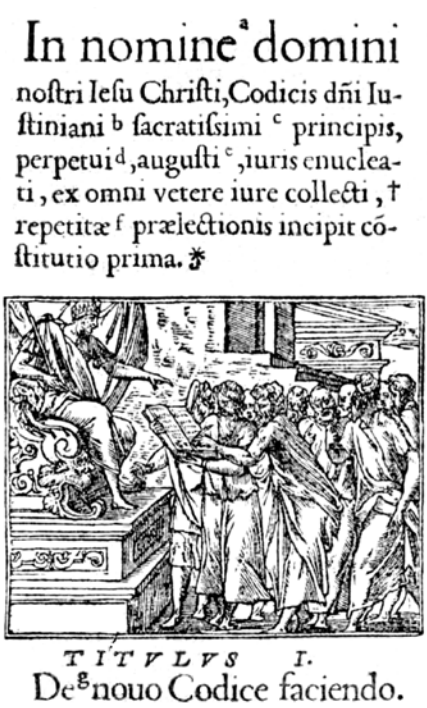
Paolo Heritier[1]

Forms of Legal Aesthetics of the Body and Sources of Law: the Hand, the Foot, the Eye. Plural Natural Paths in Law

1. Forms of the body, forms in law: the hand



Consuetudo est altera natura, by Jacobus Bornitius Emblematum *ethico politicorum,* Heidelberg, Bourgeat, 1654, (here reproduced in P. Goodrich, *Visiocracy*)

Justinian in the act of handing down law in the incipit of the *Corpus Iuris Civilis "In nomine domini nostri Jesu Christi…"* (ed. Senneton, 1548-50), here reproduced in P. Goodrich, *Visiocracy*)

The two emblematic images reproduced above, taken from the article *Visiocracy*[2] and the book *Legal Emblems*[3] by Peter Goodrich, symbolically represent two different concepts of law: law as the emperor's legitimate device of command, handed down *in nomine domini,* and written in the name of nature.

1 Professor of Philosophy of Law, Turin University and Director of DIREL.

2 P. Goodrich, *Visiocracy. On the Futures of the Fingerpost, Critical Inquiry*, Spring 2013, University of Chicago Press, pp. 498-531 (pp. 504, 509).

3 P. Goodrich, *Legal Emblems and the Art of Law,* Obiter depicta *as the Vision of Governance*, Cambridge University Press, Cambridge University Press, New York 2014 (pp. 7, pp. xxii).

I do not intend to say much in relation to the first, linked to a positivist theory of law as command, emphasized by the Hobbesian theory and at the basis of the theory of aesthetic foundation presented by the jurist Pierre Legendre, already analyzed elsewhere[4]. In particular, Hobbes, as Bobbio efficaciously points out, is the one who separated the traditional distinction between command and advice, present in the juridical tradition and canonic law, to form the distinction between command and non-command (ascribed to the recapitulatory sphere of 'advice') the same criteria of distinction between *that which is juridical and that which is not*[5].

In the light of the contemporary crisis of the sources of law (from *soft law*[6] to *governance*[7]) and more generally in relation to a theory of the network of law[8] and the normativity of the image[9] aimed at overcoming the approximation to law as statutory commands, in order to recuperate the rhetorical, semiotic, aesthetic, legal elements of the normative process, it is possible to give a first approximate definition of the field of legal aesthetics as *the part of judicial knowledge aimed at studying the advice, seen as a recapitulatory notion of all the different normative forms from the aforementioned command and others not mentioned, as sources of law.*

Starting from this initial observation concerning the setting and the importance of the theory of the sources of law, between *civil law* and *common law*, it appears to be of interest to analyze the two symbolic images reproduced, paying particular attention to the theoretical importance of the second.

In the first, fictionally, the emperor Justinian holds, so to speak, within his body the entire content of the law and is immortalized here, a new Moses, in the act of indicating it (commanding it) to the scribes by dictating it, with that *fingerpost*, analyzed by Goodrich in his article *Visiocracy*, which is the index finger that symbolically summarizes that establishing act of imperial founding/dictating of the law.

This device has been seen, from the time of the doctoral thesis of the French legal historian and psychoanalyst Pierre Legendre, as being included in the adage *Solus princeps habet potestatem condendi leges et interpretandi.*

4 P. Heritier, *Estetica giuridica,* vol. II. *A partire da Legendre. Il fondamento finzione del diritto positivo,* Giappichelli, Torino 2012.

5 N. Bobbio, *Comandi e consigli,* in *Studi per una teoria generale del diritto,* Giappichelli, Torino 2012, pp. 39-64 and T. Hobbes, *De Cive. Elementi filosofici sul cittadino,* Editori Riuniti, Milano 1999, p. 256, P. Heritier, *Estetica giuridica,* vol. II., pp. 137 *et seq*.

6 Starting with the well-known text by L. Senden, *Soft Law in European Community Law*, Hart, Oxford-Portland 2004.

7 In the endless bibliography of J. Lenoble, M. Maesschalck, *Toward a Theory of governance: the Action of Norms*, Kluwer, The Hague, 2003,A. Andronico, *Viaggio al termine del diritto. Saggi sulla governance*, Giappichelli,Torino 2012, and in the issue dedicated to Lenoble in the journal TCRS (2007).

8 Amongst the first contributions on the topic in a bibliography that became endless, I recall for general theory F. Ost, M. de Kerchove, van, *De la pyramide au réseau ? Pour une théorie dialectique du droit*, Publications des Facultés universitaires Saint-Louis, Bruxelles, 2002; and, in *Declinazione estetico giuridica* P. Heritier, *Urbe Internet, vol. 1. La rete figurale del diritto*, Giappichelli,Torino 2003.

9 C. Faralli, V. Gigliotti, P. Heritier, M.P. Mittica, *Il diritto tra testo e immagine. Rappresentazione ed evoluzione delle fonti,* Mimesis, Milano 2014.

Legendre says, in fact, that the authority of the prince is central to the theory of the sources of Roman law, which finds in him its unity, symbolized by Justinian's compilation:

"Justinien, comme le remarque Irnerius à propos du Code, n'en est pas seulement l'auteur (*auctor*); il en est à proprement parler le fondateur (*conditor*)"[10]. The keeping together of the two functions has interesting implications with regard to the unification of the emperor and the man in a single body:

> Le *jus condendi legem* permet à son titulaire d'introduire des règles neuves, de faire du Droit nouveau (*Jus novum*), come d'interpréter le Droit déjà fondé. Cette double fonction appartient à l'empereur seul: *Solus princeps habet potestatem condendi leges et interpretandi.* La constitution impériale étant l'expression écrite du Droit humain, le *princeps* apparaît donc comme le maître de ce Droit. La maxime *Princeps legibus solutus* s'explique donc d'elle-même. La loi, en effet, a sa source dans la volonté du princeps (*lex animata*). Celui-ci est au-dessus d'elle et on ne saurait distinguer en lui l'homme et l'empereur[11].

Starting from this union in the body of man and emperor as the source of law, Legendre would then develop the theory of the mythical founding reference of law, through the medieval pontiff, the body of the absolute sovereign and the dictator of totalitarianisms, up to the bodies/images represented in the advertising of the period of the sovereignty of the consumer and of the technical object[12].

There is however, a point that it is interesting to clarify, in relation to the comparison of this image with the other one. Immediately after presenting the theory of the symbolic unity of the imperial *ius interpretandi* and the *ius condendi*, the legal historian poses the question of how the *princeps* can be seen as a unifying agent of law, since the legislation is not the only source of legal rules, because the *jus*, according to Irnerius, is divided into *lex, mores, natura, necessitas*.

Here we find the notion of form, or of *putting into a form*. In fact, the emperor is not subject to the people following renouncement of the *imperium*, and he is the holder of the power conferred by God (*in nomine domini nostri Jesu Christi […],* says the inaugural text above the image):

> S'il ne peut aller contre le Droit divin, on ne saurait oublier qu'il est lui-même l'interprète des préceptes de justice et d'équité. L'empereur *met en forme* des règles (*in formam redigere*), si avant lui elles n'étaient pas connues (*equitas rudis*). Quant 'à la coutume, la concurrence qu'elle risque de faire subir à la législation impériale est vivement rejetée par Placentin, tandis qu'Albéric ed Lanfranc (de Crémone?) s'efforcent par des voies opposées de faire admettre l'indépendance de cette source juridique. La *constitutio*, cependant, est d'essence supérieure et le développement de la théorie de

10 P. Legendre, *La pénétration du droit romain dans le droit classique de Gratien à Innocent IV,* (1140-1254), Thèse pour le doctorat soutenue le 28 juin 1954, (M. Le Bras, M. Dumont, M. Gaudemet), Paris, Jouve 1964, p. 52.

11 P. Legendre, *La pénétration…, cit.,* p. 53.

12 P. Legendre, *La pénétration…, cit.,* p. 54.

la *consuetudo approbata* expressément ou tacitement témoigne du souci des docteurs de respecter, au moins formellement, la prééminence de la *lex.*

Ainsi, le *Princeps* réalise grâce à son *jus condendi* l'unité du Droit[13].

Later, in his work, Legendre once again takes up the analysis of the influence of imperial supremacy in the history of subsequent law, but it is clear that the great question of the link between custom and law has not been resolved at all, continuing to be a problem for post-Hobbesian juridical thinking. Without entering into the vast topic, it seems sufficient to point out how also in Roman law the Justinian concept of custom was indicated as problematic. For example, Filippo Gallo, in criticizing Bobbio's thinking says that:

> […] even Bobbio was not immune to the Justinian influence. The idea that the common vision of custom as a support for the legislative system is "based on a more mature legal awareness" is a presumption unsupported in reality, derived from the *legum doctrina* that Justinian substituted for the *ars iuris*. The legal philosopher could not be content with the *legum permutatio,* given the lack of consideration for it of the Romanists themselves. However, it is a fact that the he, even without this satisfaction, offered a representation of the effects produced in later legal sciences, even to our day, of the theorization of custom elaborated by the Justinian commissaries…[14]

Without wishing to enter the vast debate on custom as a source of law[15], it appears clear that the comparison between the two images *symbolically* indicates a problem central to the theory of the sources of law, in relation to the fundamental concept of nature, which appears controversial in relation to the Roman legal roots, in relation to the Justinian reform and its effects on the subsequent development of law.

From this perspective, it appears interesting to analyze the second image proposed, specifically referred to the tradition of Common Law. Goodrich, starting from an analysis of legal positivism from the perspectives of semiotics and rhetoric[16], reads the legal tradition of common law as supported by a system of memories and traditions that, in referring to the language of law,

13 P. Legendre, *La pénétration…, cit.,* p. 54.

14 F. Gallo, *Consuetudine e nuovi contratti. Contributo al recupero dell'artificialità del diritto,* Giappichelli, Torino 2011, p. 65-66. By Gallo see also on this topic *Interpretazione e formazione consuetudinaria del diritto. Lezioni di diritto romano,* Giappichelli, Torino, 1993; *La* legum permutatio. *Rivoluzione ignorata della nostra tradizione: una introduzione*, in *Estudios en homenaje al Profesor Alejandro Guzman Brito, vol.II,* Edizioni dell'Orso, Alessandria 2011, pp. 528-43.

15 We recall amongst others, in the Italian legal culture, R. Sacco, *Antropologia giuridica,* Il Mulino, Bologna 2007, pp. 175 ss.; E. Robilant, *Diritto e selezione critica. Appunti per il corso di filosofia del diritto 1996-97,* Giappichelli, Torino 1997; R. Caterina, a c. di, *La dimensione tacita del diritto,* Esi, Napoli 2009; P. Nerhot, *La coutume. Le droit muet,* Giappichelli, Torino 2012; S. Zorzetto, a c.di, *La consuetudine giuridica. Teoria, storia, ambiti disciplinari,* ETS, Pisa 2008.

16 P. Goodrich, *Legal Discourse. Studies in Linguistics, Rhetoric and Legal Analysis*, Macmillan, Houndmills and London 1987.

> is depicted as a language of record, a perfect language that harbors true reference, that corresponds to real events, that is itself a monument, a memorial, a vestige or a relic of previous wisdom and prior judgement" where "the inhabitants of the legal institution are thus custodians not only of a tradition of rules and of texts but also *of linguistic* forms and of techniques of interpretation that will unlock the memories of legal language[17].

The theory that Goodrich presents is that, if the structures of positive law are mobile, the tradition of common law, rather than representing a mere language for transmitting an institutional order, writes in the body of the individual his bond with the law. We could say that it *inscribes the form of the law in the body*, on the basis of a pretense of continuity, implying the "the continued creativity, the continued life and productive power of that order, of that plan, of the 'law of the persistence of the plan'"[18] that we could call the aesthetic foundation of the law. So common law "does not represent or remember the past; it repeats it by living it, it suppresses it through the immobile memory of the mirror, through duplication"[19]. In this reading the order of the rule becomes the order of things, because it overlays it like a reproduction, a copy, an image reflected in a mirror. In this way it is possible to see the proximity of the models of civil law and common law from an aesthetic perspective, where the latter is a relevant enunciation of the iconic device present in the version of the Legendrian imperial model.

Through this itinerary there emerges, therefore, described in an approximate and abbreviated manner, all the extension and the importance of the question of the image for the analysis of common law. Also in this model, starting with the approach of the C*ritical Legal Studies,* it is possible to identify all the theoretical, conceptual ambiguity and the complexity of the form of the law, always aimed at denying the normativity of the image and the idol, in its paradoxical position within a founding iconic-liturgical device of its own discourse, seen as writings and text. Goodrich notes that, "law is always a governance of thought and so can perhaps be most radical rethought as such it also constitute itself upon an unthought – upon custom, repetition, and repression". Though the law is so 'aristotelianly' "wisdom without desire" it appears at the same time to be "a truth that represses desire, a text that negates its images and denies the figurations or fluidity of its texts"[20].

In his recent text, quoted above, dedicated to legal symbols, in order to revive *visiocracy* as a system of legal power that makes use of the normativity of images, the author takes up and extends the analysis of the two images reproduced above, representing the two apparently alternative concepts of law, reducing them to a unit of the aesthetic-legal perspective. This highlights the common underlying iconic-liturgical structure, beyond the rationalistic myths of modernity

17 P. Goodrich, *Languages of Law. From Logic of Memory to Nomadic Mask,* Weidenfeld and Nicolson, London 1990, p. VII.

18 *Ibid*.

19 Ivi, p. VIII.

20 P. Goodrich, *Oedipus Lex. Psychoanalysis, History, Law,* University of California Press, Berkeley, Los Angeles, London 1995, p. X.

and legal positivism, convinced that man has been forced to reason by the (text of) law, made logical and rational.

Goodrich's vision, which re-reads the tradition of common law taking into account the grammatology of Derrida and the dogmatic anthropology of Legendre, appears particularly illuminating when he analyses the symbol *consuetudo est altera natura,* contrasting it with the image of Justinian, which was analyzed first of all.

The Roman emperor is shown in the symbolic gesture of dictating the law; in the written text that heads the image he is indicated in the place of (in the name of) Christ, as the most holy, perpetual and august. His body can thus be the source of the text (*Corpus Iuris*), he is the pure law that incorporates and inaugurates the new code. The image, on the other hand, shows him sitting on a throne, on a pedestal, with the symbols of power (the scepter in his right hand, the crown on his head) but it is his left hand, extended towards the choir of doctors in law that shows, in ideal contrast with the foot of the armless cripple in the other image, as we will see. The symbolic reading of Goodrich's model is precise, in relation to the notion of the "legal indicators of direction" (*fingerpost*), signals that indicate a path, an aesthetic form of the law, a behavior:

> 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 indigitation, 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 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…[21].

The analysis of the ostensible divine foundation of the law could not be more clearly indicated. The question of the natural and divine foundation of the juridical represented and communicated through the aesthetic mediation of the symbol raises, on the other hand, for Goodrich, the question of recognition of the normative and the corporal form of the law. He therefore formulates the point by picking up the Legendrian query, which is in turn taken from *Corpus Iuris Civilis,* of what youth wishing for laws[22] can recognize in the theatrical scene of law, in the drapery and the

21 P. Goodrich, *Visiocracy, cit.,* pp. 504-5.

22 P. Legendre, *Lo sfregio. Alla gioventù desiderosa… Discorso a giovani studenti sulla scienza e l'ignoranza,* Giappichelli, Torino 2009.

garments, in the art and the artifice of the presence of the law in the audience chamber, in other words in the aesthetic and visual representation of the juridical. Why do the law and the text demand an iconic scene that founds them and supports them?

Thus, according to Goodrich, the paradox that every conception of regulation encounters is instituted in this model; its acheiropoietic basis, not created by man, of law and the mute trait of legality, the *silentium* of law: all elements that, fictional or not, inasmuch as they are represented, lead us to recognize the *other scene* of the juridical, the founding aesthetics of the juridical and the normative:

> The ceremonial dimensions of legal trial are markers of a greater presence, a tradition and authority that is captured well… 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 Triunity of the divinity, and by delegation from that impossible unity, the first sovereign, as also the pattern of custom and precedent from time immemorial. The source is never present except as the fingerpost, what Cicero terms the signature of things[23].

Here lies, in my opinion, the question of the indicator of direction as a norm of behavior necessarily corporal and plural. The visibility of the law is founded on the absence of its source, substituted by command: the scheme is that of a *juridical theology of the law and the image*, which inscribes the body as a form of the law made present. Thus the interest in comparing the signals such as the hands that point, the feet that write; thus the interest in an aesthetic anthropology of law, which poses the question of form, of the image and the law, as similar topics. An immense question that here can only be alluded to and certainly not dealt with, but, at least, not systematically removed, as the positivist theory of law tends to do.

That the point is both theological and juridical can be seen shortly afterwards when Goodrich observes:

- in the first place how

> 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… He tells us to look at the portrait, stare long and hard at the effigy— "the Statue and portraiture"… Behind the text, beyond the tome, there is the tomb, and kept long enough in the "visual" line the portrait can give way to the "child and figure" of the author, the face of the law itself[24];

- and secondly how:

23 P. Goodrich, *Visiocracy, cit.,* pp. 505-507.
24 P. Goodrich, *Visiocracy, cit.,* p. 507.

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… 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.[25]

The indicator of direction, the signal aesthetically communicated thus becomes "a mode of activating the body, of giving the lawyers their marching orders, their visual line, the figures that will take them forward.[26]

The structure indicated here, without stopping to examine the individual points, in this passage from the writings of Saint Paul to the tradition of common law, from the invisibility of the divine to the iconic form of the law, is precisely the question of juridical theology and its importance for the understanding of the question of the foundation of the scene of law. A structure that remains intact also when the theory of law intends to deny it, immersing itself in the modern myths of rationality, of the text, of the positive foundation of the juridical or of power. Thus, it is "the visual and paradoxical spectacle of things not seen" that presides over the structure of the juridical. On this question, Goodrich conceives the passage and the articulation between the two symbolic images and the 'positivist' hand – the index finger that points and guides – and the 'customary' foot that writes: different forms of an underlying common scheme, of a theological-aesthetic-juridical structure after the various forms of the writings of the text and the fictional constitution of juridical tradition.

However, it remains to emphasize the importance of the difference between the forms of *indicators of direction*, of the diversity of the paths that are traced within the forms of law. Custom is not already the text; the foot that writes is not the hand that transcribes, although the underlying theological juridical structure is the same. In the custom, the presumed founding relationship with the divine remains, but the way in which the text is written is different; man is the 'fescue in the hand of God':

> The political emblematist 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 fescues in the hands of God". 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[27].

The other traditional form of law, custom, hierarchically submitted to our arrangement of law, ironically displays, in Goodrich's iconic reading, a law of the foot, a writing of the path, a classic image of the precedent, of the tradition, of the custom and its divine rooting and at the same time, a structure of juridical

25 P. Goodrich, *Visiocrazia, cit.,* p. 26-7.
26 P. Goodrich, *Visiocracy, cit.,* p. 507.
27 P. Goodrich, *Visiocracy, cit.,* p. 508.

temporality that makes the myth present, makes the *opinion iuris* present, the link between custom and nature: "Not any feet, but visible and *repente* footpaths, the manifest marks of the ambulation of the fathers, the elders, the *praesidentes*" observes Goodrich, indicate the normative direction of human behavior.

The symbolic image of the armless man, and his comparison with the Justinian symbol shows how language divides, but the vision unites, referring to a structure that binds, holds together, operates in the invisibility of the foundation: the visual thus becomes a *topos*, it is the symbol of an image of the form of the 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* [28].

Thus, Goodrich highlights the underlying iconic structure of the normative, apart from the plurality of its forms and the methods of its writing.

2. Forms of the body, forms of the law: the foot

Nevertheless, starting from the identification of this universal communicative structure (at least in the juridical view of the West), there remains something to say, in relation to this second symbolic image and its developments. We will try to enter the topic by adding some textual and visual glosses to the commentary, in this paragraph, and extending the discourse, in the next and conclusive paragraph.

A wider analysis of the second symbol is in truth also carried out by Goodrich, not in the article *Visiocracy,* but in the book *Legal Emblems and the Art of Law: Obiter Depicta as the Vision of Governance*, placing the topic in an even wider discourse, if possible. Following the development of the analysis will therefore form a detour that will be useful in understanding the link between hand and foot as posed at the origin of the question of the *forma plural* of the writing of the law *using the body*, communicated and learned through image and vision, as a problem of the basis and the tradition.

Noting that common law is first of all an unwritten form of law, Goodrich emphasizes that "custom and precedent rather statute or code that marks and defines our national law"[29]. Knowing the law from this perspective, means accepting an unwritten tradition that exists outside history, in the dominion of the divine:

28 P. Goodrich, *Visiocrazia, cit.,* p. 28.

29 P. Goodrich, *Languages of Law, cit.,* p. 116-117. For other analyses of the topic of common law, variously historiographical and juridical theory: D. J. Bederman, *Custom as a Source of Law,* Cambridge University Press, Cambridge, New York 2010; G. Postema, *Philosophy of the common Law*, in J. Coleman, S. Shapiro, *The Oxford Handbook of Jurisprudence and Philosophy of Law,* Oxford University Press, Oxford, New York 2004, pp. 588-622; M. Lobban, *A History of the Philosophy of Law in the Common Law World (1600-1900),* Springer, Dordrecht 2007.

> in Coke's words, even where it is a matter of reading the law, it is a question of reading not simply the words of the text but also the tradition that accompanies them; the text is a mere representation of an external memory; it is a vestige in the classical sense of *vestigium*, an imprint, a footprint, a mark or trace of something, of some body, of some practice that passed on time out of mind or countless years ago. Where it is a question of reading, then it is not the words but the truth that is to be adhered to: *in lectione non-verba sec veritas est amanda*[30].

The memory is, classically, the product of a collective faith (*communis opinio*) or of a faith in the truth of the texts (*de fide istrumentorum*), which belongs to both the religious text and the juridical text. Thus, traditions and customs, in the theory of common law, lead us back to nature, seen as a model and the image of the divine source. Common law occupies a position in nature, walks on the paths of the earth and as Bornitius says – custom is second nature – it belongs to this tradition:

> Nature precedes writing or, better, it is a higher form of scripture, an *acheiropoietic,* which is to say handless inscription. Nature is the primary law, the first chirography, and its most immediate form is that of images, the visible world with all of its of paths and marks. Nature imitates divinity, and humanity, in imitating nature, responds to and observes the divine[31].

The meaning of the symbol that represents the armless scribe sitting on a tree trunk, outside the city, in the countryside, intent on writing with his right foot means that actions are more believable than words and follow a path that does not pass through the hand:

> We can speak while we walk, in motion, but we cannot write while ambulant. Ambulation is then the mark of prior law, the inscription of a higher cause, the archetype of writing, and it is by showing the truncated subject inscribing with his right foot that Bornitius expresses the power of a law that appears without the intervention of any human hand, a law of nature herself. This is what is classically meant by an unwritten law – ius non-scriptum – that is inscribed invisibly on the heart, in memory alone, without any need for writing[32].

It is inevitable to recall what Goodrich wrote on grammatology as a question of the form of law:

> For grammatology, the key question is precisely that of the form of law: a science of legal writing will look at law specifically as writing; it will define law by its opus, its work which is a body of writing, a special literary genre or species of writing that would have to be placed close – in the order of genres – to drama on the one hand and to the epic on the other[33].

30 P. Goodrich, *Languages of Law, cit.,* p. 117.
31 P. Goodrich, *Legal Emblems, cit.*, p. xxii.
32 P. Goodrich, *Legal Emblems, cit.*, p. xxiii.
33 P. Goodrich, *Languages of Law, cit.,* p. 114.

The question of law as form concerns the staging of writing in a hierarchical order, in a metaphysics of the presence, which Derrida's deconstruction would criticize.

For Ricoeur, an exponent of a traditional hermeneutic, in the writing the written text would fix, so to speak, a prior word, in a concept of the relationship between word and writing according to which the former is antecedent, necessarily, to the second and where first the word and only later the writing, emerged as formalization of a phonetic element. This would make a relationship of substitution, between dialogue and textuality possible: the writing would substitute the word; the reader would substitute the interlocutor[34], in a device of fictions forming the order of sense proper to the 'metaphysics of the presence' with the aim of resolving the paradox of legality, building a hierarchy of the sources supported by the notion of nature and the theological juridical structure already mentioned. As is known the difference between the position of Derrida and that of Ricoeur starts from the proposal to invert the relationship between word and writing fixed in the natural hierarchical order indicated by Aristotle in the renowned affirmation of *De Interpretazione* "Sounds produced by the voice are symbols of mutual impressions, and writing is a symbol of vocal signs."[35]

In this traditional vision the voice, in fact, has a relationship of initial proximity with the soul: the moods being in direct, natural contact with the voice. The point means that the writing is condemned as a secondary, derived and negative phenomenon, enunciated by Plato in *Phaedrus,* one reason for this assumption about the proximity to the original voice of the soul, which would lead to Plato's celebration of memory. This led to Derrida's criticism of the concept, to the 'metaphysics of the presence', designed to reassign primacy to writing.

In this deconstructionist context, we also find Goodrich's interpretation of the juridical symbolism and the role of the image in the science of juridical writing. The writing, for scribes with hands, is a human artifice, a second juridical order reflecting the first divine decree, the first order of the images of nature itself, guaranteed by the sovereign.

> The image precedes writing and the written is thus but a secondary mode of imaging: the printed word is simply another figurative sign, a species of hieroglyph, if you will, that hierophants, or we say learned lawyers, the brethren, will interpret and unpack. The image then is part of what Derrida termed "writing in general," an aspect of the custom and use, the immemorial practice that common lawyers call the lex terrae a realm of prior images, of emblematic patterns.[36]

We can reach a first conclusion about the proximity and the differences between the two emblems, between the two different forms of normative writing

34 P. Ricoeur, *Qu'est-ce que'un texte?*, in *Du texte à l'action. Essais d'heréneutique II*, Editions du Seuil, Paris, 1986, pp. 156-178.

35 The quotation from Aristotle appears in Ricoeur, *op. cit.,* p. 176 e in J. Derrida, *Della grammatologia,* Milano, Jaca Book, 1998, p. 29.

36 P. Goodrich, *Legal Emblems, cit.*, p. XXIII.

that they establish. It is a matter of analyzing *the conditions of possibility* of the staging of the normative text[37], in its relationship with the divine foundation.

From the iconic point of view, the classic contraposition of civil law and common law is symbolized by the opposition of hand/foot (decree/custom) but within a common visual conception of the reference to the nature and the problem of the plurality necessary to the forms of writing of truth. The obvious references by Goodrich here are to Legendre and Derrida, but the problem posed is precisely that of the *plurality of the forms* of orientation of human behavior, *all* differently linked to the position of the iconic and the theological basis for the legitimization of the juridical.

We have already pointed out how, for Goodrich, the tradition of common law is to be seen as a language that implies the transmission of an institutional order; it remains to be said *how* this is written in man: the tradition of common law, Goodrich recalled in *Languages of Law,* "implies the affective attachment of the individual to the order of institutional existence"[38]. The analysis of the juridical texts implies taking into account the image as a form of writing of the normative, part of that phenomenon of writing in general sought by Derrida in Grammatology. In this sense, the analysis of the different forms of writing in the two emblems is indicative of an anthropological and cognitive problem. The two images differ in the limb that writes (the hand, the foot) in the sense already explained by Goodrich, and also in the different scenarios: the collective setting of the scribe in the imperial architectural structure, or the individual setting of the armless man, surrounded by nature (and yet it also refers to the collective process of institution of the path, in the custom, of the trace deriving from the action). The point that I would like to raise is that of the conditions of possibility – or of impossibility – of writing with the hands. The armless scribe *cannot write* with his hands, he must necessarily find another way of writing, which takes other routes, in other forms of the body. Is there, in this distinction between writing with the hands and writing with the feet, a simple equivalence of results? What do the differing forms in which the writing is rendered indicate?

In my opinion, there is inherent in this overlapping, the possibility of a trap. In a trap, as Derrida notes in his introduction to the second edition of the text by Silvano Petrosino *Jacques Derrida e la legge del possibile*, we ignore '*who is trapping who*': the victim is one, but essentially subject to substitution, given the essential iterability of the machine thus called trap. Therefore, we do not know who is trapping whom, since he who sets the trap can also potentially be trapped. We never know which animal will lose its paw (*piège* – trappola –, *pedica, pes, pedis*), since the trap is also an aporia that prevents the living being from walking properly. It even interrupts the ability to walk, with or without shoes"[39]. The

37 This is, amongst other things, the task of *Critical Legal Studies* according to Goodrich, rereading with Foucault, following (and against Kant, the conditions of possibility of the juridical texts of common law. P. Goodrich, *Languages of Law, cit.,* p. 2.

38 P. Goodrich, *Languages of Law, cit.,* p. VII.

39 J. Derrida, *Prefazione. La scommessa, una prefazione, forse una trappola*, in S. Petrosino,

theme of the introduction to Petrosino's text is linked to the title of the book, referring to the possible in the 'father' of deconstructionism, already an interpretation of that link between possible and impossible and the prevalence of one over the other in Derrida's thinking.

When the impossible becomes possible, the event takes place (possibility of the impossible). It is even unimpeachable, the paradoxical form of the event: if an event is possible, if it is inscribed in conditions of possibility, if it does not do more than explain, uncover, reveal, enact that which was already possible, then it is not, or is no longer, an event. For an event to take place, for it to be possible, it is necessary for it to be, inasmuch as it is an event, inasmuch as it is an invention, the occurrence of the impossible[40].

The condition of possibility always operates as a condition of impossibility, what makes this possible also makes *at the same time*, according to Petrosino, impossible the reality itself that makes possible: this 'incredible filiation', notes Derrida, is the origin of faith. In what relation does this faith that derives from the impossible stand with regard to the collective faith previously mentioned, with reference to common law, *communis opinio*[41]? The condition of the impossibility of writing with the hands manifested in the figure of the armless man is at the same time the condition of possibility to write with the feet, but here, what is that 'at the same time', what form does this impossibility take in its becoming possible? What are the 'conditions of possibility', the subject of the analysis of *Critical Legal Studies* according to Goodrich, of this taking different forms, and what is the complex relationship with the idea of nature? The comment by Bornitius on the emblem begins by stating, "*Admirandum est naturae artificium acque ingenii humani vis ac potentia*" and repeats the secheme *Consuetudo altera est natura* con *Consuetudo altera extat natura.* The emblem faces the problem of continuation of the nature of the custom in a device that takes into account the bodily impossibility of carrying out an action (*Vidimus manibus carentes fila texere, litteram pedibus exarare*), inserting the impossibility as a condition of *another* action, of *another (form of) writing*; as the starting point necessary for the normative discourse, inasmuch as it is *a plural bodily form* of the law. Are we naturally born without arms? Is this not the same trap, the same paradox present in the notion of law (of the possibility, characterizing the philosophical definition of Derrida, according to Petrosino)?

Can the image as a secondary form, other than the writing of the law, therefore open to the impossible possibility of the event to which it is, from Derrida's perspective, the figure itself of the intrusion of justice, a further juridical form of law and never reducible that calls into being the notion of *event*?

Jacques Derrida e la legge del possibile. Un'Introduzione, Jaca Book,Milano 1997, p. 17.

40 J. Derrida, *Introduction. cit.,* p. 11-12.

41 Memory is, for Goodrich, the product of a collective faith (*communis opinio*) or, lastly, of a faith in the truth of the texts (*de fide istrumentorum*). See Languages of Law, *cit.,* part one.

3. Forms of the body, forms of law: the formation of the inner eye

George Wither, – *sapiens dominatibur astris*[42].

Wolf Vostell, video installation (Nîmes, May 2008)[43].

42 George Wither, *A Collection of Emblems, Ancient and Modern: Quickened with Metricall Illustrations,* Wolf Vostell, *both Morall and Divine: and disposed into Lotteries* (London: Robert Allot,1635), p. 31– *sapiens dominatibur astrusi*

43 Wolf Vostell: Carré d'art, Nîmes (13 février-12 mai 2008), Archibooks, Paris, 2009.

In these two images, we can see, conclusively, a topic linked to what we have said so far: the idea that there is something that precedes the letter of the law (the inner eye, the spirit that illuminates) and also, specularly, the phenomenological problem of the writing of the knowledge, that is to say how the inner eye is formed, and how it influences the law. 'The inner eye' precedes the formation of the law and assists its interpretation, it is said classically, but, at the same time, there is something that precedes it and institutes it, a previous writing, dogmatically instituted, that, so to speak, forms the soul and directs it.

The theme of the heart as the source of the law, as another way of understanding the meaning, is one of the great instances of natural law, starting from the Paulinian formulation that instituted Christian jusnaturalism in the Epistle to the Romans 2, 14-15

> Indeed, when Gentiles, who do not have the law, do by nature things required by the law, they are a law for themselves, even though they do not have the law. They show that *the requirements of the law are written on their hearts...*

The problem presented here is that of the *plurality of paths* that lead to the realization and the enactment of the law: one exterior (the observance of the written law), the other interior (the realization of the works of the laws)[44]. Of great interest is the idea of a writing preceding the laws in the heart of man, without it being made clear how this happens: naturally? Or through the same device indicated by the emblem of the armless scribe, the writing of an impossible, of an impossible justice? The theme of the heart as a genuine *bodily* source of the juridical is then explained by Legendre for the foundation of the law in his adage, referring to the medieval pontiff as the ideal successor of the Roman emperor in the *Corpus Iuris Canonici,* as witnessed in the adage *"Omnia iura habet in scrinio pectoris sui"*[45].

The first emblem is once again taken from the article *Visiocracy* and from *Legal Emblems*. For Goodrich:

> The eye of the spirit, the interior eye, has precedence over the exterior, just as, in common law, it is unwritten law – custom and use from time immemorial, the law of nature and of God – that has precedence over *ratio scripta*, written law, namely legislation[46].

44 I analyzed this point in P. Heritier (2008). *L'uomo del diritto. Il problema della conoscibilità della legge naturale in San Paolo*. In: Di Blasi F., Heritier P. *La vitalità del diritto naturale*, pp. 117-58; P. Heritier (2008). *L'umano e il giuridico. Pluralismo delle verità e diritto naturale nell'Epistola ai Romani.* Iustum, Aequum Salutare, vol. 2008/4, pp. 47-60.

45 P. Legendre, *Sur la question dogmatique en Occident*, Fayard, Paris 1999, partial Italian translation L. Avitabile (Ed.), *Il giurista artista della ragione*, Giappichelli, Torino 2000, pp. 285-96. Also H.J. Berman, *Diritto e rivoluzione. Le origini della tradizione giuridica occidentale*, il Mulino, Bologna 1998; P. Prodi, *Il sovrano pontefice. Un corpo e due anime: la monarchia papale nella prima età moderna*, il Mulino, Bologna 2006.

46 P. Goodrich, *Legal Emblems, cit.*, p. 16.

The author, apart from the description of the symbologies implicit in the emblem, such as the role of the sun, the stars, the scribe intent on writing, precisely notes the theoretical center of the device:

> The key to the picture, front and center, is thus the eye in the sovereign's chest. Here is wisdom exemplified and embodied as the very heart of sovereignty, expressed as an interior eye. The sovereign, like Justice, has no need of bodily eyes or of exterior vision. What matters is the unwritten law, the reason of nature that is carried inside and seen by the eye of the spirit as it looks in before it emanates outward. Wisdom precedes vision, and knowledge comes before sight. We have, in short, to learn how to see and make sense of the external world. This is the political theology of the image as we inherit it and manipulate it in law. Vision is mediated and motivated. It is constructed and constrained and it is to this that the emblem tradition was directed[47].

The point raised here is the link between iconomia and *oikonomia*, inasmuch as it is linked to the nexus between iconocracy and visiocracy[48], to the question of the iconoclastic struggles and the plane of historical meaning of *oikonomia,* in its reference to the existence of the Trinity, raises[49].

Without intending to explore this immense theme, it is necessary to qualify that what Goodrich calls *political theology of the image*, the inner eye as an image of the precedence of the unwritten law, represented iconically as the capacity to penetrate the divine truth of the world and to dominate the external through the internal is closely linked, as Paolo Prodi also explains in his monumental volume on the topic, to dualism between consciousness and law[50]. Jacob Taubes, in his dialogue with the political theology of Schmitt in relation to the thinking of Saint Paul, qualifies this complex point of intersection as follows: "Do you understand what Schmitt wanted? Did he want to show how the division between earthly power and spiritual power is *absolutely necessary* and that without this delimitation the West would breathe its last breath? This is what I wanted him to understand, against his totalitarian concept"[51]. Prodi 'glosses' or better adds a minor corollary to this distinction by Taubes, ob-

47 P. Goodrich, *Legal Emblems, cit.,* p. 18.

48 P. Goodrich, *Emblemi giuridici, cit.*, in publication, in enunciating the neologism visiocracy, Mondzain makes use of the term iconocracy in the article *Can Images Kill?, Critical Inquiry* 36 (Autumn 2009), p. 20 ("The Christian revolution is the first and only monotheist doctrine to have made the image the symbol of its power and the instrument of all its conquests. From East to West, it convincer all those in power that the one who is the master of the visible is the master of the world and organizes the control of the gaze").

49 J.M. Mondzain, *Immagine, Icona, Economia,* Jaca Book, Milano 2006; G. Dagron, *La règle et l'Exception. Analyse de la notion d'économie,* in D. Simon, a c.di., *Religiöse Devianz,* Klostermann, Frankfurt a.m., pp. 1-18. G. Agamben, *Il Regno e la Gloria. Per una genealogia teologica dell'economia e del governo*, Neri Pozza, Vicenza 2007.

50 P. Prodi, *Una storia della giustizia. Dal pluralismo dei fori al moderno dualismo tra coscienza e diritto,* Il Mulino, Bologna 2000, to which we refer for the analysis of the development of the doctrine of the inner conscience / external conscience; conscience / law, moral / law, which concern the qualification of the notion of custom.

51 J. Taubes, *La teologia politica di San Paolo,* Adelphi, Milano 1997, p. 186.

serving that "if this division is to exist it is necessary that, somehow, old or new, the *two* powers exist just as Western men have existed in our experience." [52] (analyzed in the book, which reproduces the historical development, from the Middle Ages to modernity). Apart from Taubes' apocalyptic discursive style and his prophesies, I would like, in turn, to 'gloss' Prodi's gloss, noting how this division of powers is inevitably linked to the Iconocracy of Mondzain and the Visiocracy of Goodrich. There is a nexus between the question of the 'external' dualism of the powers and the dualism between internal and external within man, and the image cannot be separated from these two aspects. The reference to the "political theology of Saint Paul" must not be separated from the notion of the Christological link between the visible and the invisible, which, through Saint Paul, has influenced the history of the *image* in Western culture[53]. The opportunity that the discipline known as *Law and Humanities,* the reanimation of the question of legal aesthetics and the analysis of the question of the normativity of the image seem to offer to the normative culture of the West represents that theoretical nucleus identified here, and which has to do with the *complex aesthetic juridical editing* of the distinctions between image and text, consciousness and law, moral and law, in relation to the notions of custom and of the staging and formation of the normative. The problem of the *form of government*, the problem of the *positive form* or *customary law* cannot be reduced to a mere opposition between moral and law, between jusnaturalism and juspositivism, even when it is reformulated in the current terms of the debate between the neoconstitutionalism *à la Dworkin* and the post-Hartian positivism, but demands a humanistic passage, within the artistic and iconic dimension of the juridical.

In addition to the traditional distinction between law and moral, or between jusnaturalism and juspositivism, it appears essential, in maintaining the form of dualism between temporal power and spiritual power considered essential by Prodi and Taubes – in order to avoid falling into some form of neo- or post-totalitarianism *à la Schmitt* – to analyses the political juridical artistic dimension of mankind, starting from the iconic breakthrough[54], to assume an "affective breakthrough[55] in anthropology: instances that seem to appear with increasing relevance in contemporary philosophy, in relation to the overcoming of the so-called "linguistic breakthrough" preiconized by Rorty[56]. Examples are Goodrich's reference to the affective in the de-

52 P. Prodi, *Una storia della giustizia.,* cit., p. 485.

53 Col. 1, 15, which defines Christ as "visible image of the invisible God, generate *before* every other creature". See O. Boulnois, *Au-delà de l'image. Une archéologie du visuel au Moyen Age (Ve-XVIe siècle),* Seuil, Paris 2008.

54 I will only mention W.J.T. Mitchell, *Pictorial turn: Saggi di cultura visuale,* Duepunti, Palermo 2008.

55 Presented in the 2013 issue of *Rivista TCRS (Teoria e critica della regolazione sociale);* Mimesis, Milano 2013 e http://mimesisedizioni.it/libri/scienze-sociali/tcrs/antropologia-della-giustizia.html

56 R. Rorty, a c. di, *La svolta linguistica,* Garzanti, Milano 1994, A. Somma, *Introduzione, La rappresentazione artistica del diritto*, in M. Stolleis, *L'occhio della legge. Storia di una metafora,* Carocci, Roma 2007, pp. 22.

constructive sense[57] and, above all, in this same issue of the journal, Sequeri's reference to the affective declined in the sense of the third Kantian and Schillerian criticism ("La question est la suivante: comme faut-il que l'être soit pour être comme il faut, afin que l'homme puisse habiter poétiquement la vie qui lui est destinée?")[58]; and the reference by Ossola to the link between law and poetry ("they live off the same 'architectural' virtue; they do not create, but they 'model' [one society, the other language], they 'fabricate' sanctions or memory, to be relived in the behaviors or the pronouncements"[59] and by Vercellone to the nexus between chaos and order in the form of the individual (("Order (chaotic) is, therefore, the principle of singularity beyond the univocality of being, according to the notion that its very foundation is dispersed in each and every single individual…")[60].

The problem of the inner eye deriving from the closeness to the origin (supposedly divine)[61], expressed by the metaphor of the inner eye thus appears, in turn, to be preceded by the problem, to be defined in a phenomenological key, of the preceding "writing on the soul". In this sense the temporal leap from the emblem of Georg Wither to the image of Wolf Vorstell, who places at the center of the heart of man not the inner eye, but a machine external to man, the television, appears to be of considerable interest and attributable to the maintenance (or the definitive decline) of that dualistic structure that presides over the *form*ation of the bald conscience of the technique. While the *TV dé-coll/age* of Wolf Vostell associates the television broadcasting of memories of Nazism[62] the image of the television placed in Christ's heart borrowed from one of his video-installations can efficaciously contribute to exemplifying the notion of Bernard Stiegler of *tertiary retention.* In Husserlian terminology, as read by Stiegler following Derrida, the primary retention is that which the perception retains of the object, so that the secondary retention is a primary retention held and selected, that is to say the constitutive memory of the genuine (temporal) flow

57 See note 46.

58 P. Sequeri, *Esthétique du commandement. Phénoménologie et herméneutique de l'injonction*, TCRS 2/14 *Visiocracy*, p. 124 (Italian translation) e pp. 124-125. Sequeri explains the point variously: «Le miracle de la beauté qu'on *peut* universellement *respecter* (pas consommer, ou simplement faire fonctionner) est le sublime de la justice qu'on *peut* individuellement *aimer*. Ce pouvoir, enfin à besoin d'être autorisé : c'est-à-dire d'être reconnu comme un impératif du don, qui personne peut me donner, au moins que nous tous – indistinctement – ne l'avons reçu de Dieu» and again «Il faut penser le sublime du commandement et du beau de la raison humaine jusque-là. Et on doit le penser *comme il faut*. Dans l'Europe qui doit arriver, l'intellectuel dégagé de cette tâche n'aura droit d'appeler au peuple : pas plus que les scribes et les prêtres qui vont substituer les règles à la loi et à la foi ; ou les faux prophètes et les zélotes du désir sans règles, qui appellent à l'amour du beau et – par cela même – à la volonté de rien». See also the 2013 issue of TCRS previously mentioned, dedicated to Sequeri and, for the notion of *affectio iuris,* P. Heritier, *La dignità disabile. Estetica giuridica del dono e dello scambio,* Dehoniane, Bologna 2014.

59 C. Ossola, *La legge e la leggenda,* p. … in reference to Vico and Rousseau.

60 F. Vercellone, *Chaos and Morphogenesis in German Romanticism*, TCRS 2/14 *Visiocracy*, pp. 129-134.

61 M. Stolleis, *L'occhio della legge. cit.*

62 P. Webel, *Der Deutsche Ausbück (1958-59) aus den Zyklus,* pp. 251-256 in *Wolf Vostell, artista europea,* Mudima Milano 1994 (and in general the entire volume).

of the conscience, important on the plane of the imagination (and not of the perception), finalized in holding and selecting the primary retention.

The problem that Stiegler poses with his notion of tertiary retention is precisely that of the *writing from the outside on the conscience of man* through standardized materials, infinitely repeated in the mass society. For example, the distinction between attending a concert, which will always be interpreted differently from the orchestra – example of individual secondary retention the fruit of a personal culture, and listening to the same concert on an I-pod, through a device that impoverishes and can be replicated *ad infinitum*, always in the same and objective way for a potentially infinite number of subjects. In the first case, there is room for an inner hermeneutic dimension, when in the meaning there is the risk of a mass standardization within an infinitely replicable repetition. Stiegler's criticism of Husserl therefore lingers on the derivation from outside, of an exteriorized memory, from channels coming from outside man, to the work of the inscription of traces that influence (forming) the flow of conscience, potentially standardizing and massifying it[63].

Vostell's image and the subsequent ones, taken from another well-known exponent of the movement of video art, Nam June Paik, clearly show the point, if compared with the detail of Wither's emblem.

Television, but all media, nowadays enter, so to speak, in the device of the political theology of the image inherited by Christianity, showing how the institution of the image is important for the purpose of the *inscription of given content in the consciousness* of a man who is considered such as a *mere surface of writing, of inscription of content determined a priori.*

The image of a man literally dismembered and decomposed by the violence of war in the famous painting by Picasso *Guernica* (1937)*,* is thus magnified by the violence of the stylized image of Vostell's man (*TV-Schue, Décollage*, 1970) in which the body of the man is composed of a head/television, a 'body' of old shoes placed above the legs/batteries or, the man-robot by Nam June Paik (*Family of*

63 In particular Stiegler's analysis, later taken up in a number of volumes, can be found in *La technique et le temps, 2- La désorientation,* Galilée, Paris 1996. See also, the reference to the notion of *hypomnémata,* as support for the process of exteriorisation of memory.

Robot, 1986)[64], in which the human body takes the form of a number of televisions assembled in a humanoid form.

P. Picasso *Guernica* (1937)

W. Vostell (T*V-Schue, Décollage*, 1970) Nam June Paik (*Family of Robot*, 1986)

Here it is the form of the human being that becomes modular, decomposable in external pieces that determine the interior. Here the custom, far from acting as a

64 Nam June Paik, *Becoming Robot,* Yale University Press, New Haven, London 2014.

reference to a consciousness linked to the divine, is entirely supplied by technology, seen as a form of inscription, of writing, televisual, media of the consciousness. The heart of man is constituted of images that he retains (tertiary retentions). Interesting, nevertheless, is the analogical permanence of the form of the human being, entirely composed in an artificial manner, which corresponds to the modern dream of man/machine already present in that figure of the *Corpus Iuris* conceived by Hobbes in the emblematic image of the Leviathan as a personal representation of power in the Absolute State (after the Roman emperor and the medieval pontiff).

The aesthetic writing of power in the iconic representation of the foundation is transformed into *technological writing of custom*, mediated by new sources, both communicative and media, inscribed in the heart itself, in the perception and the imagination of man. As Mondzain emphasizes, the terrifying show that began with the attack on the Twin Towers of New York in 2001, to the recent iconoclastic destructions of the representations of the divine and the ferocious executions transmitted via Web by the new totalitarian subjects seem to lead us back to a *new war of images* that amplifies the juridical aesthetic content, until it leads us to formulate new queries. While, in fact, no-one can deny that in our society of images, said images are "an instrument of power over bodies and minds" and that this power, considered over the twenty centuries of Christianity as liberating and redeeming, are now, with the advent of mass-media, potentially a genuine instrument of alienation and dominion: "images are considered to have incited the crime when a murder seems to have been modeled after fictions shown on screen"[65]. Who then becomes responsible for the acts committed? Those who commit them, or those who broadcast the images that inspire them? The scholar of images Mondzain poses a series of questions that the new wars of images seem to raise:

> Can images kill? Do images make us killers? Can we go so far as to attribute to them the guilt or responsibility of crimes and offenses that as objects they couldn't actually have committed? Do edifying allegories of virtues and patriotism produce a virtuous and patriotic world? Does Picasso's deconstruction or Dora Maar's face provoke the carnivorous cutting up of a loved one? No? Then how could some images be more irresistible than others?[66]

In relation to all these questions that are today represented in the technological era, the reintroduction of the anthropological debate of the tradition of the juridical emblematic and the considerations on the custom and the consuetude is obligatory. Against the background of political and juridical theology of the image inherited from the tradition of the *Corpus Iuris*, it must give way to a radical consideration of the nexus between the technology, as a new normative source assumed by the post-totalitarian mass society, and the institution of new customs and consuetudes through the inscription of new dogmas blindly and enforcedly inscribed in the conscience of man, through the technologies of communication and technological propaganda.

65 M.J. Mondzain, *Can Images Kill?, cit.,* p. 22.
66 M.J. Mondzain, *Can Images Kill?, cit.,* p. 26.