18. Jahrhunderts*. Berlin: Lit, 2009.
- Prosperi, Adriano. *Giustizia bendata: percorsi storici di un'immagine*. Torino: G. Einaudi, 2009.
- Ripa, Cesare. *Iconologia*. Roma: heredi di Gio. Gigliotti, 1593.
- Robert, Christian-Nils. *Une Allégorie parfaite: La Justice: vertu, courtisane et bourreau*. Genève: Georg, 1993.
- Robilant, Anna Di. 'The Aesthetics of Law.' *Global Jurist Advances* 1, no. 2 (2001).
- Rodolfo Sacco, 'Mute Law'. *The American Journal of Comparative Law* 43, no. 3 (1995): 455.
- Sant'Anna, Affonso Romano de. *O Enigma Vazio: Impasses da Arte e da Crítica*. Rio de Janeiro: Rocco, 2008.
- Schapiro, Meyer. *Mondrian: a dimensão humana da pintura abstrata*. São Paulo: Cosac & Naify, 2001.
- Stolleis, Michael. *L'Œil de la Loi Veille – Histoire d'une Métaphore*. Paris: Mille et Une Nuits, 2006.
- Vismann, Cornelia. 'Image and Law – a Troubled Relationship,' *Parallax* 14, no. 4 (2008).
- Wieacker, Franz. *História do direito privado moderno*. Lisboa: Fundação Calouste Gulbenkian, 1980.

## The Florence Picpoems

picpoet

Picpoetry is the process of combining iPhoneography and instant text writing. It is a practice initiated by *picpoet*, an iPhoneographer, writer and performer. Picpoems are immediately uploaded on picpoet's account on Instagram and also fed into picpoet's website *picpoet.net*. The text draws from the visual of the photograph but also attempts to capture the multisensorial atmosphere of the particular time and space in which the photos are taken. The text must be written quickly while immersed in the specific space, and remain unedited, in an imitation of automatic writing, but with the atmospheric imprint on it.

*The Florence Picpoems* is a series commissioned by Ric Mohr and Nadir Hosen, the organisers of the International Symposium on *Technologies of Law and Religion: Representation, Objects and Agency* that took place in the Prato Centre of Monash University in Prato, Tuscany, on

the 13-15 June 2016. Part of the symposium was a guided visit to the *Monastero di San Marco* in Florence. Picpoet was asked to create a series of picpoems drawing from the visit to the city of Florence in general, and the visit to the monastery in particular.

The picpoems reflect on such issues as law and justice, legal spatiality and temporality, agency, digitalisation and AI in relation to the law, objects and materiality, bodies and movement, and so on. The connection between the textual and the visual is tight and parallel, yet not descriptive. This allows questions on the relevance of the law in terms of affective, embodied and spatialised movements to emerge both pictorially and textually, and ultimately left unanswered.



every morning she would sweep. she'd start from inside the villa, then the little balcony, and then little by little, she would sweep the roofs around her, and the antennas, and the palazzi, and the birds and clouds, even the big court hall at the end of the horizon, till all the city would be swept away, and before her a vast white sheet would flap in the wind. now I can set my own way, she thought. now I can move in any way I want.

we are striations, craving for smoothness.



chop me up. there are others coming this way. same others. same skin same breath same world, assemblages of oneness, jelly singularities of wholeness. a whiff of a summer breeze lifting that drape you placed in front of our being - this is all it takes for the wave of the other law to blind us.

we are awake, slumberous eyes of an anthropocenic chain.



a force of invitation. you are now in, parasite and host at the same time, pulling my entrails and commanding my desires. this is not an ethical hotel where we serve faces on platters and otherness as first dish. this is the beast of all our fears, settling a conflict without judge, following the violence between our bodies. theatre and presence, residual technologies of self.

we have grown up, beyond little numerical moralities, and we are afraid.





liquid never, airy nowhere, our digitalisation feels complete. we are such stuff as nothing is made of, riding space like demons at night, defying time like gods' repose. we carry a secret in our pocket, the way of our whole where nothing is not part of it and where all parts dissect into fractal furthermores, brittle lawscapes of pixelled collapse. something is laughing somewhere at us. it might be the battery, it might be the real future.

we are never whole, we are never part.



come in. this gate is for you. I've opened it with my statues, I've carved it around your shape, all paragraphs sectioning your limbs. can't you see? it's the perfect fit. it is what you've always desired. it is your wetness, your darkness, your aftertaste. it is so soft that it'll feel like a part of your own body, an extension of your saliva, a pool of arms holding you up in dream of other worlds. come in. we are waiting. we are the guardians of the gate.

no? it's ok. this gate will never leave you.



every afternoon, my inhumanity tickles my thighs, rising force  
of a geology without logos. in the evening, all is smoothness: I  
lay where I'm laid, drenched in the whispers of my biology. I am  
tired of this body, you see? all human, no space for the screams  
that gallop through my mind and my veins when all is silent.  
and so we try to silence it.

we are inhuman stories of a mineral flesh.



hold my object like a planet rests on a god's lap: gently and with future streaming through your fingers. this is my armour, the boundary of my life, poor technology against death. preserved, my object lasts aeons of falls. even when your hand, sometimes revolutionary, often in ignorance, lets it fall, it bounces back following its own just emplacement.

we are hands holding while breaking, lest we fall.



she kept on digging, nails and teeth screeching on the surface of the earth. she had this idea, sliding on the light that she thought was coming heavenway: she had to see behind. the world a fruit lost in the palimpsest of the city, rotting but pure still. so she thought and so she dug. the world got thin like a petal and her nails and teeth dust - and the behind is still behind.

we are surfaces turned inside.



we would ride that cement carpet flying high into the city of order. we would speak with the soaring birds. we would dive with them, clouds heavy with the tears of gods, air bloated with the fumes of the padding boats.

our happiness was easy, precious and polluted.



## The Contributors

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**The Westminster Law & Theory Lab** is a research lab based at the University of Westminster, experimenting with collapses between law and other disciplines, such as geography, religion, anthropology, art theory, political theory and so on.



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Vision traditionally occupies the height of the sensorial hierarchy. The sense of clarity and purity conveyed by vision, allows it to be explicitly associated with truth and knowledge. The law has always relied on vision and representation, from eye-witnesses to photography, to imagery and emblems. The law and its normative gaze can be understood as that which decrees what is permitted to be and become visible and what is not. Indeed, even if law's perspectival view is bound to be betrayed by the realities of perception, it is nonetheless productive of real effects on the world.

This first title in the interdisciplinary series 'Law and the Senses' asks how we can develop new theoretical approaches to law and seeing that go beyond a simple critique of the legal pretension to truth. This volume aims to understand how law might see and unsee, and how in its turn is seen and unseen. It explores devices and practices of visibility, the evolution of iconology and iconography, and the relation between the gaze of the law and the blindness of justice. The contributions, all radically interdisciplinary, are drawn from photography, legal theory, philosophy, and poetry.

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