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produced by the alchemical process—that is, Christ was the stone of all wisdom and knowledge" (*Encyclopædia Britannica Online* 2009, entry for *Christianity*). Carbuncle is a stone known for resembling burning coal and, among the stones on Aaron's breastplate, signifies divine knowledge (Richardson 1734, 129–30, entry for ll. 596; Dupré de Saint-Maur and Milton 1767, 131, n. [s]), and chrysolite, although similar to *crystal*, is actually a greenish stone and has the property of shining *like gold* (Dupré de Saint-Maur and Milton 1767, 131; *Oxford English Dictionary Online* 2009, entry for *Chrysolite*).

Milton also directly refers to the Urim and Thummim and Aaron's breastplate in *Paradise Regained* and describes them as "oraculous gems" or "tongue of Seers of old" (Milton 1671, bk. 3, ll. 12–16). Elsewhere, Milton, in an earlier, more political piece, refers to the prelate as a "Dunce" and contrasts him with a "learned [secular] Minister" as he "whom God hath gifted with [all] the judgement of Urim more amply oft-times than all the Prelates together" (Milton 1641, 204). It is not only knowledge that the orb confers but judgment and wisdom (necessary endowments for earthly dominion). Milton, as a leading figure of the seventeenth century, is clearly familiar with seeing stones, and his writings, like Rubens' paintings, reflect shared conceptions about authority and knowledge of the early seventeenth century. Both Rubens and Milton provide *portraits* of English and European cognitive authority in the seventeenth century, at least as understood by those belonging to the educated and ruling classes.

Illustrating the ancient roots of the mysteries of kingship, German kings, beginning with Otto I (962 AD), and with whom the English Saxon monarchs shared a common heritage, fashion their crowns in semblance of the biblical breastplate of stones worn by Aaron (Schramm 1954–56, vol. 2, 578, 581, fig. 16, 583–96, table [tafel 68–69]):

> [D]en vier Reihen von Edelsteinen an der Nackenplatte der Krone, die wir weiter unten auf die 12 Stämme Israels (und damit auf die *parentes* des Königs Salomon wie jedes Köngis) beziehen werden, und…der Widerschein der göttlichen Herrlichkeit, in dem Stirn- und Leitstein der Stirnplatte, dem *signum gloriae*.
>
> [T]he four rows of precious stones on the neck plate of the crown, which, as we will later discuss, refer to the twelve tribes of Israel (and thus the *parentes* of King Solomon as with every king) and…the reflection of the glory of God in the forehead and guide [also, *lead* or *main*] stone of the plate, the *signum gloriae*. (Id, vol. 2, 580)

The *guidance* or *lead stone* is specifically identified with jasper, which in turn is linked by the same scholar to the white stone in Revelation 2:17, which has also been linked by some to the Urim and Thummim (M'Clintock and Strong 1894, 679):

> Auf ihn ist "ein neuer Name" geschrieben, den niemand kennt….An dem weißen Stein, den Gott spendet, erkennt er also die von ihm Ausgewählten. On it is written "a new name," which no one knows….It is through this stone, given by God, that we recognize those who have been chosen. (Schramm 1954–56, vol. 2, 610)

From the breastplate's stones (signs of the ten tribes) to lead stone, to the white stone in Revelation—in the end, it is the same story, the dependence upon some object, signifying knowledge and foresight for kingly, and not just religious, authority.

The discussion of orbs, Urim and Thummim, oraculous gems, white stones, and so on gives context of what preceded the cognitive authority or shared empiricism

of the seventeenth centuries. When books become signs of authority, the starkness of the break from past is more vivid upon considering how the orb and similar objects serve as mediums for kings and gods to access the knowledge necessary to govern and rule. In keeping with royal prerogative, few can handle the orbs and oracle stones, and even fewer understand their function. By their operation, all of these objects limit knowledge and authority to a relative few. The sphere's connotative meaning is hidden. Consequently, there is little opportunity for connotative evolution of meaning through use of the orb as sign by the populace. Milton and Rubens are privileged exceptions, not the rule. It is because of its restricted, mysterious use that the orb signifies dominion, rather than connoting a wider meaning of access to the knowledge necessary to rule.

In keeping with media theory, the medium of the book is easily co-opted by an ever-increasing literate class in seventeenth-century England. It is as if the *Tablets of Destiny* had, in a sense, been copied and disseminated en masse. This use of the book—as an *accessible* medium—facilitates shared knowledge and governance. This communal authority of books also counters the crown's prerogative of authority, symbolized by the royal orb. As media theory would predict, society's shared cognitive authority shifts in relation to new media technology and institutions. In the age of print, neither knowledge nor legal authority can be confined to the providence of a few.

3.4 Printed Texts as Cognitive Authority: Analysis Through Holistic Media Theory

While printing began in the mid-fifteenth century (and entered into England later in the same century), it is not until the seventeenth century that its full impact is realized (Steinberg 1996, 5–6; Cowley and John 1932, xix [discussion of first English law abridgments]). Per media theory, a number of factors must be considered to understand why the medium of the book comes to represent cognitive authority for English society.

3.4.1 Temporal and Geopolitical Factors: Textuality and the Times

Early seventeenth-century England is, in a word, remarkable. After Queen Elizabeth's reign of judicious tolerance, popular access to the Bible in the vernacular is finally secured with the publication of the *authorized version*, or King James Bible, in 1611 (*Encyclopædia Britannica Online* 2009, entry for *King James Version*). The edition results from seven years of committee work under the direction of Elizabeth's successor, King James I, the *textual* and scholarly monarch of Britain.

James I "was a true bibliophile. He built up a considerable private library in the classics; owned a host of theological works (…which he read in Latin); was especially well read in the French poets…; and of course had many writings in English and Scots" and apparently received an honorary degree from Oxford (Bobrick 2001, 206; Carter and Muir 1983, 68–69; Stephen 2002). "James was not only an active patron, but also a published author, which was a rarity among European monarchs before and since" (Stephen 2002, 12). "With his patronage and repression of works, James believed that he demonstrated that he ruled over the literary realm with the same mediating authority which he wielded in his political and religious ones" (Id, 12). He publishes his own theory of kingship in *The True Law of Monarchies*, arguing that the king is "God's lieutenant" without being bound to "frame his actions according to the law" (Bobrick 2001, 270; James 1996, 72).[8] The *textuality* of James' reign befits the early seventeenth century, which is the era of numerous luminaries in both law and literature, including William Shakespeare (1564–1616). The Bard's *First Folio* is published in 1623, shortly after the authorized version of the Bible (Carter 1983, 73–74; Evans 1974, 59 [facsimile of first folio title page]). These are unprecedented times.

It is during this same prolific period that the legal works of Sir Edward Coke (1552–1634) appear. His works first came into conflict with the crown when, in 1616, King James I ordered Lord Edward Coke "to review all the cases in his previously published eleven volumes of *Reports* in order to eliminate erroneous statements concerning the royal prerogative" (Berman 1994, 1676; Bowen 1957, 376). Notwithstanding the pressure, Coke found only five trivial errors and appears never to have made any changes (Bowen 1957, 381). King James I removed Lord Edward Coke as Chief Justice of the Court of Common Pleas because of his displeasure with Coke's *Reports* (Id, 379–88). However, there is no evidence of any attempt to recall or destroy the *Reports*. The question is: Why not? The answer is that diffusive spread of printing (supplemented with book smuggling) and England's prior history with unsuccessful suppression of the Bible and religious tracts may have made such an effort, if ever proposed (Callister and Paul 2008, 10–15). Furthermore, the geopolitical boundaries of Europe made suppression of the Bible difficult because there was always a safe haven for presses (Id, 11, fig. 2). In the sixteenth century, England's government had vigorously but unsuccessfully attempted to block the smuggling of Bibles in from Europe, and during the seventeenth century, numerous religious and political tracts, including accounts of trials and petitions to Parliament, were published in Holland (Id, 15–22, 44–58). Europe's fragmented geopolitics facilitates the spread of the printed word, even when suppressed, making recall of Lord Coke's reports impracticable.

Lord Coke is numbered among the five masters of English common law: "Glanville, Bracton, Littleton, Coke, Blackstone" (Wambaugh 1903, xi; 43, 96). In effect, Coke may surpass them all by serving as the common thread uniting these

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[8] "There were Kings, James stated, before there was law" (Bowen 1957, 228–29).

diverse *masters* by transcending ancient law (Glanville, Bracton, and Littleton) in contemplation of modern law (Blackstone). "If Bracton first began the codification of Common Law, it was Coke who completed it" (Carter and Muir 1983, 75). Besides rounding out and completing a description of the common law, Coke provides continuity with the past. "[H]is writings stand between, and connect the ancient and modern parts of the law, and by showing their mutual relation and dependency" (Butler 1775–78, at an unnumbered page prior to the editor's signature in the preface; Hicks 1921, 96). As a temporal factor, Coke is the important link between legal traditions. That linkage to the past may explain acceptance of Coke's works as authority.

As described above, the temporal factors in Deibert's holistic model illustrates that an information environment should not be considered in isolation, without respect to history. Like Ronald Dworkin's paradigm of law as the unending chain story, where prior events in the chain affect current interpretations of law (Dworkin 1986, 228–38), a fuller understanding of the effect of the information environment upon legal institutions and thinking comes only through a grounding in the past.

3.4.2   Institutional Factors: Coke's Law Books and Revolution

Lord Coke's works operate not only as restatements of law for the profession and arguments for the supremacy of English common law, but for historians they act as sign of English resistance of royal prerogative and absolute power. "With it [the *Institutes*] the lawyers fought the battle of the constitution against the Stewarts; historical research was their defense for national liberties. In the *Institutes*… the tradition of the common law from Bracton and Littleton… made famous, firmly established itself as the basis of the constitution of the realm" (Carter and Muir 1983, 76). The battle is over institutions (constitutional government versus royal prerogatives). It is the lawyers that fought the battle. The development of a literate bar, with the Inns of Court as their fundamental institution, establishes a base of citizenry capable of constitutional debate.

Membership in an Inn implies a progression of fellowships, with a significant role for *readers*: "two years in Clerks' Commons, two in Master's Commons, Utter Barrister in eight years and in sixteen, Reader and Bencher…" (Bowen 1957, 62). Head instructors at the Inns are called readers and were selected from *Utter* or outer barristers by benchers (Barton et al. 1928, 12):

> Many of the Readers of the Inns of Court afterwards attained to high positions at the Bar or on the Bench, and many of their "Readings" were long remembered in the profession for their learning and excellence. Among the most celebrated readings were Sir Thomas Littleton's upon the Statute of Entails, Sir James Dyer's upon Wills, Sir Edward Coke's upon Fines, and Sir Francis Bacon's upon Uses…. (Id, 13)

Obviously, these readings resemble more of a lecture than a simple vocalization of text among a group of law students. Nonetheless the role of tradition in private reading is also evident, at least with respect to Lord Coke, who apparently arose at

3:00 a.m. each morning to read until 8:00 a.m., followed by hearing argued cases and attendance at *readings* (Id, 123). The point is that the bar is a community of readers, and as such the bar in its institutional role is receptive to the *Institutes* and supportive of constitutional reform.

Prior to the *Institutes*, but after publishing his *Reports*, Lord Coke engages in a famous exchange with King James I over the issue of royal prerogative (in this instance, the propriety of King James sitting as a judge to hear a dispute regarding jurisdictions of common law and ecclesiastical courts) (Bowen 1957, 304; Usher 1903, 664, 672–73). According to one source, the exchange ends with Coke on all fours before his sovereign (Bowen 1957, 305). Coke was a constant irritant to the royal institutions such as prerogative to hear cases. It is natural that his books might symbolize that conflict.

The influence of Coke's writing is recognized as such a threat to the monarchy that upon his deathbed in 1634, drafts of his *Institutes* (parts II through IV had not been published yet) are seized by the crown (King Charles, whose throne would soon be lost in Civil War). The manuscripts are not released until 1641 (Hicks 1921, 99–101), at a time when parliamentary power is at its zenith and capable of compelling the crown to produce Coke's seized manuscripts (Bowen 1957, 517).

Coke's struggle with James portends the constitutional conflict to follow his death:

> Intended as a basis for peaceful change, Coke's recourse to history eventually provided a basis for violent overthrow of the existing order. History, Tradition, Precedent, became the slogans of revolution in the seventeenth century sense of the word, and the struggle between Coke and James became a paradigm of the conflict which broke out a generation later in civil war and which ultimately transformed English government, English law, and English Society as a whole. (Berman 1994, 1651, 1689)[9]

As the basis for revolution and reform of English law, government, and society, Coke's writings assumed an unparalleled position of authority. However, only with a bar of readers who embraced Lord Coke's *Institutes* and *Reports* could such books be so effective.

Moving beyond Coke, literature and the populous became important. By the mid-seventeenth century, events had further degenerated into pamphlet wars and actual civil war:

> [L]iterature *was* part of the crisis and the revolution, and was at its epicentre. Never before in English history had written and printed literature played such a predominant role in public affairs, and never before had it been felt by contemporaries to be of such importance: "There had never been anything before to compare with this war of words. It was an information revolution." (Smith 1994, 1)

With this information revolution came concern for the public opinion, which became a basis for modern politics. While the seventeenth century began with a firm

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[9] "According to Bacon, if it had not been for Coke's Reports, 'the law by this time had been like a ship without a ballast'" (Mullett 1932, 466). Bacon's praise is noteworthy, considering Bacon and Coke had been lifelong adversaries (Bowen 1957, 30).

commitment to monarchy and "little place for public opinion," it ended with public opinion assuming "a privileged place… in liberal-democratic conception of political order" (Zaret 2000, 7).

3.4.3   Technological Factors: Lord Coke's Works and Visual Signs

A primary effect of modern printing, at least after a sufficient time, is the use of indexing and cross-referencing to buttress and organize knowledge. Standardization helped clear up errors and provide access to texts. In particular, innovations brought about by cross-referencing to standardized texts led to the prominence of a new form of treatise, as exemplified by Lord Coke's *Institutes* and the emergence of the common law as primal authority.

Print technology permits Lord Coke's works to operate on at least two levels with respect to visual signs. First, Coke's treatises are visually rendered to emphasize supporting authority through marginal, pinpoint citations to authority. Secondly, they are arranged in such a way as to connect them to glossed manuscripts, constituting authority in prior era. In early seventeenth-century England, Lord Coke finds an information environment favorable to publication and abundant in stabilized texts. Through unprecedented use of marginal cross-referencing to diverse sources (made possible by stabilized texts), Coke creates a web and appearance of authority sufficient to stand on its own, even without royal sanction (Callister 2008, 40–43). See Fig. 3.7. Coke's extensive use of marginalia is unprecedented, at least for English legal texts (Id, 29–35). By its appearance, the *Institutes* establishes a web and weight of authority (Radin 1937, 1124, 1127–28).[10] Second, the layout of Coke's first part of the *Institutes*, the *Commentaries upon Littleton*, visually replicates the glossed manuscript texts of Justinian,[11] which will only serve to reinforce the authority of the *Institutes*. The subject of the work, *Littleton's Land Tenures*, is paralleled with Coke's translation into English (itself a major departure from the past), then surrounded by Coke's extensive annotations, and finally garnished (a distinction from Justinian) with marginal references to other authority, such as Bracton, Britton, and Fleta (see Fig. 3.7). The visual effect is one of weighty scholarship and authority of the same stature as Justinian's works. The technology

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[10] Hicks described Coke's Institutes as "a virtual piling of Pelion on Ossa enabling the law student to scale the heights of legal learning" (Hicks 1921, 95; as to the extent of Coke's citations, see generally Gest 1909, 516–32).

[11] To understand the relationship between Coke's *Institutes* and earlier legal codices, examine the layout of Justinian's Digest from the twelfth century in the Shoyan Collection (*Iustinianus: Digestum Novum Cum Glossa* [although the resolution of the image makes study difficult, note the tiny alphabetical enumeration of the marginal gloss, but lacking any indication of cross-referencing, and any visible indication of citation to other sources]).
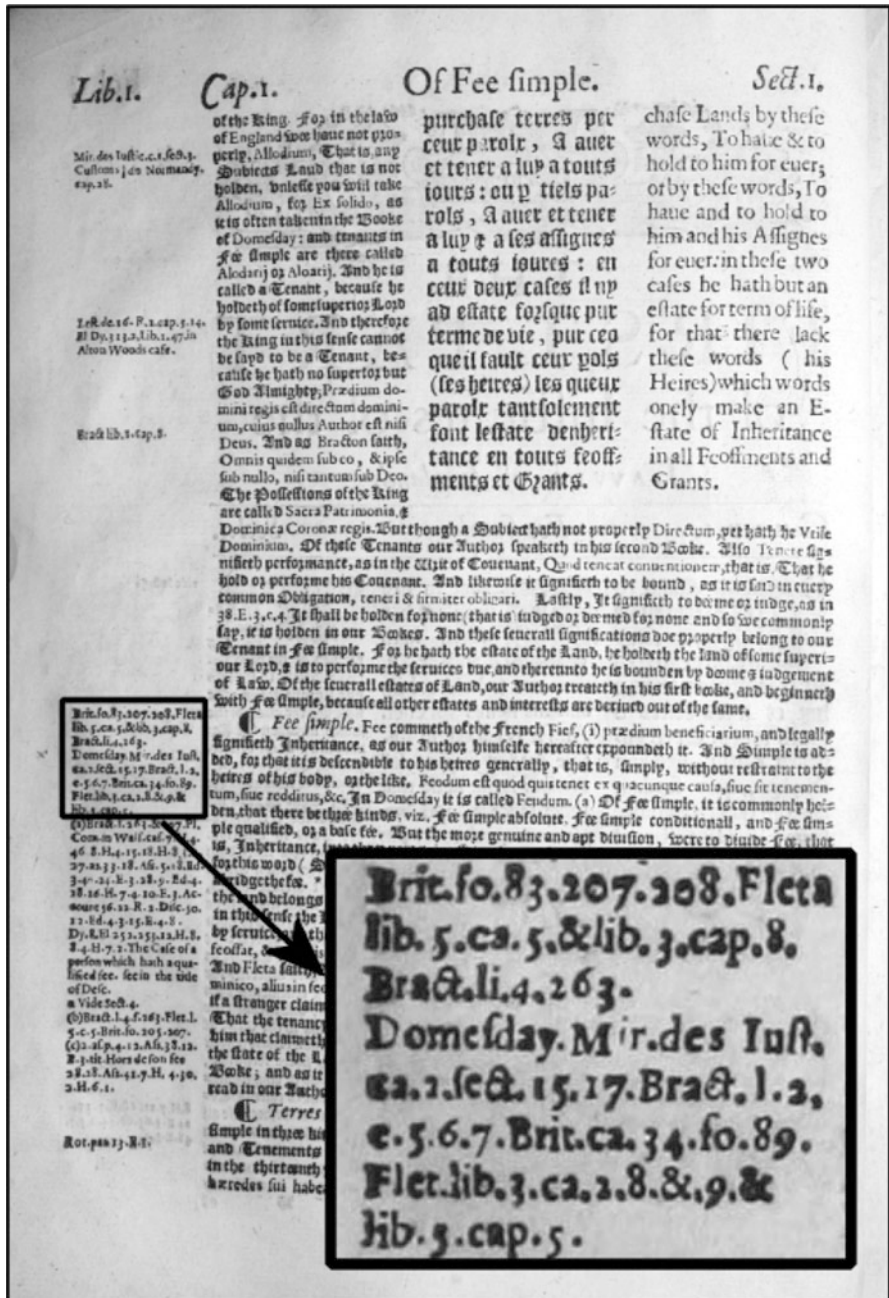
Fig. 3.7 Page from Coke's Institutes (First Part, 3rd ed.) illustrating layout in replication of glossed texts and use of pinpoint citations

of print allows Coke not only to cross-reference with precision but to replicate prior forms of authority.

Coke's objectives and indeed his whole relationship to authority contrasts with other early legal scholars. For instance, the 1607 edition of Cowell's *Interpreter* is dedicated to the Archbishop of Canterbury and pleads for his "gracious protection toward this simple work" (Cowell 1607, *2 [no page numbering]). Cowell, when venturing onto the controversial terrain of whether the monarch can make law, again is obsequious, "whether his power of making lawes be reſtreined…I leaue to the judgements of wiſer men" (Cowell 1607, at entry for *Prærogative of the King* [second recto unnumbered folio from the entry]). Beside Cowell's deference to Prerogative and invocation of royal approval, consider the stance of Britton (who nearest precedes Coke in time among the published authorities on the ancient common law) toward the monarchy. From the introduction of Nichol's 1901 edition of Britton:

> Throughout the whole of the treatise there is a steady endeavor to guard and magnify the royal prerogatives. The laws as they are set forth are to be obeyed because the king wills and commands it. He may take jurisdiction over all manner of actions. Holy Church shall "retain her liberties unimpaired" because the king so wills. If a royal charter is set up, whether it be allowable or false can be judged by the king…. (Baldwin 1901, xv)

With such deference to royal prerogative, approval of the work by the crown must have been much more likely.

In stark contrast to Cowell and Britton, Lord Coke, in the preface to the first part of his *Institutes*, defers to neither monarch nor archbishop but Littleton's *Tenures*, upon which the work was written, and Parliament, for support of introducing a legal treatise into English—"I am juſtified by the Wiſdome of a Parliament" (Coke 1633, at unnumbered folio iv: a-b [of preface]). In fact, Coke's *Preface* asks that the reader (not monarch or Archbishop) "will not conceiue any opinion againſt any part of this painfull and large Volume, vntill hee ſhall haue aduisedly read ouer the whole, and diligently ſerched out and well conſidered of the ſeuerall Authorities, Proofes, and Reaſons which wee have cited and ſet downe for warrant and confirmation of our opinions thorow out his whole work" (Id, unnumbered fol. v [b]). Coke appeals to the reader to search out cited authority before rendering judgment, rather than implying *protection* or authority from any sovereign figure. Not only does Coke have a different conception of cognitive authority from preceding commentators on the common law, but he is urging his readers to adopt his model of cognitive authority as well, perhaps as defiant an act in legal history as may be found.

Because of marginal *pinpoint* citations (made possible by the stabilization of texts), Coke is able to create a web of authority, including an appearance of overwhelming support for his interpretations of the common law. Because the stabilization of texts—the creation of widely circulated versions in acceptable formats for citation—took significant time after the invention of printing, it is not surprising that the full effect of printing upon legal authority should be delayed until the

seventeenth century. By virtue of its new capacity, the book qualifies to signify authority independent of royal imprimatur.

3.4.4 Cognitive Authority: John Lilburne's Defense and Coke's Institutes as Visual Sign

In seventeenth-century England, the law became much more widely accessible through the influence of books. Law books became the *weight of authority* for the profession. John Lilburne, Leveller hero and book smuggler, would appear before Parliament to appeal a judgment of the King's Star Chamber against him "with the Bible in one hand and Coke's Reports in the other," an unprecedented act for the times (Berman 1994, 215; Hill 1994, 200).

In a subsequent trial for high treason during the English Interregnum in 1649, Lilburne engaged in vigorous debate with judges and Lord Commissioner of the Commission of Oyer and Terminer over his right to read the law, specifically Lord Coke's *Institutes*, to the jury (Salmon 1719, 627–28 [Lilburne reads from *Coke upon Littleton*, which constitute the first part of the *Institutes*, and later from the third part of the *Institutes* on treason]). See Fig. 3.8 (Lilburne 1710). A judge objected, "You cannot be suffered to read the Law;…That the Jury are the Judges of the Law, which is enough to destroy all the Law in the Land, there never was such damnable Heresy broached in this Nation Before" (Id, 627). Perhaps because the judges feared the crowd (Pease 1916, 293–94), Lilburne managed to read the First Part of Coke's *Institutes* to support his contention that the jury could consider the law and the *Third Part* (Coke 1644), dealing with treason, to show that proof of treason requires two witnesses (Coke 1728, 627). In the end, the jury acquitted Lilburne (Id, 627). The reasons given by jurors included the "discharge of conscience" and that they indeed "took themselves to be Judges of Matter of Law, as well as Matter of Fact" (Id, 638–39). In subsequent years, Levellers would take up the argument that juries not only had the right to consider the law, but they had a duty to set aside the acts of Parliament at variance with the common law of England (Pease 1916, 326, 342–343). The role of the jury in deciding matters of law was an aberration in England, seen only during the Interregnum, except in the sense that "any general verdict" involves a question of law ("such as no disseisin, or not guilty") that must be decided (Langbein et al. 2009, 441).

About the same time as Lilburne's trial, King Charles I unsuccessfully answered charges against him through the written medium in *The Eikon Basilke* (Charles I and Gauden 1648/49; Smith 1994, 111–12). Note that on the frontispiece to the work (Fig. 3.9), Charles kneels before a book open with the words, "IN TU VERBO SPES MEA" or *in your words my hope*. Apparently, Charles I turns to the book, and thereby public opinion, to defend himself and the institution of monarchy (Smith 1994, 111–12).

Fig. 3.8 John Lilburne Defends
Himself. Note "Cookes Institutes"
across *top*
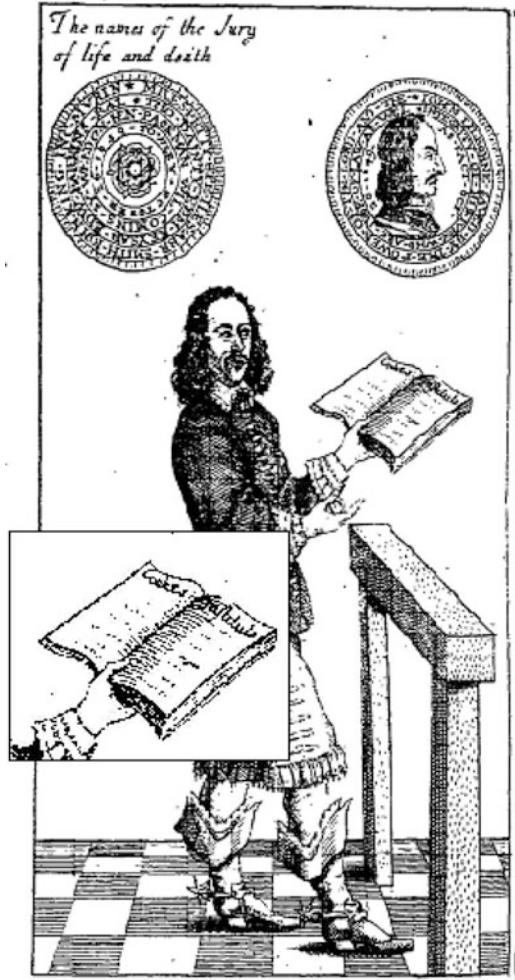
3.4.5   Cognitive Authority: Book as Sign for Social Conscience

Books help define the mental milieu of the seventeenth century, which has been
characterized as the "Age of Conscience" (Saunders 1997, 21).[12] Indeed, the
English Civil War is described as a "colossal case of conscience," and the political
tracts of the time amply testify to conscience's central role in the crisis that lead
to revolution (Thomas 1993, 43–44). Conscience was understood as a type of
knowledge "made up of two ingredients: the natural law of reason or law of nature,

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[12] For support, Saunders quotes Keith Thomas about the importance of conscience in the age: "For
much of the century it was generally believed that conscience, not force of habit or self interest,
was what held together the social and political order…" (Saunders 1997, 21; Thomas 1993, 29).

Fig. 3.9 King Charles I on front piece of Eikon Basilike (1648/1649)

which was universal to all human beings, and knowledge of the word of God, which required appropriate religious education" (Id, 30). Literacy was a prime tool in both imparting knowledge of the word of God and instruction in the art of natural reason.

Seventeenth-century England is relatively literate, particularly urban areas.[13] The effect of that widespread literacy and the silent reading that accompanies it is individuation of what has previously been a more collective whole in more auditory societies:

> By its very nature, a reading public was not only more dispersed; it was also more atomistic and individualistic than a hearing one…. The notion that society may be regarded as a bundle of discrete units or that the individual is prior to the social group seems to be more compatible with a reading public than with a hearing one. (Eisenstein 1983, 94)

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[13] Sir Thomas More estimated that 40% of the English population could not read, implying that 60% could (Cressy 1980, 44). But More's estimate may have been accurate only for London or urban areas. By 1650, the literacy rate (based upon making a mark) was about 30% for men and 15% for women, while in London, as of about 1641, the rate for men was as high as 78% percent (Id, 44, 74, map 1).

The conditions brought about by silent reading among the literate massesfacilitate an uncensored "interior space," which "embolden[s] the reader," a logical prerequisite for individual expressions of conscience (Manguel 1996, 50–51; Saenger 1999, 137). "To hear an address delivered, people have to come together; to read a printed report encourages individuals to draw apart" (Eisenstein 1979, 132). Sharp divisions emerge between public and private spheres (Id, 133). Such change from what had been an auditory culture provides a rich new environment for individual conscience to emerge, flourish, and challenge group norms and authority.

The impact of this new sense of conscience upon the state is significant. The state finds its authority challenged in religious spheres: "Every attempt by the State to prescribe the forms of religious doctrine and worship tested the consciences of those who believed it was their duty to obey the law of the land but were also persuaded of the truth of a rival creed" (Saunders 1997, 21–22; Thomas 1993, 29–30).

Among the foremost influences on public conscience was the Bible. Its impact on "reformation of English politics" is best understood with reference to the schism it often describes between monarchs and prophets (Hill 1994, 20). "[The English] found support for godly kings in the Bible; but they also found a disconcerting black/white, either/or emphasis," which could encourage popular condemnation of rulers (Id, 50). "The old testament at least had no doubts about the treatment which wicked kings deserved" [p. 50]. Rejecting monarchy, the children of Israel had fled pharaonic Egypt for prophets, judges, and the Ten Commandments (Exodus 18:10, 13–26; 20:2–17). King Herod's slaughter of the innocents exhibits the evils of unchecked power. Biblical analogies were easy to draw to contemporary events, for example, between the wicked King Ahab and his wife, Jezebel (1 Kings 16:33; 19:1–2; 21:21–24; 2 Kings 9:27–37), and King Charles and his queen, Roman Catholic Henrietta Maria from France, who plotted a military coup against Parliament.[14] This is not surprising given the many comparisons made between the Pope and the Antichrist of the Book of Revelation (String 2000, 137–39):

> [T]he New Testament is "full of libertarian ideas." The Protestant doctrine of the priesthood of all believers, of the supremacy of the individual conscience, encouraged many to read their destiny in such verses as: "Where the spirit of the Lord is, there is liberty." Through prayer and meditation, they learned to approach God without assistance, and in reading the Word of God to themselves heard it, as it were, not from a priest on high and at a distance, but from deep within their own immortal souls. They turned out tracts proclaiming themselves "free-born," and by the time Laud and his prelates attempted to inculcate passive obedience as a virtue of faith, scriptural notions of their obligation to righteous disobedience had taken hold. (Bobrick 2001, 279–80)

Unmitigated Bible reading was a powerful social force that had to be countered. According to Sir John Coke, the "chief" function of the clergy "is now the defense of our Church and therein our state," which apparently included espionage

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[14] Apparently Charles I's Jezebel was his wife Henrietta Maria, who was too openly Catholic in her practices (*Encyclopædia Britannica Online* 2009, entries for *Henrietta Maria* and *Charles I*). Hill enquires, "Was it just possible that Charles himself was so much under the influence of his Jezebel that he was too reprehensible?" (Hill 1994, 50).

(Hill 1994, 16). While Henry VIII had used the printed Bible to assert his authority (see Fig. 3.3), in the end the Bible proved to be a source of popular cognitive authority that challenged the monarchy.

In 1648, a remarkable event occurred, or almost occurred, demonstrating the symbolic association of both law books and the Bible with conscience and adherence to law. David Jenkins, a judge convicted of treason for retaining loyalty to Charles I during the Long Parliament, asked to have Bracton's legal treatise, the Statutes at Large, and the Bible hung about his neck on his execution day (Douthwaite 1886, 212–13). Although the execution never took place, the visual message of such an adornment would have been clear. Books offer the authority necessary to defy government.

3.5 Conclusion

The relationship of the book to monarchy and authority has traveled full circle in this chapter: the monarch is figuratively subject to the Gospels in the medieval crown of St. Stephen of Hungary (Lübke 1904, 373), Lorenzetti's fresco, *Allegory of Good Government* (circa 1338–1340) (Cohen 1992, 40–41), and the throne room of the Terem Palace (Polynina and Rodimtseva 2000, 58, 60–61, 63). Continuing the circle, Henry VIII asserts himself above the printed Bible Fig. 3.3; King James I challenges Lord Coke's *Reports* (Berman 1994, 1676; Bowen 1957, 376), but he publishes his own written defense of royal prerogative (Charles I 1648; Smith 1994, 111–12); King Charles I must look to his own published book for his defense (see Fig. 3.9); and a royalist judge defends his position by conjuring up the image of hanging with books about his neck (Douthwaite 1886, 212–13).

With respect to the masses, nothing so clearly illustrates the book's cognitive authority as John Lilburne. A book smuggler, Leveler hero, and self-represented defendant, Lilburne's image with Coke's *Institutes* (see Fig. 3.8) illustrates the role that the book could play for the populous. It is noteworthy that the image of Lilburne's defense comes forth in a book designed to take Lilburne's ordeal to the masses and that it occurs in the period of the interregnum, suggesting the alignment of books, the populace, and more distributed, if not representative, government.

The relationship of the book to the orb, each as signs of authority, also evolves with the book's transition from codex manuscript to printed form. As codex, the book, like the orb, is mysterious, inaccessible, a medium, and associated with authority. They are both, in the words of the Grand Inquisitor, per the introductory quote, "founded…upon miracle, mystery and authority," or better yet, they "found," as in ground, the miracle, mystery, and power for control over the masses—that is, until printed books and widespread literacy.

The technology of printing plays a role in the evolution of the book's signification in relationship to authority and power but so do other important factors identified in Deibert's holistic media theory, such as temporal and geopolitical factors, institutional developments, and shifts in cognitive authority. The geopolitical fragmentation

of Europe, book smuggling, the failure to control printing and distribution of the Bible, Henry VIII's suppression of icons, the stabilization and cross-referencing, James I's orientation as a *textual* monarch and scholar, jurisdictional disputes between Coke and James I, political pamphleteering, and the ascendancy of individual conscience and public opinion among the shifting notions of cognitive authority are all factors interrelated with printing and the effect on the books ascension to preeminence as a sign of authority. Media theory and cognitive authority provide important tools necessary for semiotic analysis of legal signs.

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Chapter 4
Representing Sovereignty in Renaissance England: Pictorial Metaphors and the Visibility of Law

Cristina Costantini and Lucia Morra

Abstract This chapter investigates some of the multifarious ways used to represent and to communicate what the body of law is and how the law has to be understood. The analysis is based on an interdisciplinary approach, aimed to interpret political concepts and legal practices according to the more recent results of cognitive science. Pictorial metaphors are described as the outcomes of a general mode of thought operating in various spheres of human cognition expressed through pictorial languages. In the background to the recognition theory of depiction and to pragmatic research about contextual factors of evaluation, the cognitive characteristics of pictorial metaphors as well as a sketch of their understanding are given, and their persuasive potential and their role in shaping organizations are hinted at. Examples of pictorial metaphors in the Renaissance England iconography of law are then examined through these analytical tools. In particular, dress of law and allegorical portraits of sovereignty are considered. The purpose of this study is to discover the bulk of symbols and signs used to shape the English Legal Tradition and to justify the inner structure of its proper narrative. The aesthetics of Renaissance Common Law is scrutinized beyond the conventional accounts with the aim to bring to the surface the contending images sustaining antagonistic claims to sovereignty.

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The research conducted in this chapter seeks to investigate the multifarious ways of representing and communicating what the body of law is and how it is to be understood. The analysis is based on an interdisciplinary approach, aimed at interpreting political concepts and legal practices according to the more recent results of cognitive science. Pictorial metaphors are described as the outcome of a general mode of thought operating in various spheres of human cognition expressed through pictorial languages. Against the backdrop of recognition theory and pragmatics, we explore the cognitive characteristics of pictorial metaphors and sketch their understanding and persuasive potential together with their role in shaping organizations. Using these analytical tools, we then provide examples of pictorial metaphors in the legal iconography of Renaissance England. In particular, we will consider the aesthetic apparel of law along with allegorical portraits of sovereignty. The purpose of this study is to discover the range of symbols and signs used to shape the English Legal Tradition and to justify the inner structure of its proper narrative. The aesthetics of Renaissance Common Law will be scrutinized beyond conventional accounts with the aim of bringing to the surface disparate images that sustain contested claims to sovereignty.

4.1   The Icons of Legal Traditions: A Question of Shades and Appearances

Every system of law is *lived* and *presenced* (Goodrich 1990) through a codified cluster of images, icons, and symbols that depicts and entails its own exclusive and historically bounded aesthetics. An inquiry into legal aesthetics has to address both the ontology of law and the discursive practices used to translate and to assess the bulk of visual signs. The body of law, or the more evocative Latin *corpus iuris*, is shaped by an indissoluble concurrence of *ontological questions, aesthetical responses, and narrative accounts*. On this ground, the intellectual construction of legal traditions should be reinvestigated.

Peter Goodrich has vividly depicted the multifaceted masks of law, casting doubt on the conventional account according to which language is the very medium of transmission and communication of what law is and of what law prescribes, dictates, fixes, and establishes (Goodrich 1990). The crucial issue is how law is represented. This scientific question implies a double perspective: from one side, it deals with the heterogeneous (and, we could say, unfamiliar – if not unsound – to the prevalent explanations) forms used to denote, designate, and portray the law; from another side, it deals with the correlate topic of sovereignty and its legitimate means of expression. On this analysis, law has to be reassessed in relation to the complex and frequently obscure structures of signification of any form of discourse.

In a similar vein, Paul Raffield has analyzed the recondite constitution of English Common Law: "the absence of textual codification necessitates that the legitimacy of the legal institution, and of the constitution that it embodies, is established with

reference to a system of representation and visual signs. This system can be described broadly as the aesthetics of law: the idea that governmentality expresses the 'art' of law" (Raffield 2007). Thus, the conscious selection of visual signs and iconic archetypes, knowingly composed in a learned order of icons and images, becomes a strategic device for reframing constitutional relationships. The multiple forms of appearance and representation of law are structured both to legitimate the arrangement of the present and to scrutinize the past. On this ground, the memory of law is constructed and consigned to an eternally present.[1]

The boundaries of the systems of law are secured by an elaborate discursive plot formed by symbols and emblems codified into an elucidatory narrative. What is a nurtured heritage, a shadowy legacy, where knowledge and customs are mixed together, comes to be perceived as the visual demarcation line that defines self-celebrating identities. Legal traditions overwhelm the histories of law in the same measure as, in literary terms, a plot overshadows a story. This statement is confronted with the two main characteristics of plot: first, whatever form of plot moves from an original ambiguity toward a final (predetermined or unpredictable) solution[2] and, second, in whatever form of plot the emphasis falls on causality (Forster 2005). Both of these structural elements are the inner constituents of the process of constructing or representing legal traditions. The claim for an earliest ambiguity is central when we have to deal with the act of shaping legal identities: the assertion of recognizable and distinctive traits stands for a decision (the juridical equivalent of the common solution) over the early indifference.[3] Moreover, causality governs genealogies and displays the foundational figures of law.[4]

In essence, the *legal plot* is the product of a fascinating design apt to mingle texts and images and words and visual bodies into a purposive form of coherence. In this way, legal traditions solemnize their own idols and memorialize a proper mythology. Within this theoretic framework, we intend to investigate how Renaissance Common Law composed its own imagistic mask, pursuing not only a cultural but also a political strategy. In this strategy, a significant role was performed by pictorial metaphors.

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[1] Goodrich (1996, 96) pointed out that "the memory of law – as a custom and tradition, as precedent and antiquity – is held and 'sealed' in images imprinted through visual depiction of textual figures that bind, work and persist precisely through the power of the image, through a vision."

[2] In this perspective, Lowry (2001, 23) has pointed out that "in whatever type of narrative plot, the event of the story moves from a bind, felt discrepancy an itch born of ambiguity, and moves toward the solution, release from the ambiguous mystery, the scratch that makes it right."

[3] For a skillful and intellectual analysis on ambiguity, see Pier Giuseppe Monateri's thought when he casts doubt on the real possibility of solving ambiguity, which consequently becomes the conclusive (in the sense predicated to this word by Walter Benjamin) incarnation of sovereignty (Monateri 2009).

[4] In this perspective, Pierre Legendre's thought on the *parental function of the States* is a clear and powerful clarification of what it has been assumed in the text (Legendre 1992).

4.2   Metaphorical Thinking Through Pictorial Languages

Nowadays, metaphorical reasoning is recognized as a central cognitive instrument, a general mode of thought operating in various spheres of human cognition (Lakoff and Johnson 1980). Metaphorical expressions are considered to be semiotic phenomena (Eco 1984) not restricted to language but materializing in different representational modalities[5] such as picture, gesture, and sound. Research on gestural metaphors (Cienki and Müller 2008) and pictorial metaphors (Aldrich 1968; Kennedy 1982; Kennedy and Kennedy 1993; Carroll 1994; Forceville 1996, 2002a, b) suggests that they are the outcomes of the same cognitive mechanism that builds verbal metaphors applied through different communicative media with modality-specific characteristics.[6]

Metaphorical reasoning connects two conceptual domains, projecting one of them, the source, onto the other, the target, in order to transfer some of the knowledge characterizing the first domain onto areas of the second. To be metaphorical, the connection attempted must involve domains that not only share some features (some of their elements must implement a similar structure) but are also different in a measure that their combination is perceived as deviating from norms or beliefs about the world (not necessarily as wrong: the domains may be simply settled, as it were, in distant areas of the conceptual net). Interpreting a metaphor means building a conceptual area revolving around selected analogies between the two domains. This is why metaphor is credited with the capacity to structure, transform, and create new knowledge. An expression is produced and interpreted as a metaphor when it occurs in a context that makes the two domains involved and their slotting as source and target identifiable, and that cues to the features of the first domain to be mapped onto the second (Forceville 1996). Pictorial metaphors do this work influenced by the characteristics of the languages through which they are expressed.

Pictorial languages are systems for communication using signs accessed by the visual system. The nature of the signs they use makes their semantics and grammar different from those of verbal languages. While words hold a conventional relation with what they stand for, pictorial signs hold with what they depict an iconic relation that engages the perceiver's visual abilities of recognition (Schier 1986). The latter include dynamic perceptual skills that, working on pattern of visual salience, make perceivers identify objects, scenes, and states of affairs through the recognition of some of their visual characteristics (Lopes 1996).[7] It is on the basis of the aspectual

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[5] Lakoff and Johnson's dictum that "metaphor is primarily a matter of thought and action and only derivatively a matter of language" (1980, 153) relies on the cognitivist principle that thought is not a specific form of language; rather, verbal language is a form of thought.

[6] Multimodal metaphors (Forceville and Urios-Aparisi 2009), such as verbo-gestural (Müller 2008) and verbo-pictorial metaphors (Winner 1982; Forceville 2002b), use different modalities of communication conjointly.

[7] Recognition theory of depiction here endorsed states that in interpreting the image of a given thing, interpreters use some of the cognitive capacities used in perceiving the thing in the flesh. For perceptual theories explaining depiction in terms of experienced resemblance, cf. Wollheim (1987), Peacocke (1992), Hopkins (1998); for theories holding that the relation between depictions and what they represent is entirely conventional, cf. Eco (1976), Goodman (1976).

information a picture conveys from the object it depicts that viewers familiar with depiction, and able to recognize the object depicted by its appearance,[8] may visually identify the picture's subject as that object. This is so even when the match between the appearance of the picture and the appearance of the reality it depicts is very rudimentary (cf. also Messaris 1997, 3). Appreciating the visual properties by means of which a picture represents its subject, viewers can detect its content, namely, the properties it represents (or misrepresents). Pictorial recognition is not a conceptual skill. Rather, it enables viewers to think of the object they see in a picture, which is to say, it triggers the entertainment of thoughts about its character and doings that are grounded in the workings of the information system of which the picture is part (Lopes 1996, 102).

The ability to recognize the subject of a picture over pictorial aspects is generative. A first successful pictorial interpretation of an item of an iconic system of representation endows a perceiver with a dynamic ability of recognition. This makes her understand the pictorial content of any novel item of the same system without further tuition, namely, without being privy to additional stipulations, provided only that she can recognize the object or state of affairs the item depicts. *Natural generativity* (Schier 1986, 43–64) is lacking in verbal languages, whose signs hold a conventional relationship with their reference. No speaker understands a sentence composed of words she has never heard before, even if the sentence refers to a state of affairs that she knows. On the contrary, once a pictorial competence in a given system has been achieved, being able to recognize what a picture depicts by its appearance means being able to grasp its pictorial content even if the picture or any of its meaningful parts are seen for the first time. An interpreter may retrieve the pictorial content of an image, provided that she can recognize the object or state of affairs it depicts, without knowing the conventional guidelines along which the picture was produced: neither those of representation for the system to which the picture belongs nor those specific to the cultural background in which the image is set. This retrieval is a necessary step for accessing the information system to which the picture belongs and opens the possibility of interpreting this one as a communicative act. However, it is only a basis for working out the sense of the picture and for inferring the intention of the picture maker (Schier 1986, 58; Lopes 1996, 157–160). This also requires knowledge of the relevant communicative conventions through which a picture is produced and that govern the composition of its parts.

In this understanding, as opposed to verbal metaphors, no necessary guidelines from grammar may be of help, since pictorial languages lack a grammar. Being symbols whose global references are recognized perceptually as well by reference to their parts (Carroll 1994, 189), icons do not call for any set of strict rules to be used for composing them. When the subject of a picture is not fictive, its total meaning can be generated directly on the basis of the ability to recognize the total scene depicted.

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[8] Visual information sufficient to enable recognition abilities for an object is given not only by the acquaintance with it *in the flesh* but may be put into circulation by those who are directly acquainted with it and also by pictures (Lopes 1996, 149–157).

When the subject is fictive, the parts of the image being iconic, their combination calls for no necessarily fixed rules other than the commitments settled by the selection of visual aspects through which a picture represents its subject.[9] As opposed to verbal syntax, which clears the direction of the connection proposed by a group of concepts or statements, visual syntax lacks a set of explicit devices for indicating causality, analogy, or any relationships occurring among the objects pictures portray or between pictures other than those of space or time, to indicate which steady conventions have been developed throughout time. Culture-bound conventions about pictorial representation and visual communication on which image-makers do indeed rely (Scott 1994; Goodman 1976) are then functionally different from those holding in verbal languages. They are not fixed and explicitly shared as these, and viewers can ignore, reject, or misinterpret them, but nevertheless have a substantial grasp of what the image stands for (Messaris 1997, 93).

4.3   Understanding Pictorial Metaphors

In the framework of recognition theory, interpretation of a pictorial metaphor follows the detection of the pictorial content of its components. Since the properties a metaphorical picture ascribes to the world are not the properties the world has, the viewer can have no recognition capacity for the whole subject depicted (Nishimura 2004). However, she can understand it once she treats the visual information as if it were denoting (Lopes 1996). With this information, she works out the conditions on which a make-believe source of the subject may be identified. In other words, how may the different parts of the whole picture be seen as similar? Perceptual informational states, into which she is put by the metaphorical picture, are insulated from higher-order cognitive states, so she understands its basic pictorial content whether she knows that its producer meant it to be metaphorical or not. The basic meaning of metaphorical pictures, as that of all pictures, is independent of the producer's belief or intention, but it is the basis for inferring them (Lopes 1996).[10]

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[9] A representation is committal with respect to a property F provided that it represents its subject as either F or not F, inexplicitly noncommittal when it does not go into the matter of F-ness, and explicitly noncommittal when it represents its subject as having some property that preclude it from being committal with regard to F. Pictorial content, given by the totality of the picture's commitment and noncommitments, is aspectually structured also because pictures visually present objects and parts of objects as related to each other, so every part of the scene that a picture shows must be represented as standing in certain spatial relations to every other part (Lopes 1996, 118, 125).

[10] For a critic of the role assigned by the recognition theory to communicative aspect of pictures, cf. Hopkins (2005).

Applied to pictorial metaphoric understanding, the recognition theory of depiction seems to mimic the H.P. Grice's hypothesis that the metaphorical interpretation of a verbal expression starts from the retrieval of the literal meaning of its terms, performs a test about its semantic match with what has been already processed, acknowledges its failure, and ends with the final retrieval of an alternative meaning. This idea has been deeply questioned by recent cognitive theories holding that understanding a (verbal) metaphor is a process that starts once a choice about the most salient meaning of its compoments in the given circumstance of interpretation has been made (Ortony 1979; Recanati 1995, 2004). In the bilateral brain language processing model (Jung-Beeman 2005), in which language understanding is simultaneously performed both by a *logical* and a *contextual* stream of analysis (Morra 2010), verbal metaphor interpretation is a fully contextual task, not only because it requires building overlaps between wide areas of the semantic net but also because it is usually triggered by contextual considerations about the most promising meaning to be processed. Grice's description holds when errors of evaluation take place indicating in the literal one the most promising meaning.

The description of pictorial metaphor understanding given by the recognition theory of depiction is compatible with cognitive theories only if the attempt to give a unique account of metaphor understanding that can apply both to verbal and nonverbal contexts is relinquished (Indurkhya 1992; cf. Kaplan 1992). The fact that pictorial interpretation unavoidably starts from the recognition of what the image stands for, balances, as it were, the absence of a fixed set of rules governing how its parts must be composed to form an iconic whole. Possibilities of combination suggested by the conceptual net in which these parts are plunged are automatically limited by the possibility of accessing the net only through the recognition of their pictorial content. By contrast, the relationship between words and what they stand for being conventional, interpretation of a verbal metaphor starts from the recognition of its terms as entries of an acquired lexicon. Then all the meanings associated with the words during this acquisition may be accessed and chosen. The literal one holds no priority and does not necessarily guide the meaning making of the whole expression.

4.4 Pictorial Metaphors and Context

Verbal metaphors are opaque to interpreters not instructed in the meanings of their component words. However, when these are entries in their lexicon, interpreters not only realize the incongruity or distance between the semantic fields elicited and then the opportunity of working out a projection among them but also, given the explicit syntax, they understand their slotting as target and source. The structured way in which words may combine gives interpreters a guide for

working out, on the background of contextual factors, a sense of their combination that, at given conditions, can approximate the mapping intended by its producer.

By contrast, pictorial metaphors, being pictures, are transparent, at least such is their basic content. Since they represent objects as having properties normally perceived visually, what their elements stand for, provided it can be recognized, is also understood by interpreters whose pictorial competence consists only in having already recognized a product of an analogous pictorial system as an icon. But no grammatical rules being fixed for images and no syntactic consideration may be used to select the contextual factors delimiting interpretative choices, not only about the metaphorical mapping pictures propose, but also about the very slotting as source and target of the domains evoked. So, interpretation of a pictorial metaphor has a very low threshold, but lacks a syntactic guide for understanding its metaphorical sense.

Let us provide some examples. A sentence like "Louis XIV thought of himself as the Sun of France" may be understood by those who understand the individual words. Knowing them means (usually) understanding the sentence as metaphorical, and syntax makes it clear which are the target and source of the projection proposed (the king and the sun). An interpreter may then work out the mapping between these ideas considering semantic and contextual factors, although, due to the given knowledge and disposition she has, this mapping may be different from the one intended by the author of the metaphor, and her interpretation may be more or less appropriate. For instance, she may not know that the king thought of himself as Apollo, but, provided that she knows something of the reign of Louis XIV, she can conclude that he thought of his role in France as similar to that of the sun in the universe.

Consider next the left panel of the Wilton Diptych, painted for Richard II of England. Surrounded by Saint John the Baptist, Edward the Confessor, and Edmund the Martyr, the king is portrayed as kneeling – as the other panel hinged to it shows – before the Virgin and Child. The depiction is rich in symbolic nuances (cf. Gordon et al. 1997). For instance, the fabric of the king's outer robe is decorated with white harts, his badge, and sprigs of rosemary, the emblem of his wife Anne of Bohemia, and the three saints, believed to have been venerated by the king, hold the symbolic attribute by which they are recognized in art (respectively, the Lamb of God, a ring, and an arrow). Their depiction in composition similar to the one in which the three Magi were often represented, hints at King Richard's birth on January 6, the feast of the Epiphany.

Notwithstanding its symbolic complexity, a basic pictorial content of the left panel of the diptych may be grasped by whoever has already seen a portrait and understood it as such, at the minimal condition that she can visually recognize human beings. But the metaphorical stance of the portrait can be perceived only by those interpreters that can visually discriminate the figures, namely, recognize one of the men as a king (e.g., since he wears a crown) and the others as saints

(e.g., since their head is surrounded by a halo)[11] and then the anomaly of their being together. Again, their understanding of the metaphorical mapping is a matter of degree. Viewers can know little about conventions relating the iconic parts of the image to the symbols with which they are depicted nor recognize the king as Richard II of England, the saint on the right as John the Baptist, etc. Yet, they may still interpret the composition as an implied comparison between monarchy and sanctity. Of course, nothing in the image necessarily drives the interpretation: to determine the slotting of the domains as source and target (saints thought of as kings or kings thought of as saints?) and which features may be mapped, interpreters must take into account (and then possess) a great deal of contextual information.

Interpreting pictorial metaphors relies, then, on contextual factors of evaluation even more than is the case with verbal metaphors. Understanding a verbal metaphor entails an exploration of the semantic fields elicited, whose actual structure is determined not only by the interpreter's actual encyclopedia (the knowledge stored in it) but also by the degree to which she activates it in the specific circumstance of interpretation (Müller 2008). So, the metaphor may be worked in a conceptual net in which not all the connections suggested by its producer are established or activated, or, alternatively, in a more sophisticated net suggesting unforeseen inferences. Whatever is the case, the connections activated are selected through clusters of criteria: the generality with which they are accepted in the linguistic community and their frequency of activation during conversational exchanges; the status of the metaphor in the given interpretative context (open or closed to interpretation, cf. Morra et al. 2006 – waking or sleeping, Müller 2008); the thematic dimension determined by the subject matter of the dialogue in which the metaphor occurs; the temporal and physical setting of the interaction in which the metaphor is interpreted; nature, function, and register of the text including it; and the relationship its producer and its interpreters share (equality, subordination, etc.). All these factors

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[11] Visualizing sanctity through a luminous disk surrounding the head calls on the optical phenomenon of light reflection and refraction observed near strong light sources and mainly around the sun or moon. In ancient religious traditions, a halo variously denoted the sun god, the gods and goddesses, and sometimes, the transcendent nature of people associated with them: in Christianity, it marked Christ as divine from the third century (at first, only when he was represented after his baptism, since it was believed that he had assumed his divine nature during his life: the limitation failed when it was stated that he was born with a fully formed divine nature as well as a human nature). From the fifth century onward, the halo was extended to the Virgin, angels, and saints (after some time, a superior degree of sanctity – such as that of Christ – was then marked by an aureole that encased the whole body or by a halo within which a cross was inscribed). By the eighth century, square halos were used to designate donors, bishops, and popes living at the time the painting was done (the square being inferior to the circle and thus associated with the earth). For individuals who were revered for their sanctity but who had not yet been formally declared saints, it was usual to depict rays of light emanating from their heads, but no actual halo was added until canonization had taken place. Later, it became usual to depict only the circumference of the halo as a circular line (Cf. Collinet-Guérin 1961).

make the activation of less conventional features of the elicited fields inhibited, allowed, or requested. Such constraints are not mandatory, since interpreters may always refuse to conform to them, but then their interpretation, although possible, is not appropriate (Bazzanella and Morra 2007).

Ceteris paribus, these considerations hold even more for pictorial metaphors. Different individuals may interpret the same pictorial metaphor slightly or vastly differently, and slightly or vastly differently from how it was intended by its producer depending on factors similar to those ruling interpretation of a verbal metaphor. Lacking any syntactic way of distinguishing the direction of mapping a metaphorical picture proposes, in order to set it and to select the relevant features to be projected, it is "necessary to take various contextual levels into consideration […] partly text-internal, partly text-external" (Forceville 1996, 65), such as the concrete ways in which domains are rendered, involving specific forms, textures, and colors; an individual's personal knowledge of and attitudes toward these domains; the context in which the metaphorical picture came across as well as the genre of the representation to which it belongs that makes interpreters have certain expectations about what kind of messages they are likely to encounter. Extrapolated intentions of the image maker may guide interpretation when the viewer conceives the metaphorical picture as part of a goal-directed (argumentative, persuasive, instructional) representation and then knows (or thinks she knows) who made the picture and why. When it is so, the number of contextual cues to the source domain provided by the producer of the metaphor indicates to what degree the metaphorical nature of an item was active for her at the moment of its production (Müller 2008).

4.5   Pictorial Metaphors: Structure and Kinds

Noel Carroll described a prototypical pictorial metaphor as characterized both by the fact of being susceptible to reversible interpretations of its target and source and by the fact of portraying in a homogeneous space entities composed of physically *noncompossible* elements (Carroll 1994). He thought of homospatiality as the visual device (analogous to the *is* or *is like* structuring verbal metaphors) used to suggest identity in order to encourage metaphorical insights in viewers. For him, typical visual metaphors are hybrids: namely, visually stable figures in which discernible elements calling to mind different concepts are copresent in the visual array and recognized as such simultaneously in a spatially bounded entity. Visual metaphors intimate categorical identity by presenting non-converging categories as applying to the same entity. The physical noncompossibility of the homospatially fused, but disparate elements in the visual array invites the viewer to comprehend the image not as a representation of a physically possible state of affairs but as an opportunity to regard one of the categories as providing a source for apprehending something about the other category or as an opportunity for regarding each of the categories as mutually informative.

More recently, Charles Forceville described prototypical pictorial metaphors as irreversible thanks to the context in which they are produced[12] that provides sufficient clues for identifying their target and source and the mapping of at least a relevant feature in the situation at hand.[13] This view enlarged Carroll's definition of pictorial metaphors. For Forceville, the only condition for a pictorial representation to be called metaphorical is the necessity that its *literal* or conventional reading "is felt either not to exhaust its meaning potential, or to yield an anomaly which is understood as an intentional violation of the norm rather as an error" (Forceville 1996, 64). He then distinguished four forms a pictorial metaphor can take in a static representation (Forceville 2002a):

Hybrid metaphor: an image consisting of two different parts usually considered as belonging to different domains, but there perceived as parts of an impossible entity in the world within which it occurs, infringing the physical integrity of at least one of the terms involved. Context determines whether the hybrid has to be understood metaphorically or not. In fable contexts, for instance, hybrids between animals and human are considered as possible characters, while in other contexts are more likely to induce the building of a metaphor.

Contextual metaphor: an image in which something is understood as being something else due to the unexpected visual context in which it is depicted that strongly cues something else instead. The target is usually represented in its entirety: the source is only suggested and has to be identified through the visual context.

Pictorial simile: objects belonging to a different category are juxtaposed to the effect that one is understood in terms of the other. Target and source are non-homospatial and both depicted. While similes in language are more explicit than verbal metaphors, visual juxtaposition invites the metaphor's *seeing-A-as-B* in a way that is less explicit than other kinds of pictorial metaphors. It triggers something less than an integration between the activated conceptual systems.

Integrated metaphor: an object is represented as resembling another one. Target and source are perceived in a single gestalt but without noncompossible conflation: the first has been designed in a way that strongly evokes in perceivers the second, but there is no sense of its identity having been violated. Architecture, design, and fashion yield examples of these pictorial metaphors when they produce objects built not just in order to be practical or convenient but also as a source of pleasurable or meaningful experience.

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[12] For Forceville (1996, 2002b), in whatever media they occur, metaphors have clearly distinguishable target and source domains which in a given context cannot be reversed in order to be produced or perceived as metaphors. In pictorial metaphors, the direction of the mapping is set by the context to the effect that there is usually no uncertainty about which of the two possible directions is at stake (situations in which uncertainty about the direction of the mapping is deliberately created are restricted to specific genres of images, such as those considered by Carroll).

[13] Referring to Yus Ramos (1998) and Forceville (2002b) suggests that this condition should be worked out in the frame of relevance theory proposed by Sperber and Wilson (1995).

4.6   Pictorial Metaphors as Vehicles of Persuasion

Like verbal messages, pictures are vehicles for the storage, manipulation, and communication of information. The implicit character of their arguments, which calls for a great cognitive work to make sense of them, and the fact that they speak to individuals at an unconscious level, due to the relationship between vision and emotion[14] (among others, Scott and Batra 2003), make images produce a great attitude change of their interpreters. On their part, relative to their literal counterparts, metaphorical messages have a greater suasory potential, especially when they are novel, stem from the context, are proposed by a highly credible communicator, and the audience is familiar and involved with the target (Sopory and Dillard 2002).[15] It is not by chance then that pictorial metaphors are ubiquitous in persuasion contexts ranging from politics to consumer advertising (cf., for instance, Mio and Katz 1996).

Pictorial metaphors are accessible to a greater audience than verbal metaphors. As opposed to these, detected only by those tutored about their component words, pictorial metaphors have content for anyone who is pictorially competent in the minimal sense required by the recognition theory of depiction. To those who can recognize similarities and differences among the things depicted and then the anomaly of their being together, the bare perception of this anomaly triggers an attempt at metaphorical mapping that they try even when they know little of the pictorial conventions through which the image was produced. Not all the different possibilities of interpretation a pictorial metaphor offers to viewers require consideration of beliefs and intentions of its maker: the more visual clues viewers can decipher as intentionally inserted by her,[16] the closer the mapping they work out can be to the one she meant, but nothing in the editing of the picture allows us to say that one interpretation is more correct than the others. From a suasory point of view, the risk that pictorial metaphors are understood differently from what their creators have intended is balanced by the fact that they are very penetrating due to the essentially implicit character of the arguments they attempt to express (among others, cf. McQuarrie and Phillips 2005). Making sense of them requires the viewer to activate complex affective, motivational, and cognitive processes that, tailoring the message

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[14] Thanks to this relationship, images may "elicit reactions stemming from the unique experiences of each individual in addition to the common, shared influence of culture and biology, that might not be as easily accessible through verbal means" (Messaris 1997, 34).

[15] Sopory and Dillard (2002) argued that data most support the explanation of metaphor's persuasive impact given by the theory of superior organization – namely, the idea that, evoking a greater number of semantic associations, a metaphor helps to organize the arguments of a message better than literal language, and a more coherent organization improves the comprehension of message arguments.

[16] This caveat is necessary since when viewers' encyclopedia exceeds the one of the image-maker, they can find more connections between the elements of the image than the image-maker was aware of; cf. Carroll (1994, 210).

to her own predispositions about the matters suggested, enhances stronger and more persistent changes in attitude and belief than would otherwise be the case if the argument were completely explicit. Furthermore, the implicitness of the message they carry has the advantage of not triggering eventual viewer's resistance as much as explicit messages (Messaris 1997; Sbisà 2007).

Metaphorical pictures have, as pictures and metaphors do in general (Morgan 1986), an important role in the making and legitimizing of social organizations. Pictorial metaphors expressed in allegorical portraits, emblems, ceremonies, rituals, theater plays, clothes, etc., facilitating the apprehension of a meaning under construction, are tools for building social identities, for shaping power relations in organizational life of a community, for settling rules and regulations, and for ruling information and management of meaning (Kaplan 1992). In the following section, we will consider some of the pictorial metaphors that shaped the Renaissance Common Law. This takes us to the aesthetic dressing of law and the allegorical portraits of sovereignty.

4.7   Dress Code, Pageantry, and the Renaissance Common Law

If the urgent question is how law can be seen and remembered and how an abstract ideal can be enclosed in real life, our research path has to explore one of the most plastic and, at the same time, detectable signs, that is, the aesthetic dressing of law. By *aesthetic dressing* we refer here to the sociopolitical advertisement exploiting the suasory potential of pictorial metaphors. By publicly linking a category of people with specific visual features that in turn evoke ideal characteristics or symbolic meanings, dressing preferences publicly state how the authority wants people's attire to be perceived or how they themselves wish to be viewed. It is then a shared vehicle for the process of social identity shaping and display. Conceived as such, dressing can be considered as an integrated pictorial metaphor designed to evoke in perceivers a given conceptual domain (e.g., through a sophisticated choice of colors). When the dressing is worn, a metaphor in the form of a pictorial simile takes place, in which the target is the nature and status of who wears it and the source is suggested by the visual characteristics of the attire.

The apparel of the men of law identifies both an inner and secluded body of actors and an inviolable, self-determining space, so as to connect a definite group of individuals to a concrete space and to an ostensible form. The claims for distinctiveness is the background of a conscious contraposition in respect to the other centers of power, and this aspect functions as a powerful lens for inspecting through what can be called the polemical spirit of English Common Law (Costantini 2009). Recently, Bennet Capers has underlined that "clothing is communication: something that can be said, something that can be understood, something that can be read" (Capers 2008).

Contrasting the peaceful appraisal of the history of Common Law, the English Legal Tradition will be here discussed as a manufactured narrative of unity and

timeless custom that hides the antagonistic claims for a higher jurisdiction. In this view, different habits trace a kind of *painted boundaries* among several and concurrent jurisdictions. For these reasons, the inquiry about Tudors sumptuary laws gains a specific, political-juridical significance and reveals a specific feature of English legal history, a useful device for a systematic analysis.

As we know, the main purpose of sumptuary laws, from the Roman period onward, was to adverse social extravagance and consequently to control expenditure.[17] But the appraisal of English Renaissance law allows us to emphasize another function of the same legislation. In brief, sumptuary laws arguably portray and vividly fix a definite constitution. Paul Raffield astutely remarks how the deep justification of sumptuary laws shifted in the historical passage from a medieval legal system to an Anglicized Protestant community so as to reflect a new, emergent constitution (Raffield 2007).

During the reign of Henry VIII, the main subject of the visual representation was the glorified king as the only supreme head of the Church of England. Consequently, the assertion is made of royal supremacy against the Popish illegitimate aggression and usurpation. If this was what the people had to see, then sumptuary laws became the existing device that, deprived of the original meaning and scope, could be perfectly used to support royal strategy. The climax of this political plain is reached in the Act of 1533 (entitled "An Act for Reformacyon of Excesse in Apparayle") marked by an increased stringency in respect to the previous legislation (and especially in reference to the Act of 1509, "An Act against wearing of costly Apparel").[18] A clear evidence of what we are stressing is given by the respective introductions that explain the reasons behind such legislation.

In the first Act of 1509, it is stated:

> For as much as the great and costly array and apparel used within this Realm contrary the good statutes thereof made hath be the occasion of great impoverishing of divers of the King's Subjects and provoked many of them to rob and to extortion and other unlawful deeds to maintain thereby their costly array.

In the following Act of 1533, it is stated:

> Where before this time divers laws ordinances and statutes have been with great deliberation and advice provided established and devised, for the necessary repressing avoiding and expelling of the inordinate excess daily more and more used in the sumptuous and costly

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[17] This purpose is inferred from the etymological roots of the expression *sumptuary laws*, from the Latin leges sumptuariae: legislation directed to regulated sumptus, that is, the expense and more specifically the expense on luxury goods. But there are grounded reasons to say that the category of *sumptuary laws* can be a diffuse and vague one (Kovesi Killerby 2002). In fact, critical accounts of the second-century Rome law had variously qualified the goals of this kind of regulation. On the one hand, it is associated to a misogynist rhetoric (Aubert 2004); on the other hand, it seems to express an aristocratic moral belief (Harris 1985); some authors recall a political purpose and especially the reduction of illicit influences in elections or the sociopolitical stability, insofar as *leges sumptuariae* discouraged the competition (Champion 2004).

[18] From the Statutes of the Realm, London HMSO; 1817, vol. III. On Tudor sumptuary laws (Baldwin 1926; Hooper 1915; Sponsler 1992; Cox 2006).

array and apparel accustomably worn in this Realm, whereof hath ensued and daily do chance such sundry high and notable inconveniences as be to the great manifest and notorious detriment of the common weal, the subversion of good and politic order in knowledge and distinction of people according to their estates pre-eminences dignities and degrees, and to the utter impoverishment and undoing of many inexpert and light persons inclined to pride mother of all vices; which good laws notwithstanding, the outrageous excess therein is rather from time to time increased than diminished, either by the occasion of the perverse and forward manners and usage of people, or for that errors and abuses rooted and taken into long custom be not facile and at once without some moderation for a time relinquished and returned.

Only with the second act is the category of *sumptuary laws* expressly linked to politics. It has become a political device fitted to assured common weal and public order[19] to certify the social status that anyone holds, making clearly perceptible the rank, and the degree, or the estate and dignity every man possesses.[20] The impoverishment, as a matter of concern, that in the previous Act appeared as the one and only goal to reach closes a much more extensive list of legislative aims. Thus, the scope of sumptuary provisions is enlarged in various directions, with clothing being defined as a mark of social and occupational status. The actual rationale for the Act of 1533 is to introduce social texts that narrate a particular view of the political order. In this normative framework, the first provision, modeled on the first statement of the previous Act, takes on a new meaning. It proclaims that:

No person or persons of whatever estate dignity or degree or condition so ever they be, from the feast of the purification of Our Lady which shall be in the year of our Lord 1534 use or wear in any manner their apparel or upon their Horse Mule or other beast any silk of the colour purple, not any cloth of gold of tissue but only the King, the Queen, the King's mother, the King's children, the King's brethren and sisters and the King's uncles and aunts.

Here is the condensed *image-making operation* which concerns the king and his double-faceted sovereignty. To consolidate the new position of the king as the head of spiritual jurisdiction, to render the new ministerium recognizable to the society at large, even the dislocation and the specific attribution of the dress colors becomes a matter of public interest in need of regulation. In particular, the colors of gold and purple are granted only to the king and to specified close relatives. The political-theological project is ritualized by a regulated liturgy of colors.

Recalling the symbolism of classical icons, Henry VIII's figure is communicated as the new Caesaropapist emperor. In the rule mentioned above, there is a conscious quotation and a deliberate reenactment of Roman codes.

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[19] As M. R. Jaster suggests, "modern scholars identify various objectives behind sumptuary legislation; some motives were, in brief, economic protectionism, the preservation of the social hierarchy, and the government's attempts to curb the luxurious tendencies of its citizens for their own good and the good of the kingdom. At different times in the history of the laws, one or the other of the motives took precedence, but the most frequently rationale for the laws was that a citizen's sartorial desire must be tamed in the interest of the state" (Jaster 2006).

[20] F. A. Youngs depicts this function: "The fundamental principle was that the gradations in society should be reflected in men's cloth so that each rank might wear apparel of slightly less magnificence than those in the next highest order" (Youngs 1976).

The combined use of purple and gold as the colors that signify sovereignty dates from ancient times. Even before the Republic, the Roman kings were represented in the attire of celebrating a triumph, dressed in a purple cloak, wearing a golden wreath on their heads, and carrying a scepter surmounted by the figure of an eagle. This was the visual incarnation of an *Earthly Jupiter*: the dress of the triumphator was simply the emblem of supreme power or status (Gradel 2004; Gruen 1995). The same color association marked imperial iconography, and especially the color of gold was closely related to the cult of Sol Invictus (Janes 1998; Beck 2007; Kantorowicz 1963).

In this regard, it is important to remember that the same color combination celebrates, as a figural label, the first public appearance of the new, uncrowned king during his solemn procession from the Tower to Westminster. According to Wickham Legg, the king's dress on this occasion, as well as the arrangement of his escort, was ruled both by *liber regalis*, introduced in 1307, and by another document known as the *Little Device*, set down at the time of Richard III's coronation. This prescribed that the king should "wear a doublet of Grene, or white clothe of golde and a long gowne of purple veluet furred with Ermyns."[21] During the reign of Elizabeth I, sumptuary laws were supported by a much more intense political purpose, so to mark the entire period as an era of unprecedented activity in the history of restraints on apparel. To represent the perfect unity of the kingdom, the queen imposed a rigid etiquette, a binding code of dress, a *prescribed* conformity.

Another visual expression linked to the social product of sumptuary laws is pageantry: both of them have a political function, representing *power* as the very image of potency that authority projects upon the governed (Anglo 1969). Sumptuary laws and ceremonials fix together an accepted iconographic tradition. In particular, Tudor ceremonial transmitted an unequivocal message about the dynasty and his ambitions (King 1989; Strong 1999; Polito 2005), declared the compelling bound between the Crown and the notables of the Reign, and decided the thresholds existing among different domains, and especially between theological and secular, secret and accessible, and private and public.

Obviously, insofar as the monarch is the exemplary center of a symbolic system (Geertz 1981), coronation was the most spectacular event, which combined the reasons of politics with the arguments of theology[22] and embodied a liturgically constructed drama. It was also the iconic mark of the royal project to control or better manipulate community memory. After the Reformation, the ancient ritual was transformed with the aim to merge or reconcile the emerging political language with the settled meaning. Thus, the representation of royalty, staged throughout

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[21] As printed by Wickam Legg in English Coronation Record, pp. 220–139, printing P.R.O., LC 1/424.

[22] Alice Hunt underlines "The purpose and the effect of a coronation became a site of contest between rulers and the Church […] The introduction in the West of the anointing of the new monarch with holy oil enforced this, drawing distinct parallels with the Christian tradition of anointing priests and bishops and the Old Testament precedents of the anointing of David and Salomon" (Hunt 2008).

coronation, was nourished by the shifting strategies of political persuasion (Kléber Monod 2001; Jackson 1984). The ceremony of coronation was complex and articulated. Here we would like to mark the main passages (without going into full details) so as to understand the pivotal role of visual representation in Renaissance England. According to the accounts of Henry VIII's coronation, after the creation of New Knights of the Bath, in a deeply symbolic ritual of cleansing and prayer,[23] it was the moment of the procession from Tower to Westminster, which identified the king's first appearance in the public sphere, followed, the next day, by the route from Whitehall to Westminster Hall, where the king sat in the marble chair known as the King's Bench.[24] Then another procession took place, from Westminster Hall to the Abbey. Here, at the presence of the archbishops of Canterbury and York who brought the regalia,[25] the ceremonial included the act of recognition, the celebration of the mass, the king's oath taking, and the rituals of pardon and anointing. As it has been emphasized, these conclusive constituents of English coronation ceremony imbued the monarch with priest-like qualities (Loach 1994). In particular, the ritual of English king's anointing was declared by Pope Innocent II in 1204 as pertaining to the episcopate alone (Schramm 1937), and it was completed in two phases: first, the king was anointed with oil on the hands, the breast, the back, the shoulders, the elbows, and the hand; then he was anointed again with chrism.

To protect the sacred body of the monarch, to cover the parts of the renewed body after anointing, the ritual prescribed the use both of linen gloves put on the king's hand and of a linen coif on his head. As it has emerged, English kingship was underpinned by a choreography of religious devotion (Adamson 2000). In sum, the coronation made perceptible the encounter of the theological element and the political issue: the ritualized transmission of God's grace represented the theological justification visually invoked to legitimate monarchy and its power.

There is another pivotal theme that has to be discussed in this chapter, namely, the strong nexus between sovereignty and the representational power associated with clothing and images within the community of common lawyers. Concluding one of his works on this subject, Raffield has aptly stated that "without the image, the legitimacy, authority and sovereignty of unwritten law cannot be verified" (Raffield 2002, 148). The compelling sense of belonging to a discrete community postulates a corresponding *dress code*, which is apt to reflect the intimate purposes of the fellowship and the way it has chosen to depict and conform itself (Kuper 1973).

As we have known, the brotherhood of the common lawyers was recognizable even by the means of its habitus: the honorable society of the serjeants-at-law was

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[23] The knights were dressed in blue robes with hoods like priests (Thomas and Thornley 1938). This detail is very important for the analysis conducted in the following pages. In fact, there is a very deep and impressive consonance with the act of investing new serjeants-at-law.

[24] According to Jennifer Loach, "by taking possession of this, and taking possession of it in the presence of his nobility, the king hinted at a secular enthronement, a parallel to that which took place in Church at the end of the coronation service" (Loach 1994).

[25] The coronation regalia claimed to belong to Edward the Confessor and consequently were the visual signs of a sacred kingship.

immediately perceived through its specific dress symbols and especially through the connection of the gown, the hood, the tabard, and the coif. The powerful and underlying symbology concerned both the type of dress and its colors, tissue, and texture. The justifying discourse that clarified the profound meaning of the common lawyers' *habitus* made use of a theological argument. This remark is interesting insofar it allows us to trace a line of continuity from the medieval custom to the prototype after Reformation even if the political constitution and the aims of sumptuary laws had been substantially changed. Both Waterhouse and Dugdale claimed a religious origin that sanctified the dress of the lawyers (Dugdale 1666).

Other theological arguments were used by the Lord Chief Justice in his inaugural discourse during the ceremony of investiture of the new, privileged serjeants-at-law. In this occasion, the religious element has to be found not so much in the genesis of the dress, as in the conscious choice of their colors, so that we can efficaciously speak of an intentional *liturgy of colors*. In this view, the celebrated parti-colored dress in its *blu-murrey* variant was described and explained with these words:

> Tabard and hood is belwe and murrey, rather than of any other colors. I shall tell you mine opinion. The blew dothe represent unto us the elyment, in token that we should lift up our yees to hevine and remember us that we suffer not our selfes so to be drowned in worldlye matters that we forget heaven and heavenlye cogitations. The murrey signifiethe unto us the blode that Christ sched for us all when he suffered his passion, wh ich thinge we that be Christians owght always to have in memorye.[26]

Moreover, the talk of the Lord Chief Justice was clearly devoted to exemplify the function of the various garments. It was at the same time an erudite discussion and a severe advice for the neo-nominated lawyers. The structure of the speech inevitably – if not expressly – combined the theological lecture of the selected colors with a not only secular conception of the serjeants' office.

We find an articulate comment in respect of the coif, whose representational meaning was so strong as to forge the name of the serjeants' guild: more exactly, Order of the Coif. Quoting the inaugural discourse of 1521:

> Your white coife betokeneth the pure life and thein corrupte consciens which is loked for in you, and ought to be in men of your profession. For, as the coif is immaculate, fayre and cleane, purged from all filthe, so ought your life to be without spott or blemishe, so ought your conscience to be purged, that no corruption may entre whereby ye might be allured from the truthe.[27]

The sacred duty of the body of law to set and apply a particular theory of the image was reaffirmed with a new scope after the Reformation. Once again the brilliant analysis of Raffield has pointed out how. Despite the fact that the Inns of Court were free from interference by the crown, and in particular were exempted from the sumptuary legislation enforced in the reign, the legal community adopted its own regulation and imposed upon its members appropriate apparel. In this way, it took upon itself the role of exemplifying the correct use of symbols (Raffield 2002).

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[26] BL MS Harley 361, ff. 80v-86 e BL MS Add. 21993, ff. 155-161v.

[27] BL MS Harley 361, ff. 80v-86 e BL MS Add. 21993, ff. 155-161v.

The Protestant Reformation was followed by a corresponding reformation of clothing, in the same way the self-governing body of male jurists comprised a compelling dress code not only to reassert the inherent divinity of common law (Raffield 2002) but also to legitimate the new Constitution. On this ground, the arguments discussed above seem to be deeply interrelated and cast new light on the multifarious elements that shaped, even in a semiotic way, the English constitution and the *Englishness* of English law.

4.8   Royal Iconography

The shifting visibility of sovereignty is also shaped by royal iconography. There is a subtle link among dress code, pageantry, and figural depiction of kingship and law. The issue at stake is one of utmost political importance insofar as it deals with the accepted image of the monarchy that has to be communicated to subjects. Moreover, during the Tudor dynasty even pictorial representations were theologically determined. As J. P. D. Cooper has noted, "visual symbols of the monarchy were certainly becoming an increasingly obvious feature of parish life in the Tudor period and the trend was closely associated with Reformation, if not entirely dependent upon it" (Cooper 2003). The conscious selection of images, symbols, and settings, combined in a propagandistic metaphor, declares both the real nature and the location of sovereign authority (Sharpe 2009). The projection of power passes through (and is manifested by) means of the multifarious activities (production, circulation, and even appropriation) connected to images.

These remarks are useful in the proper perspective of the comparative lawyer. The iconic visualization of sovereign power could be assumed as a systematic device to discuss the deepest relation between politics and law. Roy Strong has pointed out that, during the sixteenth century, "portraiture was one aspect of the massive expression of the Idea of Monarchy; involving the dissemination of a ruler's image in paint, stone, print and metal throughout the realm on a scale unheard of since Classical antiquity" (Strong 1999). Commenting on this notion, Louis Adrian Montrose has written that "the proliferation of images of Habsburg, Valois, and Tudor princes provides compelling visual evidence for the consolidation of the powers of the dynastic state, and for the highly personalized nature of political identity and affiliation" (Montrose 2006).

When one is confronted with the critical understanding of a definite legal framework (how it is shaped, narrated, and transmitted), it is also important to verify how all the visual signs are used to construct a discursive text in support of or in opposition to the pictorial strategies. In our view, this is an interesting topic that should be emphasized in legal analysis. Given that the visual and the verbal are distinctly representative media, with differing resources and limitations, it is possible that their formal differences may be placed in the service of different interests. Most interesting would be the means to verify how these differences – at various levels (both at the level of the typology of the means of communication and at the level of

the nature of interests promoted) – could be reassessed, composed, or better negotiated to substantiate the unity of a legal system or the cultural body encoded in an identifying legal tradition. On this ground, circumscribing the object of the present research, our attention focuses on three pictorial representations of sovereignty that seem to fit better with the arguments made in this chapter. Obviously, Tudor iconography is extremely rich, rendering a purposeful selection unavoidable.

Our preference here is devoted to allegorical portraits (West 2004). This is justified by the characteristic properties they have as persuasive images: iconicity, indexicality, lack of an explicit syntax, and metaphorical potential. Portraits can be considered as direct traces or emanations of the subjects they depict. This is especially the case when these very subjects commissioned them. (In special conditions, portraits can act as substitutes for the individual they represent.) When undertaken with a propagandistic aim, allegorical portraits visually present how the authority that commissioned them wants their subjects to be perceived and thought of. They visually build (new) identities for the subjects they depict. Furthermore, the implicitness of visual syntax makes them state their persuasive arguments in a less obtrusive way than if the same arguments were to be declared verbally. Allegorical portraits may then strongly suggest an argument that avoids the implications entailed by saying it explicitly. Thus, they are particularly useful tools when the assumption or expectation they hint at is one that the audience itself may not want to confront directly. Through their implicitness they lower or *bypass* altogether the viewer's eventual resistance.

Allegorical portraits are contextual metaphors. The subjects they depict are understood as being something else. This is due to the unexpected visual context in which they are depicted, strongly cueing something else instead. Usually, the target of the metaphorical mapping is represented in its entirety, while the source is only suggested and consequently has to be identified through the visual context. (For instance, Holbein's allegorical portraits of Henry VIII, considered hereinafter, have the king as the target and God's direct investiture as a source, suggested by the religious context.) When the maker of an allegorical portrait wants its metaphorical sense to be clear beyond doubt, a verbal context may come into play. Sometimes, the verbal headline only reinforces the message of the image itself, especially when this is already clear in itself (cf. the allegorical portrait discussed at the end of this section). But the headline often anchors the meaning of the pictorial metaphor it is linked to in order to avoid possible misinterpretations.

The allegorical portraits discussed in the following pages are those of Henry VIII, appearing respectively on the front page of the Coverdale Bible of 1535, on the front page of Cromwell's Great Bible of 1539, and in both the 1570 and the 1576 editions of John Foxe's Acts and Monuments. All these images function as pictorial metaphors aimed at shaping and assessing the king's supremacy over the Pope.

The Coverdale Bible was the first complete print translation of the Bible into modern English, commissioned by Thomas Cromwell under the king's auspices, compiled by Myles Coverdale, and published in 1535. Its front page is occupied with an emblematic woodcut designed by Holbein, where King Henry VIII is represented in the act of handing the Bible to the bishops with the theological and political aim of demonstrating his own ultimate authority. The first pictorial assertion

of the *Godly King* states the king's direct line to God. This powerful message is communicated by the means of three images, namely, through the lack of a Pope, through the Tetragrammaton at the top of the page, and, on the right side, through the image of Christ handing the keys not just to St. Peter, as the Catholic Church maintained, but to all the disciples. Roy Strong has noted that "on the Bible frontispiece Holbein creates an image which was to be a definitive one for the Tudor and Stuart Kings. […] a variant iconographically of the classic renaissance emblematic device *Ex utroque Caesar*, the emperor bearing the sword and book, allusions to the duality of his triumphs in peace as well as war" (Strong 1967).

This woodcut has to be compared with the image that clarifies the political-theological purposes surrounding the adoption of the so-called Great Bible, the first authorized and approved version of the Bible, compiled by Myles Coverdale (working under commission of Cromwell). Peter C. Herman, paraphrasing John N. King, emphatically asserts that "the language of universals masks the inculcation of political values through his analysis of the reciprocities between religion and politics." Transferring to Henry VIII images and symbols previously used to describe the Pope, the courtly artist made the first steps toward the planned construction of the monarch as a *cult figure* (Herman 1993, 8).

Given the aims of this chapter, the relevant aspect is that the Great Bible, as it became known due to its large size, was issued to meet a decree that each church should make available in some convenient place the largest copy of the whole Bible where all the parishioners could have access to it and read it at their will.[28] This injunction clearly unveils that the inaugural image representing King Henry VIII was destined to assert the way Renaissance English people should know and conceive their sovereign.

Tatiana String has aptly emphasized that the title page illustration of the Great Bible functioned as a key instrument in conveying a fundamental political message, namely, that papal authority over the church in England had been replaced by Henry VIII's Royal Supremacy (String 1996, 2008). At the top of the image, instead of the enigmatic Tetragrammaton, incumbent in the previous representation of the Coverdale Bible, there is now a kind of meaningful triptych. At the top left, the Church and Cranmer are clearly identified; at the top right Cromwell stands in his blank coat of arms; at the center Henry VIII is depicted with the Word of God in each hand. As King has noted, "the propagandistic title page of the Great Bible contains a sophisticated variation of Holbein's original portrayal of Henry VIII for the Coverdale Bible." It "symbolizes royal supremacy over church and state by depicting a graded hierarchy in which the king replaces the pope as the temporal

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[28] Tatiana C. String has elaborated an interesting and exhaustive analysis on the strategic goals and commercial success of the Great Bible, from the junction on September 5, 1538 to the ordinance on 6 May 1541, passing through the license granted from Henry VIII's Privy Council to the merchant Anthony Marler (permitting him to sell *the bibles of the great volume*) and Anthony's Marler petition for a proclamation that every church not yet provided with a Bible shall provide one according to the King's former injunction (String 1996).

intermediary between heaven and earth" (King 1993, 80). Even the transmission of God's word is conceived as an exclusive royal prerogative, and it lays on the ground of the renewal of the Church, a theological justification for the Reformation. In this perspective, recalling the clear association of Henry VIII to the figure of Moses, the image inscribes the underlying political strategy in a much higher, providential plan.[29]

Both of these portraits can be further confronted with the woodcut that pictorially clarifies Foxe's apocalyptic view of English history and English sovereignty. Obviously, this was not a case if the image was inserted just after Foxe's account of the events that justified the adoption of the 1534 Act of Succession. Elizabeth Hageman has suggested that the woodcut "is an important visual representation of a principal theme of Foxe's History, for it presents the reformist belief in the moral power of the true English church over the papal Antichrist" (Hageman 1979, 36). Here, Henry VIII is represented as the king enthroned, holding the sword and the Book in his hands, in the act of stomping Pope Clement VII. All around the king, there are several spectators: Cromwell and Cranmer, a community of confident Protestant, and *the lamentable weeping and howling of all the religious route for the fall of their god the Pope*, as it is clarified by the means of an additional gloss that constitutes a whole with the motto over the picture *The Pope suppressed by King Henry VIII*.

The prominent role assigned to the King and to the Pope brings us to conclude that the woodcut is a clear and strong example of propagandistic imagery used to represent and to persuade, to demonstrate and to establish, and to show and to convince. In this perspective, in accordance with Hageman's remark, we can interpret the same woodcut as a Renaissance modification of the typical medieval presentation scene, where an author or a translator is offering his book to a patron (Hageman 1979).

These examples clearly show that in Renaissance England the perceptible meaning associated with signs and figures was used as a potent device to mark political innovations as well as a legitimizing legal discourse (Woolf 1991). In a wider perspective, they highlight the central role assigned to images and to visual metaphors to shape and inform a clear understanding of an identified legal tradition.

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[29] J. N. King (1993, 82) remarked that "Moses' combined role as both leader of the Chosen People and recipient of the Ten Commandments furnishes a precedent for Henry VIII's reputed deliverance of England out of bondage in papal Egypt and for his authorization of the vernacular Bible."

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Chapter 5
Visual Common Sense

Neal Feigenson

Abstract Pictures can tell us a lot, but not as much as we tend to think they do. A particular common sense attitude toward pictures, *naïve realism*, tends to make people overconfident in their interpretations of visual evidence and less receptive to alternative viewpoints, as well as to entrench the effects of other, first-order biases. Borrowing from anthropologist Clifford Geertz's classic analysis of common sense, I begin by describing naïve realism about pictures as the exemplar of *visual* common sense, and I offer an example of it in judicial decision making. I then explain its psychological bases and its various implications for legal judgment. First, it is a special instance of naïve realism generally, a fundamental and familiar phenomenon in cognitive and social psychology. Second, the claim that naïve realism about pictures results from inattention to context and subjectivity, yielding a sense of assurance that our understandings are correct and that alternatives needn't be taken as seriously, is congruent with the causes and effects of *overconfidence* generally. Third, the literature on *processing fluency* provides further support for the claim that seeing visual evidence would tend to generate overconfidence in the beliefs and judgments associated with that evidence, especially for naïve realists. I conclude by arguing that even in the age of Photoshop and YouTube, when people ought to be increasingly sophisticated about their visual culture, naïve realism about pictures remains a common and psychologically powerful default, and therefore of great significance for legal decision making.

5.1 Naïve Realism About Pictures as Visual Common Sense

Pictures can tell us a lot – but not as much as we tend to think they do. This pervasive metacognitive error and some of its consequences for legal decision making are my focus in this chapter. I claim that a particular common sense attitude toward

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pictures, *naïve realism*, tends to make people overconfident in their interpretations of visual evidence and less receptive to alternative viewpoints. It can also entrench the effects of other, first-order judgmental biases, as well as create biases of its own. The causes and consequences of this central feature of visual common sense ought, therefore, to be of interest to anyone concerned with the role of visual and multimedia displays in the law.

By "naïve realism" I mean people's tendency to identify a picture that looks like ordinarily observable reality[1] with its contents – to look through the visual representation to the reality it depicts. Naïve realists are inclined to believe that descriptive pictures mean just what they think they see in them. To think about pictures this way, however, is to ignore how pictures and their meanings are *framed*: by the physical borders of the picture or screen, which may exclude things viewers would deem relevant to the judgment task; by the underlying technology, which both creates and constrains what can be seen; by words and other pictures that provide context; and perhaps most importantly, by the prior knowledge and expectations that viewers themselves bring to the viewing (Feigenson and Spiesel 2009).

Because naïve realism tells people that reality is just out there to be seen and known and that pictures give that reality to them, it tends to keep them from recognizing that (most) pictures can plausibly mean different things to different people – that viewers who bring different preconceptions to the viewing may reasonably construe the picture in different ways. So the force of naïve realism, like appeals to common sense generally, tends to be a conversation-stopper. It ends discussion on the ground that the picture "speaks for itself." This approach to visual evidence, however, neither enhances the accuracy of legal judgments nor comports with ideals of how those judgments should be reached.

I begin, borrowing from anthropology, by describing naïve realism about pictures as the exemplar of visual common sense, and I offer an example of it in judicial decision making. I then explain its psychological basis and its various implications for legal judgment. I conclude by explaining why naïve realism about pictures remains a concern for the legal system even in the digital age, when people might be presumed to be less naïve about pictures than they used to be.

To understand what visual common sense might be, it helps to have some idea of what is meant by common sense more generally. For guidance, I turn to anthropologist Clifford Geertz's classic essay, "Common Sense as a Cultural System" (Geertz 1983).

Geertz describes what he terms the "stylistic features" of common sense. It is, first of all, *natural*: Things known to common sense have the aspect of "of-courseness." Common sense is also *thin*: Whatever there is to know is right there on the surface.

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[1] Thus, pictures that don't look to laypeople like ordinarily observable reality, such as many sorts of forensic scientific images, are unlikely candidates for naïve realism because they can't be as readily incorporated into a useful internal representation of relevant reality. On the other hand, to the extent that these kinds of "expert images" (Dumit 2004) *do* resemble what laypeople think of as reality, they may appeal to naïve habits of viewing and comprehension, as the example of fMRIs indicates (Feigenson 2009).

Relatedly, common sense is *accessible*: Anyone with a sound mind and open eyes can see and understand. And it is *practical*: Attributing common sense to a judgment or a person reflects a normative evaluation that the judgment or person is wise in an everyday kind of way – pragmatic, but unexceptionally so. Crucially, "it is an inherent characteristic of common-sense thought … to affirm that its tenets are *immediate deliverances of experience*, not deliberated reflections upon it…. Religion rests its case on revelation, science on method, ideology on moral passion; but common sense rests its on the assertion that it is not a case at all, just life in a nutshell. *The world is its authority*" (Geertz 1983, 75) (emphasis added).

All of these features of common sense combine to produce great confidence in the beliefs and judgments it yields. Because common sense beliefs are justified by the way the world is, appeals to common sense tend to cut off debate: "There's nothing more to say." Yet as the diversity of beliefs that different cultures take as common-sensical shows, "[c]ommon sense is not what the mind cleared of cant spontaneously apprehends; it is what the mind filled with presuppositions … concludes" (Id, 84). By locating the source of belief in the world out there, common sense resolutely fails to notice how belief is shaped by individual psychology and shared culture.

Geertz's conception of common sense maps quite nicely onto visual common sense as exemplified by naïve realism. First, for naïve realists, the judgments about reality to be derived from seeing a photo or video come naturally. Believing in the truthfulness of our perceptions is intuitive. Our brains process direct sensory inputs more quickly than they do the kinds of language-mediated thoughts that lead to reflection, critique, and suspicion. At the same time, intuition, as cognitive psychologists Daniel Kahneman and Shane Frederick have observed, is like perception: fast, effortless, and automatic (Kahneman and Frederick 2002). Intuitive judgment just "feels right." And that's how the naïve realist tends to take up the meaning of a picture. Seeing is believing; to engage in further interpretive labor would be superfluous.

Visual knowledge is also thin. The meaning of a picture is just what it obviously depicts. Neither context nor verbal gloss can materially change anything, because the picture "speaks for itself." There is in naïve realism a kind of reflexive movement in which the intuitive understandings prompted by the picture are *projected onto* to the picture; what the picture means seems to come from the picture, so that what one thinks one knows appears as a simple "read-off" from depicted reality, rather than being derived as well from other sources (such as the context or the viewer's prior knowledge and expectations about the depicted reality).[2] And the ease with which viewers seem to get the point makes them less willing to look into things more deeply.

For the naïve realist, visual knowledge is also fully accessible, at least to anyone who can see – and anyone who can, as social psychologists remind us, should see things the same way. Expertise is not required, or even helpful. Finally, it's also

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[2] This is an example of the *aboutness principle* (Higgins 1998), discussed below.

eminently practical to rely on visual evidence. If seeing is believing, having something to look at offers a reliable ground for belief, so visual evidence is the best sort of evidence there is.

Geertz's portrait of common sense not only helps us to understand why naïve realism about pictures is a characteristic of visual common sense but also reveals what's most problematic about it: the failure to notice or to pay sufficient attention to the ways in which the framing of pictures, including context and the presuppositions that people bring to the viewing, shape their very perceptions as well as the inferences they draw from those perceptions. Precisely when common sense tells people that they are being the most "bottom-up," relying on visual access to what's out there ("what the mind cleared of cant spontaneously apprehends"), they are actually being significantly "top-down" ("what the mind filled with presuppositions concludes").

5.2   Visual Common Sense: A Case Study[3]

Justice Antonin Scalia's opinion for the majority of the US Supreme Court in *Scott v. Harris* (2007) perfectly illustrates a naïvely realistic approach to visual evidence. In a nutshell, the case is as follows. Late one night in 2001, Victor Harris led Georgia county police on a high speed car chase. The chase ended when one of the pursuing officers intentionally rammed Harris's car off the road. The car careened down an embankment and crashed, leaving Harris a quadriplegic. Harris sued the officers and the county in federal court, alleging that the police had violated his constitutional rights under the Fourth Amendment by using excessive force to end the chase. The legal issue was whether the force that the police used was reasonable under the circumstances; or, to put it another way, whether Harris's driving posed enough of a threat to public safety to justify the officers' use of deadly force.

Whenever a question like the reasonableness of conduct is genuinely disputed, it's up to a jury to decide the case. Both the trial and court of appeals judges agreed that a jury should consider all of the evidence to decide if the police had acted reasonably. But eight of the nine Justices of the Supreme Court disagreed. They ruled that there would be no trial because any reasonable person would have to conclude that Harris's driving posed such a great risk to public safety that the police were justified in using deadly force.

Why did the Supreme Court think that it could decide for itself a question ordinarily left for local jurors? Because they had seen the chase – as recorded by video cameras mounted on the two pursuing police cruisers. It didn't matter that Victor Harris and the police testified to different accounts of the events; the Justices had the tape. As Justice Stephen Breyer asked Harris's lawyer during oral argument: "But suppose I look at the tape and I end up with Chico Marx's old question …: Who do you believe, me or your own eyes?" Justice Breyer believed his own eyes. Indeed, so

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[3] This section is adapted from Feigenson and Spiesel (2009).

conclusive did the video evidence seem to the Court that it took the unprecedented step of posting a version of the videos on its own web site. Justice Scalia, responding to dissenting Justice Stevens' different interpretation of the facts, wrote for the majority, "We are happy to allow the videotape to speak for itself."

Does the tape "speak for itself"? In deciding that no reasonable person could draw any different conclusion from watching the tape than the one they themselves reached – that Victor Harris's driving posed such a risk to public safety as to warrant the use of deadly force to end the chase – the majority of the Court reduced the crucial evaluative judgment to a simple perceptual one: what "we see" on the tape. Justice Scalia wrote that "what we see on the video … resembles a Hollywood-style car chase of the most frightening sort" and that "we see [Harris's] vehicle racing down narrow, two-lane roads in the dead of night at speeds that are shockingly fast" (*Scott v. Harris* 2007, 379–80).

But do "we" really "see" all of this? Whether the cars' speeds are "shocking" depends as much on the viewer as it does on what the video shows. During closing argument, Justice Scalia remarked that Harris "created the scariest chase I ever saw since 'The French Connection.'" This reference is especially telling. There are of course many differences between the Hollywood chase, with its exciting sideswipes and near misses, and the actual visual evidence in the case, which appears to show that Harris, although speeding, drove his car in a very controlled fashion, signaling his turns and neither colliding with anything nor even causing any other vehicle on the highway to swerve to avoid him. And the crosscutting in the movie reminds us that Gene Hackman's character was chasing a criminal member of a heroin ring. How might these cultural frames have influenced what Justice Scalia thought he saw and how he judged it? Justice Stevens, watching the same video but informed by different personal experiences, concluded that it was "hardly the stuff of Hollywood" in terms of the danger Harris posed to the public.

In short, *Scott v. Harris* illustrates the problem of naïve realism in response to visual evidence that looks like ordinarily observable reality. Justice Scalia seemed to believe that his judgment about the dangerousness of Harris' driving was a simple read-off from reality as the videotape depicted it: "The videotape speaks for itself." Conversation closed. Others who watched the same material, however, including four judges in the courts below and Justice Stevens, interpreted the tape differently. The majority's naïvely realist stance, the assumption that the video unproblematically and unequivocally showed "the real," dismissed these alternative interpretations as unreasonable, and therefore, not worth considering.

5.3   The Psychology of Naïve Realism

So far I have relied on one anthropologist's wisdom and one legal case to suggest that naïve realism about pictures hampers good legal thinking because it tends to blind people to the ways in which context and presupposition shape their beliefs about what they see in those pictures and to discourage them from considering

alternative points of view. I would now like to marshal the cognitive and social psychological research that supports this conception of naïve realism about pictures and its consequences.

5.3.1 Naïve Realism in General

Naïve realism describes people's basic tendency to experience subjective representations of the world as objective copies of it. "[T]he represented world 'in here' is experienced phenomenologically as veridically mirroring what is 'out there'" (Gilovich and Griffin 2010, 574). "[T]he act of [mental] representation is transparent to the actor … [; people] tend to look *through* their lenses rather than *at* them" (Id, 573). That is to say, people think that they see things as they really are.

As a consequence, naïve realists "fail to acknowledge, consider, or otherwise take into account their mind's role in the construction of their subjective experience" (Gilbert 1998, 125). The result is "the individual's unshakable conviction that he or she is somehow privy to an invariant, knowable, objective reality – a reality that others will also perceive faithfully, provided that they are reasonable and rational, a reality that others are apt to misperceive only to the extent that they (in contrast to oneself) view the world through a prism of self-interest, ideological bias, or personal perversity" (Robinson et al. 1995, 405).

Naïve realism has been described as a "fundamental and universal" tendency in human thought (Ross et al. 2010, 22). Unsurprisingly, then, it is a familiar concept in many fields, identified as an epistemological stance in philosophy, politics, and education, to name a few. Often it carries a pejorative taint (e.g., as "level zero" in adolescent cognitive development; Boyes and Chandler 1992). Yet, naïve realism expresses a very basic neurobiological response to the existential problem of being in the world. It reflects the fundamental principle of *brain-world consonance* (Wexler 2006): By importing our presuppositions into what we take to be our perceptions and what we recognize as our beliefs, we sustain the comforting sense that our knowledge of the world is in agreement with the world itself.[4] Thus, naïve realism should be understood as a natural and powerful mindset, a deep-seated, biologically based default sense that our knowledge of the world corresponds to the world itself.

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[4] Our brains develop through infancy, childhood, and early adulthood to adapt to our interpersonal and cultural environments. Then, as adults with reduced neuroplasticity but greater conceptual and physical abilities, we try to make our worlds adapt to what our brains have come to expect. This is what psychiatrist and neuroscientist Bruce Wexler describes as brain-world consonance in the ontogenetic sense. Neuroscientist Leif Finkel (1992) has eloquently captured the discrepancy between the mind-world agreement that our consciousness seems spontaneously to yield and the underlying neurophysiology of perception: "The world, to a large extent, is a vision of our own creation. We inhabit a mixed realm of sensation and interpretation, and the boundary between them is never openly revealed to us. And amid this tenuous situation, our cortex makes up little stories about the world, and softly hums them to us to keep us from getting scared at night" (404).

5.3.2 Naïve Realism About Pictures

Naïve realism about pictures concretizes the lens metaphor (Gilovich and Griffin 2010) to apply to our perceptions of external visual representations (i.e., pictures) and the cognitions we derive from them. People tend to think that what they think they know about the reality a picture depicts derives more or less exclusively from the picture. That is, their understanding is just a read-off from objective reality as shown in the picture. This exemplifies the *aboutness* principle (Higgins 1998): "When people perceive a [cognitive or emotional] response … they represent it as being *about* something, and this thing that the response is about is inferred to be the *source* of the response" (Higgins 1998, 174). The most common way in which aboutness leads to judgmental error is by leading people to think that what a response to the world is about is *the* source of the response, when in fact there are likely to be *multiple* sources. This perfectly characterizes naïve realists' response to pictures – they attribute their understanding of relevant reality solely to the picture and not also to the context of the picture and their viewing of it and to their own presuppositions about the depicted reality.[5]

5.3.3 Naïve Realism About Pictures and Overconfidence

The basic model of naïve realism about pictures that I am proposing is congruent with at least some of the causes and effects of *overconfidence*. I summarize the findings and concepts in this area, and in particular, the relationship between overconfidence and *processing fluency*.

5.3.3.1 Confidence in General

Subjective confidence in the correctness of one's memories, beliefs, or judgment is an example of metacognition – that is, it involves second-order thoughts, or thoughts about thoughts or thought processes (Briñol et al. 2010). Confidence is also a feeling (Clore and Parrott 1994; cf. "feeling of knowing" (e.g., Koriat 1993)) that is generally experienced as positive (Lazarus 1991).

Having confidence in one's beliefs and judgments can be adaptive. First, uncertainty (Kagan 1972) and cognitive dissonance (e.g., Festinger 1957) are usually thought to be aversive states, which people would want to reduce or avoid (Blanton et al. 2001; Trout 2002). The feeling of confidence is a somatic marker that uncertainty and self-doubt about the matter at hand have been avoided, and insofar as confidence

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[5] Naïve realism about pictures is not about *mistaking* the picture for direct access to reality in the sense of being fooled into thinking that one is really present at the depicted events, as in the mythologized report of early cinema goers hurrying from the theater to avoid the approach of the train on the screen (Gunning 1995). Naïve realism is about believing that one's understanding of reality is objectively correct, to the exclusion of all others, because one's understanding simply copies that reality.

helps to maintain closure around a given mental state, it also helps to ward off further dissonance and uncertainty. Second, since people are generally motivated to hold true beliefs (see, e.g., Petty and Wegener 1999), confidence again functions as both a desired state and a satisfying cue signaling that one's beliefs are correct (whether they are or not). Third, because society generally encourages people to hold and express their beliefs with confidence and to act with confidence (O'Connor 1989), the confident person gains approbation and the positive sense of being and acting in conformity with social norms. Fourth, confidence can motivate people to make decisions and undertake tasks that they otherwise might avoid, increasing the chance of positive outcomes (Baumeister 1998).[6] In the legal context, increased confidence in judgment can help jurors deal with the considerable stress of deciding the fate of another person (Feigenson 2010).

5.3.3.2   Overconfidence

But there can be too much of a good thing. Confidence in one's judgments and beliefs can become overconfidence. Many studies show that people tend to be overconfident about the correctness of their answers to questions testing their memory and general knowledge (for reviews, see Alba and Hutchinson 2000; Hoffrage 2004; O'Connor 1989), and the more difficult or less familiar the question or task, the greater the overconfidence (Alba and Hutchinson 2000; Hoffrage 2004; O'Connor 1989). More specifically, studies show that people tend to overestimate their abilities, among other skills particularly relevant to the law, to detect changes in the visual field (*change blindness blindness*; Scholl et al. 2004), to have predicted past events (*hindsight bias*; Fischhoff 1975) and to determine whether an eyewitness is telling the truth (e.g., Kassin and Fong 1999).

People's overconfidence about their beliefs poses a threat to both the judgmental accuracy and good process ideals of legal decision making. The more firmly that people hold onto inaccurate beliefs (Alba and Hutchinson 2000), the more likely they are to reach incorrect decisions. And the more overconfident they are, the more *closed minded* they become (Kruglanski 2004) – the less willing they are to seek out and properly consider differing points of view.[7]

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[6] The phrase *positive illusions*, for instance, describes people's unrealistic but sometimes beneficial optimism about potential health and other outcomes (Taylor and Brown 1988).

[7] Kruglanski (2004) offers a helpful framework for understanding the relationship between overconfidence and closed mindedness or *cognitive closure*. He explains that people are generally subject to competing cognitive motivations, the *need for closure* and the *need to avoid closure*. Forming beliefs and reaching judgments always involve a trade-off between, on the one hand, keeping an open mind, seeking out additional information, and entertaining other points of view (i.e., avoiding closure) and, on the other, stopping the information search, ceasing to consider alternative viewpoints, and concluding the cognitive task (i.e., seeking closure). Both are essential to knowledge formation; each presents benefits and risks. Being overly confident leads to closed mindedness by reducing the perceived costs of premature closure, which include the possibility of being wrong ("fear of invalidity") and the potential for conflict with relevant decision making norms (such as the standard jury instruction to keep an open mind).