

**Martin Jay**  
***Must Justice Be Blind?***  
***The Challenge of Images to the Law***

Allegorical images of Justice, historians of iconography tell us,<sup>1</sup> did not always cover the eyes of the goddess, Justitia. In its earliest Roman incarnations, preserved on the coins of Tiberius' reign, the woman with the sword in one hand, representing the power of the state, and the scales in the other, derived from the weighing of souls in the Egyptian Book of the Dead,<sup>2</sup> was depicted as clear-sightedly considering the merits of the cases before her (fig. 1). Medieval images of justice based on figures of Christ, St. Michael, or secu-



*Fig. 1: Roman coins dedicated to Justice and Impartiality. Justitia's sword is not yet in place in these images, which show her with a staff instead.*

(1) Dupondius of Tiberius (22-23);  
(2) Dupondius of Vespasian (77-78);  
(3) Aureus of Marcus Aurelius (168)

<sup>1</sup> O. E. von Möller, »Die Augenbinde der Justitia,« *Zeitschrift für christliche Kunst*, 18 (1905), pp. 107-122, 141-152; Otto R. Kissel, *Die Justitia: Reflexionen über ein Symbol und seine Darstellung in der bildenden Kunst*, Beck, Munich 1984; Dennis E. Curtis and Judith Resnik, »Images of Justice,« *Yale Law Journal*, 1727 (1987); Christian-Nils Robert, *La justice, vertu, courtisane et bourreau*, Georg, Geneva 1993; Robert Jacob, *Images de la justice: Essai sur l'iconographie judiciaire du Moyen Age à l'âge classique*, Léopard d'or, Paris 1994.

<sup>2</sup> Herman Bianchi, »The Scales of Justice as Represented in Engravings, Emblems, Reliefs and Sculptures in Early Modern Europe,« in G. Lamoine (Ed.), *Images et représentation de la justice du XVIe au XIXe siècle*, University of Toulouse-Le Mirail, Toulouse, 13, p. 8.

lar rulers likewise provided them with the ability to make their judgments on the basis of visual evidence (fig. 2).



Fig. 2: The eruption of Justice in imaginary causes. The trial of Satan and the queen Ratio. *The book of the king Modus and of the queen Ratio*.

But suddenly at the end of the 15th century, a blindfold began to be placed over the goddess's eyes, producing what has rightly been called »the most enigmatic of the attributes of Justice.«<sup>3</sup> Perhaps the earliest image showing the change is a 1494 wood engraving of a Fool covering the eyes of Justice, illustrating Sebastian Brant's *Narrenschiff* (*Ship of Fools*), which was rapidly reproduced in translations throughout Europe (fig. 3). Initially, as this engraving suggests, the blindfold implies that Justice has been robbed of her ability to get things straight, unable to wield her sword effectively or see what is balanced on her scales. Other medieval and Renaissance allegories of oc-

<sup>3</sup> Robert, *La Justice*, p. 13.



*Fig. 3: The fool ties the eyes of Justice. S. Brant, La nef des folz du monde; French transl., Lyon 1497.*



cluded vision, such as those of Death, Ambition, Cupidity, Ignorance or Anger, were, in fact, uniformly negative. The figure of the nude child Cupid, as Erwin Panofsky pointed out many years ago, was depicted blindfolded not merely because love clouds judgment, but also because »he was on the wrong side of the moral world.«<sup>4</sup>

By 1530, however, this satirical implication seems to have lost its power and the blindfold was transformed instead into a positive emblem of impartiality and equality before the law. Perhaps because of traditions transmitted by Plutarch and Diodore of Sicily from ancient Egypt that had depicted judges as blind or handless, the blindfold, like the scales, came to imply neutrality rather than helplessness. According to the French scholar Robert Jacob,<sup>5</sup> the explanation may also have something to do with the reversal of fortunes experienced by the symbol of the Synagogue in medieval Christian iconography. Traditionally shown as blindfolded – as well as with a bro-

*Fig. 4: The Synagogue with the broken lance and tied eyes. A sculpture of the Strasbourg Cathedral, XIIIth Century.*

<sup>4</sup> Erwin Panofsky, *Studies in Iconology: Humanist Themes in the Art of the Renaissance*, Harper and Row, New York 1967, p. 109.

<sup>5</sup> Jacob, *Images de la Justice*, p. 234f.

ken lance – to symbolize her resistance to the illumination of divine light, the Synagogue was negatively contrasted with the open-eyed Church as in the famous early fourteenth-century statue on the south gate of Strasbourg Cathedral (fig. 4).

What had been a sign of inferiority was, however, dramatically reversed when the iconophobic Reformation took seriously the Hebrew interdiction of images, the second of the Commandments Moses brought down from Mount Sinai. Now it was once again a virtue to resist what Augustine had famously called the »lust of the eyes.« A blindfolded justice could thus avoid the seductions of images and achieve the necessary dispassionate distance to render verdicts impartially, an argument advanced as early as the jurist Andrea Alciati's influential compendium of emblems, the *Emblemata* of 1531.<sup>6</sup> According to Christian-Nils Robert, this impartiality was required by the new urban, secular, bourgeois culture of the early modern period, which left behind the personalism of private, feudal justice. It was not by chance that many statues or fountains of blindfolded Justitia were placed in town squares in Northern Europe next to newly erected civic buildings, in which a nascent public sphere was in the process of emerging.<sup>7</sup> Even in Catholic countries like France, where churches remained flooded with images, secular edifices began to grow more austere.

The law was now to be presented entirely in language and justice dispensed only through language, necessitating discussion and persuasion, rather than appearing in images, which might overwhelm through dazzlement. Along with the iconoclastic purification of courtrooms of their artworks and lawbooks of their illustrations, at least in countries influenced by Reformation iconophobia, went the frequent robing of judges in sober black and white and the replacement of colorful seals by simple signatures on legal documents.<sup>8</sup> No longer would signs from heaven, like those informing medieval ordeals, be sufficient; now the words of men giving testimony about what they knew or had witnessed and then arguing about what rule might be violated would in most instances suffice. Although it is true that law was to be increasingly codified and preserved in written form, which has been interpreted by some as reflecting the modern privileging of sight because of its

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<sup>6</sup> Andrea Alciati, *Emblemata cum Commentariis*, Garland, New York 1976.

<sup>7</sup> Robert, *La Justice*, p. 37f.

<sup>8</sup> Bernard J. Hibbitts, »Making Sense of Metaphors: Visuality, Aurality, and the Reconfiguration of American Legal Discourse,« *Cardozo Law Review*, 16, 2 (December, 1994), p. 255-56. He interprets these changes in terms of the growing ascendancy of an abstract, Cartesian visuality over the more concrete variant that reigned in the Middle Ages.

frequent use of visual metaphors,<sup>9</sup> the non-hieroglyphic script of Western languages meant that visual revelations of the truth, illuminations of divine will, were no longer relevant to the decision-making process. Along with the invisible »hidden God« of the Jansenists, who increasingly left the world to its own devices, went a justice that applied general rules and norms rather than looked for indications of divine dispensation. As with the later prohibition of laws referring to specific people with proper names, famously banned in the American Constitution as »bills of attainder,« so too the interdiction on images was designed to thwart favoritism or personal vengeance. With the blind-folding of Justitia, we are well along the road to the modern cult of the abstract norm in juridical positivism.

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If that road is paved with the prohibition of concrete images, we have to ask, however, whether or not building it had hidden costs, which we may still be paying today. In what follows, it is precisely this question that will occupy us. One place to begin an answer would be Max Horkheimer and Theodor Adorno's celebrated accusation in the *Dialectic of Enlightenment* that the modern notion of justice was still beholden to a mythic assumption: the fetish of equivalence, the desire for perfect commensurability, the domination of the exchange principle:

For mythic and enlightened justice, guilt and atonement, happiness and unhappiness were sides of an equation. Justice is subsumed in law...The blind-fold over Justitia's eyes does not only mean there should be no assault on justice, but that justice does not originate in freedom.<sup>10</sup>

Unexpectedly, in the light of the Frankfurt School's often-remarked embrace of the Jewish taboo on idolatrous images as a mark of resistance to a prematurely positive utopian thought, Horkheimer and Adorno here register a protest against the complete banishment of images. The preservation of the ability to see they cryptically associate with freedom, a freedom that is threatened when justice is reduced to law. What, it has to be asked, is this freedom

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<sup>9</sup> *Ibid.*, p. 241. Hibbits, however, acknowledges that in the early modern period, when most people were still illiterate, texts were meant mainly to be read aloud rather than silently (p. 256).

<sup>10</sup> Max Horkheimer and Theodor W. Adorno, *Dialectic of Enlightenment*, trans. John Cumming, Continuum, New York 1972, p. 16-17.

which the blindfolding of Justitia denies? How does the reduction of justice to law threaten its very existence?

One explanation is suggested by the famous argument developed by Lessing in his classical treatise on aesthetics, *Laocoon*, in favor of the Greek regulation of images, an argument drawing the critical attention of W.J.T. Mitchell in his influential study of images, texts and ideologies, *Iconology*.<sup>11</sup> According to Lessing, images should be kept under legal control because of their capacity to depict monsters, those indecorous amalgams of the human and divine or the human and the bestial that are a scandal to the alleged order of nature. Mitchell interprets Lessing's iconophobia as symptomatic of an anxiety over proper sex roles and adulterous fantasies, but it might be just as plausible to see it as a fear of boundary transgression in general, especially the boundaries that define and circumscribe our bodies. Lessing's visual monsters are an affront to the law because they depart from the assumption that the bounded categories we use to order the world are ones under which all its particulars can be subsumed. The image of a hybridized creature, at once man and beast, divine and human, male and female, confounds our reliance on conceptual subsumption by refusing to be an exemplar of a general rule.

The freedom of which Horkheimer and Adorno speak is thus the ability of the particular, the unique, the incommensurable, the improper to escape from the dominating power of the exchange principle that is manifested in universalizing concepts and in the reduction of justice to the law of equivalents. The eye, by far the most discriminating of the senses in its ability to register minute differences, must therefore be closed to produce this reduction. Justitia's vision is veiled so that she is able to maintain the fiction that each judgment before her can be understood as nothing more than a »case« of something more general, equivalent to other like cases, and subsumable under a general principle that need only be applied without regard for individual uniqueness. That general principle is understood to hover somewhere above specific cases, recalling the origin of the word justice in the Latin *iubeo* (to command). This is a version of justice, as Vassilis Lambropoulos has recently pointed out, that can be understood as »the right command, the command that rightfully deserves obedience. What is right is what is decreed as straight, the line of the ruler and the regime directing from above, the regal control, the reign of the supreme direction.... 'Justice' comes from above, from the realm of certainty.«<sup>12</sup> It is thus unlike the Greek notion of *Dike*, which in

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<sup>11</sup> W. J. T. Mitchell, *Iconology: Image, Text, Ideology*, University of Chicago, Chicago 1986, p. 108f.

<sup>12</sup> Vassilis Lambropoulos, »The Rule of Justice,« *Thesis Eleven*, 40 (1995), p. 18.

certain of its acceptations involved a dynamic, polemical balance between contraries, an agonistic ethos based on proportion and analogy that could not be subsumed under a single *nomos* or law.<sup>13</sup>

It will doubtless have occurred to many of you that achieving this effect of regal control required not merely a blindfold, but also one placed over the eyes of a specifically female deity. Granted, as Christian-Nils Robert has argued,<sup>14</sup> *Justitia* may be a somewhat androgynous figure, at least to the extent that she wields a powerful symbol of coercive authority, a sword fit for swift decapitations. Traditional religious iconography had, in fact, permitted its use only infrequently to women, the most notable instance being Judith, the slayer of Holofernes, in the Old Testament. The stern and vaguely menacing statues of *Justitia* in front of the Palaces of Justice in early modern Europe were certainly a far cry from the maternal images of the forgiving, mediating Madonna that populated so many medieval churches. Nor were they reminiscent of so many sainted, suffering female martyrs, whose assigned role was that of passive victim bearing witness to their faith, even if one might detect a certain symmetry between the blindfolded criminal condemned to die and the image of blindfolded executioner.<sup>15</sup> As a result, *Justitia* may plausibly be interpreted as a symbol of the very temporal power, firmly in male hands, that sought to displace the spiritual power that had accrued to the cult of Mary in the late Middle Ages. Neo-classical images with martial overtones were, after all, the source of this allegory, not religious ones.

And yet, it must be acknowledged that blindfolded *Justitia*, with all of her warlike attributes, was still primarily a female figure, as had been the Egyptian *Maat* (not only the Goddess of justice, but also of truth and order) and the Greek *Dike*, who was the daughter of Zeus. Male images of divine justice, such as that of God at the Last Judgment or St. Michael, had not been prevented from exercising the power of vision. Solomon famously could see how the two contesting mothers felt about the dividing of the child they both claimed as their own. What was the implication of preventing a female judge from seeing? What power might still be lurking beneath her blindfold, which, after all, does not permanently rob the Goddess of her sight?

What that power may be is suggested by the traditional reading of another image from a slightly later era, Jan Vermeer's »Woman Weighing Pearls«

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<sup>13</sup> See the entry on *Dike* in F. E. Peters, *Greek Philosophical Terms: A Historical Lexicon*, New York 1967. For more sustained discussions, see Eric Havelock, *The Greek Concept of Justice: From Its Shadow in Homer to its Substance in Plato*, Cambridge, Mass., Harvard 1978; Michael Gagarin, *Early Greek Law*, University of California, Berkeley 1986.

<sup>14</sup> Robert, *La Justice*, p. 65f.

<sup>15</sup> For a comparison, see Robert, *La Justice*, p. 92.

of 1662-1663 (fig. 5). Depicted in front of a picture of the Last Judgment, thought to be by Cornelisz Enghelbrecht, the woman with the delicate scales in her hands appears to be looking soberly and carefully at the individual pearls in each tray, as if she were contemplatively pondering their particular value. Or at least so the traditional interpretation of the canvas has assumed. Whether or not she is actually doing so is a question to which I will return shortly. But whatever the target of her gaze, there is no trace of judgmental harshness or vindictiveness in her visage; indeed these seem to be traits that the blissfully serene Vermeer was simply incapable of depicting. As with the souls whose salvation is judged in the scene behind her, each pearl, that precious object mirroring the world around it so often at the symbolic center of Vermeer's paintings, seems worth careful, deliberate scrutiny. The setting, moreover, is a typical Vermeer interior, a private, intimate, humble realm, far from the public space of the early modern statues of Justitia.

The goddess's gender as mediated by this comparison with Vermeer's painting is relevant here if we recall the contrast between male and female variants of moral reasoning posited by feminists like Carol Gilligan and Seyla Benhabib against moral theorists like Lawrence Kohlberg and John Rawls.<sup>16</sup>



*Fig. 5: Jan Vermeer van Deft, Woman Weighing Pearls (1662-1663)*

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<sup>16</sup> Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development*, Harvard,

Whereas male judgment often tends to be abstractly universalist, decontextualized, and formalistic, its female counterpart, they tell us, is more frequently sensitive to individual detail, narrative uniqueness, and specific contexts. Instead of acknowledging only an imagined »generalized other,« it focuses instead on the actual »concrete other« before it. The blindfolding of Justitia is thus not a thwarting of the gaze *per se*, but of the specifically female gaze, or at least of those qualities that have been associated with it in our culture.<sup>17</sup> It is thus ultimately in the service of the disembodiment, disembodyedness, and decontextualization that a legalistic justice based on the reductive equivalence of the exchange principle requires.

The complete victory of what has recently been dubbed »algorithmic justice«<sup>18</sup> because it involves following binding rules decreed from above is, to be sure, substantially modified in a legal system such as the Anglo-American, in which concrete precedent is often as important as statute as the basis for judgment. Here Kant's well-known contrast between reflective and determinant judgments, the former applied to aesthetic issues, the latter to cognitive and moral ones, might be invoked to justify the paradigmatic value of prior specific examples over abstract rules that are universally binding. But there is still in the law of precedent the presupposition of at least analogical commensurability from case to case. Even reflective judgments, after all, draw on the presumption of a »sensus communis,« a shared sentiment that goes beyond the arbitrary whim of idiosyncratic taste. If not by subsumption, then by analogy, what is different is somehow compelled to become similar through resemblance. In addition, the common law of precedent can be said to col-

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Cambridge, Mass. 1982; Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Theory*, Routledge, New York 1992.

<sup>17</sup> Hibbitts cites certain feminists scholars who claim that the power of the gaze is inherently male, whereas women's culture is more aural, and uses their arguments to buttress his claim that at least the American legal order until only recently was both ocularcentric and phallogocentric (p. 267). I would qualify this generalization to the extent that a female gaze is not a contradiction in terms and it is precisely its occlusion that may be complicitous with the type of visual regime that he shows dominated American legal theory. That is, without essentializing the gender differences, there may be a link between realizing the abstracting potential in vision and patriarchal domination, which functions by repressing the more concretizing alternative latent in the »female gaze« denied Justitia.

<sup>18</sup> Alan Wolfe, »Algorithmic Justice,« in Drucilla Cornell, Michel Rosenfeld and David Gray Carlson (eds.), *Deconstruction and the Possibility of Justice*, Routledge, New York 1992. He criticizes it for lacking an appreciation for »the rule-making, rule-applying, rule-interpreting capacities of human beings and an emphasis instead on the rule-following character« (p. 366).

lapse the temporal difference between past and present in its search for a replicable standard of measurement.

Although images can, of course, themselves be the object of such judgments, their initial, brute impact on the beholder's sense of sight may well be prior to any evaluation, reflective or determinant, of their meaning. Even Kant's a priori categories do not, after all, include a necessary mechanism of cultural, symbolic commensuration. If Horkheimer and Adorno are right, mute visuality retains traces of a mode of interaction between humans and the world which is prior to conceptual subsumption or the rule of common sense, a mode they call mimetic. This is not the place to launch a full-fledged analysis of the vexed concept of mimesis in their work, an analysis I have tentatively attempted to make elsewhere.<sup>19</sup> Suffice it to say that they understood mimesis to involve a non-dominating relationship between subjects and objects in which the world was not »subjected« to categorical determination or even intersubjective consensus. Mimesis meant a more passive affinity between perceiver and perceived rather than a hierarchical control by one over the other. Affinity, it should immediately be noted, does not mean identity or equivalence, as the mimesis between subject and object maintains a certain, irreducible difference between them. Insofar as images and their referents, representations and originals, perceptions and objects, may be similar, but not ontologically identical, they resist the full power of the exchange principle. Thus the image need not be of an imaginary monster, transgressing natural boundaries, to do its work of resistance; it need merely evoke the primal power of mimetic affinity, which acknowledges differences even as it seeks similarities, against the counter-power of conceptual subsumption, which seeks to suppress the remainder left behind in the act of subsuming.

What ultimately distinguishes mimetic from conceptual behavior, according to this argument, is the absence of violence in the former, the symbolic violence, that is, of categorical subsumption, which finds an echo in the potential for literal force heard in the phrase to »enforce the law.« Justitia, it should be remembered, is never depicted without her unsheathed sword.<sup>20</sup> As Jacques Derrida has recently pointed out in his meditation on Walter

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<sup>19</sup> Martin Jay, »Mimesis und Mimetologie: Adorno und Lacoue-Labarthe,« in Gertrud Koch (ed.), *Auge und Affekt: Wahrnehmung und Interaktion*, Fischer, Frankfurt 1995.

<sup>20</sup> This raises the question of the status of images or representations of violence (or threatened violence, as in the case of the brandished sword). If they are understood as more mimetic than conceptual, does this mean that the violence in them is modified or even cancelled? Or can images participate in another kind of violence beyond that of subsumption? For a consideration of this theme, see Paul Crowther, »Violence in Painting,« in *Critical Aesthetics and Postmodernism*, Oxford University, Oxford 1993.

Benjamin's famous essay »Critique of Violence,« there may well be a moment of originary violence or brute force in the foundation of even the most legitimate of laws: »Applicability, 'enforceability,' is not an exterior or secondary possibility that may or may not be added as a supplement to law,« he writes. »It is the force essentially implied in the very concept of *justice as law*.«<sup>21</sup> »Here we can detect an echo of the argument from Horkheimer and Adorno's *Dialectic of Enlightenment*: that a justice reduced to a law of equivalence based on the subsumption of individual cases under a general rule, the »algorithmic justice« produced by commands from above, involves violence and restricts freedom. A different justice that would evade the binding force of the algorithm would follow instead the logic of the gratuitous gift, bestowed without an expectation of reciprocity, rather than that of the debt paid to even out a score, the primitive act of vengeance that Nietzsche famously saw at the root of modern notions of exchange.<sup>22</sup> It would be incalculable, impossible to capture in definitions, irreducibly aporetic, perhaps even dangerously mad. Always either a memory of what may have been or a hope for a future that can perhaps be, but never actually is, it haunts the project of fully realized justice in the present, a justice based on blinding one's eyes to the absolute alterity of each of its alleged cases, a justice reduced to nothing but the positive, formal, abstract law. As such, it is the basis not only of religious notions of divine justice, but also of every defense of a revolutionary »political justice« that can claim the right to suspend the laws prevailing in a system that can itself be deemed unjust.<sup>23</sup>

But both dialectical and deconstructionist modes of thinking, as we know, resist simple binary oppositions, and so too this overly abstract dichotomy must itself be shaken. Allegedly non-violent, gratuitous justice based on respect for absolute particularity and the benign mimesis of nature cannot be placed entirely on the other side of a divide from the putatively sinister, coercive force of law as command from above. In »Critique of Violence,« Benjamin had in fact juxtaposed a divine violence, which destroys laws and transgresses

<sup>21</sup> Jacques Derrida, »Force of Law: The 'Mystical Foundation of Authority',« in Cornell et al. (eds.), *Deconstruction and the Possibility of Justice*, p. 5.

<sup>22</sup> Friedrich Nietzsche, *The Birth of Tragedy and The Genealogy of Morals*, trans. Francis Golfin, Doubleday, Garden City, N. Y. 1956.

<sup>23</sup> For a classic account of the dilemmas of political justice, see Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends*, Princeton University, Princeton 1961. For a more recent discussion, which considers Kirchheimer's position with relation to Carl Schmitt, see William E. Scheuerman, *Between the Norm and the Exception: The Frankfurt School and the Rule of Law*, MIT, Cambridge, Mass. 1994.

boundaries, to a mythical one that makes and conserves them.<sup>24</sup> Although he cryptically described the former as »lethal without spilling blood,«<sup>25</sup> the troubling implication was that a justice beyond the law of formal equivalence, the life-affirming justice of absolute qualitative singularity based on the logic of the gift, was not itself somehow beyond coercion. For without any rules or criteria at all, what was to prevent a *soi-disant* divine justice from descending into nothing more than the principle »might makes right.« As Derrida himself uneasily concludes, »in one form or another, the undecidable is on each side, and is the violent condition of knowledge or action.«<sup>26</sup>

Similarly, Horkheimer and Adorno were never willing to pit mimetic affinity against conceptual reflection as if they were simple opposites, one inherently superior to the other, one the singular locus of freedom, the other of mere repression. Discussing the residue of mimetic behavior that can be found in the work of art in his *Aesthetic Theory*, Adorno wrote,

The desideratum of visuality seeks to preserve the mimetic moment of art. What this view does not realize is that mimesis only goes on living through its antithesis, which is rational control by art works over all that is heterogeneous to them. If this is ignored, visuality becomes a fetish.<sup>27</sup>

In art, he argued, it was important to avoid the either/or of sensuality vs. spirituality, which simply repeats the alienation characteristic of modern life. Instead, the paradoxical mixture of the two must be preserved, for

What lurks behind the false synthesis called aesthetic vision is a rigid polarity between spirit and sensuality which is inadequate. At the center of the aesthetic of vision is the false, thing-like notion that in the aesthetic artifact tensions have been synthesized into a state of rest, whereas in fact those tensions are essential to the work.<sup>28</sup>

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<sup>24</sup> Walter Benjamin, »Critique of Violence,« *Reflections: Essays, Aphorisms, Autobiographical Writings*, Peter Demetz (ed.), Harcourt, Brace, Jovanovich, New York 1978, p. 297.

<sup>25</sup> *Ibid.*

<sup>26</sup> Derrida, »Force of Law,« p. 56. At the end of his piece, Derrida acknowledges the frightening potential in Benjamin's attraction to divine violence, an annihilating, expiatory violence, to become a perverted justification for the Holocaust. For differing opinions of how successful Derrida himself has been in thwarting this potential, see Dominick LaCapra, »Violence, Justice, and the Force of Law,« *Cardozo Law Review*, 11, 6-6 (1990), Drucilla Cornell, *The Philosophy of the Limit*, Routledge, New York 1992, chapter 6, and Gillian Rose, *Judaism and Modernity: Philosophical Essays*, Blackwell, Oxford 1993, chapter 7.

<sup>27</sup> Theodor W. Adorno, *Aesthetic Theory*, C. Lenhardt trans., Gretel Adorno and Rolf Tiedemann (eds.), RKP, London 1984, p. 141.

<sup>28</sup> *Ibid.*, p. 143.

If we return to our point of departure, the blindfolding of Justitia, we can now understand that it was perhaps not entirely without some reason that vision was denied even to a female gaze in the name of impartiality and the banishment of monsters. Like the other »fools« in medieval tales, who often speak a higher truth, the fool who blindfolds the goddess on Sebastian Brant's ship may have known what he was doing after all. For like the false synthesis of the aesthetic artifact, a practice of judgment based solely on the power of an immediate visual apprehension of irreducible singularity risks succumbing to the illusory potential that always accompanies sensual perception, however acute.

There is also another powerful justification for the allegorical image of the blindfold. Because her eyes are covered, Justitia must walk cautiously into the future, not rushing headlong to judgment.<sup>29</sup> Vermeer's open-eyed, female weigher of pearls can be shown without a blindfold because her judgment is allegorically linked to that of the Last Judgment in the canvas depicted behind her. But a secular judgment that is anything but the last, a justice of mere mortals, cannot pretend to possess so clear-sighted a sense of whose soul merits salvation and whose does not. It must acknowledge that imperfect general laws and the concrete judgments of those who apply them somehow always fall short of an absolute and final justice, and yet that both are necessary means in the endless struggle to realize that unrealizable goal.

It must furthermore accept the fact that even the most comprehensive notion of justice contains within it a pluralism of distinct logics that may sometimes be in conflict.<sup>30</sup> Procedural notions of justice within an established order, those that subordinate it to positive law, are likely to be in tension with compensatory, distributive, restitutive and retributive alternatives that may well point beyond that order. A justice that remembers and tries to redress the wrongs of the past and one that hopes to create a truly just society in the future can easily be at odds with formal procedures in the present, as any observer of the heated debate over affirmative action in the United States can well attest. Rather than a single over-arching criterion, there may be several that cannot be perfectly reconciled, but this does not mean that it is better to throw out general considerations altogether and judge decisionistically.

Unexpectedly, this point is suggested in visual terms by the same Vermeer

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<sup>29</sup> This metaphor of blindfolded Justice walking cautiously is taken from M. Petitjean, »Un homme de loi semurois: l'avocat P. Lemulier,« *Annales de Bourgogne*, LXII, 245, cited in Robert, *La Justice*, p. 130.

<sup>30</sup> In this issue, see Michel Rosenfeld, »Restitution, Retribution, Political Justice and the Rule of Law,« *Constellations*, II, 3 (January, 1996), pp. 309-332.

painting discussed earlier as an example of a benign woman's gaze at concrete particulars. For recent scientific analysis of the pigments on the canvas has revealed that the scales do not, in fact, contain pearls, as has traditionally been thought, but are empty instead.<sup>31</sup> What shines is apparently only the light reflecting off the trays. Rather than directed at individual cases, the woman's contemplative gaze, we now can appreciate, falls on the apparatus itself, as if she were weighing its merits as an impartial mechanism of fairness, albeit one then used to judge the worth of each pearl.

A justice, in other words, that tries to see only concrete, contingent, incommensurable particularity and judge without *any* abstract prescriptive criteria whatsoever – such as that recently defended, for example, by Jean-François Lyotard in *Just Gaming*<sup>32</sup> – may paradoxically be as blind as one that pretends to be entirely algorithmic. What is needed, as Adorno points out in the case of aesthetic judgment, is a creative tension between the two, a justice that can temper the rigor of conceptual subsumption, or more precisely, several such subsumptions, with a sensitivity to individual particularity. The unresolvable paradox of the relationship between law and justice, as the Slovenian philosopher Jelica Šumič-Riha has recently argued, may, in fact, require a certain measure of blindness. »We know,« she writes,

that law as such is not and cannot be just. However, if we accept that and behave according to this knowledge, we will have lost not only justice, but also law. Law is namely conceived as an instance that appeals to justice which means that a law that does not refer to justice is simply not a law. It is therefore in some way necessary to blind ourselves to this knowledge. In Derrida's terms: even if justice cannot be reduced to rule-governed activity we must respect rules. We must respect them because in the very undecidability of justice on the one hand and the groundlessness of law on the other lies the danger that the right to do justice can be usurped by bad legislators.<sup>33</sup>

Perhaps it is best, therefore, to imagine the Goddess Justitia neither as fully sighted nor as blindfolded, but rather as she was once visually depicted at the threshold of the modern world, in a mid-sixteenth century frontispiece to J. De Damhoudere's *Praxis rerum civilium*: Justitia, that is, as a goddess with not one face, but two. The first has eyes that are wide open, able to discern difference, alterity, and non-identity, looking in the direction of the hand that

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<sup>31</sup> Arthur J. Wheelock, Jr., and Ben Broos, *Johannes Vermeer*, Yale University, New Haven 1996, p. 141-142.

<sup>32</sup> Jean-François Lyotard and Jean-Loup Thébaud, *Just Gaming*, trans. Wlad Godzich, University of Minnesota, Minneapolis 1985.

<sup>33</sup> Jelica Šumič-Riha, »Fictions of Justice,« *Filozofski Vestnik*, 2 (1994), p. 80.



Fig. 6: Justice with two faces, one veiled and the other with open eyes. Frontispiece of J. De Damhoudere, *Praxis rerum civilium...*, Anvers 1567.

wields her sword, while the second, facing the other hand with the calculating scales of rule-governed impartiality, has eyes that are veiled (*fig. 6*). For only the image of a two-faced deity, a hybrid, monstrous creature which we can in fact see, an allegory that resists subsumption under a general concept, only such an image can do, as it were, justice to the negative, even perhaps aporetic, dialectic that entangles law and justice itself.

