

# Visiocracy: On the Futures of the Fingerpost

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Perspicua vera non sunt probanda.

—Edward Coke<sup>1</sup>

Here is a recent study, carried out at the New York University (NYU) School of Law. During the first year of law school, the curriculum includes a course on the elements of lawyering. In addition to the substantive curriculum of contracts, property, civil procedure, criminal law, and administrative law, there is a compulsory course that deals with legal research and writing, case analysis, advocacy, negotiation, and trial. At the end of the first year, students must argue a case. The researchers divided the students randomly into two groups.<sup>2</sup> The first argued in an informal setting, a classroom or lecture theater that had been temporarily rearranged into a courtroom, with a judge in regular clothes presiding. The second group made their case in a formal courtroom, replete with columns, panels, Latin inscriptions, murals, portraiture, bench, bar, and thrones, before judges in robes.

The survey questioned the students as to the authority, legitimacy, and justice of their first case. Students studying for a doctorate in law, a second,

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1. “Perspicuous truths do not need to be proved” (Edward Coke, *The First Part of the Institutes of the Lawes of England: Or, A Commentarie upon Littleton, Not the Name of a Lawyer Only but of the Law Itselfe* (London, 1628), n. p.

2. See Oscar G. Chase and Jonathan Thong, “Judging Judges: The Effect of Courtroom Ceremony on Participant Evaluation of Process Fairness-Related Factors,” *Yale Journal of Law and the Humanities* 24 (Winter 2012): 221–46.

and sometimes a third higher degree—at the end of a year devoted to studying legal reason, the art of juridical analysis, the line, square, and compass of doctrine, precedent and rule—responded that justice was more likely in the second setting. The group that appeared in the formal court with the robes and regalia, the Latin and the other insignia of *maiestas* were significantly more likely to view the procedure as more legitimate, the judgment as more authoritative, and the judge as more learned in law than those who appeared in the makeshift informal auditoria. For all the didactic effort, disciplinary skill, and Socratic dexterity expended upon training in the substantive principles and core rules, the precedents and other sources of law—despite the maxim *quoad non ultra*, in its various forms, meaning that there is no beyond of law, that legal reason dictates decision—the students responded positively and affectively to the classical visual emblems, the ceremonial and architectural aspects of the grandeur and gravitas of legality. The young eager for law, *juventus cupida legum* as they were traditionally called, apprehended—with minimal training in visual advocacy and therefore little critical appreciation—that there was more to the theatre of justice than can be captured by reason and reduced to the page. I will argue—borrowing from Francis Bacon, one-time lord chancellor, the highest judge in the English legal system—that these students intuitively but improperly apprehended the fingerposts of law.

What did the students see in the robes and regalia, the Latin and the elevations, the ceremony and the insignia? Why did the apparent ornaments and accidents of judicial presence have an effect upon their perception of legal authority and their apprehension of the justice of judgment? Why is this outcome so surprisingly unsurprising? The answer lies in part, and I will not keep you waiting, in the absence of training in the visual and artistic dimensions of legality. The lawyer is explicitly told to judge with downcast eyes, to wear a blindfold as it were, which is to say as it appears, and to look inside and not outside, *intima non extima* in the classical sources, to find their advocacy of causes and their representations of the truths of law. Take even the example of Bartolus of Sassoferata, the first author of a legal treatise on insignia, arms, vexillology, and law. He is depicted, in a portrait dating to 1566, as an emblematically monastic figure: a cowl on his head and eyes averted, not looking out but rather looking

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FIGURE 1. Bartolus da Sassoferato from Antoine Lafrèry, *Illustrum iureconsultorum imagines* (1566). Courtesy Rare Book Collection, Lillian Goldman Law Library, Yale Law School.

down, not seeing but turning his gaze away (fig. 1).<sup>3</sup> What this paradoxical portrait suggests, I will argue, is a juridical ambivalence towards vision and an air of dissimulation that surrounds the artistic and figurative dimensions of governance. The ceremonial, triumphal, and sartorial dimensions of law are generally assumed, taken somehow for granted, and thus over-

3. The portrait is in Antoine Lafréry, *Illustrum iureconsultorum imagines quae inveniri potuerunt ad vivam effigiem expressae* (Rome, 1566); Bartolo da Sassoferato, *De insigniis et armis* (1358), extant in various collections of heraldic works; and most recently in *A Grammar of Signs: Bartolo da Sassoferato's Tract on Insignia and Coats of Arms*, ed. Osvaldo Cavallar et al. (Berkeley, 1994).

looked or at best seen as something glimpsed, lateral to legal action, heterotopic moments that are all the more effective for being unnoticed, everyday aspects of the reliquary of institutional routines. These are not nothing. They are structures of the visible, so embedded as to be presupposed, so familiar that they are unrecognized, so forbidding that they turn the gaze away and are less observed than looked past or looked through. Their presence, their visual jurisdiction and impact has, therefore, to be cautiously and appropriately reconstructed from the early common law sources that established the reign of legal emblems and the modes of visual governance that became the visiocratic regime that we myopic modern lawyers inherit along with the libraries and collections, the rule books and statutes that provide the first appearances of the *arcana imperii*, the antique and continuing secrets of law.

### Fescues and Fingerposts

To address the juridical meaning of the visual requires, as obvious as this might seem, that we wrest our eyes from the text and look up and out. By this I mean in part that we need to return to different texts, to the early modern woodcuts of legal norms that the printing press made available in the form of *emblemata iuris*, emblem books of law.<sup>4</sup> Here we have available a code of legal images, the basic visual structures, the juridical imaginary in diverse images of sovereignty, justice, amity, reverence, lure, lust, and numerous further images of the particulars of law. More than that, wresting our eyes from the text means giving credence to images, becoming learned in the visual, and so proceeding, as the legal authors of the emblem books were wont to say, *ad apparentiam*, according to appearance, figuratively and not textually. We have, and here I will borrow from Georges Didi-Huberman, to open to the image, we have to let it breathe, and we have to insufflate ourselves to come anywhere close to the sense of the image, as opposed to reducing it to the *litera mortua* of text and law.<sup>5</sup>

Back then to old streaky Bacon himself. The fingerpost is from the *Novum organum* and is a translation (you know this well enough) of the Latin *instantias crucis* or presence of the cross.<sup>6</sup> Already the plot thickens.

4. I will provide relevant sources as I progress rather than unnecessarily swamping the reader with scholarship here. Suffice it to say that the best recent study of the juridical bases of the *emblemata* is Valérie Hayaert, "Mens emblematica" et humanisme juridique: *Le Cas du "Pegma cum narrationibus philosophicis" de Pierre Coustau (1555)* (Geneva, 2008).

5. "The expression consecrated for this operation whereby the images become visible is *aperire imagines*, to open the images" (Georges Didi-Huberman, *L'Image ouverte: Motifs de l'incarnation dans les arts visuels* [Paris, 2007], p. 42).

6. See Francis Bacon, *The New Organon*, ed. Fulton Anderson (1620; Indianapolis, 1960), p. 258.

Bacon's book aims to return scientific method to "simple sensuous perception," but he recognizes simultaneously that what is perceived is far from simple and in fact highly indexical.<sup>7</sup> What, he asks, at the very beginning of the treatise, if we wanted to move a vast obelisk so as to mark some novel triumph?<sup>8</sup> It cannot be done unaided; there has to be a method to our madness, a machinery to motivate the movement of the obelisk to its new place and role as a sign of signs. The obelisk itself, and Bacon undoubtedly was aware of this, was a primary symbol of governance, frequently used as the frontispiece for iconological works, embellished with hieroglyphic marks, and representative of things *aegyptian* and communicative by means of visual signs. So the apprehension of the senses that Bacon begins with may be simple in an internal sense, as method, but is complex and indexical in external terms of the objects perceived and apprehended. I could say this in many other ways and by means of further examples, but we have already the instance of the fingerpost, the chironomic example of the fescue, the pointing stick embedded in nature, sculpted in culture, that the studious and attentive will want to observe and apprehend.

To cut to the chase, the sign of the cross, the fingerpost, is termed a prerogative instance. Returning to the Latin text, the connotations are pretty obvious because *praerogativa* means to speak (*rogare*) before (*prae*), to be first, to take precedence, and by tropological extension it references an omen, a privilege, an obelisk. The prerogative is in substantive terms a theological-legal concept that is most familiar in the form of sovereign power as an executive prerogative and for Bacon as a royal prerogative. The king had a power of lawmaking that was coeval with his dignity, that was part of regality and its *imperium*, and an aspect of *maiestas*. Prerogative power is inherent and summary, incontestable, and absolute, such that the early texts, contemporary with Bacon, define it as the power of majesty that is *sacra sacrorum*,<sup>9</sup> the Holy of Holies in our sorry vernacular. So the fingerpost is an instance of transmission, no ordinary sign but rather an omen and portent, and, as formulated by the lawyer Edward Whitehouse in the treatise *Fortescutus illustratus*, it is a sign of the cross, *cruce signati* and so, as he elaborates it, a mark of faith. In turn, just to finish the sentence, "faith . . . is the evidence of things not seen (and in) seeing him that is invisible" we also see his precepts and commands—

7. *Ibid.*, p. 34.

8. See Bacon, "Praefatio," *Novum organum sive indicia vera de interpretatione naturae* (London, 1620), n. p.

9. See, for example, John Cowell, *The Interpreter* (Cambridge, 1610), s. v. "praerogativa."

*praeceptum et mandatum.*<sup>10</sup> I could go on: the prerogative instance is cognate with—in the *conusance* of the proper oracles of the rites and mysteries of law, which are in their turn to be imparted by the *praesidentes ecclesiae*—the guardians and “watch-men” who oversee their, which is to say our, spirituality.

The fingerpost thus does not refer to any ordinary finger but rather to a prerogative digit, and, as Seneca put it, “*O digitum multum significantem*,” the finger is full of meaning.<sup>11</sup> The moving finger, as we know, “writes and having Writ, / Moves on; nor all thy piety nor wit / Shall lure it back to cancel half a line, / Nor all thy tears wash out a word of it.” The fingerpost is the sign of that writ, the passage of law that is marked and signaled on. So, remaining with the finger, with indigation and its chironomic significance we can juxtapose to the metaphor of the fingerpost the manual obelisk, the dignified digit, and an early image of the personal transmission of law in a mid-sixteenth-century illustrated version of the *Corpus iuris civilis* itself (fig. 2).<sup>12</sup> Here our Lord (*domini nostri*) and lawgiver is figured exercising his prerogative power, literally handing the law to his waiting subjects to transcribe. The distinction in the image is between *ius dare* and *ius scribendi*, he that gives the law and those who must write, which is to say transcribe, the words of the commandment. They are to learn the law by listening and writing, *audiendo, scribendo, et legendo*. The one above, in the burning bush, in the cloud, or here seated on the imperial throne as the delegate and vicarious of divine majesty passes on a law. Justinian sits, the text is explicit, in the place of Christ; he is most holy (*sacratissimi*), and, by extension of confused genitives, he is also perpetual and august. It is he, the sovereign, who pries open and relays pure law—*iuris enucleati*—collected from all the old texts and thus both embodies fashions and here inaugurates the novel code. So much for the text. It is not unhelpful, but look at the image. Justinian is seated on a throne, itself on a pedestal, with the rod of office in his right hand, a crown on his head, and his left hand out-

10. Edward Whitehouse, *Fortescutus illustratus, or a Commentary on That Nervous Treatise “De laudibus legum angliae”* (London, 1663), p. 126; hereafter abbreviated *F*.

11. I am citing Seneca here, quoted in the wonderful Gilbert Austin, *Chironomia or a Treatise on Rhetorical Delivery* (London, 1806), p. 326. On the hieroglyphic significance of the finger, which is not unimportant for Bacon, see Orus Apolo de Aegypte, *De la signification des notes Hieroglyphiques des Aegyptiens, cest à dire des figures par lesquelles ilz escripoient leurs mystères secrèt, and les choses saintes and divines* (Paris, 1543), p. 98.

12. This is from the copiously illustrated Senetton edition of Justinian, *Corpus iuris civilis. Digestum vetus. D. Iustiniani imp. Aug. Digestorum, sue Pandectarum, enucleatum ius omne vetus comparhendentium, tomus primus ad Florentinarum, 5 vols.* (Lyon, 1548–1550), codex title 1, catalogue no. 21511, Municipal Library of Lyon.

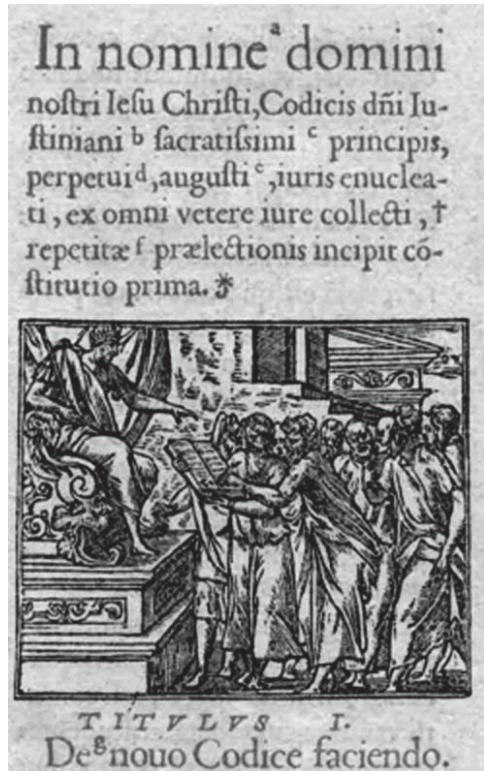


FIGURE 2. Emblem from Justinian, *Corpus iuris civilis*.

stretched towards the chorus of scribes who are writing down the dictate of the sovereign, the word of the law.

What of the fingers of the left hand? According to Quintilian, no gestures can be made with the left hand, but here—because it is the sovereign, because time has moved on—Justinian is shown leaning forward and down, left hand with thumb and index finger open and apart over the book, the code, that is being inscribed. The canon of the fingers (*dactylogia* or *indigitatio*) indicates that this gesture signifies protection and exordium. The hand extended and covering the audience is the signal of bringing them under the governance and safety of law, while the specific indigation, the claw made of the thumb and index finger marks the exordium, the beginning of the laws as given by the emperor and through him by God. The throne with its billowing backdrop screen signals the division of the human and the divine as is mirrored in the separation of the sovereign from his subjects. The columns and portals in the background

lend a political significance to the image of lawgiving. These are the *fora* in which the law will be enacted.

Note that the sovereign does not wear shoes and that the scholars inscribing are depicted with togas that seem almost to become wings, the mark of angels, as they stretch forward to write the law. The fingerpost as here portrayed is of interest primarily because it makes so evident that the finger is not ours but his, not here but elsewhere. The digit that writes is not that of the hand that inscribes; indeed the law is *acheiropoietic*, without intervention of hands precisely because it is nature and divinity, apprehended through time immemorial, that historically have sent the writ that the lawyers have merely tabled and entered into the rolls. The thumb and index finger curved and moving forward are generally a sign commanding silence, and in the classical gestural rhetoric expounded by Quintilian this connotes exordium and also legislation. In the magnificent later text of John Bulwer's this is canon 6 in his *Indigitation*, and this gesture both opens and urges, but it is equally and obviously close to *silentium postulo* (I demand silence). There are further intimations of benediction and of parsimony, the latter suggesting the limitations that the immortals place upon human wisdom and legal knowledge (fig. 3).<sup>13</sup>

Cut to the present, and the question is that of what the youthful law students recognize in the drape and dress, the art and artifice of law's presence in the courtroom. What is it that is here fingerposted? The clue lies in *achieropoiesis* and in *silentium*, in the handless and the silent character of legality. What is recognized is something more, another scene. The fingerpost recommends an opening to sensuous apprehension. The ceremonial dimensions of legal trial are markers of a greater presence, a tradition and authority that is captured well, again by the veritably smoky Bacon, in his insistence, despite speaking very good English himself, upon writing his law books in Latin, for the majesty and authority of it.<sup>14</sup> More than that, the signaling of an elsewhere, another scene (in the argot of the Vienna brigade), is the marker of the paradox of legality. Law's authority depends upon its visibility, and yet the source of law is an absent sovereign: the Trinity of the divinity, and by delegation from that impossible unity, the first sovereign, as also the pattern of custom and precedent from time

13. See John Bulwer, "Chirologia: or the Natural Language of the Hand" and "Chironomia: or the Art of Manual Rhetoric" (London, 1644), p. 202.

14. A point made at length in the preface to Bacon, "The Preface," *The Elements of the Common Lawes of England* (London, 1630): "The rules themselves I have put in Latine, . . . which language I chose as the briefest to contrive the rules compendiously, the aptest for memory, and of the greatest Authoritie and Majesty to bee avouched and alledged in argument" (n. p.).

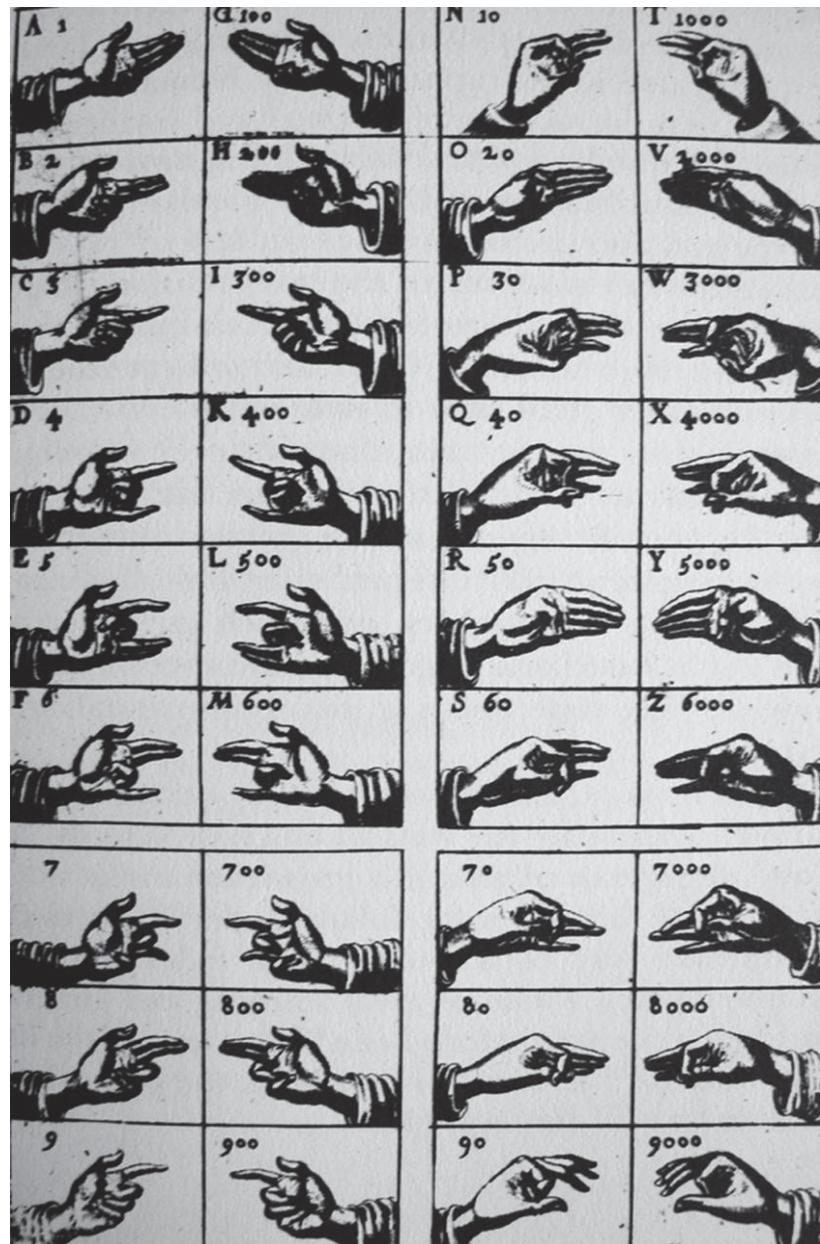


FIGURE 3. From Bulwer, *Chironomia* (1644), p. 91. Photo Peter Goodrich.

immemorial. The source is never present except as the fingerpost, what Cicero terms the signature of things. The lawyer John Doderidge puts it as follows: "Law Arguments are deduced more from authority than reason, for the English Lawyer in arguments requireth most the strength of Cases apt to the purpose, and Presidents of former times, then discourse of reason."<sup>15</sup>

For Bacon too the authority of antiquity, of what the theologians termed "indefinite time," of the classical and lost Greek authors, of the Pythagorean formulae, the Aegyptian hieroglyphs, the symbols that escape the confusion of Babel precisely by virtue of being visible to all, as fingerposts, are what will mark the way. The spectral and visible coheres the subtextual and juridical. Leaving aside the reference in Doderidge to presidents—the *praesidentes ecclesiae*—the oracular emanations of the past, we can address briefly what this legal fatalism depends upon. The initial point, as theologically obvious as it is materially opaque, is that what is seen is significant only by virtue of being seen through, by virtue of what is not there. It is a Pauline principle, but we can use Edward Coke, who usefully begins his *Institutes* by suggesting that the reader visit the tomb of Thomas Littleton, the lawyer whose work Coke is commenting upon, glossing and interpolating, in the first part of his multivolume code of English common law. No matter that it is in French, that sad tincture of Normanism, our glossator sees it as Anglican, and who are we to stop him now? He tells us to look at the portrait, stare long and hard at the effigy—"the Statue and portraiture"—and the longer and more diligently the visitor "beholds in the visial line, and well observes him, the more shall he justly admire the judgment of our Author, and increase his own."<sup>16</sup> Behind the text, beyond the tome, there is the tomb, and kept long enough in the "visial" line the portrait can give way to the "child and figure" of the author, the face of the law itself.<sup>17</sup>

There is another clue. The fescue, which is Whitehouse's version of the fingerpost in his commentary on Fortescue, has a primary meaning of straw or "mote in the eye." This suggests, as much as anything else, an internal obstruction to vision, the outside making its presence felt on the surface of the inside, the retina, the *via regia* to the soul. The fingerpost in all our instances is after all a mode of activating the body, of giving the lawyers their marching orders, their visial line, the figures that will take them forward. Why then the need for silent pictures, for *muta eloquentia*,

15. John Doderidge, *The English Lawyer* (London, 1631), pp. 55–56.

16. Coke, "Preface," *The First Part of the Institutes of the Lawes of England: Or a Commentarie upon Littleton* (London, 1632), n. p.

17. *Ibid.*

the art of gesture, fingerpost and signs? What does the visual line convey? The answer lies in the silence, in the visual and paradoxical spectacle of things unseen. The political emblematicist Bornitius can provide an instance in his emblem of custom as law (fig. 4). The armless *generoso*, the gentleman inscribing the law with his feet, is spelling out the message of tradition, the recurring signs that nature loves to hide, the footprint—*impresa*—of the father. Laws are made by “men excited by God” is how Whitehouse puts it, and then he continues to stipulate that “all the learning of men and ages, are but feskues in the hands of God” (F, p. 124). The correspondence of law to its principal cause is thus precisely a posting, the carriage of a letter with all of the authority of him who sent it. That the legal scribe in Bornitius’s emblem has no arms and writes with his feet is precisely an image of such posting, a sesquipedalian law, a footpath marked by the sign of the cross, an instance of the fingerpost.

### Maxims and Mysteries of Law

The fingerpost that our students recognized transpires ironically to end up by indicating a law of the feet. Not any feet, but visible and repeated footpaths, the manifest marks of the ambulation of the fathers, the elders, the *praesidentes*. These, just to follow the image, are described as effluxions and as *imprimere effigiem*, the face of the impression of time, *iure receptum*, the gubernative path that all have seen to be so in their time or in its proper language, *quoad semper sic viderunt tempore suo* (see F, p. 20). The fingerpost corresponds thus to the signs of law in nature, the *impresa*, the vestiges that lawyers collect, inscribe, and table as the devises of legality prior to the letter and the confusion of language. They make the visual a *topos* and the emblem an image of the form of law. Language divides, but vision unites. The visual is in classical emblematic terms universal, undivided, free of the chaos that Babel inflicted upon language. The visual is the primary means and medium for transmitting law because, like law, it touches all—*quod omnes tangit* in a maxim that Bracton uses and that can be seen most directly in an emblem *ad omnia* from 1642 (fig. 5).<sup>18</sup> Law is promulgated as *regulae ad omnes*, behind which can be divined without much difficulty Barthélemy Chasseneuz’s *honor tangit omnes* from his *Catalogus gloriae mundi* of 1572.<sup>19</sup> Honor, dignity, the spectacular insignia of illustriousness, of visible priority, of precedence and place, title and triumph are there to be seen. They are the notes of dignity, the *notitia dignitatum* that derive from the classical Roman *imago*, the mask of the noble ancestor.

18. *Ad omnia*, in Diego de Saavedra Fajardo, *Empresas politicas* (Milan, 1642), p. 36.

19. See Barthélemy Chasseneuz, *Catalogus gloriae mundi* (Lyons, 1572), fol. iv column 1.



FIGURE 4. From Jacob Bornitz, *Emblematum ethico-politicorum* (Heidelberg, 1664), p. 45. Courtesy of Princeton University Library.



FIGURE 5. *Ad omnia*. Courtesy of the Virtual Library of Bibliographic Heritage.

Stay with the theme of universality, this drive towards all, the monotheistic impulse behind the images of the dignity and majesty of an always already instituted law. The visial line is the line of effectivity because it is the accessible form of law and the avenue *ad omnes*, to the spirit, which in Christian theology we all share. Here then we encounter the epistemology of the fingerpost comingled with its ontology. The emblems of law, the images and *impresa* that constitute the visible marks of legality in the custom and use of time-honored practice, are the source of the maxims and other *universalia* of law. They are the objects, the bedrocks of the visial lines that Coke promulgated as the appropriate method of legal reverence. The Latin maxims, let me be clear, are expressly “the depths, and restorative quintessences of Law; that from whence all inferior things have their invigoration and spiriting.” They are productive of “many excellent illations,” and they are maxims, *quia maximus est*, because they have the greatest authority and dignity of all (F, p. 121). Whitehouse, my source here, is very explicit, though he does not differ from others on this, that there is “no pre-existency to be imagined to them,” meaning nothing except the eternal source of all law is prior to the maxim (F, p. 122). That is his footprint and vestige, his emanation, the *ultra quod non*, the point beyond which no human imagining can go, the blinding light: “Let then Principles, remain Mysteries, not to be dived into, but adored, because of their coparcenry with Divinity” (F, p. 122). The maxims are mysteries, the dogmas of law, which Legendre defines explicitly as visions, as iconic images of legality. Chasseneuz can provide a clue in his emblem of the hierarchy of forms of knowledge that starts, as we should recognize well enough today, with *ideologia*—which translates as doctrine—in pride of place, dexter chief in the heraldic terminology (fig. 6).<sup>20</sup>

After doctrine comes canon law (*scientia canonica*) and then the science of law (*scientia legalis*), top right in the eyes of the viewer. It is law, incidentally, that signs be apprehended and letters read from left to right, a view first articulated and legitimated by Bartolus de Saxoferrato in his treatise on signs from 1358. Such then is the order of knowing, in which each of the top three figures with their emblems—the cross, the miter, the scales, and the sword—represent the dissemination of universal truths. And just to pursue this, the emblematic axis, taken from the heraldic escutcheon, reads diagonally, so that *ideologia* is linked to astronomy and legal science to music. They represent respectively the motion of heavenly bodies and the rhythm and melody of *nomos*. There is here an important valuation of signs, of exterior images, of universal motives, and causes

20. See Chasseneuz, *Catalogus gloriae mundi*, p. 183.



FIGURE 6. Barthélemy Chasseneuz, *Catalogus gloriae mundi* (1572), p. 183. Photo: Peter Goodrich.

as expressions of the being of the divine in the tangible and human realm of the observable and at the same time a dissipation of the juridical into the ineffable, an evaporation, as Walter Benjamin put it, of ideas into images. It is not enough to be a mere “eye servant”; the interior of vision, the astral and the infinite have also to be scanned and followed (F, p. 129). Such is the message of the maxim and of the image that the emblem places conjointly with the maxim. Body and soul, in the emblem, represent both the appearance and the vanishing point of legality. The authority and the legitimacy conveyed by the ceremonial

and ritualistic forms of law convey the mutation from known to unknown, visible to invisible, rational to mysterious.

The mystery is that of the intersection of the invisible and the visible that gets formulated variously as sacrifice, initiation, sacrament, liturgy, and in legal garb as prerogative and principle. Giorgio Agamben has addressed this point at length in *The Kingdom and the Glory* and *Opus Dei*.<sup>21</sup> The classical legal maxim was *symbolum, id est quod figurat*, meaning the symbol is what has effects, or, literally, it is what it figures. In Agamben's reconstruction of the power of the liturgy, we also find dogma, a vision of transmission and of hierarchy at the root of the mystery. The liturgy is a practice, and it is one that aims to galvanize collective action, the chorus, the choir, the faithful; the law of faith establishes the law of prayer—*lex credenda legem statuat supplicandi*. What above all characterizes the mystery is the manifestation of the invisible and, citing the theologian of mystery, Odo Casel, "at root the 'mystery' designates a *praxis* . . . gestures and acts by means of which divine action is realized in time and in the world for the salvation of men."<sup>22</sup> *Scientia iuris* is proximate to *ideologia* in Chasse-neuz's emblem, and it is linked to music, the melody of the infinite in a number of emblematic figures, and it is this proximity, this lineage and trajectory, that mystery invokes and conveys.

The key term for Agamben is *effectus*, meaning not simply effect but effectivity, in the sense of accomplishment and execution. The mystery of the sacrament is that it expressly makes it *verba visibilia*, the enigma of the visible word, in the traditional language of the sacraments. In juristic terms there is a similar connotation associated with the third element in the classical trinity of persons, things, and actions. The *legis actio* was for early Roman lawyers explicitly defined by the procedure of the *sacramentum*. With its connotations of sacrifice and perpetuity and the mystery of the word, the procedure, in fact, involved giving up domestic animals as surety for trial. The *sacramentum* meant that what was said would be done, and the *Twelve Tables* legislated this in a formula that Giambattista Vico was fond of reciting: *uti lingua nuncupassit, ita ius esto*, what was said shall be done or, literally, is to be the unwritten law.<sup>23</sup> The word was the mystery, and the mystery was the word, a commonality between theological *logos* and the legal *sacramentum* that allows Agamben to analogize the liturgy

21. See Giorgio Agamben, *The Kingdom and the Glory: For a Theological Genealogy of Economy and Government*, trans. Lorenzo Chiesa and Matteo Mandarini (Stanford, Calif., 2011) and *Opus Dei: Archéologie de l'office* (Paris, 2012).

22. Agamben, *Opus Dei*, p. 53.

23. See Giambattista Vico, *The New Science*, trans. David Marsh (1725; New York, 1999), p. 388, for example.

and the trial. What is interesting about this proximity of law to doctrine, of legal action to liturgical mystery, however, is the mixed conusance, the alternate jurisdiction that the mystery implies. Within the Anglican tradition, not that it differs much from the civilian, the sovereign was head of the church and according to laws dating back to King Edward I, the law-giver, was "Lord of the People, and ruler and governor (*regat et gubernet*) over all the Holy Church."<sup>24</sup> Here the mystery has a political and juridical significance suggesting most immediately that what the visible hides, what the majesty and decorum of law elliptically suggests are quite literally an *aereall* jurisdiction and "ghostly power" that give law its vocation and destiny.<sup>25</sup>

We are familiar enough, thanks to Ernst Kantorowicz, with the notion of the *corpus mysticum* of state, and, indeed, there are any number of legal emblems that portray such a secret and mysterious perpetuity (fig. 7). Death liberates and propagates, which secret of governance finds expression in the specular jurisdiction of the law. The crown vanishes but the kingdom remains; the unhappy and forbidding looking skeleton of death with its scythe suggests that the angel of death would rather that it were otherwise. These in short are not easy things to comprehend, let alone to internalize, and, hence, the *homines sacer*, in Barthélémy Aneau's description, the initiate and sacred men of law (*sacris initiate*), in Whitehouse's diction, are expressly keepers of the mysteries and rites, guardians of the secrets of the invisible, which is the essential meaning of the ghostly power that lawyers as *speculators* (according to Roger Coke) are expected to exercise.<sup>26</sup> This is not to say that the practice of law is coextensive with ecclesiastical governance but rather that the mystery and secret of sovereignty relates to ghostly powers that dictate that legitimacy derives from a right to rule *in ordine ad bonum spirituale*.

The spiritual object of rule is not the body but the ghost, a factor represented in the emblem of the triumph of the imperial crown over death in the circle, the *annulum* or ring, that indicates eternity and surrounds the floating image of perpetual sovereignty with the knotted clouds of death, a ruff for the queen, and the circle of light for the divinity of living on. The theme harks back to St. Augustine, who declared *ars artium est regimen animarum*, and the secular law could hardly resist that incitement to govern the furthest reaches of existence, the most ethereal and vanishing of parts, the imagined and angelic elements, the virtual and moral dimen-

24. Quoted in John Godolphin, *Reportorium canonicum, or An Abridgment of the Ecclesiastical Laws of This Realm Consistent with the Temporal* (London, 1678), p. 97.

25. Roger Coke, *Justice Vindicated* (London, 1660), p. 43.

26. See *ibid.*, p. 366.



FIGURE 7. Honras, *Libros de Honras* (Madrid, 1603).

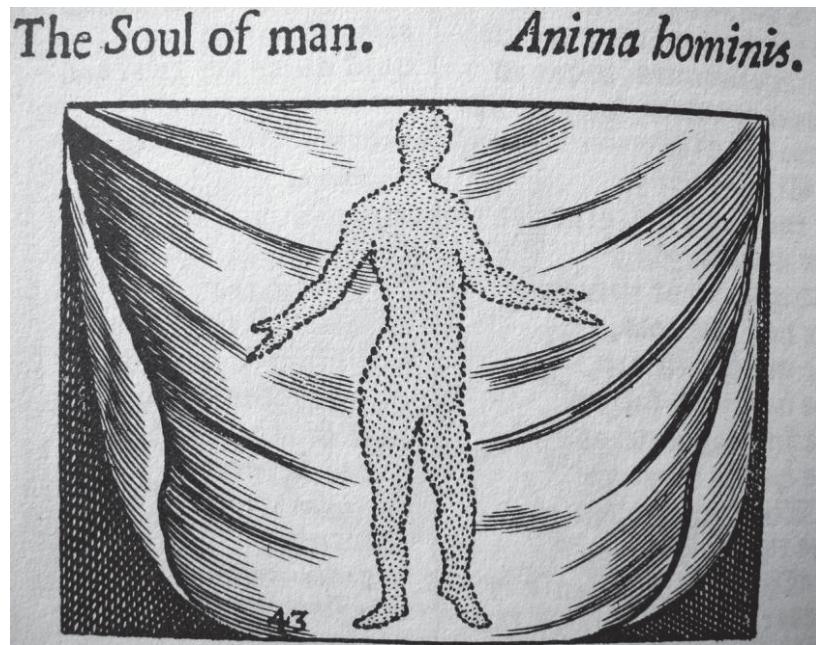


FIGURE 8. Johan Amos Comenius, *Orbis sensualium pictus* (1658; London, 1672), p. 88.  
Photo: Peter Goodrich.

sions. A later work, the famous Latin schoolbook of Johan Amos Comenius, *Orbis sensualium pictus*, can provide a hint, a glimpse, a pixelated image of what is meant by *regimen animarum et correctionem morum*, namely, care of the soul (fig. 8).<sup>27</sup> Caught on a sheet, the soul is the specter of the person, quite literally the nonbeing of the subject. The image is thus an umbrageous one, a representation of nonpresence, in the classical form of the shadow and outline, a ghost, which, if addressed without knowledge, without the rectitude (*rectitude*, like *corrector*, stems from *rector*) will leave the ruler with no more than the appearance, a handful of cloud. Faith alone makes vision of the invisible and regulation of the unseen possible. Doctrine—*ideologia*—thus explicitly teaches an architectonical science and the principles of salvation, and whether or not the sovereign believes, the jurisdiction of the ghostly realm persists, not least in the imaginary of the subject. Here then we encounter the domain of conscience, of knowing with law, in Roger Coke's definition, and such a knowledge is intrinsic to the role of governor: "and that Kings did become nursing fathers, and Queens nursing mothers . . . and that to him only, by all divine and humane laws, belongs the care and preservation of all subjects, none excepted, in all causes."<sup>28</sup> These, *flores quae faciunt coronam*, are the flowers that make the crown; they are the choicest jewels and the longest of reach.

### Justice Visible

In defining the sovereign as a nursing parent concerned in the end with the spiritual good and moral welfare of his subjects, Coke centers law upon an invisible power. Law is an avenue to something more, not an end but a means to faith, which is expressly "the evidence of things not seen, and the substance of things hoped for" (F, p. 126).<sup>29</sup> Jurisdiction, *ius dicere*, it transpires, is less important than *ius dare et docere*. If we return then to the paradox of the visual, the question of what it is that the law of ceremony and the regalia of trial are supposed to provide, it is necessary to address the specific theology of the *regimen animarum* and, in particular, the access to justice and wisdom or, we would say, the truth that it promises.

Whitehouse defines justice as the garment of kings. The nursing function is that of justice, and justice is the clothing, the regalia of judging. He then lists "Honour, Law and Justice" as the trinity of virtues, even if justice also contains them all (F, p. 126). There are two stages to the argument.

27. See Johan Amos Comenius, *Orbis sensualium pictus* (1658; London, 1672), p. 88.

28. Coke, *Justice Vindicated*, p. 43.

29. The source is most likely William Perkins, *A Discourse of Conscience* (Netherlands, 1608), p. 11, where he defines faith as "perswasion, whereby we beleeve things that are not."

First, there is the dignity of place, which is visible, spectacular even, and marked by the political notes and indicia of office. The order of honor is the mode of production of the institutions of law; it is for Chasseneuz the vestige of the fathers, and it is visible in all of the signs that we recognize, however dimly, in entering public spaces and most especially the ornate and closely guarded spheres of law. The second step in the argument is that while justice may be visible, what is visible is simply the marker, the fescue, of the invisible, an imaginary unseen. According to the Gospel of St. Mark, the mystery of the kingdom is enigmatic. All these things are done in parables; that seeing they may see and not perceive—*ut videntes videant et non videant*. The parable of the visible is an enigma and riddle to be seen through by means of faith, and this requires *speculatores*, spiritual watchers, correctors, and the regimen of the soul that they administrate.

John Fortescue had already indicated that the judges were priests, in the Roman tradition of *sacerdotes*, who could read in the law not simply the words but the force and power (*vim ac potestatem*) of their meaning.<sup>30</sup> For the later common lawyers, the same principle of *anima legis*, of an indexical and hidden truth, defines the jurist and, most emblematically, the judge as the bearer of truth. They are Men of Truth, in Whitehouse's definition, and "through the glass of the law" the sovereign is able to see "the portraictures" of law's mysteries, *graviora legis* being left safely in their hands; "judges set in their proper orbs" are the judges in their places of judicature, as delegates of the higher power, and indirectly as *haereditarii Christi Apostoli* (F, pp. 134, 136, 128). What is significant, because the genealogy and especially the philology can become tedious, is that in looking at law, in appearing before the *court* in its glory, the student sees not law but justice, not rule but principle, not force but flowers, in the garments of justice. Justice is a matter of faith, of belief in what is not and has no being, according to William Perkins, and so a matter of parabolic appearances and of the enigmatic signs that form the secrets of government.

Remaining with the visibility of justice, it is something that can be recognized in a dual form in those honorable and dignified, illustrious and elderly judges who sit in the seat of judgment. They are gods to men, according to Whitehouse, and they act *sub gravitates purpura*, according to the weight of their robes, of their royal purple, and their purple pens. They start their day *ad sacra* and then move *ad jura* (see F, p. 150). And this can be seen in their station, their surroundings, and their dress. They carry the "Emblems of [their] Proficiency" literally in their habit, meaning their

30. See John Fortescue, *De laudibus legum angliae* (London, 1568), esp. chap. 8.

dress (F, p. 137). The enigmas of law are visible in the decorum and regalia of court and judgment; the images surrounding the judge and the judgment are so many *icunculae*, little icons according to one source, that have to be learned, appreciated, and seen through: "a harmless trepanning to study of the law" (F, p. 143).<sup>31</sup>

Staying with the *icunculae* is to remain in the order of the visible, the *iconomus* of ecclesiastical law that underlies and directs the *oeconomus* of quotidian administration and is glimpsed in the gravity of the emblems of legality. So finally, in recognizing legitimacy and authority in the form of law, in its visible exterior, the student, the subject of law, sees the possibility of justice, the extant quality of faith in the inherited offices, the precedents and traditions, the honor and dignity of law. Which is surprising and unsurprising at the same time. A last Latinism before addressing some examples, a gloriously obscure text, Thomas Pierce's *A Vindication of the King's Sovereign Rights*, and then, just so you have it all, because book titles have really declined in length and illustriousness in our unlettered times, *Quoad regimen animarum, et correctionem morum* of 1683.<sup>32</sup> Thomas Pierce uses a late Latin term, much to the point in our novel digital era, *virtualiter*, in discussing the power of royal delegates. What they had *virtualiter*, they had as of right, by originary donation, as a ghostly power and spiritual good. What exists *virtualiter* exists symbolically and atemporally; it is inheritance; it is the visual line that can be perceived if the emblem, the judge, is looked at long enough. The virtual, with its dubious philological roots in *vis*, meaning power, and in *virtus*, meaning angel, translates as *aereall*, and vanishing, as in *sanctae virtualis*, the sign of the cross made in air. Again the image gives way rapidly to the virtual entity, the invisible truth that it signifies.

To see justice, to perceive faith, is to recognize emblems as archetypes, images as imprints, faces as masks, and purple as power. The virtual is precisely what lives on as structure, and Didi-Huberman can help us here in his extrapolation from Aby Warburg's theory of aesthetic continuance: "that which survives in a culture is that which is most repressed, the most obscure, the most distant and stubborn aspects of that culture. In one sense the most dead, because the most buried and so most ghostly; and equally it is the most living, because the most unstable, the closest and the most driven."<sup>33</sup> It is an argument that in fact goes back to Andrea de Jorio's

31. The concept of *icunculae*, of little icons, is taken from Thomas Philipot, *A Brief Historical Discourse of the Original and Growth of Heraldry* (London, 1672), p. 7.

32. See Thomas Pierce, *A Vindication of the King's Sovereign Rights* (London, 1683), p. 141.

33. Didi-Huberman, *L'Image survivante: Histoire de l'art et temps des fantômes selon Aby Warburg* (Paris, 2002), p. 154.

theory of the immutability of hand gestures, a version of Quintilian's *lex gestus*, but we can apply it as easily to law.<sup>34</sup> There are archetypes of virtue, condensations of affect, that are seen without being seen, imagined without being present, that dictate without being heard. And for an example, as brilliantly obvious as it is literally obscure, see the castle of justice from a 1521 text by Guillaume Rouille (fig. 9).<sup>35</sup>

What maxim, what Latin, what superior truth and law does the *turris iustitiae* bring to the interior eye? First, it is an image of justice, though not the usual and equally misunderstood depiction of sword, scales, and blind-fold. Here is the emblem of *salus populi suprema lex esto*: the safety of the people is to be the end of law. Starting from the foundation stone of true faith, progressing up the stairs of hope, to the portals of legal reason and fortitude, in the shadow of silence and study, justice as expressed in the banners of the turrets is a three letter word, *pax*, peace. The greatest good, *maximum bonorum exteriorum*, may be signaled by the outside, but the interior is hidden by closed doors and unyielding stones. It is after all a fortified structure, a sovereign site, and significant of the long history of common law protection of the home as the inviolable fortress of the subject. Such protection, so justice requires, comes *virtualiter* with every home.

### Megalographs, Structures, and Other Virtual Conclusions

There is another meaning to *virtualiter*, one that extends its choral and angelic force, and that is simply its more modern and effective meaning of virtue. I will play with it. Virtue is visible in emblematic forms that signal established truths, precedence as hierarchy, and the dignity of establishment. The visual is in this sense the archive—the treasure chest, the fortress, the structure and law (*archa*)—of prior forms. The visual as emblematic structuration, as *via regia* to the *regimen animarum*, takes hold of the subject and is far more effective than mere words. Not that words are ineffective. The Latin, the maxim, the verbal majesty of address and obedience are significant enough; they clearly announce that the auditor who is untrained, *non peritus*, not yet an initiate, should keep out. But there must also and perhaps paradoxically be modes of identification and attachment, of reverence and obedience, that also accrue to these signs, and it is here that the most external forms of the most interior of virtues are signaled by images, by the gravity of the purple, by the weight of law's presence and promise of justice.

34. See Andrea de Jorio, *Gesture in Naples and Gesture in Classical Antiquity*, ed. Adam Kendon (1832; Bloomington, Ind., 2000).

35. See Guillaume le Rouille, *Justicie atque iniusticie* (Paris, 1520), fol. iv.

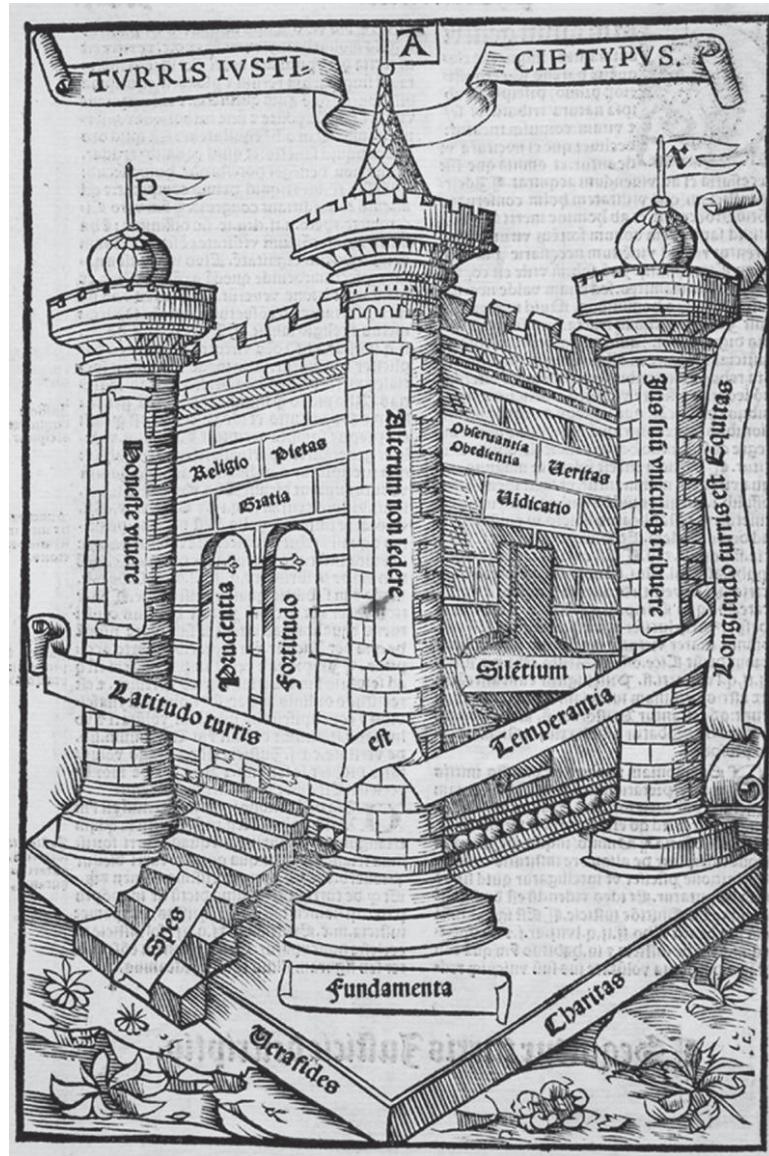


FIGURE 9. Guillaume Rouille, *Justicie atque iniusticie* (Paris, 1520), fol. iv. Courtesy Rare Book Collection, Lillian Goldman Law Library, Yale Law School.

Juristic images, the emblems of the fingerpost, the fescues and other *icunculae* are no ordinary digital dross; they are far from the visual detritus that we associate with the internet, with film and television, the tablet, the iPhone, the iPad, the moveable console, the Android, a car's computer screen, and all the other new media that now reign. But they also coexist with them and increasingly share the medium. It is precisely in the visual dimension of digital media, in the facility with which it engages the *contentment of sight*, that the visiocratic regime continues and propagates. The visual structures, predicated upon the emblems of sovereignty, justice, judgment, rule, and precedence, upon the visible contours of the soul and the practices that correct it, are there moments through which law is passed on most accessibly and with the greatest doctrinal detail. Persons, things, and actions are delineated and promulgated, and these missives, these envelopes, are so familiar as to be overlooked, so transparent as to be misrecognized. There is little that changes in the signaling of force and power, whether by arms or by laws, two versions—two decorations in the classical description—of the same structure.

My argument is that the emblematic images lurk unnoticed behind their reproductions in the modern and ultramodern image archive that circulates to degree Xerox in all the PDFs (perfumed dispersal fuses) and twists and tweets, brochures and announcements, publicity drives and public relations exercises that characterize even the conservative dominion of universities and their law schools. That indeed will be my example, the project to hand, the law school as a virtual visibility. First instance, the modern art of the legal academy, and what better emblem than that of the portrait of the deans. They line the walls of the most hallowed of spaces, the moot court in Stanford University, the lecture lounge at NYU, the corridors and stairwells, classrooms and lounges at older schools where deans and eminent professors have died in sufficient number to outgrow the initially designated wall spaces. I have made a study—visited numerous law schools, gone back to them, changed my mind, taken further surreptitious photographs, ripped images—to study in solitude. So the portrait of the dean will vary superficially with the era of composition, but mainly it will be passed by without comment, known but forgotten, present but overlooked and unremarked. I have classified these megalographic images according to apparent type, but I will not reproduce such reams of scholarship here. Take one example, the most famous law school dean of contemporary US legal academic history: the man whose decanal practices changed the culture and catapulted his law school, New York University, with which we started, from a good commuter school, ranked somewhere in the thirties, second tier, to number four, five, or six. An incredible feat;

a historic tenure; a success of theological proportions, and hence his name, Monsieur Sexton, warden and keeper of the secrets of the church (fig. 10).

Deconstruct the image a little. Standing at the lectern in suit and tie, leaning forward, his right hand is raised and slightly cupped, finger grapes pointing upward and back. The hand beckons and so proffers the call of the pedagogue, but, in classical chiromancy, the gesture, number fifty-two in Bulwer's previously mentioned corollary of the speaking motions, as it happens, is *conscienter affirmo*, a pledge of faith, an invocation of the divinity and overall an affirmation of belief as witnessed by God. Below the lectern is a globe while to the decanal right is a curtained but open window through which can be glimpsed the *arc de triomphe*, Washington Square's own triumphal monument. Finally, on the lectern an open book, but as far as we can see the pages are white, the laws yet unwritten, ready for the taking, terra incognita. So what are the structures visible in this prominent portrait, what visual lines can be traced if we look at it long enough and so improve our judgment and understanding?

First, and most intriguingly, it is much less a portrait of a dean than the image of a sovereign. The restrictive markers of decanal office—desk, rod, robe, shelves of law books, black letter Gothic text, office accoutrements—are lacking. Instead our sovereign stands above a globe and thus, emblematically, takes the place of Hermes, the go-between who ferried the messages of the gods to the humans below. As the emblem from Gabriel Rollenhagen shows, the sovereign above the globe is ruled by the stars, by astronomy, and, if wise, he conforms the stars to his will (fig. 11).<sup>36</sup> A big project, a universal endeavor, which places this dean as an initiate, a "man of truth," a priest of law. And no blindfold on this sovereign; the open window offers a view out of the institution and into the world, while the curtains indicate the theater of the political. They are a regal red, a signal of gravitas, while beyond the panes is glimpsed the arch that marks George Washington's victory and bears itself the motto *exitus acta probat*—effectivity justifies the act. There is, in short, a world to be conquered, battles to be won, and triumphs to be acclaimed and celebrated. And then, with the proper motif of Gregorian global reform, there is a world to be remade, and this is the man, the dean, the dignity that will do it.

The image is interesting for being the precise opposite of Brandt's famous and inaugural image of a fool placing a blindfold on *Justitia* to indicate how petty cavils and pointless lawsuits adjudicated in ignorance of the

36. See Gabriel Rollenhagen, *Nucleus emblematum selectissimorum* (Cologne, 1611), p. 31. There is an English version of this emblem in George Whither, *A Collection of Emblemes Ancient and Moderne* (London, 1631).



FIGURE 10. Portrait of Dean John Sexton, NYU Law School, Greenberg Lounge.



FIGURE 11. Gabriel Rollenhagen, *Nucleus emblematum selectissimorum* (Cologne, 1611), p. 31. Photo: Peter Goodrich.

universal law blind the spirit of justice. Here the subject of the portrait is not sedentary but standing, leaning forward, disquisiting. Nor is he blindfolded but rather open-eyed—*oculo ad caelum manu ad clavum*, eyes to the heavens and key in hand, as the maxim goes. Most importantly, the globe that he will govern, as opposed to the orb below him, is visible through the window, accessible to him and to a universal project that is the essence of the Christian project, iterated and reiterated in the pontifical slogan, *reformatio totius orbis*, of the late twelfth century. The world is to be remade, and if such is the case then its basis must lie in the universal bond, *una sapientia*, as Cicero has it, expressed through the *numine deorum*, the signs of the gods, which rule and govern all things. This is the project expressed structurally as much as apparently in the portrait, and, by way of information, this has been, immediately or metaleptically, what the subject in question has done. He has catapulted from dean of the law school, to president of the GNU, the global network university, the multiportal, myriad campus, universal university (fig. 12).<sup>37</sup>

There are other examples, too numerous to canvas here, of megalographic portraits, grandiose inscriptions, statues, and monuments that I cannot here unleash. There is the portrait of Abraham Lincoln on the stairwell at Yale Law School; there is the white marble statue of Kent just outside the Langdell Law Library at Harvard; and then inside that library, portraits of Roger Coke and Bacon amongst other long dead luminaries who are somehow and curiously now emblems of a new world law school within a system that long ago denied their dependence upon the parochial English common law that those two dubious luminaries represent. Then there are the inscriptions of names, Langdell most prominent, on the buildings in the law school quad—monumental names that I could go on about. I will move, however, and against my better nature and stronger inclinations, to a photo portrait more typical of this media-swamped epoch. On an NYU law school magazine for autumn (note, not fall) 2005, there is an image on the front cover titled “Dworkin on Dworkin” (fig. 13).

The title of the article on Dworkin on Dworkin is “The Transcendent Lawyer,” but let me stick with the images. The front cover shows Dworkin surrounded by nature: Moses emerging from the rushes, the jurist in luxuriant foliage. Here the legal philosopher is visibly in nature, seated amongst the signs of the oldest of all laws, the *lex terrae*, the *ius naturae*, which is according to the common law sources so old as to return to the divinity itself. That nature is the backdrop and surrounding has a consid-

37. See Marco Antonio Ortí, *Siglo quarto de la conquista de Valencia* (Valencia, 1640), p. 893.



FIGURE 12. Marco Antonio Ortí, *Siglo quarto de la conquista de Valencia* (Valencia, 1640), p. 893. Courtesy of the Virtual Library of Bibliographic Heritage.

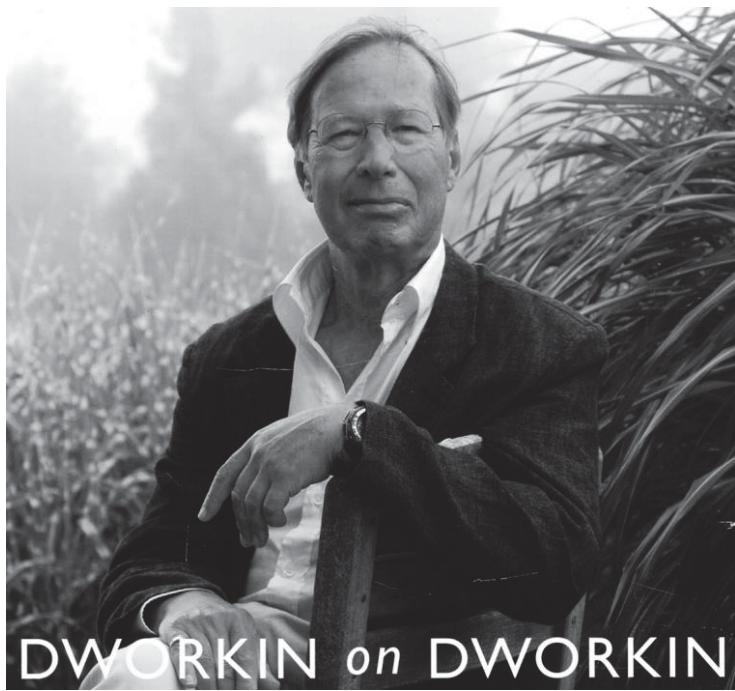


FIGURE 13. "Dworkin on Dworkin," *The Law School*. Detail of cover image.

erable significance for the representation of transcendence in that the more usual props of legal portraiture are evidently social and man-made whereas for Dworkin such institutional confines and references would merely be restraints upon the force of natural law that he is depicted as representing. Then note the left hand drooping with fore finger pointing down and the other fingers slightly curled inward. No thumb visible, obvious enough. But the left hand forms a chirogram, *gestus* seven, in Bulwer's *dactylogia*, the canon of the "discoursing gesture of the fingers."<sup>38</sup> This particular finger signal, the grape of the index pointing down and towards the luxuriance of nature, is defined as *diffidentiam noto*, the mark, the finger-post of diffidence in the presence of a greater force. The hand is here *manum occulatam*, a seeing hand, and that it points thus and diffidently expresses the subject's awareness of the greater weight of nature and its law, a *gravitas* that our philosopher alone is capable of conveying, interpreting, and transmitting. The diffidence is that of a philosopher who bears the world, that of someone who achieves the unattainable, who is equal to the impossible task, who has the ability *temperamentum ad pondus*.

At the same time, ironically, to proffer an alternate and satirical meaning, a minor divagation, there is a further potential connotation to the diffident left index finger pointing down. It is visually the sign of a lawyer who trades principle for lucre, who will only talk when the rays of the sun enlarge his eyes and open his mouth and cause him to retract the distended finger of Harpocrates, the signifier of a recalcitrant silence. Pierre Coustau in his wonderful *Pegma* of 1555 includes an emblem, *contra advocatos*, in which the extended digit thus signals an imperial silence until the heliotropic rays, until gold strikes the will (fig. 14).<sup>39</sup> The implication of the pedestal passes into the political theology of the emblem and so, too, the emanating rays, and the extended finger, which both also indicate a lawyer who steps across the line that separates the source of law from its interpreters, the divinity from humanity, the medium from the message. So at least it can be argued on the basis of Coustau's analysis in which legal reason here visibly gives way to phantasm and belief. The weeping tree behind the statue signals, then, the rushes deformed and amity betrayed. *Diffidentiam noto* becomes expanded into a Delphic oracle (*oracula Delphica reddit*). There is at least a hint in this image of the dangers that attend

38. Bulwer, "Chirologia: or the Natural Language of the Hand" and "Chironomia: or the Art of Manual Rhetoric," p. 189.

39. See Pierre Coustau, *Pegma cum narrationibus philosophicis* (Paris, 1555), p. 33.



FIGURE 14. Pierre Coustau, *Pegma cum narrationibus philosophicis* (Paris, 1555), p. 33. Courtesy Rare Book Collection, Lillian Goldman Law Library, Yale Law School.



FIGURE 15. Vincent Cartari, *Les Images des Dieux* (Lyon, 1572), p. 585.  
 Photo: Peter Goodrich.

to the transcendence that is emblazoned upon the photo portrait of this jurist, this megalograph, this angelological emanation of justice.

There is then another visual connotation that bears examination as a further play upon and upending of the link between this image and ethical theories of law. The left hand is the symbol of justice in the iconography of early modern emblems of gods. Justice thus, in Cartari's *Imagini*, is shown precisely as a left hand, scarcely noticeable, at the bottom left of an image of *Justitia* using both force and law. The philosopher lawyer transcendent, to return to my topic, is in the classical language "a god to men" and shares in the rays of His eminence (fig. 15). Justice being a matter of faith requires the ability to see what is not there and has no being, and this is the capacity and sacrality that Dworkin lays claim to possess.<sup>40</sup> If this visual connotation were not obvious already, the next images show Dworkin on Dworkin dressed entirely in white, in angelic garb and pure as wind, clear as alabaster, visibly part of his light, lustre, effluxions, and emanations (fig. 16). It is a double-page spread, and across the image, emblazoned in white, is the caption, the title, the motto, all in caps, shouting, "THE TRANSCENDENT LAWYER."<sup>41</sup> The angel is the manifestation itself, and for Thomas Hobbes for example, ideas are angels, small epiphanies, messages from the gods and hence the importance of white, of the absence of colors signaling as close as the human can get to that nonbeing, that incorporeal abstraction, that absence that is legitimacy, authority, and truth. It is a paradoxical thought, but it is one that is emphasized to the extreme in the final image of Dworkin on Dworkin, this transcendent being, which shows him in white at the tiller of his yacht, riding the wind and the waves. Dworkin is here *governator*, literally and metaphorically the ruler of fate and the helmsman of men (fig. 17).

It is emblematically the sovereign who sits at the helm and pilots the ship of state, and we can take this theme from a English emblem book by the lawyer Wither, showing the crowned figure holding the rudder in his right hand and the *clavis regnum*, the key to the kingdom, in his left, with the motto *dum clavum rectum teneam*—while holding to the true course, no storms nor windy censures to fear (fig. 18).<sup>42</sup> Fate is thus to be mastered; there are keys, tillers, correct courses, and, for Dworkin of course, right answers for those who can read the wind and thereby understand the *arcana imperii*, the mysteries of state, the secrets of government, Bacon's invisible politics. That is what the photo portrait of the yachtsman philos-

40. The image of *Justitia*, in Vincent Cartari, *Les Images des Dieux* (1572; Paris, 1610), shows *Justitia*, active and passive, with a severed left hand, pointing down, in the bottom right of the image. I discuss this in Peter Goodrich, *Obiter dicta* (forthcoming).

41. Adam Liptak, "The Transcendent Lawyer," *The Law School* 15 (Autumn 2005): 12–13.

42. See Whither, *Emblemes*, p. 37.

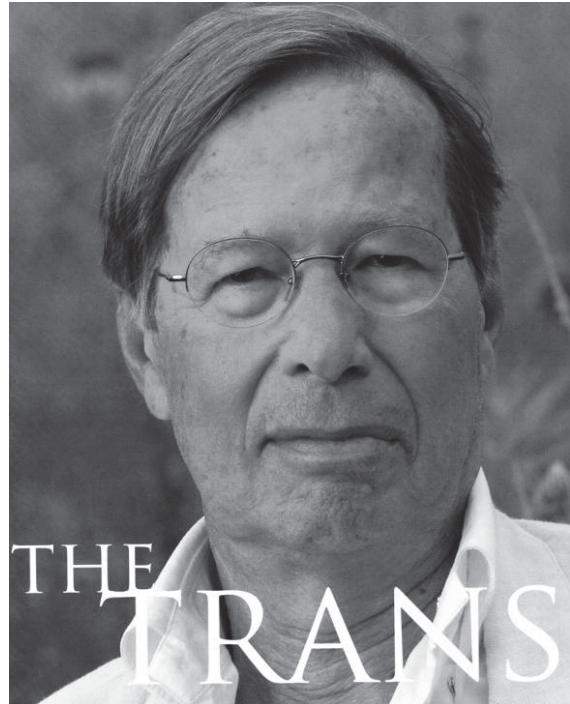


FIGURE 16. *Character angelicus.*

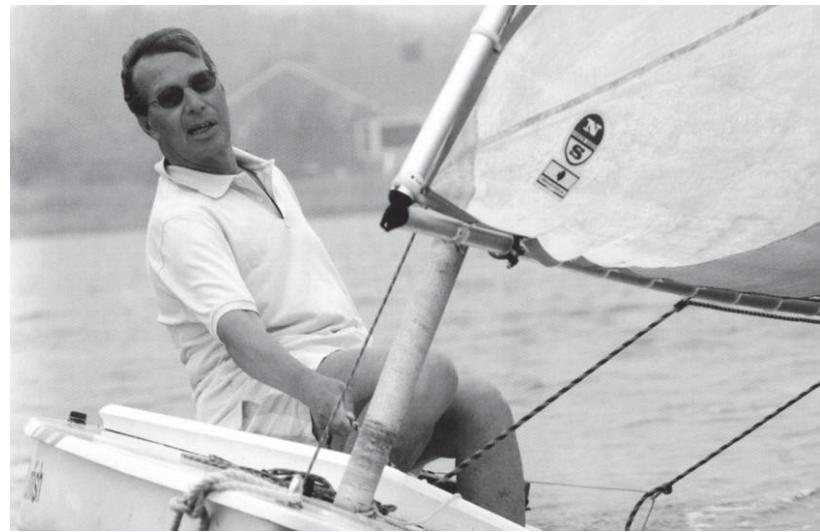


FIGURE 17. Dworkin on water.

opher depicts, namely mastery, undaunted self-making, man and nature at one. The latter point—and here I am drawing to my conclusion, I have to leave my commentator some time to work on things—places Dworkin not simply in harmony with nature, the *lex terrae*, but also bending it to his will.

The last emblem is from Sebastian de Covarrubias Horozco's moral emblems of 1610. It shows the idol of *fortuna*, naked and with a sail, in the hand of God protruding from the clouds (fig. 19).<sup>43</sup> The knotted clouds signal death, the great divide, while the left hand of God signals the power of providence and of faith over fate. The idol is about to be smashed on the anvil below it. The idol of fortune must give way to the works of faith, and by the same token the *governator* who holds the key to the kingdom is properly our director and ruler who, as Covarrubias points out in his commentary, is the forger of his own destiny and the master of his own fate. That is the role then of the transcendent philosopher, the man on the make, Dworkin on Dworkin, who, in the appropriate visual tropology, has taken the seat of power, which is that of the one who judges right and wrong and directs us to do the same for ourselves. Justice lies in the chosen necessity of fate, in the accommodation of the wind and the patterns of nature that faith, integrity, and intuition can unveil and allow us to apprehend in the quotidian business of government.

The principle of the visual line now established, the figures of visiocratic rule now referenced, I can end by advertizing to what it is that the image conveys *virtualiter*. According to the early law dictionary *Aenigmata iuris*, there is a distinction to be made between *iconomus* and *oeconomus*.<sup>44</sup> The former is the jurisdiction and manipulation of the ecclesiastical law, through iconic signs; the latter is the distribution and administration of the household, through the *imago* and *imagunculae*, the persisting images of the ancestors, of lineage and inheritance. Antonio de Nebrija, the author of the *Aenigmata*, notes immediately that economy and economy are commingled and that administrators must know how to use the iconic in the economic just as much as the sovereign as nursing parent of the people must know how to penetrate the economic, the location of the subjects of the *regimen animarum*. My point, lengthily deliberated, is that new media have made available an iconic archive of legal images that had been lost for some three hundred years. Abandoned in Latin, secreted in the ar-

43. See Sebastian de Covarrubias Horozco, *Emblemas morales* (Madrid, 1610), p. 875.

44. See Antonio de Nebrija, *Aenigmata iuris*; republished as *Vocabularium utrisque iuris* (1506; Venice, 1612), s. v. *iconomus*. See Goodrich, "Legal Enigmas—Antonio de Nebrija, *The Da Vinci Code*, and the Emendation of Law," *Oxford Journal of Legal Studies* 30 (Spring 2010): 71–99, where Nebrija is discussed at length.



FIGURE 18. George Wither, *Emblemes* (1635), p. 37.

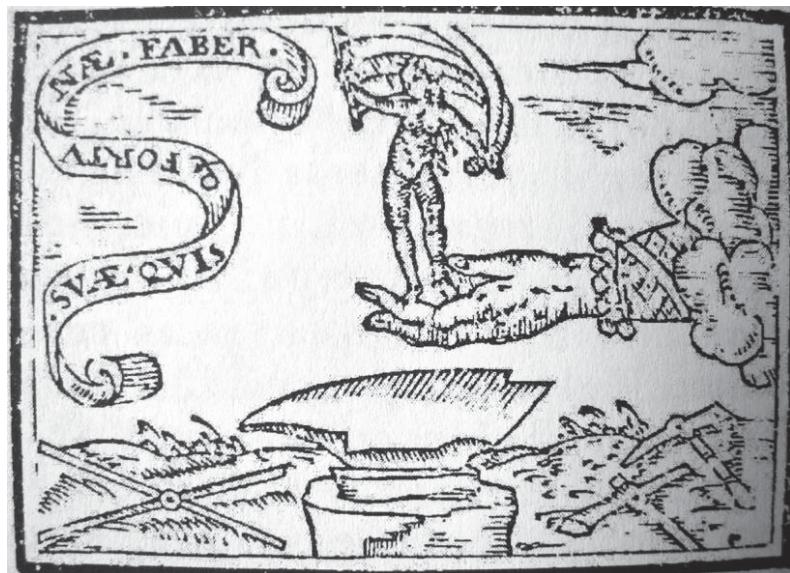


FIGURE 19. Sebastian de Covarrubias Horozco, *Emblemas morales* (Madrid, 1610), cent. 3, emblem 67, p. 267.

chives, vegetating in libraries, the emblem book tradition has only now come again to light by dint of the facility of digital reproduction and circulation. For the first time in over three centuries, the visial lines of law, the structures of legal imagination, the figures that depict the norms of legal regimen are visible and available, accessible with ease for scholarly study, hermeneutic apprehension, critical investigation, and public use alike. Returning to the epigraph at the beginning—*perspicua vera non sunt probanda*, which stipulates that what is visibly true needs no proof—the image archive of law can provide the dogmatic structures, the emblematic images that can bring us closer to understanding what is evident, manifest, and too apparent to need proof for lawyers.