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art (Daniell 1585).<sup>14</sup> Initially, the context of the devise or ‘holy letter’ has to be reinstated. It is a representation, here in image and vernacular motto, of the earthly reflection of the ‘heavenly ierarches’ and specifically of the system of law which Legh specifies in terms of ‘order, cunning and working’ (Legh 1562). Order here represents office – dignity and recognised rank, while cunning is reason in the sense of disposition and administration, and working is service, obedience to the hierarchy, ‘following the conformitie, and likenes of god’. The nine orders of Angels duly acknowledged, and ‘the glorie of his countenance in heaven’ properly imagined, amen, then the image can be viewed as the spectacle of the relation between the temporal order and the celestial hierarchy, between government, nature and divinity, seamlessly joined in one image. This is a matter a signs and their laws as boldly presented in the figure of the herald in a white shirt dotted with black spurs (mullets Sable, in the armorial argot).

The herald is the messenger, the master of signs and wears on his shirt an escutcheon or shield representing the arms of England devised by ‘holye Edwarde kinge and confessor’. He is thus immediately identified and placed, our herald, the representative and distributor of common law. To this we can add a rod of office in his right hand, pointing to a flag, and in his left hand the tail end of a banner with words of criticism inscribed, effectively stating that in cold weather more clothes are needed. The herald responds, at the foot of the devise by saying that any clothes will do in haste until more can be had. Legh cites Bartolus in support of this proposition, arguing that any clothes will do provided that the symbols that they bear are visible. What matters for the message is not the quantity of clothing but the visibility and legibility of the sign. Put more strongly, the messenger – text, shirt, skin or coat – is subordinate to the missive which attaches properly neither to body nor materiality but to the invisible and celestial source that sent it. It is for this reason, because of the intrinsically chimerical – ‘aereall’ or vanishing – quality of the visible, that the science of signs is necessary and the place of the herald and latterly hermeneut is significant. The rod of office held in the right hand points to the flag on the standard that is held by the dragon. The two animals, dragon and panther, represent, respectively, ferocity and amiability, war and peace, fear and love. Between the two, centre image, a banner on which is inscribed the motto, familiar in some form to all common lawyers, ‘That lawe alloweth must needes be Reason’.<sup>15</sup>

The most striking feature of the devise lies in the conjunction of law, reason and the visible. The herald, the English herald, is the messenger of common law. He is the index and manifest spectacle of the order of reason and the architecture of legality. He is conceived as an image and presented as a devise for transmitting in a didactic and accessible form, the power and the glory of law, its draconian force and

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<sup>14</sup> This defines the prose of the art at 6r: ‘to shadow suerly their purposes and intents by figures. Thus by a Serpent [they signified] pollicie. By an Olive peace. By a Gote, lust ... This was the first foundations of Impresse ...’

<sup>15</sup> Plowden is often cited for the maxim *semblable reason semblable ley* – like reason like law; but it is Coke’s *Institutes* which offers the best discussion of reason as the spirit of law and distinguishing *ratio vera et legalis* from the merely apparent reason.

its facilitative felicity, its conjunction of authority and reason, threat and allure. It is thus that the periphery of the image refers to clothes, to the question of vestment as a matter of the signification of identity in the visible realm. Law, we are told, allows these vestments; they are reason in the sense of being fit to the office of the herald and subordinate to the task of conveying messages. Then, in the centre of the image, under the rod of office and authority, is the motto, technically the soul of the devise. Here we learn that what law allows is necessarily reasonable. This requires a little reconstruction.

First, as we know, what is reasonable is legal. At an allegorical level, what is reasonable is what is allowed. What is allowed is what is visible in the figure of the devise, the order of places and the hierarchy manifest in the public and domestic spaces, within the providential and *oeconomic* spheres, respectively. What is seen is ‘a spectacle of things invisible’, an enigmatic mirror, as St Paul has it, onto a world unseen and still to come. The licit order of things, the visible status quo, is the manifestation of a presumed legality, an esoteric and covert order of being. Second, at the level of doctrine, the words convey a rationality that belongs to and refers more or less directly to prior and unseen causes. The image, which is variously termed a figure, a body, nature or event is to be understood as a glass, a lens onto *anima legis*, the soul or truth of law that only the wise can see and then only in part. The devise, as a figure and as an image, thus represents a structural and necessarily absent order. In the case of the Roman *imago* or funereal mask, the structure represented by the image – the effigy – was that of lineage, of the ancestors and their nobility. For the authors of the devises, the image is similarly a figure, a reason and law that gains a momentary materiality in the visible world. The devise is a *prosopopoeia*, according to Estienne, a personification of abstract and incorporeal ideas, the dictates of an unwritten law (Estienne 1650). The image thus represents the exteriority of a larger and hidden design. It is the outer shell, the mark, vestige or impression left by the hidden order and structure of being as law.

The English philosopher and lawyer Abraham Fraunce, author of the *Lawier's Logike*, also wrote on the philosophy of symbols. In the fourth book of his treatise on armorial insignia, the opening sentence defines the symbol as ‘a representation by which something is concealed’ and then proceeds to interpret the symbol thus defined as a species of *synecdoche*, the rhetorical figure of part for whole (Fraunce 1588). The image, meaning the figure used in the devise, is viewed by Fraunce as a literal mark, an impression left by the structure of being, by nature and law as orders that express a much greater but unfortunately invisible schema of causes. At its strongest, Fraunce defines the image as a legal bond, an obligation and an undertaking that the bearer of the sign will acknowledge and obey the intention of its unseen author, be it God, nature, sovereign, ancestor or parent who devised the image and so left their mark upon the order of things seen and recognised as allowed by law and therefore reasonable.

Returning to Legh's devise of the herald, we can note certain other features. Centre stage, the herald touches the flag with his rod and the figure speaks. This signifies that what law strikes comes to life, is brought to speech, unveils and divulges meaning to its authorised audience. This, as the central banner and words disclose, is allowed by

law and therefore is reasonable. More than that, this image of interpretation and transmission is emblematic of the art of law which brings nature to life and dead letters to speech. The image is of the herald, the messenger of law, bringing nature to expression, ostensibly, as a personification, as power and glory, force and love. The visible and inanimate or painted realm, nature as dormant matter, together with the animals and standards, vestments and instruments shown are all symbols that form part of an order of reason and law. The task of the jurist is to contrive the expression of an occluded intention and to interpret the signs of the hidden legislator, be it the Christian *deus absconditus*, Leviathan or *salus populi*, the will of the people in its immemorial and encrypted forms. All nature signifies and law is the pattern of that signification. At the same time all signs are synecdoches, marks of an anterior and interior intention and meaning. That is the nature of learning and the medium of law for the early modern era. As Plowden put it, and as Fraunce reiterates, even the word must be conceived as nothing other than the image of the legal rule, the sign of the legislator's intent or the impression of the speaker's devise and desire.

### 1.3 Legal Emblems

Writing towards the end of the seventeenth century, the Jesuit scholar and systematiser François Menestrier opens his treatise *The Philosophy of Images* by observing that the art of devises is the single strongest taste of the century (Menestrier 1682). This inspires Menestrier to produce a comprehensive selection of devises according to the twin criteria of justice and spirituality, law and theology. The devise, in this schema, is a liminal image, an envelope, the material exterior and visible moment of a spiritual cause which becomes, once manifest, law for us. The image as sign always in this tradition refers to an anterior structure, to the idea, ideal and idiom that underpin and explain it. Menestrier elsewhere cites Psalm 18: 'he made darkness [*tenebras*] his hiding place and canopy', meaning that there is an element of the esoteric and enigmatic to all signs, for their cause lies in shadow and darkness, in another realm, a theme that is taken up very explicitly in the systematising works (Menestrier 1694). The Cambridge scholar Philipot makes the same point eloquently: 'The *Egyptians* folded up their Learning in the dark contexture of Hieroglyphicks, the *Greeks* wrap'd up theirs in the gloomy Vesture of Emblems, and the *Romans* lodg'd it behind the cloudy Traverse of Allegorical Allusions pourtrai'd in those Mysterious Signatures that adorn'd the Reverse of their Coin ...' (Philipot 1672).

The emblem is a subspecies of devise. It has a lengthy prehistory of legal significance, being the term that jurists would use to refer to ornaments or other images inserted into objects. Antonio de Nebrija, in his legal dictionary from the very beginning of the sixteenth century, a quarter century before Aliciatius' little book, defines the emblem as the form of insets painted on vases, mosaic inlays in tiled floors, inserted images in vestments or any other marquetry or ornament put into and absorbed by a foreign surface. It is a term devised, according to Menestrier, by the jurisconsults, for any assembled image, combination of colours that ornament

an object, a surface or structure (Menestrier 1684). It is, by extension, the image of its cause, the meaning and message of the mosaic, habit, monument or building in which it is inserted. Thus Philipot offers the concept of the emblem as *icuncula* or little icon, the legitimate representation of office – in this case that of a priest – that is inserted into their vestments (Philipot 1672). So too the trappings of positive law had their symbols, their legitimate modes of expression, their visible signs of provenance and authority. The legal emblem is most simply the legitimate image of law as a mixed knowledge and practice, as an expression of ‘things divine and human’, as rule and administration, legislation and *oeconomic* disposition.

If we look to the standard definitions of the distinction between devise and emblem, the devise is particular in that it represents a specific and identifiable person, family, city or nation, while the emblem is general and at its best is ‘the art of painting morals, and of putting the operations of nature in images for the instruction of men’ (Menestrier 1684). It is this instructional and didactic purpose of emblems that chiefly distinguishes them from devises. Thus, the devise uses a motto and such is expressly to be obscure, ideally in Latin, as a talisman or secret knowledge and key to the noble identity of the bearer. The words are thus to be ‘neither too intelligible, nor yet too obscure’ and to this we can add, borrowing from Fraunce that where the motto of the devise does not refer to the image and so is enigmatic, in the emblem the words describe and interpret the figure (Manning 1991). Thus, the emblem is designed to be relatively accessible, is more free in its use of images and is constructed to achieve the end of making the foundations of law, its roots in nature, reason and moral use, visible to a populace that was often unable to read, or as Fraunce formulates it: ‘letters are intelligible only to few, presumably only the learned, while even children can quite readily understand images (*figuras*)’ (Manning 1991). Mignault in his commentary on Alciatus belabours the same point: ‘maxims are sometimes rather obscure, and may not be accessible to everyone; but the emblem, either because of the picture which is the subject, or through the explanation given by the poem or through the inscription, has some facility in which the mind can be at ease’ (Mignault 1577).

Drawing out the implications of Mignault’s commentaries, we can note first and literally that Alciatus’ emblems begin with an emblem of dedication and authorisation. These are lawful and hierarchically approved emblems. The first emblem, opening for content, is of the Duke of Milan, and the ensign of the Duchy. The central figure of this emblem is a shield showing a twisting snake from whose mouth a child emerges. The verse below explains the image as representing nobility of pedigree – *gentilitiis nobile stemma tuis*. The verse then proceeds to explain that the figure of the snake indicates he is the progeny of divine seed. This is the lineage and visible majesty of law, its reference back, its place in the hierarchy, such as to allow the sovereign to promulgate by means of their authority, what the Digest terms ‘a knowledge of civil law which is a most sacred wisdom (*res sanctissima civis sapientia*)’.<sup>16</sup> The fourth emblem, titled *In Deo laetandum*, one must delight in God, reinforces the message of the divine provenance of these images and their messages

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<sup>16</sup>Digest 50.13.5 (Ulpian).



Fig. 1.2 Andreas Alciatus, *Emblemata*, emblema 4. (Ganymede)

(Fig. 1.2). Taken quite superficially, the figure shows Ganymede being borne through the heavens on the wings of an eagle. The motto, in Greek, stipulates, as already noted, that one must delight in God. Travelling through the clouds, amongst the angels, Ganymede looks forwards and upwards. Below, on earth, a dog barks at the disappearing image.

Mignault prefaces his commentary on this emblem by noting that it is taken from Homer and that it is to be interpreted by reference to classical mythology, which is to say by reference to stories that ‘the early lawyers’ used so as to acquire and increase their authority (Mignault 1577).<sup>17</sup> That said, the image is followed by a verse explanation which, in most editions, was in the vernacular and helped to explicate the emblem as the means by which the minds of early viewers were ‘captured and charmed’. As to the image itself, the key feature is that Ganymede is

<sup>17</sup>Mignault’s commentary to the 1577, Plantin edition of Alciatus’ *Emblemata*.

a child, an innocent, carried to the heavens through his love of God, and it is this filial devotion to divinity and law that the figure captures. The subject of law should be such a child, empty and open to being carried away at a literal level by the word of the father, and allegorically by the wings of an eagle, the queen of birds. The child comes to God and in doing so separates soul from body through joy or rejoicing (*gaudium*). To be carried amongst the clouds, symbols of angels, is to join the celestial choir, to sing praise through one's being as such, and to attach to the divine in a spiritual friendship – *animae amicitiam* (Mignault 1577). It was this spiritual friendship, the amity and brotherhood of a law both spiritual and temporal, that constitutes the first precept, maxim or rule of the emblems that ensue.

Another common juristically directed emblem, number 18 in Alciatus, but the opening emblem in the first vernacular emblem book, given pride of place and principal import by the Toulousian humanist Guillaume Perrière, is the figure of Janus (Fig. 1.3). The two-faced God directly represents past and future, backwards and forwards, but equally, and this is explicit in the symbolism of the vernacular figure, the two realms of governance, exterior and interior, secular and spiritual. It is to this end that the representation in Perrière, reprised in the English translation by Thomas Combe, shows Janus holding an image, in classical terms a funerary mask (*imago*), in his right hand – *in patribus visum est*, as Renaissance lawyers liked to say, meaning thus is the father seen. In his left hand, towards which the mask is seemingly turned, he holds the key, the mode of entry to the kingdom, *clavis regni* in the language of the Psalm (De La Perrière 1553; Combe 1593). John Selden explicates this division in terms of the divide between the interior and the exterior realms, the household and the *populus*, but it is also a distinction between providence and fate, rule and administration, legislation and *oeconomic* disposition (Selden 1610).<sup>18</sup> The accompanying verse specifically refers to providence as the source of governance and the key held in Janus' left hand is expressly an image of the mode of entry to the celestial realm of providence itself. Janus marks thus the two regimes of law, the exterior and positive which is in Christian terminology but a shadow or image of the interior, invisible and enigmatic cause.

The authority and lineage of the emblem established, its sacral and mysterious content presupposed and symbolised, the second feature of the emblem as presented by Mignault lies in the juridical character of its content. The emblem emerges out of a tradition of adages, maxims, precepts, formulas and rules – whether the latter be termed brocards, *regulae* or commonplaces. These short and often poetic statements of moral and legal precepts were developed in part as an accessible species of mnemonic device but had their greatest authority and most visible presence as expressions of lawful conduct and of just reasoning (Scheffer 2007). The legal maxim was of the greatest legitimacy and indisputable prestige within common law where the Latin maxims collected by Sir Francis Bacon and relayed by Sir Edward Coke were expressly 'conclusions of reason ... aptly called *legum leges*, lawes of lawes' and had both authority and majesty, power and glory, whether 'penn'ed or

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<sup>18</sup> Selden uses this image and the following motto: *e quibus haec facies populum spectat, at illa larem*. On the distinction between providence and fate, derived from Boethius, see Agamben, *Règne*, at 190–201 on the *duplex modus* of providence and disposition.



Fig. 1.3 Guillaume de la Perriere, *Le Theatre des bons engins*, emblem 1. (Janus)

dicted verbatim' (Bacon 1630). The maxims were the principles, the underlying reasons of law and as such deserved emblematic expression. These were the discovered and self-evident grounds of all legality and judgment, and it is these reasons, these precepts for living, these items of dogma and doctrine that the legal emblem takes up and conveys. Estienne in his discussion of the utility of devises also refers to the use of images – 'the contentment of sight' – as a means of conveying doctrine and so promulgating not simply law but the reasons that constitute the law of law (Estienne 1650). This space of pictorial representation of doctrine, this visible enactment of judgment, to borrow from Junius, occurs in a space of public spectacle where judgment is made visible and plain to see (Junius 1565).

The notes of dignity and other armorial colours and signs, shields, crests, banners and the like were visual identifications of place and lineage. The emblems expanded the scope of such visible marks to the project of moral identification and thus the inculcation of the primary norms, the customs and uses, that make up the unwritten and perhaps we would say the unconscious law. The emblems, no doubt ironically,



promulgated and disseminated images of an invisible source, a law of law, which undergirded and authorised the extant books, rolls and reports of legal community. Thus, for Alciatus, ‘it is neither the words written on parchment nor those engraved on bronze that constitute the law, but rather it is that which justice dictates, and which equity directs that bears the true name of the law (*verum legis nomen habet*)’ (Alciatus 1582).<sup>19</sup> The images and figures of the emblem tradition were didactic and popularising modes of disseminating the moral content of law and the rules of spiritual amity and temporal civility that provided the context of law application and reception.

Viewed juristically, the legal emblem in its most general sense, that of a visual figure addressing topics pertaining to law, should be understood as a rhetorical device. As Hayaert elaborates it, choosing the Senneton brothers magnificently illustrated edition of the *Corpus iuris civilis* published in five volumes between 1548 and 1550, the images were a matter of elegance of style, of subtlety of disputation and force of persuasion. In the case of the Senneton edition, the images were broadly illustrative, representing specific titles – rubrics or principles of law – in carefully coded figures and gestures. This symbolic visual lexicon would please and engage the subject while also fulfilling the important role of making manifest the mythological roots of the legal injunctions. The illustrations were in this sense technically enigmas, meaning references to antique poetic and literary texts that were the sources of the rules of law.<sup>20</sup> The *Digest* title *de postulando* (rights of action) is illustrated by an image of a judge (praetor) whose left hand is held out staying a child and a woman who turn or are turned away (Fig. 1.4). On the judge’s right, towards whom his face is turned, are two men appointed to defend the woman and child. The text illustrated spells out the prohibition of actions being brought by those under the age of 17 or by women. As for the latter, the reason is given in terms of a ‘modesty in keeping with their sex’ and then refers to the classical story of Carfania ‘a shameless woman who .. brazenly made applications to the magistrate’.<sup>21</sup>

The image itself is taken fairly directly from Alciatus’ *Emblemata* and specifically emblem 109, *In Studiosum captum amore*, a legal scholar (*iuris peritus*) overcome by love (Fig. 1.5). The earlier emblem is if anything more explicit and in a relatively lewd manner portrays the threat of lust and here the lure of the lascivious and feminine undermining law. The enthroned scholar-judge is shown looking towards a naked Venus, his left hand stretched out towards her sex, his right hand pointing towards Eros who stands bow in hand to the right of Venus. On the other side of the scholar, stands Athena with spear and shield to hand, representing justice in its classical definition as an art graced by both arms and laws. The affective symbolic grammar of the emblem, to borrow Hayaert’s locution, is one that depicts in visceral and memorable form the separation (and connection) of public and private spaces, *res publica* and *domus*, law and *gynaeceum* that the tradition constantly revises and relays. The emblem presents temptation and affective relation as the left hand of law, the unconscious and oceanic other scene, the realm of administration, of the law of non-law in Agamben’s terms, that is kept at a distance, contained yet pressing at the chirological barrier of legality. The lawyer has been ensnared and of this the

<sup>19</sup> Discussed in Valérie Hayaert, *Mens emblematica et humanisme juridique*, at 198–199.

<sup>20</sup> For discussion of the meaning of aenigmata iuris or legal enigmas, see Goodrich (2010).

<sup>21</sup> *Digest* 3.1.5.



Fig. 1.4 Senneton edition of the Corpus iuris civilis (de postulando)

relevant maxim is *non bene convenit* – it leads to no good. This emblematic visual source is then transferred to the legal text, the holy writ of law in its day, to enliven, to figure and give effect to the juristic interdiction upon actions: ‘The image has at least a triple status: a cordial or one could say expressive function, a pedagogic and mnemonic role and an affective and symbolic dimension’ (Hayaert 1555). Here then, in interlinear or more accurately non-linear form there is a more popular grammar, a guide to and glimpse of the poetic cause, the invention and motive of this institutional reason that captures the subject for law. It is the symbol, as Legendre has lengthily elaborated, that gets under the skin, that has effects or in the Latin maxim, *id efficit, quod figurat* (Legendre 1994).<sup>22</sup>

<sup>22</sup> Translated as, ‘*Id efficit, quod figurat* (it is the symbol which produces effects): The Social Constitution of Speech and the Development of the Normative Role of Images’ (P. Goodrich trans.) (1995) 20 *Legal Studies Forum* 247.



Fig. 1.5 Alciatus, *Emblemata*, emblem 109

## 1.4 Conclusion

There is perhaps no better expression of the lure and the doctrinal ruse of the emblem than that to be found in Thomas Combe's edition of *The Theater of Fine Devices*. The question posed in the preface to Combe's work is that of the differential effects of image and word. The written text, the linear and ever so sensible dictates of prose, will all too often pass the reader by and so gain little or no consideration, let alone having any affective impact. Thus, Combe moves to contrast the image to the word, detailing that 'pictures that especially are discerned by the sense, are such helps to the weaknes of cōmon understandings, that they make words as it were deedes, and set forth the whole substance of that which is offered, before the sight and concept' of the viewer. The emblem is a mode of performance, not simply a speech act and illocutionary force but more than that, an enactment, a moment in the visible theatre of legal rule. Here and quite vividly the dead letter of legal prose comes to life, takes to the stage, gets up and walks and in doing so becomes law for us, the viewers, the audience, the spectators of an administration of justice that has always been fairly expressly a theatrical mode of implementation

replete with its aura of majesty, spectacle of place, agon of trial and insignia of dissemination.

Returning to the lawyers who devised the emblem tradition, the performative character of law's visual modes of presence and promulgation is very evident. The emblem is explicitly a theatrical device. Perrière's *Théâtre* not only uses theatre as its title but also invokes 'engines', which in this context refers to stage machinery, the engines, scaffolds or props that are used to make actors appear in front of their spectators. The emblem is a dramatic machine that helps devise, if you will, the mode and method of performance. The emblems in Perrière's work are indeed presented as figures on stage, with the title page itself in the form of a theatre (Fig. 1.6).

The lawyer Pierre Coustau takes up this theme in his *Pegma cum narrationibus philosophicis* of 1555 (Costalius 1555). The work consists of a collection and expansive philosophical annotations of emblems. The opening emblem is a portrait of justice – *in simulachrum Iustitiae* – and shows her holding a child to each breast, suckling war on her right nipple and law on her left. Seated on a throne with a curtain behind her, this pedagogic tableau evidently stages an image, a dramatic mask portraying the two orders of rule and governance, of providence and fate as understood by the Renaissance jurists whose tradition of images we inherit. Barthèlemey Aneau, a year earlier, had used a not dissimilar image of *Iustitia* in his *Jurisprudentia* a work that presented in visual and textual form the biographical history and portraits of great jurists as an introduction to the institution of law (Aneau 1554). *Iustitia* in Aneau's image is interesting for being placed on a stone pedestal, the book of laws in her left hand, declaiming to an audience of blindfolded subjects. It is here again the staging, the theatrical natural machinery of presence and play that are of significance.

For Coustau, justice is even more explicitly staged, a social performance upon the two scenes, external and internal, military and domestic, that his opening image portrays. In Anglican terminology, law is a nursing father and passes an interior spirit of animation, a living voice, via its spectacles and stages. The concept of *pegma* is very much to the point and highly indicative, its reference being a pedestal, scaffold or other theatrical device whose origin lies in the shelves and cupboards that were used classically to display the *imago* or mask of the ancestors who ruled from the atrium of the house. The image was there the archetype of governance, a visible visage that overlooked domestic space and represented in spectral form the lineage and inheritance, the honour and virtue of the family and the place and genealogical as well as moral qualification of the subject. The law of images was the pattern of inheritance, the order and titles of honour, the symbolic grammar of governance as it inhabited the most proximate and interior domains of the subject. And then, last point, the tradition of legal emblems arrived on the social stage as a novel apparatus for the promulgation and dissemination of the idea of law. The emblem presented what Combe terms the 'whole substance of that which is offered', meaning in contemporary jargon the big picture, the social face of the 'concept' of law. The power of the image lay in its ability to carry and apply the abstract rule, the prosaic letter of governance to a terrain that law in its positive scriptural expression would never reach.

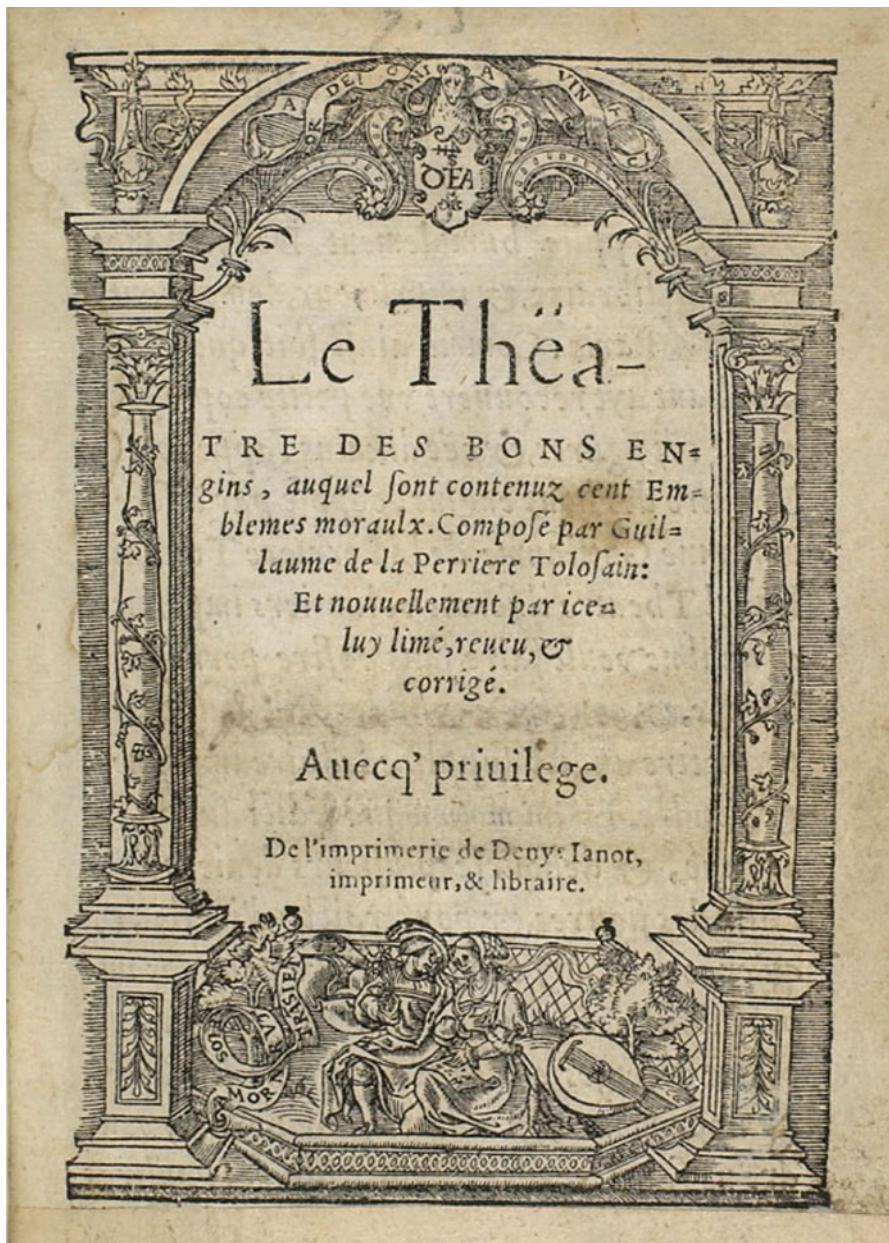


Fig. 1.6 Perrière, Theatre des bons engins, title page

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# Chapter 2

## Law and Image: Towards a Theory of Nomograms

Paolo Heritier

**Abstract** Contemporary legal theory cannot be referred solely to the concepts of text and norm, but must take into account the connection between image and law. One of the most interesting contemporary contributions to the study of the relationship between myth, image, history and law is Legendre's analysis of emblem theory. He identifies a single mechanism of legitimation of power – from Roman Empire to globalisation – the dimension of the *Third (Tiers)*. It is a structural anthropological device on which the Western concept of power and law is founded that brings together different concepts such as God, state, democracy, science and the market and places them in a single *legendary fictional place*, visually perceptible on the aesthetic plane of representation. This chapter analyses the historical and philosophical elements of this conceptual framework, showing both application to the fields of marketing and advertising (the communicative strategies of multinational car companies such as Fiat Chrysler) and also implications for hermeneutics and aesthetics (the analysis of the painting by Piero della Francesca *The Flagellation*). The final aim of this chapter is to begin to develop a theory of legal sources suitable for the contemporary society of the image moving from the idea of nomogram designed as the unifier tool of the written and unwritten forms of the law.

### 2.1 A Starting Point: Modern Emblems

Contemporary legal theory, in a semiotic perspective, cannot be referred solely to the concepts of text and norm, but must take into account the connection between image and law. A general conception of the sign, starting from the work of de Saussure (Goodrich 1987) and Peirce (2008), must take into account a plurality of

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phenomena (which can be considered as signs) that show a specific juridical importance and are of interest to the philosophy of law.

One of the most interesting contemporary contributions to the study of the relationship between myth, image and history is Legendre's analysis of emblem theory. Taking its departure from the standpoint of normative theory, this chapter will pursue a semiotics of law and the image. More specifically, this research aims to analyse the concept of the nomogram elaborated by Pierre Legendre, historian of law and psychoanalyst, especially in his *Leçons* (Legendre 1983, 1985, 1988a, b, 1989, 1990, 1992, 1994, 1998, 2009) (the seven volumes published so far), and recently analysed by Peter Goodrich (1997; Avitabile 2004; Heritier 2009b; Berni 2008; Lenoble and Ost 1980; Kozicki 1982; Pottage 1994; Schutz 1995) and Alain Supiot (2005).

In his *Leçons*, Pierre Legendre examines various ideas such as the history of canonical and Roman law, aesthetics, emblematics and the study of the arts, the theory of industrial organisation and management, the theory of political communication, Lacan's psychoanalysis and Saussure's linguistics. Always seeking new ways to thematise the question of the legal structure of society, Legendre identifies a single mechanism of legitimation of power characteristic of Western society. In this way, he aims to explain the legal methods of ancient or mediaeval societies, based on the Empire and the divine (like modern-day ones based on the market and on science). Apart from the simplifications of a rationalism convinced that it has, through the advent of scientific thought, overcome the dark centuries of superstition, the Roman Empire and globalisation have in common a structural anthropological device on which the Western concept of power and law is founded, namely, the dimension of the *Third* (*Tiers*).<sup>1</sup>

This is what the notion of *malleability of reference* (Legendre 1994) suggests: it brings together different concepts such as God, state, democracy, science and the market and places them in a single *legendary fictional place*:

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<sup>1</sup> The texts of Legendre have drawn upon a vocabulary developed from the history of Roman law, canon law, mediaeval legal texts and contemporary psychoanalysis and semiotics. So, the definition of technical words as *Third* (*Tiers*) will aid the reader: 'Third. ...Power is never directly present but is always triangulated, which is to say mediated through the space of the third. In a theoretical sense, the Third is the structural site of the absolute, the empty space, abyss or nothingness upon which both value and power depend. As the founding principle of the social, the logic of the Third is the logic of the distance of lack which makes power possible, it is the inaugural space or theatrical stage of social value and subjective attachment. In theology, the power of God or absolute place of the mythical Third must thus always pass through a mediating figure – that of the Pope, the emperor or the priest – before it becomes an object of subjective attachment. The logic of the Third thus refers to a logic of exchange between the subject and the absolute, which takes place across the space or distance of interpretation. To communicate with, or to love, the enigmatic figure of social authority or of divine power, the subject must address that figure as a lack, as something absent or in Lacan's terms, as the object of an impossible desire. Thus Legendre variously refers to the Third as the absolute Other, as the Image, Emblem, Mirror or Text. At the level of the Western institutions, the necessary yet empty space of the Third to which desire is addressed is replicated most prominently in the practices of penitence and law...' (*An Abbreviated Glossary* in Goodrich (1997)).

The Pope is the delegate of the Christian God; no-one can see this God, he is a name. The king or the queen of the United Kingdom is the delegate of the 'United Kingdom'; no one can see it, it is a name; and the crown worn by the monarch is nothing more than the apparent sign of an invisible crown in the hands of God. The president of the French Republic is a delegate of the Republic, no-one can see it, it is a name. All these names are part of the linguistic scaffolding that supports the culture; and the popes, the kings or queens, the presidents, are delegates of these names, *the living Emblems of these names*. (Legendre 2004)

In other words, Legendre identifies a constant structural mechanism that crosses disciplinary fields and historical divisions considered academically and substantively separate. In doing so, he overcomes consolidated distinctions such as those between postmodernity, modernity and the mediaeval or between art, science, religion, law and economics.

The identification of a similar device is possible only when we place ourselves on the *aesthetic* plane of representation, of the image of these names, in their *being presented to the subject as references on which to rely*. (Think only of the mechanisms such as *advertising, corporate image, the mass media* on which today's democracies and markets are based, deeming themselves secular, rational and devoid of 'myths'.) All of these *names* may be founders since they have access to the logic of Third (*Tiers*), whose first name is, in the west, symbolised by the name and figure of the Father (not only the *pater familias* of Roman law or the *God the Father* of Christianity but also the *Father State* of the paternalism of the welfare state, until recently, bore the traces).

In this sense, the Pope, the Dalai Lama, the presidents or the queens can be considered emblems of the mythical foundation. And in terms of corporate brands, we might also mention Coca-Cola or Nutella or the stylised figures of the models or the sports champions (Legendre 1983)<sup>2</sup> which nowadays dogmatically and aesthetically occupy a similar position to that of centuries-old emblems. The paradox and irreverence of these combinations, made possible by the work of Legendre, not only raises the doubt that humanity, on the road to globalisation, has been faced with a serious anthropological problem regarding normativity and the role of the law and its institutions. In addition, it also offers a glimpse of a historical continuity that goes well beyond the historiographical categories once assumed by modernity as 'eternal'.

According to Legendre, secularisation is only one of many observable historical *shifts* in the Third Mythical Foundation of societies. This is how he explains the historical passage from the Empire to the modern state and then to the globalised market and on to the *organisational nomenclature* of an Empire or Church. This historically and aesthetically founded substitutive process is evident when we take into consideration the historical development of the juridical foundation. In this sense, I will limit myself to briefly analysing three twentieth-century theoretical formulations that explain in very different terms the idea of foundation, linked to the names of Schmitt, Legendre and Kelsen. I will then go on to analyse the relationship between image and normativity.

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<sup>2</sup> 'Development, the Revolution, God, the Class War, the Republic, the Toyota brand, these are examples of axioms that present the guaranteed truth'.

### 2.1.1 *Historical Analysis: The Juridical Foundation as a Mythical Place in Legendre's Theory*

That society organises itself at various times around different dogmatic nuclei is an easily observable phenomenon. Although a controversial figure for his compromise with Nazism, Carl Schmitt remains one of the most distinguished German jurists of the past century. Schmitt described the expedient of substituting the foundation and developing the doctrine of *centres of reference* typical of the time in his pioneering exploration *political theology*, a work with deep roots in the early centuries of Christianity (Schmitt 1963). According to Schmitt, each era had its own hub around which it organised itself. For example, the sixteenth century was organised around the theological; the seventeenth around the metaphysical and scientific; the eighteenth around moral-humanitarian aid; the nineteenth around the economy, to which we then might add the twentieth century, which organised around the technological; and perhaps the twenty-first around the informative-communicative (though, admittedly, it may be difficult today to identify a single centre of reference).

Legendre, while adhering to this Schmittian vision, highlighted the 'reference points' of an era as the criterion for understanding the socio-juridical phenomena in a broader historiographical logic, with reference to the entire second millennium, but dating back to the position of Emperor Justinian at the time of the writing of the *Corpus Iuris Civilis*. From his doctoral dissertation (Legendre 1963)<sup>3</sup> onwards, the French legal historian observes how the authority of the *princeps* is placed at the centre of the theory of the sources of Roman law. He finds in reference to the imperial figure its unity, symbolised by the *Corpus Iuris Civilis*, of which Justinian is not only the author (*auctor*) but also, properly speaking, the founder (*conditor*): '[T]he *jus condendi* allows the holder to introduce new rules, making the New Law (*Jus novum*), and to interpret the established law. This dual function belongs to the emperor alone: *Solus princeps habet potestatem condendi leges et interpretandi*' (Legendre 1963).

Here, Legendre identifies a model that already anticipates the position of Schmitt's Leviathan, from the point of view of the sovereign founding function: 'The imperial constitution being then the expression of the human Law, the *princeps* appeared then as the lord of this law. The tenet *Princeps legibus solutus* is thus self-explanatory' (Legendre 1963). This imperial position would then be taken up by Gregory VII as a model, resulting in the complex elaboration of the *Corpus Iuris Canonici*, in which the Romanist doctrine of *Jus condendi et interpretandi* was retrieved to justify papal dominion, and thus the Pope being conceived as analogous to the *princeps*.

The importance of the subsequent process of Romanisation within the Church seemed fundamental. The true heir of the Roman Empire, the historian notes, is the

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<sup>3</sup> More generally on the topic of the mediaeval revolution of the interpreter, see variously and from various perspectives, Berman (1983), Nemo (1998), Nerhot (1992), Prodi (2006) and Grossi (2004). Recently, Legendre comes back on the subject (Legendre 2009).

Church of the twelfth and thirteenth centuries, which ‘tried in the first place to imitate its organizational power. It made, so to speak, the Pope its emperor’ (Legendre 1963).

In the essay *La totémisation de la société: Remarques sur les montages canoniques et la question du sujet* (Legendre 1999), Legendre analyses this legal device, referring to the *Decretum Gratiani*, a collection of disparate texts that was compiled around 1140 in the wake of the Gregorian reform of the eleventh century. Even here he identifies a precise functional symmetry with what was achieved by Tribonian appointed by Justinian at the time of the compilation of the imperial *Corpus*, the *Digesta* or *Pandectae*. He notes how the friar Graziano brings together different sources, identifying canonical texts (to be included in the collection) and texts to be excluded (Apocrypha) – just as Tribonian had done centuries before with the vast material of quotations from Roman jurists of the early centuries.

The first useful step in reconstructing Legendre’s theoretical evolution is to consider how in his early lessons, *Leçons II, L’empire de la vérité. Introduction aux espaces dogmatiques industriels* (1983), he precisely identifies the historical-juridical mechanism that leads to the development of the model called the ‘malleability of reference’. In relation to Roman law (in the final Justinian version), this is considered the first staging (*mise-en-scène*) of ‘reference’ and a construction technique of the mythical third place – a model later picked up on historically (and therefore capable of taking on increasingly new content in a constant structure) six centuries later by Pope Gregory VII.<sup>4</sup>

For Legendre, the Roman law represents the first instance during which the myth was constructed as the ‘trick of historical timelessness’ (Legendre 1983). The history of Roman law builds a structure, ‘a signifier destined for institutional reproduction’ (Legendre 1983), from which it is impossible to escape when analysing the industrial system, for ‘to question the concept of history of Roman law is to question the discourse of truth to which industrial order is linked’ (Legendre 1983).

The history of the Western resumption of this myth is impressive indeed. It ranges from ‘commentators of the two periods (the Middle Ages and Modern Times), *jusnaturalists* of the seventeenth and eighteenth centuries “Pandectaeists” of the nineteenth century and their following of scholars, regardless of the mythological and poetic aspects, amongst whom we also must include the name of Bachofen’ (Legendre 1983), to the delusional references of Hitler’s Third Reich and the continuity of an imperial tradition.

It is then necessary to fully understand the institutional mechanism assumed by the writings of Justinian in representing the written law or statute, the logic of good and justice. The composition of the *Pandectae* or *Digesta* makes it possible to identify, to some extent, the original mechanism of the space occupied by Roman law in the mythical reference: in these 50 books which gather the historical heritage are ‘millions of fragments, grouped under the name of their author and placed under a

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<sup>4</sup>Legendre’s reconstruction of the normative history of the West is inevitably forced to select some aspects of the normative experiences, inasmuch as it is conditioned by theoretical choices and assumptions.

title' (Legendre 1983). It is the dynamics of the composition that interests us here. On what basis can these texts be considered legally true?

Tribonian, appointed by Justinian, collected the texts by adapting the ancient law: 'He fiddled with the texts', Legendre notes, 'cut them to do away with troublesome or inconvenient passages, mutilated their meaning and transformed their formulations or added words (*tribonianismo*, interpolation)' (Legendre 1983). It is here that we find the change of state, of 'legal truth' of the texts, which due to their inclusion in the collection are, so to speak, mythologised. The Parisian author explains that 'these texts change, while remaining the same. Modified or not by Tribonian, they exist under the name of their original author, becoming something else' (Legendre 1983). Here, the *textual* root of the mechanism of transposition-manipulation of the fragments is created. In doing this, Justinian enacts the *mythical founding place of the origin of the law*: he 'presents something that does not exist, an absolute Authority whose name – the name alone – is proof, also absolute, that the law originates from this author' (Legendre 1983). For instance, we literally find 'Justinian' here a *lieutenant*, a placeholder, in introducing the *Digesta* with the first two words '*Deo auctore*'. God is fictively the author of *Pandectae*, of the *Digesta*; he *theatrically represents a name*, the name of an absence, of a function, the sacred name of a place through which, by dogmatic logic – the same for the laws and for the unconscious – the question of the origin is answered. Thus, the mythological space of the law, in which Roman law first took office, is constructed: a functional assemblage by power that consists 'in a liturgical manoeuvre that presupposes a functional recipient, the *laós*, namely the People, not as a conglomeration of countable individuals, but as a mystical unity to which the absolute Place – a god whatsoever – speaks' (Legendre 1983).

Here it is easy for Legendre to indicate the inaugural and mythical function later assumed by Roman law. For instance, he observes how in this Justinian operation it is possible to see the *consecration of a device* that will maintain its influence over the way of conceiving law, placing it in the Third Empty Place of Reference. Moreover, he considers how this technique represents the continuation of the Greek oracular practices (*ta thesphata*), noting that the Roman Empire produced this institution of the 'sovereign oracular power', which later became 'the juridical strength of the Western Church, a true replication of the Empire' (Legendre 1983). The phenomenon of the centralisation of oracular power testifies to the reference of the absolute interpretation of the sovereign, capable of issuing laws and interpreting them. In fact, the structure of the *Corpus Iuris Civilis*, marked as a collection of laws (*Codex e Novellae*), and of fragments such as the *Pandectae*, has a hermeneutical effect: the distinction between *two types of text* that can be traced to *two different legal functions*: 'the assemblage of the emperor-representative of God legislator stipulates a twofold recognition: (a) for the Law as a logical principle of the legal function, (b) of the emperor inasmuch as it is a trick for humanising, that is, enacting this principle' (Legendre 1983). This is the structural point that, according to Legendre, has not been perceived by Romanist scholars careful to expunge the Tribonianisms, the *mythical value of this Reference* and the establishment of a *division of planes* between the mythologised texts and the interpreters, in which the science of interpretation plays the role of mediation between a theoretical absolute and a casuistry.

This is the *principle of division that links*, that holds together the stakes of the reference and of political love, of the sacrifice required of the individual in *liturgically uniting* with power, placing at the heart of the legal discourse the illusory ‘truth’ of the text bound to the represented absolute. *A principle of division which binds socially and institutes two positions in the enunciation of the law*, Roman law presents itself ideally as the *inaugural law*, which is literally linked to the science of augurs as a discourse that *presumes omniscience*, a *divine reference* communicated in the *liturgical form* as an emblematic imperial position, theological-political mediation between the divine and the human. Thus, the Roman law, according to Legendre, gains access to the plane of the *signifier* in a Lacanian sense,<sup>5</sup> functioning as mythical reference.

On the basis of this analysis of the iconic device underlying Roman law, it is possible to understand the process through which the drafting of the *Decretum Gratiani* was achieved. Many centuries after Tribonian, there was a similar undertaking. The classification of legal texts was undertaken according to a dual causal criterion, testifying to the Pope’s claiming of the fundamental position of the Roman Emperor, the *origin (origo)* and the *authority (auctoritas)*, as can be seen from the maxim ‘*Omnia iura habet in scrinio pectoris sui* – the pontiff guards all the legal texts in his breast’. Here, the pontiff takes the position of the third guarantor, the *living text*, of the incarnate text of the texts: the *origo* is the causal criterion by which the Pope is acting in the position of Christ *in the name of Christ*, as *vicarius Christi*. According to a continuous chain descending from the first *vicarious*, the fact of being *vicarius* still places the pontiff in a position of *Pater Legum* and thus implies the *auctoritas* (being the author) as occupying the position of the foundation that authenticates and *makes the texts real*, guaranteeing their truth (as against the texts that the Pope, or someone in his name, refuses as apocryphal).

As Legendre notes, the superimposition of the figure of the Pope, as well as that of the Emperor, makes the device of occupation of the third place in the legal foundation myth susceptible to being occupied by new figures: even linking, as we shall see, the structure highlighted by Schmitt’s ‘centres of reference’, meaning secularised figures, in the sense explained above, of the foundation.

### **2.1.2 The Foundation Plane and the Plane of the Interpreter: The Structure of the in the Name of...**

The Roman-canonical device described above allows Legendre to identify a way of expressing the power, the *dogmatic communication*, by communicating the position held by the foundation and that of the practices of interpretation referring to it,

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<sup>5</sup>On the role of the significant in Lacan, for example (Lacan 1966a, b, 2005). In the field of philosophy of law, I recommend only on Lacan and psychoanalysis and law (Goodrich 1995; Romano 1991) and more recently with mention also of Legendre (Romano 2006).

together holding the fictional third place occupied by the Emperor and the Pope and the concrete place of the legal practices enacted by the jurists. In fact, the French author conceives in structural terms the dogmatic communication as a 'liturgical manoeuvre that presupposes a functional addressee, the *laós*, that is to say the People, not as a countable agglomerate of individuals, but as a mystical unit to which the absolute Place – a god of some kind – speaks' (Legendre 1983). This formulation allows us to better understand not only how the plane of the foundation, and therefore the mythical place, is understood in the legal sphere as a malleable place but also how it becomes undetermined and merely functional, linked to the exercise of power rather than to its specific content.

The relationship between the mythical-sacred foundation and the concrete legal reality implies a specific theory of interpretation as well. According to this logic, a system of interpretations is socially defined as 'organisation on planes of the positions of interpreters' (Legendre 1983). It is precisely this differentiation of planes of interpreters that shows how law identifies a sacredness of its 'priests' as well as its rites in a totally secularised context: the sacred character of the juridical 'rite' or procedure must correspond to the mythical place of the foundation. In order to understand this point, it is necessary to complete the analysis of the model.

Legendre observes that the dynamic underlying the *speaking in the name of* (of the Roman senate in relation to the Empire; of Christ – in relation to the Church; of the people – in relation to the modern democracies), that is to say, recourse to the legitimating *reference*, the enacting of the legal discourse, is still present in the fiction according to which the people of the nation are the author of the texts published in the official Gazette, through its elected representatives. In this sense, there is no clear separation between modernity and premodernity, marked by the French Revolution. Rather, there seem to be surprising elements of structural continuity between historically very different periods. Even the 'Hobbesian' moment of the formation of an absolute state, emblematically symbolised by the Leviathan, cannot escape this structural dynamic of manipulation of the mythical and 'sanctified' third place. To make such a claim would mean removing an incorrect pre-comprehension of the distinction between a juridical 'premodernity' (the Middle Ages) and an enlightened and positivist juridical 'modernity', which finds in the idea of the state the place for the maturity and the definitive consecration of juridical science. On the contrary, even in this rationalistic setting, traces of 'secularised' sacredness of the legal text and its interpreters (the modern jurists) would remain.

Schmitt's doctrine of the 'centres of reference' itself would move within this logic. Not only the height of the positivist construction of the twentieth century, the fundamental Kelsenian norm – a fictive and only imagined norm – would merely fit into this structural logic, becoming a device transcendently legitimating the state, the *empty* space previously occupied by the Emperor, the Pope and later by the Goddess Reason, under the authority of knowledge of logic. As Amato effectively notes, the empty structure mentioned by Legendre (the dogmatic communication and the position of interpreters who speak in the name of...) appears to indicate not only a 'God as empty as the Kelsenian fundamental norm', which demonstrates how

the institution of a referee intends to save man from the nightmare of nothingness or from the inextricability of the fact, but also a ‘God “politically” necessary, like the decisionistic archetype of Schmitt’s Creator’ (Amato 2002) or even like nostalgia for the divine (which allows the discourse of man on the world a horizon of effectiveness).

In fact, while Schmitt considers the state of exception, a concept that defines the sovereignty and is the basis for decisionism (like the miracle in theology), Kelsen notes not only the logical parallel established between God and state but also a certain real relationship (Kelsen 1962a).<sup>6</sup> Here, he explicitly states that there is a parallel between Christianity and pure juridical doctrine. In fact, Kelsen believes that the theory of self-obligation of the state precisely corresponds to the dogma of the incarnation of God. According to this claim, the meta-juridical state becomes law due to its submission, as a legal subject, to itself, and thus the state limits itself. The difference between God and state lies only in the difference between rational and irrational: in the fact that with respect to this mystery theology can appeal, and explicitly appeals, to the supernatural, while the doctrine of law and of the state, although it states the same mystery, must give the illusion of remaining within the sphere of the rational (Kelsen 1962a, b),<sup>7</sup> precisely through the logical artifice of the fundamental norm.

We can therefore conclude that the twentieth-century founders of two of the principal addresses of twentieth-century legal theory, decisionism and positivism – even if they apparently refer to theology – in fact operate within a mechanism that reads the juridical foundation in the same mythical terms as does Legendre (Legendre 1985).

### ***2.1.3 Dominium Mundi: The Empire of Management and the Postmodern Nomenclatures***

However, merely considering two fundamental authors of twentieth-century legal theory, like Kelsen (1988) and Schmitt, does not seem sufficient to justify the extent of Legendre’s position, which goes beyond the world of law into the analysis of the aesthetic, the psychological and the irrational present in the juridical. In fact, the French historian extends the process of structural transposition of the mythical and sacred foundation well beyond the merely legal sphere, giving it an aesthetic structure capable of justifying the ‘mythical-sacred’ logic of the functioning of ‘centuries-old’ lay situations (such as the market and advertising) as well.

In his analysis of the ‘political desire of God’, Legendre states that the third place of the foundation, in the historical perspective given, cannot be reduced to the

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<sup>6</sup> 11th chapter.

<sup>7</sup> 12th chapter.



history of Western political theology, dealt with by such different thinkers as Gaines Post, Carl Schmitt or Jacob Taubes. He explains, 'Having dismissed the western creator and warrior god, the institutional secularization makes it possible to perceive that the place left empty is in fact *a structural place*, where the liberal, or rather the libertarian, hermeneutic is forced to enrol, incapable of revoking the logic that presides over the emergence of the civilisations and over the construction of the subject' (Legendre 1988a).

Many other 'functional subjects' occupy the third place of the foundation. This is the further journey suggested by Legendre's notion of *malleability of the reference*. Placing itself well beyond Schmitt's theory of the centres of reference, it intends to unite, putting them in a single *mythical, fictive place*:

...[I]t can be said that the flags, the brands, the currencies ... are Emblems. At another level, the great traditional texts functioned as Emblems: the Bible, the Qur'an... the traditional sovereigns, but also the modern heads of state are living Emblems: the Pope, the King or Queen of England, the President of the French Republic... What have these forms got in common? They are in representation of something that is not here, *in representation of an absence* that... is the *invisible foundation of the Power*. (Legendre 2004)

Here, Legendre identifies a structural *aesthetic* plane of the representation, of the image of these names and, ultimately, of their being *introduced to the subject as references to be trusted*.

Precisely from this aesthetic point of view comes a continuity between the emblematic representations of the Pope and the Emperor and contemporary ones. The figures of the foundation nowadays placed in the third and mythical position are, after the state, the new substitutes that 'secularise' the sacredness of the reference to the state, replacing it with the market or communication. As already stated, in the advertising functions of the *corporate logo*, there is now a similar mechanism of psychological identification with the empty place already operating at the times of Justinian, of Gregory VII or the Leviathan. The corporate logo now functions as an empty emblem that carries the foundation reference, the sovereign place (even though it is a 'sovereignty of the consumer' and not of the people). However, it is also possible to identify other icons of communication carrying the new forms of the socially recognised sacred, for example, the role of the models for the fashion industry, gifted with an idealised shape, or the new public role of the effigies of Pope John Paul II in the media.

By taking the standpoint of the legal interpretation and the distinction between the layman and the priests, it is possible for us to identify phenomena of transposition of the same structural role, which thus gives rise to the notion of *nomenclature* of the industrial societies. This notion is similar to the distinction (dating from the period of the pontifical revolution of Gregory VII) between *two kinds of men: the ecclesiastics and the laymen*, the latter being those to whom one speaks through a dogmatic communication in the sense previously described. In fact, the laymen formed the *laós*, the ritual, liturgical people (and not the *demos*, the people in the political-deliberative sense), to whom the ecclesiastics turned 'dogmatically'

according to the scheme taken from the *Decretum Gratiani*, where humanity is divided in *duo genera christianorum* (Legendre 1988a, 2009). For instance, while God occupied the third and mythical place of the founding axiom, the *ecclesiastics* were in hierarchically superior positions to the *laymen*, for they were entirely dedicated to God in a fusional political love (renouncing temporal things). Both categories, however, were formed in relation to the mythical figure of the foundation (in this case the Christian God), one by means of the other, giving rise to two differentiated planes of operating subjects *in the name of* the foundation (the ecclesiastics on a *sacred* plane, the laymen on a *profane* plane).

This *structural distinction on two planes* is said to be the origin of the modern question of the *nomenclatures*; having followed the historical events of the malleable reference in the West, it continued to secularise until it became modern-day *management*, which according to Legendre, today, occupies the privileged position of the *ecclesiastics of the past*. The structure of the *two types of men* qualifies *in the name of* jurists, politicians, bureaucrats, scientists, technicians and managers. Even the celebrities of the mass media and television represent the various secularised forms of this *first type of man* whom the historian explicitly refers to as the *nomenclature* (Legendre 2006). This X (referring to ‘nomenclature’) operates on an aesthetic-legal plane and acquires a differentiated statute with respect to the people (respectively the citizens, the employees, the consumers, the television viewers, etc.).

We can find visual support for this theory in the documentary *Dominium mundi, L’empire du Management* (Legendre and Caillat 2007), which was produced for the French-German television company ARTE by Legendre with the director Caillat. In this documentary, annual conventions of multinational companies are shown, in which the *liturgical* (dogmatic-communicative) role of the *managers*, who speak *in the name of the company* to the *laós* of the shareholders and the employees, is evident.

In particular, the theatrical appearance of the motor vehicle in one scenario reflects a fact that is not only related to advertising but is also normative, as Legendre explains while commenting on the filmed sequence:

The love of the images, the passion for being similar, the art of appearing are irresistible: we are bewitched. In the West as elsewhere, the powers touch on this vulnerable point. The industrial system promoted by the West rivals the great religious dream. It exalts the vast paradisiacal surfaces, the ceremonies of fashion, the beauty of images to be consumed... Management has appropriated the authority of the pomp, of the sensuality of the rituals. It produces the liturgies. The market sells the products-entertainment. The ceremonies of marketing enact a world that knows no masters or slaves, but only planetary fraternity. (Legendre and Caillat 2007)

The images reproduced below (taken from the documentary) refer to the presentation of a French car and clearly show this ritual appropriation. They explain the extension of a theory of *nomograms*, of the multiple forms of writing in the juridical sphere, which (as mentioned earlier) are not limitable to the text, but are extendable to the image and to the ‘liturgies’ of advertising and of the market that makes use of marketing.



Without wishing to go into too much detail, or extending the nucleus of this interpretative scheme (for to consider the preparation of a model or the presentation of a cosmetic, as Legendre and Caillat do in the documentary, would not be different), I wish to advance, in support of the line of analysis indicated by Legendre, a further observation concerning the presentation of a car, in which the iconic connection between the normative and the marketing appears even more evident. This link is precisely evident in relation to the similarity between the body, which is made up of men of the Leviathan, and the car body, which is made up of men presented in the centre of Torino. We see this on live television demonstrated by the team that organised the opening ceremony of the Winter Olympic Games held in Torino in 2006, during the launch of the new version of the 'historical' vehicle from the Torino-based car manufacturer, 'Fiat 500'. In the narrative 'liturgy' of advertising during the show, this car is even considered to represent the very symbol of Italian economic and civil development, to the point of conceiving the overlaying of the narration of Italian history in the last 50 years and the product being advertised. Finally, the car, in the performance that almost rose from the waves, composed of men, terminated its journey by rising from the ground with a spectacular ascension into the night sky and 'standing' side by side

in a magical atmosphere with the monument on the hills of Torino, overlooking the river and the Church of the Capuchin Friars.<sup>8</sup>



<sup>8</sup> To see the video of the construction of the Fiat 500 'made of men': [http://tv.repubblica.it/home\\_page.php?playmode=player&cont\\_id=11480&ref=search](http://tv.repubblica.it/home_page.php?playmode=player&cont_id=11480&ref=search), Title: 500, la festa di Torino – L'auto umana.

It is interesting to note that the background of the two images is similar: a natural background in which we see the *polis*, the use of men (painted or in flesh and blood, but always considered aesthetic-legal elements) to build the object (the state body of the Leviathan or the ‘car made of men’).

Although this is a simple example, it seems to clearly and iconically represent what Legendre theoretically indicates by the idea of a malleability of reference: a foundation (the state, the company) is represented and communicated to the people according to aesthetic and fictional modality. This is the same kind of legal fictional modality that we can find in the history of law with regard to the notions of corporation and legal person (Heritier 2009c, 2010).

The message carried by the two images is similar. For instance, we could call it *the entrance of the people* (the citizens, the consumers) *into the represented object* (the state, the automobile) *through a process of iconic and psychological identification* (of an aesthetic-normative nature). Particularly significant in this sense is the overlap on which the show is based (between the history of post-war Italy and the vehicle advertised) and seen as a symbol of that historical period, thus becoming a mythical reference, as can be seen from the article by the journalist of a daily paper reported in the footnote.<sup>9</sup>

### 2.1.4 *The Normative Framework of the Image*

In conclusion, it seems even more necessary to indicate how image is normative according to Legendre. We may seek to identify this iconic legal device by means of the specific analysis of a highly controversial painting, undertaken by the French legal historian in his book, *De la société comme texte. Linéaments d’une anthropologie dogmatique*, with the reproduction of the famous painting by Piero della Francesca, *The Flagellation of Christ* (circa 1463).

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<sup>9</sup> That the event was experienced as a ‘mythical’ moment is evident from the newspaper reports ‘500 DAY REPORTAGE. The history of Italy becomes a performance for the stands. And a car “takes off” from the Po’ (title of an article by Alberto Mattioli in *La Stampa* dated 15 July 2007). ‘Who knows, perhaps when the shows in the town square were organized by Leonardo or Bernini the effect was similar. [...] So, the 59 minute show organized for the presentation of the new 500 [...] ceases to be the most beautiful advertisement ever dedicated to a car and becomes a performance in its own right, a “total” work of art both concrete and visionary, realistic and futuristic, technological and baroque.... It begins with the 500 that was, the car that ferried Italy-past from the Longanesian *strapaese* to a satisfied modernity. And then here it is, amidst extracts from vintage films and songs, the mythical *cinquino* protagonists of the changing country, with Alberto Sordi’s traffic warden, the Brambilla family leaving for their first paid-for holiday, Coppi passing the water bottle to Bartali... in a remote *Giro d’Italia* accompanied by a pink 500 like the jersey of the leader, Anita Ekberg diving into the Trevi fountain, and life seems truly sweet ... then it’s rock and the Beatles are here: modernity is four unique voices singing “I want to hold your hand”. The 500 is the history of Italy, the true history, not the list of ‘summertime’ or institutional governments, but always Christian Democrats, but the people who travelled, loved, hoped in this great little car, in a word, lived.



As Legendre notes, the painting is divided into two scenes: one referring to the past, the scene of The Flagellation of Christ, and the other referring to the present in which the painter portrays three individuals who seem to be questioning or discussing some topic. The problem, then, is the organisation of these two moments. The debate surrounding the painting's dating and, perhaps more importantly, the identity of the three characters in the foreground is interesting because it represents an enigma, a symbolic representation of the *question*, of *human interrogation*. As the historian says:

Let's consider the painting and its two parts separated by the pillar to the front of the loggia. The scene on the left recalls an episode from the Gospels referring to the passion of Christ: Pilate, the Roman governor of Judea, had Jesus flogged before handing him over for crucifixion. The scene on the right shows a group of three people whose striking presence, made even more enigmatic by the uncertainty that reigns over their possible identity – a mystery not yet resolved by academics (Calvesi 1998; Ginzburg 2000; Bonnefoy 2006) – seems to be offset (in what fate?) against the narration of Jesus tortured before Pilate seated on the praetorium. Why can this canvas be approached as a paradigm, in typically western style, of the dogmatic structure at its most abstract level? (Legendre 2001)

Here we move towards the understanding of an expression specific to a legal aesthetic: the *sovereignty* of the artist (Kantorowicz 1981, 1984, 1995), emblematic of his freedom in representing the world and things. According to the new vision of painting, inspired by the invention of perspective and belonging to Piero della Francesca (and, on another plane, to Pico della Mirandola with regard to the philosophical convergence of all the doctrines), the architectural volumes can no longer be shown in parallel. Rather, they converge towards a rational point, seen as a fugue, and thus create a space projected beyond the painting. Sometimes it is represented as *an eye*. This is the enactment (*mise-en-scène*) of the third dimension, the mythical place of the foundation that is so often mentioned. From here, power ideally descends, as represented in both its aesthetic and its legal dimension at the time, in which a new technique for the representation of three-dimensional objects on a

two-dimensional surface is invented. In other words, *perspective* creates depth, a fictive ideal point of convergence of all the lines in pictorially representing objects.

It is this point at which we find a mechanism paradoxically open to a fictive space of the foundation (the point at which all the perspective lines converge) similar to the Kelsenian space of the *Grundnorm*: the creation of a fictive space on which the reality of the scene (or the system) represented depends. As Legendre notes, the space of fiction here ‘insinuates the idea that the aesthetic enunciates something that evades objective understanding, because it depends on the staging (*mise-en-scène*)’ (Legendre 2001). Thus, the fictive space of the foundation is identified beyond the distinction between the two scenes into which the picture is divided, to the division between that of the dominant Christ and that of the three characters. This is a difference, as already suggested, instituting a hermeneutic that can, in turn, be referred to the two planes on which the dogmatic, founding and instituting communication of that hermeneutic is organised, proceeding from the asymmetry of the two planes (of the malleable foundation and of the interpreter).

And here lies the secret that the hermeneutic processes guard (including those of law): the relationship between the world of man is not reduced to operations of mere information (Legendre 2001). On the contrary, there is an *anthropological foundation* for human knowledge that, even in its most abstract form, can be traced to the *separation* of the subject from its image. This is what the myth of Narcissus and the mirror dynamic indicate: recognition of self always *speaks of the other and of the world*. In other words, any form of knowledge, including scientific knowledge, is based on a previous *discourse*, by means of which that given knowledge is *instituted and believed* by men as such.<sup>10</sup> There is always a previous legal discourse that *institutes a knowledge* relating to the representation of the foundation: it has precisely the function of *founding* the belief around a certain form of knowledge within a society. A knowledge is not given, at a social level, if it is not ‘instituted’, ‘notified’ to mankind or represented theatrically. To use Legendre’s effective expression, it must be presented to mankind, if mankind is to *believe in it*. This is the *dogmatic theatrical mechanism*, fictive and constitutive, that he identifies and presents to contemporaneity as a considerable problem. And, as already mentioned, the *knowledge of the discourse that institutes the foundation* is different from the *knowledge deriving from the socially instituted foundation*. The dogmatic anthropology of Legendre considers a possible form of knowledge that turns on the theatrical plane of the empty space, the foundational (referred to the Third) view of every discourse. As we shall see, it crosses and holds together epistemological, historiographical-methodological, religious, legal, aesthetic and hermeneutic concepts. It aims to

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<sup>10</sup> ‘The reference is a place, and the legitimacy is the recognition of this place which places the figure of the *Third founder* [...] in an apodictic position, that is to say incontrovertible...’ (Legendre 2001).

reintroduce, following the modern and the postmodern, a theory regarding the attitude of conferring trust on something:

In other words the Law in each system institutes its own science, a legitimate and magistral knowledge, to ensure communication of the censures also to the subjects and to impose the opinion of the teachers... From the theologian-jurists of antiquity to the manipulators of advertising propaganda, a single and similar dogmatic means has been perfected for the purpose of inveigling the subjects with that infallible method that is at issue here: the belief of love. (Legendre 1974)

If the question of *convincing* has always been the subject of juridical-political capture, it nonetheless qualifies the position of the problem of the *dogmatic* in a general sense. In fact, the sphere of the dogmatic draws justification from the observation according to which all knowledge must be instituted. Not even science, the last to occupy this social role in contemporary society, is exempt from jumping through these hoops. So dogmatic anthropology stands as a theory about the *cultural fixtures* that provide credit to the disciplines that (in a given society) from time to time are placed beyond criticism. These are the disciplines that occupy the third mythical place: Aristotelian philosophy, theology, rationality, law, economy, technology, computer sciences and so on, just to give a few examples.

Piero della Francesca's painting shows us this theatrical 'aesthetic-dogmatic framework' at work, an 'aesthetic envelope of culture' (Legendre 2001), at a very particular moment of the history. According to Legendre, Piero della Francesca is one of the *ferryman* who ply their way between two eras – like Braque and Magritte in the twentieth century – where we find the enactment of *why?*, the problem of the enigmatisation of the world. In his handling of the enigma, Piero paints here 'a way of seeing man and the world, namely: *the Western institution of the glance*' (Legendre 2001). Consider the logic of the two scenes that the painting (The Flagellation of Christ, with its mysterious group of three characters and their organisation) shows. Without going into great detail concerning the ongoing historical controversy surrounding the painting, which most recently occupied authors such as Clark, Ginzburg and Calvesi, for a legal historian, it shows the constitutive structure of society: the organisation of the figures portrayed, the *iato* between the two scenes represented in the painting emblematically consents 'the infinite opening to interpretation' (Legendre 2001).<sup>11</sup>

This infinite opening to interpretation is possible because the historical reference (Christianity as a founding reference) was under discussion at the time of Piero della Francesca, and it is subject to *criticism* by the three characters, in a today that has *passed* beyond the Middle Ages, and no longer conceives the reference in the same way. We are thus taken back to the topic of malleability of the reference, of the position of the *empty place* that can be manipulated by man in a projective movement dominated by the starting point of contemporaneity, as well as operated by the

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<sup>11</sup> Here we see at work, through the *iato*, the same structure identified elsewhere by the author with regard to the relationship meaning/significant: the constitutive separation (of the subject, of the theatrical scene of society, of the sense).



three characters in the picture, who displace the centrality of the first scene (Christ scourged), relating to it as the ideal reference. Through the construction of the *viewpoint* that the painter imposes on those who *pass by* the painting, the movement identified (*the enigma of the iato*) aesthetically traces the construction of the normative structure that supports society.

In this regard, *the institutional systems can be studied by aesthetic means*. For instance, a link is created between aesthetics and law: *just as we study a picture, so too do we study a law*, which shares with the former the same *fictively* eternal position and *dogmatic position*. Without forgetting that any exegetical technique presupposes a theatrical foundation on which it is based (even if allegedly positivist), a knowledge that institutes it: this is the *theatrical scenario of law*: the *institutive place of practices of interpretation that recognise an ideal and mythical, institutive, dogmatically founded and fictively historically malleable reference*. These institutions do for society what a painting like that of Piero della Francesca does for its observers: they impose *a window, a framework, a way of seeing*. *Whether it is a question of a painting or of a text, the dogmatic structure from which it begins is the same*. The problem of the framework (the opinion, the fixing of a glance) is thus posed in its normative and, simultaneously, hermeneutic essence.

The last question that remains to be analysed is the relationship between ‘the painter’s gaze and the gaze of the viewer’ (Legendre 2001) or, transposed in terms of legal hermeneutics, between the eyes of the court creator and the gaze of the citizen to whom the law is communicated: between the gaze of the qualified interpreter and that of all the others. According to Legendre, this is what the *normative mechanism of the framing* means, organised in three moments, in a transposition of glances between he who paints and he who looks, by means of a brokerage of forms:

1. *The painter’s viewpoint* (or the functionally equivalent viewpoint of the director or the constructor of pages on a computer). He quotes the work by Leon Battista Alberti, a contemporary of Piero della Francesca and founder of the narrative ‘Italian style’ of painting *De Pictura*:  
 “I trace [...] a square of the size I want, made of right angles, and for me it is an open window through which to cross history [...]” (Legendre 2001; Alberti 1980)
2. *The gaze of the viewer*:  
 We don’t see just the forms represented, we compulsorily see them through a certain focus desired by the painter, a binding viewpoint that captures, guides, moulds every gaze to come (Legendre 2001).
3. The *window that frames* (the image as a normative text) is therefore the mediation, placed in an unbiased position, through which the gaze of the viewer *passes* for the vision of the painter who imposed the frame. The viewer’s observation in fact comes second, that is to say, it is generated by the viewpoint that created the window. Yet, it does not accede to another’s vision (the painter’s) which crosses his gaze. Naturally, even perspective (in painting technique) did not represent more than a moment in the western institution of the viewpoint, after which,

according to the logic of the malleability of the reference, other forms of ‘framing’ followed progressively (up to the present-day forms, the latest of which being the video of a computer connected to the Internet).

According to Ivan Illich, the Italian style of painting, dating from Alberti, became ‘narrative’. As a way of telling a story, it translated what was written in a book into something that the eye could contemplate: it ‘is a legitimate art, because it represents significant interactions between persons’ (Illich 2004). As Wim Wenders notes in his cinema, the image is normative inasmuch as it supplies a frame for reality that selects elements, producing, by means of the image, a psychological identification in the viewer (Wenders 2009; Heritier 2009a). Without exploring this psychological aspect regarding the identification (indeed, extremely relevant in the thinking of Legendre and at the basis of the functioning of advertising), I will draw this chapter to a conclusion by following the juridical exposition of the importance of normativity of the image found in Goodrich. This author refers to the notion coined by Legendre of ‘nomograms’, ‘a neologism formed from the combination of *nomos* (norm) and *gramma* (mark) first defined in Pierre Legendre’ (Goodrich 2006).

According to Pierre the French thinker, his wanderings through mediaeval Latin manuscripts, his study of dance, of emblems and of rituality opened up a new area of legal research. He states, ‘I came to this conclusion: book, dance, emblem and ritual are variations of a single phenomenon of writing, I designate it with the term nomograms’ (Legendre 1992) (cinema would later be added to the list).

Studying the normative phenomenon, seen in an extended perspective and not limited to the specific area of positive law and juridical norms, thus means that ‘the phenomenon of writing can no longer be defined only through the historical or ethnological criteria of a lasting support material that preserves traces of it. Rather, it must be explored through the perspective of the institution of signs and the legality of the repetition of the sign, for these manifestations (that we call graphic productions essentially symbolic) depends on the social construction of the Third, a basically normative construction [...] So what we are dealing with in every cultural system is a system of nomograms, diversified but dominated by the representation of the third founder, the unifier of the written productions. It is this system of nomograms that research must now circumscribe’ (Legendre 1992).

### ***2.1.5 Towards a Theory of Nomograms in the Society of the Image***

It is once again an Italian jurist and his book of emblems, the first of its kind (Andrea Alciato, *Emblematum libellus*, 1531, *Little Book of Emblems* (Alciato 2009)), which saw more than 200 editions in the next two centuries, to which Goodrich refers when specifying the notion of the nomogram coined by Legendre. Here, *libellus* does not only mean little book, but, according to Goodrich, it has another meaning as well, one that is useful for understanding a problem regarding

the normativity of the image which, in the context of the twentieth century dominated by legal positivism, may appear to some extent extravagant or simply extralegal. The seventeenth-century emblem, the union of an image and a motto, shows another communicative-normative meaning of Alciato's *libellus*: 'if the emblems are charters or deeds, they are foundational, they institute their object or create the subject to which the emblem will attach. The *Libellus* here signifies a series of obligations, the bonds of norms, the *vinculus* that will hold the subject in place' (Goodrich 2006). In other words, Goodrich wants to insert the seventeenth-century emblem into the area of legal rhetoric as traditionally understood, in a context that is aimed at recognising the methodical value of the rhetorical discourse for the understanding of the legal phenomenon in postmodernity and following the crisis of positivism.<sup>12</sup>

While traditionally epideictic or ceremonial rhetoric was generally considered merely ornamental or merely aesthetic (Heritier 2009b), or at most as having a persuasive purpose, as in Perelman, on the contrary, Goodrich notes that 'Epideictic rhetoric was traditionally the genre of religious practices, of rites and rituals that would bind (*religare*) the subject to the social. The epideictic was the discourse of public office and of social events' (Goodrich 2006). At the time of Alciato, he says, 'The law was a subdivision or branch of the ceremonial. The social presence of law depended upon the theatre of the Court and the rituals attached to an itinerant judiciary or majestic trials' (Goodrich 2006). In fact, while the general function of ritual and the ceremonial, anything but marginal, was to give credence to the law and effect to the rule, in the context in which Alciato operated, and although he uses an ironic register, 'the books of emblems secularized the transmission of law and so greatly expanded its impact as well enlarging the tone or style in which the message of law were delivered' (Goodrich 2006).

Based on these observations, Goodrich can consider Legendre 'the modern Alciato', that is to say, he who turns his attention (with his pioneering studies into the normative role of the image) to a problem that appears central to the modern-day 'society of the image' and of communication. The legal texts, as we have seen, including the codes of modernity and not only the *Corpus Iuris* of classicism, always have an emblematic and institutive value and demand to be communicated by means of figures and images. This element is well known from the rhetoric of the evidence given during a trial, as he notes, 'What was figured would pass before the eyes and so make the point in a manner that the auditor could not refuse. Lawyers did not ignore such an important rhetorical point' (Goodrich 2006). Thus, the central element identified by Goodrich in developing the notion of nomogram seen as the set of normative and semiotic materials (much wider than the mere written law of a given society) is that 'legal text, textures and textualities are not simply prosaic statements of minuscule and technical rules. They attach to life, they go within. More than that, the emblem is the emblematic legal text. It is the clearest possible depiction of the textual function, of what laws are historically supposed to do.

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<sup>12</sup> This methodological re-evaluation of rhetorical discourse in Italy is seen in Cavalla (2007) and Velo del Brenta (2007).

They institute life, they pass on the habitus of the human, the institution of the social, they tell, in brief, what to do' (Goodrich 2006).

Here Goodrich explains the notion of nomogram as the key to the way law presents itself in contemporary society (as well as in all societies), beyond the formalisms. In fact, he traces this perspective to the problem present in Carl Schmitt (2003) with regard to the notion of *nomos* meaning 'appropriation that makes law visible'. The problem of making the *nomos* visible in Schmitt's perspective, read against the background of the nomogram in Legendre, 'now takes on a more precise historical meaning in that law is simply a medium of access to the *nomos*' (Goodrich 2006). Legendre's theory, in other words, allows us to understand that, 'the *nomos* is a letter that gets inside, the norm is a message – it gives us our assignments, our name, our place, our role, our understanding of who we are and whence we came' (Goodrich 2006). The well-known statement by McLuhan, 'the medium is the message', which lies behind the society of the image and communication, can here be considered a sort of legal version to be clarified: 'the norm is the message', from which it is possible to derive the idea that 'the *nomos* is a system of nomograms'.

Consequently, the task of a legal semiotic is that of circumscribing the entire widespread system of nomograms operating in the complex contemporary society, which takes us well beyond the pioneering work already carried out by the French historian.<sup>13</sup> In fact, in Goodrich's opinion, it is important to try to move on when investigating 'the telegraphic urgency and libidinal force of the media that bear the message of law' (and I would add, particularly that of the latest media, the Internet, which can be seen as a hypertext that continues and renews the technique of legal writing of the mediaeval glosses) (Heritier 2003). As Goodrich writes, 'the nomogram captures the communicative function of law as a message that renders social structure visible. The nomogram is the system of mail, the relay of social missives by means of which we learn what has been assigned, our assignments, our sense of a place both in genealogical and institutional forms' (Goodrich 2006).

If Goodrich reveals how Legendre's theory, by means of the concept of the nomogram, illustrates the choreography of the social (showing how the legal text is always 'more than simply a text'), other theoretical positions (which would take us beyond the scope of this chapter) approach the configuration of a communicative-normative theory of the legal. In criticising the epistemological formulation of Bobbio and Kelsen from a formulation close to the critical rationalism of Popper, and in particular the fictive tract of the construction of the Kelsenian *Grundnorm*, the Torino-based philosopher of law, Enrico di Robilant, already in 1975 (di Robilant 1976)<sup>14</sup> observed, when analysing what the legal theories do, that a legal theory, in

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<sup>13</sup> However, Legendre came back recently to the concept of nomograms in *Leçons IX* (Legendre 2009).

<sup>14</sup> I analysed the position of Robilant in the chapter *Dalla teoria generale all'epistemologia e all'estetica giuridica*, in *Società post-hitleriane?* pp. 3–82. This article is the critical re-elaboration of material sketched out in that text and in other articles on Legendre.

representing the legal system, produces a *figure* of reality susceptible to an aesthetic evaluation:

The explanation that the legal theories offer [...] must not be confused with reality, because it constructs an independent structure that, although seeking correspondence with reality, remains distinct, and, having its own communicativeness and form, it is the carrier of an allusive meaning that goes beyond the information produced. The theories, therefore, contain less than the reality that they propose to explain because they form a figure based on a theoretically conditioned selection, but, on the other hand, they contain more than the reality explained, since they are carriers of an allusive meaning that stems from their form and transcends the reality represented and explained. (di Robilant 1976)

Beginning from this epistemological introduction, Robilant, on the basis of the *General System Theory* of von Bertalanffy, maintains the interest and the fecundity of an aesthetic approach to the legal phenomenon seen as an informative-normative phenomenon. Following the analysis of Legendre's position, it is possible to observe *how the society of the image in which we are immersed cannot be considered merely a place in which information circulates, but also as the place in which normative communication circulates in a system of nomograms*. As Ugo Volli states, speaking of Jacobson and of what *passes* through the various systems, 'from advertising to the romantic communication, from fashion to the shop windows, ... a strong *exposure* of the issuer and a strong *pressure* on the receiver exist together due to a particularly emphasised contact and a rich formal elaboration of the message' (Volli 1994).

The legal phenomenon that emerges from the analysis of Goodrich and Legendre, as well as of Robilant and Volli, can therefore be configured as a *communicative-normative system*. This system can be further analysed alongside the traditional analysis of the system conducted by the general theory of law. In so doing, we seek to identify the system of nomograms that circulates in the complex society of the image, beginning with the resumption of the classical aesthetic-rhetoric and legal semiotics (of the normativity of the image) of which the theory of the legal historian Pierre Legendre supplies the present point of reference and quite possibly the first step of a renewed theory of legal-semiotic aesthetics.

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## Chapter 3

# The Book as Authoritative Sign in Seventeenth-Century England: A Review Through the Lens of Holistic Media Theory

Paul Douglas Callister\*

**Abstract** Seventeenth-century England is primarily a textual era for legal authority, but the book also has the capacity to act as sign, and in a few notable instances it does so, providing authority to check both royal prerogative and parliamentary power during the Interregnum. Although its precise meaning is debated, royal prerogative includes the right of the monarch to act as a higher court than common law courts and may encompass the right to legislate. It was the central issue in the seventeenth-century power struggle between English courts, parliament, and the monarchy.

The image of the book has always appeared among icons signifying sovereign authority. However, in seventeenth-century England, the printed law book came to represent a check on government power, especially absolute monarchy and royal prerogative over the interpretation and application of law. To be properly studied within semiotics, signs must be understood holistically, using tools from a variety of disciplines. Holistic media theory, when expanded to include the concepts of cognitive authority and connotative meaning, illuminates the book's evolving signification and function leading up to and including the seventeenth century.

This chapter first sets forth foundational concepts with an explanation of holistic media theory, cognitive authority, and their connections to legal semiotics. It then contrasts the book with another sign of authority—the royal orb—which signifies dominion and prerogative, and finally illustrates specific instances of the emerging

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\**We have corrected Thy work and have founded it upon miracle, mystery and authority.* – *The Grand Inquisitor* (Dostoyevsky 1955, 282)

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association of books, particularly Lord Coke's *Institutes and Reports* and the King James Bible, with authority and conscientious objection.

### 3.1 Introduction

Seventeenth-century England is primarily a textual era for legal authority, but the book also has the capacity to act as sign, and in a few notable instances, it acts as visual sign, providing authority to check both royal prerogative and unmitigated parliamentary power during the Interregnum.<sup>1</sup> To be properly studied within semiotics, signs must be understood holistically, using tools from a variety of disciplines. Holistic media theory, when expanded to include the concepts of *cognitive authority* and *connotative meaning*, illuminates the book's evolving signification and function leading up to and including the seventeenth century.

This chapter first sets forth foundational concepts with an explanation of holistic media theory, cognitive authority, and their connections to legal semiotics. To better understand the importance of the printed book as sign, the second part of the chapter contrasts the book with another sign of authority—the royal orb—which signifies dominion and prerogative. The third part illustrates specific instances of the emerging association of books, particularly Lord Coke's *Institutes*<sup>2</sup> and *Reports*<sup>3</sup> and the Bible,<sup>4</sup> with authority and *conscientious objection*.

## 3.2 Methodology: Media Theory, Cognitive Authority, and Semiotics

### 3.2.1 Media Theory

In the 1950s and 1960s, Marshall McLuhan and Harold Adam Innis conceived of *Media Theory* as an explanation of historical developments, including geopolitics

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<sup>1</sup> The meaning of “royal prerogative” is a subject of much controversy as illustrated by the fact that King James, probably as a concession to Parliament, chastised John Cowell for going too far on the subject in his famous law dictionary (Hicks 1921, 37–44). In sum, royal prerogative includes the right of monarch to sit in judgment, as a higher court than common law courts, and may encompass the right to legislate [*compare* Cowell 1607, entry for “Prærogative of the King” (no page or folio references given), *with* Cowell 1964, entry for the same (no page or folio references given)].

<sup>2</sup> Unless otherwise noted, references to the *Institutes* are to Part I (Coke 1633). Coke's third or 1633 edition of the First Part of the *Institutes* is the last edition appearing before his death in 1634 and is so selected for reference.

<sup>3</sup> This work cites the first English edition of the *Reports*, not published until 1728 (Coke 1728).

<sup>4</sup> All references to the Bible are from the King James Version.

and social institutions (Deibert 1997, 6).<sup>5</sup> For instance, *per Innis' theory*, in about 2160 BC, the movement from Egyptian monarchy to feudalism “coincides with a shift in emphasis on stone as a medium of communication... to an emphasis on papyrus” (Innis 1950, 17). However, the initial theory was faulted for being technologically deterministic and *monocausal*, crediting every geopolitical event to new media technology (Deibert 1997, 26–27; Carey 1981, 162, 168). Another prominent, early media theorist is Elizabeth Eisenstein, who has focused on the history of the book, including legal texts (Eisenstein 1979). She is criticized for similar reasons as Innis and McLuhan (Deibert 1997, 17 [citing Hunter 1979]; Rabb 1971, 135).

In a later generation of media theorists, Ronald Deibert imposed a less deterministic and, ultimately, Darwinistic model, in what he termed to be a “holistic” approach (Deibert 1997, 37–38). Deibert modified media theory by moving away from technological determinism to emphasize the ecological and holistic nature of information media: “New technologies of communication do not *generate* specific social forces and/or ideas, as technological determinists would have it. Rather, they *facilitate* and *constrain* the extant social forces and ideas of a society” (Id, 36). Much as in Darwin’s theory, those institutions best adapted for the media environment are most likely to survive and prosper.

Deibert represents the information environment as a series of concentric rings, with humanity’s shared *web* of beliefs (which, per this author’s adaption in Fig. 3.1, includes *cognitive authority*) at the center, surrounded by various spheres of influence, with each neighboring ring affecting and being affected by its neighbors (Id, 38, fig. 2). Deibert’s model is primarily devoted to explaining changes in a society’s web of beliefs and the relative power of social forces that are facilitated or hindered by developments in media technology (Id, 94).

The model is an apt construct for the fields of legal history, legal bibliography, and legal semiotics. For our purposes, Deibert’s model is useful for considering the effect and media context of particular legal and authoritative works, such as Lord Coke’s *Institutes*, his *Reports*, and the Bible.

### 3.2.2 Cognitive Authority

In the second to the center ring of the model in Fig. 3.1, Deibert uses *social epistemology* instead of *cognitive authority*, as represented by this author. The two concepts are related. “Social epistemology” has to do with the “web-of-beliefs into which people are acculturated and through which they perceive the world around them” (Deibert 1997, 94). Cognitive authority is a concept derived from

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<sup>5</sup> Also see generally Innis (1950, 1951), McLuhan (1962, 1964), McLuhan and Fiore (1967, 1968).

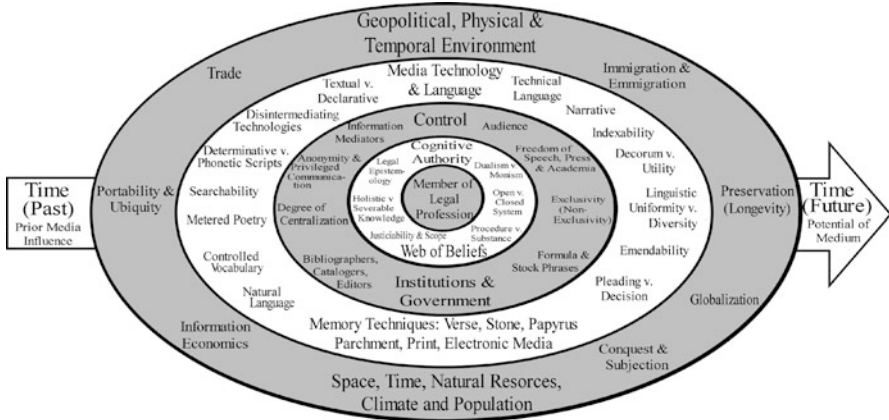


Fig. 3.1 Author’s adaptation of Deibert’s model

*social epistemology*, which term originally referred “to study of the production, distribution, and utilization of intellectual products.... Any study of these subjects leads quickly to questions of cognitive authority...” (Wilson 1983, vi). As a concept, it initially includes an individual’s recognition and trust of particular individuals or institutions as authority (Id, 81, 89). Its original champion, Patrick Wilson, described cognitive authority as the “influence on one’s thoughts that one would consciously recognize as proper” (Id, 15). Within the field of library and information science, the concept encompasses an individual’s trust and recognition of specific texts as authoritative. Texts are accepted as authority in several ways—if authored by trusted individuals or groups, by publication record of the publisher, and through repeated revision of a reference work (Id, 166–68). *Cognitive authority* has also been extended to Internet sources (Rieh 2002, 145; Fritch and Cromwell 2001, 499). Based upon Wilson’s definition, there is no reason that oral traditions, metered verse, insignia, and regalia might not fall within a particular individual’s cognitive authority. This author previously made such analysis for law memorialized in oral traditions and metered verse (Callisterp and Paul 2007, 263).

Deriving from *social epistemology* (which is the exact term Deibert used for his center ring of analysis), cognitive authority is not merely applied to the epistemology of the individual, but to social groups and even society as a whole (Deibert 1997, 38, fig. 2). Robert Berring notes that cognitive authority is not only relevant to the legal profession (as a social group) but that “[f]or most of the twentieth century, the legal world ha[s] agreed to confer cognitive authority on a small set of resources” (Berring 2000, 1676). Berring uses cognitive authority to mean “the act by which one confers trust upon a source” (Id, 1676). The field and practice of law share social epistemology and respect cognitive authority based upon a circumspect sphere of trusted authority.

### 3.2.3 *Conceptual Connections to Semiotics: Connotation, Media Theory, and Cognitive Authority*

As a channel for signal or sign, media is an important consideration for semiotics. Because of this role as a carrier of signs, any inquiry into legal semiotics may properly concern itself with media theory, including cognitive authority. However, there is a more profound reason for semiotics to concern itself with media theory—often, a particular medium itself becomes a sign, sometimes even as a visual expression. This phenomenon can be described by drawing from the well-known distinction between denotative and connotative meanings.

In semiotics, signs are understood to have denotative and connotative meanings. *Denotative* emphasizes a literal and definitional meaning, one commonly recognized, based upon a visual image or an object corresponding to the sign, while *connotative* includes the “socio-cultural and ‘personal’ associations (ideological, emotional, etc.) of the sign” (Chandler 2007, 137–38; Sonesson 1998, 187–89). *Connotative* meaning is a second-order meaning, where the first order (*denotative*) has had new meaning added to it (Chandler 2007, 139–40). *Connotative* meanings are *context dependent* and have much more to do with the recipient and sign user’s background. Furthermore, such meanings are “typically related to the interpreter’s class, age, gender, ethnicity and so on” (Id, 138). It is the “sign users,” either sender (author) or receiver (interpreter), who may add connotative meaning to the sign, apart from the “perceptual world” (Sonesson 1998, 187). Because the context within which sign users operate is so important to connotative meaning, Deibert’s holistic media theory (especially, analysis of cognitive authority) is an appropriate tool for considering the semiotics of the book as sign.

Legal texts and other books act in a denotative role to memorialize arrangements of textual signs. But, in addition, their mere presence is a sign of more signs. By the seventeenth century, however, these books operate on yet another level, one of connotative signification: these books signify authority within the society’s accepted realm of cognitive authority. In essence, it is the process of connotative signification that endows law and other books with cognitive authority—in this case, at a level of authority significant enough to challenge royal prerogative and parliamentary authority during the Interregnum.

When Deibert’s holistic version of media theory (which includes consideration of temporal, geopolitical, technological, and institutional factors) is applied to books, the theory facilitates an understanding of how the relationship of books to cognitive authority evolves, as books change from manuscript to print forms. As shall be shown in Sect. 3.4.3, printed books have increased acceptance and weight as cognitive authority because of their widespread usage, stability, and capacity for cross citation to other authority.

In summary, cognitive authority is a powerful, fundamental concept and is relevant to several fields. As a social epistemology, it bears a relationship to the intersections of both media theory (as applied to legal history) and the emerging field of law and semiotics.

### 3.3 Signs of Cognitive Authority: Book Versus Royal Orb

To understand the significance of the law book as sign in the seventeenth century, it is helpful to consider and contrast the historical function the book has played as sign with the role of another sign, the royal orb. The orb plays a similar role, particularly with respect to cognitive authority, since at least the Middle Ages. In general, the printed book is accessible, stable, and widely distributed, while royal orbs are mysterious, unpredictable, and held only by sovereign lords. Nonprinted books function more like the royal orb. All have functions with respect to signifying authority and knowledge.

#### 3.3.1 *Nonprinted Book and Authority*

On the continent, books have always been associated with authority. For instance, the Throne Room of Terem Palace of Moscow's Kremlin City was redecorated in 1836 by a prominent art historian in the style of the early seventeenth century. It bears an image in the apex of the ceiling of the Lord with open Gospels (manuscript), directly over the throne (Polynna and Rodimtseva 2000, 58, 60–61, 63). A similar relationship between open book (as held by divine hands) and throne can be found in Ambrogio Lorenzetti's fresco, *Allegory of Good Government* (circa 1338–1340). In it, a female figure representing *wisdom* floats, holding a book (perhaps the Gospels), above a female figure on a throne, who represents *justice* (Cohen 1992, 40–41). Furthermore, the motif is repeated in the nineteenth-century throne rooms of Kaiser William I (female deity holds open book above the throne) and Neuschwanstein Castle and on crowns in seventeenth-century Russia and eleventh-century Hungary (Engle 1962, 138; *Neuschwanstein Castle*; Schramm 1954–56, 1161–62, 1164, tpls. 83–84, 86) and, most notably, the eleventh-century crown of St. Stephen, featuring the enthroned Christ holding the Gospels on the fore plate (Lübke 1904, 373).

Compared to continental Europe, the most notable thing about the representation of books in English regalia is their relatively limited role, at least after the Norman Conquest. In one of the few instances where the book is portrayed as an icon of authority (or at least survives as such), Edward the Confessor, last of the Saxon kings, is depicted in stained glass at Canterbury. Although possibly demonstrating his saintly status rather than making any statement about regal authority, Edward holds a book, probably the four Gospels. See Fig. 3.2. Likewise, Saxon King Athelstan has been illustrated presenting a codex to St. Cuthbert (Deshman 1974, 176, 196, fig. 45). However, this author was unable to find any post-Conquest Norman kings depicted with books until issuance of the printed, great print bibles, starting with Henry VIII (String 1996, 90–112; King 1985, 41, 45, fig. 1). See Fig. 3.3 (*Title Page of Great Bible 1539*). Note Henry VIII's position is as disseminator of the word of God, handing two bibles off to the Archbishop of Canterbury

**Fig. 3.2** Edward the Confessor



and the Lord Privy Seal. “There is nothing allegorical about the Great Bible title page illustration... Henry... becomes the obvious link to spiritual authority from God” (String 1996, 1100). He authorizes the Bible and is its conduit, not an inferior to it.

One reason that books do not appear in more iconic representations in England is that the English were influenced less than others by such images. Tatiana String concludes that, in contrast to the German people of Luther’s time, “[t]he primary means by which the majority of the English people were ‘inculcated’ with political



**Fig. 3.3** Title Page of Great Bible 1539

and theological propaganda were not pictorial” (String 2000, 141). Supporting her conclusion, String observes, “Unlike the situation in Germany, there is no evidence of a comparable English campaign that used illustrated anti-papal broadsheets or polemical prints” (Id, 138). She queries, “Was literacy in England so high that images were unnecessary? Were those responsible for the clear campaign of persuasion unaware of the value of visual support?” (Sonesson 1998, 33). Perhaps adding some insight into the English stance toward icons is that many such images were removed from public life after Henry VIII ordered dissolution of the monasteries (Id, 85). Such images have functioned in Gregorian fashion (and as adopted by Martin Luther) as “unlearned men’s books” (Id, 86). Historian Christopher Hill observes in a work on the English Bible and the seventeenth century, “For Catholics images had been the books of the illiterate” (Hill 1994, 14). With the removal of icons from the information environment, reading becomes essential for accessing information. Per String, the English evolved differently than elsewhere in Europe and were less dependent upon visual icons. Nonetheless, visual signs did occasionally play an important role.

### 3.3.2 *The Ubiquitous Orb*

Another reason the book may not play a more central role in the history of English regalia and icons may be the book’s image has a functional substitute—one lying deep at the mysteries of kingship throughout Europe. Commencing with the coronation

of King Harold, last of the Saxon kings, and the Bayeux Tapestry, and appearing in regalia of various monarchs until the present day, the orb has occupied a central place in British regalia, as well as in Europe (Coad 2007, 25 [orb in Bayeux Tapestry]; Schramm 1954–56), tafel 113, no. 148 [King Richard II with sphere, 1377–99].<sup>6</sup> At the beginning of the seventeenth century, King James I displays the orb on his Great Seal and on his coinage (Knight 1838–1841, 3, 86, 550, 763). When the monarchy is restored after the revolution, the orb reappears after absence on seals and coinage (Id, 109, 399, 422, 555, 662). Indeed, the actual orb, made of gold and encrusted with jewels, had to be replaced because it had been lost during the Interregnum [45, 225–26, 248], perhaps hinting at its incompatibility with anything but monarchy.

The orb's functions are often described as symbolizing the world, God's power over it and imperial dominion (Ferguson 1954, 313 [entry for "globe"]; Hilliam 2001, 226; Keay and Murphy 2002, 18); however, even a casual survey of literature and art of the Renaissance and Middle Ages suggests more portentous meaning tied to the rites of kingship. By grasping the underlying meaning of the orb, the significance of the printed book to English cognitive authority is easier to comprehend.

In Antwerp in the sixteenth century, a series of gates demarcating a route for procession and honoring various Spanish monarchs were constructed and decorated with statuary from Flemish artists such as Rubens, de Vos, van Thulden, and van den Hoecke (Martin 1972, 23, 30, 142, plate 1). Numerous manifestations of the orb are present in surviving sketches of these gates. The orb is held by the goddess Juno as she consults with Jupiter [plates 17–20], by the goddess Providentia (Id, 69–70, plates 16–18, 21–22, 32), by emperors Maximilian I and II, by Charles V, by Rudolph I and II, by Fredrick IV, by Mathias I, by Ferdinand I [plates 23–24, 26, 38–43], and by various angelic ministers [plates 16–18], but the most telling drawing, by van den Hoecke, depicts Providentia holding the orb. The entire image bears the caption "The Foresight of the King" [plates 76, 79], suggesting the king's role as seer, via the orb. To the Renaissance and medieval mind, the orb, whether held by divine or regal image, represents foresight and providence (through such foresight). It fills a role similar to that of the Mesopotamian *Tablets of Destiny*, part of the secret knowledge of kingship necessary for temporal sovereignty (Callister 2005, 286–87):

[T]hese tablets are given various names: the Tablets of Destiny, the Tablets of Wisdom, the Law of Earth and Heaven, the Tablets of the Gods, the Bag with the Mystery of Heaven and Earth. All these names reflect various aspects of these mysterious tablets. They decide the destiny of the Universe, they express *the law of the whole world*, they contain supreme wisdom, and they are truly the mystery of heaven and earth. (Widengren 1950, 11 [emphasis added])

<sup>6</sup> Additional illustrations of the orb and regalia include Queen Elizabeth, King James I, Charles II, Mary II, and Edward II (King 1985, 3: 65, fig. 13, 80, fig. 19 [Queen Elizabeth, 1603–4, with sphere]); (Keay 2002, 63 [King James I with orb], 19 [orb of Charles II]; Holmes and Sitwell 1972, 17 [orbs of Charles II and Mary II, in 1689]); (Binski and Panayotova 2005, 136–37 [coronation of Edward II includes sphere]). Henry VIII is depicted with his orb on manuscripts, The Great Seal, and *Black Book of the Garter* (Starkey 1991, 85, fig. V.35, 86, figs. 38–39, 95, fig. VI.5, 141, fig. XI.2). The orb is even present with Charlemagne in a manuscript and mural depicting the "worthies" of Arthurian legend (Loomis and Loomis 1966, illus. 13–14).





**Fig. 3.4** Christ holding book on throne [Author will license]

In essence, the orb, like the Mesopotamian Tablets of Destiny, represents everything needed to govern—including wisdom, destiny and law. Also linking the orb to law is Andrea di Buonaiuto's fresco, *Triumph of St Thomas of Aquinas: Allegories of Civil and Canon Law*, from 1365. It presents seven women seated in thrones above seven men also seated. Each man holds a book, but two of the women hold orbs (Robbins 1990, 156–57).

The question that suggests itself is whether the book is fully interchangeable with orb in terms of its symbolic function as a medium. The instances of persons of the Christian Trinity and of saints in identical poses in religious icons holding orbs and books or scrolls are too numerous to fully cite (Lazarev 1997, 206–07 [note the parallelism of bishops holding scrolls and angels holding transparent spheres]; Id, 316, fig. 115 [Christ child holding scrolls]; Wedgwood 1967, 60 [title frontice piece by Rubens with Pope holding book]; Baudouin 1977, 59 [Christ child with orb], 266, fig. 137 [frontice piece designed by Rubens with Captain holding orb]). As a representative example, from England, consider the following illustrations in the mid-thirteenth-century-illuminated Book of Revelation, known as the *Douce Apocalypse*, held at Oxford's Bodleian Library: ([Ms. Douce 180](#), [Fig. 3.4]; [Douce Apocalypse](#), 187 [Fig. 3.5]). These identical poses of Christ, holding a book in one and the orb in another, appear on the 22 verso and 23 recto of the codex, for pages beginning with Revelation 7:9 and Revelation 8:1, respectively. John the Revelator appears with a book off to the left. In the first passage, the multitudes stand before

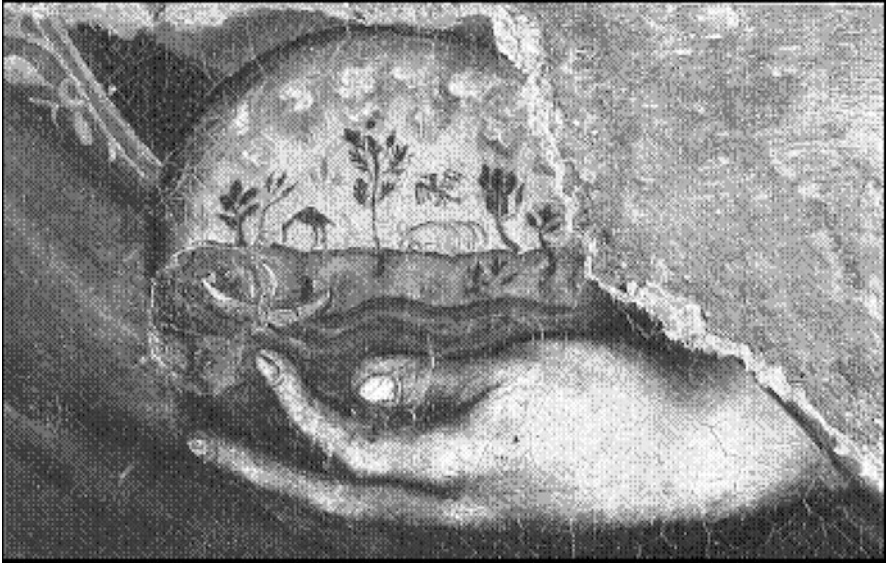


Fig. 3.5 Christ holding orb in pose identical to that of previous figure

the throne. In the second, seven angels await opening of the *Seventh Seal*. In either case, the interchangeability of orb and book as signs is apparent.

The importance of these illuminated registers is what they reveal about the mind-set of mid-thirteenth-century English people and how they viewed the relationship of authority, the throne, books, and the orb. In another example from mid-thirteenth-century England, the revelatory or informational aspect of the orb is apparent in a panel of the *Westminster Retable*, an altarpiece constructed for Henry III (Binski 2005, 2nd back panel). In the panel depicting Christ on the throne, the Lord holds a sphere. Unlike those found among English regalia (appearing to be gold or copper), the sphere is transparent, revealing a paradisiacal scene of a world, with birds in the clouds, grazing animals, abundant trees, and a great whale in the ocean (Keay and Murphy 2002, 19; Holmes and Sitwell 1972, 17; Binski 2005, front panel 3). See Fig. 3.6. What Christ holds is a medium, signifying, as in van den Hoecke's depiction of *Providentia*, the "foresight of the King" (Martin 1972, plates 76, 79).

Illustrating just how culturally embedded the orb had become, the transparent orb is a theme captured by painters, illuminators, and poets of the Renaissance in both England and Europe. In late sixteenth-century and early seventeenth-century works, Rubens portrays the orb as having crystalline and translucent qualities (Baudouin 1977, 58, plate 12, 70, fig. 36, 96, plate 22; Wedgwood 1967, 117, plate



**Fig. 3.6** Orb held by Christ as depicted in panel of Westminster Retable (Copied with permission. Copyright: Dean and Chapter of Westminster)

20, 118–19). In addition to Rubens, his contemporaries of the times also gave the globe a crystalline quality (Baudouin 1977, 117, plate 2 [Abel Grimmer and Henrik van Balen’s, the “River Scheldt at Antwerp”]). In *Paradise Lost* (first published in 1667), Milton compares Satan’s impressions upon escaping to a spot “in the Sun’s lucent Orbe.” That spot is “beyond expression bright” and described as a multitude of elements—gold, silver, carbuncle, chrysolite, ruby, and topaz—which Milton expressly ties to “Arrons Brest-plate” and the oft-imagined “philosopher’s stone” (Milton 1667, bk. 3, ll. 588–601). The stones of Aaron’s breastplate are often associated with the biblical Urim and Thummim, media by which knowledge, including prophecy, is obtained (*Oxford English Dictionary Online* 2009, entry for *Urim*).<sup>7</sup> The *philosophers’ stone* has typically referred to alchemy and the transmutation of substances, but it also has a function with respect to knowledge. “Even the philosopher’s stone or elixir was reinterpreted so that Christ appeared as the perfect matter

<sup>7</sup> The etymology for *Urim* from the Hebrew is “light,” or since it is in the plural, “lights” (*Oxford English Dictionary Online* 2009, etymological entry for *Urim*). It is usually referred to with *Thummim* as in *Urim and Thummim*. The etymology of *Thummim* is “perfections” or “complete Truth” (Strong 1890, 124 in “Hebrew and Chaldee Dictionary,” entry 8550). The Urim and Thummim were not the 12 stones of Aaron’s breastplate but were attached to (M’Clintock and Strong 1894, 677). Some have argued that the Urim and Thummim were a system of lots, with “yes” and “no” written on different stones, but M’Clintock and Strong reject this since “[i]n the cases when the Urim was consulted, the answers were always more than a mere negative or affirmative” (Id, 677).