

Law and the Image

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"It would be a dangerous undertaking for persons trained only to the law to constitute themselves as final judges of the worth of pictorial illustrations outside of the narrowest and most obvious limits. At the one end some works of genius would be sure to miss apprehension. Their very novelty would make them repulsive until the public had learned the new language in which their author spoke. It may have been more than doubted for instance whether the etchings of Goya or the paintings of Manet would have been sure of protection when seen for the first time".¹

(i) Law's Fear and Love of the Image

This striking statement about the relationship between law and art was made by Justice O.W. Holmes, the greatest American judge of the century. For Holmes, law and art are radically distinct and their separation does not allow people versed in the law to appreciate beauty or even the masterpieces of art. Lawyers live by the text and love the past, they hate novelty and misunderstand new languages. The law is able to appreciate new art only after it becomes a matter of convention, use and habit, in other words, when art becomes like law. Great art, on the other hand, precisely because it breaks away from conventions and rules and expresses creative freedom and imagination, is the opposite of law. The law of art is the opposite of the rule of law.

Similar judicial statements distancing law and aesthetics are not difficult to find. "Certain legislatures might consider that it was more important to cultivate a taste for jazz than for Beethoven, for posters than for Rembrandt, and for limericks than for Keats. The world would be at continual seesaw if aesthetic considerations were permitted to govern the use of [governmental] power".² But "aesthetic considerations are a matter of luxury and indulgence rather than of necessity and it is necessity alone which justifies the exercise of [governmental] power to take private property without compensation"³ thundered another court in a humble case involving local anti-billboard regulations. These judicial statements express the most common justification of the attitude adopted by the law toward aesthetics. The experience of art is radically subjective and no common or universally valid standards for its appreciation can be found. By contrast, law is the discourse of reason and the practice of power. The government

cannot indulge in fanciful considerations of beauty or extravagant aesthetics in carrying out its functions. In Hegelian terms, law is the combination of reason and necessity; for law, art is the combination of sensuality and freedom.

These statements are contemporary expressions of a long standing ambiguity of the law towards art and aesthetics. They express one way of looking at art, which emphasises its formal qualities, its aesthetic affect and its slightly frivolous status when compared with the practice of reason and the injunctions of social and political necessity expressed in law. They are part of a typically modern attitude to art best represented in Kant's critical philosophy. According to this approach, modernity releases three areas of inquiry and action, the cognitive, the practical and the aesthetic and the three faculties of knowledge, justice and taste are freed to develop their own specific, internal rationality, in separate institutions operated by distinct groups of experts.⁴ Modern law is born in this separation from aesthetic considerations and the aspirations of literature and art and a wall is built between the two sides.

The self in art –as painter or viewer– is free, desiring, corporeal, it has gender and history. The subject of law –as judge or litigant– is constrained, oppressed, censored and ethereal. The legal person is a collection of rights and duties, a point of condensation of capacities and obligations of a general or universal nature and the judge is at the service of the law of reason which has no history and time, no past or future but is omnipresent.⁵ The legal subject that comes before the law is genderless and contextless, a *persona* or mask placed on the body. Justice must be blindfolded to avoid the temptation to face she who comes before the law and put the individual characteristics of the concrete person before the abstract logic of the institution. Finally in an institutional sense, law is presented as the solution to the conflict of value and the plurality of interpretations and is therefore functionally and politically differentiated from literature and art.

Only discussions of the art policies of fascism and soviet communism acknowledge the common concerns and mutual influences, between art and law. "In Germany, the USSR and Italy, increasingly intense battles for the control of art and culture were an integral part of the establishment of power and prefigures the real war which started in Spain and then spread throughout Europe.... These battles for art –or cultural revolutions– were part of the process of purging or cleansing through which each threatened nation could be healed and made whole.... Art is a weapon that could be used to this end".⁶ In this version, power, particularly pathological authoritarian or dictatorial power, and the law are interested in using art for their evil purposes. But this is a perverted, degenerate and transient way of dealing with art and has been used by evil regimes and immoral laws only. A similar argument has been applied to those laws in Western legal systems which impose various types of control or "limited" censorship on the arts. Such laws are condemned as illiberal and oppressive, because they stifle imagination and creativity. The use of art by power as much as artistic censorship are seen as exceptional in the double sense of the word. They are rare and they represent emergency or exceptional law.

And yet, while it is true that tyrannical regimes have often tried either to use art or to ban certain images and censor or punish their “degenerate” makers, the main difference from normal periods is to be found in the blatant character of their attempts and their often ridiculous overreaching. Throughout the history of Western culture, art and more generally images have been treated with various degrees of caution and hostility by religious, political and legal regimes. Both the philosophical –Greek– and the religious –Jewish– traditions express a strong anxiety about the power of images. In the Greek tradition, Plato excluded art and artists, poetry and poets from the realm of reason and good government and inaugurated the ancient quarrel between art and poetry on the one hand and philosophy and truth. This “ancient quarrel” is well-known and has been repeatedly commented upon. What has been discussed less is the relationship between the aesthetic and the practical, in its moral and legal aspects. Law has mimed philosophy in its reservations, if not downright hostility, to art and images. Plato again stated, in the *Laws*, that “when a poet or a painter represents men with contrasting characters he is often obliged to contradict himself, and he does not know which of the opposing speeches contains the truth. But for the legislator, this is impossible: he must not let his laws say two different things on the same subject”.⁷ Indeed for Plato, the supreme achievement of the mythological Egyptian legislator was to realise that certain movements, tunes and artistic representations were harmful to the young and to legislate a list of good and acceptable styles and forms. “Painters and everyone else who represents movements of the body of any kind were restricted” to those forms to such a degree that according to Plato, paintings and reliefs produced ten thousand years earlier were identical to those created at his time. From a contemporary liberal perspective, the Egyptian legislator may be presented as the first censor; but he was also the first lawmaker to realise that the function and the truth of art is to be found in its use. Whatever the formal arrangement or the medium, art has important social effects, which can be manipulated for good or evil.

The Greek legislator often followed similar imperatives. The laws of Thebes commanded artists to idealise their themes and punished digression toward ugliness with punishment. Painters, like Pauson, who enjoyed portraying ugly human beings, and other “dirt-painters” were punished. The great 18th century art critic Lessing commended the Greeks who legislated against caricature and insisted that artists should make their copies more beautiful than the original. Lessing believed that images have a vividness and a presence which gives them strange powers. These powers can be used both to create beautiful men and nations but also to defy nature. Art is too important for nation building and its potential for harm is too great to be left unregulated. “The plastic arts in particular –aside from the inevitable influence they exert on the character of the nation– have an effect that demands close supervision by the law. If beautiful men created beautiful statues, these statues in turn affected the men and thus the state and owed thanks to beautiful statues for beautiful men”.⁸

The Judaic tradition and biblical law are even stricter with art and ima-

ges. The second commandment has been often interpreted to ban to divine images only, but its import is much more general. The prohibition extends to all “graven images, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth”. This prohibition initiated a huge controversy about the power and function of images which still permeates Western culture and law. Their public and overtly political expression in the iconoclastic disputes reveals a deep-seated fear but also an ambiguity as to the use of art and of images more generally. This essay argues that the traditional approach to the law-art relationship is deeply problematic. No radical separation exists between the two domains and not only dictatorial regimes develop policies on images. On the contrary, law has always had a visual policy and understood the importance of the governance of images for the maintenance of the social bond. Law’s force depends on the inscription on the soul of a regime of images which consists of an economy of permitted images or icons, an *iconomy*, and a criminology of dangerous, threatening fallen and graven images or *idolatry*. This peculiar and historically changing combination of iconoclasm and iconophilia amounts to the *iconomachia* of a historical period, or its war of/about images, its complex legal administration of aesthetics. This regime received its most complete formulation after the Reformation but it is still indispensable for the operations of law. Secondly, law’s strategic intervention in the field of vision and iconicity is organised around the regulation of the relationships between object, image and text. Finally, the persistence of the war over images indicates that the stakes are high. This essay concludes by arguing that the peculiar and historically variable combination of law and images is necessary for the constitution of human subjectivity and examines these points through a fascinating nineteenth century libel trial.

(ii) *Prosopon and antiprosopon*

In 626 A.D., the Emperor Heraclius left Constantinople in a military campaign against the Persians. During his absence, the Slav nation of the Atars attacked and besieged the city. The Patriarch Sergios, who had been entrusted by Heraclius with its safety, appealed to the Virgin as protector of the city and general of its armies.

On all the gates of the city, whence the monstrous brood of darkness came, the venerable patriarch had painted, like a sun that drives away the darkness with its rays, images of the holy figures of the Virgin with the Lord her son on her arm, and cried with a terrible voice to the masses of the barbarians and their demons. “You wage war against these very images... but a woman, the Mother of god, will at one stroke crush your temerity and assume command, for she is truly the mother of him who drowned Pharaoh and his whole army in the red Sea”.⁹

And when, through the intercession of Mary, her son had given victory to the faithful, the Patriarch rushed again to the city walls and held up to the enemies “to *phrikton eidos tes graphes tes agraphou* [the terrifying form of the unpainted icon]...showing the enemy its *antiprosopon* [non-face or opponent of the face *prosopon*]”.¹⁰ But the miraculous icons did not just save the city from the siege. Heraclius had taken with him in the campaign against the Persians the “divine and venerable figure of the non painted image [*morphen tes graphes tes agraphou*]. The Logos, which forms and creates all, appears in the icon as a form without painting [*morphosin aneu graphes*]”. And when the Emperor rose to address his army before the battle, he “took the awesome image [*phrikton apeikonisma*] of the figure painted by God in his hand and spoke briefly. This one [not I] is the universal emperor and lord and general of our armies”.¹¹

The Byzantine holy icon which leads the faithful to victory and saves the city belongs to a different iconic tradition from that expressed in the statements of the modern judiciary. The holy icon indicates that if the law’s job is to order the world, one of its main targets and instruments is the image, as mental image, the building block of conceptual thought and imagination or as plastic representation, the material support of vision. The link between law and the image is as old as the world or at least as old as religion.

These icons are not an unprecedented religious aberration. Cult images existed throughout the Greco-Roman period. They often became symbols of social identity and a community’s ideal and were given various protective roles and responsibilities for the security and prosperity of the city. The Trojan *palladium* was such a heavenly image. It was kept hidden in its cella and, as it guaranteed the safety of the city, it had to be stolen before the Greeks could take Troy. Many Greek cities fought to acquire it and, according to legend, it was taken to Rome and then to Constantinople where the emperor Constantine hid it under the famous column bearing his statue. The *palladia* were kept hidden and those who dared to see them were punished. Such icons were often called *diipeteis*, sent or literally thrown by Zeus. Cicero describes the miraculous image of Ceres in similar terms. It was *non humana manu factum, sed de caelo lapsam*.¹² A few centuries later the protective qualities of the miraculous image had been transferred fully to the *acheiropoietoi* (non-painted by the human hand) icons of Christ and his mother, the veronicas or holy shrouds so vividly presented by the seventh century chroniclers.¹³

The supernatural powers of cult icons are an extension only and exaggeration of the peculiar qualities of all images. Images give visual form to invisible powers and make present what is absent and cannot be represented. Regis Debray has argued that the birth of the image is linked with death.¹⁴ Death turns the mind from the visible to the invisible, from the temporary to the eternal, from the material to the spiritual. Archaic images adorn graves and mausolea, they are an attempt to defy the trauma of loss and soothe the sadness of mourning. By painting the image of the departed, in death masks, on mummies, in funereal sites or the Roman imagoes, a double or replica is created and death is defied.

The first ritual images of the Greeks were called *eidola*. The original Greek meaning of the *eidolon* is the double, the replica of an object.¹⁵ Archaic *eidola* refer to dream images, to apparitions and visitations sent by the Gods and to the phantoms or ghosts of the dead. The simulacrum of the dead who visits the living as a ghostly double is called the *psyche*.¹⁶ In the famous opening scene of the *Iliad*, the *psyche* of Patroclus visits Achilles and pleads with him to re-join the battle against the Trojans. At the end of their conversation, "Achilles held out his arms to clasp the spirit but in vain. It vanished like a wisp of smoke and went gibbering underground". Achilles "leapt in amazement. He beat his hands together and in his desolation cried: 'Ah then, it is true that something of us does survive even in the Hall of Hades'".¹⁷ In the economy of the *eidolon*, the image is the double of its object, at times almost identical with it. It does not share only its shape, colour and form but also its voice, life and soul, all its ontological qualities except for its material existence. It can be seen but cannot be touched. The phantasm or idol brings back to vision and imagination the invisible, it brings the absent to temporary presence.

These attitudes to images indicate a permanent theme in the theory of the icon which crosses the ontological divide, inaugurated by Plato, between representation and its object. Images speak directly to the senses and affect the psyche, they address the labile elements of the self and avoid the calming intervention of *logos*, language and reason. This extraordinary power of the image forms a permanent theme in classical religion and culture well before Christianity. *Genesis* records that Jacob's cattle had produced striped and spotted offspring when exposed to coloured rods during conception.¹⁸ The Church Father Theodore the Studite in his early defence of images repeats and humanises the claim: a woman who saw a black man during her pregnancy delivered a black child. If these stories sound unbelievable, a more consistent line links imagery, and dreams with strong emotion and erotic or sexual arousal. Artemidorus claims in his *Interpretation of Dreams* that it made no difference if one saw "Artemis [Diana] herself...or her statue" in a dream, because statues had the same effect "as if Gods were appearing in the flesh".¹⁹ Pagan households according to Gregory of Nyssa and Clement of Alexandria had pictures of Aphrodite in erotic embrace and other lewd subjects on their bedroom walls, which were used to invigorate their erotic appetites and embraces of their inhabitants.²⁰

The third century rhetor Quintillian writes that "what the Greeks call *phantasiai*, we call *visiones*, imaginative visions through which the images of absent things are represented in the soul in such a way that we seem to discern them with our eyes and to have them present before us".²¹ Quintillian provides the link between archaic idols and faculty psychology and alerts us to an original attitude towards the imaginary, both images and imagination, that radically differs from Platonic *mimesis*. During the Byzantine iconoclasm, the iconoclasts mobilised the earlier anti-pagan arguments against the followers of holy icons. In response, the iconophiles adopted implicitly the pagan position affirming the affective power of images but changing their target. While pagan private and pu-

blic illustrations were meant to arouse passions and erotic desire, the iconophile Christians believed that a more pious love would be created through the contemplation of holy icons. The phantasiai, phantasms or visions of Quintillian, which will later develop into the cult icons, the visions and visitations of the mystics and the virtual reality of the moderns are the descendants of the Greek *eidola*.

Lessing, in his discussion of *Laocoon*, takes up these themes and links them with the classical beliefs. For Lessing, images create illusions because they have a vividness and a presence which gives them strange powers. These may be used both to create beautiful men and nations but also to defy nature. Modern artists, Lessing believes, do not consider the depiction of beauty as their main aim and a certain type of art has developed which consists in the “wanton boasting of mere skills, not ennobled by the intrinsic worth of their subject”.²² At that point, Lessing digresses from the beautiful men and beautiful statues of Greece to the moderns for whom “the susceptible imagination of the mother seems to express itself only in monsters” and explains the detour through a recurrent mythical theme. Mothers of a number of heroes, including Alexander the Great, Scipio and Augustus dreamt during their pregnancy that they had intercourse with a serpent. Lessing explains that serpents were emblems of divinity and were commonly presented in statues and images of Bacchus, Apollo, Hermes and Hercules. These pious and honourable women would have been “feasting their eyes upon God during the day” and as a result the adulterous fancy of the snake would visit them in their dreams. From the archaic Greek *eidola* to the visions of Quintillian to the dream visitations of Artemidorus and Lessing and the cult icons of the Church a strong theme connects pagan and Christian beliefs on the image. Improper and holy images, snakes and serpents as well as pious and saintly icons imprint themselves on susceptible imaginations and lead people either to sin, adultery and unnatural couplings or to holy life, spiritual and political salvation. There is a strong link between desire and the image which indicates its significance for the construction of the human subject.

(iii) On the theology of the icon

This is the aspect that Plato’s theory of *mimesis* attacks mostly. The *psyche* is no longer the ghostly double of the dead but the living part of the person, while the fascinating and bewitching aspects of the *eidolon* are now attributed to all images. The image becomes an idol in the modern sense, it deludes and passes for what it is not. The image is the copy of a prototype, it resembles the form and shape of its model and is therefore false. Plato defines the image as other from its model, in the *Timaeus*: “For an image, since the reality, after which it is modelled does not belong to it, and it exists ever as the fleeting shadow of some other, must be inferred to be another”.²³ Its ontological status differs radically from its prototype or model. The image has no reality other than its likeness to what it is not, the real things whose nature it feigns. A purely visible or sensible

phenomenon, it feigns the substance of its model and has a radically different ontological status. In the dialectic of the same and the other, the *eidolon* shares the ontological status of the model albeit temporarily and works on the axis of the absent and the present while the icon or image reduced to mere likeness is ontologically different, false, untrue and fictive.

Despite differences of nuance and detail, the prohibition of idolatry is justified on two grounds: First, worshipping images of gods turns these images into fetishes. The god is replaced by the material object because the idol takes on the qualities of the entity represented thus becoming a fetish. Fetishism forgets that icon represents an invisible object or power and turns it into an autonomous object of veneration. The principal problem here is not so much the impossibility of representation of invisible and supernatural powers but their wrongful worshipping which is presented as a sexual sin. The main image used by the prophets to condemn idolatry shows God as a jealous husband whose wife, Israel, is not allowed to have adulterous relations with others. Idolatry is sometimes denounced as whoredom, others as harlotry or nymphomania.²⁴ Idols are worshipped for their sexual temptations and, according to the prophets, "Israelites indulged in idolatry in order to allow themselves to perform forbidden sexual relations".²⁵ In a more abstract vein, idolatrous fetishism eliminates the ontological abyss between the original and the copy. The idol offers an inappropriate simulacrum of divinity which attracts undeserved and sinful veneration.

But the iconic representation of divinity is also prohibited for cognitive or, in modern terms, aesthetic reasons. The fear now is of the representational practice itself. God has no image, and the material depiction of the spiritual divine essence is wrong. The Christian "negative theologians" insisted that divinity cannot be circumscribed by the human spirit or artefacts because it is radically transcendent to secular existence. Images of God are wrong because they confuse original with copy and lead to acts of undeserved veneration or because the representation itself is inappropriate by alleging to put into wood and stone, hue and paint the uneffable and uncircumscribable. This position that became the basis of Judaism in the theology of Maimonides, although without clear biblical authority and, any material depiction of the divine immaterial essence, is wrong. And yet, the Jewish tradition appreciates the urge to have visual witness of God. Philo of Alexandria repeatedly states that Moses was burnt by the desire to receive "visible signs" of God. "So insatiably he desires to behold [God that] he will never cease from urging his desire" and though he "is aware that he desires a matter which is difficult of attainment, or rather which is wholly unattainable, he still strives on".²⁶ Moses could resist the sinful consequences of this insatiable desire, but for ordinary people the veneration of idols was inevitable. Idolatry is therefore the theologically and philosophically misconceived expression of a strong eros.

But the Bible places a second pronouncement about imagery at the centre of the law. According to *Genesis* 1: 26-27, man is made in the image and likeness of God, he is the *Imago Dei*. The paradox between the two foundational laws, in

Genesis and *Exodus*, became the basis of the theological and philosophical arguments during the Byzantine and later iconoclastic controversies, after which the insatiable desire of Moses was finally fulfilled. In the typological interpretation of Christianity, the conflict is resolved through the greatest of paradoxes, the incarnation of the Son of God. St Paul had argued that Christ was the image of the invisible God (Col. 1:15) and the early theologians dealt with the question of the image as a Christological matter not immediately related with the question of iconic representations.²⁷ That Christ is the natural image of God was accepted by both iconoclasts and iconophiles. The incarnate Christ, the “word made flesh”, partakes fully and perfectly of both divine and human nature. But while the iconoclasts claimed that this double nature of Christ cannot be circumscribed in icons and material representations, the victorious iconophiles retorted that “the new order”, inaugurated by the incarnation, meant that Christ’s human form could be circumscribed and depicted. God, by violating or fulfilling his own commandment against graven images, provided an image of himself in Christ and legitimised the production and display of representations and icons of his Son.

But the theology and philosophy of these types of images is fundamentally different. The theory of the aniconic natural image belongs to theology, the theory of the icon to economy. Theology deals with the reality of God, his eternal and invisible essence, while economy, is a historicised theology which through the doctrine of incarnation, deals with the dispensation of God in relation to all creation, to humanity and to the Church.²⁸ For theology, there can be no resemblance between God and man. Christ is the natural image and Logos of God, the *Imago Dei*, he is co-substantial with his Father. This natural image or essential likeness is one aspect of the love and grace that unites Father and Son. Christ the image of God and Christ the Son of God refer to the same essential relationship which cannot be seen or portrayed but upon which all other relations and images are based and modelled. Economy, on the other hand, argues that the incarnation introduced the divine into history by presenting the image of God in human flesh. Economy cannot be separated from the bodily image of Christ: “he who refuses the icon refuses the economy of salvation”.²⁹ We are presented therefore with two orders of resemblance. The absolute and unrepresentable likeness between Father and Son founds as well the relative or formal likeness between Christ and his icons. But this formal relationship is not one of representation.

The icon does not present Christ but tends towards him, it puts into plastic form the relationship between human and divine Logos. It does not resemble but imitates, it does not aim to persuade through verisimilitude but through the orientation of the mind from the limited formal likeness of iconic representation to the absolute likeness of divine affinity, it turns the soul from the material to the spiritual. The divine essence remains invisible while its limited imitation by the icon puts into circulation the transcendent and attaches the world of secular visibility to the unrepresentable essence of the Logos. The “chain of images” which penetrates every corner of the Byzantine Empire after the end of the

iconoclastic controversies is a highly regulated and hierarchical order, a pyramid of symbolic and iconic links at the apex of which stands the ineffable, infinite and invisible *Imago Dei*. Iconophilic doctrine does not attack therefore the aniconic principle of the Second Commandment and of the other great monotheistic religions. It stages the transcendent by metonymically indicating spiritual and absolute likeness through the limited resemblance of iconic representation. This concern to retain divine invisibility is present in the negative theology of the Orthodox and Catholic Churches. The negative theologians insisted time and again that divinity cannot be circumscribed by the human spirit or human artefacts because it is radically transcendent to all secular existence. The role of the theologian is to express what the God is not and cannot be, to formulate the principle of total transcendence in relation to earthly existence. The first and greatest exponent of negative theology, Dionysius the Areopagite, says that any perfections we perceive and know are of this world and “there is no speaking of [the Supreme Cause], nor name or knowledge of it. Darkness and light, error and truth - it is none of these. It is beyond assertion and denial”.³⁰ God can only be known “through unknowing”.³¹ And yet Dionysius defends icons and a contemporary commentator finds it “strange” that his work has been claimed as authority by both iconoclasts and iconophiles.³²

Despite his mysticism of total transcendence, Dionysius can defend holy icons through the dialectical reworking of the great paradox we encountered earlier in the debate between essential theology and historical economy using the Neoplatonic theme of the divine light. It “can enlighten us only by being upliftingly concealed in a variety of sacred veils which the Providence of the Father adapts to our nature as human beings”.³³ These veils or symbols allow us to perceive the divine revelation and provoke the mind to move towards the absolute they hide. Revelation works “by proceeding naturally through sacred images in which like presents like, while also using formations which are dissimilar and even entirely inadequate and ridiculous”.³⁴ “I doubt that anyone” Dionysius adds opening the way for the modern sublime “would refuse to acknowledge that incongruities are more suitable for lifting our minds up into the domain of the spiritual than similarities are”.³⁵ Holy icons are such dissimilar similarities, which lift us “from obscure images to the single cause of everything”. Icons lead us to the transcendent because “in a divine fashion we need perceptible things to lift us up to the domain of conceptions”.³⁶

In these obscure and paradoxical formulations, we find the most complete defence of the claim that visuality is anchored on the desire to perceive the invisible and ineffable, insight on blindness and light on darkness. “If only we lacked sight”, Dionysius sighs, the knowledge of unknowing would then be so much easier, a statement that could easily have been made by Moses.³⁷ But our fallen nature is endowed or damned with the senses of which vision is the foremost. In the Judaic tradition, the repressed desire to see God leads to the pleasures of the flesh;³⁸ in the Christian, vision becomes productive. By adopting a principle of aggressive visuality, the iconophiles promote the imperial aspira-

tions of Christianity and of the secular powers which accept the sovereignty of its faith. The holy icons of the Patriarch act on the world and save the city, they affect the imagination and call on the faithful to organise their lives in *imitatio Christi*. Christian iconology, both politically and spiritually, acts in ways more radical, total and far reaching than any previous theory of the image claimed or practised. Holy icons do not abolish or transcend the great metaphysical divides of western civilisation, those between divine and human, material and spiritual, eternal and historical. They make them part of divine economy, in other words they historicise them and put the icon, this most powerful mediating entity, at the service of political and administrative tasks. The celebration of the double nature of Christ which adorns our Churches and Galleries, particularly in the great Renaissance paintings of the Annunciation and of the Virgin with the baby, is the greatest proof that the infinite and invisible has entered the world and, through its immanence and limited formal likeness in the icon, can save and change it. Similarly, the *acheiropoietoi* (non-man made) icons and the veronicas with their splendour and miraculous powers, offer a necessary guarantee: behind the proliferating images and icons stands not the limited craft of the artist but the absolute and therefore invisible power of the sovereign *demiurge* who, as divine artist, creates the world in his own image.

And while triumphant orthodoxy retains a strong principle of non-representability behind its proliferating images, similarly the aniconic and iconoclastic traditions do not reject fully the principle of representation. While idol-worship and images of divinity based on likeness are prohibited, non mimetic signs of the divine are acceptable. The Holy of Holies in the Jewish temple often hides behind a curtain an image of the Cherubim who are God's chariots, a metonymical and not metaphorical reference to God. The Byzantine iconoclasts forbid all iconic representations of divinity, but they accept the sign of the cross, the Eucharist and good government as permissible signs of God's presence and of Christ's plan of salvation. The desire to stage and hide the transcendent is a permanent theme of both orthodoxy and iconoclasm.

(iv) Political power and the *speculum mundi*

Secular rulers have adopted similar positions to the portrayal and dissemination of their image. The Kings of Persia would never be seen by their subjects to whom they spoke behind a screen. The Temple in Jerusalem hides nothing behind its elaborate veils and curtains. In Japan, only the Emperor can enter the inner sanctum of the main temple, where a mirror is hidden in a chest. Gods, Emperors and Kings hide the ultimate signs of their power, make them distant and invisible but often this distanciation and occlusion hides nothing. But their Roman successors took a more aggressive attitude towards their portrait. Andre Grabar's classic treatment of imperial portraiture concludes that their dissemination was part of a deliberate policy.³⁹ Contemporary scholarship treats imperial art as more nuanced "dynamic dialogue between ruler and subject, court

and ruler, public and artist, artist and emperor".⁴⁰ But the conclusion is not different: "Rarely has art been pressed into the service of political power so directly as in the age of Augustus".⁴¹ A direct line can be traced between the early Roman adoption of Hellenistic cults, with their elaborate classical depictions of gods and emperors, and the eventual triumph of aggressive iconophilia in the Byzantium. The theology of the icon was simply its most advanced and to-date unsurpassed philosophical and political justification.

The Roman emperor Diocletian introduced in the third century an imperial cult which equated the emperor with his portrait. Strict legal rules codified and developed pre-existing conventional practices and granted to imperial portraits all the honours given to the emperor. Imperial portraits were ceremoniously sent to all the provinces and elaborate rituals were established for their reception. Provincial authorities received the portraits outside the provincial capital and led them into the citadel in a ceremonial procession which was followed by festivities during which authorities and people paid homage to the portrait. Any breach of the rules of reception and veneration of the portrait amounted to *lesè majesté* because all honour appropriate to the emperor should be addressed to his portrait. Special "imperial bearers" were appointed to carry the imperial portrait during public processions.⁴² The image of the emperor was taken to all public buildings; it adorned court rooms and presided over judicial proceedings. And when an emperor was deposed or a territory seceded from the empire, the changes were confirmed through the ceremonial removal and destruction of his portraits. In one such instance, after Caracalla's victory over his brother Geta, the destruction of all portraits of Geta was ordered. Many were effaced while others were covered with foul smelling substances as part of the ritual of *damnatio memoriae*.⁴³

The symbolic and moral function of imperial art was accepted by early Christians. In their attacks on pagan idolatry, the Church Fathers claimed that pagan rulers had placed their statues in public places in order to turn their subjects from crime and delinquency through the awesome sight of the kingly statue. Gregory II chastised the first iconoclastic emperor Leo III for the removal of pictures from public places because he thought that the mob was freed as a result to engage in gossiping and playing the harp, the cymbals and the flutes, activities which the Patriarch considered both trivial and dangerous.⁴⁴ The Father of the Church Athanasius summarised the justification of this second attitude quite succinctly: "The likeness of the Emperor in his image is exact, so that a person who looks at the image sees in it the Emperor; and he again who sees the Emperor recognises that it is he who is in the image...the image might say, 'I and the Emperor are one; for I am in him and he is in me.' He who worships the image in it worships the emperor also; for the image is his form and appearance".⁴⁵ And St. Basil affirms: "Honour which is paid to an image pertains to the prototype".⁴⁶

From the perspective of contemporary aesthetics such claims sound absurd. But if we examine the form of imperial portraits, a form which survived

well into modernity, we can get an insight into the moral aspect of cult images. Grabar has distinguished between realist and “typological” art. Imperial portraits are the best example of the latter. They have an emblematic character and are organised in a series. Iconic seriality appears first in the imperial cults of the early empire. The statues of Augustus which proliferate both in the East and the West follow closely formulaic depictions of the emperor in mythical guise, initially developed in Rome and then faithfully copied throughout the empire. A uniform conception of the “emperor’s appearance and that of his family prevailed, and these images in turn, owing to the new political order, became models for clothing and hair styles –in life no less than in art– throughout the Empire”.⁴⁷ This iconic regime led to a simplification and standardisation of artistic forms, but proved invaluable for the creation of a strong sense of a unified and ideologically coherent empire. The emperor’s portrait stood at the centre and in “the compact, pyramidal structure of Roman society entirely oriented towards its apex, the image of the emperor easily became the model for every individual”.⁴⁸

This simplification and standardisation was continued in the Byzantium and was sanctified by the Church fathers. Eusebius authoritatively defined the status of the Christian emperor when he wrote in 336 A.D.: “God has designed the kingdom on earth to be an image of the kingdom in heaven; he urges all men to strive towards his radiant kingdom. And in this heavenly kingdom, the emperor, who is dear to God, shall in future participate, for he has been endowed by God with natural virtues and has received in his soul the outpouring of God’s favour. The emperor has become rational through the universal Logos, he has become wise from his communion with Wisdom, good through his association with the Good, and just from his connection with Justice”.⁴⁹ This statement fixed the visual language of Byzantine imperial portraiture for 10 centuries. Emperors appear invariably in full length frontal portraits with all their finery and pomp as the representatives of God on earth and, despite limited efforts at individualising the images through the inscription of the name of the emperor, a “consistent Byzantine representation of imperial power” can be found “in which all the Dynasties agree”.⁵⁰

These formulaic images have two aspects: they stage the aura of imperial power and divine affinity by placing the imperial face within a regulated continuum of past and future emperors and, secondly, they are power’s *prosopopoieia*: they superimpose a face on the glory of the empire. The new emperor will come to occupy a place in an eternal space, he will slot in, as it were, in a series that confirms his divine partnership by meeting the requirements of kingly representation. Descriptions and even portraits of future emperors circulated before their enthronement pre-empting the succession and placing the future emperor within the visual regime of imperial power. Nicephorus narrates how the emperor Heraclius on a mission to meet the King of the Avars brought with him a portrait of his sister who he wanted to marry to the king. But in another story we are told that imperial messengers were sent to the four corners of the empire to

find a bride for the young prince, carrying with them a portrait of the future empress.⁵¹ According to Dagron's felicitous phrase, imperial icons have a prospective function, they link the future of the empire with the regulated present of imperial representations. Being part of a repeated and eternal series confirms the emperor's secular divinity.

In this sense, while the emperor's portrait is always the same because God is eternal and unchanging, it is also peculiarly invisible. Liutpard of Cremona, a western visitor to Constantinople in the tenth century, narrates the following story. Emperor Leo VI, wishing to test the loyalty and alacrity of the imperial guards, went out at night in disguise. As he approached the palace, he was challenged three times by guards and claimed that he was looking for a brothel to spend the night. The guards arrested him twice and twice he bribed them and went free. On the third occasion, he was finally chained, beaten up and put in a cell. When the soldiers left, he called the prison guard and asked him: "My friend do you know the emperor Leo?" "How could I know him as he is a man I do not remember ever seeing? Certainly on public occasions when he passes by, I have seen him from a distance (for you cannot get close) but I felt I was looking at a marvel not a man".⁵²

Seeing a marvel and not a man and linking secular with divine power is the essence of imperial portraiture. Religious imagery was initially an instrument of imperial aggrandisement but the emperor becomes the representative of God on earth, an "image of divine King and the apostle of true faith", after the seventh century.⁵³ Kantorowitz has famously described the King's two bodies, the mortal human body and the imperishable second body, the *persona ficta* which incarnates the eternal and mystical communion of church and empire. The evolution of this double body follows iconographic developments. After the conversion of Constantine, the picture of the emperor appeared on the front of coinage and the sign of the cross at the back. But following the change of sovereign in the seventh century, the image of Christ replaced that of the emperor. The iconoclastic emperors replaced Christ with images of themselves and their ancestors, which were removed after the victory of the defenders of the icons at the second Council of Nicaea, in 787. The unity of the empire becomes identified with the unity of the faith and the coinage followed the changes in imperial policy indicating the close link between power, territory and image.

The typological imperial portrait with its unalterable characteristics regulates the artistic representation of the Other or mystical body of emperor and state and its disciplined visibility indicates its invisible source. Strangely, it was the iconoclastic emperors who, by replacing the image of Christ with their own and that of their ancestors, turned the secular principle of succession through parentage into the transcendent basis of imperium. In doing so, they prepared the road for the modern monarchies for which blood has largely replaced divine provenance.

Holy icons follow similar formal patterns. Icons, Dionysius's veils or symbols, represent ideas not phenomena or subjects. They are the limited at-

tempts to capture divine creations or archetypes. Their painter is not a creative artist but a medium used by the holy spirit to convey these metaphysical truths. Painters, like the medieval copyists, do not make an individual contribution and, like the saints, with whom they were often compared, they participate in an act of divine creation. The artist's hand is directed by God and his identity disappears to allow the image of the saint to come forth. Icons become standardised and the task of the painter is to copy previous icons. The formal justification for this great labour of copying was that ancient icons, those painted by St. Luke who was wrongly reputed to have seen the historical Christ and veronicas, prove the authenticity of the witness. Leaving aside these unconvincing explanations, the fact remains that a great chain of images deluged the empire and, assisted by imperial portraiture, installed an elaborate panorama of representations in its four corners.

Theodore the Studite, the great defender of the icon wrote during the second iconoclastic controversy that "if that which is absent can be contemplated by the mind and cannot be also seen in a visual representation, then it denies also itself to the mind's eye".⁵⁴ Nicephoros, in his more polemical mood, puts the same idea in starker terms: "not only Christ, but the whole Universe will disappear if there is no circumscription or icon", an idea expressed today by CNN and Sky TV.⁵⁵ The Byzantium was the first empire to use aesthetics to create and propagate an all-inclusive perception of the world. There are two aspects to this early society of the spectacle. The elaborate iconography created a sense of identity, by providing the community with an ideal with its iconic representations to aspire to. But its greater innovation lies at the level of the individual psyche.

The holy and imperial images offer a complete *speculum mundi*, a total visual organisation of the world which furnishes the faithful with models of what he should see, think and dream. The icon is an aesthetic, moral and political category which incites the imagination to superimpose the individual features of the face of the beholder onto its schematic outlines, to anticipate like the portrait of the future empress, what he should look like and become. The faithful would be moved to tears in front of icons depicting the martyrdom of the saints, to joy at their triumph and to spiritual love through the icons of the Virgin and would be tempted to imitate their lives. Fear and trembling would be created by icons of the Last Judgement where Christ rewards the faithful and punishes the sinners by consigning them to the fires of Hell. Dionyssius the Aeropagite argued that lions, oxen, eagles and horses painted on holy icons, turned the mind of the faithful to the angelic orders and presented invisible powers to the human eye. Michael Psellus, an eleventh century philosopher, commenting on the "image and likeness" passage of *Genesis* writes that "'image' is the capacity of imperfect human beings to perfect themselves, or to attain the true likeness of God. 'Likeness' is a process of perfection through virtue, in which the body participates through progressing to true beauty. Beauty is thus an ethical category. We can either advance on the way to the good or, equally, can lose our way through 'incapacity for beauty'".⁵⁶ By linking the order of vision with a moral vision and

an emerging conception of aesthetic beauty, the Byzantine world created the most effective way for capturing the soul of the person. After the Byzantium all empires will be empires of the senses.

We can conclude that the two iconic models for imposing and authorising imperial power, despite their surface differences, include both a moment of darkness and a surfeit of light. The first is based on invisibility, on hiding the ultimate bearer of power, God or Emperor, and prohibiting the exhibition of his portrait. Here the principle of visibility and the order of representation are based on a metonymical transfer of meaning from the infinite to the invisible finite and from the all-seeing to the non-seen. But despite the prohibition, ultimate authority must be staged in full pomp in a place that hides nothing. Irrespective of particular historical and political circumstances, visibility is grounded on the invisible, representation rises on the ground of the unrepresentable, the support of power is a powerful void which must be both staged and hidden. If images, icons and idols, mediate between gods and men, the living and the dead, the rulers and the ruled, the most powerful image is this image of nothing. Claude Lefort has argued that in modernity, power becomes empty.⁵⁷ But the history of the image indicates that well before the coming of modernity the place of power was vacant. Rulers knew this simple and terrifying fact and they staged the most elaborate scenery to display this most empty of places. The hidden gives value to the apparent and the invisible gives power to its guardian. As Louis Aragon put it joining the normative and the aesthetic, “on a fait des lois, des morales, des esthétiques, pour nous donner le respect des choses fragiles”.⁵⁸

The second regime rests on extreme visibility: on a garrulous proliferation and dissemination of the image which is treated as a sign of presence and as a symbol of power. They are linked with the two Aristotelian conceptions of the imagination, *phantasia mimetike* and *phantasia demiourgike*. The imitative imagination creates copies of what has already been perceived by the senses and is necessary for memory, while the creative produces new combinations of familiar images. The two types of imagination complement one another and are encountered both in orthodoxy and iconoclasm. Iconophobia and iconophilia are not two opposed and alternating regimes but the two necessary moments in every authorised system of representation and power. The icons of power presuppose the elaborate representation of nothing which underpins its mystique. The regulated distribution of royal and divine icons, signs and emblems establishes a legitimate and legitimising system of visibility and disperses it in the territory as model and symbol of acceptable forms and valid ways of representation. Power and form, politics and aesthetics, territory and image come together and become an integral combination in which the writ of the Emperor or of God reaches the places where their picture is displayed.

(iv) Images, law and the constitution of self

The persistent link between law image and desire indicates the important synchronic or anthropological function of the relationship. The separation and

bonding between images, words and things, the question of representation of self and other lies at the heart of the constitution of subjectivity, if we attend to some of the great discoveries of “the cognitive Continent” of psychoanalysis. According to a basic psychoanalytic insight, the subject comes into existence by entering the symbolic order of law and language which separates the pre-Oedipal infant from the maternal body and inscribes loss, absence and lack in the midst of self. This lack is partially addressed through identification with signifiers, words and ideal images. This separation, carried out in the name of the Father, is the effect of entry into the symbolic order of language and law. The operation of the image in this process of subjectivation has not received equal attention to that of language. In the famous “mirror stage” the infant experiences a sense of jubilation when she first recognises her image and through the reflection she identifies with a whole and complete body.⁵⁹ But that image is external to the body, it is other from the child’s sensual experience of a disjointed and disobedient body. The body is made present for the subject by means of an image, the body is posed outside of itself in its mirror image or double, it is ex-posed. The ego does not precede the image but is made in the image of the image and it is in this sense that Lacan would claim that the ego and its unity are imaginary, that is, visual and illusionary, the result of a bodily wholeness and completeness imaged and imagined through this projection of the uncoordinated body into an adorable visual other.

The basic law or interdiction which creates humanity as a speaking species therefore is that of division and separation: from the maternal body, through the Oedipal law of the Father, from one’s one body through the narcissistic identification with its image, from the other as subject and object through their negation or nihilation in the sign. The ego from the start is another. This is the void that lies at the centre of human existence. The function of the originary prohibition is to split the subject from corporeal existence and bond her to signs, words and images. The regime of images has as its first object to determine our ways of seeing, of attaching symbolic constructs to missing, lost or dead objects and making them appear as natural, inescapable or truthful in their absence. But this necessary division and alienation is not without its dangers: an instance of representation must be assumed or provided, a place from which image and word originate and upon which they are safely anchored. The first task of every culture is to institute and guarantee regimes of imagistic and linguistic representation, which both separate and bond words and things and thus allow the assembly of the biological, social and unconscious dimensions of human life in the figure of the person (*persona* in Latin is the mask actors put on stage during performances).

According to the French historian, jurist and psychoanalyst Pierre Legendre, the normative structures of society are charged with the task of establishing and manipulating this instance so that the subject’s alienation in the sign becomes part of the dialectic of her formation.⁶⁰ Religion and law carry out the-

refore vital anthropological functions. For Legendre, society is a generalised or social mirror in which the work of institutions is to transfer the narcissistic “I love myself” into “I am another” and “I love another”, and therefore to establish the necessary relation of the subject to the (image as) other. This function calls for an instance which ritually displays or stages the principle of representation. Two crucial tasks are involved here. First, the social mirror must stage the negativity which is essential for the subject’s introduction into the relationship with alterity or with the symbolic. Separation is domesticated and loss and absence accepted through their reference back to a foundational image from which all power to legislate and all ability to attach signs to objects emanate. But at the same time, the imagistic representation of divinity or royalty must retain the distance and protect the radical alterity that separates the human and divine worlds, self and other. The inner sanctum is empty, the most apposite sign of divinity and royalty and the emblem of the law is the zero. The *antiprosopon* of the holy icon of the Patriarch, the non-face or the other of the face, ensures that the face and its eyes come to vision. *Antiprosopos* is the representative in Greek, he who stands in for the face and by extension for the person of someone else. But all *antiprosopeia* or order of representation is based on the invisible or terrifying *antiprosopon* contained in the limited attempts to picture radical otherness. The Christian *Imago Dei* reconcile humanity to its inescapable limitation. The absolute other cannot – must not – be seen, but its existence and power must be asserted and staged. This is why the absent founding image must be staged in order to allude to the terrible force or transcendent power which lies behind all subjectivity, power and law. The social mirror, a necessary foil or support of representation, is thus presented as its fount and origin.

The ritual mirror must also guarantee the principle of resemblance which supports the differentiation, multiplication and identification of specular objects. Augustine’s Christian semiotics argued that for signs to attach to things or beings and become their likeness, their limited bond must participate in a *similitudo absoluta*.⁶¹ This site of participation of things in the likeness of God is the Logos, Christ as the natural *Imago Dei* is the metaphysical prototype of all resemblance. Christ as the natural image underpins not just the limited likeness of the material icon but the whole order of representation. The absolute image both secures and domesticates division and separation and, by staging the principle of resemblance and iconicity, binds signs and images to things. Through the recognition of the absolute otherness of the divine image, narcissistic desire – desire of the self in its image – is transposed into an acceptance of radical otherness (of the image, the other) and into desire for the other. Two basic anthropological functions are therefore at stake behind the war of images: division, negativity and otherness as well as likeness, mimesis and representation. In this sense, the power to stage representation links the normative structures with the world of forms, relates politics and aesthetics and supplies the symbolic order with its absent foundation.

(v) Law and the normative screen

In modernity, as sovereignty becomes dispersed and the law acquires a relative autonomy from political power, these tasks have been gradually and partially transferred to the legal institution and art. The sublime feeling replaces the awe created in front of the divine image and, the law, the legal form of absolute command, becomes the guarantor of individuality and freedom, in other words of the process of subjectivation. While laws, rules and regulations proliferate and affect every aspect of social relations, the law of law is absent. We are surrounded by laws but we do not know where the Law is. The function of dividing and bonding signs and things is now carried out by the legal institution. The final stake in the war of images is the validation, valorisation or idealisation of particular representations or imagistic and semiotic constructions over against others which are devalued, banned or excluded. Let us conclude by briefly examining a court case which exemplifies these points.

Whistler v. Ruskin is a libel suit brought in 1878 by the London-based American painter James McNeil Whistler against the English critic, essayist and polemicist John Ruskin. Ruskin's libel related to eight Whistler paintings exhibited at the Grosvenor Gallery in London in 1877. They included four portraits and four "nocturnes". The nocturnes were scenes of London in the moonlight. In their dark, moody composition and colour and in their name, which evoked pieces of music, these paintings were an attempt by Whistler to move away from the pictorial realism he had been taught by Courbet in Paris. The more abstract of the pictures *Nocturne in Black and Gold*, a view of fireworks and a falling rocket over Cremorne Gardens, was called by Punch "a tract of mud. Above, all fog; below, all inky flood; For subject - it had none."⁶² Another, a *Nocturne in Blue and Silver*, showed in the words of Oscar Wilde, who was at the opening of the exhibition, fireworks "breaking in a pale blue sky, over a large dark blue bridge [Battersea Bridge], and a blue and silver river".⁶³

Ruskin's view of Whistler's paintings was published in a series of letters addressed to "the workmen and labourers of Great Britain". Letter 79, entitled "Life Guards of New Life", said about Whistler:

For Mr. Whistler's own sake, no less than for the protection of the purchaser, Sir Coutts Lindsay [the owner of the Grosvenor] ought not to have admitted works into the gallery in which the ill-educated conceit of the artist so nearly approached the aspect of wilful imposture. I have seen, and heard, much of Cockney impudence before now; but never expected to hear a coxcomb ask two hundred guineas for flinging a pot of paint in the public's face.⁶⁴

We will concentrate on two characteristic passages, one from the cross-examination of Whistler, by counsel for Ruskin Holker, the Attorney General

of England, and another from his address to the jury. Showing *Nocturne in Black and Gold* to Whistler, Attorney-General Holker asked him what it showed. Whistler responded that it was a night piece and represented the fireworks at Cremorne. "Not a view at Cremorne?" continued the Attorney General, alluding to the tradition which treats art as graphic, pictorial representation. "If it were called 'A view of Cremorne' it would certainly bring about nothing but disappointment on the part of the beholders" responded Whistler. It was only "an artistic arrangement" and for that reason it was called a Nocturne. "You do not think that any member of the public would go to Cremorne because he saw your picture?" pressed Holker, to which Whistler rather dejectedly agreed that his picture would not give the public "a good idea of Cremorne". In this mimetic semiotics, "titles function as captions, with images illustrating the words" and Whistler's paintings by not offering a representation of their themes amounted to "pictorial perjuries" which "not only withheld material facts but also bore false witness".⁶⁵ The central aspect of the case concerns the relationship between object and image, in other words, the authorised meaning of representation, a task transferred from the theology of the icon to the jurisdiction of the law.⁶⁶

Holker opened his final address to the all-male jury by asking them to accompany him on an imaginary visit to the Grosvenor Gallery where the Whistlers were exhibited.

We would find "nocturnes", "arrangements" and "symphonies" surrounded by groups of artistic ladies – beautiful ladies who endeavour to disguise their attractions in medieval millinery, but do not succeed in consequence of sheer force of nature – and I daresay we would hear those ladies admiring the pictures and commenting upon them. For instance: A Lady, gazing on the moonlight scene representing Battersea Bridge, would turn round and say to another, "How beautiful! It is a 'nocturne in blue, and silver'. Do you know what 'a nocturne' means?" And the other would say, "No, but it is an exquisite idea. How I should like to see Mr. Whistler, to know what it means!"⁶⁷

And the ladies would "admire and adore" and "pour incense upon the altar of Mr. Whistler" although they would not understand a thing. Whistler's response comes from his aesthetic manifesto, the 10 O'Clock lecture:

Know then all beautiful women that we are with you. Pay no heed, we pray you, to this outcry of the unbecoming -this last plea for the plain. Your own instinct is near the truth -your own wit far surer guide than the untaught ventures of thick heeled Apollos... For art and joy go together, fearing naught and dreading no exposure.⁶⁸

It is impossible not to contrast those two views of women, beauty and art. The indolence and silliness of women, their artistry and beauty are symbols for the “ill-educated conceit”, the “monstrous extravagance” of Whistler’s “fantastic things”. Standing against the folly of beauty and femininity is the “reasonable man”. In Holker’s imagery, the male members of the jury taken on the tour of the gallery after the ladies represent common sense and honesty. Men, unlike women understand what they see—a bridge is a bridge and it is not like a “telescope”, a “fire escape” or a “whale”, Holker’s descriptions of the nocturne. Things come with their natural images attached to them and with their price tags, so many guineas for so many hours of work. Men have a deal with reason and cannot be hoodwinked. Indeed, manly common sense is the obvious language of reason and of law. Whistler on the other hand, who “does not see things as other people do” is conceited and incomprehensible, extravagant and effeminate, eccentric and slightly deranged, an American and therefore an impostor and jester.⁶⁹

Throughout the iconoclastic wars, the sinful pleasures of pictures are linked to women. Images are like women; women use images and adornments to seduce and corrupt. And it is women and the uneducated who are the victims of images, because they forsake God and his word for the passing attractions of the material form. The “image is an harlot, and man is no otherwise bent on worshipping it, if he may have it and see it, than he is bent to fornication in the company of a strumpet”⁷⁰ writes Parker in his *Scholastical Discourse against Symbolising*. Images seduce women, they are like women and are used by women to corrupt. Stillingfleet in his *Discourse on Idolatry* refutes the argument that the honour given to images is addressed to the prototype comparing it to “an unchaste wife plead[ing] in her excuse to her husband, that the person she was too kind with, was extremely like him, and a near friend of his, and that it was out of respect to him that she gave him the honour of his bed”.⁷¹ The image is a woman, idolatry a feminine vice in which body and spirit become confused.

Holker’s strategy follows the old quarrel between word and image and indicates its political and legal significance. His common sense semiotics and misogyny are based on the time-honoured “natural” bond between object and image. It is the legalisation of the iconoclastic theme, according to which, images “mirror” the world, coupled with the fear of image as feminine, sensual, emotional against reason and common sense. Our case is a good example of law’s involvement in the politics of visibility. It is an early attempt to interpose a “legal screen” between the subject and the social gaze, to filter the objects of vision and to determine the way in which we see and are given to the world to be seen. According to Kaja Silverman, who has reworked the Sartrean concept of the gaze in a Lacanian direction, the screen is the site at which the gaze is defined at a particular society and is responsible both for the way people experience the effects of the gaze and for the particularity of the visual regime of a particular society and epoch.⁷² It introduces “social and historical variability not only into the relation of the gaze to the subject-as-spectacle, but also into that of the gaze

to the subject-as-look".⁷³ As a collection of authoritative images and material practices the screen offers "a repertoire of representations by means of which our culture figures all of those many varieties of 'difference', through which social identity is inscribed".⁷⁴ The religious "chain of icons" was such an institutional arrangement through which certain representations were validated and valorised over against others. But the first and foremost target of the normative screen is representation as such, the assignment of certain ways of seeing as natural, normal or truthful. Through these historically changing imagistic regimes the sensual body and approved icons come together and create what can be called the "normative" body of the individual, of the future empress, of the faithful *imitator Christi*, or the follower of cultural icons, the Dianas and Mother Therasas of our era.

The war of images involves therefore three vital anthropological tasks. The first is about the internalisation of absolute otherness and the domestication of death. The second organises the field of representation, defines what passes as true or natural with the obvious normative connotations of that designation, while the last is more detailed, flexible and historically changing. It is about positive evaluations of certain images which fall within the dominant regime of representation but additionally are ascribed a culturally specific normative superiority against other and competing ones. The first establishes the human subject; the second is about what passes as true in a society, the third about what is to be accepted as good or beautiful. Modern law contributes to all three. It is no surprise therefore that the modern order of images is always accompanied by laws and regulations, by a broad or more detailed code that tells us how to see, what it means to perceive (*aesthesis*) and understand the image, how to link the sign, visual or graphic, with its signatum and stop its endless drifting. It is this sense, *imago est veritas falsa*. As a creation of law and power, the image is non-natural, false; but as the necessary support of our humanity, it is the only truth we have. In acknowledging the *ars juris*, the aesthetic dimension of law, we open the institution to the ethics of otherness and the justice of the senses to that of *Justitia*, the feminine principle of transcendence that challenges the patriarchy of sublime Law.⁷⁵

Notes

1. *Bleistein v. Donaldson*, 188 US 239, at 251 (1903).
2. *City of Youngstown v. Kahn Bldg. Co.*, 112 Ohio St. 654, 661-2, 148 NE 842, 844 (1925).
3. *City of Passaic v. Paterson Bill Posting, Advertising & Sign Painting Co.*, 72 NJL 267, 268 (1905).
4. For a discussion of the Kantian faculties and their relevance to law and jurisprudence see C. Douzinas and R. Warrington, *Postmodern Jurisprudence*, Routledge 1991, Chapters 1 and 3.
5. C. Douzinas and R. Warrington, *Justice Miscarried*, Edinburgh UP, 1994, Chapter 4.
6. D. Elliott, "The Battle in Art" in *Art and Power: Europe under the Dictators 1930-45*

- (London: Hayward Gellery, 1985).
7. Plato, *The Laws* (London: Penguin, 1977), Bk 2, 91.
 8. F. Lessing, *Laocoon, an Essay on the Limits of Painting and Poetry*, (E. A. McCormick transl., Baltimore: Johns Hopkins UP, 1766, 1984 ed.), 14.
 9. Theodore Synkellos, *Sermon on the Siege of Constantinople in 626*, in *Acta Universitatis de Attial Jozsef nominatae*, Acta antiqua et archaeologica 19, Opuscula byz. 3, (Ferenc Makk ed., Szeged, 1975), 74-96 (Greek text), 80.
 10. George the Pisidian, *Bellum Avaricum*, in Agostino Pertusi, *Giorgio di Pisidia Poemi*, Vol.1, *Pengerici Epici* (Studie Patristica et byzantina 7, Ettal 1960), 176 ff. Pisidian's poem to the Virgin has been anthologised in Hans Belting, *Likeness and Presence*, (Edmund Jephcott transl., Chicago: U of Chicago P, 1994), Appendix, 497.
 11. George the Pisidian, *Expeditio Persica*, Pertusi supra n.2, at 84 ff.; Belting supra n. 10, at 497.
 12. Belting, *ibid.* at 55.
 13. Robin Cormack, *Painting the Soul* (London: Reaktion, 1997) passim.
 14. Regis Debray, *Vie et Mort de l'Image*, (Paris: Gallimard), Chapter 1, 26.
 15. Jean-Pierre Vernant, "The Birth of Image" in *Mortals and Immortals: Collected Essays*, (Froma Zeitlin ed.), Princeton, N.J.: Princeton UP, 1991, 165-185.
 16. John Brenner, *The Early Greek Concept of Soul* (Princeton, N.J.: Princeton UP, 1983), 78-9; Verant, "Psyche: Simulacrum of the Body or Image of the Divine", op. cit n. 14, 186-192.
 17. *The Iliad* (E.V. Rieu trans., Hammondswoth: Penguin, 1950), XXIII, 72 ff.
 18. 30: 37-41.
 19. Artemidorus of Daldis, *Das Traumbuch* (K. Brackertz ed., Munich,1979), 163-4.
 20. Clement of Alexandria, *Exhortation to the Greeks* (London: Loeb, 1963), 136-8.
 21. Quintillian, *Institutiones* 6.2. 29.
 22. Lessing, op. cit., fn. 8, 13 ff.
 23. Plato, *Timaues* 52c
 24. M. Halbertal and A. Margalit, *Idolatry* (Harvard UP, 1991), Chapter 1.
 25. *Ibid.* 23. The link between idolatry and sexual immorality remains a common topos during the Reformation controversies.
 26. Philo, *On the Posterity of Cain* (*Works I*, 289) quoted in Moshe Barasch, *Icon: Studies in the History of an Idea*, New York: New York UP, 1992, 66.
 27. Origen's early gloss on St. Paul is instructive: "The image of God is the first born of all creation, the very Logos and truth, and, further, the very Wisdom Himself, being the 'image of his goodness'" *Contra Celsum* VI, 63, 378.
 28. Jaroslav Pelikan, *Imago Dei* (Yale UP, 1990), 98, Marie-José Mondzain, *Image, icône, économie* (Paris: Seuil, 1996), 33-90.
 29. Mondzain *ibid.*, 79.
 30. *On Mystical Theology in The Complete Works* (C. Luibheid transl., New York, 1987) 5; col.1048A; 141.
 31. Quoted in Barasch, op.cit., n. 26, 161.
 32. Barasch, *ibid.*, 159.
 33. *The Celestial Hierarchy in Complete Works supra* n. 30, 2,3; col. 141A-C, p. 150.
 34. *ibid.*, 149.
 35. *ibid.*, 150.
 36. *The Ecclesiastical Hierarchy*, in *Complete Works supra* n. 30, 1,5; cols. 376D-377A, p. 199.

37. *On Mystical Theology*, *supra* n. 30, 2; col. 1025, p. 138.
38. *Idolatry*, *supra* n. 24, Chapter 1; L. Cochan, "The Unfinished and the Idol: Towards a Theory of Jewish Aesthetics", (1997) 17 *Modern Judaism* 125.
39. André Grabar, *L'empereur dans l'art byzantin* (Paris: 1936).
40. Robin Cormack, "The Emperor at St. Sophia", in *Byzance et les images*, (Cycles de conférences du Louvre sous la direction d' André Guillou et Jannic Durand), La Documentation française, Paris 1994, 232.
41. Paul Zanker, *The Power of Images in the Age of Augustus*, (transl. by Alan Shapiro), Ann Arbor: U of Michigan P, 1990, v.
42. S.R.F. Price, *Rituals and Power: The Roman Imperial Cult in Asia Minor*, Cambridge: Cambridge University Press, 1984, 189.
43. Hans Belting, *op.cit.*, fn. 10, 107. The symbolic removal and destruction of portraits of leaders after the overthrow of a political regime was repeated again during the fall of communism. Statues of Lenin and Stalin were toppled or disfigured throughout Eastern and central Europe.
44. Nicaea II, *Actio I* (Mansi 12: 977).
45. Quoted in Pelikan, 38.
46. Basil, *On the Holy Spirit*, xviii. 45.
47. Zanker, *op.cit.* at 302.
48. *Ibid.* at 336.
49. quoted in Cormack *op. cit* at 234.
50. *Ibid.*
51. Dagron *op. cit.* 131.
52. Quoted in Cormack *op. cit* 250.
53. Belting *op. cit.* 138.
54. *Ibid.*, 154.
55. Nicephoros, *Discours contre les iconoclastes* (ed. and transl. M.J. Mondrain-Baudinet) Paris (1989, 244D): 9, 86.
56. This is based on Psellus, *Scripta Minora*, 1:141-14, summarised in Belting, "Appendix: Texts on the History and Use of Images and Relics", *op. cit.*, 529-30.
57. Claude Lefort, *Political Forms of Modern Society*, (Cambridge: Polity P 1986), Chapters 1, 2.
58. Louis Aragon, 'Système Dd', in *Littérature*, no 15 (July-August 1920): 8-9.
59. The *locus classicus* for this analysis is Jacques Lacan, "The Mirror Stage as Formative of the I" in *Écrits: A Selection* (London: Routledge 1995).
60. Pierre Legendre, *Dieu au Miroir* (Paris: Fayard, 1994); Pierre Legendre, "Introduction to the Theory of the Image", (1997) VIII,1 *Law and Critique* 3; "The Other Dimension of Law", 16 *Cardozo Law Review* 3-4, 943-962 (1995); *Law and the Unconscious* (P. Goodrich ed., London: Macmillan, 1998).
61. J.-F. Lyotard, *Libidinal Economy* (London: Athlone, 1993), 66-76.
62. Quoted in Linda Merrill, *A Pot of Paint. Aesthetics on Trial in Whistler v. Ruskin* (Washington D.C.: Smithsonian P, 1992), 36. Merrill's reconstruction of the record of the trial from contemporary sources is a fine forensic achievement. Whistler's own account of the trial initially published as the pamphlet *Whistler v. Ruskin. Art and Art Critics* is now reprinted in his *The Gentle Act of Making Enemies*, Dover, 1967, 1-89. For a discussion of the case see Douzinas "Whistler v. Ruskin: Law's Fear of the Image", *Art History* 19 (1996): 353.
63. Merrill, *supra* n. 62, at 36-7

64. Fors 79 (July 1877) in *Works of Ruskin*, 29:158.
65. Merrill, *supra* n. 62, at 145, 236.
66. This regulation of the order of representation is a permanent theme of twentieth century law. In the American case of *U.S. v. Olivotti* (1916), the court, following Holker, introduced a “representational test”, according to which, art is an “imitation of natural objects chiefly the human form, and represents such objects in their true proportion of length, breadth and thickness, or of length and breadth only”. The test was partially overruled in the case of Brancusi’s *Bird of Flight* (1928) in which the court grudgingly accepted the development of ‘a so-called new school of art whose exponents attempt to portray abstract ideas rather than to imitate natural objects’ and designated the abstract sculpture as art because “it is beautiful and symmetrical in outline, and while some difficulty might be encountered in associating it with a bird, it is nevertheless pleasing to look at and highly ornamental” and was produced by “a professional artist”. For a full analysis of contemporary legal regimes of representation see my forthcoming *Legal Iconology*.
67. Merrill, *supra* n. 62, at 165-6.
68. Whistler, *supra* n. 62, at 153.
69. Merrill, *supra* n. 62, at 168.
70. Parker quoted in Peter Goodrich, *Oedipus Lex* (U of California P, 1995) at 62.
71. Stillingfleet quoted in Goodrich at 63.
72. Kaja Silverman, *The Threshold of the Visible World* (New York: Routledge, 1996), Chapters 4-6.
73. Silverman, *ibid*, at 135.
74. Silverman, *ibid*, at 19.