

IMAGES ON THE LIMIT OF THE LAW:
THE EFFIGY IN MODERN ART

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ABSTRACT

The disciplines of jurisprudence and visual studies have recently and meaningfully overlapped. Jurisprudence has become increasingly interested in how the legal subject is 'interpellated' through images of authority and law. Visual studies has extended their analysis past art to certain images that command and discipline, that control and punish (as opposed to merely the beautiful, the ugly, the sublime, etc). Both disciplines explore the possibility that images can be treated as people (or at least embedded socially like a God or ideology), as a social 'subject' in themselves, and this definition of the image is explained through psychoanalytic theory, sociology and anthropology. This thesis focuses on this image that acts like the father figure, a 'king', an image in front of which we are asked to bow down.

In an apparent reversion these innovative approaches to images are brought back to the modernist canon. Simply put, artists are legal subjects, as we all are, but subjects with a particularly attuned sensibility to images, including the law's images. The modernist avant-garde is reframed in legal terms, in particular representations of sovereignty. Through mimicry, parody or appropriation modern art uses vestiges of 'the king's body' as a site of critique; disguised behind the formalism of modernism, the vestige of courtly art still lingers where the artist dissents not as the avant-garde outsider but from *within* the symbolic order.

The approach is not analytical but attempts to play at the limit of the law. The artists respond to the issue of sovereignty in different ways depending on a number of different factors: historical, social and political. The political freedom of the modern legal subject, the aesthetic freedom of the modern artist, and the particular autonomy of the sovereign are all conflated terms in the artworks chosen. The artists use many differing strategies in response to the authority of the sovereign — they taunt, tease, anarchically displace, hysterically call for, indifferently accept, and attack the 'king' through their images. In the end the 'king' is probed by attacking the fantasies that cover his lack, the 'void' on which power and law is founded.

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CONTENTS

Abstract	2
Acknowledgements	3
Plate List	5
Preface	7
Introduction	21
PART 1 EFFIGIES, ART AND THE LEGAL SUBJECT	
1. Psychoanalysis and the Subject of the King's Body	38
2. Visual Studies and the Effigy	59
3. Artists, their Blank Canvas and the Symbolic Real	92
PART 2 MODERN ART AND DUELING MASTERS	
4. Daumier and Replacing the King's Body	116
5. Courbet and the Nude Republican Master	147
PART 3 HYSTERICIS AND THE MARKS OF AUTHORITY	
6. Dada and the Self Created Sovereign	176
7. Klein and Marks of the Invisible Authority	202
PART 4 KNOWLEDGE, HIDDEN IDEOLOGY AND THE MODERN IMAGO	
8. Warhol and Hidden Ideology	228
9. Hanson and the Modern Imago	254
Conclusion	275
Bibliography	293

PLATE LIST

1. David Hockney *The Princess in her tower*, 1969, 45cm x 33cm, etching and aquatint.
2. David Hockney, *The boy hidden in an egg*, 1969, 20cm x 17cm, etching, aquatint & drypoint.
3. David Hockney, *The boy hidden in a fish*, 1969, 23cm x 27cm, etching and aquatint.
4. David Hockney, *The Princess searching*, 1969, 27cm x 17cm, etching and aquatint.
5. President Saddam Hussein taking delivery of Koran written in his own blood, Iraq, September 2000.
6. Saddam Hussein's Koran, September 2000.
7. Lucian Freud, *Queen Elizabeth II*, 2001, 23cm x 15cm, oil on canvas.
8. Aby Warburg, example of a panel from *Mnemosyne Atlas*, Warburg Library London, 1924-1929.
9. Eric Fischl *Tumbling Woman*, 2001, 66cm x 109cm x 112cm, bronze.
10. *Wounded Soldier*, circa 480 BC, from the Frieze Aegina Temple of Aphaia
11. Henry Moore, *Falling Warrior*, 1956-57, length 147.5cm, bronze
12. Thomas E. Franklin, *Untitled*, 2001 for *The Record* (Bergen County, N.J.)
13. 'The Wizard Exposed', *The Wizard of Oz*, Metro-Goldwyn-Mayer, 1939
14. Jean-Léon Gérôme, *Pygmalion and Galatea*, c.1890, 89cm x 69cm, oil on canvas.
15. François Boucher, *Pygmalion and Galatea*, 1767, 23cm x 33cm, oil on canvas.
16. David Dawson, *Queen Elizabeth II posing for Freud*, 2001, c-type colour print.
17. Pablo Picasso, *Stalin*, 1953
18. Diego Velázquez, *Las Meninas*, 1656, 318cm x 276cm, oil on canvas.
19. Diego Velázquez, *Portrait of Juan Martínez Montañés*, 1635-1636, 109cm x 107cm oil on canvas.
20. Honoré Daumier, *Gargantua*, 1831, 30cm x 21cm, lithograph.
21. Charles Philipon, *Pear*, 1831, 20cm x 22cm, pen and bister ink sketch.
22. Honoré Daumier, *Royalty in Decline*, 1834, 18cm x 20cm, lithograph.
23. Honoré Daumier, *Your cape's in pretty good shape!...* 1834, 25cm x 15cm, lithograph.
24. Honoré Daumier, *The Masks*, 1831, 29cm x 21cm, lithograph.
25. Honoré Daumier, *Heave! Ho!... Heave! Ho! Heave! Ho!...* 1832, 26cm x 16cm, lithograph.
26. Honoré Daumier, *A Modern Galileo, And Yet it Continues Its Journey*, 1834, 23cm x 27cm, lithograph
27. Honoré Daumier, *The Republic: The Republic Feeding her Children and Instructing them*, 1848, 73cm x 60cm, oil on canvas.
28. Gustave Courbet, *The Artist's Studio, A Real Allegory of a Seven Year Phase in my Artistic and Moral Life*, 1854-1855, 361 cm x 598cm, oil on canvas.
29. Honoré Daumier, *The Second French Republic is suspicious of the attention of Ratapoil*, September 25 1851, 25cm x 20cm, lithograph.
30. Honoré Daumier, *The vulture like eagle of Napoleon III eats the liver of France*, February 13 1871, 25cm x 21cm, lithograph.

- 31 Antoine-Jean Gros *The Republic* 1794, 120cm x 80cm, oil on canvas.
- 32 Nanine Vallain, *Liberty*, 1793-1794, 128cm x 97cm oil on canvas.
- 33 Marcel Duchamp, *Three Standard Stoppages*, 1913 – 1914, 28cm x 129cm x 23cm, wooden box, thread, glass.
- 34 Marcel Duchamp, installation of *Three Standard Stoppages* showing method of creating curves.
- 35 Marcel Duchamp, *Network of Stoppages*, 1914, 149cm x 198cm, oil and pencil on canvas.
- 36 Yves Klein, ex-voto, 1961, 21cm x 14cm x 3cm, plastic, pigment, gold leaf, gold bars, paper.
- 37 Yves Klein, light installation at Obelisk of Luxor, Place de la Concorde, re-enactment for Pompidou Centre Exhibition, 7 October 2006.
- 38 Yves Klein, blue stamp on invitation, 1957, 16cm x 9cm, ink, paper.
- 39 Yves Klein, *Anthropometry* performance, Galerie International d'Art Contemporain, Paris, 1960.
- 40 Yves Klein, *Anthropometry* performance, Galerie International d'Art Contemporain, Paris, 1960.
- 41 Yves Klein, *Untitled Fire Painting*, 1961, 145cm x 97cm, charred paper on board.
- 42, 43 Anonymous photographer, Yves Klein making Fire Paintings, Centre d'Essais du Gaz de France, 1961.
- 44 Yves Klein, *Leap Into The Void*, 1960, 26cm x 20cm, gelatin in silver print.
- 45 Andy Warhol, *Thirteen Most Wanted Men*, 1964, mural at New York State Fair.
- 46 Andy Warhol, *3 Most Wanted Men No. 11 John Joseph H.*, 1967, 23cm x 17cm, silkscreen on paper.
- 47 Andy Warhol, *Sixteen Jackies*, 1964, 203cm x 163cm, acrylic, enamel on 16 jpointed canvases.
- 48 Andy Warhol, *Atomic Bomb*, 1965, 264cm x 203cm, silkscreen on canvas.
- 49 Andy Warhol, *Little Electric Chair*, 1964, synthetic polymer paint and silkscreen ink on canvas
- 50 Andy Warhol, *Electric Chair*, 1965, silkscreen.
- 51 Duane Hanson, *Museum Guard*, 1975, 175cm x 53cm x 33cm, polyester, fiberglass, oil, and vinyl.
- 52 Duane Hanson, *Football Player*, 1981, 107cm x 76cm x 80cm, Oil on polyvinyl.
- 53 Madame Tussaud, Pablo Picasso wax sculpture.
- 54 Allen Jones, *Hatstand*, 1969, 178cm x 102cm x 35cm, painted fibre-glass, leather and hair.
- 55 Anonymous, Westminster Abbey, wax mannequin of Charles II.
- 56 Granville (Jean-Ignace-Isidore Gerard) *Why do we need a human person?*, 1844, lithograph.
- 57 Duane Hanson, *Janitor*, 1973, 166cm x 71cm x 56cm, polyester, fibreglass.
- 58 Man Ray, *Rose Sélavy*, 1921, 15cm x 10cm, silver print.
- 59 Maurizio Cattelan, *Now*, 2004, 85cm x 225cm x 78cm, wax, clothes, natural hairs, wood.
- 60 Marc Quinn, *Siren*, 2008, 88cm x 65cm x 50cm, 18 karat gold.

PREFACE: THE ALL SEEING PRINCESS IN THE TOWER

Who can hide in secret places so that I cannot see them? Do I not fill heaven and earth?¹

I have no desire to make windows into men's souls.²

The man described for us, whom we are invited to free, is already in himself the effect of a subjection much more profound than himself. A 'soul' inhabits him and brings him to existence, which is itself a factor in the mastery that power exercises over the body. The soul is the effect and instrument of a political anatomy; the soul is the prison of the body.³

There is no jewel, be it of never so rich a price, which I set before this jewel; I mean your love. Though God hath raised me high, yet this I account the glory of my reign, that I have reigned with your loves. I have ever used to set the last Judgment Day before mine eyes, and so to rule as I shall be judged to answer before a higher judge. You may have many a wiser prince sitting in this seat, but you never have had, or shall have, any who loves you better.⁴

THE LITTLE SEA HARE

The Little Sea Hare, from the Brothers Grimm, is a metatext for this study of law and vision.⁵ In it a Princess is able to see everything on earth, in the sky and under sea, through windows of her magic tower. She proclaims that she will marry only the man that she is *unable* to see. Many suitors come, fail and are executed. The hundredth suitor tries. A raven suggests the boy hide in an egg, but he is still seen by the Princess. A fish hides him in his belly at the bottom of

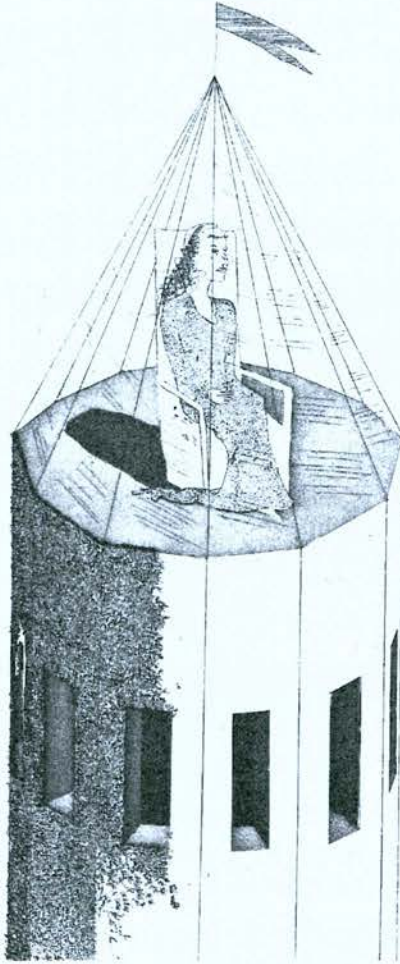
¹ Jeremiah 23:24

² Attributed to Queen Elizabeth I in a letter of Sir Francis Bacon, quoted in *The Oxford Dictionary of Quotations*, ed. Angela Partington, 4th ed., rev. (Oxford: Oxford University Press, 1996), 274

³ Michel Foucault, *Discipline and Punish: the Birth of the Prison* (New York: Random House, 1975), 30

⁴ Queen Elizabeth I, *The Golden Speech*, 1601

⁵ Jacob and Wilhelm Grimm, 'The Sea-Hare,' *Complete Fairy Tales*, (London and New York: Routledge, 2002) 682-685



I. David Hockney *The Princess in her tower*, 1969, 45cm x 33cm, etching and aquatint.

the sea, but to no avail, he remains visible. After helping to remove a thorn from a fox's paw, the fox tells him a trick. The boy is turned into a sea hare, a mythical sea creature,⁶ which crawls into the Princess's hair. She cannot see the boy and agrees to be married; he becomes King.

DAVID HOCKNEY AND THE BROTHERS GRIMM

The story was shown to me in a very small facsimile of *Six Fairy Tales: from the Brothers Grimm with original etchings by David Hockney*.⁷ It may seem strange to be discussing Princesses in relation to modern art and modern jurisprudence but Princesses are after all a contemporary reality. All legal scholars in Commonwealth countries must at some time come to think on the strange anachronisms that underpin their respective constitutions. As art scholars, the many royal effigies, plaques, and crests stare at you questioningly as you sip your coffee while reading a magazine full of royal gossip. How do we respond to idols? A fairy tale seems a good place to start and is a method by which we are all made into good law abiding citizens. We are taught how to differentiate the beautiful witch from the beautiful Princess.

By suggesting that modern power works through these images, we must of course take into account Foucault's critique, where power is invisible and capillary. In the story there is a 'magic' glass tower from which the Princess can see *everything*. The tower is an embodiment of the sovereign power of the bewitching Princess rather than an extension of the 'normalising' gaze of the grey bureaucrat. Her gaze is a mixture of control and desire, of aesthetic pleasure at the pain of death.⁸ The subject and the sovereign are interconnected and act on the other. In this story the

⁶ See the British Council Art Collection, notes for Hockney prints, 2009

<http://collection.britishcouncil.org/html/work/work.aspx?e=14839&id=46364§ion=/exhibition/>

⁷ *Six Fairy Tales from the Brothers Grimm with original etchings by David Hockney*, trans. Heiner Bastian (London: Petersburg Press, 1970). The original etchings are 31 cm x 44.6cm and the facsimile is only 6cm x 7.5cm.

⁸ It is reported that Hockney liked the perversity of a princess who both wanted but confounded her own search for a husband. British Council notes, 2009

characters interchange between active and passive, seer and seen, visible and hidden, exchanging both desiring and threatening gazes.

David Hockney, in 1969 took the challenge of (re)imaging the Brothers Grimm.⁹ Having read all 220 stories, Hockney chose twelve, and completed six.¹⁰ Based on interviews with Hockney about the series Peter Webb concluded:

David Hockney had always loved Grimm's Fairy Tales...He also admired earlier illustrations to them by Arthur Rackham and Edmund Dulac. In 1969 he decided to make his own images. He especially enjoyed the elements of magic in the tales, and his images focus on his imaginative response to the descriptions in the text rather than attempting to concentrate on the most important events in the narrative. They are therefore more than simply illustrations: they stand on their own as images, independent of the stories.¹¹

He returned to strange, childish folktales and modernised them, tempering the original tale and its more pre-modern concerns as a mode of critique and extension.¹² A visual study of the law can uncover the law's aporias in ways text cannot. Hockney produced illustrations to supplement a

⁹ Hockney created the 39 copper plates between May and November 1969. He had prior to this illustrated two other series: *The Rakes Progress*, 1961-1963, and the *Illustrations for Thirteen Poems for CP Cavafy* 1966. Both have become a popular series, and *David Hockney: Grimm's Fairy Tales*, a National Touring Exhibition from the Hayward Gallery, first opened in 1993, continues to tour extensively.

¹⁰ The six chosen work were: *The Little Sea Hare*, *Fundevogel*, *Rapunzel*, *The Boy Who Left Home to Learn Fear*, *Old Rinkrank*, and *Rumpelstilzchen*.

¹¹ Peter Webb, *Portrait of David Hockney* (Dutton: University of Michigan, 1988), 103

¹² Hockney says of the *Rapunzel* story: '...the stories really are quite mad, when you think of it, and quite strange...In modern times, it's like the story of a couple moving into a house, and in the next door's garden they see this lettuce growing; and the wife develops this craving for the lettuce that she just must have and climbs over to pinch it, and the old woman who lives in the house next door says well, you can have the lettuce if you give me your child, and they agree to it...And if you put it into terms like this and imagine them in their semi-detached house agreeing to it all, it seems incredible.' Quoted in Hayward Gallery Media Release for *David Hockney Prints*, River and Rowing Museum Exhibition 2009; accessed 7/09:

www.kallaway.co.uk/pdf/HockneyPRFinal.pdf

lack in the stories only the visual could fill and in this particular story he shows how power is still mediated through its image.¹³

FAIRY TALES AND JURISPRUDENCE

Fairy tales are among other things about the law: queens and kings, high executioners and sheriffs, frogs and outlaws. Jurisprudence looks at these mythologies and fantasies of law critically and earnestly.¹⁴ For art history, especially British artists, the turn towards fairy tales was an extension of a strong tradition of using this literary form as a source of inspiration.¹⁵ There is a tension in the Hockney series between the high seriousness of art (with knowing appropriations of Leonardo, Breughel, Hieronymus Bosch, Durer, Uccello et al.) and a playful and personal dreamscape. This sense of childishness is emphasised by Hockney's decision to originally publish the book small, to fit into a child's hands. However, they are still earnest and reflective works. Recently Maria Aristodemou used myths and fairytales as jurisprudential subjects. Highlighting the patriarchal bias in the law, she writes, 'Myths and fairy tales, for example, while presented as 'truths about the human condition', can be seen as attempts by a male subject 'to define himself from other: gods, slaves, barbarians, animals and, of course, women.'¹⁶

¹³ Alan Woods, 'Pictures emphasising stillness,' in *David Hockney*, ed. Paul Melia (Manchester: Manchester University Press, 1995), 30-47, for an in depth discussion of the use of language/text in Hockney's work. Woods writes at 32, 'Hockney prefers to keep on explaining, to use language as a pointer to send us back to vision, although he is also unapologetically a "literary" and narrative painter, and increasingly a didactic one.' See also Alan Woods, 'Paintings with Banging Doors: Art and Allusion in Kitaj and Hockney,' *Cambridge Quarterly*, XXIV, issue 4, (1995), 315-339; Myer Shapiro, *Words and Pictures: On the Literal and the Symbolic in the Illustration of a Text*, (The Hague: Mouton Press, 1973).

¹⁴ A use of fairy tales to explicate the law can be seen in Anthony Farley, 'Behind the Wall of Sleep,' *Law and Literature*, Vol 15, No 3, 2003, 421-434; Erica Rackley, 'Judicial diversity, the woman judge and fairy tale endings,' *Legal Studies*, Vol 27, Issue 1, 2006, 74-94; Erica Rackley, 'Representations of the (woman) judge: Hercules, the little mermaid, and the vain and naked Emperor,' *Legal Studies*, Vol 22, Issue 4, 2002, 602-624

¹⁵ See David Blamires, 'The Challenge of Fairytales to Literary Studies', *Critical Quarterly*, Vol 21, Issue 3, 1979, 33-40

¹⁶ Maria Aristodemou, *Law and Literature: Journeys from Her to Eternity*, (Oxford: Oxford University Press, 2000), 56

The Little Sea Hare is not exempt from such a reading. A haughty, irrational Princess is baselessly violent towards men; there is a patriarchal presumption that she rules poorly over the land. Only when she is married off at the end and a new King is crowned, is the land restored to justice and balance.¹⁷ There is, however, in this story a wilful sovereign female subject. The 'envious' Princess in *The Little Sea Hare* preserves her sense of freedom and self and opposes her father's contract of marriage by destroying suitors. She combats her 'terror of non-being,' the non-being of the banality of marriage.¹⁸ Beside these reservations the fairy tale is still instructive for our reception of jurisprudence and Hockney's imagery illustrates law as poetic, fictive and metaphoric. The law creates the symbolic subject and gives us all something upon which to hang our hat as civilised and socialised beings. The story shows that the law is interested in the body and is often inscribed there. Finally sovereignty is an object of desire, power and love, fear and demand, magic and myth.

IN THE TOWER OF DESIRE AND SIGHT

The first image is *the Princess in her tower* (Figure 1). The beautiful princess sits on a throne within a perfectly transparent turret, mounted by a royal pennant. It is a metaphor of her all seeing power: '...she saw everything above the earth and under the earth, and nothing at all could be kept secret from her.'¹⁹ The glass, the windows, the transparency and bright illumination all focus on the ability of the Princess to see the truth and that all is visible.²⁰ In this case though there is a violence attached to the gaze; if She sees you, you die. The disciplinary gaze symbolically dissects

¹⁷ Aristedemou looks closely at the practice of marriage as a way in which women are brought to heel by the law, for example, in *Measure for Measure*. See *ibid*, especially Chapter 4, 'The Marriage of Death and Desire in *Measure for Measure*'; originally published as 'Law and Desire in *Measure for Measure*', *Law and Critique* Vol 9, Issue 1, 1998, 117-140

¹⁸ Reid W Anderson, 'The Envious Will to Power', *Journal of Analytical Psychology*, Vol 42, 1997, 363-382. This is a reading based on Melanie Klein's definition of envy.

¹⁹ Grimm, 'The Sea-Hare', 682

²⁰ The Enlightenment is characterised by a primacy given to visual metaphor and the concept of illuminating light. See Martin Jay, *Downcast Eyes: The Denigration of Vision in Twentieth Century Thought*, (California: California University Press, 1994)

the subject, 'symbolically castrating' him.²¹ What is so striking about this image of panoptic power is that it is a corrective to Foucault's vision. The sovereign is reinstated. Her body is totally visible in Hockney's illustration, unlike Foucault's shuttered guard. His decision is wilful because the text merely suggests that the Princess looked from *within* an apartment 'high under the battlements in her castle.'²² The windows are drawn, dark and inset, but it is the turret of glass that is Hockney's innovation. It shows that sovereignty never lost its bodily form, and that a panoptic power need not be an invisible, disembodied one but was and is connected to the sovereign body.²³ She becomes a sculptural architectural element adorning her tower. She herself is the object of the voyeur and is beautiful.²⁴ Her ability to see clearly is now inverted and it is her beauty that becomes a metaphor for truth and reason, all the more as she is lit by a strong light (which casts a dark shadow).²⁵ So, *pace* Foucault, the sovereign is seen and sees. She remains as a living effigy of social power, a sovereign centre that the tower doubles, not effaces.

²¹ See John Bender, 'Impersonal Violence: The Penetrating Gaze and the Field of Narration in *Caleb Williams*,' *Vision and Textuality*, ed. Stephen Melville and Bill Readings, (London: MacMillan Press, 1995). Also Jacques Derrida, 'Violence and Metaphysics,' *Writing and Difference*, trans. Alan Bass (Chicago: University of Chicago Press, 1978). Derrida writes at 91, '...The heliological *metaphor* only turns away our glance, providing an alibi for the historical violence of light.'

²² Grimm, 'The Sea-Hare,' 682

²³ See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen, (Stanford: Stanford University Press, 1998).

²⁴ Voyeurism and the scopophilia (the pleasure of looking) have been seen as recurring themes in Hockney's work. Paul Melia discusses voyeurism in regard to the male nude in 'Showers, pools and power,' in Paul Melia, *David Hockney*, 1995, 49-67. These works date to the period just before *Six Fairy Tales*, 1963-1967. A homosexual desire is also present in the illustrations to the *Rake's Progress*, an autobiographical appropriation of the Hogarth original. Another work defines the homosexual gaze one year before the Grimm illustrations is *Christopher Isherwood and Don Bachardy*, 1968. Between Isherwood looking at Bachardy and Bachardy holding the viewer directly there is a closed circuit to desiring gazes. See also the biography by Peter Webb, *Portrait of David Hockney*, (London: Chatto and Windus, 1988).

²⁵ The platform that presented the sovereign body, and the surrounding ritual, in medieval Byzantium (and elsewhere) was called the *prokypsis* and often involved theatrical effects such as lighting and curtains. See Sergio Bertelli, *The King's Body: Sacred Rituals of Power in Medieval and Early Modern Europe*, trans. R Burr Litchfield (University Park: Penn State University Press, 2001).

The Princess in her tower relates to a forked mechanism of power. The sovereign controls and sees everything but alternatively she is seen, adored and loved. The point is that these two seemingly paradoxical conclusions are linked. For Pierre Legendre the subject falls in love with the institutions (like St Augustine does with the liturgical order) in a 'structure of love.'²⁶ Adam Gearey mentions that:

There is a way in which human relationships can be imagined as within law, but constantly challenging the forms of the law that chose to represent those relationships. There is a 'gap' between the form of law at any one time and its possible reinvention, a different fantasm. This follows from the logic of castration and the structure of *jouissance*.²⁷

So on one level there is the written law, the boy must submit to the Princess's rules and challenge. Fantasms also create the subject's legal identity and in this story the love fantasy also becomes an expression of the subjects relationship to the Princess/Law. As Žižek suggests, there is an obscene hidden supplement to the law, where we enjoy the law, and relate to it through *jouissance*. Is not love, looking from the other side, always about power and sovereignty?²⁸

A RIDDLE OF LOVE AND VISION

The chosen weapon in the challenge between the Princess and her suitors, is vision itself:

Moreover, as she was haughty, and would be subject to no one, but wished to keep the dominion for herself alone, she caused it to be proclaimed that no one should ever be her husband who could not conceal himself from her so effectively, that it should be quite impossible for her to find him. He who tried this, however, and was discovered by her, was to have his head struck off, and stuck on a post.²⁹

²⁶ Pierre Legendre quoted in Adam Gearey, *Law and Aesthetics*, (Oxford: Hart Publishing, 2001), 41

²⁷ *Ibid*, 43

²⁸ See *ibid*, 40; Also Julia Kristeva, *Tales of Love*, (New York, Columbia University Press, 1987), 125

²⁹ Grimm, 'The Sea-Hare', 682

The desiring gaze is conflated with the surveillant gaze of the sovereign. If vision, complete vision, is a definition of sovereign power, then the person who is unseen and unseeable, is the other who is outside the purview of the law, the outlaw. The Princess cannot see herself through the tower, nor the unseeable (winning) suitor. The outlaw, as Agamben has shown, shares characteristics with the sovereign, as an alternative point of being outside the law.³⁰ That is why the winning suitor immediately becomes King as well as the outlaw/unseen; he is unable to be made the subject (of her gaze).

The sovereign body of the Princess is also instated by the actual physical punishment that is meted out to her suitors. As Foucault notes, the body of the criminal was punished when the law was seen as an extension of the sovereign body. As the suitors have affected the Princess and her body they must be violently beheaded, to match the violence of their original crime (their failure). But also, in a modern reading, the punishment and death of the visible bachelors here agrees with Foucault's bureaucratic notions of the test, the selection, and the disciplinal hand of authority. Ninety-seven heads soon become ninety-nine heads until the younger brother comes to try his luck. The repressive violence of the sovereign has stabilised the state through the lack of challengers; we know that it has been many (peaceful) years since someone has accepted the Princess's challenge. But this royal body, which embodies violence, is also the site of desire.

What sets the hundredth suitor apart is that the desire is reciprocated. The Princess's desire is described, 'As he [the boy] was so handsome, and begged so earnestly, she said: "Yes, I will grant you that [three chances], but you will not succeed."' ³¹ Her desire is peaked by the threat of being totally out done. His desire seems also based on the limitations set, the prohibition of desiring the

³⁰ Agamben suggests that both the sovereign and the outlaw are *homo sacer* (or a sanctified life, that can be killed but not sacrificed).

³¹ Grimm, 'The Sea-Hare,' 683

Princess on pains of death; would this not be the ultimate situation for *jouissance*.³² The relationship between vision and the law is highly charged in the story.

BEHIND THE EYE

After failing twice, represented in the two images, *The boy hidden in an egg* (Figure 2), and *The boy hidden in a fish* (Figure 3), he does finally succeed in hiding from the Princess. The story suggests two obvious readings. First, the boy only manages to hide through magic. Second, he hides by taking the place of the sovereign herself (by hiding behind the Princess's ear or in other versions 'beneath the braids of her hair'³³); the boy does not succeed through hiding *from* the Princess but on the contrary through over proximity. One reading is that there is something in the legal subject (*here the boy*) that is always unassimilable. When the boy magically metamorphoses into a sea hare he is able to hide from the Princess. This animal is as *unhuman* as possible, soft and amorphous, it seems to represent an unsymbolisable creature.³⁴ The law/Princess can therefore not account for such a creature. This lesson of proximity is also important and Hockney seems to respond to it. When she cannot see the boy she responds in a terrible rage, (in Lacan's terms an eruption of the Real). So at once she desires the handsome boy but at the same time she is

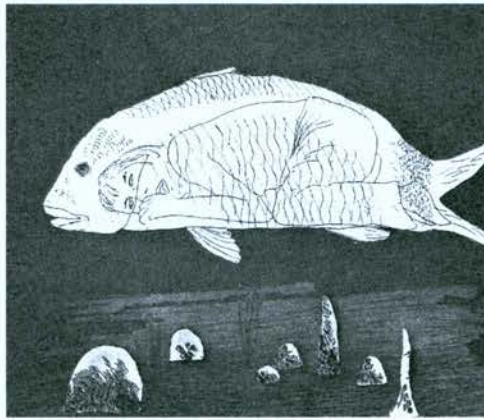
³² See Jacques Lacan 'Kant with Sade' [1963] trans. James Swenson, *October* vol 51, 1989, 55-75: Lacan differentiates pleasure from *jouissance*. Against Kant's certainty that a man would give up a chance with a lover on pain of death Lacan shows that if the man is searching (as Sade is) for *jouissance* he will do just that. See also Jacques Lacan, *The Seminar, Book VII: The Ethics of Psychoanalysis* (London and New York: Routledge, 2008) 233, where he discusses Kant's story as a case where, 'pleasure and pain are presented as a single packet to take or leave.'

³³ Grimm, 'The Sea-Hare,' 684

³⁴ The Real for Lacan, represents something that is unable to be accounted for by the symbolic, it prefigures language. The British Council Notes, suggests the creature is unsymbolisable because it is magic. Even if we take the sea hare as a form of 'sea slug', the sea hare could also be seen as Lacan's abject Real. Another similar metamorphosis is of course Kafka's, where Gregor Samsa wakes to find himself *ungeziefer*. Here too the *ungeziefer*, or monstrous vermin, (literally unsacrificeable animal in middle German) commonly translated as cockroach represents that which is outside the social law, outside the family, outside language.



2. David Hockney, *The boy hidden in an egg*, 1969, 20cm x 17cm, etching, aquatint & drypoint.



3. David Hockney, *The boy hidden in a fish*, 1969, 23cm x 27cm, etching and aquatint.



4. David Hockney, *The Princess searching*, 1969, 27cm x 17cm, etching and aquatint.

affected by her inability to 'see' him. The story shows that something will exceed the sovereign, be that the subject or concepts such as truth or justice on which the law is centered. This blind spot is explained by Slavoj Žižek in his concept of the 'parallax view'³⁵:

The philosophical twist to be added (to parallax), of course, is that the observed distance is not simply subjective, since the same object which exists 'out there' is seen from two different stances, or points of view. It is rather that, as Hegel would have put it, subject and object are inherently mediated so that an 'epistemological' shift in the subject's point of view always reflects an ontological shift in the object itself. Or—to put it in Lacanese—the subject's gaze is always-already inscribed into the perceived object itself, in the guise of its 'blind spot,' that which is 'in the object more than the object itself', the point from which the object itself returns the gaze. Sure the picture is in my eye, but I am also in the picture.³⁶

Our fairy tale is a wonderful illustration of this point; the Princess has a blind spot at the point from which she sees. This is known by the tricky fox who tells the boy: 'When the King's daughter goes to the window, creep quickly under the braids of her hair.'³⁷ But Hockney himself does not choose to illustrate that. Instead the boy is found *inside* the Princess's belly, and doubled again by gazing calmly out as she too gazes in the same direction. In the final image, *The Princess searching* (Figure 4), which illustrates this climactic event, the boy is found inside the Princess. The boy is the aporia of the Princess's visual field. So the boy is *within* the Princess/law, and of the Princess; what Žižek would call the 'Symbolic Real'.³⁸ The boy represents that which cannot be integrated into

³⁵ A term borrowed from the Japanese philosopher and literary critic Kojin Karatani.

³⁶ Slavoj Žižek, *A Parallax View*, (Cambridge MA: MIT Press, 2006), 17

³⁷ Grimm, 'The Sea-Hare,' 684

³⁸ See Slavoj Žižek, *On Belief*, (London and New York: Routledge, 2001), 81; see also James Mellard, *Beyond Lacan*, (Albany NY: SUNY Press, 2006) 250, as Mellard points out the Lacanian triad has now become nine (or cubed), where each term is doubled, (for example the Symbolic Real, Symbolic Imaginary, Symbolic Symbolic etc.).

the [Princess's] Symbolic order. The impossibility of seeing the boy, and his resistance to her sight, creates a traumatic response in the Princess, which later turns to resignation.

AND THEY LIVED HAPPILY EVER AFTER

The story concludes:

The wedding was solemnized, and now he was king, and lord of all the kingdom. He never told her where he had concealed himself for the third time, and who had helped him, so she believed that he had done everything by his own skill, and she had great respect for him, for she thought to herself: 'He is able to do more than I.'³⁹

The boy finds in his transformation into the Little Sea Hare, the secret to the Princess's vision. The boy resists inscription into the law. What is unassimilable to the law points to the possibility of political resistance and dissent. In this story – through playfulness, trickery and ludic refusal – the boy is able to complete the challenge. He has the ability, with the help of the fox, to find the blindspot and win the crown. In the end, too, the boy is not merely a subject but takes his place as sovereign. This is because the one who finds the 'symbolic Real' finds a position from which to critique the State. The boy finds the void in the law but in the end also becomes an alternative placeholder of this void. The boy may be a sham King but he is a metaphor for the uncertainty of an inconsistent and incomplete law. Only he knows it was through trickery that he assumed his position and that there is a gap between his position and his lack of kingliness. As Kafka, among others, has shown, however, impotence itself may characterise the workings of power.

The original reading of this tale is then that through marriage the kingdom is restored to a proper Kingly justice. But there is a reading that retains the reciprocal nature of the desire between the boy and the Princess. The happy ending implies that the marriage also symbolises their love. So although the boy 'wins' so does the Princess who desired the 'handsome boy' all along. Indeed the

³⁹ Grimm, 'The Sea-Hare,' 685

movement from the *jouissance* of the deadly game of courtship subsiding into a banal marriage of 'resignation' could define the workings of love and resonate with all love affairs.⁴⁰

What this thesis does, like *The Little Sea Hare*, is to place power, desire and enjoyment within the parameters of vision and the law. The boy, the younger brother, is the artist/outsider, and offers a point of critique. In the study to follow it is the artist who is able to find the small gaps in the law's façade, and by re-imagining and re-imagining it, create a new image of the law. The artist becomes the King. It is not a transgression against the law, or totally outside it, but within it and through it.

⁴⁰ Perhaps this banal end is proof that they are actually in love and do indeed continue to desire each other. Based on Lacan's *Anxiety* seminar, where he suggests 'Only love-sublimation makes it possible for *jouissance* to condescend to desire' (Lacan, May 13, 1963 lecture), Zupancic explains how love humanizes *jouissance*; love desublimates *jouissance* so that we may continue to desire. See Alenka Zupancic, 'Addendum: On Love as Comedy,' *The Shortest Shadow: Nietzsche's Philosophy of the Two*, (Cambridge, MA: MIT Press, 2003). She writes at 179: 'In love, we do not find satisfaction *in the other* at whom we aim, we find it in the space, or gap between – to put it bluntly – what we see and what we get (the sublime and the banal object).'

INTRODUCTION

Open ye to me the gates of justice: I will go into them, and give praise to the Lord. ¹

Coats of arms, plaster Rorschach blots,
crowned stone moths, they encrust Europe.
As God was dismissed from churches
they fluttered in and cling to walls,
abstract comic-pages held by scrolled beasts,
or wear on the flagstones underfoot.
They pertain to an earlier Antichrist, ²

ON THE LIMIT OF ART AND LAW

This thesis examines the image of the sovereign, or to be more exact the imaging of sovereignty. Immediately two disciplines avail themselves: the philosophies of both art and law. The question of the nature of sovereignty is vexed; it is a limit case, a sublime, at once a founding of the law and somehow also before it. Any discussion of sovereignty demands an acceptance that we are dealing with something based in theology if not magic, and this is difficult for both our disciplines. Both were deeply affected by the modern Enlightenment drive to truth, and to universal theories based on normative principles. Art and representation, in modernity, was seen, in Greenberg's terms, as an essentialist truth, 'the expression of an absolute'³. For jurisprudence we can boldly and simply proclaim that there has been more difficulty in seeing the theologico-political basis for law. There is a circular definition that if a modern jurisprudence begins with notions of natural law then even for Thomas Aquinas such law was to be gleaned through reason. Divine law was separated out from natural and positivist concepts of law.⁴

It was in the move towards structuralism, post-structuralism and post-modernity, that the modern itself was mined for its limit cases; there was found in modernity the seeds of something that

¹ Psalm 118:19

² Les Murray, 'The Shield-Scales of Heraldry,' (excerpt) *Learning Human*, (Sydney: Duffy and Snellgrove, 2003), 136

³ Clement Greenberg, 'Avant-garde and Kitsch,' *Partisan Review*, Vol 6, Iss 5, 1939, 34-49

⁴ Thomas Aquinas, *Summa Theologica*, 1265-1272, especially Part I-II. At Question 90, article 4: '[law] is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated.' Thomas Hobbes in his *Leviathan* (1651), also defines law as a natural law, or general rule, found through reason.

worked against the grand narratives. It is in this move that both art and jurisprudence have found common ground. As both have moved away from their disciplines as an 'empirical science' their edges have frayed. There are common muddying influences. The social is one such aspect where both art and law are not conceived as autonomous but embedded, complex and living aspects of our social lives. The complexity of the political subject is also an aspect that has challenged these disciplines: What is a viewer? What is a citizen? What are human rights? Is this subject universal or specific?

These questions have led to a turn in art history, first to a social art history and then broadening further until art itself was not the sole object of study. The terminology used for this new scope was visual culture or the study of images because it was seen that there were many aspects of images and vision that could not be so strictly termed 'art'. Jurisprudence was also deeply affected by the post-modern questioning of genre, and broadened its scope to accept a critique that questioned the law in its approach to subalterns, to its use of language, and to its broad relationship to the socio-political. One particular turn was towards aesthetics and what it might say about legal reason.⁵

Through the 1990s both disciplines found themselves meeting at the same point; this confluence originally gave impetus to this study. Critical Legal Studies, a broad category of jurisprudence, has made substantial inroads into the 'law's art' and 'art's law' in relation to both images and text.⁶ As a school interested in the social and political underpinnings of law, its ideologies and rhetoric, the visual was one way in which legal power showed itself.⁷ The Law and Literature School also began

⁵ See *Law and the Image: The Authority of Art and the Aesthetics of Law*, ed. Costas Douzinas & Lynda Nead, (Chicago: University of Chicago Press, 1999); Adam Gearey, *Law and Aesthetics* (Oxford: Hart Publishing, 2001); Roberta Kevelson (ed.), *Law and Aesthetics* (New York: Peter Lang, 1992); Desmond Manderson, *Songs without Music: Aesthetic Dimensions of Law and Justice* (Berkeley: University of California Press, 2000). Seminal texts of the interdisciplinary possibilities of law and literature are: Richard A. Posner, *Law and Literature*, 2nd edition (Harvard: Harvard University Press, 1998); Ian Ward, *Law and Literature: Possibilities and Perspectives*, (Cambridge: Cambridge University Press, 1995); Maria Aristodemou, *Law & Literature: Journeys from Her To Eternity*, (Oxford: Oxford University Press, 2000); Melanie Williams, *Secrets and laws: collected essays in law, lives and literature* (Sydney: Cavendish, 2005); Michael Freeman & Andrew Lewis, editors *Law and Literature*, Current Legal Issues, Volume 2, (Oxford: Oxford University Press, 1999). The review of this literature occurs in Chapter 1 and focuses on the law and the image.

⁶ Douzinas and Nead, *Law and the Image*, 1999, 11

⁷ As an example of Critical Legal Studies and the ideology of images see Lewis Kornhauser, 'The Great Image of Authority,' *Stanford Law Review*, Vol 36, 1984, 371- 387

looking at images.⁸ On the other side visual studies has begun to look at images that command, authorise, or seduce, and which have a power over the subject. In brief, they are both interested in an image that is embedded in the social fabric and an image that controls the social fabric. Immediately the third discipline that is involved in both discourses becomes obvious: psychoanalytic theory, or at least an anthropological understanding of an image that works like another 'subject'.⁹ The commanding image is a very small subset of visual studies on which to focus, but it is important to bring these two lines of thought together. Of course there is not an exact parity and both disciplines can help tease out the limits of their respective genres. This thesis is primarily based within the discipline of art history. It maps the concept of 'sovereignty' against the modern canon. As actors and astute readers of vision, the artist and their artwork is as good a place as any to discover insights into the image of the sovereign and sovereign power.

PLAYING AT THE LIMIT AND SOVEREIGNTY

There are many subalterns that postmodern jurisprudence has sought to excavate, as limits or exceptions to grand narratives.¹⁰ Sovereignty is a particular test and challenge to a modern, reasoned conception of law and goes to the heart of questioning law's limits. In philosophy and jurisprudence there has been a relatively recent turn to sovereignty as a political-theological concept.¹¹ The notion of such an irrational founding force was anathema to a positivist or

⁸ Besides Douzinas and Nead, *Law and the Image*, 1999, recent additions to this field include, Alison Young, *Judging the Image: Art, Value, Law* (London & New York: Routledge, 2005); for a semiotic approach see the collection *Images in Law*, ed. Anne Wagner and William Pencak, (Surrey: Ashgate, 2006). Law and Literature's literary texts broadened to accept plays, film, television and visual images.

⁹ We will see in the Chapter 1 and Chapter 2 the way psychoanalytic theory has influenced many of the theories to be discussed. The pioneering work of David Freedberg, *Power of Images: Studies in the History and Theory of Response* (Chicago: Chicago University Press, 1989) recently extended the interest of art history to broader visual 'response'. Freedberg himself was heavily influenced by Aby Warburg, Ernst Kris and others from the early Viennese School of Art History who were all very open to psychological and anthropological approaches to art.

¹⁰ Seminal texts are: Costas Douzinas, Ronnie Warrington and Shaun McVeigh, *Postmodern Jurisprudence*, (London and New York: Routledge, 1991); 'Postmodernism and Law: A Symposium', *University of Colorado Law Review*, Vol. 62, 1991, 439- 636; 'Symposium: "Deconstruction and the Possibility of Justice,"' *Cardozo Law Review*, Vol 11, 1990, 919-1726; Dennis Patterson, 'Postmodernism,' in *A Companion to Philosophy of Law and Legal Theory*, ed. D Patterson, (Oxford: Blackwell, 1996), 375-384

¹¹ The term 'political-theology' was coined by Carl Schmitt in 1922, in his essay 'Political Theology'. He suggests that modern theories of the state are secularised versions of the belief in God. Ernst Kantorowicz indirectly critiques Schmitt and reinvigorates the notion of political theology in *The King's Two Bodies A Study in Medieval Political Theology*, (Princeton: Princeton University Press, 1957). The erudition of this text and its

normative account of law. There has been a recent turn especially in relation to psychoanalysis and post-Marxist questioning of ideology that sees sovereignty as a very important term; belief, faith and desire are as important to connecting the subject to the law as any notions of reason, authority or right.¹²

Similarly in art history the auratic arts beholden to religious or courtly purpose were meant to have ended with modernism.¹³ But the survival and persistence of this aura has been well noted (*pace* Benjamin). This is a crucial aspect; to borrow a term from Aby Warburg, there are 'survivals' of magical and auratic images still present in modern art. By *not* focusing on images properly called art, visual studies is able to look at the 'power of images' holistically. Sacred icons, images of ritual use, voodoo dolls, and political effigies, to name a few, become subjects of interest. To help prove and explore this terrain the image of the leader's sovereign body is shown to be one such vestige of pre-modern 'magic'. What sort of challenge does this magically sovereign body pose?

Joseph Raz in a positivist reading suggests that the concept of the limit relies on 'the position that there is a test which distinguishes what is law and what is not'.¹⁴ The positivist argument is circular in as much as the idea of the limit, either conceptual or empirical, is itself a principle of identity for the law. As Foucault suggests in 'Preface to Transgression', the limit is defined by what is outside it.¹⁵ Whatever is 'inside' the limit of law can only be read against the 'trace' left by the 'outside'. In other words there is a free play over and through this permeable limit. It is what Foucault calls the 'spiral' movement.¹⁶ A similar idea is taken up in Derrida's address and essay 'Force of Law'.¹⁷ In this essay Derrida makes a distinction between the justice of the theological sovereign and law. Law fails to respond to the particularities of difference and instead reduces the legal subject to

fusing of literature, art, religion and law is a spring board for much interdisciplinary legal scholarship and this study.

¹² Most notably the work by Louis Althusser began an interest in how the subject is 'interpellated,' through belief and ideology. Chapter 1 will review this material and contemporary conclusions.

¹³ The move away from courtly and sacral art is the defining characteristic of modern avant-gardism for Peter Burger. Peter Burger, *Theory of the Avant-Garde*. trans. Michael Shaw, foreword by Jochen Schulte-Sasse (Minneapolis: University of Minnesota Press, 1984).

¹⁴ Joseph Raz, 'Legal Principles and the Limits of Law' in Cohen (ed.), *Ronald Dworkin and Contemporary Jurisprudence*, (Duckworth: 1984), 842

¹⁵ Michel Foucault, 'Preface to Transgression,' in *Language, Counter-memory, Practice: Selected Essays and Interviews by Michel Foucault*, ed. Donald F. Bouchard, (Ithaca: Cornell University Press, 1977) 29-52

¹⁶ *Ibid.*, 35: 'a spiral which no simple infraction can exhaust.'

¹⁷ Derrida, Jacques, 'Force of Law: The "Mystical Foundation of Authority"', in Drucilla Cornell, Michel Rosenfeld and David Gray Carlson (ed.) *Deconstruction and the Possibility of Justice*. (London and New York: Routledge, 1992) Publication of keynote address to Cardozo School of Law.

essentialist rules, regulations and policies. For Derrida justice, on the other hand, leaps into the void, and reinvents law in every case; it is this leap of faith in decision making that he equates with the sovereign. For Derrida then, justice is aporetic for it arises in the aporia of the law.¹⁸ Yet again the paradoxical relation to the limit is inherent in the relationship of law and justice; justice is reliant on the law but necessarily transgresses it. Derrida's 'The Law of Genre' highlights the fact that any demarcation of an area of knowledge be it law, art or any other conceptual separation of intellectual pursuit, depends on the trace of another.¹⁹ The law's parameters were seen as separate from society in the modern conception of autonomy of the law. Similarly in visual culture the autonomy of art history has been something that has been questioned through postmodernism. There is a site of conflict or misapprehension of terms between visual culture and the law. Both have defined limits that are now being queried within each discipline. Art history itself has been co-joined with the discipline of visual culture, which although not necessarily supplementary, tends to broaden the approach of art history. Law itself has a long history of aesthetic categories for use in policing images. Similarly art has defined itself against legal norms and frameworks.

It is in an effort to move past normative law too, that Giorgio Agamben revisits the work of Carl Schmitt. For all its faults, Schmitt's response to sovereignty as the power that 'decides the exception', gives an expression of sovereignty outside normative constraints. In agreement with Derrida and Foucault, Agamben highlights that it is this exception that also proves the rule. The exception and the rule are interconnected as a system that creates law.²⁰ This contrasts to the positivist answer in H L A Hart's *The Concept of Law*.²¹ Hart expresses 'sovereignty' as a framework of rules that not only describe the 'sovereign' but constitute it. Hart suggests that in a rule bound modern jurisprudence the 'sovereign' as a term ceases to exist.²² So here we follow the return to the archaic, irrational, founding of the law from a point outside the normative set of rules, as a limit case.

The approach to understanding sovereignty, as the limit of the law, will be done mainly through repeating its terms. It is not an analytical approach as such, but a working through the problem of

¹⁸ See Drucilla Cornell, *The Philosophy of the Limit*, (London and New York: Routledge, 1992) for a closer reading of Derrida's text.

¹⁹ Jacques Derrida, 'The Law of Genre', *Critical Inquiry*, Vol 7, Iss 1, 1980, 55-81

²⁰ See Giorgio Agamben, *State of Exception*, trans. Kevin Attell, (Chicago: University of Chicago Press, 2005) especially Chapter 1, 'The State of Exception as a Paradigm of Government.'

²¹ H L A Hart, *The Concept of Law*, 2nd ed. (Oxford: Oxford University Press, 1997 [1961])

²² *Ibid*, 74-75; see also Nasser Hussein, *The Jurisprudence of Emergency*, (Michigan: University of Michigan Press, 2003) 13

sovereignty, and especially the imaging of sovereignty, from the site of the artist and an artwork. As sovereignty is best described as this sublime limit or as unrepresentable, it is a clear example of an institutional or structural metaphor. It is again the post-structuralist move that allows for this shift from truth, origin and structure. There is a freedom in this text to follow the imaging of sovereignty in modern art as a beginning of many possible readings that can go on indefinitely, or to use Derrida's term, to play with this idea and image of sovereignty. Derrida writes:

There are thus two interpretations of interpretation, of structure, of sign, of play. The one seeks to decipher, dreams of deciphering a truth or an origin which escapes play...the other, which is no longer turned toward the origin, affirms play and tries to pass beyond man and humanism, the name of man being the name of that being who, throughout the history of metaphysics or of ontotheology— in other words, throughout his entire history— has dreamed of full presence, the reassuring foundation, the origin and the end of play.²³

In this way the approach is provisional. It traverses fantasies, fictions and metaphors rather than scientific knowledge. It is reassuring that the discipline of visual studies and the inroads of the Law and Literature school in jurisprudence have allowed for such a playful approach to images.

JURISPRUDENCE AND VISUAL CULTURE AS AN EXTENSION OF LITERATURE

Critical Legal Studies arose through a poststructuralist and deconstructivist awareness of the complexity of the legal 'text'. Postmodern jurisprudence attempts to theorise and problematise, not the entire legal system as modern jurisprudence practised, but the local production of meanings in specific contexts. Peter Goodrich suggests that we find ourselves again at an understanding of the limit of law:

Literature here offers glimpses not only of 'nomos and narrative', of justice and injustice in the social relations imposed by law, but also offers an occasion for lawyers to acknowledge and respect the voice and the precarious place of the other – perhaps of literature itself – within the normalizing discourse of the juridical domain...Literature, one could here argue, presents an image of a beyond of law, a justice that exists like equity beyond the letter of legal rule. Literary method provides subtle and, in political terms, non-obvious critical tools for analyzing the felicity – the justice – of legal speech acts.²⁴

²³ Jacques Derrida, 'Structure, Sign and Play in the Discourse of Human Sciences,' *Writing and Difference*, trans. Alan Bass (London: Routledge, 1990) 278-294, 292

²⁴ Peter Goodrich, 'A Law by other Means', *Cardozo Studies in Law and Literature*, vol 10, 1998, 111-116, 115. See also Peter Goodrich, *Languages of Law: From Logics of Memory to Noamdic Masks*, (Cambridge:

The legal 'text' itself is put under the pressure of deconstructive interpretation and attempts to reinterpret legislation, judicial and jurisprudential texts. In a reading of difference Goodrich is interested in the history of the law in as much as it shows the trace of earlier rhetoric. The law never erases the past in a play of differences; as we have seen it is this sort of 'survival' of perhaps pre-modern vestiges that underpins the study.²⁵ This approach to literature and the law saw an interesting expansion of jurisprudential interest. The law expanded its approach to jurisprudential sociology beyond social history to other plastic cultural forms such as literature, music and art history. Desmond Manderson has dubbed these approaches 'apocryphal jurisprudence'.²⁶ Unlike more orthodox approaches in the Law and Literature school these approaches do not suggest that there is an essential truth to be garnered about the nature of legal rhetoric or reasoning.²⁷ Instead it tries to show how these disciplines can be seen as interdependent, and in parts mutually inscribed. Art history has recently become an area of study.²⁸ It is impossible to underplay the importance of *Law and the Image* on this area of scholarship; Costas Douzinas and Lynda Nead write that:

This collection is the first attempt to develop a specifically legal iconology, to draw on the critical procedures of law, art history, and cultural studies in order to consolidate a new interdisciplinary field of visual culture and law. The focus is on the diverse interfaces between the law and the artistic image. The essays explore the ways in which art and law intertwined – the history of their

Cambridge University Press, [1990] 2004); Peter Brooks and Paul Gewirtz, (ed.), *Law's Stories: Narrative and Rhetoric in the Law* (Yale University Press, 1996 and 1998).

²⁵ Peter Goodrich, 'Law and Language: An Historical and Critical Introduction' *Journal of Law and Society*, vol 11, 1984, 173. See also Desmond Manderson, 'Et lex Perpetua' *Cardozo Law Review*, vol 20, 1999, 1621-1645; Costas Douzinas and Ronnie Warrington, (ed.) *Postmodern Jurisprudence* (London: Routledge, 1991)

²⁶ Desmond Manderson, 'Apocryphal Jurisprudence', *Studies in Law, Politics and Society*, vol 23, 2001, 81-111; see also Desmond Manderson, *Songs without Music: Aesthetic Dimensions of Law and Justice*, (Berkeley: University of California Press, 2000)

²⁷ For example of law and literature texts which treat literature and law as social phenomena see: William MacNeil, 'The Monstrous Body of Law: Wollstonecraft v. Shelley' *Australian Feminist Law Journal*, vol 12, 1999, 21; Adam Gearey, 'Death and the Law Between James Joyce and Pierre Legendre' in *Courting Death: The Law of Mortality*, ed. Desmond Manderson, (London: Pluto Press, 1999), 194-215

²⁸ For the analysis of art history and the law: Costas Douzinas and Lynda Nead, eds., *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago: University of Chicago Press, 1999); Costas Douzinas, *Justice Miscarried: Ethics, Aesthetics, and the Law* (Hemel Hempstead: Harvester Wheatsheaf, 1994); Costas Douzinas, Shaun McVeigh, and Ronnie Warrington, 'The Alta(e)rs of Law' *Theory Culture and Society*, Vol 9, Issue 4, 1992, 93-117; Piyel Haldar, 'In and Out of Court: On Topographies of Law and the Architecture of Court Buildings' *International Journal for the Semiotics of Law*, vol 7, issue 2, 185-200.

relationship, the ways in which the domain of the visual is made subject to the force of law, and the complex relations between law, the image, and identity – while addressing questions of distinction and the maintenance of boundaries.²⁹

This thesis draws upon their collective project. Broadly, there is a shared use of visual studies, postmodern theory and psychoanalytic theory to discuss images of the law. Douzinas highlights the shared theological history of law and images, where images become the placeholders of the sublime in law, the theological underpinning of law.³⁰ The law is seen as an extension and a defining force of the subject's psychology and broader social concerns. In this context the images of the law become a marker of society's understanding of the law's authority and a way in which we see the law promulgated throughout society.

Chapter One further explores the inroads jurisprudence has made into the realm of images. It highlights more particularly the use of art and its relation to the law. It canvases new studies of aesthetics and the law, and looks beyond the common search for what art can tell the law about itself (how can law reclaim its irrational, sublime side and can aesthetics help in this discussion?).³¹ The question becomes: how is the image tied to the power of sovereignty and is art involved inherently in this process? This utilises the methodologies of art history to read images anew in light of an image that may command and rule. It is especially the work of a jurisprudence underpinned by psychoanalysis that can be utilised to look at how the subject is interpellated by the law and in particular here the law's images. I will explain how jurisprudence may place a heavy burden on the image in the law's interpellation of the legal subject, following mainly from the work of Pierre Legendre.³²

The common assumption that modern democracy has a void at its centre where the king once was begs the question (following Legendre, Althusser and others): what does a democratic effigy look like and how does it work? But also the subject itself is shown not to be the 'reasonable man' of the law. Psychoanalytic theory shows the subject to be a complex, idiosyncratic subject with desires, loves and fears. We isolate the 'commanding' image and the response to this figure of

²⁹ Douzinas and Nead, *Law and the Image*, 1999, 'Introduction,' 11

³⁰ Costas Douzinas, 'Prosopon and Antiprosopon: Prolegomena for a Legal Iconology,' in Douzinas and Nead, *Law and the Image*, 1999 36-67

³¹ Douzinas and Nead, *Law and the Image*, 1999; Alison Young *Judging the Image*, (London and New York: Routledge, 2005)

³² Pierre Legendre, *Law and the Unconscious*, ed. Peter Goodrich, trans. Alain Pottage, (London: Palgrave Macmillan, 1997); see also Peter Goodrich and David Carlson, *Law and the Postmodern Mind: Essays on Psychoanalysis and Jurisprudence*, (Ann Arbor: University of Michigan Press, 1998).

authority. As Freedberg himself warned, we are on the uncertain ground of a mere 'theory of response' and yet, the response of the artist to images of sovereignty is what drives this study. What does their visual response say about the visual interpellation of the subject? The idols that command in the end do not interpellate subjects in a universal way.

VISUAL CULTURE, ART, AND ITS EXTENSION INTO JURISPRUDENCE

The addition of visual culture to 'apocryphal jurisprudence' comes with distinct challenges to the semioticians of the law. As Goodrich explained above, literature offers a perspective of the law that often locates its power in being a 'non-obvious' tool for analysis. W.J.T. Mitchell is also apposite to the thesis, and highlights the distinct importance of the visual in culture as opposed to a textual analysis:

[...W]e [should] not confuse the desire of the picture with the desire of the artist, the beholder, or even the figures in the picture. What pictures want is not the same as the message they communicate or the effect they produce; its not even the same as what they say they want. Like people, pictures don't know what they want; they have to be helped to recollect it through a dialogue with others.³³

This is a bold addition to the parameters of art history and its iconology. Mitchell prefers to see images as actors within social frameworks, almost as if they were (human) subjects. In this he follows the recent anthropological approach of Alfred Gell in treating images and artefacts as social agents. Gell's approach was necessitated by the uncertainty of the term 'art' to define certain cultural artefacts that would not ordinarily come under the Western notions of art. For example, the Pukamani poles from Bathurst Island at the National Gallery of Canberra Sculpture Garden are framed as 'sculptures' but does this encroach on their cultural meaning as funereal poles?³⁴ Or from a Western perspective can medieval icons of Christ be called art when the apperception of those images fell under the magical 'presence' of Christ rather than an 'art object'?³⁵ Gell highlights that the primary goal of anthropology is not an understanding of 'culture' or 'appreciation' but one of mapping social relationships within social systems.³⁶

³³ W J T Mitchell, 'What Do Pictures Really Want?', *October* Vol 77, 1996, 71–82, 81

³⁴ No information regarding their ritual use is provided. Similarly there are slit-drums from Vanuatu that are looked at but never sounded.

³⁵ See Hans Belting, *Likeness and Presence: A History of the Image before the Era of Art*, trans. Edmund Jephcott, (Chicago: University of Chicago Press, 1997)

³⁶ Alfred Gell, *Art and Agency: An Anthropological Theory*, (Oxford: Clarendon Press, 1998), 6

Mitchell's approach, though similar, is grounded in psychoanalytic theory. He asks whether images themselves can have their own desires, whether they can command, inspire fear or love, and proposes a way of looking in Lacanian terms.³⁷ Mitchell shifts our reception of images away from 'meaning' towards a broad understanding of art's power. In this way Mitchell moves beyond mainstream art theory. In Chapter Two we discuss this theory in greater detail and its implications on the reading of art. At this point however, I want to simply signal the utility of Mitchell's idea of an image that commands. For Mitchell the images of the law, are culturally embedded and linked to power, the Name-of-the-Father, and the Lacanian term, the Symbolic, or big Other. Put another way the image is 'authorised' to command. It is this authorisation and connection to a Symbolic order outside art that allows new terms for certain objects we take for granted. For example, a portrait attached to a sign and then burnt in a protest functions as an effigy, or as mentioned above, Christ's figure in a church becomes Christ's *presence* and not merely an image (for the faithful).

Gell and Mitchell's work provide a fruitful methodology for the discussion of images of the law and artworks. They also share a useful understanding of the relationship between the viewer and the image and how the subject is 'interpellated'. Chapter Two speculates on the implications of incorporating these inter-disciplinary insights into canonical art history. Using the terms of visual studies, we see how an image that commands, or is 'authorised' is an effigy. The effigy embodies the history of art historical allusion and sculpture on one hand and on the other, like the political effigies we see burning at protests, suggests something political, legal and magical. The effigy was also the Romano-canonical term, *effigio*, for a magic, forensic sculpture that could be used both for punishing criminals and exalting emperors.³⁸ Does art history have a blind spot for this ritual use of its images?

FINDING ART'S EFFIGIES

This thesis brings the approach of visual studies to commanding images, and the experiments of jurisprudence to art history. It is a fraught exercise. Visual studies purposively expanded the scope of art history and to bring these methods back to the canon of that history and in particular the canon of modernism is to jettison some major claims against the hierarchical, patriarchal and Enlightenment discourse of the canon. But one critique that visual studies was able to make, which is utilised here, is whether in regard to law's images, the moniker of art is useful at all. Many

³⁷ W J T Mitchell, *What Do Pictures Want? The Lives and Loves of Images*, (Chicago: University of Chicago Press, 2005). The triad of idol, fetish and totem which Mitchell explores is mirrored by the Lacanian triad, respectively, the Symbolic, Real and Imaginary.

³⁸ Freedberg, *The Power of Images*, 1989, especially 'Chapter 10: Infamy, Justice and Witchcraft', 246-282

canonical artworks and artists can be seen anew through the insights of the 'commanding image'. Beyond a social history of art their work can be used as a way of understanding the power of the law and how the subject (here an artist) is controlled; these are concerns outside the tradition.

Art complicates the interpellation of the subject in a particular way. Modern art has its own Promethean character, who interpellates his viewer, and that is the 'Great Master' artist. In this way there is a doubling of the 'sovereign' author of the image. There is a tension between the legal author of the image and the artistic author of a legally symbolic image. Most approaches to art and jurisprudence do not figure the 'author.' Traditionally the 'author' of the work does not figure because it is assumed that the law is the author of its own image.³⁹ Modernist art and law do share a striving for the absolute: values such as beauty and justice. The utopian project of modernism in both disciplines is underpinned by the Kantian notion of the free, autonomous subject. It seems more than a metaphoric relationship that the artist can be seen as an exemplar of the sovereign subject. For Kant, and the Romantics, the autonomous author was tantamount to a modern aesthetic creation; no longer beholden to the court or sacral duties, the author/artist strove for beauty. Beauty for Kant was a notion of the social, *sensus communis*. In late modernism freedom and autonomy was absolute and beauty/ugliness became no constraint on the artist. The artists actions and choices alone dictated whether art existed or not.

The idea of the sovereign poet who challenges the king and God is not new. Griselda Pollock suggests that we are all – as viewers of art – infantilised by the great paternal figures of the 'Great Masters.'⁴⁰ So there is here a real tension between the sovereign artist and any institutional or canonical overlords he may have. The canon creates sovereign, male, modernist Prometheus, in relationship to legal metaphors of paternity. The connection in this thesis between the legal sovereign and the poetic sovereign is therefore seen as explicit and not merely metaphorical; any connections between the two forms of sovereignty are seen as literal and mined for their theoretical potential. On the other hand the artist may be the hysteric who responds questioningly to his master, but this begs the question: who is the master of the Great Masters? In the end the artist is not as wholly free as modernist mythology suggests. The artist is still a legal

³⁹ Although Chapter Three discusses this issue in depth, a quick test for the Commonwealth reader is to look at their coins. The effigy of the Queen prior to the nineties was not authored, that is there was no artist's signature. Since the nineties, one assumes because of moral rights, the author has been allowed to initial the effigy. The shift becomes clear: the image is seen as a portrait rather than a sacred effigy. This is exactly what is at stake, though perhaps an image can be both an artwork and an effigy depending on your point of view.

⁴⁰ Griselda Pollock, *Differencing the Canon: Feminism and the Histories of Art*, (London and New York: Routledge, 1999)

subject who is *within* the legal and symbolic order, who works in the aporias of the symbolic structures and not *against*, or *outside* them.⁴¹ The myth of the canonical modern artist as the outsider, the rebel or the madman is debunked. This thesis offers a new reading of avant-garde modernism that does not need direct opposition. As Duchamp would later insist, he was never interested in anti-art but merely called himself an 'anartist'⁴². There would be other ways to continue this line of argument that were not juridical, to take up Baudrillard's cheeky idea of art as an 'art of collusion vis-à-vis the contemporary world. It plays with it and is included in the game. It can parody this world, illustrate it, simulate it, alter it; it never disturbs the order, which is also its own'.⁴³ The liberating and utopic drive of modernism has been roundly debunked. What we can find though is a new form of liberation as suggested by play and parody. The story to be told is an art that finds some freedom and liberty at the point of stress in the law, at the point of its founding, its violence and its aporias and lacks.

This thesis offers one effort to approach art in this jurisprudential way. It is neither authoritative nor analytical. In fact if anything it seeks to explain the persistence of the effigy, that a vestige of a pre-modern courtly art persists through the period of modernism in various guises. The social apperception of power and sovereignty shifts through the nineteenth and twentieth centuries. It charts a shift from belief and faith in a sovereign power to a much more open acceptance of the sublime nature of the law. This is further explored in relation to the contemporary field of art and a 'return' of the sovereign body in the age of terror and sedition.

The law's image is based on command, authority and sovereignty and relates to the order of the Lacanian big Other, or the Symbolic order. Subjects, however, respond to this symbolic order in different ways. The movement of the thesis as suggested above is chronological. Drawn over this chronology is a psychoanalytical description of response which can be described broadly through

⁴¹ This important direction for art theory comes in a small footnote by Hal Foster discussing a similar suggestion of Eric Santner; Hal Foster, 'Obscene, Abject, Traumatic,' *October*, vol 78, 1996, 107-24. If the abject is outside the symbolic then as Foster rightly highlights it is only from attacking the symbolic from within that a direct critique of the law can be made. Foster chose this essay as his representative essay in Douzina and Nead, *Law and the Image*, 1999.

⁴² See Thierry de Duve, *Pictorial Nominalism: On Marcel Duchamp's Passage from Painting to the Readymade*, trans. Dana Polan (Minneapolis: University of Minnesota Press, 2005) Foreword ix: the suggestion I am making is that 'anartist' is not the same as an 'anti-artist.' It is unclear what Duchamp was suggesting exactly but it seems that there is a pun with anarchist, so a disavowal of certain frameworks. But also it seems that the relationship mirrors that between anomy and *nomos*. Anomy is still in connection with the *nomos* and there is a clear interrelatedness.

⁴³ Jean Baudrillard, *For a Critique of the Political Economy of the Sign*, trans. Charles Levin (Saint Louis: Telos Press 1981 [1972]), 110

Lacan's four discourses: master, hysteric, university and finally (and briefly) analyst; each part responds to one of the discourses.⁴⁴ If we take the master discourse of Lacan as the beginning of modernism the other discourses can be thought of as a certain response to this modernism. What is useful about Lacan's four discourses is, that without being too prescriptive, they help articulate what we have set out to define, that is, how does the legal subject respond to the big Other? How does the artist respond in various ways at various times to the images of sovereignty, which are the visual equivalent of the master signifier, or phallic signifier? The discourses also suggest a subtle interrelationship between these positions.

MODERNISM AND THE EFFIGY: SEEING THE CANON ANEW

Chapter Three outlines a new definition for a form of critique within avant-garde modernism that does not attack the law as a transgression but finds the weakness, or fissure within the law itself. We will look at art through an examination of autonomy, authorship and transgression in relation to the legal categories of sovereignty, legal subjecthood and ideological interpellation. It defines transgression and autonomy in relation to the big Other, not necessarily 'against' it, but *within* the Symbolic (and not outside the social). So to follow Lacan, avant-garde modernism can be defined as a 'return of the real' but here the Real is defined as the unsymbolisable sovereign.⁴⁵ Against more traditional notions of the avant-garde that sees art separated from life, art is brought back into the service of the social. Here transgressions are seen not against, but within society's symbols of law, authority and prohibition. It makes a case for an avant-garde project, in the twentieth century, that attempts to come to terms with the traumas of the early twentieth century: the two World Wars, new forms of sexual and social politics and economic uncertainty. The lack of faith in traditional structures and institutions, including religion and law provided the preconditions for the avant-garde; to put this in Lacanian terms, if interpellation happens through the big Other, what happens when the subject begins to lose faith in the big Other?

⁴⁴ Jacques Lacan, *Seminar XVII*; see also Mark Bracher. "On the psychological and social functions of language: Lacan's Theory of the Four Discourses" in Mark Bracher (ed) *Lacanian Theory of Discourse: Subject, Structure and Society*. (New York: New York University Press, 1994) 107-128; I came too late to the book to incorporate it but see, Jeanne Schroeder, *The Four Lacanian Discourses or Turning Law Inside Out*, (London: Birkbeck Law Press, 2008). I have however used her earlier insights in Jeanne Schroeder, 'The four discourses of law: a Lacanian analysis of legal practice and scholarship,' *Texas Law Review*, vol 79, issue 1, 2000, 15-98.

⁴⁵ Hal Foster, *Return of the Real: The Avant-garde at the End of the Century*, (Cambridge, Mass: MIT Press, 1996). Although primarily related to the neo-avant-garde Foster's argument has an inherent notion of reiteration and connection to the early avant-garde.

Part Two looks at art in early modernism when the authority of the law and particularly sovereign power is still effective. We will explore early modernism as the original attack against the State's right to make and control images. In Chapter Four, on the cusp of monarchical control and the birth of democratic freedom a particular challenge was mounted by Honoré Daumier's paintings and caricatures. His battle and jailing for his terrible indignity against the king's body marks the birth of an emancipated space for the modernist artist (outside the power of the court). His freedom is guaranteed from some other sovereign body outside the frame. This discussion continues through Gustave Courbet's great work *Painter's Studio: A Real Allegory*, 1855, in Chapter Five. Using a jurisprudential framing, a blindspot in art theory's reading of this image becomes apparent. There is an apparent doubling of the sovereign body that has gone unnoticed, with the artist as mediator. Previous readings have seen Courbet's portrait, central in the frame, as the fulcrum of the piece (following Romantic notion's of authorship and biography). This chapter offers an alternative reading where Courbet again is an infantilised legal subject, controlled from *within* the symbolic. The second section shows that early avant-garde modernism was deeply affected by a master discourse, or a fully operative belief in monarchical power. Democracy was still imaged in relation to the monarch and an alternative sovereign body.

In Part Three the hysteric's discourse is examined. The avant-garde of the first half of the twentieth century is seen as a response to the trauma and anxiety occasioned by the traditional authority figures faltering. Chapter Six looks at the effects of this lack of belief in Dada and their hysterical response to this lack. Marcel Duchamp, Max Ernst and Tristan Tzara show contempt not only for the ideas of the State but also its material manifestations. The father figures of the law and State are probed and found lacking. There is a strong vestige of a master's discourse where the individual is posited as the new master, in a strong and complete disavowal of the State. The individual is the State.⁴⁶ Chapter Seven describes a more obvious hysteric in the work of Yves Klein. Here the artist/subject is the hysteric calling interminably for the traditional father figures to return and reassert themselves. Klein repeats the images of the State, and its methods of interpellation through simulation that is both satirical and yearning. Klein's work is seen as part of a deconstructive practice that plays and questions the law's ability to call its subjects to account.

Part Four focuses on the disciplinary turn in the law, or the university discourse. It suggests that even in a disciplinary society there is still a repressed truth or big Other that underpins power and knowledge. As part of the return to an engagement with 'life,' Pop art and Conceptual art critiqued the 'art for art's sake' high formalism of the 1950s by deriving ideas and images from social, cultural and economic fields. The thesis examines the potent use of vestiges of courtly and

⁴⁶ This follows certain theoretical philosophies of anarcho-individualism, such as the work of Max Stirner, who is directly influential on all three artists.

sacral art even in modernist sculpture and painting. Chapter Eight elaborates this discussion through Warhol's ability to create an image of 'double interpellation', where the two elements of the ideology, the subjective and the legal, are concurrently in play, in tension. There is a direct interest in State images from JFK portraits to the atom bomb, from the electric chair to riot police. The thesis focuses on Warhol's 'double interpellation' through examining the image of the sovereign and other ideological manifestations. State violence and repressive strategies are looked at in the scandal surrounding the censoring of his piece *Thirteen Most Wanted Men* in 1967. Chapter Nine moves away from the leader's body to suggest that in democracy perhaps all of us embody sovereign power. If we are all interpellated but at the same time the subject who interpellates are we not *all* symbolic bodies. Duane Hanson's wax caste sculptures are seen not for their abject 'realness' but for their symbolic realness. The thesis inverts the traditional reading of this work as visceral and corporeal and sees the corpus instead as a symbolic political corpus. The disciplinary society (or university discourse) turns the body into a site of knowledge, but is there an unspoken political basis of our bodies, a 'bare life'?

The thesis concludes with the most recent return in a long line of modern and postmodern effigies in the 'Age of Terror.' The concluding chapter tentatively suggests that artists such as Maurizio Cattelan openly play with a contemporary and democratic manifestation of a sovereign body or effigy. The totalitarian overtones of the latter are playfully suggested and seen both as troubling but impotent; the work shows an anxiety around a lack of symbolic structures *and* an opportunity to see past traditional forms of control. The void at the heart of democracy, where the image is a placeholder of the void, is accepted and explored. The political real is highlighted as a hole around which we all function. We need our myths to ground the law.

CONCLUSION: LAW, ART AND EKPHRASIS

The law is traditionally logocentric. We are putting into words the particular power of images. There are difficulties associated with the rhetoric of ekphrasis. In ancient rhetoric, ekphrasis was one of the most advanced of the preparatory exercises created to educate the young in basic rhetorical skills. Persons, places, and events were possible themes for ekphrasis but in practice, paintings, sculpture and buildings came to be popular subjects for Greek rhetoricians from the 2nd century onwards. Ekphrasis of works of art and buildings survived throughout the Byzantine Middle Ages and reached the West during the Renaissance.⁴⁷ The interest to scholars such as Mitchell is that ekphrasis embodies the impossibility of language to completely embody the object

⁴⁷ For a good survey, see Grant F. Scott, 'The Rhetoric of Dilation: Ekphrasis and Ideology,' *Word & Image* vol 7, no 4, 1991, 301-10; see also W. J. T. Mitchell, 'Ekphrasis and the Other,' in *Picture Theory*, (Chicago: University of Chicago Press, 1994) 151-182

of discussion, in Mitchell's terms the words may cite but not 'sight' the visual object in question. In other words the understanding of the visual is as much a theory of response and social or cultural experience of the visual as it is a language to be deciphered.

Culture has traditionally been understood largely as an affair of language and texts. Although images, visual objects, and performative activities have been understood as vehicles of cultural expression, the meaning of these things has generally been referred to as verbal codes of discourse or narrative. One of the provocations of the very notion of visual culture, then, is that it requires us to ask whether there are dimensions of culture that lie beyond or outside of language, whether images, for instance are vehicles of experiences and meanings that cannot be translated into language.⁴⁸

The jurisprudential rhetoric of visual culture, as it leads from aesthetic questions injected into critical legal studies by literary and semiotic study, must see the distinguishing features of the visual. It is a warning that visual culture is not merely a literary text. The image is used juridically often as a symbol or sign but in a public and social context. An iconological approach is a powerful tool in art history and still very useful.⁴⁹ However, little legal scholarship has been done on what the law brings to an image as it functions socially. A number of words are about to follow, but the visual may command in a way that is beyond the text.

⁴⁸ W J T Mitchell, 'What is Visual Culture?' in Irving Lavin, *Meaning in the Visual Arts: Views from the Outside: a Centennial Commemoration of Erwin Panofsky*, (Princeton, NJ: Princeton University Press, 1995), 207 – 217, 208

⁴⁹ For an iconology of law and justice see Cesare Ripa, *Iconologia*, ed. Piero Buscaroli, (Milan: Tea, [1593]1992); Robert Jacob, *Images de la Justice: Essai sur l'iconographie judiciaire du Moyen Age à l'âge classique* (Paris: Leopard d'Or, 1994); Martin Jay, 'Must Justice be Blind? The Challenge of Images to the Law,' *Law and the Image*, ed. Douzinas and Nead, *supra* note 5.

PART I
EFFIGIES, ART AND THE LEGAL SUBJECT

CHAPTER I: PSYCHOANALYSIS AND THE SUBJECT OF THE KING'S BODY

Papa Ubu (running after them and bringing them back): Gentlemen, we forgot an indispensable part of the ceremony. We have to swear to fight valiantly.

Captain Barbage: How can we do that? We don't have a priest.

Papa Ubu: Mama Ubu will fill in for one.

Everybody: So be it.

Papa Ubu: So, you swear to really kill the king?

Everybody: Yes we do. Long live Papa Ubu!

END OF THE FIRST ACT¹

What I see in Japan, and maybe this is my own myth, is that behind all these notions of politeness, snobbism etc., the Japanese are well aware that something that may appear superficial and unnecessary has a much deeper structural function. A Western approach would be: Who needs this? But a totally ridiculous thing at a deeper level might play a stabilizing function we are not aware of. Everybody laughs at the English monarchy, but you'll never know.²

The circus lions don't care to know that their leader is a weakling human; the fiction guarantees their social well-being and staves off violent anarchy.³

BLOOD AND INK

In a little publicised report in December 2000, Saddam Hussein celebrated his 60th birthday with the unveiling of a truly anxious object (Figures 5 and 6). To celebrate his birth and his many victories, including the first Gulf War, Hussein had commissioned a complete Koran written in his own blood.⁴ At the time the special Koran was discussed in Iraqi press as evidence of Hussein's faith; he was willing to sacrifice his own blood to redress prayers answered. This Koran came to greater worldwide attention after the fall of Hussein through the widely

¹ Alfred Jarry, *Ubu Roi*, trans Beverly Keith, G. Legman, (Mineola, NY: Courier Dover Publications, 2003) 19

² Slavoj Žižek quoted in Geert Lovink, 'Civic Society, Fanaticism, and Digital Reality: An interview with Slavoj Žižek', *Uncanny Networks: Dialogues with the Virtual Intelligentsia* (Cambridge: MIT Press 2004), 47

³ Yann Martel, *Life of Pi* (Florida: Harcourt Books, 2001), 85-86

⁴ Originally reported *BBC Monitoring* 25 September 2000; accessed 7/09,

http://news.bbc.co.uk/2/hi/world/monitoring/media_reports/941490.stm



5. President Saddam Hussein taking delivery of Koran written in his own blood, Iraq, September 2000.



6. Saddam Hussein's Koran, September 2000

syndicated journalist Paul McGeough.⁵ Some surrounding information became available and filled out the tale. The scribes had been tricked into creating the Koran. Hussein had provided 24 litres of his blood over many months and had mixed it with ink before its delivery to the scribes. McGeough noted the paradoxical nature of the Koran in relation to Islamic law. On one hand obviously it was the Holy Book, and its completeness here becomes relevant. However, as blood is considered *haram*, or unlawful, the Koran was on the other hand, voided. McGeough quoted Professor Any, from the University of Bahgdad, 'Saddam is not a holy man, so his blood is dirty.'⁶

In Islam the Koran is considered a directly transmitted text from Allah to Mohammed. Judaism also considers the Torah the result of a direct dictation from God to Moses. Unlike Christianity where the text is understood to be written by disciples after the events of Christ's life, in Judaism and Islam the text is considered literally to be the word of God. There are many rules relating to the 'transmission' (copying) of the religious text, including ink, the order in which passages are written and errors. The Jewish laws relating to the writing of Torah scrolls, tefillin and mezuzot are called *Sefrut*; if any of these rules are broken then the object is *posul*, or unacceptable.⁷ The scroll may contain no errors whatsoever and while some mistakes may be corrected with a knife or a pumice stone, if a mistake is made in writing any of the names of *Hashem*, God, no correction may be made because God's name may not be erased. Similar laws apply in Islam.⁸

Most curious of all, both religions have rules that apply to paradoxical objects on the limit of the law — sacred and profane, complete and incomplete — like the Hussein Koran. In Bagdhad two suggestions were made: to bury the book or to throw it in the river.⁹ In Judaism the laws of *Sefrut*, also suggest treating the *posul* object as sacred but dead, and to bury the object like a body. Alternatively the writings can be placed in a *genizah*. The *genizah* means, literally in Hebrew, 'the

⁵ Paul McGeough, 'A bloody Koran has the Muslim faithful in turmoil,' *The Age* December 18, 2003; accessed 7/09, <http://www.theage.com.au/articles/2003/12/17/1071337033787.html>. McGeough is a senior Australian journalist in Iraq whose stories are published most notably in the *New York Times*.

⁶ Quoted in Paul McGeough, 'A bloody Koran,' 2003

⁷ The writing of the Torah is important to Jewish mystic tradition. The Cabbalistic tradition holds that letters in a Torah are the sacred names of God written as 'black fire upon white fire.' Similarly in the Talmud (Eruvin 13a) Rabbi Yishmael exhorts that the omission of even one letter 'could result that you destroy the entire world.'

⁸ Sura 56: 77-79 suggests that only the 'purified' or even those that have ritually washed (*wudu*) may touch the Koran. The desecration of the Koran is in some countries part of criminal law, such as Article 295-B, *Pakistani Penal Code*. Finally the importance of such rules to Islam was seen in the global riots that resulted from allegations of Koranic desecration at Guantanamo Bay; see Josh White and Dan Eggen, 'Pentagon Details Abuse of Koran: Detainees' Books were kicked, got wet' *The Washington Post*, 4 June, 2005, A01

⁹ McGeough, 'The bloody Koran,' 2003

hiding place' and is a building often connected to a synagogue which holds such sacred/profane objects prior to burial, sometimes for hundreds of years.¹⁰ Hussein later said that he would not have commissioned the piece if he had known it was *haram*. The confusion was perhaps inevitable. It is an understatement to say that the mediation between the transcendent and the worldly is particularly fraught.

The Saddam Hussein Koran suggests three issues that concern this chapter. First, it shows a contemporary political leader as directly linked to theology's sacred objects. The Koran becomes the presence or sacramental body of God. Second, it shows the way in which there is a gap between the sacred and the profane that can never be accounted for no matter how many rules frame their mediation. It shows that material objects and rituals try desperately to cover this gap between the world and heaven. Some thing is always unaccountable to the law; the blood of Hussein was unable to become ink. Third, the story suggests a particular instance of a subject called to account. Hussein created the special Koran as a 'submission' to God for answered prayers; he was anxious that God had not recognised his devotion enough. He wished to be recognised by the (theological) law so he connected his body/blood to the law book.¹¹ He then celebrated his act through media outlets and housed the Koran in a specially built museum in Baghdad. Although it is tempting to link these strange paradoxes and contradictions to a totalitarian, quasi-religious state, the three theses that come from Hussein's act can apply to all legal systems. Much has been written on these strange manifestations of transcendental power and what follows is a brief overview of the literature that jurisprudence has relied on. Pierre Legendre, Costas Douzinas and Peter Goodrich have particularly relied on a Lacanian psychoanalytic approach to understand how these objects *work* to frame power and this chapter outlines how this Lacanian theory may be brought to bear on the three theses of Hussein's Koran.¹²

¹⁰ For example the Cairo Ginazah housed objects from AD 882 until 1880 when it was finally disseminated in 1896 primarily to the University of Cambridge, Taylor-Schechter collection.

¹¹ Islam is well known for its privileging of memorising the Koran; the text is embodied by the memoriser or *Hafiz* who is cherished as a living embodiment of the text.

¹² Costa Douzinas, '*Prosopon and Antiprosopon: Prolegomena for a Legal Iconology*' *Law and the Image*, eds Douzinas and Nead, (London: Chicago University Press, 1999) 36-87; Peter Goodrich, *Oedipus Lex: Psychoanalysis, History and Law*, (Berkeley: University of California Press, 1995) especially 'Image, Icon and Idol,' 56-62; Pierre Legendre, *Dieu au Miroir. Etude sur l'institution des Images*, (Paris, 1994) 41-88; Pierre Legendre, 'Introduction to the Theory of the Image: Narcissus and the other in the mirror', *Law Critique*, Vol 8, no.1 1997, 3-35 (later published in Pierre Legendre, *Law and the Unconscious*, (Houndmill: Macmillan Press, 1998), see in this also Peter Goodrich's introduction.

THE SECOND BODY AND THE KING

Hussein as a political leader was linked to a greater authority. This authority may come from divine right (as in this case) or some alternative politico-theological founding, say sovereignty (in a democracy). Ernst Kantorowicz created the notion of political iconology and this area of interdisciplinary research.¹³ His erudite medieval history suggested the theological basis of politics starting from the 'birth' of western law in the thirteenth century. What Kantorowicz added to our understanding of politics and the law was that its transcendental power was mediated in much the same way as religion mediated its power, that is through ritual ceremonies and objects. As Christ is found in his iconic objects, *Christomentes* or *Imago Dei*, for Kantorowicz his focus on the King's 'two-bodies' was an important discovery. He studied the rituals surrounding the 'second body' or sacred, symbolic body; as opposed to the 'body natural'. *The King's Two Bodies* describes the 'second body' of the king as the symbolically charged representation of the continuity of the legal and political system; it was a symbol for the *dignitas* of the sovereign which was perpetual and undying.¹⁴ Similarly and notably Louis Marin, in his discussion of Louis XIV, saw that the king's 'second body', borrowing the Christian tradition of the Eucharist, became the sacred 'presence' of the royal image; Marin called this the visual staging, the 'king-effect'.¹⁵ Others have also noted the important political role of ceremony.¹⁶

Pace Foucault, these theological concepts are essential to understanding contemporary sovereignty. So what is this strange 'second body,' or sacred body? In this case it is unclear how the image or sculpture should be received. Kantorowicz himself offers a three-part designation:

...the king has only one body left, but this sole body, in truth, unifies three, a physical historical body, a juridico-political body, and a semiotic sacramental body, the sacramental body, the

¹³ Ernst Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology*, (Princeton, New Jersey: Princeton University Press, 1957)

¹⁴ Kantorowicz, *ibid*, 'Chapter 7.3 Dignitas Non Moritur,' 384-451

¹⁵ Louis Marin, *Portrait of the King*, trans. Martha M Houle, forward Tom Conley, (Minneapolis: University of Minnesota Press, 1988)

¹⁶ See also Ralph Giesey, *The Royal Funeral Ceremony in Renaissance France* (Geneva: Librairie Droz, 1960) Sarah Hanley, *The Lit de Justice of the Kings of France: Constitutional Ideology, Legend, Ritual and Discourse* (Princeton, NJ: Princeton University Press, 1983); R A Jackson, *Vive le Roi! A History of the French Coronation from Charles V to Charles X* (Chapel Hill: University of North Carolina Press, 1984); Maurice Bloch, *The Royal Touch. Sacred Monarchy and Scrofula in England and France*, (London and New York: Routledge, 1973); Sara Melzer & Kathryn Norberg eds, *From the Royal to the Republican Body. Incorporating the Political in Seventeenth- and Eighteenth-Century France* (Berkeley: University of California Press, 1998).

'portrait' operating the exchange without remainder (or attempting to eliminate all remainder) between the historical and political bodies.¹⁷

Here Kantorowicz has added a third term that is the 'sacramental body' or 'portrait'. So there is the body natural (the actual body), the 'second body', which is linked to the purely transcendental (divine right, *dignitas*, the perpetuity of sovereignty) and the framing of this body in a physical manifestation. So to put it in terms of the Hussein Koran, the text from God is the transcendental thing that is housed in a sacred body and second body, as the object/text that represents the divine on earth, the Koran. By placing the portrait in quotation marks, Kantorowicz is alluding to the mechanism of manifesting the transcendental beyond our normal understanding of art and portraits. Although Kantorowicz separates the bodies into 'three', what underlies his critique is in fact the inseparability of the bodies. They are 'housed' in the same body. Marin also shows the direct link between all these modes of bodily image: aesthetic, symbolic, sacred and natural. He extends the meaning of the 'portrait' of a king: 'The king is only true king, that is, monarch, in images. They are his real presence...the first effect of representation in general: to do as if the other, the absent one, were here and the same; not presence but effect of presence.'¹⁸ It already seems clear that the 'second body' is not easily described in aesthetic terms nor in semiotic ones, it seem more akin to religion or magic. As we will discuss below, Kantorowicz bases much of his analysis on rituals surrounding the second body as represented by an effigy in funeral rites, in medieval and even early modern France and England. The effigy becomes the symbolic body of the king.¹⁹ We will look at the actual import of the notion of the effigy below, but nevertheless the 'sacramental body' is more than a symbol. Citizens of Commonwealth countries may be surprised to find this distinction made in the rituals of the contemporary English Monarchy. When the Sovereign opens parliament every year in England, Her Majesty arrives in two coaches, one for her natural body, the other for her crown; it is possible to see the crown as a symbol or a metonym for sovereignty, but it comes originally from a rite where the Crown is the Sovereign.

It is Giorgio Agamben review of Kantorowicz's work that offers us a way to move past normative conceptions of sovereignty. He extends Kantorowicz's notion of the 'second body' towards the

¹⁷ Kantorowicz, *The King's Two Bodies*, 1957, 421

¹⁸ Marin *Portrait of the King*, 1988, 5-7

¹⁹ Although not helpful to all readers, the Horcrux, in the *Harry Potter* novels, by JK Rowling, gives some sense of the 'presence' that I am referring to. Voldemort magically posits his 'soul' into the Horcrux. Whether as a diary, a cup, a snake, or as Harry Potter's body, the actual manifestation of the Horcrux is unimportant. It is not symbolic in an iconological sense but *becomes* a piece of Voldemort's person, external to his natural body.

Roman sacrifices of sacred *devotus*. In *Homo Sacer* Agamben questions Kantorowicz's conclusions using the work of Kantorowicz's student Ralph Giesey.²⁰ As Agamben writes:

The king's political body...is, in the last analysis, derived from the emperor's colossus. Yet for this very reason, the king's political body cannot simply represent (as Kantorowicz and Giesey held) the continuity of sovereign power. The king's body must also and above all represent the very excess of the emperor's sacred life, which is isolated in the image and then, in the Roman ritual, carried to the heavens, or, in the French and English rite, passed on to the designated successor...as the cipher of the absolute and inhuman character of sovereignty.²¹

Agamben has found in Kantorowicz seeds of a 'cipher' at the place of the sovereign, within a contemporary disciplinary society where a sacred body survives in present day bio-politics. This reading highlights that what is at stake is not merely a semiotic of power or a representation but something transcendental. We will not follow Agamben's analysis much further; but its rewriting of Foucauldian biopolitics has been pervasive and significant. Chapter Nine revisits the concepts in regard to the sculpture of Duane Hanson. As an aside, Hussein's idea that he was a living-dead martyr and sovereign could have been lifted directly from Agamben.²²

²⁰ Giesey, *The Royal Funeral*, 1960; Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, (Stanford: Stanford University Press, 1998). In his study *Homo Sacer*, Agamben traces the second body instead back to the Roman cult surrounding the *devotus*, a warrior who ritually surrenders his life to the gods in exchange for their favor in battle. For Agamben, the fate of such a man provides a key instance of his paradigmatic, *homo sacer*. For Agamben, *homo sacer* (sacred man) is a founding political atom. The surviving *devotus* provides a key illustration of the concept of *homo sacer* because his continued existence falls outside the realms of both the sacred and the profane. It is in order to address this unwanted metaphysical remainder that the community would then perform the ritual burning of an image (a 'colossus') as a substitute for the missing corpse denied to the gods. We will see later how this profane/sacred, inclusion/exclusion dichotomy continues in relation to the democratic 'sovereign decision'.

²¹ Agamben, *Homo Sacer*, 1998; see 'Sovereign Body and Sacred Body,' 91-103 at 101. In the final analysis Agamben suggests that all citizens, in 'disciplinary societies' become *homo sacer*, when the sovereign's body is disseminated through the populous. This is Agamben's corrective to Foucault, that the body was *always* involved as the site of sovereign power, there was always a 'biopolitics.'

²² In fact Hussein's Koran can be seen as exactly the sacrifice of a *devotus* who has not died in a victorious battle. In the BBC report, *supra* note 4 Hussein's press release is quoted as, 'My life has been full of dangers in which I should have lost a lot of blood...but since I have bled only a little, I asked somebody to write God's words with my blood in gratitude.' As President Hussein he is already *devotus* in Agamben's theory because the *devotus* and the sovereign share the state of being outside normative law.

DEMOCRACY, THE KING AND THE EMPTY SPACE

This thesis focuses on these transcendental 'ciphers' through a Lacanian lens. It is this scholarship that has most heavily influenced the approach of jurisprudence and the image. As Douzinas concludes: 'The absolute other cannot —must not —be seen, but its existence and power must be asserted and staged. This is why the absent founding image must be staged in order to allude to the terrible force or transcendental power that lies behind all subjectivity, power and law.'²³ The methods of this framing, staging, asserting, giving body to, this cipher are many and varied and worthy of study. There are many who would not see the empirical evidence of how a 'transcendental' reading of politics could be efficacious. Derrida says we must move the law away from its theological origins; but to properly deconstruct the 'mystical foundation of authority' perhaps we should explore its uses further and clearly. Foucault says we must kill the king, but perhaps it is not so easy. Martin Loughlin also suggests that once potent ideological symbols 'no longer appear to serve as adequate images of political power and legal justice', and so need to be replaced by more modern ones.²⁴ That is not how ideology works. Behind law's rational and normative frame is a hidden reliance on a transcendental authority. Claude Lefort directly links the 'democratic invention' to the death of the king's second body; power now is an 'empty place' that no 'real' subject can fulfil.²⁵ Indeed he sees any continuance of 'political theology' as a totalitarian trait. Both Carl Schmitt and Ernst Kantorowicz (indirectly) suggest the importance of the theological basis to the notion of the void at the heart of the law, even in democracy. Although their conception can be distinguished, what is present in both is the reliance on the notion of a 'civic God', the sovereign. Although Kantorowicz seemed to suggest, *contra* Carl Schmitt, that we should be wary of the fusion of theology and law in contemporary legal concepts such as the *Fuhrer*.²⁶ It is becoming clearer however, through Lacan, Agamben, Žižek and others that, while this transcendent space can be connected to the sovereign, it always was empty and virtual. So although there is a 'discarnation of society' the empty place of the king still remains as a trace, as a

²³ Costas Douzinas, 'Prosopon and Antiprosopon: Prolegomena for Legal Iconology' in *Law and the Image* 1999, 60. Douzinas also sees the proper image of the law as a zero, empty or virtual.

²⁴ Martin Loughlin, *Sword and Scales: An Examination of the Relationship Between Law and Politics* (Oxford: Hart, 2001), 234

²⁵ Claude Lefort, *The Political Forms of Modern Society: Bureaucracy, Democracy, Totalitarianism* (Cambridge: Polity Press, 1986); Claude Lefort, *Democracy and Political Theory*, trans. David Macey (Cambridge: Polity Press, 1988)

²⁶ See Lior Barshack 'Constituent Power as Body: Outline of a Constitutional Theology,' *University of Toronto Law Journal* Vol 56, No 3, 2006, 185-222, for a discussion of the differences between Schmitt and Kantorowicz's notion of the theological basis of the constituent power. Kantorowicz's approach is clearly him coming to terms with Schmitt's notion of 'political theology' which is present in the subtitle to the *King's Two Bodies*, and of course to fascism more generally.

positive absence.²⁷ Other sociological studies have proved this survival of the sacramental body in democracy. Mark Neocleous begins his study of 'imagining the state' with the body of Reagan.²⁸ The king's body becomes the 'body politic' which he connects to Medieval theology and its *corpus mysticum*: 'The state, as it emerged from this encounter, had a whiff of incense about it.'²⁹ And like Lefort, he notes that, although totalitarianism is the obvious limit case of this 'survival' of the sacramental body, the 'singularity' of fascism expanded to include multiplicity and perpetuity of the office rather than the Fuhrer or iconic singular body.

THE 'MASTER SIGNIFIER' AS THE VOID

Lefort has been contradicted by Lacanian arguments that the 'second body' itself is the cipher, the empty place. Žižek brings democracy to monarchical terms, suggesting that at the heart of even a secular state is the unknowable, which can be denoted as the 'king'. Whether the sovereign as denoted by the monarch or as the sovereignty of the people, the authority of the state is still a sacred, unrepresentable object. Importantly, the process of 'personifying' the void still occurs through 'bodies' and images, which can be explained empirically or through Lacan.³⁰

These analyses help to explain why the symbolic body has survived in contemporary politics as a fantasy structure connected to what Lacan sees as a 'master signifier', the cipher. The connection of Lacanian analysis to broader political questions is relatively new. Underpinning all this is Lacan's 'philosophical anthropology.' A number of theorists have expanded his analysis of subject formation and neuroses to explain social and anthropological phenomena. This anthropological approach was present in Lacan's work, and was extended by Althusser and post-structuralist theorists to describe certain political effects.³¹ The important aspect of this work for jurisprudence

²⁷ See Bernard Flynn, *The Philosophy of Claude Lefort: Interpreting the Political*, (Evanston, IL: Northwestern University Press, 2005)

²⁸ Mark Neocleous, *Imagining the State*, (London: Open University Press, 2003); see also Tim Raphael, 'The King is a Thing: Bodies of Memory in the Age of Reagan', *The Drama Review*, Vol 43, No 1, 1999 46-58 for a similar argument.

²⁹ Mark Neocleous, *Imagining the State*, (London: Open University Press, 2003) 13

³⁰ Michael Walzer writes: '[Because]the state is invisible...it must be personified before it can be seen, symbolised before it can be loved, imagined before it can be conceived.' Michael Walzer, 'On the role of symbolism in political thought', *Political Science Quarterly*, Vol 82, No 2, 1967, 191-204, 194

³¹ Notable works in this oeuvre beside Žižek, include Yannis Stavrakakis *Lacan and the Political*, xxx. In relation to politics and aesthetics see *Lacan, Politics and Aesthetics*, ed. Willy Apollon and Richard Feldstein, (Albany: State University of New York Press, 1996) and Eric Santner, *My Own Private Germany*, (Princeton: Princeton Press, 1996). For law and Lacan see the collection of articles on Lacan in *16 Cardozo Law Review*, 1995

is that, from a Lacanian point of view, the law actually makes or forms the subject as we know it. As Pierre Legendre, borrowing from Roman jurisprudence says, law 'institutes life.'³²

When the subject enters the symbolic realm of the society (a symbolic castration) they must submit to the Name-of-the-Father, the Law. The subject in Lacan's theory is founded on an interrelated triadic structure based on the Symbolic, the Imaginary and the Real. The Law then is the symbolic part of this triad. It can be seen as an integral part of what Lacan calls the big Other. Although the big Other is more than the law, it represents our entry into language – the unwritten rules and symbolic structures that we base our life's meaning on. The importance of this is that as individuals or subjects of the law we always relate with each other *within* the symbolic structures of the big Other and through language.³³ Through Lacan we have another avenue of showing how the sacramental body still works in our present circumstances. The big Other as the ground, as the hook upon which we pin our subjectivity, is often 'personified or reified in a single agent' or 'body' (such as the king, God, President), or as 'the cause that involves me,' (Freedom, Communism, Nation).³⁴ Žižek explains this theory more clearly in a seminal work *The Sublime Object of Ideology*.³⁵ Ideologies work to identify individuals with political terms, which Žižek terms 'master signifiers' and which 'rally' the political subject.³⁶ It is a term similar to Deleuze and Guattari's *mot d'ordre*, or order word. He suggests the use of such terms as 'God' in a theocracy or 'the people' in communist China as an effect that binds the society together. The most important component of the pivotal political words is that no one knows to what they refer exactly, they are unseen sacred objects ('God', 'the people'). They are as Lacan suggests 'signifiers without signified.'³⁷ The master signifier, the king, the people, and democracy, is what Žižek calls the Real Thing. Žižek explains:

... the coordination [of political subjects] concerns not the level of the signified [of some shared

³² Pierre Legendre, 'The Other Dimension of Law,' *Cardozo Law Review*, Vol 16, Iss 3-4, 1994-1995, 943-962, at 943

³³ See Slavoj Žižek, *How to Read Lacan*, (London: Granta Books, 2006) especially 8-12

³⁴ *Ibid*, 9

³⁵ Žižek, *The Sublime Object of Ideology*, (London: Verso, 1989); see also his introduction 'The Spectre of Ideology,' in *Mapping Ideology* (London: Verso, 1994), 1-33

³⁶ For a lucid explication of the term see Rex Butler, 'What is a Master Signifier?', *Slavoj Žižek Live Theory*, (New York: Continuum Press, 2005) 31-6

³⁷ Jacques Lacan *The Seminar. Book III. The Psychoses, 1955-56* trans. Russell Grigg. (London: Routledge, 1993). Lacan often calls the 'signifier without signified' a 'pure signifier.' Lacan writes at 185: 'Every real signifier is, as such, a signifier that signifies nothing. The more the signifier signifies nothing, the more indestructible it is.'

empirical cause] but the level of the signifier. [In political ideologies], undecidability with regard to the signified (do others really intend the same as me?) converts into an exceptional signifier, the empty signifier, the empty master signifier, the signifier without signified; nation, democracy, socialism and other causes stand for that something about which we are not sure exactly what it is the point rather is that identifying with the nation we signal our acceptance of what others accept, with a master signifier which serves as the rallying point for all the others.³⁸

The master signifier 'is rather the word which, as a word, on the level of the signifier itself, unifies a given field, constitutes its identity'.³⁹ There is actually no 'richness' to the terms but in fact a complete emptiness to better encompass the 'field'; if a discursive field had no master signifier the signifiers would be 'meaningless' or floating. The master signifier acts to bind this meaning to it, and retroactively finds meaning in the field of discourse by placing the signifiers in a 'paradigmatic chain of equivalence.' The master signifier is not to be read merely as a repressive, evil, domineering Father figure but as a vital 'rallying point', where our political life is defined by a gesture of collective identification and is sustained by belief. As Douzinas highlights the virtual and insubstantial 'cipher' survives only through the material actions and rituals of belief that the subjects perform in its name. An image may work, like a word 'God' or 'freedom' in designating the 'master signifier'. What is the visual equivalent for the master signifier: the king's body, the flag of nation? Following from its historical, juridical usage this thesis intends to resurrect the term effigy, to denote a visual master signifier. Traditionally this is what we call the image of a king or queen on a medallion or coin. It is a term that follows directly from Kantorowicz's founding study as well; his description of English and French effigies of kings, was of course the most important example of his term 'second body'.⁴⁰ The word seems to exist as a supplement to the term 'portrait'. We will look at this issue in more detail in the next chapter but let us look at a few uses of the term. The word is used on Guy Fawkes Day, in protests, on coins, and was used in relation to medieval law as a sanctioned form of execution *in effigio*.⁴¹ They are used to exhalt people and

³⁸ Slavoj Žižek *The Indivisible Remainder: An Essay on Schelling and Related Matters* (London; New York: Verso, 1996) 142

³⁹ Slavoj Žižek, *The Sublime Object of Ideology*, 95; here too Žižek uses the term *point de capiton*, literally button, which 'quilts' the field together.

⁴⁰ Kantorowicz, *The King's Two Bodies*, 1957, see Chapter VII:3, 'Dignitas Non Moritur, especially 'Effigies', 419-436

⁴¹ David Freedberg, *The Power of Images: Studies in the History and Theory of Response*, (Chicago: University of Chicago, 1989) especially Chapter Ten, 'Infamy, Justice and Witchcraft'. When a criminal, before Interpol, absconded and could not be found, the law would sentence the criminal to execution *in effigio*. The examples Freedberg uses come from mainly Europe from the thirteenth to seventeenth century. He relies heavily on the work of Wolfgang Bruckner, *Bildnis und Brauch: Studien zur Bildfunktion der Effigies*, (Berlin, 1966) a most thorough study on wax effigies.

to dishonour people. We can tell from some of the less than artistic efforts on Guy Fawkes Day that resemblances and verisimilitude are of little importance. Indeed often the effigies are so poorly made that they are supplemented by a sign ('George W', 'Osama', etc). The effigy is a symbolic creature, it is of the social, it has a particular authorisation (be that the law or social enmity). It is explained or framed by something outside it, which often relates to some shared socio-political belief.

INTERPELLATION OF THE SUBJECT: BELIEF IN NOTHINGNESS

The next issue that Hussein's Koran raises is the process by which the big Other forms the subject; the subject and the big Other are inextricably linked. This forms the foundation of Lacanian inspired jurisprudence. It was Althusser who first extended Lacan's thinking in this direction. Althusser saw in the material manifestations of the big Other the way the symbolic exerted control over the subject. For Althusser he calls the process of subjectivation through the law, 'interpellation.'⁴² For Althusser ideology 'acts' on individuals and turns them into 'subjects.'⁴³ We fix ourselves, or locate ourselves in relation to the ideology that hails us and become social beings whose actions are proscribed by the symbolic. The example Althusser uses is the hailing of the policeman who calls, 'Hey, you there.' Althusser explains:

By this mere one-hundred-and-eighty-degree physical conversion, he becomes a subject. Why? Because he has recognized that the hail was 'really' addressed to him, and that 'it was really him who was hailed' (and not someone else).⁴⁴

For Althusser the interpellation of the subject is not quite complete however and there are inconsistencies that allow space to move. The major addition of Althusser to our understanding of Marxist notions of ideology is that he insists on the physical and ritual manifestations of this ideology; it is this aspect that is of course very interesting to art history.⁴⁵ Ideological State Apparatuses (sport, religion, the arts, family, media etc) are the manifestations of ideology. The

⁴² Interpellation has many similarities with artistic reception. For a good overview of interpellation in terms of visual studies see W JT Mitchell, 'Iconology and Ideology: Panofsky, Althusser, and the Scene of Recognition' in *Image and Ideology in Modern/Postmodern Discourse*, (ed.) David B. Downing, Susan Bazargan. (Albany: State University of New York Press, 1991) Chapter 17, 321-330

⁴³ Louis Althusser, 'Ideology and State Apparatuses,' in *Lenin and Philosophy and Other Essays*, trans. Ben Brewster, (New York: Monthly Review Press, 1971) 174

⁴⁴ *Ibid*, 174

⁴⁵ We should not forget Theodor Adorno and the Frankfurt School, which also brought Marxist theory to cultural artefacts and was thus another influential counterpoint to rethinking art history and visual theory. See Theodor Adorno and Max Horkheimer, *The Culture Industry: Enlightenment as Mass Deception*, 1944

law is also considered one of these manifestations.⁴⁶ According to Althusser, ideology is 'the imaginary relationship of individuals to their real conditions of existence' and more importantly 'an ideology always exists in an apparatus, and its practice or practices'.⁴⁷

But the Althusserian analysis misses a major issue which is that there is always a remainder to this interpellation at the point of the subject. It is Žižek who inverts Althusser's maxim, in that the law interpellates the subject and creates the individual (not the other way round).⁴⁸ What he means by this is that it is our relationship with the law that creates the individual's unconscious desires, fears and personhood. Through entry into the symbolic, and the process of our Freudian 'castration', the subject is born into their social relationship with others.⁴⁹ This is a major shift in Žižek's understanding of Lacan. For Žižek we should not look too harshly on the big Other, because all though it may repress or constrain us to act in certain ways it also forms us as subjects.⁵⁰ We can not be individuals without the big Other.

So whereas Althusser talks of a misrecognition of the subject, what Žižek sees is always a gap between subjection to the signifier (the master signifier described above) and the materiality of the body, the actual bodily individual.⁵¹ Hussein's Koran serves as a metaphoric suggestion of this. The Koran was unable to be written in blood and to still be effective, universal and transcendent. It is not just about blood but red bloodedness. Desire is mediated by the Other: you cannot talk of an individual's desire without first symbolizing that desire through the big Other, as desire is the desire of the other. Boucher sees two distinct aspects of this interpellation. The body is subjectified into a Symbolic Real, and the subject's ego, or their individuality is subjectified within the Symbolic Imaginary.⁵²

⁴⁶ For Althusser the law is both a Repressive State Apparatus (police, courts, institutions of repression, etc) and an ideological manifestation.

⁴⁷ Louis Althusser, *Ideology and Ideological State Apparatuses*, (1969,1971), 127

⁴⁸ For a good summary of Lacan and his influence on Althusser and Žižek see, Joe Valente, 'Lacan's Marxism, Marxism's Lacan (from Žižek to Althusser)' in *The Cambridge Companion to Lacan* (ed.) Jean-Michel Rabaté, (Cambridge: Cambridge University Press, 2003); For a very clear and concise explanation of the connection between Žižek and Althusser see, Matthew Sharpe, *A Little Piece of the Real*, (Ashgate Publishing, 2004) especially Chapter I, 'On Žižek's Expanded Notion of Ideology.'

⁴⁹ Žižek explains his take on Althusser's interpellation in Chapter Three of *Sublime Object of Ideology*. Geoff Boucher, 'The Law as a Thing: Žižek and the Graph of Desire', *Traversing the Fantasy: Critical Responses to Slavoj Žižek*, (ed.) Geoff Boucher, Jason Glynos, Matthew Sharpe (Farnham: Ashgate Publishing, 2006)

⁵⁰ The Marxist idea of ideology as a false consciousness loses its purchase in this framing.

⁵¹ See Žižek, *The Sublime Object*, 1989, 124; see also Boucher, 'The Law as a Thing', 2006, 24

⁵² Boucher, 'The Law as a Thing', 2006, 25

French psychoanalyst and jurist Legendre also sees the body, among others, as the site of symbolisation and castration, as a site connecting the law and the abject. Legendre perceives the institutionalisation of law as a record of historical inscriptions on the body, ritual, religion and subjectification, which Legendre calls 'dance.'

[T]he body of Law is a human body; the substance to be counted, that which signifies, is not some eternal principle but rather the human body. It is on the strength of this complex mystification of the body and equally by reference to the amnesiac discourse which supports it, that the various species of dance inscribe their pervasive formulae. The strongest evidence of this is to be found in the classical forms of breeding, which were later taken up by Christianity and by industrial cultures, which all practiced a particular form of domestication which became intrinsic to our historical forms of organization. They dictated to all bodies present, standing respectively and greedy to be loved, a mother tongue (which in contemporary Europe is inseparable from the national language), conformity of manners and gestures, and a doctrine of rectitude. Everyone comes to dance with the Law.⁵³

The visual is an important site for this interpellation by the big Other, if not the primary site.

RESISTANCE AT THE POINT OF MISRECOGNITION

Once we recognize this mode of interpellation it offers a point from which to dissent and critique the law. The criticism of Althusser can also be seen in the difference between Lacan and Foucault's notion of power and ideology. Foucault's subject is *wholly* created by power structures, which through Lacan's reading is debatable: there is a lack in the symbolic identity of the subject that paradoxically constitutes the subject. As Saul Newman describes, 'whereas for Foucault, the identity of the subject is based on a successful interpellation, for Lacan the subject's identity is based on a *failed* interpellation [original emphasis].'⁵⁴ As Newman suggests it is this 'unsymbolizable' gap between the subject and the symbolic that always allows for a distance between the subject and the structures that constitute it. The gap comes from the very process of symbolisation through language and external structures, and hence shows the gap at the level of language itself. There is a gap between the subject and the symbolic order, which might provide a space for resistance.

There are two points of weakness, two lacks within the symbolic order. First, the inability of the subject to be fully interpellated means that the subject is misrecognised by the law. His desire is

⁵³ Legendre, *Law and the Unconscious: A Legendre Reader*, (Hampshire: Palgrave Macmillan, 1997), 37

⁵⁴ Saul Newman, 'New Reflections on the Theory of Power: A Lacanian Perspective,' *Contemporary Political Theory*, Aug 2004 Vol 3, Issue. 2; 148 at 152

unassimilable to the law, while on the other hand it is the prohibition and this misrecognition that creates the desire. The 'real' of the subject is unable to be symbolised, the abject parts of the subject; this is a mode of resistance popularised through the abject art of the nineties. Second, this gap in the power structures also interrupts the big Other itself. There is something always outside the Law, the element of the 'real' exterior to it, or to reiterate Žižek's term following Lacan, this is the 'master signifier'. In reality this real exterior to the political may be the founding violence of colonial power, the founding violence of revolution, repression, or capitalist power. The big Other is split at the point of the subject but also within itself. Žižek argues that, 'every power structure is necessarily split, inconsistent, there is a crack in the very foundation of its edifice— and this crack can be used as a lever for the effective subversion of the power structure...'⁵⁵ This ability of the Real to offer a place of resistance is discussed in more detail in Chapter Three and is central to the methodology of this thesis.

The split in the law's edifice – this lack – creates an interesting connection to the law. The outcome is that we are not merely ruled by the law but we also desire it. For Lacan, as we are castrated, or submit to interpellation, we must give up our desires, *the object petit a*. There is a fantasy that the Big Other has held this lost object of desire almost on trust and will at some point give it back. Our relationship to the big Other or the Real Thing is then mediated by desire. Žižek's contribution is once again helpful. He shows a supplement to the public law that is a hidden secret law whose overarching power is one of *jouissance* and superego injunctions. So that, for example, our truest relationship with the 'nation' may be at a sporting event, the Olympics or even a music festival.⁵⁶ In *Tarrying With The Negative* Žižek suggests as a master signifier, the subject may not 'know' the nation (as an object of empirical knowledge) but they 'enjoy (*jouis*) their nation as themselves'.⁵⁷ The Lacanian term *Jouissance* is usually translated from French as 'enjoyment' – as opposed to the English idea of 'pleasure' – implying *jouissance* as a sexualised, transgressive enjoyment at the limit of what subjects can experience or talk about in public. This method of connecting the subject to law is distinguished from the 'public' law by Žižek and given the term, 'superegoic' law.⁵⁸ Žižek gives examples of this 'nightly law' as the Ku Klux Klan and the 'Code Red' in the 1992 film *Few Good Men*. So for Žižek an important aspect of the law, as a corollary of the lack at the heart of the big Other are these 'inherent transgressions'.

⁵⁵ Žižek, *The Indivisible Remainder*, 1996, 3

⁵⁶ I am thinking here of the Australian music festival, *The Big Day Out*. In 2007 the festival was forced to ban (either the wearing or carrying) of the Australian flag due to racially inspired jingoism – the flag transformed into a symbol of violent national possession.

⁵⁷ Slavoj Žižek, 'Enjoy Your Nation as Yourself!', in *Tarrying With The Negative*, (Durham: Duke University Press, 1993) 200-238

⁵⁸ Slavoj Žižek, 'Superego by Default,' *Cardozo Law Review*, vol 16, 1995, 925-942

The *jouissance* that these activities create through 'enjoyment' and 'guilt' for Žižek point the subject towards the greater truth of the transcendental master signifier and to borrow Legendre's notion become part of the 'dance' of the subject and the law. Sex and violence, drugs and alcohol are transgressions that are conjoined to our understanding of the nation. Australia has a particularly strong example of this in the annual coin game 'two-up'. On a national holiday (Anzac Day), all hotels are able to organize a game of two-up, a ritualised form of gambling popular during World War I. The transgression helps define the law and the subject's relation to the nation.⁵⁹ To conclude the process of castration and interpellation is part of our access to the law as a speaking subject. The *jouissance* which is sacrificed through castration becomes the socialised *objet petit a*. For Žižek and other post-Lacanian scholars you can bring these ideas to the socio-political makeup of societies. The subject must forego the *jouissance* in the name of the greater good or for the law (constitutions etc). For Žižek the corollary of this for is that *jouissance* grounds the law as well, through hidden transgressions, thus the master signifier is not only a topic of knowledge but of *jouissance*.⁶⁰

So let us look at the controversy that surrounds the Hussein Koran again. By going to such obscure lengths did he not highlight the strangeness of his request and the emptiness of the gesture? When he lost power Muslim authorities reasserted their position in regard to the Koran through a strict reading of the scriptures. Žižek's idea of the underlying superegoic injunction of the law, however, creates another alternative reading; it was the very prohibition, and his secret crime, that was the point of Hussein's venture to secure God's recognition.

THE IMPORTANCE OF THE VISUAL IN STAGING POWER

The visual is a way that power is framed and staged. The artistic image is one means of mediating the big Other. The image itself is inextricably linked, as we have seen above, with the transcendental cipher that represents power. Hussein's Koran is a wonderful example of the framing of power. And could we not say the words of God are put in a frame within a frame within a frame in Hussein's Koran? Working our way down, there is the nation of which Hussein is

⁵⁹ We should not overlook the relevancy of Giorgio Agamben's *State of Exception*, (trans.) Kevin Attell, (Chicago: University of Chicago Press, 2005) especially chapter 5, 'Mourning, Feasts and Anomie' 65-73. Based on Schmitt's 'Political Theology', Agamben explores the relationship between the state of emergency and sovereignty. Agamben also highlights the importance of 'anomic' festivals that offer a period of 'unlaw' so as to help define what the 'law' is, somewhat like the position of the state of emergency. It is in the festival that transgression is allowed to take place as a measure of preservation – where the 'suspended law' offers a place from which the subject may simultaneously 'see' the law.

⁶⁰ It is this love and desire for the master signifier which is so apposite in the *Little Sea Hare* discussed in the preface.

leader, the building especially built to house the text, and the pages that are themselves framed by calligraphic borders. The work of Goodrich and Douzinas attends to the import of psychoanalysis on the law, and in particular the use of psychoanalysis and the image in Legendre.⁶¹ In relation to framing, belief and interpellation, Goodrich makes a concise summary:

There can be no law, in other words without subjective attachment, without belief, and that belief would be impossible were it not for the totemic representation of law, the enigma of the message: 'the primal fact of law, is that of subjection of the human to representation, which implies, for it to take a *civilised* form, the production of an inaugural space— an enclosure, call it poetic, mystic or religious – where the simulations of allegiance to the law (whatever the historical coloration of this allegiance) take on meaning.'⁶²

In light of this necessity for the law to mediate itself the Hussein Koran makes much more sense. How do you mediate between the transcendental other and your own subjecthood? Hussein literally attempted to connect himself, or his blood, to the word of God. The text, the Koran, is the primary mediating document between earth and heaven. Legendre talks at great length on the writing of texts as a way to 'humanise' the Godly text, or as a method of finding human scale within the text itself.⁶³ For Legendre the 'copyist' of these texts privileges the performance of writing over the meaning of the text:

Borrowing again from the Hegelian description of the work of art, I shall say, in relation to calligraphy, that it is a *species of reproduction of oneself*, something that belongs to the sublime order of subjectivity. This is what lends the great cultures of the letter and of the love of the letter — for the teaching of the Torah to Japanese calligraphy — their dimension of humanity and equally allows them to resist the scientific outbursts of our times...The practice of calligraphy teaches us a very important lesson in relation to the institution of the subject. In calling upon the body in a formalised manner, the exercise of writing introduces the human being, if I can put it this way, to the circuit of the Third,⁶⁴ to the metaphorisation of the enigma and to the point at which it can break through the narcissistic fantasm: to refer to Hegel again, it is necessary for man to recognise himself in the shape of things; a topic that teachers today could well reflect upon.⁶⁵

⁶¹ A founding study of the law and psychoanalysis is *Law and the Postmodern Mind*, (ed.) Peter Goodrich and David Carlson, (Michigan: University of Michigan Press, 1998)

⁶² Peter Goodrich, 'Law's Emotional Body', *Languages of the Law: From Logics of Memory to Nomadic Mask*, (London: Weidenfeld and Nicolson, 1990) 288

⁶³ Pierre Legendre, *Law and the Unconscious*, Chapter 6 'Parenthesis: In Praise of Calligraphy'

⁶⁴ By this term Legendre seems to be alluding to what we have called above the big Other.

⁶⁵ *Ibid*, 135-136

So Hussein's plan to conjoin himself to God's text was a common process of binding his subject to the master signifier. However, instead of legal texts we are concentrating primarily on the image. Similar effects apply though, bringing the transcendental to bear on the senses, on the body and on aesthetics. Douzinas and Nead write: 'Images are sensual and fleshy; they address the labile elements of the self, they speak to the emotions, and they organize the unconscious. They have the power to short-circuit reason and enter the soul without the interpolation or intervention of language or interpretation.'⁶⁶ The neo-ceremonialists have made a similar point. In his paper 'Symbols, Song, Dance', Maurice Bloch re-emphasised the role of ritual in justifying and concealing hierarchy.⁶⁷ At the same time, he argued persuasively that where ritual appears as formalized language it works through illocutionary, and not as a propositional force; so there is no point in looking for 'rational' links between ritual productions and the political forms they support. The big Other is presented through its image. Peter Goodrich highlights the primary place the image has in Legendre's output:

The image has a crucial role in Legendre's theory of law as in psychoanalytic interpretation more generally. The image, or in Roman legal terms, the *imago* was a social form of representation of the principle of authority, of Father, sovereign or Law. At the level of the institution, the image of authority, the effigy of social power or representation of collective belonging is an object not only of fear but also of fascination [magic] and love. The image presents the absolute to the subject of law and so constitutes law as that discourse which can interpret, which is to say mediate or speak between the divine and so unknowable space of authority and the mundane instance of secular law.⁶⁸

The image is a mode of mediation and interpellates the subject through fear, fascination and love; it is the use of the word effigy in this context that we borrow. Goodrich also provides a very useful glossary at the end of *Law and the Unconscious* and for this study I suggest particularly the glossary on the 'Image':

Both state and law, in Legendre's definition, are 'montages' or complex assemblages of images. The political order, in other words, depends on manipulation of subjective attachment through the play of images. Because attachment to political and legal authority is a matter of desire — a 'love of the censor' — it is most successfully generated through unconscious forms, through images and other fictions of an author of the laws or sovereign figure of power. The image is thus crucial to an understanding of the authority of law, because it is the image, the specularly structure of authority,

⁶⁶ Douzinas and Nead, *Ibid*, 7

⁶⁷ M Bloch, 'Symbols, Song, Dance and Features of Articulation (1974) 15 *European Journal of Sociology* 55

⁶⁸ Peter Goodrich, 'Introduction: Psychoanalysis and the Law,' *Law and the Unconscious: A Legendre Reader*, 2007.

which generates the subject's submission to law or, to use Legendre's terms, the capture of the subject by the institution. To understand law it is necessary to understand the aesthetics of law, the erotics of attachment to the institution.⁶⁹

We have already seen this interpellation not merely through command but from a supplementary *jouissance* or need. Goodrich continues:

The order of law is an iconic order; it represents authority through licit images and binds the subjects of law to their likeness or semblance *within* [my emphasis] the institution. In political terms, Legendre depicts the legal order as an order of representation which depends upon the successful staging of truth through a series of rites, symbols, emblems, images and other metaphors or figures of normative governance. It is in this sense that the order of law is an iconic order, a theatre of images aligned with the truth...The image is also a trace or vestige of an absent source or cause, it represents something that is not present, or in Pliny's terms, it is the shadow of an absent object of desire. In its strongest sense, the Image founds the social by representing its absent source or cause, namely God or some other mythic figure of whom there can only ever be an image. The social is thus in Western terms quite literally *Imago Dei*, or the Image of God from which all other images flow. The image is in consequence an absent presence, a vestige of the divine...⁷⁰

By now this must all seem quite clear and there is nothing totally new. One aspect that is worth noting though is the notion that the image represents the social 'as if' it were a subject. That is that the relationship to the law occurs through the image – socialised, humane and personal.⁷¹ In the following chapter the pioneering work of Gell and Mitchell is used to formulate a concept of the image as a social entity. In this case the entity, *imago*, or effigy, is a Father figure, a commanding image, but nevertheless it commands as if it were another subject, not as an image or artwork. Mark Neocleous also mines the notion of the State itself as a subject which exhibits characteristics of body, mind, personality and territoriality (or 'home'). As Neocleous suggests, 'imagining the state as a subject in its own right helps sustain the practices through which the state administers

⁶⁹ Peter Goodrich, 'An Abbreviated Glossary,' *Law and the Unconscious*, 2007, 258

⁷⁰ *ibid*, 258

⁷¹ Goodrich describes this at *ibid*, 258: In more technical Freudian terms, the image should be understood in a dual sense: it is the mechanism of subjective attachment to identity, and so it is also the most appropriate or successful means of instituting law. The image is thus to be understood first in a narcissistic sense as the mechanism which founds individual identity through a specular reflection or mirroring. It is upon this narcissistic mechanism of self-identification that the political order plays when it represents the social 'as if' it were a subject.

civil society and fabricates social order.⁷² In the following chapter the image is discussed as if it has its own subjecthood and character.

This chapter has concluded that the image 'mediates' between the big Other, or master signifier, and the subject. There is always a gap between the big Other ('the principle of authority, of Father, sovereign or Law) between which this image intercedes. What is shared by the 'sacramental body,' the 'second body,' the *imago* of Roman jurisprudence, or the effigy is that they are all 'authorised' and 'authored' by the big Other, by the law. The aesthetic judgments do not then apply in the same way. Perhaps Žižek's suggestion that, 'We obey [the law] not because it is good but because it is the law,'⁷³ can be shifted to, 'we do not follow the queen (the sovereign) because they are beautiful, or even smart, but because they are the law.' The master signifier itself is a virtual thing, a collective lie, which through rituals we all agree to believe. As Legendre suggests, the western law is structured like monotheistic religion and for this reason our understanding of the law's image must follow this sort of theological logic. For example is the Eucharist in a monstrance for sight, an image? Is it a body? Is it divine? We are well beyond the safety of art history or of traditional aesthetics to answer fully. The simple answer is that it is both. The effigy is a special thing, and authorised in a special way. It is not an artwork, or not merely one. If we follow this logic then the notion of the aesthetic is only secondary to the real process at work. All the trappings of power in its images and rituals take on the political, if the political *is* the staging of the absent Other. The images are not read in terms of beauty, sublimity, ugliness, or in other aesthetic terms but through efficacy.⁷⁴ This efficacy comes only through authorisation from the big Other, not from an artist or maker. No matter how beautiful, how skilled the scribes, how beautiful the temple that housed it, the Hussein Koran was in the end declared void by clerics. It is Legendre who explains:

The *sanctification of texts* means that no system, even those organised in a wholly monarchical manner, can dispense with a formalised rhetoric, designed to make it understood that for legally legitimate institutional power to address itself in a normative form to its subject, it must speak in the name of its absent source.⁷⁵

⁷² Mark Neocleus, *Imagining the State*, (Berkshire: Open University Press, 2005) 5. Neocleus' position will be elaborated on in the following chapter.

⁷³ Žižek *The Sublime Object*, 1998, 37

⁷⁴ There can be a tension created by looking at images in different modes. For a discussion of the beauty (and yet violence) of the criminal forensic photographic see Katherine Biber, 'Photographs and Labels: Against a criminology of innocence,' *Law, Text, Culture*, Vol 10, 2006, 19-40; see also Katherine Biber, *Captive Images: Race, Crime and Photography*, (London: Glasshouse Press, 2007)

⁷⁵ Legendre, *Law and the Unconscious*, 2007, 209

The effigy is similarly authorised by an absent socio-legal authority and may be differentiated from other images. Art has tended to be defined by artistic autonomy not by *authorisation* and *command*, therefore the understanding of aesthetics, through the discipline of art history is not enough to help us understand how these images work. The connection and juncture of these two authors, one artistic, the other 'in the name of the absent source,' will be discussed as the theme of Chapter Two. The historical context and the psychoanalytical approach of the artist affects *how* the subject receives the master signifier. Through this exploration this thesis adds to our knowledge of how the images of the law work on the subject, and in what manner the images that command relate to societies other images. It is this overview that art history and visual studies can provide and place the commanding image in relation to other responses to the image.

The psychoanalytical reading of the law adds much to our understanding of how the law acts upon the subject. Far from being merely repressive, the law, through its mediating rituals, *creates*, the possibility of an individual desiring subject. The master signifier commands but it also allows for the existence of the social discourse. Legendre suggests that the idea of a limitless society or a society with no prohibitions is possibly catastrophic: 'We do not understand that what lies at the heart of the ultramodern culture is only ever law; that this quintessentially European notion entails a kind of atomic bond, whose disintegration carries alongside it the risk of collapsing the symbolic for those generations yet to come.'⁷⁶ If transgression is impossible we must at least explore how the mediation of the master signifier works. It entails coming to terms with the big Other's two lacks. One is its inherent misrecognition of the subject. The second is its repression of its own founding through the master signifier. The artists to follow approach the master signifier like hysterics, probing and questioning the master signifier for its lacks and inconsistencies. The actual, subjective, personal responses to these images has not been explored. We know that the image frames and embodies the law but how do we respond? What follows is to play with a few individuals that respond through art. Why is it that for most Muslims the Koran successfully interpellated them to believe? For Hussein the text was not enough and like a hysteric he felt his misrecognition by God needed correction; only through text in his own blood did he feel God could truly recognise him. It is perhaps a particular legal hypothetical to treat Hussein not as an individual but as a sovereign.⁷⁷ Unlike other totalitarian 'second bodies', like Vladimir Lenin, Ho Chi Minh, and Mao Tse-tung, embalmed and laid in State (in a mausoleum), President Hussein successfully split his bodies while alive. He placed his Blood Koran in a 'mausoleum' as his symbolic stand in. As an image it was particularly resonant, and as we have seen was totally consistent with Western rites of the *devotus*, Medieval kingly funeral rites, and Islamic notions of martyrdom.

⁷⁶ Pierre Legendre, 'The Other Dimension of Law,' 1995, 943

⁷⁷ A question of course that was raised at Hussein's trial, not least by Hussein himself.

CHAPTER 2: VISUAL STUDIES AND THE EFFIGY

It was clear that what she saw in him was something like a prototype of a nation which existed now only in her imagination. She was kissing and cherishing a painted image of England. It was for him the oddest experience in the world...

'Stop. Stop,' he cried sharply. 'We are not like that any longer, Leila.' It was an absurd book-fed dream this Copt had discovered and translated. He felt as if all those magical embraces had been somehow won under false pretences — as if her absurd thoughts were reducing the whole thing, diminishing the scale of it to something as shadowy and unreal as, say, a transaction with a woman of the streets. Can you fall in love with the stone effigy of a dead crusader?¹

I did but see her passing by,
And yet I love her till I die.²

Telegram and telephone destroy the cosmos. Mythical and symbolic thinking strive to form spiritual bonds between humanity and the surrounding world, shaping distance into the space required for devotion and reflection: the distance undone by the instantaneous electric connection.³

ART AND THE EFFIGY: CONTINUITY AND SUBJECTHOOD

This chapter looks more closely at how the effigy works within its social framework as an image among other images. Lacan's notion of the symbolic order (so important to the last chapter) comes from Levi Strauss and the discovery that signs did not 'mean' anything outside their social use.⁴ Art history has broadened its approach to images and visibility and this widened scope has much to say about our response to the icons of the law; some of these insights have not been

¹ Laurence Durrell, *Mountolive*, (London: Faber and Faber, 1958) 29

² Thomas Ford, 'There is a Lady Sweet and Kind,' (excerpt) in *Seventeenth Century Lyrics*, ed. George Saintsbury, (New York: Macmillan and Co, 1892) 114; used by Sir Robert Menzies as the opening lines to his toast to Queen Elizabeth II on her first visit to Australia in 1954.

³ Aby M Warburg, *Images from the Region of the Pueblo Indians of North America*, trans. by Michael P. Steinberg (New York: Cornell University Press, 1997) 54

⁴ See Ellie Ragland-Sullivan, *Jacques Lacan and the Philosophy of Psychoanalysis*, (London and New York: Routledge, 1986) 165-167; here Ragland describes Lacan's approach to a fluid symbolic order following from the discoveries of Levi-Strauss, Marcel Mauss, and Dan Sperber, particularly. For a description of the connection between anthropology and psychoanalytic theory, see also Anne Dunand, 'Lacan and Levi Strauss,' in *Reading Seminars I and II: Lacan's Return to Freud*, ed Richard Feldstein, Bruce Fink, Maire Jaanus (Albany, NY: SUNY Press, 1996) 98-110.

integrated into the jurisprudence (of the image) in the last chapter. As argued in the last chapter, the power or magic of the 'second body' persists in modernism and an anthropological approach embodying the *longue durée* can refine our reasoning.⁵ What follows is based on a belief in the continuity of what we have called the effigy. The effigy, even in modernity, responds to the trauma of the law's founding. The image becomes something like a civic idol that commands, demands and loves us. The effigy is a visual expression of the master signifier, a civic God.

Although we may call the effigy an 'aesthetic object' which lures the viewer to look at it, it is worth pursuing the primacy of its legal or symbolic authorisation as its defining characteristic. It is worth noting that Georges Didi-Huberman also saw the need to differentiate art from the effigy (or here *imago*) as part of the seminal *Law and the Image*.⁶ He suggests that there are two distinct beginnings to art history, one that begins with Pliny and the other that begins with Vasari. Vasari represents categories of Western aesthetics but Pliny, for Didi-Huberman, suggests a totally different approach. The image for Pliny was judged primarily on its legitimacy or legality based on *ius imaginum*, that is whether a noble had the right to make an ancestor portrait, or *imago*, which was a privilege offered to a few. So the image 'has meaning as much by virtue of a relation to the social and legal world as to that of material or natural forms.'⁷ The relations that framed the *imago*, Pliny designated as *dignitas* or respect.⁸ Now it is not beholden on Didi-Huberman to answer whether Pliny's analysis has any bearing on questions of the image today although the essay leaves the question tantalisingly open.⁹ Unlike Didi-Huberman's careful textual analysis our method is to work backwards from the bold assertion that the *imago* is still with us. As Mitchell's writes: 'Let me put my cards on the table at the outset. I believe that magical attitudes toward images are just as powerful in the modern world as they were in so-called ages of faith. I also believe that the ages

⁵ The *longue durée* in political theory sees that even pre-modern structures of governance may have a bearing on political structures today. See this in relation to Denmark: Bent Flyvbjerg, *Rationality and Power: Democracy in Practice*, (Chicago: The University of Chicago Press, 1998). In relation to Italy: Robert D. Putnam with Robert Leonardi and Raffaella Y. Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy*, (Princeton NJ: Princeton University Press, 1993)

⁶ Georges Didi-Huberman, 'The Molding Image: Genealogy and the Truth of Resemblance in Pliny's Natural History, Book 35, 1-7' *Law and the Image*, ed Douzinas and Nead, (London: University of Chicago Press, 1999) 71-8

⁷ *Ibid*, 73

⁸ *Ibid*, 73

⁹ Didi-Huberman is an expert on the work of Aby Warburg who, as we will see, is connected to an idea of artistic survival (*Nachleben*). In Chapter Nine on the wax effigies of Pop, we revisit Didi-Huberman and his work on the survival of the wax effigy in contemporary art. See Georges Didi-Huberman 'Artistic Survival: Panofsky vs Warburg and the Exorcism of Impure Time,' *Common Knowledge*, Vol 9, Iss 2, 2003, 273-285.

of faith were a bit more sceptical than we give them credit for.¹⁰ The previous chapter explained how Lacan still sees ideology functioning through the master signifier; the existence of these images is another proof that there is still political 'belief' in the contemporary world.

So we need a methodology that moves beyond aesthetics and asks: how do we respond and use images, and how do they use us? The discipline of art history allows for a broad approach to the image; the early Vienna School moved beyond aesthetic categories to found the discipline on more 'scientific' and empirical footing. This thesis follows this broader view within the discipline, in particular the work of Aby Warburg, to understand how 'art' might function as an image of the state. It is Warburg who first suggests the possibility of a magical or irrational response to images and the notion of a social memory for an image's power. These ideas are extended through a close analysis of the work of Alfred Gell and W T J Mitchell. For both, the image is treated 'as if' it were another subject, or person. Mitchell comes to this conclusion through psychoanalytic theory and asks not what a picture 'means' but what it 'wants', 'needs' or 'desires'.¹¹ Alfred Gell is a good example of how a methodology of images may do without 'art'; in many cultures there is no known term or structure for art, as we have come to understand it through the philosophy of Western aesthetics.¹² Faced with this problem, Gell chose to begin his exploration of 'aesthetic' objects as if the term 'art' did not exist. What he decided was that, in a very broad approach, sculptures, paintings, ornamental objects and ritual objects are treated as if they were another subject within a broad social matrix. He also saw an incredible 'continuity' in the way the image has been apprehended through the ages as well as through different cultures. Both Gell and Mitchell offer a methodology that they hope will be utilised. This thesis does this in a very particular way. Adam Gearey sets out the brief:

¹⁰ W J T Mitchell, *What do Pictures Want: The Lives and Loves of Images*, (Chicago: Chicago University Press, 2006) 8

¹¹ W J T Mitchell, *What do Pictures Want*, 2006. Mitchell is hugely influential to this study. His work gave me a means to connect the experiments of jurisprudence to art history and visual studies. Mitchell's *Picture Theory* is something I have been working with for over ten years. The Power Institute was an 'early adopter' of this mode of image analysis. Julian Pefanis ran a course, beginning in 1994, *Masterpieces and Metapictures*, which was heavily influenced by *Picture Theory*. Terry Smith also published 'What Do Pictures Want? An Idea of Visual Culture' in *In Visible Touch*, ed Terry Smith, (Sydney: Power Publications, 1996) which was originally written for 'Rethinking Picture Theory,' a conference held at Melbourne University in October 1994. Mitchell acknowledges Julian Pefanis: 'whose witty response to this paper made it clear that it will always be too late to know what a lecture is about.' 215

¹² In a footnote Mitchell talks of the similar approach but says he came too late to Alfred Gell's *Art and Agency: An Anthropological Theory*, (New York: Clarendon Press, 1998)

The very constitution of both ancient and modern society rests on the communal acceptance of an image that represents the founder, whether God, King, law, nation or constitution. This brief description, no doubt, begs many questions. Tracing the precise modifications of the regime of images remains a task outside the realms of this book, but it seems both theoretically defensible and experientially resonant that social and political order is legitimised and perpetuated by images.¹³

This thesis continues the exploration of this 'founding image'. The broad and all encompassing methodology of Gell and particularly Mitchell will be used to study a small part of the spectrum of images: the effigy, or following the method above, an image or agent that commands and has authority over other people. Artists and artworks are used as exemplary of our response to the law. By choosing to keep art in play it creates a tension between two approaches, one that sees an artwork, the other that sees an effigy; as we will see in the case study of Lucian Freud, both may exist as plausible readings of the one image. The small supplement that I make is to suggest that from another viewpoint, a viewpoint often suggested by the artists themselves, the work can also be seen as an effigy or at least as a response to the effigy. In this chapter, two case studies, Lucian Freud and Eric Fischl, are used to show how this tension between art and the effigy, aesthetics and juridical use, resolves itself in public controversy. In art history a 'scandal' is only an art historical concern in as much as it says something of the social context that receives a work; in fact art history has been very good at dismissing the 'philistines' that are scandalised by the avant-garde experiments of modernism. Both works were in some way 'public', and this authorised the 'public' to attend to the image away from the rarefied atmosphere of the museum or gallery.

FROM COINS TO CANVAS AND BACK AGAIN

Lucian Freud's *Queen Elizabeth II*, 2001 (Figure 7), painted for the Silver Jubilee, is an idiosyncratic little painting; it seems certain that Freud was well aware that the work walked the fine line between the effigy and the portrait. Freud usually shies away from painting famous people on

¹³ Adam Gearey, *Law and Aesthetics*, (London: Hart Publishing, 2001) particularly, Chapter 2, 'Lie Dream of a Legal Soul Critical Legal Studies an the Theory of the Image,' 25-50, 30



7. Lucian Freud, *Queen Elizabeth II*, 2001, 23cm x 15cm, oil on canvas.



8. Aby Warburg, example of a panel from *Mnemosyne Atlas*, Warburg Library London, 1924-1929.

the grounds their public persona overrides the 'affect' of the work but here he relents.¹⁴ It is not too far fetched to suggest that Freud, in accepting the commission, knew that the work played on the history of the 'royal portrait' and that, following Marin, the work's realism would also have to account for the 'king effect'.¹⁵ The reception of the work split along party lines: the art critics, read it primarily as an artwork; the public and other critics judged it based on its ability to embody the Queen's presence. Of the latter a number said the work was a treasonous act.¹⁶ Robert Simon, critic and editor of the *British Art Journal*, said, 'It makes her look like one of the royal corgis who has suffered a stroke.'¹⁷

Part of the context for the framing of Freud's royal portrait is that he is a realist painter. Freud is not known for his conceptual engagement with the limits of modernism.¹⁸ The critical rhetoric praises Freud for accounting for the psychological intensity of the sitter beyond the surface.¹⁹ Another rhetoric of high art is that the work is not even 'portraiture.' He accepts no commissions and has to find something interesting in a sitter to agree to paint them; he never poses sitters but just observes them. Robert Hughes writes:

¹⁴ See Clare Garner, 'Freud to paint Queen's Portrait,' *Independent Newspaper*, 22 February, 1999, accessed 7/09: www.independent.co.uk/news/freud-to-paint-queens-portrait-1072464.html; Freud refused to paint the Pope John Paul II and Princess Diana beside the Queen until this point. Garner goes on to say that it took six years of negotiations by the Queen's confidant, Sir Robert Fellowes, to convince Freud.

¹⁵ In this way too it is tempting to see the portrait as an extension of Freud's appropriative practice; he has appropriated from Chardin and Watteau most famously, both *Ancien Régime* paintings that represent the height of courtly painting, as discussed by Marin and the 'king effect'.

¹⁶ See 'Royal portrait: your views,' *BBC News*, 24 December 2001. A number called it ugly, masculine, puerile, purposively seeking controversy. <http://news.bbc.co.uk/1/hi/entertainment/arts/1725311.stm>

¹⁷ Quoted in 'Freud royal portrait divides critics,' *BBC News*, 21 December 2001, <http://news.bbc.co.uk/1/hi/entertainment/arts/1723071.stm>

¹⁸ For example the eminent theorist Rosalind Krauss used Freud's success (particularly his retrospective in Washington in 1988) as an example of the philistinism of journalistic art criticism and the lack of knowledge or interest in the conceptual experiments of the sixties: 'This [the collapse of America as the art centre] has opened a kind of floodgate through which many things are rushing one of which we've seen in the current reception of Lucien Freud, a greater phony of which there never was one.' Rosalind Krauss, Denis Hollier, Annette Michelson, Hal Foster, Silvia Kolbowski, Martha Buskirk and Benjamin Buchloh 'The Reception of the Sixties,' *October*, Vol 69, (Summer 1994) 3-21 at 5

¹⁹ An example of the hyperbole can be gleaned from a seminal monograph, Robert Hughes, *Lucian Freud: Paintings*, (London: Thames and Hudson, 1987); at 7, '[Francis] Bacon's pear-shaped face has the silent intensity of a grenade in the millisecond before it goes off. In the thirty-five years since he painted this, Lucian Freud has become the greatest living realist painter.'

In 'normal' portraiture, a tacit agreement between painter and subject allows the sitter to mask himself and project this mask — of success, of dignity, of beauty, of role — upon the world. But here [Francis Bacon 1952] the face with its lowered, almond-shaped eyes and eyelids precisely contoured as a beetle's wing-case is caught in a moment between reflection and self-projection. It is as naked as a hand.²⁰

If the ability to work 'between reflection and self-projection,' characterises Freud's oeuvre then the painting of the Queen sides heavily towards symbolic 'self-projection.' How can a portrait of a Queen *not* become an effigy? To make the challenge even more difficult a number of archaisms created a fertile ground for the image to become an effigy. Freud requested that the Queen wear the Diamond Diadem (sometimes called the State Diadem) that she wore in her coronation, when traveling to the State Opening of Parliament, and the crown most often depicted on postage stamps and bank notes, that is in effigies.²¹ Freud was also not paid to paint the Queen and it was given to her as a gift; this is a traditional way in which the 'effigy' is commissioned.²² Even the public dissemination of the image through the press mirrored the spectacle of the sovereign and the ubiquity of the Queen's 'second body.' The final framing of the 'king effect' was that Freud himself was regarded as the foremost portraitist that not even money could buy.

Regardless of all this framing Freud's caked Queen attempts to return the effigy back to the psychological presence of the real sitter, as opposed to the sacred image. Adrian Searle, the Guardian's art critic, spoke of Freud's picture as the best royal portrait in 150 years: 'Portraiture is meant to get beneath the skin... Freud has got beneath the powder, and that itself is no mean feat.'²³ The 'realism' of Freud's brush thus finds itself working as a hinge, getting beneath the mask that some critics praised while also being the very reason other critics disliked the painting. The 'realism' detracted from the work's dignity and heroism.²⁴ If the standards of art history and

²⁰ *Ibid* 7

²¹ This request was reported in Garner, *Independent Newspaper*, 1999

²² As the portrait of a monarch was considered an effigy then it was not paid for like a painting. For example Velázquez's *Las Meninas* 1656 is a metapicture for the legal definition of the position of the court painter. The red cross of Santiago on the painter's chest represents an honour that the painter received in 1659, three years after the execution of the work. The records of this commission showed that he could not be presented with the honour as a noble if he was 'a painter' and therefore a man of commerce. The difficulty was overcome by his being defined as a 'painter to the king' and by the declaration that he did not sell his pictures, nor retrospectively ever did. The making of an effigy was seen as something outside commerce, outside art, sacred and removed.

²³ Quoted in Garner, *Independent Newspaper*, 1999

²⁴ The aging of the Queen has meant that she has changed her effigy four times during her reign. The effigy in Australia is of an obviously old Queen who wears the same crown as her 1965 effigy. In Canada this idea

aesthetics are applied it blinds the viewer to the use of the object as an effigy. Although the two positions are difficult to reconcile both can be recognized as valid responses.

THE EFFIGY AND ITS PLACE IN ART HISTORY

In the discipline of art history this anthropologically embedded approach is not wholly unknown. The seminal work of the connection of law and visual culture within a social art history is the work of the late nineteenth century historian, Jacob Burckhardt, whose *The Civilisation of the Renaissance in Italy*, demonstrates the close relationship between artistic production and the legislative and economic structures of a society.²⁵ *The Civilisation of the Renaissance in Italy* confirmed Burckhardt's binary approach to art historical study which used both cultural history and formal art history, without losing sight of either. For Burckhardt this meant treating each art form from the point of view of its own traditions, problems and internal development. This supplementing of the formal concerns of art is inherent to the study of the effigy. The psychological which have already outlined as important to this study also existed for Burckhardt in seminal form; Michael Podro explains, '...because in looking at paintings his focus was single not double; for him the visual performance is permeated with social attitudes, with qualities of mind and personality.'²⁶ He described this approach to art history as the history of art 'according to tasks'. Burckhardt also was one of the first to actually look at the legal and political ramifications of cultural events, 'We are here more especially concerned with the festival as a higher phase in the life of the people, in which its religious, moral, and poetical ideas took visible shape. The Italian festivals in their best form mark the point of transition from real life into the world of art.'²⁷ Burckhardt's approach greatly influenced the Vienna School of Art History. Pace Huberman this alternative 'start' to art history founded the discipline on a 'scientific' approach to art. The aim was to move the discipline away from the 'philosophy' of aesthetics and its ideas of taste (Hegel, Kant) and connoisseurship (Giorgio Vasari, Giovanni Morelli), which were seen as too subjective. One of the major proponents was Julius von Schlosser who although believing in a style based history of art also

of coming full circle in old age is highlighted further by the Queen forgoing the crown altogether in her 2003 effigy; like Freud's image it is also 'realistic' but still maintains the traditional side profile and dignified posture.

²⁵ Jacob Burckhardt *The Civilisation of the Renaissance in Italy* trans S G C Middlemore, Peter Burke, Peter Murray [1878], (London: Penguin Classics, 2004); Felix Gilbert: 'Jacob Burckhardt's Student Years: The Road to Cultural History', *Journal of History of Ideas*, Vol 47, 1986, 251–73; Francis Haskell, *History and its Images: Art and the Interpretation of the Past* (New Haven and London, 1993), 331–46

²⁶ Michael Podro, *The Critical Historians of Art*, (New Haven: Yale University Press, 1984) 116

²⁷ Burckhardt, *The Civilisation*, 2004, Part 5, Society and Festivals, 230-270; Burckhardt goes on to describe the visit of a Duke being met with a secular display that involved the combination of juridical, religious and philosophical characters and symbols, 256-270.

fused this concept to 'language-history' which looked broadly at many cultural forms.²⁸ Aby Warburg extended this analysis even further and gave a primary role to anthropology. Warburg's analysis is currently being revisited as an antidote to formalist and iconographical accounts of modernism. In contrast the formalism of Wölfflin, a student of Burckhardt's, focused on the formal properties of work and the logic of period styles which could be translated as an 'art for art's sake' model.²⁹ The iconology of Panofsky was also a very important 'scientific' addition to art history, and saw art as a text to be read.³⁰ What links both was the utopian, structuralist vision of modernism, where the irrationality and superstition of art was underplayed. It is not surprising that the latest reading of the famous iconographical metapicture, *The Arnolfini Wedding* 1434 by Jan van Eyck, sees the painting and the symmetrical pairing not as a 'marriage contract' but as funerary effigies.³¹ But it is the long look, and the broad approach of Schlosser and Warburg that grounds this work within the discipline; it is worth looking closely at two of Warburg's innovations: survival and the pathos formula.

THE EFFIGY SURVIVES

Warburg and the Warburgian school of art history studied 'survivals' of magic imagery and objects. Warburg's term is *Nachleben* which means survival, or afterlife, of images, motifs and visual modes.³² Georges Didi-Huberman writes:

²⁸ Michael Podro, 'Against Formalism: Schlosser on Stilgeschichte,' *Akten des XXV. Internationalen Kongresses für Kunstgeschichte*, Vienna, Vol 1, 1983 37-43; Ernst Gombrich, 'Julius von Schlosser,' *The Burlington Magazine* Vol 74 no. 431, February 1939, 98-99

²⁹ Heinrich Wölfflin, 'Introduction: The Double Root of Style', in *Principles of Art History, The Problem of the Development of Style in Later Art*, 1st pb. in German, 1915 (Dover Publications, Inc., 1950) 4-17. Heinrich Wölfflin, *Classic Art: An Introduction to the Italian Renaissance*, (Phaidon Press, 1994); Joan Hart, 'Reinterpreting Wölfflin: Neo-Kantianism and Hermeneutics,' *Art Journal*, Winter 1982, 191-300; Joan Hart, *Heinrich Wölfflin*, (Cambridge: Cambridge University Press, 2000). The work of Alfred Barr is heavily influenced by Wölfflin's approach, Alfred H Barr, *Cubism and Abstract Art*, (New York: Museum of Modern Art, 1936), 10-19.

³⁰ See Erwin Panofsky, *Introduction in Studies in Iconology*, [1939] (New York: Harper & Row, 1962) 3-34; Michael Ann Holly, *Panofsky and the Foundations of Art History*, (Cornell: Cornell University Press, 1984); W J T Mitchell, *Iconology*, (Chicago: University of Chicago Press, 1986).

³¹ Erwin Panofsky, 'Jan Van Eyck's Arnolfini Portrait', [1934] in *Modern Perspectives in Western Art History*, ed. W Eugene Kleinbauer, Holt, (New York: Rinehart & Winston, 1971) 193-203; Margaret Koster, 'The Arnolfini double portrait: a simple solution,' *Apollo*, no 499, September, 2003. 3-13

³² see Georges Didi-Huberman, 'Artistic Survival: Panofsky vs Warburg and the Exorcism of Impure Time,' trans. Vivian Rehberg and Boris Belay, *Common Knowledge* Vol 9, Iss 2, 2003, 273-285

He understood that symptoms are not 'signs' (the *semeia* of classical medicine) and that their temporalities, their clusters of instants and durations, their mysterious survivals, presuppose something like an *unconscious memory*.³³

So instead of seeing a linear progression, such as Wölfflin's notion of period style, Warburg describes a matrix of 'memory' across time and societies. If we look again at the response to Freud's royal portrait, it is quite surprising to see the visceral reactions to a lack of perceived dignity in the Queen's image. It would be wrong to see it as a 'renaissance' of the effigy after some period of extinction but for Warburg it would be a 'survival' or persistence of the power of the 'royal portrait'. For Warburg the 'primitive' cultural unconscious was close to the surface in Western modernity.³⁴ Warburg writes:

In attempting to elucidate the frescoes in the Palazzo Schifanoia, I hope to have shown how an iconological analysis that can range freely, with no fear of border guards, and can treat the ancient, medieval, and modern worlds as a coherent historical unity – an analysis that can scrutinise the purest and the most utilitarian of arts as equivalent documents of expression – how such a method, by taking pains to illuminate one single obscurity, can cast light on great and universal evolutionary processes in all their interconnectedness.³⁵

Matthew Rampley connects Warburg to the work of Walter Benjamin and directly sees their work as an alternative to the linear, progressional theories of modernism; for them there was a greater connection and concurrence of the past.³⁶ Until recently, because of his reception by other scholars, the complexity of Warburg's approach was not fully realised. Linked to Nietzsche's thought, particularly *The Birth of Tragedy*, Warburg describes a constant tension between the Dionysian and Apollonian forces. The Dionysian celebrates artefacts and art objects that are superstitious, ritualistic, orgiastic and responding to traumatic demons; the Apollonian related to the rational drive towards reason and meaning, science and text. Margaret Iversen sees a process whereby Gombrich and Panofsky 'deproblematise' Warburg's approach.³⁷ For example Warburg

³³ Georges Didi-Huberman, "Foreward" in Phillipe-Alain Michaud, *Aby Warburg and the Image in Motion*, (New York: Zone Books, 2004)

³⁴ See Matthew Rampley, 'Iconology of the Interval. Aby Warburg's Legacy,' *Word and Image*, Vol 17 No 4, 2001, 303-324

³⁵ Aby Warburg, 'Lecture on Palazzo Schifanoia', 1912, quoted in E H Gombrich, 'Aby Warburg: His Aims and Methods, An Anniversary Lecture', *Journal of the Warburg and Courtauld Institutes*, 1999, 268-282, 275

³⁶ Mathew Rampley, *The Remembrance of Things Past: On Aby M Warburg and Walter Benjamin*, (Weisbaden: Harrasowitz Publishing House, 2000)

³⁷ Margaret Iversen, 'Retrieving Warburg's Tradition' in *The Art of Art History: A Critical Anthology*, ed. Donald Preziosi, (Oxford: Oxford University Press 1998)

had no qualms in linking certain 'magical' responses to more formal iconological readings; for example in his conflation of the Flemish painters' realism in portraiture to the function of ex-voto images during the same early Renaissance period.³⁸ Iversen highlights the continuity or survival Warburg notes between the Renaissance and the Middle Ages, whereas Gombrich, coloured by his own view, suggests that (in Warburg's work) Renaissance rationalism triumphs.³⁹ Warburg's conclusions were not so clear, it seems, and it is this equivocation between the rational and the irrational that this thesis finds useful.

The approach in the end created a particular method which some believe is Warburg's greatest legacy to art history, his *Mnemosyne Atlas*.⁴⁰ This work was unfinished in the book form he intended but exists as forty large canvases to which almost 1000 images were affixed. The 'unconscious memory' of civilization is represented visually and 'suggests' broad relationships between the images, under such headings as 'human sacrifice' and 'draped nymphs' (Figure 8). Where he grouped photos in this way he proposed an art of the in-between, what Warburg called the 'iconology of the interval'. God, he famously declared, resides in the details; the inhuman presence that hovers in the darkness between these images is, says the philosopher Giorgio Agamben, 'the dark demon of an unnamed science whose contours we are only today beginning to glimpse'.⁴¹ As seen in Warburg's *Atlas* it is an intuitive approach where the figures of the past are brought into contact with their recurrence in contemporary imagery. Finally in these survivals there is a certain shifting; a notion that comes strongly through Warburg's writing in relation to the continuity of images and that is the notion of 'disguise'.⁴² In the interval between images, in the shift between periods or artists, was the notion of disguise. For example in his history of Perseus through the Middle Ages, Warburg sees a disguised Perseus even in Indian astrological material.⁴³ Borrowing terms from geology Warburg sometimes called the past advent

³⁸ Podro, *The Critical Historians*, 1984, 164

³⁹ Margaret Iversen, *Retrieving Warburg's Tradition*, 1998; Edgar Wind 'Warburg's Concept of *Kunstwissenschaft* and its Meaning for Aesthetics' in *The Art of Art History: A critical Anthology*, ed. Donald Preziosi, (Oxford: Oxford University Press 1998)

⁴⁰ For a good summary of the *Atlas* see Brian Dillon 'Collected Works. Aby Warburg's *Mnemosyne Atlas*', in *Frieze*, Iss 80, January-February 2004; Charlotte Schoell-Glass ' "Serious issues" The last plates of Warburg's picture atlas *Mnemosyne*', in Richard Woodfield (ed.), *Art history as Cultural History: Warburg's Projects*, (London and New York: Routledge, 2001) 183-208; *Mnemosyne. Aby Warburg's Atlas of Memory*, cat exh, curated by Italo Spinelli (Tel Aviv: Tel Aviv University 1999)

⁴¹ Giorgio Agamben, 'Aby Warburg and the Nameless Science', in *Potentialities*, trans. Daniel Heller-Roazen, (Stanford: Stanford University Press, 1999) 90

⁴² Julius von Schlosser uses a similar term, 'declassing' which we will look at in more detail in Chapter Nine.

⁴³ See E. H. Gombrich, *Aby Warburg - An Intellectual Biography*, (London: Warburg Institute, 1970), 194, 260

of an image a *Leitfossil*.⁴⁴ It is this methodology that summarises the art historical work to come. A number of uses of the 'second body' or effigy are shown to exist within the art canon from Daumier to Warhol, and we tease out their similarities and differences; what joins them though is a belief that the artefact, as an important juridical quilting point, exists through a *longue dureé*.

Before moving on within this method of memory and the ritual use of imagery, Warburg turned his attention to the 'juridical image' in the guise of the court festival, heraldry, and even postage stamps and other official symbols. In 1927 he arranged an exhibition of postage stamps looking in particular at classical symbolism and to the imaging of the sovereign; in the same year he made a note regarding the use of the metaphor of the *fasces* in Mussolini's Italy.⁴⁵ These juridical images were particularly apt at describing Warburg's concept of the 'after-life of antiquity' through a cultural memory structure.⁴⁶ If the frameworks of western law are based on Ancient models of Rome and Greece they are even now seen in contemporary juridical images. Gombrich notes that Warburg saw that a contemporary ruler, Edward VII, was represented on a Barbados stamp in the same pose on a chariot as earlier representations of Neptune. The stamp was directly related to a similar image on the seal of Charles II. The other stamp that he connects to this argument is the use of the *fasces* by Mussolini in fascist Italy. For Warburg in both cases the original classical usage or subject had changed or evolved so that in the case of Edward VII, the King is not pretending to be Neptune but only appropriates his power. In the case of Mussolini's *fasces*, the axe is not a metaphoric symbol of authority's monopoly on violence but is a real axe, larger and doubled as a frame on either side of the stamp; it is a real threat.⁴⁷ The trans-historical survival of the 'second body' or the king effect in contemporary politics underpins this example.

WARBURG TRAUMA AND PATHOS FORMULA

In the previous chapter we explained the juridical image as something that covers over the 'absent' transcendent core of the law. Chapter Three expands on this theory where to probe this lack is a certain mode of resistance. In between these two positions though is an art history that has also seen art as a resistance to loss or trauma. Indeed this may start with Pliny's view of the beginning of painting as a response to the loss of a lover to war; the Corinthian maid, Dibutade,

⁴⁴ *Ibid*, 261

⁴⁵ *Ibid*, 265

⁴⁶ *Ibid*, 307

⁴⁷ Quoted in Gombrich, 265, originally from *Briefmarke*, Notebook, 1927, p1; he writes: 'The possible title of a lecture or essay: Two classicizing symbols of political power in the mirror of postage stamps: the sea-going chariot on the English stamp, the axe of the Fascists'.

makes the first portrait as a trace of his shadow on a wall as a memento.⁴⁸ It is Warburg who, as a combination of his iconological approach and sense of memory structures, seriously looks at the possible anthropological foundation for this assumption; he concludes that *all* art can be defined as a way of mediating the transcendental and the world in what he called the *pathos formula*.⁴⁹ Warburg linked the creation and reception of art to dealing with trauma. Warburg's notion of the *pathos formula* is described less as a semiotic or semantic system, akin to iconology, but as a 'psychic symptomology'.⁵⁰ Against a formalist reading of art, the artistic expression is not based on authorial intention, but is the return of societies repressed in the image. Art then responds to the crises of history, as a symptom of its anxiety and phobia, where art acts as a sort of sublimation:

Sometimes it seems that, as a psycho-historian (*ichs als Psychohistoriker*), I have tried to diagnose the schizophrenia of Western culture (*die Schizophrenie des Abendlandes*) through its images, as an autobiographical reflex. The ecstatic (manic) nymph on the one side, and on the other, the (depressive) river god in mourning (*die ekstatische Nymphe [manisch] einerseits und der trauernde Flussgott [depressiv] anderseits*).⁵¹

The *pathos formula* clearly has a psychoanalytic aspect; it is also theological and aesthetic.⁵² For Adi Efal the *pathos formula* is a process of 'visual fixation' where we create images that mimic or make bearable (sometimes in a biomorphic way, say in the figure of a human or body) threatening and traumatic forces 'that then becomes petrified or fixed as an image'.⁵³ For Warburg the trauma is present within this very term and expresses the traumatic encounter between man and the world.

⁴⁸ Pliny the Elder, *Natural History*, bk. 35, par. 43; see H Rakhman trans. (Cambridge, Massachusetts: Loeb Classical Library, 1952) Vol. 9, 371-373

⁴⁹ See Gombrich, *Aby Warburg*, 177- 185 where the idea of the 'pathos formula' and its relevance is discussed in great detail; Gombrich writes in *Aby Warburg*, at 70, that Warburg would quote 'You live and do me no harm' as the phrase that sums up how 'primitive' man treated the images; the image is allowed to live but as recompense for alleviating the trauma or horror. See also E. H. Gombrich, 'The Ambivalence of the Classical Tradition: The Cultural Psychology of Aby Warburg', *Tributes – Interpreters of our Cultural Tradition*, (Oxford: Oxford University Press 1984), 117-138; Mathew Rampley, 'From Symbol to Allegory: Aby Warburg's Theory of Art', *The Art Bulletin*, 1997, 41-56; Moshe Barasch, 'Pathos Formulae: Some Reflections on the Structure of the Concept in Imago Hominis: Studies in the Language of Art', *IRSA*, Vienna, 1991.

⁵⁰ This phrase suggested by George Didi-Huberman, 'Dialektik des Monstrums: Aby Warburg and the Symptom Paradigm', *Art History*, Vol 24, No 5, Nov 2001, 622

⁵¹ Aby Warburg quoted in Gombrich, *Aby Warburg*, 1970, 303

⁵² See Adi Efal, 'Warburg's "Pathos Formula" in Psychoanalytic and Benjaminian Contexts,' *Assaph-Studies in Art History*, No 5, 2000-2001, 221-238

⁵³ Iversen, *Retrieving Warburg's Tradition*, 1998, especially exercises this argument, based on Nietzsche's idea of the balancing of these two forces, Apollo and Dionysus.

In the previous chapter we drew a similar connection between the transcendent and the image as its worldly mediation. Didi-Huberman highlights this traumatic absence in what Warburg called the 'dialectic of the monster':

The order of *causes* is thus the eternal conflict with a formidable, sovereign and un-nameable *thing*. The omnipresent themes of Warburg's last years were: the 'combat with the monster' (*Kampf mit dem Monstrum*) in ourselves, the 'psychic drama' (*Seelendrama*) of culture as a whole, the 'complex and dialectical' (*Complex und Dialektik*) knot of the subject with this mysterious *Monstrum*.⁵⁴

Iversen further connects Warburg to the creation of the psychoanalytical subject and to castration anxiety: 'His work suggests a sensibility which remembers the proximity to the mother, that is the lack of differentiation between the self and other; remembers the pain of separation.'⁵⁵ In Warburg's own words:

The primeval category of causal thought is maternity. The relation between the mother and child displays the enigma of a tangible material connection bound up with the profoundly bewildering trauma of the separation of one living being from another. The detachment of the subject from the object which establishes zone for abstract thought originates in the experience of cutting the umbilical cord. The 'savage', perplexed in the face of nature, is orphaned, without paternal protection.⁵⁶

As Freud and Lacan have clearly shown, this traumatic encounter resists signification. The traumatic encounter for Lacan is a missed encounter with the Real. But Žižek would agree with Warburg's analysis and does see the symbolic order as a response to trauma, coming to terms with the unsymbolisable Real, or in Warburg's terms to reassert the image of 'paternal protection.'⁵⁷ It is largely in Lacanian terms that this thesis will proceed. But it is worth noting that even at the beginning of the twentieth century within the discipline of art history, an alternative to the teleological history of formalism was being discussed. It is this repressed line of thought, an 'irrational modernism', that we will continue to plot.

THE FALLEN WOMAN AND HEROES

Eric Fischl's *Tumbling Woman* 2001 was a response to a city's trauma; it was commissioned by the Rockefeller Centre to commemorate the one year anniversary of the attack on the World Trade

⁵⁴ Didi-Huberman, *Dialektik des Monstrum*, 2001, 626

⁵⁵ Iversen, *Retrieving Warburg's Tradition*, 1998, 219

⁵⁶ Gombrich, *Aby Warburg*, 1970, 220

⁵⁷ See Slavoj Žižek, *For They Know Not What They Do, Enjoyment as a Political Factor*, (London, Verso, 1991)

Centre, '9/11' (Figure 9). The piece was not a State-commissioned work *per se*, however it was sited in an important 'public' area; the work was also commissioned as a permanent memorial. After its unveiling, a controversy immediately erupted in the press and against the Rockefeller Centre. The work was veiled twice; first it was covered in a sheet, then fenced off and finally removed.⁵⁸ Fischl was 'heart broken at the response' and defended the right to express the event (9/11) in this way.⁵⁹ What caused the scandal seems quite clear. Paul Labb, a member of the public who actually saw the sculpture while unveiled said, 'I don't think it *dignifies* their deaths. It's not art. ... It is very disrupting when you see it.'⁶⁰ What many sought, after such a traumatic political event, was a reassertion of the Law, something dignified and reassuring. They wanted an effigy, something that would speak on behalf of the State, to 'represent' the horror in the Symbolic and to 'requit' the tragedy to the master signifier, 'Democracy,' or 'America.' Fischl himself later astutely highlighted this own failure:

I made a sculpture, *Tumbling Woman*, that was ultimately *my* response to an aspect of the experience. I realized that I'm not the kind of artist who can make a *heroic piece* [my emphasis]. I don't understand heroes, though I wish I did. I understand victims. I respond to vulnerability. I chose a woman as opposed to a man because I think there's still something about the way we

⁵⁸ Jaime Holguin, 'September 11 Sculpture Covered Up: 'Tumbling Woman' Meant To Honor WTC Victims, But Drew Complaints', *Associated Press*, September 19, 2002; Holguin begins her article, 'A jarring bronze statue in Rockefeller Center, meant to commemorate those who jumped or fell to their deaths from the World Trade Center, was abruptly draped in cloth and surrounded by a curtain wall on Wednesday.' See also David Teh, 'Art and the Veil: Censorship after 9/11' *Australian and New Zealand Journal of Art*, 5/2, 2004. The first veiling only heightened the intensity of the work and 'draped' the figure adding to its corporeality; even the second curtain/fence, off the contours of the work, still became a meaningful supplement to the work, whether through the desire of the prohibited, or merely by its doubled presence.

⁵⁹ David Rakoff, 'An Interview with The Artist Eric Fischl' *New York Times*, October 27, 2002. Fischl is quoted: 'I wasn't trying to make a universal monument to sum up the entire experience of 9/11. The kind of response that I was wanting to get was one in which people would allow me to share in the experience, the holding up, the sitting with – so of course the response of "Get this out of here, you can't feel this" or "You can't make us feel this way" was incredibly hurtful...people wanted to have art as a playground and as entertainment'. See also Eric Fischl, 'A memorial that's True to 9/11' *New York Times* December 19, 2003, A35 (this paper was written in response to the judging of Michael Arad and Peter Walker's *Reflecting Absence* as the winning design for the new World Trade Centre). See '13 Who Will Do Choosing: Jurors for the Memorial Competition', *New York Times* November 19 2003, B4 for a summary of the judge's position on the designs. See also Roland Bleiker 'Art after 9/11' *Alternative* Vol 31 Issue 1, 2006, 77-100, for a description of how art was used in a popular sense through internet sites, music, literature to help mediate the experience of 9/11 in the United States.

⁶⁰ Quoted in Holguin, *Associated Press*, 2002 [my emphasis].

perceive women that heightens the sense of vulnerability. Although the form of the sculpture itself borders on androgyny, in the same way that Michelangelo's women have a strange masculinity to them. That was intentional on my part, as was the reference to Michelangelo. I wanted to reference artists who in the past had made heroic figures...I misjudged that. I saw *Tumbling Woman* as a healing tool. One of the ways to heal is to make visible the things that hurt us, so they can be dealt with. I thought it would heal, but I was wrong.⁶¹

Fischl did not produce 'a heroic piece,' but instead tried to appropriate past 'heroic figures' to a new and contemporary end. *Tumbling Woman* is an inversion of the effigy; it is purposively unheroic and 'vulnerable'. Fischl suggested that his 'tumbling' figure had little to do with the 'falling' bodies from the television and that it had more to do with the artistic genre of the 'fallen soldier' or 'wounded hero' common in art since ancient Greece.⁶² He noted particularly that the falling bodies on television were not naked; Fischl connected the work to the vulnerable female victim, of what, in art history, we call 'rape.'⁶³ The fleshiness, the nudity and the vulnerability was for public opinion too obscene and unsettling and did not readily recall experiments in modern sculpture.⁶⁴ The appeal to 'art' as a position against censorship has an interesting history and is based on formal questions, such as beauty and art historical precedent, above content.⁶⁵ Here such an account does not explain how the image was received as an affront. Beside Fischl's hiding behind formal concerns, what is striking is that he tried to speak for others and 'to heal' through a

⁶¹ Eric Fischl quoted in interview with Robert Fishko, 'Art in Troubled Times,' *Art Dealers of America (ADAA) Collectors Forum*, 2003

⁶² This claim seems slightly disingenuous, as the images were so prevalent in the press. An example of the genre Fischl is alluding to include *Wounded Soldier*, (marble) circa 480 B.C. Frieze Aegina Temple of Aphaia, Western pediment, Munich (Figure 10). For a contemporary version see Henry Moore's *Falling Warrior*, 1956-7 (Figure 11). For a survey of how myths of heroism and its memorialisation occurred in the twentieth century see George L. Mosse *Fallen Soldiers: Reshaping the Memory of the World Wars*, (New York: Oxford University Press USA, 1991).

⁶³ From the Latin *raptio*, kidnapping, for (sometimes sexual) enslavement or marriage. For a feminist discussion of this difficult term see Diane Wolfthal, *Images of Rape: The 'Heroic' Tradition and Its Alternatives*, (Cambridge: Cambridge University Press, 1999)

⁶⁴ The most obvious similarity formally is the work of Rodin, for example, *Damned Women* 1880-1917, for the *Gates of Hell*. Alberto Giacometti, *Woman with Her Throat Cut* 1932, is a Surrealist version of the same theme. In both works the eroticism of violence and damnation takes on a particularly unsettling form. An appeal to art historical precedent does not mitigate the response to this violent/erotic, a feeling that also pervades many of Fischl's well-known paintings.

⁶⁵ See Jonathan Gilmore, 'Censorship, Autonomy and Artistic Form' in *Art History, Aesthetic and Visual Studies*, (Williamstown, MA: Clark Art Institute, 2002) 105-121, for a historical account of the birth of this argument against censorship in the nineteenth century.



9. Eric Fischl *Tumbling Woman*, 2001, 66cm x 109cm x 112cm, bronze.



10. *Wounded Soldier*, circa 480 BC, from the Frieze Aegina Temple of Aphaia



11. Henry Moore, *Falling Warrior*, 1956-57, length 147.5cm, bronze.

shared experience of art. What informs Fischl's logic is a deep belief in aesthetic experience, following Kant, as *sensus communis*.⁶⁶ Fischl feels that he is sharing his image with others, and that viewers will respond with him and with his image as equals or as Stanley Cavell might suggest, as friends.⁶⁷ You can see this approach in the poem Fischl wrote on a plaque placed near the sculpture:

We watched,
disbelieving and helpless,
on that savage day.
People we love
began falling,
helpless and in disbelief.

We can hear it in his interviews:

And that's fine in good times, but when something terrible or powerful or meaningful happens, you want an art that speaks to that, that embraces the language that would carry us forward, bring us together, all of that stuff. I think that September 11 showed us that as an art world we weren't quite qualified to deal with this. Not trained enough to handle it.⁶⁸

The major problem with the acceptance of the work was that the majority did not want an artwork but an effigy, not a friend but a leader or hero.

MITCHELL, GELL AND THE ARTEFACT AS SUBJECT

Leaving Warburg's founding interest behind there has been a recent increased interest in the approach to a social art history based on a shared cultural memory. Hubert Damisch suggests that there is 'judgment' specific to art history. This judgment is connected both to the past and the

⁶⁶ Immanuel Kant, *The Critique of Judgement*, trans. Werner Pluhar, (Indianapolis: Hackett Publishing Company, 1987). Kant writes at 160, 'we must [here] take *sensus communis* to mean the idea of a sense shared [by us all], i.e., a power to judge that in reflecting takes account (a priori), in our thought, of everyone else's way of presenting [something], in order as it were to compare our own judgement with human reason in general... Now we do this as follows: we compare our judgement not so much with the actual as rather with the merely possible judgements of others, and [thus] put ourselves in the position of everyone else...' Beauty for example is judged on whether it is *sensus communis*.

⁶⁷ Stanley Cavell, *Must We Mean What We Say?* (Cambridge: Cambridge University Press, 1976), 198; Cavell writes: '...we treat them [artworks] in special ways, invest them with a value which normal people otherwise reserve only for other people — and with the same scorn and outrage. They *mean* something to us, not just the way statements do, but the way people do'.

⁶⁸ Quoted in the Fischl interview, *supra* note, 63

future in relation to art historical discourse and tries to tap into a sense of memory which is reminiscent of Warburg's *Mnemosyne*.⁶⁹ Similarly Thomas Crow suggests an 'intelligence' specific to art.⁷⁰ As Hal Foster notes, the return to Warburgian analysis may be due to an increased interest in the survival of the image in the 'psychology of culture' – a time when 'such memory-structures seem all but worn away'.⁷¹ The influence of Warburg in art history has been far reaching. David Freedberg and Hans Belting examine the 'power of the image' and suggest that there is a way of looking at this response away from the disciplinary concerns of 'art' in a period 'before the era of art'.⁷² Freedberg also directly studies the history of juridical images in the middle ages and, like Warburg, links these uses to magic and superstition.⁷³ A common criticism of Freedberg's approach is that his work merely becomes an assertive theory of 'response' as opposed to a scientific or empirical exploration. Another criticism, for example from W J T Mitchell, suggests that Freedberg and Belting do not go far enough and conveniently bracket their 'magical' images to a time before 'art'.⁷⁴ I would argue that this criticism is unfounded and that Freedberg is influenced by the work of Warburg and Schlosser, particularly in his study of wax votives and effigies; although not explicit he seems to have taken as read the Warburgian idea of continuity in the use of certain visual symbols and objects. There is an implicit suggestion, shown through the contemporary plates used rather than in the text, that these usages and feelings can be mapped upon the contemporary (for example the contemporary use of an effigy of Mitterand in a protest of 1984 as part of the chapter on 'images of infamy').⁷⁵ The work of Freedberg is

⁶⁹ Hubert Damisch, *The Judgment of Paris*, trans. John Goodman, (Chicago: University of Chicago Press, 1996)

⁷⁰ Thomas Crow, *The Intelligence of Art*, (North Carolina: UNC Press, 2000)

⁷¹ Hal Foster, 'Dialectics of Seeing', in *Art History, Aesthetics and Visual Studies*, (Williamstown, MA: Clark Art Institute, 2002) 215-230

⁷² David Freedberg, *The Power of Images* (Chicago: University of Chicago Press, 1989) and Hans Belting, *Likeness and Presence: A History of the Image before the Era of Art*. (Chicago: University of Chicago Press, 1994).

⁷³ Freedberg, 'Infamy, Justice and Witchcraft' *The Power of Images*, 1989, 246-282

⁷⁴ Mitchell writes: 'Belting and Freedberg are right to be ambivalent about their own binary narratives of a nonmodern era of images to be opposed to a modern era of art. If there is a commonplace in contemporary image theory, in fact, it is that images (if not works of art) today are credited with a power undreamt of by the ancient idolaters and the iconoclastic opponents.' W J T Mitchell, *What do Pictures Want*, 95-96; 96

⁷⁵ Freedberg, *Power of Images*, 1989, Plate 136, 258 shows a Reuters photo of an effigy of President Mitterand in Teheran. The placing of a contemporary image next to text about the Middle Ages practice of the *executio in effigie*, is very reminiscent of Warburg's approach in his *Mnemosyne Atlas*. It would be wrong *not* to see the plates as an important part of Freedberg's argument. Other modern examples include a Picasso wax work at Taussaud's (plate 121), removal of the statue of Reza Khan, Tehran, 1979 (plate 179),

particularly interesting where, like Didi-Huberman's *imago*, you wonder whether there is a survival of various forms of juridical image, outlined so carefully from the Middle Ages until the Seventeenth Century.⁷⁶

The anthropological and magical approach to the image we have outlined has been admirably explored in the work of Alfred Gell and W J T Mitchell, who provide a working methodology for the discussion of effigies and artworks. Relevant here is the notion of interpellation between object and subject, as discussed in the previous chapter.⁷⁷ By expanding the scope of visual analysis through anthropology and semiotics, Gell and Mitchell provide a method to approach the effigy.⁷⁸ As Mitchell himself highlights and shares with Gell, they grant a 'subjecthood' to the image/artwork as if the images have a life of their own.⁷⁹ Although coming from different disciplines (visual studies and anthropology respectively), both authors have arrived at a similar position in regards to the question of how we respond to images.⁸⁰ Both authors do not see traditional aesthetics as the starting point of their analysis for differing reasons. Indeed Gell seems directly interested by the anti-aesthetic turn of modernism and uses Duchamp in particular as an

the slashed *Rockeby Venus*, by Mary Richardson, 1914, (plate 183), and a portrait of President Marcos being burnt, 1986, (plate 184). I should note as an aside that the slashed *Rockeby Venus* is one of Alfred Gell's primary examples of the agent/patient relationship, see Alfred Gell, *Art and Agency: An Anthropological Theory*, (Oxford: Oxford University Press, 1998) 64

⁷⁶ For example in Chapter 8 the work of Warhol will be linked to a category Freedberg looks at called the 'image of infamy' – an image which attacked the *dignitas* of a person, like a denigrating royal portrait.

⁷⁷ The connection between Althusser's notion of interpellation and Gell's 'Anthropology of Art' has been elucidated by Matthew Rampley, 'Art History and Cultural Difference: Alfred Gell's Anthropology of Art,' *Art History*, Vol 28 No 4, September 2005, 524-551, 540. Rampley writes, 'In this respect, while from one perspective it stands comparison with formalist aesthetic notions, it also bears a more than passing resemblance to Althusserian notions of interpellation.' Mary Ann Caws also saw the similarity to Althusser in her review of Mitchell's *What do Pictures Want* in *Modernism/modernity*, Vol 13, No 2, April 2006, 407-408, 407

⁷⁸ Alfred Gell, *Art and Agency: An Anthropological Theory* (Oxford: Clarendon Press, 1998)

⁷⁹ Norman Bryson suggested this uncanny idea of an image that is alive is 'chilling': Norman Bryson, 'Their so-called life' *Artforum*, November 2005, 28

⁸⁰ In Mitchell's *What Do Pictures Want*, Freedberg is expressly credited. In *Picture Theory* Freedberg's notion of the 'power of images' is noted particularly in relation to fear and anxiety of the image, 15. Anthropology has recently become very interested in the visual. Alfred Gell, 'The Technology of Enchantment and the Enchantment of Technology', in Coote and Shelton (eds.), *Anthropology, Art, and Aesthetics*. (Oxford: Clarendon, 1994), 40-63; Morphy and Perkins eds. *The Anthropology of Art: A Reader* (Oxford: Blackwell, 2006); Fred Myers, 'Some Properties of Art and Culture: Ontologies of the Image and Economies of Exchange', in ed. Daniel Miller *Materiality*, (Durham: Duke UP, 2005), 88-117; James Elkins *The Domain of Images*. (Ithaca: Cornell UP, 1999)

example.⁸¹ For Gell an aesthetic approach, in terms of anthropology, becomes in his words a 'dead end'.⁸² Gell highlights that the primary goal of anthropology is not an understanding of 'culture' or 'appreciation' but one of mapping social relationships within social systems. Therefore Gell's approach to art is to discuss it as a relationship between two subjects: 'The simplest way to imagine this is to suppose that there could be a species of anthropological theory in which *persons* or 'social agents' are, in certain contexts, substituted for *art objects*.'⁸³ Gell goes on to clarify that his project does not allow for an aesthetic reading of art based on appreciation. Nor, as a corollary, does it allow for an institutional theory of art. More importantly here Gell suggests that his reading of 'art' is not based on a semiotic reading:

This refusal to discuss art in terms of symbols and meanings may occasion some surprise, since the domain of 'art' and the symbolic are held by many to be more or less coextensive. In the place of symbolic communication, I place all the emphasis on *agency, intention, causation, result and transformation*. I view art as a system of action, intended to change the world rather than to encode symbolic propositions onto it. The 'action'-centred approach to art is inherently more anthropological than the alternative semiotic approach because it is pre-occupied with the practical mediatory role of art objects in the social process, rather than interpretation of objects 'as if' they were texts.⁸⁴

What Gell goes on to clarify is a position similar to Mitchell, where the artwork functions as a subject in a social and cultural context. He equates the art object directly to the body, 'Thus from the point of view of the anthropology of art, an idol in a temple believed to be the body of the divinity, and a spirit medium, who likewise provides the divinity with a temporary body are treated as theoretically on par, despite the fact that the former is an artefact and the latter is a human being.'⁸⁵ Gell instead creates an equivalent term that relates to both modes: agency. In his example of a child's doll, the doll becomes such a complete 'emanation or manifestation of agency' (of primarily the child) that the doll assumes a 'co-presence' as agent.⁸⁶ This relationship then can oscillate between the roles of 'agent' and 'patient' with one working on the other.⁸⁷ Any

⁸¹ See Matthew Rampley, 'Alfred Gell's Anthropology of Art,' in *Art History*, vol 28, no 4, September 2005 at 530. He also places a Duchamp painting, *Network of Stoppages* 1914, on the cover.

⁸² Gell, *Art and Agency*, 1998, 5

⁸³ *Ibid*, 6

⁸⁴ *Ibid*, 6

⁸⁵ *Ibid*, 7

⁸⁶ *Ibid*, 20; see also Arjun Appadurai (ed.) *The Social Life of Things*, (Cambridge: Cambridge University Press, 1986)

⁸⁷ *Ibid*, 27; 1. The 'index' - i.e. the artwork (or other material entity) which 'motivate[s] abductive inferences, cognitive interpretations, etc.' 2. The 'artist': the person (or other intentional being, such as a divinity) to

social context in which an artwork mediates social agency constitutes what Gell calls an 'art nexus'; in each nexus four 'terms' provide a complex matrix of relations.⁸⁸

MITCHELL AND LACAN'S TRIAD

This mirrors Mitchell's approach to artefacts of visual culture. From his earlier work based on semiotics he asks what it is in the visual that is beyond language. The emphasis on particular relationships and social settings can also be seen in the ambivalent nature of Mitchell's own definition of objects and their agency. In *What do Pictures Want*, Mitchell travels through a wide variety of instances and objects.⁸⁹ The title of the book itself grapples with the issue seized upon by Gell, which is how to reconcile a pictures agency with the idea that any desire or demand by the artefact is merely a manifestation of the viewer/agent. Mitchell suggests:

First ask yourself what the word to want means. I attribute two meanings to it: One is desire, the other one is lack. In English another way to translate the title of my book would be: What do pictures lack? What is missing from the pictures? I mean that kind of Lacanian model of desire which is both, a desire for an object or an object choice, but also an object lack or loss. So you need to think the question in this double way. What does the picture require in order for you to understand it, to fulfil it, in order get it what it needs or in order to do the work it was designed to do? There are some very obvious examples of this, especially in religious art or in political art where they wear their heart on their sleeves, they declare their desires. The picture wants your body. It does not just want your consent or your attention. It wants you physically. Some pictures demand sacrifice.⁹⁰

We are focused on a particular image, however, the 'second body' of the sovereign or the effigy. What desire or lack does this image express or sublimate? As we have already begun to look at this artefact through Lacanian eyes it may be useful here to focus more fully on the work of W J T Mitchell, who also uses Lacan. How does the sovereign effigy fit within his schema? Remembering the previous chapter, Žižek too has seen the connection between Althusser and Mitchell. Žižek

whom is 'ascribed, by abduction, causal responsibility for the existence and characteristics of the index' 3. The patient or 'recipient': 'those in relation to whom, by abduction, indexes are considered to exert agency, or who [reciprocally] exert agency via the index' (see below); and 4. The 'prototypes': 'entities held, by abduction, to be represented in the index, often by virtue of visual resemblance, but not necessarily.'

⁸⁸ Gell, *Art and Agency*, 1998, 12ff

⁸⁹ W J T Mitchell, *What do Pictures Want?: The Lives and Loves of Images*, (Chicago: Chicago University Press, 2006)

⁹⁰ W J T Mitchell, 'Pictures Want to be Kissed' (interview), *Iconic Turn Lecture Series*, Burda Academy of the Third Millennium, Vol 13, Iss 12, 2004; accessed 7/09:

humanities.uchicago.edu/faculty/mitchell/interview_pictures_kissed.pdf

makes the connection between his ideological readings of pop culture by quoting at length Mitchell's reading of the Uncle Sam 'I want you poster!'⁹¹ Although he notes Mitchell's analysis of 'want' here he clarifies the bifurcated nature of law, that we have already seen, which is on the one hand the official public law and on the other its obscene supplement. Žižek sees Mitchell has shown these two sides in his astute and poetic analysis. There is the 'official ideological proposition' and the superegoic supplement which wants 'bodies and blood'. So in relation to Mitchell's Uncle Sam, 'What a picture like this *wants* is not the same as what it *desires*: while it wants us to participate in the noble struggle for freedom, it desires blood, the proverbial pound of flesh.'⁹² In conclusion, Žižek makes a general comment on Mitchell's Lacanian inspired analysis:

What, then, more generally, does a picture want? One is tempted to apply here the good old Lacanian triad of ISR: at the level of the Imaginary, it is a lure that wants to seduce us into aesthetic pleasure; at the level of the Symbolic, it calls for its interpretation; at the level of the Real, it endeavours to shock us, to cause us to avert our eyes or to fixate our gaze.⁹³

Later, in another context, Mitchell attempts to account for the image in just this way. His conclusions extend this small footnote and show a greater complexity. Following a Lacanian notion of desire more completely, Mitchell uses 'the four fundamental modes of relating to the libidinal object' as defined by Žižek in *The Plague of Fantasies: love, desire, friendship and jouissance*.⁹⁴ Mitchell suggests that:

An exact correspondence emerges between these relations and the standard array of sacred icons and iconic practices: love belongs to the idol, desire to the fetish, friendship to the totem, and *jouissance* to iconoclasm, the shattering or melting of the image.⁹⁵

Later in the chapter, 'The Surplus Value of Images,' Mitchell reiterates his triadic notion:

There are three names traditionally attached to the over/underestimation of images in Western critical discourse: idolatry, fetishism, and totemism. Of these three, idolatry has the longest history

⁹¹ W J T Mitchell, 'What do pictures really Want?' *October*, No 77, 1996, 64-66; Slavoj Žižek, 'The Reality of the Virtual' in *Organs Without Bodies: On Deleuze and Consequences* (London and New York: Routledge, 2004) n9, 7; I note that Uncle Sam may be considered more of a friend or kin than the idol of nation. Historically Uncle Same comes from the character of Brother Jonathon which highlights this brotherly and totemic role.

⁹² Slavoj Žižek, *Organs Without Bodies: On Deleuze and Consequences*, (London: Routledge, 2004), 8

⁹³ *Ibid*, 8, n10

⁹⁴ Žižek, *The Plague of Fantasies*, (London: Verso, 1997) 43; Mitchell, *What do Pictures Want?* 2006, 74

⁹⁵ *Ibid*, 74

and discloses the greatest surplus of overestimation (as an image of God, the ultimate value). Fetishism comes in a close second to idolatry as an image of surplus, associated with greed, acquisitiveness, perverse desire, materialism, and a magical attitude towards objects. Totemism, by contrast, has not been widely employed in public (as opposed to professional) discussion of the value of images.⁹⁶

Mitchell sees the notion of the totem as a distinct and particularly useful term for modernism. For Mitchell the totem helps to explain the meaning of the other two terms, idol and fetish:

Totemism, in fact is the historical successor to idolatry and fetishism as a way of naming the hypervalued image of the Other... if the idol is or represents a god, and the fetish is a 'made thing' with a spirit or demon in it, the totem is 'a relative of mine', its literal meaning in the Ojibway language. It is not that totems are essentially different from idols or fetishes: the distinctions are notoriously difficult to maintain (an idol, for instance, may also be a 'relative,' but it is usually a parental figure, a father or mother, whereas totemism seems more akin to brother- or sisterhood).⁹⁷

This difference is also explained in a later chapter 'Empire and Objecthood' in more obviously Lacanian terms:

The three kinds of objects can be differentiated quite strictly in relation to categories such as gods (idols), natural forces (totems), and artefacts (fetishes). In the family romance framework of psychoanalysis, the idol is the father, or Big Other; the fetish is the Mother's Breast, or the Little Other; and the totem is the natural kind as sister, brother or kinfolk. Or the three objects can be placed in a sliding scale, differentiated by degree, in which case the fetish is just a deflated, miniaturised version of the totem (lacking the communal investment), and the idol is just an inflated, gigantic version (insisting on its supreme importance and imperial ambitions).⁹⁸

In the chapter entitled 'Totemism, Fetishism, Idolatry' Mitchell brings together more coherently his concerns.⁹⁹ Mitchell again looks at the relationship between Peirce and Lacan to the triad he has sketched. In an apparent contradiction (to connecting the idol to the big Other above), here Mitchell associates the totem, not the idol, to the symbolic register and the law:

⁹⁶ *Ibid*, 97-98

⁹⁷ *Ibid*, 98

⁹⁸ *Ibid*, 165

⁹⁹ A book entitled *Totemism, Fetishism, Idolatry: Images and Others* is in production. This work is also based on a seminar of the same title which Mitchell has run at Chicago University since 2002.

Totemism, as the use of an object to prohibit incest and to regulate marriage, social identities, and proper names, seems closely tied to the Symbolic, in both Lacan's and Peirce's sense, as the figure of Law (Peirce called the symbol the 'legisign,' a sign constituted by *rule*, and Lacan associates it with prohibitions and the law).¹⁰⁰

This is understandable because it is the totem that draws the society together to a common *cause*. Fetishism he links again with the Real and Peirce's index. The idol he links to Peirce's icon and the Imaginary, the graven image that 'takes on supreme importance as a representation of a god or a god in itself.'¹⁰¹ Before moving past the triadic notion, it is important to highlight an aspect Mitchell is careful to discuss: that is, borrowing from Lacan's Borromean knot of the IRS triad, the triad (totem, idol, fetish) is really a relationship, a matrix or knot, not three distinct categories. The example Mitchell gives is the Golden Calf which can be seen to relate to all three orders: an alternative God, a totemic product of the tribe, and the golden fetish.¹⁰² Mitchell continues: 'The totem-fetish-idol distinction, then, is not necessarily a *visible* difference, but can only be apprehended through a *sounding* of the image, an inquiry into what it says and does, what rituals and myths circulate around it.'¹⁰³ This is absolutely foundational to the close readings of the artworks to come where there is a doubling of authorship. On one hand the artwork can still be seen in its guise in the Imaginary, as an aesthetic object. But how does such a fantasy structure cover the lack in the Symbolic?

THE SOVEREIGN BODY AS IDOL, TOTEM OR FETISH

How does the effigy fit within Mitchell's schema and can it help us directly? Our problem is that the sovereign's 'second body', as a representation of the master signifier, is both of the law and outside (it is the symbolic but also relies on its obscene supplement). On the face of it, it seems clear that the master signifier would be in Mitchell's 'idol' category. It is no surprise either that the totem is linked through the shared conventions of familial ties to the law and the symbolic order: 'it is in the *name of the father* that we must recognize the support of the symbolic function which, from the dawn of history, has identified his person with the figure of the law'.¹⁰⁴ In this way the friendship of the totem, which provides kinship, could be seen as characteristic of the symbolic. So if there is any confusion that our effigy is Mitchell's totem or idol it is based on a shared but different form of belief. Although we all believe in the master signifier as a 'collective lie', we believe in it as an authority, not as a friend. As Žižek describes, the master signifier is a 'rallying

¹⁰⁰ *Ibid*, 192

¹⁰¹ *Ibid*, 192-193

¹⁰² *Ibid*, 189

¹⁰³ *Ibid*, 189

¹⁰⁴ Jacques Lacan, *Écrits: A Selection*. trans. Alan Sheridan. (New York: Norton, 1977) 67

point'. The belief of the tribe or nation as shared through totemic structures seems a secondary form of belief that can only occur once the 'nation' is formed or 'quilted' by the master signifier. For Mitchell it is the totem that best describes the belief as something shared, 'I believe because Others do,' and it is to the totem that he links law. Although there are no hard and fast rules, interesting distinctions are already clear from Mitchell's analysis.

Mitchell then provides a table that gives some examples of how this idol, fetish, totem triad may work. Mitchell jokingly disclaims his own system and finishes with 'All these disclaimers will, I hope prevent anyone from making a fetish object out of my table of distinctions among them.'¹⁰⁵ This table though is a well-worked suggestion of the direction of Mitchell's future study. In relation to the image, the State sovereign is not mentioned but is alluded to indirectly in his table. Under the broad heading, 'type of animated icon', Mitchell proceeds to connect various 'associations'. I highlight a number of which are valuable to this thesis; although there is no legal category a number of associations throw light on questions concerning the sovereign body. Apart from the possibility of someone fetishising a photo of Tony Blair, or more realistically Prince William, within the public sphere legal images come to presence either as totem or idol. Focusing on this couple we see how the sovereign body may be placed amongst other contemporary structures.

Under 'Type of Art' the idol is a 'religious figure', the totem a 'public monument'. Here the sovereign body may be both in tension. Under 'Body Type' the idol is represented by the 'corporate' or 'collective body', the totem by the 'animal or plant', or non-body. The sovereign body comes from a long history of the corporate body, with its germination in the religious *corpus* or Christ and the Church. Here the totemic categorisation seems inappropriate. If we now link these categories to the notion of 'Ritual Practice' this becomes more problematic. Whereas the idol is 'worshipped', as we often see with the leader's body, the ritual practice of the totem is 'festival and sacrifice'. The 'Spectator' category also seems to point towards a notion of the sovereign effigy as the idol which is here connected to 'mass public politics' as opposed to a fetishised 'tribal identity'. This does not mean that politics cannot also have its totems. These readings suggest the flag (for example) works not only as an idol of the 'God of nation' but may also bind the tribal identity of a nation through groups of patriots that the festivals of flag waving creates. The flag becomes a totem when it is turned into the rallying point of 'kinfolk'. Similarly Mitchell sees the dinosaur as the totem of democratic capitalism in the modern world.¹⁰⁶ Mitchell suggests in his *Seven Theses on the Dinosaur*:

¹⁰⁵ Mitchell, *What do Pictures Want*, 2006, 193

¹⁰⁶ W J T Mitchell, *The Last Dinosaur Book: The Life and Times of a Cultural Icon*, Chicago, 1998, particularly Chapter 12 'The Totem Animal of Modernity'; Chapters 16-17 where a link is made through Jefferson to dinosaurs and the American Constitution; and Chapter 29 where T-rex is seen as an allegory of feudal

The dinosaur is the totem animal of modern culture. It is a modern invention, a new animal group that did not exist prior to the nineteenth century. It serves, like traditional totems, as a symbol of social groups--clans, tribes, races, nations, and species. It is an ancestor figure, a magical or taboo object, and the focus of ritual feasts, spectacles of resurrection and sacrificial consumption.¹⁰⁷

The idol is also seen by Mitchell to be primarily associated to the scopic drive as opposed to the phallic drive of the fetish and the vocative drive of the totem. In the table, Mitchell sees the idol as part of an imaginary contradiction to an earlier designation. The totem is seen as the symbolic. But if we read the table vertically we see that a number of categories are holders of symbolic power. The idol represents, for Mitchell (among others), the Priest, the God of Nation, the God of monotheism, Theology and the object. The 'object' is related to the totemic 'other', but the idol can be seen as the symbolic 'big Other'. In conclusion although the triadic structure is a matrix it is useful to think of the 'second body', the effigy as a God, as a god of nation, an idol and an icon. This represents primarily the big Other, the father figure which I would designate, *contra* Mitchell's table, as the symbolic Lacanian register. To return back to Mitchell's reliance on the four fundamental libidinal modes I may make one more clarification. Mitchell links *jouissance* to iconoclasm. Already through Žižek we see that *jouissance* is definitely a way that we experience the body of public law, through its obscene supplement.¹⁰⁸ Here again we see a beginning of the notion of the Symbolic Real that will be discussed in more detail in the next chapter; the lack, or 'unknowingness' of the icon is experienced as *jouissance*.

FREUD, FISCHL AND THE LACANIAN TRIAD

Like a bad detective novel in which you can solve the mystery too soon, the import of the two case studies may now be obvious. Both works, the Freud and the Fischl, fail to effectively embody 'God of Nation' and become something else. The Eric Fischl is firstly too much a part of the Real. It shows the act of falling, or too clearly foregrounds death. It is this traumatic Real that the work is meant (for the majority) to screen. In this case the screening was not enough that it needed to

capitalism whereas the velociraptor is seen as late capital based on fluidity and sexual disorientation. Cynthia Erb, *Tracking King Kong: A Hollywood Icon in World Culture*, (Detroit, MI: Wayne State University Press, 1998), takes a similar approach to the ideological ramifications of the ape in popular culture.

¹⁰⁷ Unpublished lecture handout. Power Institute Lecture, MCA, 2004; accessed 7/09:

www.press.uchicago.edu/Misc/Chicago/532046se.html

¹⁰⁸ This inherent move towards iconoclasm within the idols of the law is also a subject of Costas Douzinas's 'Prosopon and Antiprosopon' in *Law and the Image*, 1999, Chapter 3, 36-69; Douzinas for example shows the negative theology of Dionysius of Areopagite, who on one hand defended icons but on the other, suggested that God could only be seen as an 'unknowing,' 44.

be supplemented by the double veils.¹⁰⁹ For others the Real was experienced as a sexual fetish, where the nude body was seen as obscene and sexualized. Fischl's own assumption was that he was creating an object of friendship or kinship, a rallying point. It was a rallying point based on victimhood which was too difficult for some to stand (it is no coincidence that in Mitchell's table under 'Ritual Roles' the totemic column reads, 'substitute victim').¹¹⁰ It is a totem but in this case something failed to link the image back to the symbolic order strongly enough. The suggestion I gave earlier can now be phrased differently. The image was not connected strongly enough to the master signifier or authority and it did not appear with enough legitimacy. It did not appeal enough to the 'God of Nation', or other master signifiers such as democracy or liberty. It is no surprise that the lasting image of 9/11 is the image of three fire fighters raising the flag over 'ground zero' (Figure 12).¹¹¹ Mitchell describes the reaction to 9/11 as 'classic fetishism' where 'It's as if we are being dared to disrespect the national fetishes, or (what is the same thing) forced to venerate them or pay the consequences.'¹¹² To call this an act of 'anticipatory fetishism' is to underplay the connection of these rituals to the big Other. As we have seen there is a supplementary connection to the Law that is based on *jouissance*, a collective violence and tribalism (seen in carnivals and anomic festivals) and here in the aftermath of 9/11.

The Lucian Freud too becomes clearer in relation to the Lacanian triadic system. By starting with what is clearly an effigy, a royal portrait, Freud sets about testing the limits of this reception, *sounding* the image for other possibilities. Again to use Žižek's description of the Imaginary as an aesthetic lure, Freud frames his work through art historical reference and tradition. Again though it is his appeal to the Real that is his most obvious strategy to counter the efficacy of the idol. He attempts not so much to turn the work into a fetish, but to account for the actual individual behind the symbolic mask of the Queen. A number of formal properties of the work shift emphasis away from the symbolic effigy towards the individual or the Real.¹¹³ The fact that there were 72 sittings also adds to the idea that he studied the real body for clues of personality.¹¹⁴

¹⁰⁹ I see a similar problem in the controversy surrounding Maya Lin's *Vietnam Memorial*. The slit in the ground was too abject, a hole, and not 'phallic' enough. The *Vietnam Memorial* then has been supplemented twice by realistic sculptures of soldier, 1984 and nurses, 1993 that become in my analysis heroic effigies, embodying sovereign violence and power.

¹¹⁰ Mitchell, *What do Pictures Want*, 2006, 195

¹¹¹ Photograph by Thomas E. Franklin, 2001 for *The Record* (Bergen County, NJ); it has been noted that the composition is reminiscent of the Iwo Jima flag raising photo.

¹¹² Mitchell, *What do Pictures Want*, 2006, 75

¹¹³ Following Kantorowicz and the Plowden Reports away from the 'second body' and towards the 'body natural.'

¹¹⁴ See for a close analysis of this commission including working photographs, Sebastian Smees, Lucian Freud, Bruce Bernard, David Dawson, *Freud at Work* (London: Jonathan Cape, 2006).

Following Mitchell's designation of the (Real) fetish as small and intimate Freud's work is notably inconsequential for an official portrait; it is undersized.¹¹⁵ But it is the treatment of the face in Freud's idiosyncratic style that created the greatest turn towards 'ugliness' and the Real. Freud sculpts the paint like clay; he uses a particularly thick white paint (Cremnitz) that seems to embody the flesh.¹¹⁶ Freud is quoted as saying, 'I wouldn't use Cremnitz on anything that wasn't alive; I use it for flesh, or even on the hairs of a dog, but never for instance on a woman's dress. It is simply a code.'¹¹⁷ It is this fleshiness that again causes a break in the effigy; the image of the Queen in Freud's work sets up a split between the Lacanian Symbolic and the Real. It is a compact version of Lacan's reading of Hans Holbein's *The Ambassadors* (1533). In this case the Queen's actual corporeal, 'ugly' face stares back at the viewer reminding of us of the Real which marks the symbolic order as a lack, 'behind the powder'; as Lacan puts it, the magical floating object 'reflects our own nothingness, in the figure of the death's head'.¹¹⁸ So when the critics say, 'Freud has not painted her like the icon we see everywhere on stamps and coins. He's made her out to be a real and intelligent person,' they are pointing to this split.¹¹⁹ The complexity, which is inherent to the analysis of Lacan, is that the movement is reciprocal, the Real marks the Symbolic and Symbolic marks the Real. Even if we suggest that Freud's intentions are clear the image still, against Freud's strategies, will always work as an effigy. Žižek highlights this persistence in regard to a constitutional monarchy, 'The monarch functions as a 'pure' signifier, a signifier-without-signified; his entire actuality (and authority) consists in his Name and it is precisely for this reason that his physical reality is wholly arbitrary...'¹²⁰ For Žižek, if you attack the person of the sovereign, by saying 'Bush is stupid', or 'Berlusconi is corrupt', or painting the Queen as old and feeble, it has no effect on their efficacy as the place-holder of the void. Those commonwealth citizens who still saw the effigy as effective did not think the way Freud portrayed the Queen was appropriate. What creates the power in this work is that both positions are held in tension simultaneously, both as effigy and portrait.¹²¹

¹¹⁵ 23.5cm x 15.2 cm (9 x 6 inches)

¹¹⁶ Robert Hughes makes a link between a Rodin's *Balzac* maquette which Freud owns and his own approach to modeling.

¹¹⁷ Quoted in Robert Hughes, *supra* note 16, 22

¹¹⁸ Jacques Lacan, *The Four Fundamental Concepts of Psycho-Analysis*, trans. Alan Sheridan, ed. Jacques-Alain Miller, (New York: Norton, 1977) 92

¹¹⁹ William Feaver, quoted in the *Telegraph*, 21 December 2001.

¹²⁰ Slavoj Žižek, *For They Know Not What They Do: Enjoyment as a Political Factor*, (London: Verso, 1991) 82

¹²¹ For a painter that painted mainly family, friends and the anonymous model, the portraits of Kate Moss and Jerry Hall are vexing. Perhaps he was trying to overcome the hold of the surface, the allure of the famously beautiful (connected to Lacan's Imaginary), the fashion icon, through the same strategies of the Real.



12. Thomas E. Franklin, *Untitled*, 2001 for *The Record* (Bergen County, N.J.)



13. 'The Wizard Exposed', *The Wizard of Oz*, Metro-Goldwyn-Mayer, 1939

JURISPRUDENCE AND THE IMAGE THAT COMMANDS

Not only can we read 'art' through this method but its nuances can help tease out the jurisprudential work in the previous chapter. It is important to reiterate in Mitchell's triadic structure that an image can represent all orders in Lacan's triangle. Although there are no particular legal images mentioned, the symbolic order is on the first instance described as a totem. This squares with the use of the word totem in the work of Legendre. Following Legendre, Goodrich also uses the term totem often to describe the legal image of the sovereign body and other artefacts of the law.¹²² The totem is a useful term and implies the symbolic order that binds us together and gives us a 'tribal identity.' This works well for normative law: the architecture, the dressing of judges, the way court documents are written and presented, the way law is shown in film. Lior Barshack in a footnote talks of Legendre's notion of the totemic function as 'a very broad understanding of totemism', where there is no longer any distinction between totemism and 'ancestor worship for example'.¹²³ Barshack goes on to use the term 'totem' however to talk about the big Other as 'totemic authority,' where 'The sovereign act is legal because it is done by the sovereign himself — an absent totemic authority incarnated which is identified with the Law.'¹²⁴ The word 'absent' here is telling. Our absent founding figure, or sovereignty, is better connected to Mitchell's idol designation than to the totem.¹²⁵ The sacred body of sovereignty is not a friend or brother but the 'absent' father figure. It is an icon of the 'God of Nation.'

In a Lacanian sense it is both outside the symbolic but also within the symbolic order. For Freud the icon would be a representative of the now absent 'primal father'; it is only after his murder that the Law instigated through this absent force. The band of brothers are then held together by a totemic bond of contract and guilt.¹²⁶ To consider an aspect of Mitchell's reading again, it is unclear why this authoritative God, or father figure would be placed in the Imaginary order. A God is not a figure of narcissistic identification, of the imaginary Order. It is not the ideal-ego but a demanding authority. As Lacan mentions 'It is in the *name of the father* that we must recognize the support of the symbolic function which, from the dawn of history, has identified his person with the figure of the law'.¹²⁷ So the sacred body of the Law, although outside the law, is also most closely connected to the symbolic order. Its iconic representation may place it within the Imaginary but this is a secondary characteristic, it is this symbolically, legitimate placeholder of the

¹²² Goodrich, *Law and the Unconscious*, 1997, Glossary.

¹²³ Lior Barshack, 'The Totemic Authority of the Court,' *Law and Critique* Iss 11, 2000, 301-328, 303 n4.

¹²⁴ *Ibid*, 311

¹²⁵ Some 'idols' Mitchell mentions in his table we have already seen in relation to the 'second body': Bible, Icon, Religious figure, God of Nation, God of Monotheism.

¹²⁶ Sigmund Freud, *Totem and Taboo*, trans A A Brill, (New York: Random House, 1918) 185

¹²⁷ Jacques Lacan, *Écrits: A Selection*, trans. Alan Sheridan. (New York: Norton, 1977) 67

void that we have called the effigy.

Our analysis also helps define the effigy against the Marxist fetish which covers over or supplements the false consciousness of ideology.¹²⁸ Žižek asks why Marx calls ideology a fetish; suggesting the fetish has traditionally been used in religion to designate the 'false' idols and it was this tradition Marx followed.¹²⁹ It followed the notion that this was 'merely' ideology, so that its representation was 'merely' a fetish. Žižek's reading is that we are *all* in ideology and therefore the use of the political fetish becomes something else. For Žižek, there is still the need as part of our belief in the master signifier for a 'uncanny spectral supplement.'¹³⁰ This supplement he explains through Freud's, (not Marx's) reading of the fetish. The fetish for Freud covers the lack created by symbolic castration and 'around which the symbolic network is articulated.'¹³¹ This hole or lack is what the idol covers over, it is the placeholder for the piece of 'symbolic real' which is 'repressed' in the symbolic structure. So following Freud you may call this image or idol, that is the fantasy structure which covers this lack, a political fetish.

The sacred body is a focused version of this fantasy; it is a God, and an idol. By using the term effigy I give a name to a particularly juristic idol. It is transcendental and 'religious' but is also marked by a legal history. It represents the God of Nation, the sovereign founding moment that can never fully be accounted for and therefore needs an uncanny supplement, of which the effigy is a placeholder. Mitchell again explains it through the wonderful example of the Wizard of Oz:

In the *Wizard of Oz*, the ruby slippers are Dorothy's fetish objects; Toto (as his name suggests) is her totem animal — her companion and helper; and the Wizard himself is the (obviously false, hollow) idol, as we learn when the Wizard tells Dorothy and her friends to 'Pay no attention to the man behind the curtain.'¹³²

The effigy, the Wizard that gives the answers, is the idol. But as the *Wizard of Oz* suggests, all idols, not just the Wizard, are false and hollow. I would extend Mitchell's analysis: at the end of *Wizard of Oz* the Wizard answers the Lion and the Scarecrow by saying that they have what they desired all along, courage and a brain respectively. All they needed was the recognition of a medal and a

¹²⁸ Early Marxist inspired jurisprudence also used the term fetish to describe the images of the law: Z Bankowski and G Maugham *Images of Law* (London: Routledge, 1976). The argument in this book was largely utopian and anarchic, calling for a complete disavowal of legal structures and 'images' as examples of false consciousness. See also W J T Mitchell, 'The rhetoric of iconoclasm: Marxism, ideology and fetishism' *Iconology: Image, Text, Ideology*, (Chicago: University of Chicago Press, 1986) 160-208

¹²⁹ Slavoj Žižek, 'The Spectre of Ideology,' *Mapping Ideology*, 1994, 20

¹³⁰ *Ibid*, 20

¹³¹ Slavoj Žižek, 'How did Marx Invent the Symptom?' *Mapping Ideology*, 1994, 296-331, 327

¹³² Mitchell, *What do Pictures Want*, 2006, 194

diploma: they needed the (invisible) big Other to recognise them. The trick is actually to not look too hard behind the mask or persona of the State. But it is Toto who unveils the Wizard as a hollow idol and a fraud (Figure 13). The dog's discovery is presented as an ethical act and enables a new order, under the leadership of the Tin Man, in the Land of Oz. It is this sort of confrontation with the symbolic order, the unveiling as critique, that we need to define further.

CHAPTER 3: ARTISTS, THEIR BLANK CANVAS AND THE SYMBOLIC REAL

The other disciples therefore said unto him, We have seen the Lord But he said unto them, Except I shall see in his hands the print of the nails, and put my finger into the print of the nails, and thrust my hand into his side, I will not believe.¹

The church was an ancient one and was quite poor, many of the icons had no frames, but they say that one prays better in such churches.²

AUTHORS AND AUTHORISATION

We have defined an effigy as the visual manifestation of the master signifier and have made a few tentative conclusions about the commanding image. The artist has a very particular place in relation to the effigy. On the one hand as a legal subject, like all others, the effigy interpellates the subject, and brings the artist into the symbolic order. No artist can escape this process of subjectivisation through the image. We know too that the effigy covers over the absent source of the law, the 'mystical' or violent founding of the law, which we have called the Symbolic Real. The effigy is one of the political structures that orders and sublimates this (political) Symbolic Real. In these instances the image acts on the subject and is its own agent without any 'maker.' Art historians must look at the artefact of the idol as well as its use, the idol as both divine agent and as an object. The effigy is somehow authorless and is the site of its own authority. To revise the case of Velázquez, the making of a 'royal portrait' was *not* considered art or painting but something different, and at least the activity of a noble. Someone must 'make' or 'shape' the effigy but we do not have a distinct name for this person beside the 'effigy maker' or 'artist'.³ The writer of the Torah is not a calligrapher or writer but a *sofer*, a copyist, who through a process of study and strict guidelines, is recognised as a *mediator* of God's word. It is tempting here to suggest a neologism for the 'effigy maker' as someone who makes a figure that is *not* an artwork but is an effigy. An artefact may be both an artwork and an effigy simultaneously, so when we use the term 'artist' in this thesis it does not preclude this tension between the law and art, between the effigy and the artwork. The artefact may be seen as art or as an effigy depending on the spectator's viewpoint and its differing sources of authorisation.

The key to coming to terms with the relationship of the effigy and 'art' is the process of the legitimisation by the big Other or when the image becomes an idol of law, religion or culture. Part

¹ John 20:25

² Fyodor Dostoevsky, *The Karamazov Brothers*, trans Ignat Avsey, (Oxford: Oxford University Press, 1994) 968

³ Effigy, comes from the Latin *ex + fingere*, meaning to shape, copy, mold or fashion.

of this legitimisation is the engendering of belief in the subject of this authorisation. If we remember the Pygmalion story, the King of Cyprus sculpts a beautiful marble sculpture, which he treats as a person. As we can see in Jean-Léon Gérôme and François Boucher's versions, what 'activates' the sculpture and turns it into a real woman is Aphrodite herself, here presented in the guise of cupid (Figures 14 and 15). I suggest that we imagine the big Other's authorisation as similarly floating over an image like a ghostly apparition.⁴ In many cultures an idol or icon must be ritually blessed by a mediator of the big Other: the wafer must be blessed to become the Eucharist; the dragon boat must be 'awakened' by a Taoist priest who paints on the eyes in red paint; the English king must be crowned by the Archbishop of Canterbury. Before that act, the objects are merely a wafer, a boat and a body. In our case there may be no 'actual' ritual or bodily representation of the mediation of the big Other but the legitimisation has happened (if we believe it has been enacted). So in Lucian Freud's *Queen Elizabeth II*, the very fact that he was allowed sittings (and that the painting was 'accepted') authorised the image as an effigy; the lack of an obvious ritual of 'effigy making' however allowed others to keep the portrait in the realm of art (Figure 16). Or should we look at this authorisation through an example of an image being withheld or dismissed? Picasso painted a portrait of Stalin in 1953 that was not approved by the Communist Party (Figure 17). Picasso, the artist, apparently exclaimed, 'Apparently it was not liked. Tant pis [too bad].'⁵ The work in loose chalk, drawn from memory with pentimento ceased to be ideological because it was not the accepted image, it was too individual and showed too much of the trace of the artist. Without the secretariat's

⁴ For example in the contemporary version of Pygmalion by George Bernard Shaw, it is arguable that it is not Professor Higgins who creates the change in the flower girl but as is made very clear it is the science of phonetics, the use of words, the rules governing society, of which he makes the girl aware; this is evident in Shaw's 'Preface.' In other words, it is in this case not Aphrodite but the invisible big Other, largely invisible Symbolic rules, that vitalize Galatea/Doolittle. George Bernard Shaw, *Pygmalion: A Romance in Five Acts*, (London: Longmans, Green and Co, 1957).

⁵ As quoted in 'Too Bad about Mona Lisa', *Time*, March 30, 1953: Pablo Picasso came in for a scolding from the French Communist party yesterday [March 18] for a sketch of Stalin which appeared in the communist weekly 'Les Lettres Francaises.' In a communiqué by the secretariat of the Communist party published in the party's organ, 'L'Humanité,' it was stated that the secretariat 'categorically disapproved' the lack of 'realist art' in the portrait. While letting Picasso off gently, the communiqué indicated a reprimand for Louis Aragon, editor of 'Les Lettres Francaises.' Available online at <http://www.time.com/time/magazine/article/0,9171,818039,00.html?iid=chix-sphere>



14. Jean-Léon Gérôme, *Pygmalion and Galatea*, c.1890, 89cm x 69cm, oil on canvas.



15. François Boucher, *Pygmalion and Galatea*, 1767, 23cm x 33cm, oil on canvas.



16. David Dawson, *Queen Elizabeth II posing for Freud*, 2001, c-type colour print.



17. Pablo Picasso, *Stalin*, 1953

approval it would not have been a widely received effigy but as a gesture of Picasso's hand.⁶ On the other hand the artist must do 'a good enough job', the minimal amount of work, for the activation to occur; the image must be 'authorisable.' Again the Pygmalion story is illustrative, Aphrodite was pleased because she saw herself in Galatea, as if she was staring into a mirror; she therefore was able to bring it to life due to the quality of Pygmalion's artistry. Similarly the Torah is activated only if the *sofer's* execution is perfect. A relevant semblance or a relevant object to the big Other seems to be a minimum requirement, but this will depend on what rules a society sets.

A metapicture for the fiction of a hidden king, where the hidden authority makes the painting possible from beyond the frame is Velázquez's *Las Meninas*, 1656 (Figure 18). In Foucault's reading of the work there is a movement between multiple view points that give meaning to the painting: the authority of the King, the artist and the viewer. More broadly it is a painting about representation (opposed to resemblance) and how the sovereign subject begins to order their world.⁷ To combat *Las Meninas*-fatigue, I would like to use another Velázquez painting as metapicture for the making of a royal portrait, the portrait of the court sculptor Juan Martínez Montañés (Figure 19). In 1635 Montañés spent seven months in Madrid to model a likeness of Philip IV, to be used as a maquette for the Equestrian portrait of the King by Pietro Tacca.⁸ The portrait by Velázquez was most probably painted during this time, and shows the sculptor in the process of creating the effigy of the King; Montañés holds a wooden spatula over the clay figure. The work highlights the difference between a painting and an effigy. If *Las Meninas*, twenty years later, can be seen as a painting leaving the older notion of 'resemblance' behind perhaps this painting insists still on the power of resemblance. The effigy is not finished. The shape of the head, the eyes and the faint impression of the moustache represent the visage of the monarch clearly enough yet at the same time the head is erased (or actually more correctly merely an

⁶ This is not to say that Picasso's work is not political. The modernist rhetoric of the time in relation to Communist rhetoric caused the breach. On the contrary it is important that this opens a space for the discussion of Picasso's politics as an antidote to the Genius myth. See Gertje Utley, *Picasso: The Communist Years*, (Yale University Press: New Haven, 2000)

⁷ Michel Foucault, '*Las Meninas*,' *The Order of Things: An Archaeology of the Human Sciences* (New York: Vintage Books, 1970), 3-16; Joel Snyder, and Ted Cohen, '*Las Meninas* and the Paradoxes of Visual Representation' *Critical Inquiry*, Winter, 1980, 429-447

⁸ Finished in Florence in 1640 and now in the Plaza del Oriente, Madrid.



18. Diego Velázquez, *Las Meninas*, 1656, 318cm x 276cm, oil on canvas.



19. Diego Velázquez, *Portrait of Juan Martínez Montañés*, 1635-1636, 109cm x 107cm oil on canvas.

underpainting, with a little raw umber straight onto the canvas ground).⁹ In contrast Montañés is modeled clearly. If the painted clay head was given equal presence, even in grisaille, it would have turned the portrait into a portrait of the King and Montañés would have been merely secondary. Even now it wills the viewer to see the painting as a painting of the King's presence, yet the fact that the clay head is in the process of forming and incomplete means that the King's presence has not been authorised yet. Montañés is in the activity of bringing a royal portrait to life with his intellect and a little wooden tool. The King outside the frame waits for the moment to authorise and bring to life his own effigy. The incomplete blob of clay is still not quite something, however, and both artist and King have yet to make the decisive act. As a maker of royal portraits himself, Velásquez would have been quite aware of what an artist shares with a King: they both create something *ex nihilo*. The blob is the unsymbolisable Real in the process of its sublimation. It represents not only the blob as the artist's raw material waiting to be made beautiful, but particularly the Symbolic Real – the sublime – of the King himself.¹⁰

SUBLIMATION, AND STARING AT A BLANK CANVAS

What is this nothing from which the law and art is created? We have seen it so far described as the void, the *Monstrum*, shared trauma, the violence, the mythical foundation. In Seminar VII on the *Ethics of Psychoanalysis*, Lacan talks of the religious notion of *creatio ex nihilo*.¹¹ Žižek writes: 'Lacan insists that a *creatio ex nihilo* can only occur in a symbolic order: *creation ex nihilo* points towards the miraculous emergence of a new symbol against the background of the void of the Thing; in the Real on the contrary nothing comes out of nothing...'¹² The use of the term Symbolic Real should now be clearer; it is a decisive break in and of the Symbolic order. Lacan links this Symbolic Real of politics to a similar act, *ex nihilo*, of the artist; he sees both acts as an act of sublimation of the Real. Warburg discussed the artist as coming to terms, on behalf of himself

⁹ One is reminded of Gilles Deleuze, *Francis Bacon: The Logic of Sensation*, trans. David Smith, (Minneapolis: University of Minnesota Press, 2003) where Deleuze reads Kant's 'dynamic sublime' in terms of the 'figure' which is unformed or deformed and the 'undoing' of object-form; the 'figures' of Francis Bacon are exemplary of a plasticity found in 'figural' space, a space without a vanishing point (is this a perfect representation of the sublime political space of the sovereign?). On the point of an erased face, and the limits of 'faciality', see the 'faciality' plateau in Gilles Deleuze and Félix Guattari, *A Thousand Plateaus* (Minneapolis: University of Minnesota Press, 1987)

¹⁰ I have maintained the binary of artist (Montañés) and King but of course Velásquez is here an artist too; the canvas showing through is a similar 'hole' or gap in the picture plane.

¹¹ See Franz Kaltenbeck 'Sublimation and Symptom' *Art: Sublimation or Symptom*, ed. Parveen Adams. (London: Karnac Books, 2003); Jacques Lacan, *The Ethics of Psychoanalysis, 1959-60*, ed. Jacques-Alain Miller, trans. Dennis Porter, (London and New York: Routledge, 2008) 142-157

¹² Slavoj Žižek, *The Indivisible Remainder* (London: Verso, 1996) 229

and society, with the traumas of life, the *Monstrum*, and Žižek describes the Lacanian analysis of the Real in similar terms:

...what are Badiou's four *génériques* – art, science, love and politics – if not four ways of reinscribing the encounter with the Real Thing on to the symbolic texture? In *art*, beauty is 'the last veil of the Monstrous'; far from being just another symbolic narrative, *science* is the endeavour to formulate the structure of the Real beneath the symbolic fiction; for the later Lacan, *love* is no longer merely the narcissistic screen obfuscating the truth of desire, but the way to 'gentrify' and come to terms with the traumatic drive; finally, militant *politics* is a way of putting to use the terrific force of Negativity in order to restructure our social affairs...¹³

The notion of 'militant' politics may seem heavy-handed but alludes to a revolutionary or anomic state. In any birth or 'restructuring' of the law as Walter Benjamin has shown, there is a 'founding violence.'¹⁴ This 'militant' act of violence is the mythical point that then engenders the sublimation (in a Constitution or other).¹⁵ What is linked in this analysis is that both art and politics have at their heart this mythical, transcendental Real that is being veiled. Further, in the examples I have used to link to the effigy, artworks may not merely want to veil the traumatic *Monstrum* of Lacan and Warburg, but a particular part of this societal trauma, the traumatic Real of a society's social and political founding, or the sovereign basis of its laws. The act and site of sublimation, in art and politics, may be shared.

Žižek uses Kasimir Malevich's *Black Square on a White Ground* 1913 to illustrate how the Real is sublimated in art, as metaphor also for other sublimation. What is important here is that although we are discussing the Real it maintains through this sublimation a connection to the Symbolic:

In this formulation, 'reality' (the white background-surface, the 'liberated nothingness', the open space in which objects can appear) derives its consistency and meaning entirely from the 'black hole' in its centre (the Lacanian *das Ding*, the Thing that gives body to the substance of

¹³ Slavoj Žižek, *The Ticklish Subject*, 162; for an explanation of love as sublimation see Preface, n 33

¹⁴ Walter Benjamin, 'Critique of Violence,' trans. Edmund Jephcott, eds Marcus Bullock and Michael Jennings, in *Selected Writings* Volume 1 (Cambridge: Harvard University Press, 1999), 237; Jacques Derrida, 'Force of Law: The "Mystical Foundation of Authority"' in *Deconstruction and the Possibility of Justice*, edited by Drucilla Cornell, Michael Rosenfeld, and David Gray Carlson, (London and New York: Routledge, 1992)

¹⁵ Slavoj Žižek talks of this violence as the Real: 'At the beginning of the law, there is a certain 'outlaw', a certain Real of violence which coincides with the act itself of the establishment of the reign of law...all classical politico-philosophical thought rests... on the disavowal of this violent act of foundation...'; Slavoj Žižek, *The Fragile Absolute* (London: Verso, 2000), 93; see also Jodi Dean, 'Žižek on Law,' *Law and Critique*, Vol 15, 2004, 1-24

enjoyment), from, that is, the exclusion of the Real, the transformation of the status of the Real into a central lack.¹⁶

The big Other is always in Lacan still absent, a cipher or a collective lie, a 'central lack.' Art has dealt well with this Real in terms of horror and the abject and the attempts to sublimate the fear of death and anxiety of the body, in these cases a 'black' lack would be an appropriate metaphor. As an aside I might suggest, for legal purposes, it is Malevich's famous *White on White* 1918 that best suggests this Real as a lack; in law it is not the traumatic Real of the blackness but the trauma of anomy, the lack of writing, the lack of any order or authority that represents lack and as we have seen in the *sofer's* creed, the words come across the lack like 'black fire upon white fire'.¹⁷ The lack orders the symbolic order and is of the symbolic order; this can be seen in reverse with what happens if the Real encroaches unmediated upon the Symbolic, which is a complete disruption and annihilation of the symbolic.¹⁸

HAL FOSTER AND THE RETURN OF THE (SYMBOLIC) REAL

To approach this Real, this thesis expands on an approach tentatively outlined by Hal Foster where, in a number of essays he strategises how art must approach the Symbolic Real. This belongs to a class of contemporary art that Foster named the 'return of the real.'¹⁹ Foster connects the triadic structure of the psyche to Lacan's 'gaze' theory.²⁰ He focuses on the

¹⁶ Slavoj Žižek, 'The Undergrowth of Enjoyment,' *new formations*, No. 9 Winter, 1989, 7-29. at 16

¹⁷ See the wonderful iconography of Peter Goodrich, 'The Iconography of Nothing,' in *Law and the Image*, 1999, 89-114, where the unwritten page or 'blank space' was an important symbol for both King and Pope of a power that was *creatio ex nihilo*.

¹⁸ Žižek goes on to suggest that Rothko plays with this terrifying strategy when he places the fuzzy black square against a grey ground in his late works. Rothko almost wills the Real to take over from a successful sublimation and as Žižek ominously points out, Rothko killed himself soon after. The barrier between the Real and reality was not mediated enough.

¹⁹ Hal Foster, *The Return of the Real* (Cambridge: MIT Press, 1996), we will discuss the most common category of the abject Real, but another example offered is the ethnographic real where art seemed to archive the past.

²⁰ Hal Foster, *Return of the Real*, 1996, 138-41; Jacques Lacan outlines his theory of the gaze in Jacques Lacan *The Four Fundamental Concepts of Psychoanalysis*, trans. Sheridan, Alan, (New York: Norton, 1978); see also Margaret Olin, 'Gaze,' in *Critical Terms for Art History*, ed. Robert S. Nelson and Richard Shiff, (Chicago: The University of Chicago Press, 1996)

'image-screen', the Symbolic point where the gaze of the object returns the view of the subject as a threatening, violent and traumatic force; we need the image-screen to mediate this gaze.²¹ Obviously this is similar to the sublimation of the Real by the image, as has already been discussed. Foster sees abject contemporary art as a failed experiment because it 'punctures' the screen (so that the viewer may experience the sublime horror of the Real).²² It is in Hal Foster's essay 'Obscene, Abject, Traumatic', that has hidden in it an approach that owes much to Legendre's way of thinking (which he terms the 'third option'):

Obviously the condition of the image-screen and symbolic order alike is all-important; locally the valence of abject art also depends on it. If it is deemed intact, then the attack on the image-screen retains a transgressive value. However, if it is torn, then such transgression is beside the point and this old vocation of the avant-garde is at an end. But there is a third option as well, and that is to reformulate this vocation, to rethink transgression not as a rupture produced by the heroic avant-garde posited outside the symbolic order but as a fracture traced by a strategic avant-garde that is an ambivalent part of that order.²³

Before discussing the third option it is best to clarify briefly the other two strategies, and the failure Foster is addressing. Art or the image must be by their very nature in the symbolic order, the image-screen. On one level if the screen is intact then it can never truly, as the transgressive practice suggests, break through to the Real and remain as art. If it does break through, by 'puncturing the screen,' then this would mean it is no longer a successful sublimation and has dissolved into the Real. So what Foster suggests as the 'third option' is that you somehow touch the Real through the Symbolic order; that you find the Real *within* the Symbolic, which we have already, borrowing from Žižek, called the Symbolic Real. For Foster, transgression is not breaking with the symbolic order completely but a matter of finding a 'fracture' or 'ambivalent part of that order' to 'expose it in crisis.'²⁴ Foster soon discards this idea, and returns to abject strategies; however in a footnote he suggests the basis of the idea and how it would proceed. Foster uses Eric Santner, a Lacanian scholar who has also brought Lacan to cultural concerns, who calls these

²¹ For Lacan the viewer views the image at the point of the screen. The gaze is an 'inverted cone' that looks back at the viewer, where the subject becomes the object position. So both the Albertian cone and the gaze's inverted cone meet at the image-screen.

²² Hal Foster, "Obscene, Abject, Traumatic," *October*, Vol 78, 1996, 107-124; Republished in Douzinas and Nead, *Law and the Image*, 1999, 240-256

²³ Hal Foster, 'Obscene, Abject, Traumatic', 1999, 248

²⁴ *Ibid*, 248

fissures in the Real, 'symbolic authority in a state of emergency.'²⁵ Foster sees this reading as a new form of transgressive strategy for modern art.

Two years later Foster similarly highlights this approach to the avant-garde in his discussion of surrealist drawing in 'Blinded Insights.' My line of thought here is indebted to the brilliant text of Eric Santner... In this regard the art of the mentally ill does possess an immediacy, but an immediacy less to the symbolic (to an artistic essence) than to the real (to a primal condition that the symbolic screens from us and for us). Perhaps one can view this art diagnostically after all— but in relation to the symbolic order.²⁶ Foster is aware of Santner's use of Schreber and his insights regarding the 'performative magic' of the symbolic titles and insignia of society and particularly the paranoia of a *failure* of this symbolic authority in what Santner calls the 'investiture crisis.' This crisis marks a threshold for modernity where this failure becomes 'chronic.' After his discussion of Dubuffet, Klee and Prinzhorn, Foster uses Max Ernst, and his *Old Lecher with a Rifle* 1920, as metapicture to describe the crisis in the symbolic suggested by Santner. He notes that not only is Ernst under the pressure of post-war trauma but his art forces an actual break from his father based on his father's disavowal of his Dada art (Ernst's father was a painter). In this essay, and in *Prosthetic Gods*, Foster characterises the art of Ernst as 'phallic divestiture,' and follows his own advice at looking at transgression at sites of crisis in the Symbolic order.²⁷

To understand what exactly Foster (and Santner) mean by a crisis within the Symbolic order we should contextualise this theory briefly in regard to Santner's book. Santner reinvestigates the life and *Memoirs* of Daniel Paul Schreber. After having been named presiding judge of the Saxon Supreme Court, he was on the verge of a psychotic breakdown and entered a Leipzig psychiatric clinic in 1893. Once released, he published his *Memoirs of My Nervous Illness*, an account of real and imagined persecution, political intrigue, and states of sexual ecstasy.²⁸ As opposed to the psychoanalytic readings of paranoia, Santner reads the *Memoirs* as offering insights into the political and social obsessions of *fin de siècle* Germany and the conditions that lead into Nazism; the crucial

²⁵ Eric Santner, *My Own Private Germany: Daniel Paul Schreber's Secret History of Modernity*, (Princeton: Princeton University Press, 1996)

²⁶ Hal Foster, 'Blinded Insights: On the Modernist Reception of the Art of the Mentally Ill', *October*, Vol 97, Summer, 2001, 3–30 at 17 n 28

²⁷ Hal Foster *Prosthetic Gods*, (Minneapolis: MIT Press, 2004), Chapter 4, 'A Bashed Ego,' 151–192 at 174–177. This term borrowed from Kaja Silverman is an extended discussion of Ernst and the failure of authority figures.

²⁸ Daniel Paul Schreber, *Memoirs of My Nervous Illness*, trans. Ida Macalpine and Richard Hunter, (New York: New York Review of Books Classic, 2000); a number of writers from Freud, Benjamin, and Jung have written various accounts of the psychoanalytic history and writings of Schreber.

theoretical notion that follows from the *Memoirs* is to pass from the 'private' domain of psychoanalysis to the 'public' domain of the ideological at the point of the 'crisis of investiture'. Schreber's breakdown seems to have resulted from the precondition of a faulty passing over of juridical and social status through symbolic ritual, as he became a Supreme Court judge. Modernism initiated an age where traditional authorities did not function and did not adequately transform the subject's sense of self into accepting his new role. Indeed Santner discusses how the force of these rites can be inverted, into an anomic festival of 'demons', which threatens the borders and limits of reason and our knowledge of the social. For Schreber the pictorial and the visual play an important role in the *Memoirs* and embody this anomic inversion. Rosemary Dinnage writes, 'Schreber in his suffering and insanity saw all these [assumptions of reality and social constructions] dissolve away and reform into the stuff of myth and nightmare.'²⁹ He writes of the pleasure of painting, musing: 'What a joy to be able to picture again in my mind's eye recollections of journeys and landscapes sometimes – when the rays behave favourably – with surprising faithfulness and true colour.'³⁰ Santner contemporises his approach in the preface when he writes: 'My work on Schreber has coincided with a disturbing rise of expressions of paranoia in the United States and elsewhere just as new geo-political arrangements, ideological investments, and shifts of populations and capital come to fill the vacancy left by the end of the cold war.'³¹

Santner reads Schreber's account as an extension of insights seen in the work of Walter Benjamin and Jacques Derrida. Santner notes in relation to the Schreber story that it is based on a violent and powerful legal force, what Derrida calls the 'mystical foundation of authority', and Benjamin sees as law reserving and founding violence. Santner highlights that Benjamin observes 'magic' operations of symbolic investiture as forcing the subject into various roles (husband, wife, Senate President); this idea is very close to our notion of subjectivation through interpellation where the subject must then keep repeating and performing their symbolic role.³² So Santner's idea is to problematise these processes, as Schreber's psychosis does; to find the 'secret of modernism' that is the symbolic order in crisis.

I take this strategy of finding the Real in the Symbolic quite literally, and have focused on the 'symbolic authority in a state of emergency' as a call to look at the founding myths of the law at the point of founding violence and sovereignty. In visual terms this implies a focus on the master

²⁹ Rosemary Dinnage, 'Introduction', in *Memoirs of My Nervous Illness*, 2000, xii

³⁰ Schreber, *Memoirs of My Nervous Illness*, 2000, 181

³¹ Dinnage, *Memoirs of My Nervous Illness*, 2000, xiii; He also looks at the function and dysfunction of paternal prohibition at Eric Santner, 'Freud's Moses and the Ethics of Nomotropic Desire,' in Renata Salecl, *Sexuation*, (Durham: Duke University Press, 2000)

³² Santner, *My Own Private Germany*, 1996, 9-12

signifier, the 'second body,' or the effigy. As noted above there are other fissures in the Real, and we have suggested science, love and art as sites that cover over the lack within the symbolic order as well as the political Symbolic Real.

PLAYING ON THE SCREEN

This strategy is brought to art theory for the first time by Foster, and has had considerable purchase within psychoanalytic studies. Following Lacan, Žižek has popularised the notion of 'traversing the fantasy', a process of understanding the concealment of the Real, or the founding myths. Žižek suggests this is 'touching' the Real (as opposed to puncturing).³³ There are two primary strategies alluded to: one is through a crisis, or break in the symbolic framework or what Lacanians call the *passage a l'acte*, which allows a platform outside the symbolic order from which to critique it.³⁴ The second is the notion of traversing through the fantasy through overproximity, by taking the public law at its word to show the hidden superegoic hidden law. Santner suggests that Schreber was unable to see himself in the call or interpellation of the big Other, as *Senatspräsident*: 'What Schreber discovered is that symbolic investiture includes a kernel of invasiveness, that it can, at least under certain circumstances, introduce into the subject 'too much reality.'³⁵ Žižek suggests that as the ideology incites its own transgression so that the only effective resistance is 'to simply do what is allowed.'³⁶ By doing this Žižek shows that you refuse the game of ideology which asks to be transgressed.³⁷ Full identification undermines power through overproximity, and power itself must operate through disidentification or failure to totalise.³⁸ This is a bold thesis and amounts to a total withdrawal from our normal legal categories based on the father figure and the subject within symbolic structures. It is not until the conclusion that we tentatively suggest this approach, as a product of contemporary art's uncertainty and lack of faith in traditional authority figures and the subject's 'subjective destitution.'

Agamben suggests a way of playing with this spectre of the law that is equally utopian:

³³ See Žižek, 'Law and the Postmodern Mind,' *Cardozo Law Review*, Vol. 16, 1995, 925

³⁴ See Rex Butler, *Slavoj Žižek: Live Theory*, (London: Continuum Press, 2005), see Chapter 3, 'What is an Act?' 66-94

³⁵ Santner, *My Own Private*, 1996, 49

³⁶ Slavoj Žižek, *The Fragile Absolute: Or, Why is the Christian Legacy Worth Fighting For?* (London: Verso, 2001) 147

³⁷ Žižek notes that because ideology expects to be taken cynically, the best transgression is to follow it to the letter.

³⁸ Slavoj Žižek, *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left* (with Judith Butler and Ernesto Laclau) (London: Verso, 2000) 218

Kafka's characters—and this is why they interest us—have to do with this spectral figure of the law in the state of exception; they seek, each one following his or her own strategy, to 'study' and deactivate it, to 'play' with it.

One day humanity will play with law just as children play with disused objects, not in order to restore them to their canonical use but to free them from it for good. What is found after the law, but a new use that is born only after it... This liberation is the task of study, or of play.³⁹

It is not the task of this study to point towards these utopian outcomes but more to explain how the more traditional system works. The notion of 'traversing the fantasy' can still be used but understood as tangent touching of the Real, not a piercing through the fantasy, that is the strategy of the thesis as a whole. By travelling around the Real, we can perhaps point to its absence or impossibility and define it in this way. This notion of a task or ethics behind this movement through/across the fantasy is originally apparent in Lacan's theory. Alenka Zupancic has probably done the most to make an extended reading of this 'ethics of the real.'⁴⁰ Zupancic suggests that 'the Real happens to us (we encounter it) *as impossible*, as the 'impossible thing' that turns our symbolic universe upside down and leads us to reconfigure the universe.'⁴¹ She explains the paradox that we encountered earlier: How can something *impossible* effect us? The answer is that although the Real is impossible we experience it, encounter it as impossible, it has effect in the 'realm of the possible'.⁴² As Rex Butler explains in relation to Žižek:

Rather, the 'quasi-transcendental' conditions of possibility – this gap or negation we have been speaking of – would lie not elsewhere but *here*. It would be a matter not so much of changing the world into something else as of making the world the way it *already is*. It would be not so much a matter of opposing an other to the world as of showing that the world is already its own other, possible only on the basis of a split that occurred before it was born.⁴³

A number of authors see a problem with finding a fissure (to the Real) within the Symbolic order. Foster himself sees the contradiction between a Surrealist or Abject art, which on one hand sublimates the lack but also desublimates the 'horror' of the Real.⁴⁴ Judith Butler has particularly brought Žižek to task on this issue. Her objection is positioned against his notion of 'touching' the Real, by tangentially traversing it. Butler notes that the historical contexts and discursive regimes

³⁹ Agamben, *State of Exception*, 1998, 64

⁴⁰ Alenka Zupancic, *Ethics of the Real*, (London: Verso, 2000)

⁴¹ *Ibid*, 235

⁴² *Ibid* 235

⁴³ Rex Butler, *Slavoj Žižek: Live Theory*, 2005, 97

⁴⁴ Hal Foster, 'Obscene, Abject, Traumatic,' 1999, 248-250

are not easily overthrown but, as Benjamin and Santner suggest, are part of our speech acts, our social performances and our iterations of this behaviour.⁴⁵ Butler goes on:

To claim that the real resists symbolisation is still to symbolise the real as a kind of resistance. The former claim (the real resists symbolisation) can only be true if the latter claim ('the real resists symbolisation' is a symbolisation) is true, but if the second claim is true, the first is necessarily false.⁴⁶

Do we not run into Foster's self-criticism here? Yannis Stavrakakis suggests, in answer to this criticism, that we must accept the inadequacies of language to account for the Real. Stavrakakis uses the term 'encircling the real' and 'encircling the political', instead of Žižek's term of 'traversing through' or 'across the fantasy'.⁴⁷ It is Stavrakakis' concept of encircling that takes into account the impossibility of symbolising the unsymbolisable sublime (that is the Symbolic Real). Stavrakakis also links art to this project. Using René Magritte's *The Treachery of Images* (*This is not a Pipe*) 1928, he illustrates that by showing the limit of symbolisation – at the gap between the image and the text – Magritte encircles this pictorial aporia.⁴⁸ Unlike Butler's performative repetitions that cannot destabilize ideology, what these many examples of the effigy – the repetitions of playing around with the sovereign image – show is the unsymbolisable sublime. They attempt to probe the fantasies that cover the lack of the political through the effigy. Stavrakakis' conclusion is worthwhile quoting at length:

Recognising the constitutivity of the real does not entail that we stop symbolising; it means that we start trying to incorporate this recognition within the symbolic itself, in fact it means that since the symbolic entails lack as such, we abstain from covering it over with fantasmatic constructs – or, if one accepts that we are always trapped within the field of fantasy, that we never stop traversing it. The guiding principle in this kind of approach is to move beyond fantasy towards a self-critical symbolic gesture recognising the contingent and transient character of every symbolic construct. This is a scientific discourse different from the reified science of standard modernity.⁴⁹

So the artist must keep on approaching the fantasies of the law, to encircle them, repeat them and play with them. If Kant sees play as an important aspect of the aesthetic, what is at stake here is not merely the aesthetic but a political transgression, if not resistance. If Butler is correct to

⁴⁵ Judith Butler, *Bodies that Matter: On the Discursive Limits of Sex*, (London and New York: Routledge, 1993) 192

⁴⁶ *Ibid*, 207

⁴⁷ Yannis Stavrakakis, *Lacan and the Political*, (London and New York: Routledge, 1999)

⁴⁸ *Ibid*, 85

⁴⁹ *Ibid*, 89

question what a rupture in Foster's 'image-screen' would be, Foster himself has offered an answer. There is nothing in Foster's analysis that allows for this crack or gap within the 'image-screen' that does not imply a breaking of the screen. The screen is ultimately connected to notions of the Greenbergian picture plane, or indeed, to a Lyotardian screen. Although Foster uses the word 'rupture' in relation to the screen, he does clarify, following Lacan, that this rupture is a traumatic one for Lacan. The hole – 'rabbit hole', the French *trou* – is a hole but inside is the screen, within it and part of it.⁵⁰

ART AS THE MEANS OF APPROACHING THE REAL

This thesis conceives art as a symptom of how an artist, as a legal subject, responds to the fantastical veil of the big Other or the God of Nation. If the effigy is a fantastical screen, or a sublimation of the master signifier, then the way an artist plays with this image will be dictated by the artists' response to that master signifier. Art history may find in this blind spot a new approach to images of the law beyond iconography and towards 'magical' belief. This approach also attacks the presumption that a modern artist is defined by his or her autonomy from social structures. Even Althusser saw the possibility of 'real' art being outside the state apparatus:

The problem of the relations between art and ideology is a very complicated and difficult one. However, I can tell you in what directions our investigations tend. I do not rank real art among ideologies, although art does have quite particular and specific relationship with ideology.⁵¹

Douzinias has highlighted the idea that art and law share a common concern: the sublime; against the Hegelian reading of art, where art history is teleological and founded on the autonomous subjective artist, he suggests that both law and art have a shared concern with images at the point of representing the unrepresentable.⁵² Using Kant and Burke's 'sublime', Douzinias shows that it is the image that represents God, or the Name-of-the-Father in all its awesome glory; he goes so far as to call art the religion of modernity, because this is the realm that gives us most access to sublime power.⁵³ It is this shared process of sublimation that grounds our strategy and gives hope that through art's play we can access something about the workings of power, at its point of crisis.

⁵⁰ Hal Foster, *Return of the Real*, 1996, 132-138, this is spoken of in relation to Warhol's crash series, initially published as 'Death in America,' *October*, Vol 75, Winter, 1996, 37-60

⁵¹ Louis Althusser, 'A Letter on Art in Reply to Andre Daspre,' in *Lenin and Philosophy and Other Essays*, trans. Ben Brewster (New York: Monthly Review Press, 1971) 261

⁵² Costas Douzinias, 'The Legality of the Image', *The Modern Law Review*, Vol 63, Issue 6, 2000, 813-830 at 813

⁵³ *Ibid*, 822-824

Althusser similarly offers some hope that a critical image (or artwork) may refract the ideology, not destroy it, but create an ability to see it afresh. Althusser explains in another essay:

The specific function of the work of art is to make visible, by establishing a distance from it, the reality of the existing ideology (of any one of its forms), the work of art cannot fail to exercise a directly ideological effect, that it therefore maintained far closer relations with ideology than any other object, and that it is impossible to think of the work of art, in its specifically aesthetic existence, without taking into account the privileged relation between it and ideology, ie. its direct and inevitable ideological effect.⁵⁴

Our strategy is *not* a project of unmasking. As Žižek notes we are not the small boy in the Hans Christian Andersen tale who shouts, 'But the emperor is naked.'⁵⁵ We cannot simply critique through iconoclasm either, rather we must push on *within* the symbolic. As we saw in Chapter One the actual lack is what founds or grounds the society and the subject; it cannot ever be covered over or accounted for. Although the lack marks what the symbolic cannot ever account for, it still has a 'constitutive function.'⁵⁶ So the lack as the support of fantasy becomes unassailable and unfillable. This is a great difficulty for art that has defined itself based on its inherent subjectivity and autonomy. Our strategy is one of ethics and traversing rather than transgression and direct resistance. It implies that the artist is never free of their social lodging.

This thesis sees modern art as *still* socially embedded and ritualistic. Peter Burger sums up the approach in such an antithetical way as to be useful; he defines the avant-garde as a movement towards bourgeois art. Burger characterises the birth of the avant-garde through its final liberation from social use. What Burger draws is a movement across three categories (chronologically): sacral art, courtly art, and finally to what he terms 'bourgeois art'.⁵⁷ This movement is broken down again into three categories: function, production and reception. For Burger the decisive shift in modernism is described through the shift in function and reception.⁵⁸ Sacral and courtly art are integral to life, as cultic objects put to specific use, whereas for Burger bourgeois art, the portrayal of 'bourgeois self-understanding' occurs in a sphere that lies outside the praxis of life. This

⁵⁴ Louis Althusser, 'Cremonini, Painter of the Abstract,' in *Lenin and Philosophy and Other Essays*, trans. Ben Brewster (New York: Monthly Review Press, 1971)

⁵⁵ Slavoj Žižek, *The Sublime Object of Ideology*, (London: Verso, 1989) 28-30

⁵⁶ See Alenka Zupancic, *Ethics of the Real*, (London: Verso, 2000) 240-242

⁵⁷ Peter Burger, *Theory of the Avant-Garde*, trans. Michael Shaw, (Manchester: Manchester University Press, 1984 [1974]) 47. See Richard Murphy, *Theorising the Avant-garde: Modernism, Expressionism and the Problem of Postmodernity* (Cambridge: Cambridge University Press, 2005) for a criticism of the avant-garde and its marriage to 'autonomy'. Murphy suggests that the 'aestheticised avant-garde' can also be politically critical.

⁵⁸ Peter Burger, *Ibid*, (there is a tabulation of this matrix of terms) 48

separation is the decisive characteristic of 'bourgeois' art. Hans Belting, in defining any socially embedded image as an 'era before art', follows this same logic. Art is defined as something aesthetic and useless, not courtly or sacred.

But what is this turn to the purely formal and how does art bracket itself off like this? We do not need to further map the impact of the teleological understanding of art from Hegel, to Wölfflin, to Alfred Barr to Clement Greenberg; it is this understanding that traditionally defined the modernist canon. It is not a coincidence that I begin this thesis with a discussion of Daumier and Courbet, who are both shown as engine parts in the great 'torpedo' of Barr's modernism.⁵⁹ These artists are seen as seminal in their movement 'away' from the courtly and towards the realistic portrayal of citizens. They both famously moved against the king. But what this thesis suggests is that this very transgression must be read against the master signifier of the sovereign king; they are transgressing within the symbolic order and through the effigy of the king. Art may not be bracketed from its social context, and even Formalist theories have been reread as responses to the traumas of war and the needs for imperialism.⁶⁰ This idea that a democratic art, a utopian art, was beyond the social and ideological is exactly the argument that should be questioned. There is nothing totally outside ideology; the term ideology is persistent and haunts all artistic endeavours – what Žižek calls the persistent 'spectre of ideology'.⁶¹ The sublime of art and law is still relevant and 'survives'. Its traditional appearance as the magical effigy still has power. To borrow from Burger, modern art is not the jettisoning of the courtly and the sacral, because these modes still exist but in a contemporary form.

THE LEGAL SUBJECT RESPONDS: THE CANON AND THE FOUR DISCOURSES

But then are we not in a bind? If we take the broad reading of the image from Warburg and other anthropological approaches there is no (modern, autonomous) artist, only the image-maker and indeed no art only images. Warburg's approach to modern art may be of use here, especially his

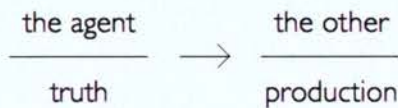
⁵⁹ Alfred Barr used the metaphor of the torpedo to describe the Museum of Modern Art's collection strategy, 'This museum is a torpedo moving through time, its head the ever-advancing present, its tail the ever-receding past of 50 to 100 years ago.'

⁶⁰ David Adler, 'Painterly Politics: Wölfflin, Formalism and German Academic Culture, 1885–1915,' *Art History*, Vol 27, Issue 3, 431–456, 2004 for a discussion of the move to formalism as 'german morality' against Italian connoisseurship; Martin Warnke, 'On Heinrich Wölfflin', *Representations*, No. 27 (Summer, 1989), 172–187 also broadens our understanding of Wölfflin as politically charged and responding to the anxieties of the preparations for WWI; for the imperialist and political importance of Greenberg see Michael Leja *Reframing Abstract Expressionism: Subjectivity and Painting in the 1940s*, (New Haven: Yale University Press, 1993)

⁶¹ Slavoj Žižek, 'The Spectre of Ideology,' *Mapping Ideology*, (London: Verso, 1994)

interest in Manet and Bocklin.⁶² He called Bocklin's interest in Romantic idealism – its pirates and ghost ships – a 'mythopoetic power of the image' which is pitted against the 'distance-destroying chaos of our 'age of traffic.' Luttiken suggests that Warburg was interested in 'myths that had once been the basis of art practice—often unexpected—appearances in modern painting; when something that was supposed to be no longer relevant to an art of *en plein air* and modern life reared its anachronistic head.'⁶³ The methodology to follow suggests places to look, within the modernist canon, for 'survivals' of the effigy. The methodology relates to the definition of the effigy as connected to a political and ideological, 'master signifier.' Lacan's four discourses chart the position of the master signifier in relation to the subject, knowledge and *jouissance* and can be used to read how the visual master signifier, the effigy works.

Through the effigy, we come close to accessing or symbolising the traumatic political real, that the master signifier represents.⁶⁴ This brings Lacan's schema of the four discourses into sharp focus, which has recently been employed to describe the differing approaches to jurisprudence.⁶⁵ Lacan wrote the four discourses as a response to the events of May 1968.⁶⁶ The historical importance of 1968 cannot be underestimated in Lacan's response to the shift in different modes of law and social formation. He described this as the discourse of the Master, University, Hysteria, and the Analyst, a matrix representing four classes of social bond. There are four elements at play: the agent, the other, and, below the line, the truth and the surplus excess (that which cannot be accommodated):



⁶² See Sven Luttiken, 'Keep your Distance' Aby Warburg on Myth and Modern Art, *Oxford Art Journal*, Vol 28, No 1, 2005, 47-59, for a discussion of Warburg's notions of contemporary art and his views on myth.

⁶³ *Ibid*, 53

⁶⁴ Slavoj Žižek, *Cogito and the Unconscious*, (Durham, NC: Duke University Press, 1998), 74-81

⁶⁵ Jeanne Lorraine Schroeder *The Four Lacanian Discourses or Turning Law Inside Out* (London: Birkbeck Law Press 2008)

⁶⁶ Jacques Lacan, *The Seminar of Jacques Lacan: Book XVII: The Other Side of Psychoanalysis*, trans. Russell Grigg (New York: Norton, 2006); Justin Clemens *Jacques Lacan and the Other side of psychoanalysis: reflections on Seminar XVII* (Durham: Duke University Press, 2006); Bruce Fink, *The Lacanian Subject*, (Princeton: Princeton University Press, 1995) Chapter 9, 'The Four Discourses,' 129-146

On this is plotted the S1 (Master signifier), S2 (knowledge), \$ (the barred subject) and a (surplus-enjoyment):

Discourse of the master

$$\frac{S1}{\$} \longrightarrow \frac{S2}{a}$$

Discourse of the university

$$\frac{S2}{S1} \longrightarrow \frac{a}{\$}$$

Discourse of the hysteric

$$\frac{\$}{a} \longrightarrow \frac{S1}{S2}$$

Discourse of the analyst

$$\frac{a}{S2} \longrightarrow \frac{\$}{S1}$$

I will not go into too much detail here as each chapter responds in some way to one of the discourses and will flesh it out. The discourses are used to help characterise the relationship of artists (who are also subjects) to the master signifier. If the law uses images to represent the master signifier in an effort to sublimate the Real, then of course the artist too must attempt to

encircle the Real through the effigy. From a canonical point of view, since we have destroyed the linear progression of art history, where the effigy is transhistorical, the four discourses perversely allow us to return to a chronology of sorts. Žižek explains the 'historicity' of the four discourses in terms of 'European development' in modernism.⁶⁷ The master discourse is connected in time to the period of the absolute monarch, the *ancien regime's* centralised feudal power. So the movement through the four discourses goes from the pre-revolutionary King to the repressed master in the disciplinary society. In short the four discourses only relate to the 'modern'. Although there is this historicity at the same time the discourses exist concurrently in all periods, with some dominant over others.

Part Two begins after the revolution but with the absolute Monarch in a state of flux in the figure of Louis Philippe, followed by the political contradiction embodied by Napoleon III/Louis Napoleon. The hysterical discourse and the university discourse both respond to the absolute rule of the master. This thesis begins this attack on the master's rule in the twentieth century. In the master discourse the master signifier is operative, is perceived as largely consistent and needs no justification – his authority just 'is'. But, as Žižek notes, 'There is no reason to be dismissive of the discourse of the Master, to identify it too hastily with "authoritarian repression": the Master's gesture is the founding gesture of every social link.'⁶⁸ This 'gesture' we already know, is an event, an act, or revolution, or violent founding, which the Master then re-quilts through the use of the master signifier. To connect it to the effigy, the image of the master signifier, the royal portrait, or images of the God of Nation effectively interpellates the viewer/subject directly.

The hysterical discourse is a questioning, probing subject who challenges the inconsistency of the master signifier. Žižek connects this to a capitalist subjectivity who is constantly 'self-revolutionizing'.⁶⁹ Part Three of this thesis examines the hysteric as a response, to capitalism, to the trauma of war and to the traditional authority structures of the law in a state of crisis, which engenders a hysterical approach. In the hysteric's discourse the *\$/a* designates a traumatised subject, a subjected hounded by the question, 'Who am I for the big Other?' In addressing the master the hysteric asks for this knowledge/answer ('Why am I what you say I am?') but then contradictorily goes on to disprove the master's theories. The very act of conferring a symbolic investiture, the symbolic castration, is questioned. The hysteric questions the gap between the signifier that represents the subject (for example legal inscription into a birth register) and the

⁶⁷ Slavoj Žižek, 'Objet *a* in Social Links,' *Jacques Lacan and the Other Side of Psychoanalysis*, (Durham and London: Duke University Press, 2006) Chapter 6, 107-128

⁶⁸ Žižek, 'Four Discourses, Four Subjects,' *Cogito and the Unconscious*, (Durham and London: Duke University Press, 1998) 74-113 at 77

⁶⁹ *Ibid*, 110

unsymbolisable surplus of actual being. The hysteric must constantly justify, question and account for their existence for the big Other. In regard to the effigy, the hysteric indicates how the image does not actually amount to the master. We will see though that this hysteric questioning often wants the master to reassert themselves against the questioning and not to falter; this has become a common societal symptom in the 'war on terror' and the uncertainties of national security. The hysterical artist wants effigies to appear so that the effigy may then deign to recognise them.

The university discourse is linked to the power of scientific knowledge and can be connected to the bureaucratic society of Foucault and Agamben; this is explored in relation to art of the sixties and seventies. The discourse of the university takes the residue, the surplus as the subject to work upon. It attempts to turn 'bare life' into a legal subject by applying the discourse of knowledge to it. This is the most common discourse and is illuminated by Foucault's ideas of the disciplinary society. The repressed truth of the university discourse is that behind the bureaucrats that merely officiate the (neutral) knowledge, there is always a hidden ideological master. The work of Warhol shows the ideology behind the society; he finds especially in crime and trauma an access to the repressed violence of the sovereign. Duane Hanson also shows that as 'bare life' we share a position with the sovereign, we are the sovereign.

Finally the analyst discourse, which as Žižek explains, has a goal to 'isolate, get rid of, the master signifier that structured the subject's (ideological-political) unconscious,' and is related to the pluralistic and inconsistent contemporary art. The discourse of the Analyst is discussed in the conclusion of the thesis. The subject in the discourse of the analyst identifies directly with the surplus 'sublime' object and identifies directly with the excess of the discursive matrices. Žižek writes:

...the analyst stands for the paradox of the desubjectivised subject, if the subject who fully assumes what Lacan calls 'subjective destitution,' that is who breaks out of the vicious cycle of intersubjective dialectics to desire and turns into an acephalous being of pure drive.⁷⁰

The discourse of the analyst produces the unconscious *sinthome*, which can also (like the effigy) be designated as the Master Signifier; to which the subject has unknowingly submitted. But in the end perhaps there is a limit to this 'desubjectivisation' of the author position *within* the canon. Can you have an *author function* without a subject/author? For this reason the thesis focuses on the other three discourses where the position of the 'master signifier,' effigy, is a clear agent with a clear relationship to the subject. In the conclusion we see the effigy as a representation in the guise of the fantastical master and an effigy of fantasy and concurrently superegoic injunction. The understanding of the analyst discourse, though, is a complete emancipation from the Name-of-

⁷⁰ Žižek, 'Four Discourses, Four Subjects,' 1998, 81

the-Father, and it is the legal, symbolic that we are more interested in; therefore our treatment of the analyst discourse is brief.

The effigy is an image that is connected to the master signifier, the invisible sublime, made visible like a religious figure or reliquary. The image functions through the magical presence of the sacred. It is an image that commands and acts as the looming Name-of-the-Father. The effigy then can appear in numerous guises but it uncovers the theological underpinning of Western law: it is an icon of nation, the bust of an ancestor, the Prime Minister. The artist is in no privileged position in relationship to the law. By accepting this visual theory we can begin to look at art's images as a site of many legal effigies, even within modernism. They affect the viewer not through an aesthetic sublime but through a political one. The modern viewer is more responsive to this magic than we have been lead to believe from the position of the Formalism of 'autonomous art.' Perhaps instead of leaving the sacral and courtly behind we must look at where their vestiges still exist in modernism. What does a modern, courtly art say about our civic Gods? All the artists in this thesis present or respond to the fantastical images that veil and house the 'master signifier.' They all play with this image's power and by encircling this limit of the law help draw its parameters.

PART 2
MODERN ART AND DUELING MASTERS

CHAPTER 4: DAUMIER AND REPLACING THE KING'S BODY

This is no longer a riot, this is a revolution!¹

The trouble with this country is that there are many men who, like you, imagine to themselves that there was a revolution in France. No Monsieur, there was not a revolution; there was but a simple change in the person of the Head of State.²

FINDING THE EFFIGY IN THE MODERNIST CANON

Honoré Daumier moved art inexorably away from the royal court toward everyday life and social themes. In responding to the common man (the peasant in a train carriage, the worker), and by pillorying the lawyers, aristocrats, and Academician snobs, art moves from a courtly, State-sanctioned purpose, to bourgeois autonomy. The artist fights for freedom and the 'halo of martyrdom' was assured by Daumier's trial and sentencing for depicting the king, Louis-Philippe, unfavourably in *Gargantua*, 1831 (Figure 20).³ By placing Daumier on the limen of the *ancien régime* and the new, Daumier's art relates to the revolutionary shift into modernity. The early period of Daumier's career coincides with the July Revolution that created a *tabula rasa* upon which everyone tried to write their own ideology. It was an extremely volatile and unstable period with many competing political interests. Daumier was merely one of many gaoled and censored for questioning, through images and text, the king's legitimacy.⁴ Beyond that he was merely one of a large popular movement against the Orleanist monarchy, which crumbled in 1848. Daumier's trial will be used to delve into something beside his own legacy of modernist rebellion. The archaic charge of *lese majesté* is the crime against the defamation of an effigy; it cannot exist without the belief in the 'second body' of the king. Early modernism is revisited as a response to this effigy as defamed by Daumier to create a Republican polemic. In this extended

¹ Marmont, a royalist guard, quoted in the 1830 July revolution. Imbert de Saint-Amand, *The Duchess of Berry and the Revolution of 1830*, trans. by Elizabeth Gilbert Martin (London: C. Scribner's Sons, 1893) 106

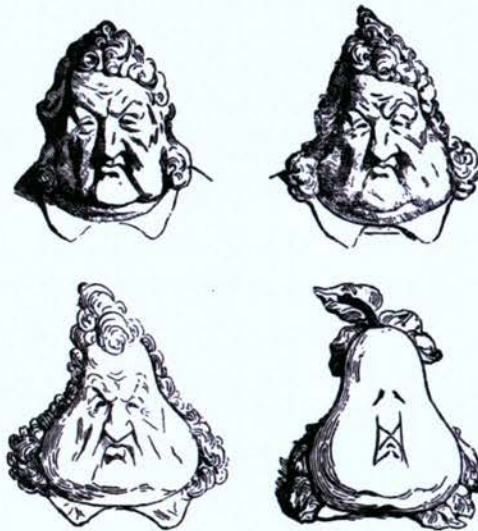
² Casimir Périer to Odilon Barrot 1831, quoted in 'Pears in History', 65; originally quoted in Odilon Barrot, *Memoires Posthumes*, 1:215 (Paris: Charpentier Press, 1875)

³ Quoted from Daumier's primary hagiographer Loys Delteil, collector and connoisseur, *Honoré Daumier: The Early Lithographs Catalogue Raisonné*, [1904] (San Francisco: Alan Wofsy Fine Arts, 2005) xxvi; see also Loys Delteil with N. A. Hazard, *Catalogue raisonné de l'oeuvre lithographié de Honoré Daumier* (Paris, 1904)

⁴ Robert Justin Goldstein, *Censorship of Political Caricature in Nineteenth-Century France*, (Kent State University Press, 1989)



20. Honoré Daumier, *Gargantua*, 1831, 30cm x 21cm, lithograph.



21. Charles Philippon, *Pear*, 1831, 20cm x 22cm, pen and bistre ink sketch.

revolutionary period the image was of primary propagandistic importance to both the king and the artist. The king too had his artists and there was a fight to see whose images would prevail.

RIOT AND REVOLUTION IN THE JULY MONARCHY

The substantial modernist blind spot in the reception of Daumier's work between 1830-1835 is that it relates to revolution not riot. Daumier's work is often determined from a modern viewpoint as a satirical critique against the government in an effort to petition for political change. However, this work – on the threshold of modernism – aimed for the complete disavowal and revolutionary overthrow of a governmental system. The period of 1830-1835 is characterised by a struggle for legitimacy. Louis-Philippe had to legitimate his accession to the throne and continually appease competing ideological positions. His reign was one of great tension and consensus building between 1830-1848.⁵ The king's position was Orleanist constitutionalism, which became a desperately centrist position between monarchical and republican interests. The monarchical Legitimists believed that only a Bourbon should rightfully accede the throne, and championed a return to *ancien régime* tradition. This position had been greatly undermined by the July Revolution and the uprising against Charles X and his repressive, autocratic rule. The republican side broadly includes the Orleanist constitutionalists (the Resistance Party) but more usually refers to the Movement Party that was more radically republican and wanted to see the overthrow of Louis-Philippe.⁶

The period transformed France into a modern capitalist economy. There was a consolidation of the power of the middle class and the rise of industry. This created a popular political consciousness and press power. It also created the shift towards a modern autonomous art, brought about by the middle class alongside the State-sanctioned academic art of the Salon. The shift from monarchy to a republic was ongoing and had begun with Napoleon, who Foucault sees as embodying this shift: 'The importance, in historical mythology, of the Napoleonic character probably derives from the fact that it is at the point of junction between the monarchical, ritual exercise of sovereignty and the hierarchical, permanent exercise of indefinite discipline.'⁷ Underlying these regime changes was the effect of the 1789 French Revolution, but it was not until 1877 that the Monarchy was totally overthrown and the crown

⁵ Hugh Collingham, *The July Monarchy: A Political History of France, 1830-1848*, (London: Longman, 1988)

⁶ There was an even more radical fringe the Montagnards see Jill Harsin *Barricades: The War of the Streets in Revolutionary Paris, 1830-1848*. (New York: Palgrave, 2002)

⁷ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan, (New York: Pantheon, 1977), 217; Foucault continues, 'As a monarch who is at one and the same time a usurper of the ancient throne and organiser of a new state, he combined into a single symbolic, ultimate figure the whole long process by which the pomp of sovereignty, the necessarily spectacular manifestation of power, were extinguished in the daily exercise of surveillance...' 217

jewels sold and melted down.⁸ The July Monarchy tried to maintain a synthesis of both the monarchical past and Republican ideals, in what was called the *juste milieu* (the middle way), but in the end increased polarisation between the two positions led to the overthrow of the July Monarchy.⁹

Daumier and the satirical lithographic journals represent an example of the incessant Republican questioning of the legitimacy of the regime. Buoyed by their role in the overthrow of Charles X their revolutionary power was unquestionable.¹⁰ This ideological positioning underpins any discussion of art in this period, for it was one important part of the juridical push to create belief and legitimacy in the regime. Revolution and democratic ideals drive the gradual retreat of the aristocracy to the rising bourgeois, and the birth of the modern state.¹¹ Francois Furet explains the 1848 Revolution in these terms:

This bastard monarchy had never found its national footing: it was too monarchic to be republican, and too republican to be monarchic. This was evidenced by the new dynasty's inability to entrench itself as the founder of legitimacy despite all the efforts it had made to reunify national history to its advantage... Instead of terminating the French Revolution... it had given it fresh vitality.¹²

Following Furet, Pierre Rosanvallon recently theorised the import of this gradual shift from Monarchy to Republic during the 19th century.¹³ Rosanvallon astutely draws the mystical and

⁸ Francois Furet, *Revolutionary France, 1770-1880*, trans. A. Nevill (Cambridge and Massachusetts: Blackwell, 1992), 510-11, 534-37, cf. 120-22, he suggests the final political defeat of the monarchy was 1877.

⁹ William Fortescue. *France and 1848: The End of Monarchy* (London: Routledge, 2005). Fortescue sees the failure of the July Monarchy as the inability to reach a consensus. As a matter of interest Fortescue, *contra* Furet, sees 1848 as the end of the monarchy because Napoleon III was forced to give away so many absolutist, monarchical rights.

¹⁰ Elise K. Kenney and John M. Merriman, *The Pear: French Graphic Arts in the Golden Age of Caricature*, (Mount Holyoke College Art Museum, 1991); James Cuno, *Charles Philippon and La Maison Aubert The Business, Politics and Public of Caricature in Paris, 1820-1840* (Ann Arbor, MI: Harvard University, 1985); David S. Kerr, *Caricature and French Political Culture, 1830-1848: Charles Philippon and the Illustrated Press*, (Oxford: Oxford University Press, 2000)

¹¹ Robert Gildea, *Children of the Revolution: The French, 1799-1914*, (Harvard: Harvard University Press, 2008); Pierre Rosanvallon *The Demands of Liberty — Civil Society in France since the Revolution*, trans. Arthur Goldhammer (Harvard University Press 2007)

¹² Furet, *Revolutionary France*, 1992, 385-386

¹³ Pierre Rosanvallon, *Democracy Past and Future*, ed. Samuel Moyn (New York: Columbia University Press, 2006)

pseudo-religious underpinnings of democracy.¹⁴ This void was held by a unified, absolute and undivided sovereignty where the individual will was replaced by a transcendent 'common will.'¹⁵ It is my contention that this particular conception of democracy in France sees a direct transference of the king's effigy, representing absolute sovereignty, to the profusion of the Marianne as a representative body of the republic.¹⁶ Both these 'second bodies' find themselves on the same page, though in tension, in Daumier's lithographs.

THE MIDDLE WAY: STEERING A COURSE BETWEEN TWO POLES

At the beginning of the July Monarchy, on August 7 the Charter of 1814 was revised and called the *Charter of 1830*. It was imposed by the nation on the king who then swore to uphold the *Charter* and accept his title 'King of the French,' the Citizen King.¹⁷ From the very beginning of his reign, there were many contradictions. Although there was no coronation, at the inauguration Louis-Philippe dressed in seventeenth century costume so as to directly recall Louis XIV, to whom Louis-Philippe bore more than a passing resemblance.¹⁸ Louis-Philippe had been chosen as a hopeful consensus-builder between both sides of the revolution. According to the wishes of the allies, the Bourbon Monarchy was restored in the figure of Louis XVIII by Talleyrand at the Congress of Vienna between 1814-1815. He agreed however to rule under a *Charter* drawn up by the Allies which allowed for a parliament, preventing the return to absolute rule. The freedom of the press, freedom of religion and *habeas corpus* were also assured. At his death, his brother Charles X became King. Unlike Louis XVIII, who had no coronation, the spectacle of Charles X's coronation was purposively linked to the *ancien régime*. Indeed the 1824 coronation even

¹⁴ Rosanvallon, like Pierre Legendre, is influenced by Claude Lefort on this score and sees the 'unknowability' of democracy as a primary characteristic. Rosanvallon follows Lefort and Francois Furet (a mentor of Rosanvallon) in seeing democracy in Rousseau's terms as a unified popular sovereignty, which replaces the absolute sovereignty of the king.

¹⁵ The possible totalitarian political ramifications of this repetition of the absolute sovereign in democracy interests Rosanvallon.

¹⁶ See Jonathan Ribner, 'Law and Justice in England and France', 183; see also *Broken Tablets; The Cult of the Law in French Art from David to Delacroix*, (California: University of California Press, 1993). As early as 1793 there was a conscious decision to *replace* the images of monarchical authority as opposed to mere iconoclasm. For example, France's Constitution was treated as a cult object, enclosed in a cedar ark during the Festival of Unity and Indivisibility, August 10 1793.

¹⁷ See Paul Harold Beik, *Louis-Philippe and the July Monarchy* (New York: Van Nostrand, 1965); Agnes Barron Stoeckl, *King of the French: a portrait of Louis Philippe, 1773-1850* (London: John Murray, 1957)

¹⁸ This story is cited in Albert Boime, *A Social History of Modern Art: Art in the Age of Revolution 1750-1800*, (Chicago: University of Chicago Press, 1987) 302

included the laying of the king's hands to heal the sick, in a resurrection of the divine right.¹⁹ He explained his Monarchical position with the statement, 'I had rather chop wood than reign after the fashion of the King of England.'²⁰ Although the reign started favourably, with freedom of the press and amnesties for political prisoners, the reign of Charles X became more conservative. Between 1829-1830 the Prince de Polignac programmed changes reverting back to before the Revolution, giving more power to the church and aristocracy. Parliament opposed the changes, so Charles X dissolved parliament. When the dust settled the new Parliament was weighted more heavily against Polignac. Clutching at straws, Charles X passed the *Ordinances of St Cloud*, 1830, which tightened press controls, took away voting privileges from the majority and dissolved parliament again; the aim was to destroy rule by the *Charter of the Allies*. The Revolution of 1830 broke out, and events were moving to a Republic when Thiers suggested an alternative monarch from a younger Bourbon line, Louis-Philippe.²¹ So instead of a Republic, Louis-Philippe was the compromise: a constitutional monarch.

Louis-Philippe is an example of a notable and effective strategy that has been called the middle way or the *juste milieu*. Its aim was to keep the bourgeoisie on side and to stave off revolution. It was an important strategy in the nineteenth century in France and in other European nations, including England.²² Francois Guizot, Louis-Philippe's primary advisor, expressed the strategy as one that 'rejects absolute principles, extreme principles; it is adaptable to the diverse needs of society; it manages to stay abreast of ongoing social changes, and in turn engages in combat whenever necessary.'²³ Another contemporary source from Scotland saw the connection between England and France's new king in supportive light:

¹⁹ R.A. Jackson, *Vive le Roi! A History of the French Coronation from Charles V to Charles X* (Chapel Hill, NC, 1984); A. Boureau, *Le Simple Corps du roi. L'impossible sacralité des souverains français (XVe-XVIIIe siècles)* (Paris, 1988); Maurice Bloch, *The Royal Touch. Sacred Monarchy and Scrofula in England and France*, (London, 1973), H.H. Rowen, *The King's State: Proprietary Dynasticism in Early Modern France*, (New Brunswick, 1980)

²⁰ Seignobos, Charles, *A Political History of Europe, Since 1814* (New York: Henry Holt and Company, 1899) 126; see also John P T Bury, *France 1814-1940*, edition 6 with new introduction by Robert Tombs, (London: Routledge, 2003) 33

²¹ There was an assumption Lafayette would take the Presidency. When his call for a socialist republic was not approved he resigned from the assembly.

²² See Vincent E. Starzinger, *The Politics of the Center: The Juste Milieu in Theory and Practice, France and England, 1815-1848* (Piscataway, NJ: Transaction Publishers, 1991)

²³ Boime, *A Social History of Modern Art: Art in the Age of Revolution 1750-1800*, 272; similarly Guizot suggested against the revolutionary spirit in 1830, 'the spirit of revolution, the spirit of insurrection, is a spirit radically hostile to liberty,' quoted in E. L. Woodward, *War and Peace in Europe 1815-187*, (London: Routledge, 1963), 212

The cause of peace in Europe and of good government in France is staked on the stability of the throne of Louis-Philippe. The intermediate position which his government has taken up between two irreconcilable extremes is precisely identical with the intermediate position at present occupied by the administration of Earl Grey.²⁴

This chapter relies on the assertion that these two sides can never be fully conflated. Lafayette at the time tended to agree: 'To say the truth France likes not the *juste-milieu* because she knows not *juste-milieu* between the ancient and the new dynasty...—between the liberty and the censorship of the press—between the freedom and the monopoly of commerce...France thinks, in truth, that *juste-milieu* means nothing when applied to questions of actual policy.'²⁵ The split between the Republic and the monarchy characterizes France's approach to democracy. Both positions countered the other with an uncompromising absolute, the King or the Republic, respectively.²⁶

LACAN, ART AND THE ATTACKS ON THE MASTER

This ideological battling is well expressed through the Lacanian idea of the master signifier and how it quilts meaning. As both ideologies are based on a transcendental other, the working of this master signifier fits strongly within the master discourse. The master rules as an absolute authority. To make the situation even clearer the revolution of 1830 provides a point from which no master signifier can yet claim total legitimacy. The starting point is the *anomie* of revolution, a vacuum of power, or the violent foundation of the law. In this way a revolution is a violent breach, a suspension of law. In Lacanian terminology a revolution is an 'act'. As Rex Butler asks: 'Is the act the passage between two different symbolic orders or between two different states of the same symbolic order? Or is it, on the contrary what founds the symbolic order, but what must be covered over or effaced by it?'²⁷ It is Žižek who suggests the act and the master signifier are intertwined in a 'constitutive way,' where the master signifier is 'being' and the act is a 'becoming'.

²⁴ Quoted in Starzinger, *The Politics of the Center: The Juste Milieu in Theory and Practice, France and England*, 6, (originally *Edinburgh Review*, LVI January 1833)

²⁵ Quoted in *Memoirs of General Lafayette and of the French Revolution of 1830: And of the French Revolution of 1830*, trans. Bernard Sarrans, Vol 2, (London: R. Bentley, 1833) 317

²⁶ The popular sovereignty of the republic and the unified nature of the 'common will' could not readily accept compromise. An extension of Rosanvallon's thesis suggests this univocal 'common will' can be seen in contemporary issues in France. For example France's insistence on no religious items in schools as opposed to a notion of 'multiculturalism.'

²⁷ Rex Butler, *Žižek: Live Theory*, (New York: Continuum, 2005) 67

The act opens up a space of potentiality through a complete cut in the symbolic field.²⁸ For Žižek the French Revolution is such an act, and we have already argued that this act still haunts the July Monarchy.²⁹ The very designation of the July Revolution implies this event cannot be explained as mere knowledge but is a subjective proposition; it remains on the plain of the Real, as discussed in the last chapter, which cannot be symbolised as knowledge. The peace treaty, including the inauguration of Louis-Philippe, is the beginning of the symbolic sublimation of this violence into something sociable and acceptable, which represses the violence of this founding in revolution. It is the beginning of the necessary ideological work so that the 'becoming' of the act turns to the 'being' of the master signifier. Louis-Philippe tried to turn himself into an all-encompassing *point de capiton*. He emptied himself out as a signifier to become all things. The Citizen-King attempted to be both a modern citizen and an *ancien régime* King, assuming the labels of revolution, liberty, freedom, democracy as well as those of stability, tradition, legitimacy and authority. In many political arenas, and especially in England and Germany, this process was very successful.³⁰ As Žižek notes, only by emptying the master signifier of all meaning can it most efficiently quilt the field of signifiers. Louis-Philippe's aim was to elicit belief from all sides.

Readings of Daumier's art, and that of other radical lithographers, have not fully addressed their relationship to these ideological processes. The most common reading sees Daumier as already 'modern' in what amounts to a circular definition. Daumier is on the cusp of the modern and represents a threshold in his mode of representation. Under the historicity of the four discourses, modernism is the gradual overtaking of the master discourse by the university and hysterical discourses.³¹ To summarise, for Lacan the university discourse is the movement towards the disciplinary society, where scientific knowledge becomes the ruling force.³² The hysteric's

²⁸ Examples from film that Žižek uses to describe this sort of act, is the action of Kayse Soze in *Usual Suspects* (Bryan Singer, 1994), who rather than allow his family to be kidnapped shoots them; or a similar murder in Toni Morrison's *Beloved* (London: Plume, 1998). It is an act that goes against the symbolic order and the otherwise expected outcome.

²⁹ Slavoj Žižek, *The Ticklish Subject: The Absent Centre of Political Ontology*, (London: Verso, 2000), 136-137. This is quite paradoxical for Žižek argues against Furet's scholarly analysis. He suggests that by bringing the Revolution to the level of knowledge, and the complexity of the social and political context of the many events that lead to the Event, Furet misses the point of this radical rupture.

³⁰ R. J. W. Evans and Hartmut Pogge von Strandmann, eds., *The Revolutions in Europe, 1848-1849: From Reform to Reaction*, (Oxford: Oxford University Press, 2000); Jonathan Sperber, *The European Revolutions, 1848-1851* (Series: New Approaches to European History), (Cambridge: Cambridge University Press, 2005)

³¹ Slavoj Žižek, *The Parallax View*, (Cambridge: MIT Press, 2006) 298-299

³² See Geoff Boucher, 'Bureaucratic Speech Acts and the University Discourse: Lacan's Theory of Modernity,' *Jacques Lacan and the Other Side of Psychoanalysis*, (Durham: Duke University Press, 2006) 274

discourse is the parallel rise of individualistic capitalism where the individual is the driver rather than overarching traditional authority. Although Lacan's matrix of the four discourses suggests all modes coexist in tension, there is this historical underpinning. Daumier is a good example of an artist, on the cusp of modernity, who acted in a few modes. The common reading of Daumier is influenced by the university discourse, where his lithographs 'show' the corruption of power. They declare the cruelty of the judge, the poverty of the poor, the nepotism of the king. In this reading Daumier is the declarative rebellious artist who depicts power for what it is.

A broader picture can be drawn through the master discourse, which sees Daumier's work as toying with the effigy. It questioned the authority of the king's effigy to represent France, and kept the alternative image of the republic in play in order to render the king's effigy as illegitimate. In this sense, Daumier's art between 1830-1835 constituted a violent act and not merely a riotous protest. Instead of seeing 1830 as the birth of the July Monarchy it is important to remember that it was still a period of flux, and that Louis-Philippe's regime was under constant pressure from Republican and Legitimist interests. The period 1830-1835 was in effect an extension of the revolutionary period, a period of becoming rather than of being. If the master signifier is used to sublimate the founding laws, in this period no master signifier could definitively finish or sublimate the revolutionary phase.³³ The art of caricaturists, such as Philipon and Daumier, can be seen here as Lacanian Acts, as an extension of the Revolution, because they attempted to problematise the king's legitimacy and keep that legitimacy open to questioning. As Furet suggests, it was the spirit of the French Revolution that pervaded this Republican political movement and it is this authority that Daumier draws on to contrast the Republic and the constitutional monarchy.

State reaction to Daumier and the other lithographers, and the popular uprising they spearheaded, was violent and efficient. This was because what Daumier and the others were suggesting was nothing short of total upheaval.³⁴ Within the master discourse Daumier is willing,

³³ Slavoj Žižek, *Cogito and unconscious*, (Durham: Duke University Press, 1998), 77-78. As Žižek writes, 'The master is the one who invents a new signifier, the famous 'quilting point,' which again stabilises the situation and makes it readable...The Master adds no new positive content – he merely adds a *signifier* which all of a sudden turns disorder into order, into "new harmony", as Rimbaud would have put it'. See also Žižek, *Ticklish Subject*, 164-165 where there is a discussion of Badiou and the master that names the event.

³⁴ See Rex Butler, *Žižek: Live Theory*, 66. Here Butler cites both the French Revolution and the Russian Revolution as examples of an Act; see also Slavoj Žižek, *Violence: Six Sideways Reflections* (New York: Picador, 2008), where the French revolution is described as 'emancipatory' violence, or a violence that aims at 'a radical upheaval of the basic social relations'. 217

like Hegel's slave, to risk his life in a struggle for mastery and domination.³⁵ Although Louis-Philippe wins the struggle (at least until 1848), this does not diminish 1830-1835 as an important site of ideological struggle. To be sure, the king's reforms were popular, and the Republicans did poorly in the elections of 1834. After 1835, and the attempted assassination of the king, the September Laws were harsh and thorough, and Louis-Philippe was finally able to exert enough control through the modern censorship laws to quash any dissent. There were to be no political cartoons at all between 1835-1848 in the Philipon journal *Le Charivari*, and *La Caricature* was closed in 1835.³⁶ The virulence of the State response shows the battle was not merely fought in the arena of facts, but between two alternative and possible masters.

DAUMIER, LÈSE MAJESTÉ AND THE BIRTH OF MODERNITY

Two famous trials can be reassessed in relation to this understanding of the art of the period. Both published in 1831, the first relates to Charles Philipon's *Pear*, 1831 (Figure 21), and the second to Daumier's *Gargantua*. Daumier's appropriation of Philipon's image of the king transforming into a pear was widely circulated. Both artists were brought to court for *lèse majesté*. These trials, especially the trial and imprisonment of Daumier, are famous as proof of their modernist, transgressive credentials. However, we should not forget that these trials centred on a legal question that is central to the birth of modern art: whether the image of the king was an effigy or merely a representation. In other words the way the law controlled the image as *lèse majesté* or later through censorship marks the shift between courtly and autonomous art, and from the politics of the absolute master to the disciplinary society. The other issue it raises is the violence of the image and the importance of the legal image to quilt the society. *Lèse majesté* is a law that for the last time in Western society admits the use of the image to bind the legal subject; the God of Nation in the disciplinary society was framed by knowledge so that its mystical base was repressed.

Soon after the signing-in of Louis-Philippe and the rewriting of the *Charter of 1830* new press laws introduced in November 1830 included *lèse majesté*. Philipon's first trial in 1831 was over a simple cartoon called *Soap Bubbles*, which showed the king blowing bubbles like Chardin's boy (*Soap Bubbles*, 1734), but what was popping in the air were all the virtues of Republicanism, including

³⁵ It is this aspect of his art that in hindsight justified Léon Gambetta arriving at Daumier's retrospective in 1878. For a clearer explanation see Mark Bracher. 'On the psychological and social functions of language: Lacan's Theory of the Four Discourses', in Mark Bracher (ed) *Lacanian Theory of Discourse: Subject, Structure and Society*. (New York University Press, 1994) 107-128

³⁶ Michele Hanoosh, *Baudelaire and Caricature: From the Comic to an Art of Modernity*, (Pennsylvania: Penn State Press, 1992) 115

freedom of the press.³⁷ In the more notable trial of 14 November 1831, for *The Plasterer*, Philipon was found guilty and gaoled; in this image the king is shown to be plastering over the virtues of the Republic.³⁸ Similarly on February 22, 1832, Daumier was brought to trial for composing *Gargantua*.³⁹ The charge was breaking the press law of November 1830 by arousing hatred and contempt of the king's government, and by offending the king's person, the crime of *lèse majesté*.⁴⁰ Daumier's mercy plea was unsuccessful as his 'seditious crayon had traced the guilty image.'⁴¹

Before further analysing the political context of these trials it is necessary to discuss the largely archaic law of *lèse majesté*. The crime of *lèse majesté* is the criminal corollary of the cultural existence of the sacred 'second body' or effigy: it is the criminalisation of the unauthorised effigy. This crime can only exist in a functioning discourse of the master, where the master acts through the effigy; the crime cannot exist in a disciplinary society, other than as an anachronism. The crime of *lèse majesté* is shared by many civil law jurisdictions, and is based on the Roman crime of *laesae maiestatis*, literally injury that diminishes the majesty.⁴² Floyd Lear describes the many acts that this crime covered in ancient Rome including rules pertaining to the image, 'respect for the images of the emperor, including unseemly acts real or alleged, committed in the presence or in the proximity of an imperial image; and the act of defacing, melting, or destroying a statue of the

³⁷ Elizabeth Childs 'The Body Impolitic: Press Censorship and the Caricature of Honoré Daumier', in *Making the news: modernity & the mass press in nineteenth-century France* Eds. Dean De la Motte, Jeannene M. Przyblyski (University of Massachusetts Press, 1999), 50

³⁸ The whitewashing symbolically represents the white flag of the Bourbons against the tricolour of the Republic.

³⁹ The trial also involved Aubert Philipon's brother-in-law and owner of the publishing house, who was charged with exhibiting and selling, and Hippolyte Delaporte, the lithographic printer, who was charged with printing the images. Both men were pardoned.

⁴⁰ Darmaing, 'Chronique', *Gazette des tribunaux*. February 23, 1832, 432

⁴¹ Quoted in Elizabeth Childs, 'Big Trouble: Daumier, Gargantua and the Censorship of Political Caricature', *Art Journal*, 51:1 (1992: Spring) 26-27. The plea and this subsequent decision are to be found in Archives Nationales, Paris BB 21 373 (no. 4172-58). Aubert and Delaporte successfully pleaded for mercy and were not incarcerated. Daumier was sentenced to 6 months at Sainte-Pelagie prison, which he served from September 1832 – February 1833.

⁴² The civil law jurisdictions such as France, Italy and other European nations are based on Statute rather than common law. The history of Roman Statutes is strong within these countries; see for this birth of modern treason law in France Simon Hirsch Cuttler, *The Law of Treason and Treason Trials in Later Medieval France*, (Cambridge: Cambridge University Press, 2003)

prince which had been consecrated'.⁴³ The destruction of, or injury to the image of the Prince was not seen merely as an insult or injury but as an impiety. It was a crime that involved the relationship between the individual and the public authority, and so became a question of loyalty and trustworthiness. This squares with our notion of subjectivisation through the legal image; in Roman law this enemy *within* the symbolic order was different to the alien enemy, and was called *perduellis*.⁴⁴ The crime was linked to early Roman religious sanctions against the killing of the father, or head of the household (*paricidium*).⁴⁵ As the effigy is a sacred body the act of treason or *lèse majesté* is close to a sacrilegious offence.⁴⁶ Again the make-up of the law is connected to Legendre's reading of the sovereign as conflated to the father figure.⁴⁷

By 1830 *lèse majesté* was already itself in a threshold moment (between the absolute master and disciplinary power). The crime of an 'imagined' treason, that is a form of (blasphemous) libel, as opposed to an actual regicide or planning for regicide, was already waning in France by the eighteenth century.⁴⁸ Kelly suggests that after the French Revolution in France, there was a shift to limiting treason to merely attempts of *actual* regicide as a safeguard to free speech.⁴⁹ So to some

⁴³ Floyd Lear, *Treason in Roman and Germanic Law: Collected Papers* (Austin: University of Texas Press 1965) 29

⁴⁴ Literally 'the hidden enemy' as opposed to the *hostis*, which was a foreign enemy.

⁴⁵ Floyd Lear, *Treason in Roman and Germanic Law: Collected Papers*, 24

⁴⁶ G. A. Kelly, 'From Lèse-Majesté to Lèse-Nation: Treason in Eighteenth-Century France' *Journal of the History of Ideas*, Vol. 42, No. 2, April-June 1981, 269-286 at 270; see also Theodore R. Sarbin, Ralph M. Carney, Carson Eoyang, Defense Personnel Security Research Center (U.S.), *Citizen espionage: studies in trust and betrayal* (Westport CT: Greenwood Publishing Group, 1994)

⁴⁷ In the English system the crime is subsumed under treason, and is presently based on the *Great Statute of Treasons*, 1351. Treason here is understood as distinguishable from the crimes of murder and even regicide; treason is a symbolic crime against a 'symbolic body' or 'second body' of the king. First codified in England by the 1351 *Statute of Treasons* (25 Edward III, St 5, c 2) during the reign of Edward III, treason has as a central aspect in imagining or compassing the death of the King. In 1534 Henry VIII passed legislation which made it possible to commit treason by words or writing (Act of Treasons Henry VIII c 13) further clarifying the ways in which such an 'imagining' could manifest. In the English system this was considered 'treason-by-words', a designation suggested by Henry VIII on his road to absolute power; the crime of *lèse majesté* was thus made redundant. This had the paradoxical effect in England, of increased debate and dissent over the definition of treason. See Rebecca Lemon, *Treason by Words: Literature, Law and Rebellion in Shakespeare's England*, (New York: Cornell University Press, 2006). Also Isobel Thornley, 'Treason by Words in the Fifteenth Century,' *The English Historical Review*, Vol 32, No 128, (October 1917), 556-561

⁴⁸ Janet Coleman's *Against The State: studies in sedition and rebellion*, (London: BBC 1990) is a point of entry to the substantial historical literature on sedition in pre-industrial and industrial Europe.

⁴⁹ Kelly, 'From Lèse-Majesté to Lèse-Nation: Treason in Eighteenth-Century France', 1981, 270

extent the *lèse majesté* laws of November 1830 could be seen as a disciplinary style of censorship given legitimacy through the older absolutist idea. Regardless of the mode the effect was a return to treason and after 1835 the censorship laws were bolstered by a rule making it 'illegal to advocate republicanism'.⁵⁰ So in the end *lèse majesté* was stopped along Foucault's lines 'to punish less perhaps but to punish better'. The violence of the assassination was a perfect precipitant for the crackdown. Fieschi took lodgings on the Boulevard du Temple, and there, with two members of the Société des Droits de l'Homme, Morey and Pépin, contrived a *machine infernale*, consisting of twenty gun barrels, to be fired simultaneously on July 28 1835. There had been numerous attacks on the king's life and there were many apologists in the press. In September 1835 the national Assembly passed new press laws (the September Laws). Here the law of *lèse majesté* was redrawn in a modern guise; any reference to the king that tried 'exciter a la haine ou au mépris de sa personne ou de son autorité constitutionnelle' was seen as an attack against the state and punishable by up to one year in prison and a 5000 franc fine (Articles 2 and 4). The 'September Laws' remained in use throughout the July Monarchy.⁵¹

In the 'Age of Terror' it is not all that difficult to empathise with a period in which distinctions between friend and enemy were being drawn. The reinvigoration of the pre-modern crimes of sedition across the world was surprisingly 'kingly'. *Lèse majesté* is still on the books in many countries and has been used most recently in Thailand, although in another kingly right, the criminal is often pardoned.⁵² What is common to both our contemporary perspective and the absolute monarch is the background of the Lacanian Master's Discourse. In the Master's discourse the master signifier is unchallengeable. It is the same iconoclastic imperative of the original Old Testament master-God. Identifying with this system is relatively intrinsic, having lived through the response to terror and the control of dissenting voices. Generally however, the workings of contemporary society would not accept a crime of *lèse majesté*. Within the university discourse,

⁵⁰ Ronald Aminzade, *Ballots and barricades: class formation and republican politics in France, 1830-1871*, (Princeton: Princeton University Press, 1993) 55

⁵¹ One of the original acts of the Revolution of February 1848 was to reform these press laws. By March 6, most were revoked; a number of new journals started in this period. Louis Napoleon, as President, forbade offences against his person in a bill of July 17, 1849 (Art 1). With the Coup d'Etat in December 2 1851. Emperor Louis Napoleon took control again over the press. Police seized press offices around the country. A Presidential Decree on February 1852 saw a return to similar laws instituted at the time of the September Laws.

⁵² In March 2007 Swiss national Oliver Jufer was convicted of *lèse majesté* and sentenced to 10 years for spray-painting on several portraits of King Bhumibol while drunk in Chang Mai, Thailand. He was later pardoned. Patrick Jackson, 'Sensitive Heads of State,' *BBC News*, 29 March 2007; Patrick Jackson, 'Thailand's King Pardons Swiss Man,' *BBC News*, 12 April 2007

the disciplinary society, criminal sanction is based not so much on imperatives as on power/knowledge. The crime of *lèse majesté* gradually gave way to the regime of censorship and control of information rather than the symbolic attack against the king's authority. The difference can be summed up with respect to the Danish cartoon that caused worldwide riots in 2006.⁵³ On one level western countries called for freedom of speech, but on the other hand Muslims from around the world appealed to the blasphemy of imaging Mohammad. To argue that the image was a vilification of Muslims (that is calling *all* Muslims, represented by Mohammad, terrorists) was to miss the point of the protestors, who were not attacking the message but upholding the Islamic ban against images. The issue highlights the risk in forgetting the power of the effigy now and in modernism as a whole.

Charged with *lèse majesté*, little theoretical attention has been done to follow the logic of this indictment in the trials of both Philipon and Daumier. What was at issue was the very question that concerns this thesis: can an image function as a presence or does it remain as mere representation? This question defines a major shift from courtly to modern art. Philipon argued that the second body of the king did not exist, insisting that the king was merely a symbolic representation. This issue was central to Philipon's famous image showing the head of Louis-Philippe metamorphosing into a pear.⁵⁴ Philipon's argument, expressed through this image, was that it was not enough to draw the king's likeness (to defame him) because it was not certain whether that was actually the king. The likeness for Philipon needed framing by text or insignia to prove the connection to the 'second body' of the king.⁵⁵ This argument follows our own analysis where the effigy must be clearly authorised by the big Other, through either State use, State promulgation or the use in State sanctioned space or festival. The journal complicated this usage because it was not state sanctioned. Philipon argued:

A resemblance, even if perfect, is never an attack; you must not recognize it as such, and you must above all refrain from sanctioning it by conviction. The injury is precise and proven solely by the name of the king, by titles, insignia coupled with his image, which is then, whether there's a

⁵³ The cartoons showed Mohammed with a turban shaped like a bomb, published 30 September 2005; 'Muslim Cartoon Fury Claims Lives', *BBC News*, 6 February 2006; accessed 7/09: http://news.bbc.co.uk/1/hi/world/south_asia/4684652.stm

⁵⁴ The image we know was redrawn by Daumier and reprinted in *La Caricature* 24 November 1831. The original however was drawn in the courtroom as an example.

⁵⁵ Michele Hanoosh, *Baudelaire and Caricature: From the Comic to an Art of Modernity*, (Pennsylvania: Penn State Press, 1992) 118

resemblance or not, culpable and deserving of punishment...but it's not the king.⁵⁶

He suggested that the king merely represented the government in symbolic guise. Indeed in the same tirade quoted above, Philipon wrote: 'Yes we have the right to personify power. Yes we have the right to take for this personification, whatever resemblance suits our needs! Yes all resemblances belong to us!'⁵⁷ Similarly Elizabeth Childs has astutely seen that the issue of Daumier's case turned on 'whether or not *Gargantua* actually represented the king, or was intended as a more symbolic representation of the government's swollen budget'.⁵⁸ Childs has done the most to look at the relationship between Daumier's images, the trial and the context of censorship laws.⁵⁹ She dismisses the importance of Philipon's argument by calling it 'a strained defense necessitated by the concept of *lèse majesté*', as if any argument against the body politic was merely for pragmatic reasons.⁶⁰ Childs suggests that the image was actually both the 'second body' and a representation, but does not take her own claim seriously.⁶¹ She understands the 'hybrid figure' of Louis-Philippe as both modern and absolute, an amalgam of *ancien régime* and the modern.⁶² Most importantly in relation to Daumier, Philipon and other caricaturists of the time, she notes their 'humour of the body politic' and footnotes Kantorowicz to highlight her meaning of the 'second body'. Although this idea titles her article it is not followed up and the 'body politic' is treated as a symbolic representation of France, not as an effigy. This thesis recovers the ability to use the term effigy; the caricatures of Philipon and Daumier respond to and point to the existence of the effigy in early modern art. It suggests to its existence in contemporary democracy but disguised. *The Pear* became famously known as an effigy.⁶³ In *Les Misérables*, Victor Hugo wrote:

⁵⁶ Sandy Petrey, 'Pears in History' *Representations*, No. 35, Special Issue: Monumental Histories (Summer, 1991), 52-71, 52

⁵⁷ *La Caricature*, November 24, 1831

⁵⁸ Elizabeth Childs, 'Big Trouble: Daumier, *Gargantua* and the Censorship of Political Caricature, *Art Journal*, 51:1 (1992: Spring), 26-34

⁵⁹ Elizabeth Childs 'The Body Impolitic: Press Censorship and the Caricature of Honoré Daumier', in *Making the news: modernity & the mass press in nineteenth-century France* Eds. 43-81; see also Robert Justin Goldstein *Censorship of Political Caricature in Nineteenth-Century France*, (The Kent State University Press, 1989)

⁶⁰ Childs, 'The Body Impolitic: Press Censorship and the Caricature of Honoré Daumier', 49

⁶¹ As Childs writes: 'The image was of course both, but for pragmatic reasons the convicted men soon attempted to argue otherwise', in 'The Body Impolitic: Press Censorship and the Caricature of Honoré Daumier', 34

⁶² Childs, 'The Body Impolitic: Press Censorship and the Caricature of Honoré Daumier', 44-45

⁶³ Petrey suggests this arbitrary choosing of representation is the beginning of Realist literature.

One summer evening, Louis-Philippe, returning home on foot, saw an undersized urchin straining on tip-toe to draw an enormous pear on one of the pillars of the Neuilly gateway. With the amiability which he inherited from Henri IV, the King helped him to finish it and then gave him a coin, a louis d'or. 'There's a pear on that too,' he said'.⁶⁴

Whether as a pear or as a Gargantua, the 'second body' of the king, his effigy, was alluded and indeed so serious was the misuse of the image that a bizarre law was passed outlawing any image of a pear in 1835. The pear symbol had become a commonplace, and one even found its way onto the pyramids.

PEARS, THE MASTER DISCOURSE AND PRESENCE

Apart from the trials asserting the existence of *lèse majesté* (and the effigy) there are other examples of the confusion, in the early 19th century, between the image as presence (effigy) or as representation (portrait, image) a confusion explained by the shift from the courtly to the bourgeois autonomous art of modernity. Daumier's early cartoons and caricatures of 1830-1835 have been largely overlooked because they do not fit within the Realist mould of his later work. Their overtly political character creates a blind spot for modern art history but it is of particular interest to this thesis. After 1835, caricatures of manners became a popular response to the strict September Laws. The mode of caricature itself has a bearing on the question of the effigy and modernity that has also been broadly suppressed by art history.⁶⁵ Ernst Gombrich suggests that, 'One of the things the study of cartoons may reveal with greater clarity is the role and power of the mythological imagination on our political thought and decisions'.⁶⁶ As Gombrich reminds us, the portrait caricature can be linked to images of infamy:

The public enemy would be represented hanging from the gallows on the façade of the town hall, and such hangings in effigy, as Kris has reminded us, were still closer to witchcraft than they were

⁶⁴ Victor Hugo, *Les Misérables*, trans. Norman Denny, 2 vols. (New York, 1976) 1:503

⁶⁵ Gombrich, 'The Cartoonist's Armoury', in *Meditations on a Hobby Horse*, (Oxford: Phaidon Press, 1963); Gombrich writes: 'Except in a few instances when great artists such as Honoré Daumier or Goya were driven to take up graphic journalism, the professional art historian has had little occasion to busy himself with the vast mass of ephemeral propaganda prints, broadsheets, and cartoons which were produced in ever-increasing volume from the sixteenth century forward...It is indeed the kind of study to which the Warburg Institute has always bent its efforts, not so much (as is sometimes thought) to unriddle some individual picture puzzles, but precisely for the purpose of finding out what role the image may play in the household of our mind'. 127

⁶⁶ Gombrich, 'The Cartoonist's Armoury', 129

to art. Their aim was to wreak vengeance on the enemy and to destroy, if not the person, at least the aura that was his honour.⁶⁷

The defamation of character is the opposite of the honouring of the *dignitas* found in the kingly portrait; both ideas are connected. For Gombrich and Kris the caricature is an extension of the effigy.⁶⁸ Gombrich in his study of caricature sees its very power linked to the magic and presence inherent to the image:

If we ask the psychologist he tell us again that, as with caricature, the hidden and unconscious aim of such fun is connected with magic. To copy a person, to mimic his behaviour, means to annihilate his individuality. The very word 'individual' means inseparable. If we succeed in singling out and imitating a man's expression or way of walking we have destroyed this individuality. It is as if we declare to our laughing fellow-creatures, 'Look, here is his whole secret. You need not be afraid nor even impressed; it is all a hollow sham.'⁶⁹

Gombrich goes on to suggest that the caricature's late arrival as an art form was its success in conjuring the sitter; 'We think that the portrait caricature was not practiced earlier because of the dire power it was felt to possess; out of conscious fear of its effect'.⁷⁰ So that caricature is part effigy belief, part modern naturalism and realism and part defamatory. It comes from the long line of images of infamy. But the difference was that the images of infamy were a legal remedy, a State sanctioned violence. The move to creating your *own* images of infamy, for example of a king, was tentative. Running parallel to the history of duelling, the image was seen as a direct attack against the enemy's *dignitas*, a slap in the face.

The Pear and the *Gargantua* represent the threshold moment between presence and representation.⁷¹ It seems to express both modes. As Childs writes, 'The defiant pear thrived as a

⁶⁷ *Ibid*, 134-135

⁶⁸ E Gombrich and E. Kris. *Caricature*, (Harmondsworth: Penguin Books, 1940); L H Streicher, 'On a Theory of Political Caricature,' in *Comparative Studies in Society and History*, Vol 9, No 4, 1967, 427-445

⁶⁹ *Ibid*, *Caricature*, 1940, 14

⁷⁰ *Ibid*, 15

⁷¹ Sandy Petrey *In the Court of the Pear King: French Culture and the Rise of Realism*, (Ithaca, NY: Cornell University Press, 2005); James Bash Cuno, 'Charles Philipon and La Maison Aubert: The Business, Politics, and Public of Caricature in Paris, 1820-1840', (PhD dissertation, Harvard University, 1985); Elise K. Kenney and John M. Merriman, *The Pear: French Graphic Arts in the Golden Age of Caricature* (South Hadley, Massachusetts, 1991); Sandy Petrey, 'Pears in History', *Representations* 48 (1991): 52-80. For satirical images generally during the July Monarchy, see Chu and Weisberg, *Popularization of Images*; and Robert Justin Goldstein, *Censorship of Political Caricature in Nineteenth-Century France* (Kent, Ohio: Kent State University

symbol of resistance in the margins of the law and the margins of the official culture'.⁷² It was at one time the actual king and on the other just far enough removed. It should be remembered too that *Gargantua* was not published by Philipon in *La Caricature*, but was merely sold as a loose-leaf image, suggesting that even Philipon was weary of this particular image. On the level of knowledge (the university discourse) many art historians examine *The Pear* as a sign, a mere representation and symbol of monarchy.⁷³ *The Pear* was attacked in the most obscene ways, and in Lacanese these responses could be seen as responses of the hysteric. They show that the king is not symbolic enough, not 'castrated enough' but has all-too-human corruptions and vices. Daumier's *Gargantua* fuses these two approaches. On the one hand it directs the viewer to read a story of avarice and greed. On the other there is the directly scatological effect of the throne/toilet. The abject scatology points to the corrupted symbolic body such as *Royalty in Decline*, 1834 where the king sits on a chamber pot with a clysmatode (Figure 22), or where Louis-Philippe is shown in a torn and muddied ermine robe, *Your cape's in pretty good shape!...* 1834 (Figure 23). This becomes a very popular method of satirizing the king for artists.⁷⁴

These modes have been utilized to discuss the work of Daumier, but if we go back to Gombrich's reading of caricatures on the threshold of modernity *The Pear* also becomes an effigy. For example, *The Masks*, 1831 (Figure 24) seems to illustrate the difference between the king's effigy and a straightforward caricature, because it so readily recalls the laws of *lese majesté*. Unable to draw the resemblance of the king, he is represented by a pear surrounded by likenesses of his cabinet. Compared to the other politicians, the king, as sovereign, was still seen as sacred, if at the very

Press, 1989), 119–68. For a general study of political caricatures in nineteenth-century France, see Judith Wechsler, *A Human Comedy: Physiognomy and Caricature in 19th Century Paris* (Chicago: University of Chicago, 1982)

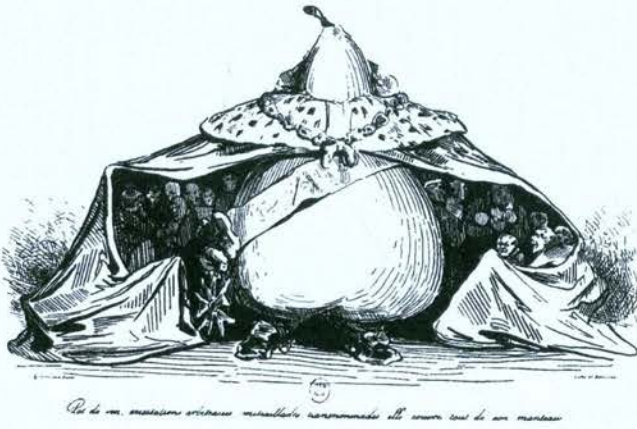
⁷² Childs, *Making the News*, 49

⁷³ James Cuno 'Charles Philipon, La Maison Aubert, and the Business of Caricature in Paris, 1829-41' *Art Journal*, Vol. 43, No. 4, The Issue of Caricature (1983), 347-354 Cuno, 'Charles Philipon and La Maison Aubert', 193–258. For the symbolic politics of the regime, see Michael Maminan, *Painting Politics for Louis-Philippe: Art and Ideology in Orleanist France, 1830–1848* (New Haven and London: Yale University Press, 1988). James Cuno suggests the pear as a sign has several possible interpretations: a pear-shaped head on the king portrayed him as a 'fat head'; a pear-shaped body became a fat-ass', the body was soft like a woman's or phallically shaped, which was often shown as castrated.

⁷⁴ Gabriel P. Weisberg, 'In Deep Shit: The Coded Images of Travies in the July Monarchy' *Art Journal*, Vol. 52, 1993, 36-40



22. Honoré Daumier, *Royalty in Decline*, 1834, 18cm x 20cm, lithograph.



23. Honoré Daumier, *Your cape's in pretty good shape!...* 1834, 25cm x 15cm, lithograph.



24. Honoré Daumier, *The Masks*, 1831, 29cm x 21cm, lithograph.

least by the courts. But *The Pear* becomes repeatedly used. The ones that are framed by insignia are meaningful in stretching the boundary Philipon set in his own court case (that it is *only* insignia, like crowns, medal etc. that can mark the effigy as an effigy). On top of this the pear is treated like the punishment *in effigio* in many of Daumier drawings, such as *Heave! Ho!... Heave! Ho! Heave! Ho!... 1832* (Figure 25).

MODERNISM AND CENSORSHIP

The *control* of the image mirrors the shift from absolute monarchy to disciplinary society. There is no doubt that these images were powerful and were seen as a serious threat to the stability and legitimacy of the July Monarchy. Courtly art had enjoyed a quasi-monopoly on the king's image, and the imaging of the State. The court maintained a phalanx of artists to image the July Monarchy but the new autonomous art became an unwelcome disruption.⁷⁵ There was a huge growth in the dissemination of images through journals, posters, and through the more autonomous art market.⁷⁶

The birth of the author is the corollary of the birth of censorship. This tale has been read as an insistence on the modern right of freedom of speech, where Daumier becomes the freedom fighter for modern autonomy. But what Daumier was gaoled for was more political and dangerous; the actual political threat has been diminished in historical accounts. Similarly, censorship has been read within its own logic of the disciplinary society through crimes of defamation, obscenity, or social corruption. In this threshold moment it is clear that the actual rights of the author were a corollary of the need to name and control the author.⁷⁷

⁷⁵ Robert J. Bezucha, *The Art of the July Monarchy: France, 1830 to 1848*, (Missouri: University of Missouri Press, 1990); Michael Marninan, *Painting Politics for Louis-Philippe: Art and Ideology in Orleanist France, 1830–1848* (New Haven: Conn 1988)

⁷⁶ Petra Ten-Doesschate Chu and Gabriel P. Weisberg, (eds), *The Popularization of Images: Visual Culture under the July Monarchy*, (Princeton: Princeton University Press, 1994)

⁷⁷ Michel Foucault, 'What is an Author?' *Language, Counter-Memory, Practice*, trans. Donald F. Bouchard and Sherry Simon (Ithaca, New York: Cornell University Press, 1977); Foucault names the law as his first characteristic of the 'author function,' 'the author function is linked to the juridical and institutional system that encompasses, determines and articulates the universe of discourses.' For the first time, he located the emergence of the 'Author' in the cultural context of the eighteenth century, arguing that 'the coming in to being of the notion of the "author" constitutes a privileged moment of *individualization* in the history of ideas.' 205. Moreover, he emphasizes that the idea of 'authorship' was neither natural nor inevitable, but represented only one possible means to the end of constraining the 'proliferation of meaning.' 213; see also Benjamin Kaplan's *An Unhurried View of Copyright* (New York: Columbia University Press, 1967)



25. Honoré Daumier, *Heave! Ho!... Heave! Ho! Heave! Ho!...* 1832, 26cm x 16cm, lithograph.



26. Honoré Daumier, *A Modern Galileo, And Yet it Continues Its Journey*, 1834, 23cm x 27cm, lithograph



27. Honoré Daumier, *The Republic: The Republic Feeding her Childern and Instructing them*, 1848, 73cm x 60cm, oil on canvas.

The philosophy of aesthetics and their categories of originality and individuality all feed into the legal framework of censorship. Martha Woodmansee conflated literary and legal perspectives on the notion of authorship through a sociological reading of the author in eighteenth century Germany.⁷⁸ Carla Hess has shown that in France, the idea of the individualistic 'author' as bearer of literary property rights was introduced as an instrument of monarchist repression, 'a legal instrument for the regulation of knowledge'.⁷⁹ The French revolutionaries later sought to 'dethrone the absolute author... and recast him, not as a *private* individual (the absolute bourgeois), but rather as a *public* servant, as the model citizen'.⁸⁰ Jonathan Gilmore writing about mid-nineteenth century France also saw a relationship between copyright protection and censorship; with copyright protection of lithographs in 1820, censorship laws were also instigated in tandem. The lithograph was seen as particularly dangerous in that 'working class' society could easily digest the satirical content of the lithograph.⁸¹ Until French censorship laws were abolished in 1881, the government censored drawings in advance of publication, but not the printed word. High art was on the other hand seen as opaque and non-threatening. It was not as yet covered by copyright protection or censorship.

I suggest that this special control of middle class art responded to the threat and monopoly of ideological control offered by and through the image. Philipon's journals were the perfect bourgeois art. Indeed part of the appeal of Philipon's journals, to connoisseurs who collected the prints, was the banal fact that paper was especially suitable for collecting.⁸² This popularity threatened the stability of government, which up until this point had had a monopoly on image making, particularly the image of the king. High art still was largely State-sanctioned through the academic control of commissions and the State control of the Salons. The image was, unlike text,

⁷⁸ Martha Woodmansee, 'The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the "Author"', 17 *Eighteenth-Century Studies*. 425, 1984; Mark Rose, *The Author as Proprietor: Donaldson v Becket and the Genealogy of Modern Authorship*, 23 *Representations* 51, (Durham: Duke University Press, 1988)

⁷⁹ Carla Hesse, 'Enlightenment Epistemology and the Law of Authorship in Revolutionary France, 1777-1793', 30 *Representations*, 109, 1990; Martha Woodmansee, *The Author, Art and the Market*, (New York: Columbia University Press, 1994)

⁸⁰ Hesse, 'Enlightenment Epistemology and the Law of Authorship in Revolutionary France, 1777-1793', 109. Before his death, Derrida published in *Cardozo Law Journal* that he came to law through his interest in authorship during this turbulent period between the Monarchy and the Republic. The Yale seminar from the seventies that Derrida gave on this subject seems at present lost.

⁸¹ Jonathan Gilmore, 'Censorship, Autonomy and Artistic Form', in *Art History Aesthetics and Visual Culture*, (New Haven and London: Yale University Press, 2002) 105-121

⁸² Childs, *Making the News*, 48

censored *before* the image was published. If the image was treated as knowledge, fact or satirical comment, like satirical novels, it would not have had this special treatment.⁸³ The caricature was controlled, even here at the birth of censorship and disciplinary statutory control, due to a fear of its *magical* power as much as any satirical knowledge that it produced.⁸⁴ As a response to the modern power of images Terdiman notes that the government countered with increased administration. The journalistic image was a successful subversive technique and difficult to control,⁸⁵ and as Terdiman shows, the French government started its own journal, *La Charge*.⁸⁶

A primary reason for the fear of the image was an irrational notion that drawing directly effected the world as in an Act, not as comment or rhetoric. When the French government requested the reimposition of prior censorship of drawings in 1835, the Minister of Justice, Jean-Charles Persil, argued that this request was constitutional, despite article 7 of the *Charter of 1830*, which guaranteed the 'right to publish' and declared that 'censorship can never be re-established.' The argument that Persil made directly connects with the shift from effigy to image as outlined above. Persil argued that the *Charter* provision applied only to the 'free manifestation of opinion' but not to 'opinions converted into actions [my emphasis].' He suggested that although opinions could be expressed in words, because they addressed 'only the mind,' drawings however, were 'when opinions were converted into acts.' As Persil continued, '[drawing] speaks to the eyes. That is more than the expression of an opinion, that is a deed, an action, a behaviour, with which Article 7 of the Charter is not concerned.'⁸⁷ Supporting Persil's argument, the chairman of the legislative committee, Paul-Jean-Pierre Sauzet, considered the government's proposal of pre-emptive censorship of images through reference to the king's body as sacrosanct. In reference to Philipon's depiction of Louis-Philippe as a pear he wrote: 'No measure is more needed by the situation and desired by public opinion [than] putting an end to these outrages that corrupt the spirit of the population in degrading with impunity the royal majesty'.⁸⁸

⁸³ The cartoon came out of the birth of the pamphlet and satirical writing. There is an argument that it is the visual example of this genre. The censorship laws do not follow this idea of direct parity.

⁸⁴ See Robert Goldstein, 'The Debate over Censorship of Caricature in Nineteenth-Century France,' *Art Journal*, 48:1 (1989: Spring), 9-15

⁸⁵ Richard Terdiman, *Discourse/Counter-Discourse: The Theory and Practice of Symbolic Resistance in Nineteenth-Century France*, (Cornell: Cornell University Press, 1985)

⁸⁶ *Ibid*, 156

⁸⁷ *Archives parlementaires, de 1787 a 1860*, Paris, Paul Dupont, vol 98 (1898), 258 quoted in Robert Goldstein, 'The Debate over Censorship of Caricature in the Nineteenth-Century France,' *Art Journal*, 48: 1 (1989: Spring), 9

⁸⁸ *Ibid*, 407

At the birth of censorship we witness a residual reliance on the laws of *lèse majesté*. Published in *La Caricature* at the time when Philipon was first sentenced to a gaol term in 1831, he writes:

Men of power, you want to hide your hideous nakedness under the royal mantle. You demand, shivering, *an asylum in the inviolability of the monarch* [my emphasis]. Well, you will be chased from the temple that momentarily serves you as a place of refuge and you will find us always at the door armed with a whip to lacerate you.⁸⁹

There is something in Daumier and Philipon's caricatures that still recognises the magic and exception of the king and his effigy. The king is the inviolable sovereign who must be imaged either as a peer or not at all, who stands at the limit of what can be transgressed or questioned. In the next part of the chapter I expand on this revelation. Daumier is not the transgressive modernist who hysterically calls out to the king; rather, Daumier approaches this subject via another mode of resistance. Only the king, following the logic of *lèse majesté*, can image himself. The State has a monopoly on the effigy. The effigy's job is to act as a visual master signifier, which interpellates the subject and assigns a symbolic order. Louis-Philippe attempted to use his body as a point in which monarchical and republican claims meshed. What Daumier and Philipon were able to do was break Louis-Philippe's ability to unify these claims to his body as the master signifier. They managed to keep the Republican master signifier separated and distanced from Louis-Philippe, stymieing the strategy of the State.

THE STATE, ART AND THE MIDDLE WAY

Louis-Philippe, born into a family of Regicides, was seen as a great hope. Delacroix's famous image, *28th of July: Liberty leading the People* 1830, suggests how liberty overthrew Charles X in the three glorious days of the July Revolution. But the violent hope of the July Revolution soon reified into the July Monarchy of Louis-Philippe. Even Delacroix's work, exhibited with great pride and solemnity in the 1831 Salon (and bought by the French Interior Ministry for the Musée Luxembourg), was secreted out of sight by 1832 due to a fear that it would incite sedition. In its stead, images that showed how the two warring parties could be brought together under the middle way were created. An exemplary piece is F E Picot's *July 1830: France Defends the Charter*, 1835.⁹⁰ The Charter, which Louis-Philippe – the self-styled Citizen King – agreed to sit between the two opposing parties: the masked republic (a phoney sovereign face) and the blind absolute monarch. Orléanist constitutionalism was the answer. It is the stellar work of the late Albert

⁸⁹ Philipon, *La Caricature* November 24, 1831

⁹⁰ Jonathan Ribner, *Broken Tablets: The Cult of the Law in French Art from David to Delacroix* (Berkeley: University of California Press, 1993). Chapter 4; for this image see page 73.

Boime that has most explored this notion of an art of the *juste milieu*.⁹¹ Paintings and sculpture were severely circumscribed by the policies and preferences of the French Academy and the regime of Louis-Philippe. Seeking to discourage the creation of large-scaled, politically tendentious subjects taken from Greek and Roman antiquity, the State and the Academy encouraged the exhibition of easel-sized pictures representing nationalistic, patriotic and familial themes from past and present history. This style would be called *genre historique* by the Academy. For some writers *genre historique* pre-dates the larger paintings of the worker and genre scenes in Realism. Sandra Petrey sees this style in the literature of the day as well. It is a 'hybrid style' of 'allegory and reality,' which ushers in the birth of Realism.⁹² Similarly, Michael Marrinan has made a very detailed study of the ideological control and money spent by the July Monarchy on commissioning works that fit within *genre historique*, or what Marrinan calls the 'history painting of the *juste-milieu*.'⁹³ Artists such as Ary Scheffer and Antoine-Louis Barye for example, sought to achieve a reconciliation of the 1789 revolution with restoration through freedom and order, democracy and stability, science and faith, progress and 'business-as-usual'. This meant that such cogent bourgeois businessmen as Louis-François Bertin, or Madame Moitessier (married to the wealthy banker Sigisbert Moitessier), could be painted by Ingres alongside the achievements of the First Republic and the victories of Napoleon. According to Boime, the art and politics of the July Monarchy endeavoured to blend the irreconcilables of French society.

In terms of the king's body there is a complexity that we have up to now glossed over. In the *juste milieu* the king's body did not represent the monarchy. The Citizen-King was trying to represent both political interests, republican and monarchical. The alliance with Laffayette was meant to smooth this transition and to give the king more republican legitimacy. In any case the king was chosen because his father was one of the few nobles who had voted for the execution of Louis XVI. The official imagery of the king followed this logic. Boime for example spends some time with Vernet's royal portrait, *Portrait du Roi*, 1847.⁹⁴ He quite literally has on both shoulders the tricolore of Louis XIV, with his sculpture in the background. Louis-Philippe's body embodies their fusion. What Boime suggests, is that Louis-Philippe intends to legitimize his rule so as not to be seen as a

⁹¹ Albert Boime, *A Social History of Modern Art: Art in an Age of Counterrevolution* (Chicago: University of Chicago Press, 1993)

⁹² Sandy Petrey *In the court of the Pear King: French culture and the rise of realism* (Cornell: Cornell University Press, 2005)

⁹³ Michael Marrinan, *Painting Politics for Louis-Philippe: Art and Ideology in Orléanist France*, (New Haven and London: Yale University Press, 1988)

⁹⁴ Boime, *A Social History of Modern Art: Art in the Age of Counter revolution 1815-1848*, 303

usurper and to link his family to the bourbons. At the same time he rides confidently out of the picture plane and into the future of France.⁹⁵

Todd Porterfield has also done some work linking the *juste milieu* strategy to the early rise of Orientalism. He sees the shift to Orientalism occurring as a way of having a common pride in France regardless of political persuasion.⁹⁶ Louis-Philippe commissioned many paintings based on the Napoleonic campaigns. Porterfield summarises the strategy:

Together they forged an official culture that provided a rationale for imperialism--based on images of France's moral and technological superiority--and an enduring project for Frenchmen of all political persuasions during an era of domestic instability. The allure of empire derived in part from its function as an alternative, surrogate, mask, and displacement of the Revolution.⁹⁷

So that it was an effort to sublimate the revolutionary violence and again to quilt the empire behind the king and a unified France, in relation to its proud empire and against the Oriental Other. Louis-Philippe raised the Obelisk of Luxor, in the Place de la Concorde, very early in his reign. Desperately Louis-Philippe tried to stitch the regime to a greater notion of French Imperial might. Boime also sees this process in action. Again in Vernet's *Capture of Smalah of Abd el Kader*, Boime sees exactly the same process that Barthes discusses in the famous Paris Match cover of *Mythologies*; the Oriental *too* is willing to fight bravely for France, for everyone is bound together under the imperialist banner.⁹⁸

Patricia Mainardi also reads the politics of the Salon on a whole as a response to *juste-milieu* politics. As the century progressed towards a modern autonomous art and away from the courtly art of the academy, there was tension between monarchist and the republican interests. In the Second Republic the compromise became a bifurcated system of annually opened free shows, as called for by Republican interests, and the less regular shows of historical monarchical academic painting.⁹⁹ Mainardi writes, 'By the 1820s it was assumed that liberals would support Romanticism, Constitutional Monarchists might or might not, and only Legitimists would continue to be as committed to classicism as they were to the *ancien régime*.'¹⁰⁰ While attention has already been

⁹⁵ *Ibid*, 303-304

⁹⁶ Todd Burke Porterfield *The Allure of Empire: Art in the Service of French Imperialism, 1798-1836* (Princeton, NJ: Princeton University Press, 1998)

⁹⁷ *Ibid*, 32

⁹⁸ Boime, *A Social History of Modern Art: Art in the Age of Counter revolution 1815-1848*, 351

⁹⁹ Patricia Mainardi *The End of the Salon: Art and the State in the Early Third Republic* (Cambridge: Cambridge University Press, 1993)

¹⁰⁰ Patricia Mianardi, *Art Journal*, Vol. 45, No. 1, Manet (Spring, 1985), 11-17, 11

paid to the impact of the *juste-milieu* on art history, the argument to follow is an extension of this scholarship.

THE *JUSTE-MILIEU* AND THE STRATEGY OF UNQUILTING

From the caricaturists point of view the *juste-milieu* was a travesty. There were during the period of 1830-1835 two major parties on the left. The *resistance* party and the more radical *mouvement* party. The Caricaturists, including notably Charles Philipon, were of the *mouvement* party.¹⁰¹ What was at the heart of the tension between the two opposing parties was that the Orléanists, the *resistance* party, was for reasserting authority under *juste-milieu*. The *mouvement* party wanted to reassert the position of revolutionary ideals of liberty and the republic. The *juste milieu* was caricatured in many ways in relation to this tension. The Orléanist King-pear was pitted against the republican virtues. The pear itself has been seen as a marker of the liquid, unstable shifting of the Orléanist position; the pear is like a water drop before the splash. Similarly it was seen to be a soft, impotent skinned penis. Jules David's *L'escamoteur* shows the king as an illusionist who, with a slight of hand called '*juste-milieu*', is able to make the revolution and liberty disappear.¹⁰² Or in a scatological piece of Travies, *Juste Milieu se Crotte* (*The Juste Milieu Dirties Itself*, July 1832) the king-pear is seen as a faeces pot carried by the poor (represented by Harlequin and Pierrot). In Daumier's *Juste Milieu*, the king-pear hides the politicians under his robe, concealing their sins under the royal cloak. Similarly Philipon in his *Le Juste Milieu*, 1830 has a pear with the tricolor hat, unsuccessfully hiding a Bourbon white cravat and *ancien régime* royal garb: the 'oxymoronic citizen-king.'¹⁰³

The major point is that what the caricaturists were able to do, and here Daumier and Philipon were at the forefront, was to keep the two master signifiers separate. They did not allow the king to quilt the terms of the republican movement onto the body of the king. First the king was always represented as the enemy of these virtues, whether plastering over it, bursting bubbles, or shitting on them. On one level this is a hysterical response. For Daumier and the others the king was not castrated enough and was too corrupt. More boldly they were calling for the complete overthrow of monarchical government. As a member of the *mouvement* party Philipon wanted a reassertion of the Republican ideals. They stopped the conflation of values seen in the *juste milieu*. Beyond this understanding of the bifurcated politics of the *juste milieu* there was a more active strategy. Many cartoons insistently kept the king's body apart from those virtues of the republic he

¹⁰¹ David Kerr, *Caricature and French political culture, 1830-1848: Charles Philipon and the illustrated press*, (Oxford: Oxford University Press, 2000), 70-73

¹⁰² Originally published in *La Caricature*, 13 May 1831. Discussed in *Ibid, Caricature and French political culture, 1830-1848: Charles Philipon and the illustrated press*, 75

¹⁰³ Boime, *A Social History of Modern Art: Art in the Age of Counter revolution 1815-1848*, 324-325

wished to accept. The effigy of the Republic or Liberty, as seen in Delacroix's rousing image, was kept very much apart from Louis-Philippe. The number of these images in Daumier's oeuvre is impressive but it will suffice to focus on a few. Starting in reverse *The Main Actor in a Tragicomic Imbroglia* (29 March 1835, *La Chairvari*) shows the bourgeois-king gradually turning again into a king. All the trappings of the bourgeois king are falling away to reveal an absolute monarch: the umbrella becomes a sceptre, the top hat with cockade becomes a crown, the coat becomes an ermine cape. So although there is a doubling of the *juste milieu* the king is unable to reconcile the two positions. It was this period in the king's reign that the press laws became harsher after the assassination attempt under the September Laws. The image can be seen as imaging the failure of the regime to adequately create consensus between the Republican and Monarchical positions. Another late work during this period was *Posthumous Sentencing*, (*Le Charivari* 1 March 1835), where the two master signifiers are placed on a scale; the Pear is outweighed by the Republican Phrygian hat. The two master signifiers – Monarchy and Republic – are shown as two images that must be balanced but are not.

In other images the two are shown as outright enemies. Looking at *Design* by Grandville (J.-I.-I. Gérard) and Bernard-Romain Julien, lithograph by Becquet, 'Barbe bleue, blanche et rouge' (Blue, White and Red Beard), (*La Caricature*, April 11, 1833). The scene is made obvious by a prosaic caption. The commentary explained: "'It's Louis-Philippe about to slaughter Constitution...'" The Press leans out of her tower holding two republican papers, *La tribune* and *Le national*. Constitution calls to her: 'Press, my sister, don't you see anyone coming?'—'I see two knights riding at a gallop carrying a banner; it's the banner of the Republic.'" Louis-Philippe is seen as the enemy of the Press but more importantly the enemy of the Republic.

An example of how the Republic is an alternative and heroic master signifier that may come 'to the rescue' at any moment is fantastically suggested by Daumier in *A modern Galileo, And Yet it Continues Its Journey*, (*La Caricature*, 6 November 1834) (Figure 26). A republican prisoner sits chained but alert in a prison facing a grave judge (who resembles Persil). Between the two figures a scepter of freedom fly's onwards unabated and into the future, on it are the dates 1832, 1833, the present, 1835, and 1836. It seems to emanate from the prisoner to attack the present legal position. So where for example Daumier's *Rue Transnonain, le 15 Avril, 1834*, shows the horror of repression and gives the viewer information regarding State violence, this image works on the level of the master signifier. The master signifier represents either liberty, Freedom or the Republic. *France at Rest* (*La Caricature* 28 August 1834) makes this connection clearer. Behind a sleeping Louis-Philippe the Republic is visible with her hands tied. There is the totemic cockerel without its feathers. Everything is in a state of hiatus. The king does not rule but the Republic is downcast and shackled. This image has almost a pendant in 'Where are we going? What's going to

happen? There's a volcano in our path... the abyss of revolution is about to open at our feet...The ship of state has gone dead in the water because of this surfeit bad feelings'. Two men are in front of Aubert's shop, among the images is Philipon's four pears. Finally the republic is separated out in one Daumier's final political cartoons, *Looks like it was a lot of bother to have us killed!* (*La Caricature* 27 Aug 1835). This should be read in relation to Delacroix's liberty as its antithesis. The three heroes of July 1830 survey the scene, watching innocent civilians killed, with irony and sadness. So the images I have chosen to focus upon all present the Republic as separated from the king, or the present Regime. The way to read these images is through the master signifier. Daumier refuses to let the two meet, to let the king quilt the ideas to his own effigy. It is this action that gives Daumier's work its importance and strength. The work becomes not an act in Persil's sense but connects to what Žižek has called an Act. Žižek suggests; 'This is the key point: an act is neither a strategic intervention *into* the existing order, nor its 'crazy; destructive *negation*; an act is an 'excessive', trans-strategic, intervention which redefines the rules and contours of the existing order.¹⁰⁴ What Daumier, and the other caricaturists, were able to do between 1830 and 1835 is to keep the political field open so that Louis-Philippe was unable to take the authority of the Republican position to his side. By keeping the Republic separated it always kept the option open for the Republic 'to come'. The Republic was the little fairy that was not obvious but nevertheless there in the prison, it was shackled behind the king but waiting. It is for this reason that finally in 1835 the crack down was so severe. The act of Daumier and the others was so successful at keeping the revolutionary field going.

In light of the images discussed above it is worth looking back again on the *Gargantua* as a revolutionary act. It seems hysterical (in a Lacanian sense), producing information and knowledge that 'The king is selling titles and favours,' and that the 'government is corrupt.' It is also hysterical in that it finds the king's body repulsive and 'not castrated enough' (i.e. not purely symbolic as a king should be). Perhaps it is the government of Louis-Philippe, who understood the image best by seeing it as treasonous libel or, in French terms *lese majesté*. What is disguised in the image is the little fairy of the Republic and indeed just near the bucket on the ground, among the common people, a small woman looks away, wearing a Phrygian white cap. In the political circumstances of the time, merely a year or two after the new regime began, even Delacroix's liberty was seen as seditious. The mistake has been to look at Daumier through the caricature of our own time. In this image it is not the same as merely saying 'President Bush is Nepotistic', it would be the equivalent of suggesting that democratic capitalism, as an ideology is wrong, illegitimate and should be overthrown. The art historians also discuss the effect of the censor, in contemporary terms such as the freedom of the press. The issue of Daumier's early work is not one of free speech, as a modern right, but of regime change and revolution; the censor is the regime (in a state of

¹⁰⁴ Rex Butler, Žižek: *Live Theory*, 145

emergency). I am reminded of Frantz Fanon discussing the ability of the storytellers in Algeria to raise a unified revolutionary body: 'The epic, with its typified categories, reappeared; it became an authentic form of entertainment which took on once more a cultural value. Colonialism made no mistake when from 1955 on it proceeded to arrest these storytellers systematically'.¹⁰⁵ Similarly, Louis-Philippe made no mistake in his strict censorship. In the end, the caricaturists were proved correct and the regime did end because the consensus was never quite reached between these two broad factions. 1848 marked the end of the monarchy.

THE REPRESSED RISES AGAIN

In 1848, when the July Monarchy ends, Daumier shows through his work that it is the Republic that has been repressed the whole time and in whose name he was gaoled (not for some mere artistic autonomy). The work *Dernier Conseil des Ex-ministres*, was drawn as soon as the Regime was changed. The Republic bursts through the door with a bright light behind her. At the table of State with papers and pen still on the table, the ministers of Louis-Philippe's regime scramble to retreat, like moths uncovered behind a curtain.¹⁰⁶ Although Baudelaire (and later modern teleology) preferred the 'modern' satirical works of lawyers, peasants, and the bourgeois drawn from life, it was the gaoling for *lès majesté* that made him a hero of the Third Republic. In his 1878 retrospective his effigy of the Republic hanging on the wall, Daumier was able to say that he had been gaoled for destabilising the Monarchy, for opening the field in some way for the Third Republic to come into being almost fifty years later. So in Daumier's work the two effigies of both the Monarch and the Republic battled out briefly between 1830-1835. The field was successfully closed in 1835 through censorship backed up by intense violence. But for five years Daumier's works were the equivalent of the Lacanian Act. They showed the possibility against the running order of the Orléanist monarchy. Not in a hysterical voice but as a revolutionary calling for the Republic. In 1848, when the revolution finally did come and the Republic again stopped *becoming*, Daumier again imaged the republic as the Marianne of the Second Republic. *Lèse majesté* or treason actually marks you as the emancipatory outlaw. Their crime was the imagining of overthrow.

¹⁰⁵ Frantz Fanon, *Wretched of the Earth*, (Michigan: University of Michigan, 1965)

¹⁰⁶ Loys Delteil, *Honoré Daumier: The Early lithographs*, (San Francisco: Alon Wofsy Fine Art, 2005) xxix. Loys Delteil quotes Michelet on *Dernier conseil des ex-ministres*: 'It is not only your verve that strikes me, it is the singular lucidity with which you state the question. I recall another sketch in which you made even the dullest understand the rights of the Republic. She returns *home*; she finds thieves at her table who, when they see her, fall over backwards. She has the force and the assurance of the *lady of the house*. There she is defined...she alone is *at home* in France'. xxix

Indeed in 1848, when the regime finally came to an end, and in the first months of the Second Republic, the provisional government organised a competition to image 'The Republic'.¹⁰⁷ Daumier entered with *Sketch for 'The Republic': The Republic Feeding her Children and Instructing them*, 1848 (Figure 27). Courbet and François Bonvin's encouragement for Daumier to compete proved worthwhile, and this effigy was State sanctioned. In 1878 this was the only effigy Daumier exhibited at his retrospective and was well received at that time as a reassertion of Republican values in the Third Republic; the exhibition of this work was a visualised version of the revolutionaries' demand, lead by Léon Gambetta, that the 1848 Republic be restored.¹⁰⁸ Although there was a Royalist majority they could not restore a Monarch to the throne.¹⁰⁹ The Republican Constitutional Laws were passed in 1875 that proclaimed France would from then on be a permanent Republic.¹¹⁰ The birth of the assured Republic coincides with Daumier's retrospective (and Courbet's death) in 1877. Both artists had lived their artistic lives through both Republican and Monarchical governments, through many revolutions and political tensions in France. The feeling at this period is well summed up in the *Punch* Cartoon, 27 October 1877, *A Decided Preference*, where a Marianne finally puts on her Republican garb for good. This image illustrates the end to an oscillation between the Monarchical and the Republican master signifiers where finally settles on the Republican democratic master signifier.

¹⁰⁷ Sarah Symonds, *Daumier*, (Oresko Books, 1979) 46

¹⁰⁸ Within a day of Napoleon III's letter (3rd September) disclosing his capture, the mob invaded the Assembly. The Assembly agreed to return to the Republic and the Government of National Defence was founded with Gambetta as Minister of the Interior.

¹⁰⁹ They had wanted the Comte de Chambord, the grandson of Charles X to restore again the Bourbon line but as a staunch conservative he had refused to wear the tricolore and wanted the white Bourbon flag reintroduced; this small concession was a deal breaker. McMahan and the royalists resolved to wait patiently for the elderly Chambord to die when the grandson of Louis-Philippe would be next in line to the throne. The royalists ran out of time. It took Gambetta another few years to claw back a Republican majority in the assembly after the bloody Communards, which he gradually did through twenty-nine by-elections between 1873-1875.

¹¹⁰ This was won by only one vote. It is from this point that France's Constitution derives. It was a two house system of a Chamber of Deputies and above this the Senate. Both houses voted the President in for a seven-year term. The President became a figurehead as in the English system, which was not originally intended. Perhaps the final birth pang was after President McMahan, supported by a royalist senate, dissolved a newly elected Chamber of Deputies in 1877, mainly because he saw it as too Republican. The Chamber was returned with a larger Republican majority, two years after McMahan resigned.

CHAPTER 5: COURBET AND THE NUDE REPUBLICAN MASTER

Carla Bruni: The New Jackie O? How France (and Its President) Fell for Its Enchanting First Lady: Liberté, Égalité, Nudité¹

My love life is terrible. The last time I was inside a woman was when I visited the Statue of Liberty.²

It will be a long time before we agree on the true sense of the word 'democracy'!³

[They] call me 'the socialist painter.' I accept that title with pleasure. I am not only a socialist but a democrat and a Republican as well—in a word, a partisan of all the revolution and above all a Realist ... for 'Realist' means a sincere lover of the honest truth.⁴

DUELLING MASTERS

In the work of Courbet, the *genre historique*, the form invented to approximate *juste milieu* values (part bourgeois, part monarchical), found its fullest expression. This chapter contains a close analysis of one work, *The Artist's Studio: A Real Allegory summing up seven years of my artistic and moral life (The Studio)*, 1855 (Figure 28). A similar shift to that discussed in Chapter Four occurred during the early years of Louis Napoleon's reign, from the hope of the 1848 revolution to Republican despair over the coup d'état of 1851 and the crowning of the President as Emperor Napoleon III. It is no coincidence then that Courbet chose the 1855 Exposition to create his own ideological masterpiece, which I will argue is Republican, seditious and politically emancipatory. This chapter relies on the definitive reading of the painting by Helen Toussaint from 1977.⁵ Toussaint's reading, which has been largely accepted by art historians, recognised the characters on the left hand side of the painting less as types and more as portraits of actual historical figures. Most importantly, the figure of the 'hunter' was seen as the king's effigy, Napoleon III, thinly disguised.

¹ *Vanity Fair*, September, 2008, (cover page caption).

² Woody Allen, *Crimes and Misdemeanours*, Metro Goldwyn Meyer, 1989.

³ Gustave Courbet, letter to the Government of National Defence, Paris [October 5, 1870] found in Petra ten-Doesschate Chu, *Letters of Gustave Courbet*, (Chicago: University of Chicago Press, 1992) 392

⁴ Quoted in Petra ten-Doesschate Chu, *Letters of Gustave Courbet*, 97

⁵ Helene Toussaint, *Gustave Courbet [1819-1877]*, exhibition Catalogue, Paris, Grand Palais, and London, Royal Academy of Arts, 1977-1978



28. Gustave Courbet, *The Artist's Studio, A Real Allegory of a Seven Year Phase in my Artistic and Moral Life*, 1854-1855, 361 cm x 598 cm, oil on canvas.

This reading was further theorised by Klaus Herding.⁶ The Toussaint/Herding analysis has Courbet as the central fulcrum of the picture, exhorting the ruler to find a peace with other nations of the world during the Exposition of 1855. The painting thus becomes an alternative 'king's portrait.' Read in relationship to the works of Daumier, *The Studio* is a large, painted caricature and as in the Daumier cartoons the Monarch and the Republic are brought together; in an original reading I see the nude 'model' as a disguised effigy of the Republic or Marianne. This revelation counters other readings that emphasise the modern genius of Courbet and *The Studio* as a metapicture for the autonomous artist. The issues of Louis-Philippe's rule had followed the French into the Second Empire. In Courbet's works we see a duel between the king's monopoly, as the agent within a master discourse, to give political meaning to the image and, another's right, expressed as both the artist's autonomy and also the Republican. More recent scholarship suggests that perhaps Courbet was not as arrogant and self-centred as he proclaimed – there is evidence that illustrates Courbet was the servant of the Republic and its politics.⁷

Previous readings of the painting are seductive and sound yet are founded on the modernist belief that the artist is central and autonomous. What if we see Courbet as an early modern author, still within the master discourse of the absolute ruler, who is a servant to the political ideology of the day? What if he is merely a painter of effigies, a sovereign portraitist? The reading of the painting as an image of the Republic also suits its framing, in the context of Courbet presenting his Pavilion of Realism at the same time as the great Exposition of 1855. In countering the Exposition, Courbet himself created a theatre, 'a comedy', which was not only the clowning reversal of the State-sanctioned paintings of the Exposition but was its Republican other. There is not enough time to dwell on the ideological underpinning of the Exposition, although a few of the royal portraits will suffice.⁸ The effigy maker of the Second Empire was primarily Franze Xavier Winterhalter. Having painted for Louis-Philippe, he was also the favourite of Princess Eugenie. The masterpiece painted for the Exposition of 1855 was *The Empress Eugenie Surrounded by her Ladies in Waiting*, 1855. The gleaming dresses represented the wealth of Napoleon III.⁹ The image of

⁶ Klaus Herding, *Courbet: To Venture Independence*, (New Haven: Yale University Press, 1991)

⁷ Petra ten-Doesschate Chu, *The Most Arrogant Man in France: Gustave Courbet and the Nineteenth Century Media Culture*, (Princeton University Press: 2008); his views are consistently political and leftist, the fact that he joined the Commune at such a high administrative level is characteristic of his general political disposition.

⁸ See Patricia Mainardi, *Art and Politics of the Second Empire: The Universal Expositions of 1855 and 1867*, (London and New Haven: Yale University Press, 1990)

⁹ Albert Boime *Art in an Age of Civil Struggle, 1848-1871* (Chicago: University of Chicago Press, 2008) 683-

Napoleon III for the coronation also brought back many monarchical symbols lacking in the royal imagery of Louis-Philippe. I note this to direct the viewer to the reality of the Exposition of 1855 as both the birth of a certain modernity of the Second Empire but also the swansong of a pre-disciplinary society, absolute monarch.

Courbet, however, was presenting a different ideology, the ideology not of a new Napoleon, but of a new gleaming Republic. The monopoly on the State-Sanctioned ideology was challenged by Courbet, the self-professed 'most arrogant man in France' and a 'government' in his own right. The whole exercise of the Courbet pavilion was to proclaim independence and autonomy.¹⁰ The revisionist historians, while seeing some social and political content, still worked within a framework that Realism was a modern movement with an autonomy removed from the State.¹¹ Despite its transgressive status, Courbet's work was highly influenced by the State-sanctioned reception of art in the Salon. The necessary consequence of reinstating the Republic in an analysis of *The Studio* is that the autonomous artist, the portrait of Courbet, is decentred. Now the central group becomes the landscape, Courbet and Marianne. The painting becomes about the mode in which the subject/artist is the servant of, and subjectivised by the Marianne figure. In this way Courbet is the Republican 'Winterhalter' of 1855.

684; Boime even suggests this insinuated to French society that Napoleon III was sleeping with the ladies in waiting.

¹⁰ In a particularly interesting reading Patricia Mainardi sees the commercial autonomy of the 'solo exhibition' as another blind spot in traditional art theory. Patricia Mainardi, 'Courbet's Exhibitionism,' *Gazette des Beaux-Arts*, December 1991, 253-266

¹¹ Linda Nochlin, *Realism (Style and Civilizations)*, (London: Penguin, 1972), and *Realism and Tradition in Art, 1848-1900* (New Jersey: Prentice Hall College Division, 1966); Theodore Reff, ed., *Exhibitions of Later Realist Art* (1981); James H. Rubin, *Realism and Social Vision in Courbet and Proudhon (Princeton Essays on the Arts)*, (Princeton: Princeton University Press, 1981). Courbet was such a promethean artist that Picasso had a pair of green striped pants made to match those of Courbet's in *The Studio*. Linda Nochlin reports this fact but cannot place where she heard it. Linda Nochlin, 'Courbet's Real Allegory: Reading The Painter's Studio,' *Courbet Reconsidered*, ed. Sarah Faunce and Linda Nochlin, (Yale University Press, 1998). A suggestion may be in Picasso's own poetry where he writes of 'Goya' wearing a 'pair of striped pants like Courbet and me,' in Pablo Picasso, *The burial of the Count of Orgaz & Other Poems*, trans. Jerome Rothenberg, Pierre Joris (Exact Change, 2004) 292

COURBET, *THE STUDIO* AND ICONOLOGY

Revisionist readings of Courbet re-established Realism as a politically and socially aware art, an art for the people by the people.¹² However the vestiges of Greenbergian formalism still loomed large, and in all the readings Courbet is the central figure who represents personal and artistic freedom and the political power of art. Linda Nochlin has made a Fourierist allegory based on notions of 'work', capital, labour and talent.¹³ This reading is heavily reliant on the presence of Proudhon and Francois Sabatier, who were both influenced by Fourier. James Rubin saw *The Studio* as an allegory of Proudhonian notions of work, nature and the artist.¹⁴ Alan Bowness follows this thread that it is about artists 'declaration of independence'.¹⁵ A turning point in the analysis of this painting came when the 'hunter', the most prominent figure on the left side of the composition was identified as Napoleon III. Helene Toussaint first suggested this reading for the centenary exhibition catalogue in 1977-8.¹⁶ Contemporary references to the figure used the term 'poacher' [*braconnier*], which alluded to Louis-Napoleon's poses as a reformer prior to his election in 1848 and the 'stealing' of the government in the coup d'etat of 1851.¹⁷

The scholarship surrounding *The Studio* have all had to come to terms with the reading of the left side figures by Helene Toussaint. Nochlin and Rubin, most famously, have revisited their initial readings, though they maintain that their prior readings still have import in the area of sociological analysis. Most recently Albert Boime has also disregarded Toussaint's iconological discoveries.¹⁸ Following this reading, Herding produced what has now been received as the definitive iconological analysis of the painting, which I note squares with the discourse of the master and an image that commands.¹⁹ Based on the importance of Napoleon III, Herding sees the work as an *adoratio ad principem*, or an exhortation to the ruler calling for reconciliation and a return to

¹² T.J. Clark, *Image of the People: Gustave Courbet and the 1848 Revolution* (California: University of California Press, 1978); Sarah Faunce and Linda Nochlin, *Courbet Reconsidered* (Yale University Press, 1988)

¹³ Linda Nochlin, 'The Invention of the Avant-Garde: France 1830-1880', in *Avant-Garde Art*, ed. Thomas B Hess and John Ashbery (New York: Macmillan, 1967, 1968), 3-24

¹⁴ James Rubin, *Realism and the Social Thought in Courbet and Proudhon* (Princeton: Princeton University Press, 1980)

¹⁵ Alan Bowness, *Courbet's 'Atelier du Peintre'*, Fiftieth Charlton Lecture on Art (Newcastle upon Tyne: University of Newcastle upon Tyne, 1972), 30

¹⁶ Helene Toussaint, *Gustave Courbet [1819-1877]*, exhibition Catalogue Paris, (Grand Palais, and London, Royal Academy of Arts, 1977-1978)

¹⁷ *Ibid*, 145. Worth adding here was Napoleon III's devotion to dogs, which was widely known and often resulted in him being symbolised by the jackboot in cartoons and caricatures.

¹⁸ Albert Boime, *Art in an Age of Civil Struggle, 1848-1871* (Chicago: University of Chicago Press, 2008)

¹⁹ Klaus Herding, *Courbet: To Venture Independence*, (Yale University Press, New Haven, 1991)

balance. In this the artist is the King's equal, teacher and wise man. Before continuing with this painting, perhaps it is timely to dwell on why there was such a blind spot for art historical analysis in the first place. The first and perhaps simplest reason was that there was a classic red herring in the form of a letter from Courbet to Champfleury. In this letter the left hand side was described as the 'world of commonplace life.'²⁰ Fried uses this letter to expand on the notion that not all empirical data is useful.²¹ The second reason is a reliance on art historical iconography to the expense of the link between more popular culture such as cartoons and caricature. Following Toussaint's analysis Linda Nochlin suggests that the painting can be seen as a 'political cartoon writ large.'²² Nochlin, however, dismisses her own intuition and describes the import of Toussaint's analysis:

Most startling of all, given Courbet's supposed animosity to the Second Empire and all that it stood for, as well as the fact that direct representation of the Imperial person in cartoons and caricatures was forbidden by the regime, was Toussaint's convincing identification of the booted moustachioed figure with the hunting dogs who dominates the left foreground as a covert representation of Emperor Napoleon III himself.²³

It should not be startling because it is in no way a celebration of Napoleon III. Courbet represented the figure of the king disguised because of the strict *lèse majesté* laws and in argument against them. The revolutionary import of the work was dismissed by Nochlin. As I will expand below even the Herding/Toussaint's analysis suffers from a heavy traditional iconographic approach. The other major blind spot is centred in the sixties, where Courbet was saturated in a Greenbergian-inspired formalism of non-engagement with political matters. Indeed Fried would have the Napoleonic painting in some way cut from his canonical story of the movement of western art:

It is as though the rise of Napoleon and the need for propagandist painting not only mobilized a generation of painters (led by the older David, who from the first lent his talents to the Empire)

²⁰ Toussaint suggests that Courbet's letter to Champfleury was purposefully dissembling (274). In another work Toussaint also suggests though that there are clues in the letter for those who have a knowledge of the slang of the period. See Helene Toussaint, 'A propos d'une Critique', *Les Amis de Gustave Courbet Bulletin* 61 (1979), 10-13

²¹ Michael Fried, *Courbet's Realism*, (Chicago: University of Chicago Press, 1992). Fried writes, 'Courbet's letter to Champfleury thus epitomises the nondecisiveness of exactly the sort of "objective" evidence that positivist art history likes to think would settle all questions of interpretation.' 323

²² Nochlin, *Courbet Reconsidered*, 20

²³ *Ibid* 20

but also placed in abeyance the entire Diderotian project, thereby staving off for more than a decade a representational crisis, the worst of which was yet to come.²⁴

For Fried, Courbet becomes the first to join the Diderotian project of absorption (not command). Although it is true that full monarchical symbolism never returned after the regicides of 1649 and 1793, many of the rituals of sovereignty were observed, as we saw in the previous chapter. Courbet's work must also be placed in the complex matrices of patronage and control in the Second Empire.²⁵ The readings also place too much emphasis on the Romantic notions of Courbet that he was a free and autonomous modern artist. Both Nochlin and Fried seem to dismiss Herding's analysis of the artist as a redemptive force.²⁶ Fried focuses on the portrait of Courbet and the 'representation of the act, the immediate context, and the emerging artefact of representation.'²⁷ For Fried the source of truth and force is the painting itself; Fried sees the work as a self-referential metapicture not directed towards ideology. Nochlin had also argued in an earlier text that:

It is the artist, Courbet, of course, who plays the central role in the monumental *Painter's Studio*, yet he envisions his role as one both socially more humble and ideologically more grandiose than the usual conception of the term. Courbet sees himself at once as the earthy matter-of-fact painter, a popular craftsman working with tools of brush and canvas and at the same time, in the iconographic context of the *Studio*, as the Harmonian Leader...²⁸

In relation to these readings the Toussaint/Herding reading does displace the centrality of the artist but turns the work into a duel between king and artist. This displacement still maintains the fiction of the artist sovereign. The duel is really between the king and the Republic.

THE KING AND THE ARTIST: A POLITICAL ALLEGORY

The Toussaint/Herding reading has a number of issues from which I borrow. The painting is seen as a political statement or cartoon based on national effigies. Furthermore, the artist is seen to be exhorting some values based on natural rights and nature. The 'model' becomes herself a muse or mediator for truth. Toussaint sees the painting as Louis Philippe's *genre historique*, and it was

²⁴ Fried, *Courbet's Realism*, 1992, 22

²⁵ See Paul Crapo, 'The Problematics of Artistic Patronage under the Second Empire: Gustave Courbet's Involved Relations with the Regime of Napoleon III,' in *Zeitschrift für Kunstgeschichte* 58 Bd., H. 2, 1995 241- 261

²⁶ Nochlin, *Courbet Reconsidered*, 20-21. It is Fried who writes 'of his own art by virtue of its special relation, emblematised by the easel, to what Herding calls "primary nature"'. Fried, *Courbet's Realism*, 158

²⁷ Fried, *Courbet's Realism*, 1992, 158

²⁸ Linda Nochlin, *Realism*, (London: Penguin, 1971) 130

common to paint genre pieces as historical and political points at the scale of history painting; although by any standard *The Studio* was impressive in scale. It is relevant to also connect the painting to an earlier Courbet work, *Firemen Running to a Fire*, 1850-51, which Toussaint reads as a political comment on Napoleon III.²⁹ Crapo also reads these two paintings together and suggests that whereas the first painting is a propaganda piece for Napoleon III, Courbet's 1855 *The Studio* is highly critical.³⁰ His major proof is the disguised portraits and national effigies. Herding goes into great detail to describe the commonplace occurrence of such 'disguised' meaning. Firstly, in similar vein to those exercised by Daumier, the political necessity of disguise, especially in regard to the king's effigy, was tantamount. Although a number of new journals started in this period Louis Napoleon, as President, forbade offences against his person in a bill of July 17, 1849 (Article 1). With the Coup d'Etat in December 2 1851, Emperor Louis Napoleon again took control over the press. Police seized press offices around the country. A Presidential Decree in February 1852 saw a return of similar laws to the July Monarchy's September Laws. Disguise was a common strategy among cartoonists and artists. Daumier himself invented the Ratapoil character who was a thug who showed more than a passing resemblance to Napoleon III. Goldstein succinctly sums up the strategy:

The techniques of evading or circumventing the censorship law were both common and more inventive than those of outright defiance. One common such technique was the use of the so-called 'Aesopian language,' that is the expression of political commentary in a form which was not direct enough to run afoul of the press laws, such as disguising political criticism as social or literary comment or making points referring to the current political regime in the guise of superficially camouflaged remarks about another.³¹

Goldstein goes further in suggesting that such techniques were accepted by French readers who 'were willing to invest their time and imagination into deciphering his [Gills] works.'³² Herding also

²⁹ Toussaint, *Gustave Courbet 1819-1877*, 110-114. This argument is continued in 'Le réalisme de Courbet au service de la satire politique et de la propagande gouvernementale', *Bulletin de la Société de l'Histoire de l'Art français*, Année 1979, Paris 1981

³⁰ Crapo, 'The Problematics of Artistic Patronage under the Second Empire: Gustave Courbet's Involved Relations with the Regime of Napoleon III,' 250. He puts emphasis on this particularly critical approach towards two figures. Two sinister figures, Emile de Girardin (symbolising the pro-Bonaparte press and the 'priest' Louis Veuillot, are represented as the worst of the conservative wing of the Church.

³¹ Robert Goldstein, 'Fighting French Censorship, 1815-1881', *The French Review*, Vol 71, No. 5 (April 1998), 785-796, 791

³² Goldstein, 'Fighting French Censorship, 1815-1881', 795

links the genre to *enigmata*, where there is a secondary meaning that must be deciphered as part of spiritual education.³³

Toussaint saw that Courbet's *The Studio* was populated by recognisable contemporary figures beside Napoleon III. The Jew was the financier Achille Fould who had been the Minister of Finance between 1849 to 1852. The old clothed man was Persigny, a close friend of Louis Napoleon, and the Italian was the military figure Giuseppe Garibaldi. The scythe man was Thaddeus Kosciuszko, a revolutionary figure of the Polish freedom movement,³⁴ and the labourer was Michael Bakunin, standing for Russian socialism. The Hungarian is Lajos Kossuth. These represent international insurrectionary movements, which formed the oppositional context for Napoleon III's government. Of the other nations present, the strongman, source unidentified, seems to represent Turkey; the clown refers to Asia; the Irishwoman and her child seem to allude to the British Isles and the conditions brought about through the Industrial Revolution, including the recent Irish potato famine. The 'romantic cast-offs' by the Emperor's feet recall Louis Napoleon's membership, as a young man, to the Carbonari, when he fought to liberate Italy from Austria.³⁵ Fintan Cullen identifies Ireland also as a national figure, if not merely a generalized representation of Britain's poor and downtrodden.³⁶ In relation to my reading of the central nude as an alternative sovereign effigy, there is another figure of the Republic that Toussaint isolates on this left hand side. The presence of the old man, a Republican guard, represents the values of the Republic. Toussaint identifies him as possibly Lazare Carnot, the revolutionary politician and military leader who was one of the original Republicans voting for the execution of Louis XVI. Petra ten-Doesschate Chu sees this figure as Antoine-Claire Thibeaudeau, the longest surviving regicide.³⁷ Exiled until 1830, Napoleon III named Thibeaudeau senator and legion d'honneur. Following this, perhaps Courbet shows that Thibeaudeau is one of the Emperor's men. It is notable in this context that Courbet refused his legion d'honneur from Napoleon III. The figure of the old Republic is nostalgic and compromised.

The right hand side figures, which Courbet in the Champfleury letter describes as 'friends' have been known for some time and are clear portraits. It is a common assumption, and relevant to my

³³ Herding, *Courbet: To Venture Independence*, 4

³⁴ Toussaint mentions that the socialist is Alexander Herzen (256-57), a colleague of Proudhon, but her position was clarified in conversation with Linda Nochlin in *Courbet Reconsidered*, n. 15, 223

³⁵ Crapo, 'The Problematics of Artistic Patronage under the Second Empire: Gustave Courbet's Involved Relations with the Regime of Napoleon III,' 250

³⁶ Fintan Cullen, *Visual Politics: Representation of Ireland: 1750-1950* (Cork: Cork University Press, 1995), especially Chapter 4.

³⁷ Petra ten-Doesschate Chu, *Letters of Gustave Courbet*, 134

reading, that this side do represent 'friends' and more broadly the art and politics of the Republican left. There is Champfleury himself, the champion of Realism in prose, Max Buchon the Realist poet and Republican exile,³⁸ and the revolutionary thinker Pierre Proudhon. Even the representatives of other arts were also politically sympathetic to Courbet. Alphonse Promayet was a musician who set Courbet's ballads to music.³⁹ Charles Baudelaire and the two 'free' lovers seem to represent the values of love, poetry and freedom. The bourgeois couple have been read as patrons of Courbet's art.

Klaus Herding, following Toussaint's empirical and iconographical work sees the painting as an exhortation for the reconciliation between contending nations and parties. Considering that the forum was to be the Exposition Universelle des Beaux-Arts to be held in 1855 this seems like a logical conclusion. Rejected from the exhibition, Courbet mounted his own Pavilion of Realism. Herding sees this through the art historical lens of allegory and *adhoratio ad principem*, 'an exhortation to the ruler of a kind common in treatises on statecraft down into the nineteenth century.'⁴⁰ Primarily the painting should be read in relation to other works depicting an artist visited by a king.⁴¹ By reversing the genre Herding sees the artist insisting on his own sovereignty, effectively a modern, autonomous art. I agree with Herding only so far as the painting shows a king visiting the studio of the artist, but it is the Republic that admonishes the king, mediated by the space of the citizen/artist's studio. In an earlier piece of writing, Herding links the nude figure to the *adhoratio ad principem*. For him it is a muse that connects the figure of the artist and monarch based on the iconography of the triad of Apelles/Campaspe/Alexander.⁴² In the story the beautiful Campaspe is Alexander's lover, sacrificed to Apelles who has also fallen for her. So for Herding there is a strong triad created encompassing the artist, 'truth'/ muse, and the king; the triad is still present in our reading but the artist is the mediator. Finally, Herding fails to come to terms with a question he sets himself: why are the two parts so separated and uncommunicative?⁴³ Art (artist) and truth (muse) bring everyone together, Herding contends, and the diverse group, from other nations, to Republicans and Bonapartists, speaks of the 'peaceful

³⁸ Max Buchon was a close friend of Courbet and was exiled to Belgium during the reign of Napoleon III.

³⁹ Petra ten-Doesschate Chu, *Letters of Gustave Courbet*, 55-56

⁴⁰ Herding, *Courbet: To Venture Independence*, 57

⁴¹ Herding, *Courbet: To Venture Independence*, 56. I am thinking of paintings such as François Guillaume Ménageot's *Leonardo Dying in the Arms of Francis I* (c.1781).

⁴² Klaus Herding 'Das Atelier des Malers – Treffpunkt der Welt und Ort der Versöhnung,' in *Realismus als Widerspruch: Die Wirklichkeit in Courbets Malerei*. Ed. Klaus Herding, (Frankfurt am Main: Suhrkamp, 1978), 223-247 at 231, 311 n 45: see also Margaret Seibert, 'Courbet Note', *Art Bulletin*, June 1983

⁴³ Herding, *Courbet: To Venture Independence*, 46

coexistence of diverse opinions and stances.⁴⁴ This in the end seems a little forced, given the paintings strict compositional separation. The reading offered below allows us to keep the two halves separate. The right hand side connected to the centre represents the promise of Republican France, while the figures on the other side are in darkness for they are characters that must be enlightened into the 'civilising mission' of French liberty.

THE IDEOLOGICAL CONTEXT OF ART AND FRENCH LIBERTY

The shift in my reading is that the nude or 'muse' character is Marianne, an alternative sovereign effigy. I see the painting as Courbet's pictorial hope for a future Republican France, and I ground this interpretation on the previous chapter's discussion of Republican artists' resistance to the hypocrisy of *juste milieu*. I will argue that Herding's analysis of an *adoratio ad principem* is correct, but it is not to the monarch that this is merely directed, but to the Marianne, the body of democratic France. The other art historical blind spot is that to represent France involves a doubling of the sovereign effigy, once the hunter is designated Napoleon III. The latest revisionist history of the salon and other exhibitions is that there were strong ideological differences between the State sanctioned academicians and the more autonomous, Republican-styled artists. Patricia Mainardi has made a very thorough study of this political manoeuvring especially around the Universelle Expositions.⁴⁵ The Fair of 1855 was clearly aimed at re-cementing France as the cultural centre after Britain's success in 1851. Mainardi sees the story of the Salon in the nineteenth century as a fight between the monarchical and legitimist claims and the autonomy of the artist in early capitalism.⁴⁶ But it would be incomplete to see the fight for autonomy merely about artists' rights. Ideologically it was important for the artists to speak for France and as the nineteenth century progressed this 'civilising mission' was taken very seriously. By bringing France back to the centre of the work, Courbet showcases 'Republican France' in 1855, not the bastardised version of liberty offered by the court of Emperor Napoleon. Between 1855 and 1937 France used the Fairs to position itself as the breadbasket of cultural trends and technologies.⁴⁷ For example, the Third Republic (or in this circumstance 'the people of France') gifted the *Statue of Liberty* to the

⁴⁴ *Ibid*, 57

⁴⁵ Patricia Mainardi, *Art and Politics of the Second Empire: The Universal Expositions of 1855 and 1867* (London and New Haven: Yale University Press, 1987); Herding also reads this battle between the State sanctioned image of the nation and sees it again as the artist's autonomy directly. The mediating master signifier is that Courbet believes he is free based on the values of freedom of speech suggested by the Republic of 1848.

⁴⁶ Patricia Mainardi *The End of the Salon: Art and the State in the Early Third Republic* (Cambridge University Press, 1993)

⁴⁷ Pierre Bourdieu, 'The Field of Cultural Production', in *The Field of Cultural Production*, ed. Randal Johnson, (New York: Columbia University Press, 1993), 29-73

United States in 1886, officially titled 'Liberty Enlightening the World.' As we have seen Daumier's Marianne is suckling the world, which illustrated quite pertinently the image France had of itself within the collection of other nations.⁴⁸ I suggest that Courbet can likewise put Republican France at the centre of his work as the superior force over the other nations presented (Hungary, Ireland, Poland etc) and over the reign of Napoleon III. This reading also makes sense of the artists and patrons on the right hand side of *The Studio*; they are the 'facilitators' of French Culture. If France is the light of the world then the figures on the right hand side are France's apostles. While Herding sees art as the unifying force, for French politics there has always been a strong notion of the unifying power of democracy.⁴⁹ Most recently Pierre Rosanvallon has described this particularly French understanding of democracy as a universalizing force which believes in equality to the point of univocality; the point of universal suffrage, enacted in March 1848, was not, Rosanvallon writes, to allow France's diversity of opinions and interests to find political expression. During the Revolution, the goal of universal suffrage was to sublimate that diversity into an undivided popular sovereignty created and expressed by the public ritual of the vote. The embodiment of the mass in a singular body was well within the understanding of Republican sovereignty.

Finally the use of cartoons and caricatures show that it is quite possible that *The Studio* has at its centre the effigy of the Republic. A number of cartoons of Daumier for example show Ratapoil (a disguised Napoleon III) at loggerheads with the Republic of France shown as the Marianne. In a classic mirroring of his earlier method Ratapoil asks the Republic whether she wishes to take his arm in *The Second French Republic is suspicious of the attention of Ratapoil*, 1851 (Figure 29); in another, *The vulture like eagle of Napoleon III eats the liver of France*, 1871 the Republic is represented as Prometheus who has her liver eaten by an Imperial eagle (Figure 30). I would link this to Daumier's strategy of disallowing the quilting of Republican virtues to Louis Napoleon. The most recent scholarship suggests that Courbet was more influenced by the popular press than of many of his artist contemporaries; we also know

⁴⁸ Todd Burke Porterfield *The Allure of Empire: Art in the Service of French Imperialism, 1798-1836* (Princeton: Princeton University Press, 1998); for the construction of nationalism through culture see Eric Hobsbawm and Terence Ranger, *The Invention of Tradition* (Cambridge UK: Cambridge University Press, 1983)

⁴⁹ Pierre Rosanvallon, *Democracy Past and Future*, ed. Samuel Moyn, (New York: Columbia University Press, 2006)



— Belle dame, voulez-vous bien accepter mon bras ?
 — Votre passion est trop subite pour que je puisse y croire!

29. Honoré Daumier, *The Second French Republic is suspicious of the attention of Ratapoil*, September 25 1851, 25cm x 20cm, lithograph.

LA FRANCE - PROMETHEE OU L'AIGLE VAUTOUR.



30. Honoré Daumier, *The vulture like eagle of Napoleon III eats the liver of France*, February 13 1871, 25cm x 21 cm, lithograph.

that Courbet was friendly with Daumier.⁵⁰ Fried and others also suggest that the 'issue of sources has been too narrowly conceived.'⁵¹ After the Coup d'Etat the *lèse majesté* rules again forbade direct imaging of the king or the Republic.

DISGUIISING MARIANNE

The use of the Marianne so intensely from 1848 to 1851 also suggests the draped figure could be the Marianne. It is not surprising that the nude has been overlooked as an effigy, as the iconology is ambiguous. The timing of the instigation of the Marianne as the Republican symbol in 1848 is alluded to in *The Studio*, which is 'seven years' before 1855. In 1848 the Ministry of the Interior launched a sculpture contest to symbolize the Republic. After the fall of the monarchy, the Provisional Government had declared: 'The image of liberty should replace everywhere the images of corruption and shame, which have been broken in three days by the magnanimous French people'. The replacement occurred directly from one symbol to another. Although the symbol of Marianne is not an official emblem, and only the French Flag is written into Article 2 of the French Constitution, the Marianne has been inscribed into state use. Its first use on a postage stamp was in 1849.⁵² The stamp showed the head of Ceres above which is written *République Française*; as an agrarian society the image of Ceres as the Republic of France was appropriate and a prototype of the Marianne was seen on later stamps. This stamp did not go on sale in French post offices until 1 January 1849. Soon after, it was replaced by the effigy of Napoleon Bonaparte, reflecting the transition of France from Republic to Empire. It is this quick shift from repression in the 1st Empire to the use of the Marianne to her repression again that underpins this work; it is the new threat, from 1852, of *lèse majesté* charges that animates the political importance of this work and its strategies of disguise.

⁵⁰ Petra ten-Doesschate Chu, *The Most Arrogant Man in France*, (2008); Meyer Schapiro, 'Courbet and Popular Imagery: An essay on Realism and Naivete,' in *Journal of the Warburg and Courtauld Institutes*, Vol 4, 1941, 164-191

⁵¹ Fried, *Courbet's Realism*, 128. Another example is how Fried suggests that *After Dinner* (1849) relates to an illustration by Lorentz that appeared in February 1848. See also Meyer Schapiro, 'Courbet and Popular Imagery: An essay on Realism and Naivete,' in *Journal of the Warburg and Courtauld Institutes*, IV, 1941, 164-191

⁵² The French National Assembly approved the issue of the first French postage stamp on 24 August 1848. Most recently Marianne was represented in September 1999, used as an official seal or logo for the French Government on the European Union stamps. In this way Marianne can be located in relation to other countries use of a sovereign head (i.e. Elizabeth II effigy in the UK).

Returning to the iconological question, the use of the Republic dated back to 1792.⁵³ The Convention adopted a new seal for the Republic to replace the effigy of the king; although there was a discussion to whether an alternative effigy was needed the convention felt that a replacement was necessary.⁵⁴ The axiom, 'Archives de la Republique Francaise', was framed by a woman dressed in an antique robe, with fasces in her left hand and 'holding, in her right hand, a pike topped with a Phrygian cap, the bonnet of liberty'.⁵⁵ The Roman influence is obvious.⁵⁶ Indeed there was another common image of the Republic based more directly on the goddess Helen. This Republic is chastely dressed, stationary and holds no weapon, in contrast to the bare breasted, combative Republic. The images of Antoin-Jean Gros (Figure 31) and Nanine Vallain, (Figure 32) show differing ways of representing liberty.

So in this period there had been plenty of models from which to choose. The major reason it has not been seen in Courbet's work is that there were no outward signs of the effigy. Vallain's work for example, include a number of related symbols: a broken crown, money (representing feudal corruption), a Funeral Um, The Phrygian Cap, a scroll with the Declaration of the Rights of Man, the Laurel Bush and Ivy, Weapons at the ready, fasces, the club of force and defense (sovereign violence), and a Pyramid. Courbet's contemporary Silvestre suggested that the central nude in *The Studio* was allegorical and a personification of truth, even though there was no symbols of truth such as the mirror or sun.⁵⁷ The woman was most probably in reality based on a photo by Julien Vallou de Villeneuve of a woman called Henriette Bonnion.⁵⁸ She is draped with one breast showing which was quite common for goddesses and other allegorical figures; see for example the

⁵³ At the inaugural meeting of the French National Convention there was a discussion concerning the new symbols of the Republic and the destruction of monarchical symbols, 21 September 1792.

⁵⁴ In our reading of the effigy the force of the Revolution that founded the Republic needed the same sublimation as monarchy.

⁵⁵ Maurice Agulhon, *Marianne au combat: l'imagerie et la symbolique republicaines de 1789 a 1880* (Paris, 1979), 29; see also Lynn Hunt, *Politics, Culture and Glass in the French Revolution*, (California: University of California Press, 1986), 61

⁵⁶ See for a general discussion of the revolution and its symbols: Ernst Gombrich, 'The Dream of Reason: Symbolism of the French Revolution', *British Journal for Eighteenth-Century Studies* Vol 2, no 3, 1979; Mona Ozouf, *Festival and the French Revolution*, trans. Alan Sheridan (Cambridge, Harvard University Press, 1988), 240

⁵⁷ Fried, *Courbet's Realism*, 158. Theophile Silvestre (1856) in *Courbet raconté par lui-même et par ses amis*, ed. Pierre Courthion, 2 Vol. (Geneva 1948-50) 1:47

⁵⁸ Susan Waller *The Invention of the Model: Artists in the Nineteenth Century* (Ashgate Publishing, 2006) 73



31. Antoine-Jean Gros *The Republic* 1794, 120cm x 80cm, oil on canvas.



32. Nanine Vallain, *Liberty*, 1793-1794, 128cm x 97cm oil on canvas.

Gros.⁵⁹ What is confusing but totally in keeping with the *genre historique*, is that below the classical and traditional drapery, is the fallen dress of the 'real' model.

Margaret Seibert and John Moffit place emphasis on the notion of Liberty.⁶⁰ Following Silvestre, Seibert sees the nude as representing Truth.⁶¹ Seibert also suggests that the central nude can be seen as a personification of Beauty and in this central grouping the cat is the allegory of Liberty.⁶² She relies on Theophile Gautier's article on the symbols of the Republic in *L'Artiste*, 1848, which explains that the cat is the symbol of independence and liberty. Seibert goes on, 'The cat became a part of the Republic's coat-of-arms and appeared at the feet of Liberty in Pierre-Paul Proudhon's *Allegory of the Constitution*... The white cat in Courbet's *Atelier* follows the dictates that Liberty be draped in white, reinforcing the fact that this is her cat, Independence.'⁶³ A logical application of Seibert's own analysis is that the central figure is indeed Liberty and not Truth or Beauty.⁶⁴

Moffit is less circumspect. Crediting and accepting Seibert's analysis that the woman represents '(in part) Truth' Moffit sees the figure also representing Liberty, a composite allegory that he calls 'Truth-Liberty'. It is Moffit that first takes Seibert's illumination of the symbol of the white cat to its full conclusion.⁶⁵ More convincingly, however, Moffit connects the meaning of Courbet's work to the popular print of Claude Niquet, which treats the subject of '*La Declaration des Droits de l'Homme et du Citoyen*.' In this print, the element in the centre is not a landscape but a large, tilted sign inscribed with the complete text (17 articles) of the Declaration; the similarity of the compositions is uncanny. As in the Courbet painting a woman looks at the Declaration as the central nude looks intently at the work on the easel. Moffit suggests, 'In effect, instead of

⁵⁹ Marina Warner, *Monuments and Maidens: the allegory of the female form*, (London: Weidenfeld and Nicholson, 1985) 294-328; David O'Brien, *After the Revolution: Antoine-Jean Gros, painting and propaganda under Napoleon* (Pennsylvania: Penn State Press, 2006) 26-28

⁶⁰ Margaret Seibert, 'A Political and a Pictorial Tradition Used in Gustave Courbet's Real Allegory', *The Art Bulletin*, Vol. 65, No 2, June 1983, 311-316; this was followed by a letter which highlighted the similarity of her approach to Herding which had not been credited (or seen), Margaret Seibert, 'Letter', *The Art Bulletin*, 66:1 March 1984, John Moffit, 'Art and Politics: An Underlying Pictorial-Political Topos in Courbet's "Real Allegory"', *Artibus et Historiae*, Vol 8, No 15, 1987, 183-193

⁶¹ This analysis is supported by a number of writers, see for example Georges Boudaille, *Gustave Courbet-Painter in Protest*, trans. M Bullock, (New Haven, Conn) 1969, 65, Benedict Nicholson, *Courbet: The Studio of the Painter*, New York, 1973, 31

⁶² Seibert, 'A Political and a Pictorial Tradition Used in Gustave Courbet's Real Allegory', 312

⁶³ *Ibid*, 315-316

⁶⁴ Seibert, instead, relying on previous art historical iconography and in particular a close reading of the obscure engraving of Johann Saenredam, *Painter Painting a Young Woman*, the women did represent love but has been 'modernised' and now represents Republican Truth and Beauty.

⁶⁵ Moffit, Art and Politics: An Underlying Pictorial-Political Topos in Courbet's 'Real Allegory', 184

functioning as the spokesperson-translator for 'la liberte', as in Niquet's print, in Courbet's *L'Atelier* this woman now is Liberty.⁶⁶ So Truth-Liberty looks on the artwork, and for Moffit represents the truth of Realist painting and literature. Again, like Herding's definitive iconological reading, Truth and Liberty are connected only to the modernist author and artistic autonomy. Moffit mentions the Toussaint/Herding analysis disparagingly and sees no broader political statement in the work.⁶⁷ So for example in the Niquet print there is a side that is unenlightened by the Declaration; this corresponds in the composition to the left side of Courbet's painting. Niquet represents the evil of the prior *ancien regime*, by one fallen figure clutching a money bag and lying on top of the crumpled document 'droits et privileges.' Moffit reads this unenlightened attitude in relation to the Truth-Liberty expressed by the artists Realism. Moffit does not feel it necessary to extend his analysis to legal questions. But Moffit's reading of the work in relation to the Declaration of the Rights of Citizens is surprisingly apt, where the painting becomes the symbol of natural rights. Moffit however, focusing on the import of 'truth' for Social Realism and is not interested in making any jurisprudential conclusions.

By a fusion of Herding's muse and *adhoratio ad principem*, Moffit's Truth-Liberty and Toussaint's many national effigies, an aperture is opened to see the central nude as an effigy or the Marianne. In the political context of the time, and the ideological framing of the Exposition Universelle, the movement towards a juridical understanding of the piece seems warranted. The final shift that allows for a reevaluation of the sophisticated and knowledgeable iconological readings is the scholarship that has helped us see the birth of Realism in relation to the Salon, cartoons and other contemporary academic and State sanctioned work. The autonomy of the early moderns was by no means complete and was beholden to many ideological pressures. *The Studio* is not only a metapicture for painting but can be looked at as a metapicture for the ideological power of the sovereign image. Through this reading a number of iconological discoveries become apparent.

THE ICONOLOGY OF THE ARTIST AS AMANUENSIS

The iconology supports the reading that the artist is merely the servant of the Republic. Although Picasso was able to see in the green striped pants of Courbet the quintessential garb of a genius, the artist's appearance intimates a working class circumstance.⁶⁸ As Nochlin notices, Courbet is

⁶⁶ *Ibid*, 188

⁶⁷ *Ibid*, n 24, 193. Moffit finds the reading too 'explicit' and feels that each figure should be seen more as principals of authority. He does not like the Masonic angle of the Toussaint/Herding reading, seeing no internal logic for it.

⁶⁸ Picasso apocryphally had a pair of green striped pants made for studio use based on this picture and his adoration of Courbet.

the only one 'working'. This position of art and the artist working and contributing to the public good follows the logic of theorists who see the work illustrating Proudhon's socialist ideas. Rubin for one sees it directly linked to Proudhon's ideology; 'The Studio in fact encompassed all aspects of past, present, and the future of their [Courbet and Proudhon's] association: while as we shall see it alluded directly to a history of social development derived from Proudhon's social theory, it showed Courbet as the hero of this development. Thus it represented what for Proudhon would become a problematic interpretation of his own ideas.'⁶⁹ In our new analysis Courbet's position squares with Proudhon and Rubin's analysis.⁷⁰ The blind spot created for Rubin is that modernist teleology *must* have Courbet as the fulcrum. Even in the letter to Champfleury the work is split into three parts (whether based on the Niquet print or not). My suggestion is that the Republic herself is the centre and the one who is the overall patron/author(ity) of the work. In the letter to Champfleury, Courbet states in regard to the nude: '...then comes the canvas on my easel and myself painting, showing the Assyrian profile of my head. Behind my chair is a nude female model. She is leaning on the back of the chair, watching me paint for a while. Her clothes are on the floor in front of the painting. Then there is the white cat close to the chair.'⁷¹ Her expression and gesture is one of deep sympathy with what Courbet is doing; she is almost motherly in her devotion to Courbet's work. This is doubled by the small child also watching. Unlike Seibert, who sees the child as an 'innocent eye', it is more likely that he is the hope of a new Republican France. The letter goes on to connect the 'nude model' to the 'friends' behind them; these are the other artists and allies of the Republic.

The central group therefore concerns the creation of a legal subject through the figure of the Republic and through the image. It is as if the Republic gives meaning to all that is within the frame of the painting and to the others that work in the arts; it is a very Proudhonian thesis. In Freudian terms there even seems to be a simple triadic group, where the Republic is the superego/sovereign, Courbet is the ego/citizen, and the child is still to be totally symbolically castrated, the Id. The strong and obvious diagonal that links all three faces has hitherto been under theorised, but the effigy of the Republic (not a muse, not truth, or artistic autonomy), political Liberty, is 'mother' and 'nurturer' to both child and Courbet. The tightness of this group

⁶⁹ James Henry Rubin, *Realism and Social Vision in Courbet & Proudhon*, (Princeton: Princeton University Press, 1980) 90

⁷⁰ In 1863 the men worked together on what would become *The Principle of Art and Its Social Purpose*, published after Proudhon's death in 1865. Courbet wrote: 'It's marvelously funny I am swamped by manuscript; every day I write between five and ten pages of aesthetics. . . . We are at last going to have a real treatise of modern art, and the way, pointed out by me, is to run parallel with the Proudhonian philosophy'.

⁷¹ Petra ten-Doesschate Chu, *Letters of Gustave Courbet*, 131-133

also explains the distance and secondary importance of the Napoleon III character. If the Herding analysis was correct, you would have thought the connection between the artist and the king would have been formally stronger; in this reading the circularity of the central group dismisses the need for any monarchical structures. As we saw in Daumier's illustrations, the Republic is kept separate from the monarch, so that the *juste milieu* is not effective.

CIVILISED LANDSCAPE AND NATURAL LAW

The other element in the central group is the painting itself. The painting is a picture of the Franche-Comté region, where Courbet was born and raised in Ornans. Herding, and many others, see the landscape as a return to this childhood, a primordial nature far from the modernity of the city.⁷² Herding locates within his reading of 'primary nature,' 'Rousseau's 'state of nature'. This is linked to his interpretation of Truth and the muse, and elsewhere as a symptom of the anxiety of modernisation.⁷³ Herding goes on to argue that after 1855 – and *The Studio* – Courbet turns more to nature, 'in which nature came to stand in for the artist's earlier demands for equality.'⁷⁴ But a more extended reading would look more seriously at the jurisprudential import of this discovery. The horizontal created by the Republic looking along the brush of Courbet pass his head, threading nature, Courbet and the Republic pictorially together. Beside this obvious compositional link, Fried notes that Courbet almost dissolves *into* the picture plane of the landscape. Conversely the waterfall flows *out* of the painting and seems to continue down the body of the Republic.⁷⁵ The painting represents the basis of natural law. In a reanimation of Moffit's analysis (remembering the connections between *The Studio* and the famous Niquet print) not only is the painting compositionally similar but, *contra* Moffit, actually raises the same topic. The landscape is a visual representation, of the Declaration of Human Rights and the Citizen. The light of Reason emanates from the painting, enlightening the right hand side of the work, as in the Niquet print.

If the painting does represent the idea of natural law *and* the Declaration then this helps explain

⁷² Herding, *Courbet: To Venture Independence*, 59. Herding mentions the corroborative sources at n 94; see Simon Schama *Landscape and Memory* (London: Vintage Books, 1995) for a general discussion of the cultural construction of 'nature'.

⁷³ See Herding, *Courbet: To Venture Independence*, Chapter 4: 'Equality and Authority in Courbet's Landscape Painting'.

⁷⁴ Herding, *Courbet: To Venture Independence* 64. Fried too noted the turn to landscape after this painting. A reason for this may be the tight censorship of the more political imagery of Courbet's earlier 'Realism'. Tentatively would also suggest that the *genre historique* became a popular mode of painting *within* the Salon and Expositions. Could the use of a lesser genre, landscape, not continue a trajectory towards disavowing the State sanctioned imagery of industrial capital and modernisation of the city, which it celebrated? That Herding sees the political allusion to Rousseau's 'state of nature' confirms this idea.

⁷⁵ Michael Fried, *Courbet's Realism*, 160-161

the tightly connected characters in the centre of the painting. Both the French and American Republics saw natural law underpinning natural rights.⁷⁶ In other words the social contract is what turns natural liberty into a nation state.⁷⁷ For Hobbes it is by foregoing their natural liberty and subjecting themselves to the sovereign that the social contract and nationhood is formed. By extending Herding (who was merely interested in Rousseau's 'state of nature') the central group can be explained through Rousseau's *The Social Contract*, the most complex discussion of this process of legal subject making.⁷⁸ The social contract gave over legislative power to the 'general will', which subsumed all other individual will; this would stop corrupted 'positive laws' encroaching on natural rights. The triad represents natural law, flowing out into the legal subject and the Nation, who represent this complex social contract; that is, a Nation unified (under the Republic) but nevertheless made up and moving through the legal subject (Courbet). Arguably, this painting becomes a metapicture for the process of symbolic castration. From a primordial state of nature (Courbet's birthplace the Franche-Comté) the subject is 'forced to be free' through the figure of the unified Republic. The Declaration put forward a doctrine of popular sovereignty and the 'general will', 'The principle of any sovereignty resides essentially in the Nation. No body, no individual can exert authority which does not emanate expressly from it.'⁷⁹ The subject is castrated and his subjecthood is constructed like language, 'negatively.' The subject is known only through his relationship with others, and the complex network of 'friends' and 'enemies', which we see strongly in the setting of the painting. By entering in a relationship with the symbolic order, here Republican France represented by Marianne, the subject must lose something of himself or herself. So far from being the arrogant artist, in this work Courbet not only shows himself as a worker/slave of the Marianne, but in the image loses his leg into the painting (which in this instance represents his primordial childhood which must be left behind as 'lack.') By a series of losses shown in this central grouping the subject is born into the French Republic and natural law.

This central grouping shows the circuit between the master signifier and the citizen. Looking at Lacan's master discourse the elements of the central grouping can be teased out. The master signifier, Marianne, (S1) addresses the slave (S2) or Courbet as worker/citizen; this is very simply

⁷⁶ French Assembly spoke of 'simple and indisputable' notions that led to natural rights. See Mark C Murphy, *Natural Law in Jurisprudence and Politics* (Cambridge: Cambridge University Press, 2006); John Finnis, ed. *Natural Law*, 2 Vol. (New York: New York University Press, 1991)

⁷⁷ See Thomas Hobbes, *Leviathan Or The Matter, Forme and Power of a Common Wealth Ecclesiasticall and Civil* (1651), (Oxford: Oxford University Press, 1998), where the natural liberty, in the state of nature is considered 'solitary, poor, nasty, brutish and short'.

⁷⁸ Jean-Jacques Rousseau, *The Social Contract*, Trans, Maurice Cranston (London: Penguin Classics, 1968)

⁷⁹ Article 3 of the Declaration.

the idea of Marianne as the patron or commissioner of Courbet's work, the representation of natural law, a projection of Marianne's law. Lacan shows that the slave/Courbet comes to embody knowledge (the knowledge of natural laws/the Declaration). But the truth of the master discourse is that the master is also symbolically castrated. The Marianne must also be created in images (and language) and this is in the end what the painting reveals – adding that other ideologies like that of Napoleon III must also be painted and shown in their own alternative Expositions. The master will exist if the subject believes, and the Courbet/slave shows his belief through the act of painting, which is an act of faith and submission. In the end the painting shows a doubling of the Marianne (sovereign under natural law) by the landscape (natural law), the process of the painting is the ongoing process of belief and production of the master's power; the master signifier must be obeyed and repeated. The faith in the law is created through images. By corollary the great 'I' of modernist art in this reading is established through loss. In *The Studio* the 'I' of the Courbet/genius is not complete but only recognized through his devoted position and the way he is 'imaged' by the law.

Finally, the side of the image where the 'friends' are positioned may be seen as representing the 'legislators' or an alternative and incorruptible 'national assembly' that actually did represent the general will (as opposed to the corruptible Bonapartist court represented by the figure of Napoleon III, and his assorted cronies). Under the 'social contract' the entire body of citizens was responsible for making laws with the executive government, and were not merely there to serve the 'general will.'⁸⁰ Jonathan Ribner has discussed the image of the 'legislator' in art at the time and in this reading Courbet is joined by other 'poet' legislators. Ribner writes, 'As the French Revolution's cult of the law lost steam, the sacred authority of the lawgiver was transferred to the poet and artist on both sides of the Channel.'⁸¹ This work could be linked to Courbet's friend Millet and his self-portrait as Moses in 1841, which Ribner has also discussed at great length.⁸² Along these lines Baudelaire's open, empty pages are reminiscent of the 'double tablet' motif that commonly linked Moses' commandments to the State's Declaration.⁸³

⁸⁰ Rousseau, *The Social Contract*, 62-78, 146, 151-154

⁸¹ Ribner, 'Law and Justice in England and France', *Law and The Image: The Aesthetics of Law and the Authority of Art*, Chapter 7, 192

⁸² Ribner, *Broken Tablets: The Cult of the Law in French Art from David to Delacroix*, Chapter 6, 'The Romantic Moses'.

⁸³ These empty, 'to be written on pages' are reminiscent of Peter Goodrich's wonderful analysis of the empty page in 'The Iconography of Nothing: Blank Spaces and the Representation of Law in Edward VI and the Pope,' *Law and the Image*.

Katherine Taylor puts this appeal to the natural law and 'good' legislators into context. She suggests there was a consensus that after nineteen failed constitutions (between 1789 and 1848) there was a general distrust of the natural law. She proves that more emphasis was being placed on the actual holders of authority, which was exemplified in the *Festival of Justice* that occurred in 1849 in Paris.⁸⁴ The judiciary in 1849 was seen as 'less an agent of the ruler than as a separate power conferring legitimacy upon the state.'⁸⁵ Taylor suggests that the Second Republic was a major upheaval, leading to judicial reform, based on 'staffing rather than codes' and that an ideal universal text was undermined by 1848 (both through upheaval and philosophical discussion).⁸⁶ Taylor makes a close reading of the visual spectacle of President Bonaparte. So perhaps it is in this setting that Courbet would so adamantly proclaim and reassert the possibility of natural justice. The rhetoric of 1848 would of course return in the Third Republic. The import of *The Studio* may have been hard to see since its rediscovery in the 1920s since we link the Master's discourse with totalitarianism (for example the repression of Napoleon III). *The Studio* illustrates the fact that we need the Master (the Marianne) as the founding force, the 'patron' of our social worlds.

MY ENEMY'S ENEMY

Through the lens of Lacan a few more issues may be teased out. Herding had difficulty understanding the split nature of the work, 'On the right are the shareholders, that is friends, workers, devotees of the art world. On the left the other side of trivial life, the people, misery, poverty, wealth, the exploited and the exploiters, the people who live off of death.' Although these notes may be 'disguised' they point to the opposition. Herding had difficulty seeing the logic that bound the two sides together. As we have seen from the cartoons of the day it was not uncommon to have both the Emperor and the Republic within the one frame, united in juxtaposition.⁸⁷ *The Studio* has at least two effigies. The blind spot may have arisen even in the Herding/Toussaint reading because it was assumed there could be no king's body alongside another sovereign body; in fact the only other 'sovereign' body they privileged was that of the autonomous artist. As argued in the previous chapter, the effigies are master signifiers, but what is this doubling? For Žižek this separation is what helps *form* the meaning of the master signifier. As

⁸⁴ See Katherine Fischer Taylor, 'The Festival of Justice, Paris, 1849' in *Law and the Image*, 137-177

⁸⁵ Taylor, 'The Festival of Justice, Paris, 1849', 141; see also Mona Ozouf, *Festivals and the French Revolution* (1976), trans. Alan Sheridan (Cambridge, Mass.: Harvard University Press, 1988)

⁸⁶ *Ibid*, 144

⁸⁷ Ribner, 'Law and Justice in England and France', *Law and The Image: The Aesthetics of Law and the Authority of Art*. Ribner identifies this doubling in many places, for example he discusses a ceiling work of by M-J Blondel titled, *France in the Midst of the Legislator Kings and French Jurisconsults, Receives the Constitutional Charter from Louis XVIII, (1827)*. A regal and crowned France humbly receives the Charter, Montesquieu and *ancien Regime* royals are in attendance. This rather odd piece suggests that both allegories of France and the King are on the same page.

Žižek suggests, 'This tension introduces a kind of reflective distance into the very heart of ideology: ideology is always, by definition, 'ideology of ideology'...There is no ideology that does not assert itself by means of delimiting itself from another mere "ideology"'.⁸⁸

One aspect of the master-signifier is that it must displace others in order to create enemies (and by extension know your friends). That is, there must be space outside the symbolic to inscribe and define the big Other. In this work, like the rhetoric of Universal Exposition, it is France that proclaims herself as the leading light that defines democracy and liberty. Through the nineteenth century and the turmoil of revolution the leader is still connected to the notion 'of cultural imperialism against the 'uncivilised'. In Courbet's work France defines itself against the Bonapartists and the other nations and races. He defines the noble culture of France against the industrial capitalism of Napoleon III and the Jewish penny pincher. It is in this violent *exclusion* that France and democracy really shines forth; it is for this reason that Courbet would have seen the Exposition as a perfect place for unveiling this apostolic work.

NUDE LAW AND JOUISSANCE

There are a number of reasons why this reading has not been seen before. From a modernist perspective (the work was only put on public display in the 1920s) the painting shows many formal and 'Realist' innovations. By 1920 the interest in the effigy, whether monarchical or republican, had already dissipated. Although the Marianne is still in use and understood in France, without the context of the Herding/Toussaint analysis and appeal to caricature this reading could have never been articulated. The museological approach, for example, is enlightening. The annexed nature of the display of Courbet's work in a 'side chapel', apart from other Realists or other displays of contemporary applied arts, suggests that the 'genius' Courbet was unaffected by external, political or artistic influences.⁸⁹ Or as Mieke Bal has noted, in The Musee D'Orsay the *Allegory* has hung next to *The Source*, 1868, since 1995. 'The nude woman, then is reinstated at the center of the painting by the discursive collocation of these two paintings on the same wall...they make the viewer go from *Allegory's* nude to *The Source's* in an act of *metonymic troping*'.⁹⁰ Subsequent readings seem only able to move so far from the traditional art historical iconography

⁸⁸ Slavoj Žižek, *Mapping Ideology*, (London: Verso, 1994) 19

⁸⁹ Emma Barker, 'Case Study 2: The Museum in a Postmodern Era: The Musee D'Orsay,' in *Contemporary Cultures of Display*, ed Emma Barker, (New York: Yale University Press: 1999). Barker writes: 'Its overall effect is to reinforce a highly traditional conception of art history made up of individual geniuses whose unique creativity owes nothing to the world in which they lived'. 65

⁹⁰ Mieke Bal, 'The Discourse of the Museum', *Thinking about Exhibitions*, ed. Reesa Greenberg, Bruce W. Ferguson, Sandy Naime, (New York: Routledge, 1996) 212

and not realize the import of this work as a jurisprudential exploration of the shift from monarchical to democratic power.

It is the nude itself with all its varied connotations that confused the viewer more than anything – that the viewer could engage with a libidinal reaction to power in the age of Foucault's disciplinary power was a considerable blind spot. But if we follow Goodrich's assessment of Legendre the libidinal aspect finds lucidity:

The image is thus crucial to an understanding of the authority of law, because it is the image, the specularly structure of authority, which generates the subject's submission to law or, to use Legendre's terms, the capture of the subject by the institution. To understand law it is necessary to understand the aesthetics of law, the erotics of attachment to the institution.⁹¹

On one hand the beauty of the woman alone suggests the sublime nature of the law, and transcendental notions of justice and love. This feeling could be summed up in the Christian coverall of justice: 'love thy neighbour'.⁹² This erotic connection to the law and Nation is secured through a series of 'art jokes'. Freud links the joke to man's repressed instinctual nature, especially sexual drives, since for Freud the joke is an expression of the repressed in the conscious (symbolic) world via its elliptical thought.⁹³ Art also mediates, or is able to sublimate the Real or repressed to some extent, and Freud suggests that his work on the joke is closest to an aesthetic theory in his oeuvre. The first joke is that Courbet has made the Republic inordinately sexy. As a 'real' allegory it is unclear whether the Republic is an effigy or an actual 'nude model', as described in the Champfleury letter. The modelling and warmth of the model's skin are particularly noteworthy. Delacroix particularly liked her thighs, 'In the later work (*The Studio*) the planes are well understood, there is atmosphere and there are some parts that are important in execution: the haunches, and the thigh of the nude model and her bosom... They have refused one of the most singular works of this period...'⁹⁴ There is a supplement to her symbolic drapery which is the

⁹¹ Peter Goodrich, 'Glossary: Image' *Law and the Unconscious*, 260

⁹² Michael Detmold in his final lecture series as Emeritus Professor of Law at the University of Adelaide linked natural law, love and the law, 'Four Lectures on the Law of Love,' March/April 2009: http://www.law.adelaide.edu.au/documents/law_of_love_lectures.pdf

⁹³ Sigmund Freud, *Jokes and Their Relation to the Unconscious*, trans. J. Strachey, (New York: W. W. Norton, [1905] 1960)

⁹⁴ Delacroix, 'Diaries', August 3, 1855 quoted in *Art in Theory, 1815-1900* ed. Charles Harrison et al. (Wiley-Blackwell, 1998) 361

pink dress of the real 'bohemian' model.⁹⁵ But as many have pointed out, the imagery of the Marianne was always libidinal. Joan Landes suggests that in both high and low cultural images the Marianne was drawn in such a way as to seduce.⁹⁶ The images allowed men to fall in love with France.⁹⁷

So Courbet's work beautifully shows the workings of the superegoic Marianne. Besides ruling through order and codes (the symbolic order) she asks you to 'Enjoy your Nation.'⁹⁸ It is this 'obscene imposition of enjoyment', which can never be fully met, which marks, for Žižek, the 'obscene superego supplement.'⁹⁹ Already we have seen some of this obscenity through the veiled racism in the piece, which was ideologically common at the time. France was seen as hierarchically above other nations and races. These enemies are placed with the skull on the side of death. Similarly the 'love' of Nation coincides with Žižek's contention that the carnival and the clamorous sporting event are the true 'political' event. In these transgressive acts, against the superego's own rules (against say drunkenness or propriety), we build a 'social contract' on 'nightly' laws. Whether unconscious or not, in Courbet's effort to 'disguise' Marianne as a 'model', the erotic truth of Nation was disclosed.

Another joke suggests this hidden obscene supplement of the law. If the landscape represents 'natural law' then this phrase in the letter to Champfleury is particularly dissembling: 'the canvas that I am working on is a painting of an ass driver who is pinching the butt of a girl he meets, and the donkeys loaded with sacks in a landscape with a mill.'¹⁰⁰ Is this a joke? Was Courbet's original intention to have a lewd, puerile scene at the centre of *The Studio*? Obviously this seems to have no connection to reading the landscape as 'natural law'. As a Freudian slip it points to the 'Sadean' side of the 'state of nature'; there are links to be made here with Lacan's reading of Kant through Marquis de Sade, to Courbet's Rousseauian vision of nature. Kant and Rousseau's subject in the

⁹⁵ For these common prejudices at this time see Sarah R. Phillips, *Modeling life: art models speak about nudity, sexuality, and the creative process* (Washington: SUNY Press, 2006); Susan Waller *The Invention of the Model: Artists and Models in Paris 1830-1871* (Farnham: Ashgate Publishing, 2006)

⁹⁶ Joan Landes, *Visualizing the Nation: Gender, Representation, and Revolution in Eighteenth-Century France*, (Cornell: Cornell University Press, 2003), Hunt, *Politics, Culture, and Class*, 89–95; and Maurice Agulhon, *Marianne au combat* (Paris, 1979)

⁹⁷ Lynn Hunt, *Eroticism and the Body Politic*, (Baltimore: Johns Hopkins University Press, 1991)

⁹⁸ Here *Enjoy* is connected to the French word *Jouissance*.

⁹⁹ Jodi Dean, 'Žižek on Law', *Law and Critique*, Vol 15, No 1 Jan 2004, 1-24; Slavoj Žižek, Cardozo; Slavoj Žižek, *For They Know Not What They Do: Enjoyment as a Political Factor* (London: Verso, 1991); *The Sublime Object of Ideology* (London: Verso, 1989)

¹⁰⁰ Petra, *Courbet Letters*, 132. Petra dryly observes, 'Courbet apparently abandoned the idea for the naughty subject of the painting within the painting and decided on a Franche-Comté landscape instead'. 133

end participates in an ideal and externalised realm, unattached to teleological, social and practical concerns. Rousseau's notion of the 'general will' as a unified and forceful superegoic entity has often been criticised as both democratic but wholly totalitarian.¹⁰¹ The law and our own acts under the law are never a perfect match, and like Kafka's (anti)heroes we are always guilty that we have not met the demand of the Law. Perhaps this is why Courbet (jokingly) suggests that the spectre haunting the landscape is the desire of the ass driver. Similarly the landscape represents the primordial setting of his childhood before submission to the law (and the codes and performances of Paris).

THE MODERN GENIUS REINSTATED AFTER ALL

The central figures create a circuit, however the subjecthood of Courbet is not fully effaced through submission to Marianne. Something of Courbet resists subjection. Natural law speaks through Courbet, where the artist is almost absorbed into the picture plane. On the other side he is bracketed by the 'general will' personified by the sovereign figure of the Marianne. Paradoxically, Courbet and his subjecthood is *still* the fulcrum of the painting. He in effect interpellates himself through the image of the law he is painting (and gazing at). The cast of characters around him (both friend and foe) only frame and redouble the processes of interpellation through Nation and the law.

Perhaps this leads to a cynical conclusion for *The Studio*. Courbet was trying to hold on to an illusion of self-identity that had been threatened by Napoleon III's refusal to recognize Courbet's genius. We have to ask: does Courbet produce another Master/Mistress that recognises him in the same way as he imagines himself (which is within the definition of the Lacanian master discourse)?¹⁰² There is no hiding: in this work the Republican dream of modernity is universalising. It is a vision of French liberty that is expansionist and culturally imperialistic, which threatens to 'teach' and affect *all* nations. Indeed the process illustrated in the painting belies its hidden 'totalitarian' and obscene underbelly. It is a work of a staunch Republican, singing the praises of the hope of 1848 (which was then receding quickly). One year before his overthrow in 1870, in an effort to instigate the *juste milieu*, Napoleon III tried to broaden his base of support by giving

¹⁰¹ Jacques Lacan. 'Kant avec Sade,' in *Écrits*, (Paris: Seuil 1966); see Žižek 'With (or against) Sade,' *The Žižek Reader*, (Wiley-Blackwell, 1999) Chapter 13, Žižek, Parallax View, 91-94; Alenka Zupancic, *The Ethics of the Real*, 80-82, Zupancic sees the reading of Sade and Kant together as, 'Thus for Kant freedom is susceptible to limitation, either by pleasure (in the form of any pathological motivation) or by death of the subject.' 82

¹⁰² By excluding the unconscious the Master discourse represents the other exactly within the S2 (knowledge).

amnesty to previous opponents, and he offered both Courbet and Daumier the legion d'honneur. Both artists refused.¹⁰³ This refusal should not only be perceived as an act against the Master, but also as demonstration that both artists were tied to one another via their aesthetic and political contributions.

¹⁰³ John Milner, *Art, War and Revolution in France, 1870-1871: Myth, Reportage and Reality* (Yale University Press, 2000) 26; Milner suggests Courbet's friends and supporters were very appreciative of this snub to the Emperor and held a dinner in his honour at 10 francs a head, in 1870.

PART 3
HYSTERICIS AND THE MARKS OF AUTHORITY

CHAPTER 6: DADA AND THE SELF CREATED SOVEREIGN

Don't forget that polemics always played a big part in Dada.¹

It was a metaphysical attitude. It was intimately and consciously involved with 'literature.' It was a sort of nihilism to which I am still very sympathetic. It was a way to get out of a state of mind — to avoid being influenced by one's immediate environment, or by the past: to get away from clichés — to get free. The 'blank' force of dada was very salutary. It told you 'don't forget you are not quite so 'blank' as you think you are.'²

DADA, TRAUMA AND THE HYSTERIC

Dada has been historicized as a high point in modernism's irrationality that drew out the underside of Enlightenment reason and belief. Dada strategies, including the birth of the readymade, interrogated the indeterminacy of art's absolutes (beauty, the sublime, the author). By showing Dada's connection to State and legal imagery, this questioning can be framed as directed at the inconsistency of the law's absolutes. Dada can be connected in this way to art that commented on the underside of the socio-political condition a century earlier. Within the nineteenth century the great ideals of reason and freedom were questioned. Although the 1848 revolutions solidified the primacy of constitutionalism as a political reality, the seeds of dissent that attacked these Hegelian absolutes were already present. This chapter builds on recent analysis of the 'irrational' modernism of the late nineteenth and early twentieth centuries. The death of God, the threat of the newly sexualised and politicised modern woman,³ new understandings of the prevalence of disease,⁴ the decentering of man through the theory of evolution,⁵ the uncertainties

¹ Tristan Tzara, quoted in Hans Richter, 'Foreward,' *Dada: art and anti-art*, trans. David Britt, (New York: Harry Abrams Inc, [1964] 1965) 7

² Marcel Duchamp, *The Museum of Modern Art Bulletin Bulletin*, (New York: The Museum of Modern Art, 1946) 19

³ Bram Dijkstra, *Idols of Perversity, Fantasies of Feminine Evil in Fin-de-Siecle Culture* (Oxford: Oxford University Press, 1989); Rebecca Stott, *The fabrication of the late-Victorian femme fatale: the kiss of death*, (London: MacMillan, 1992); Lisa Tickner, *The Spectacle of Women: Imagery of the Suffrage Campaign* (London: Chatto and Windus, 1988); Sander L Gilman, *Hysteria beyond Freud*, (Berkeley: University of California Press, 1993)

⁴ Sharon Hirsh, 'The Sick City,' *Symbolism and Modern Urban Society*, (Cambridge: Cambridge University Press, 2004); Laurinda Dixon ed. *In Sickness and in Health: Disease as metaphor in art and popular wisdom*, (Delaware: University of Delaware Press, 2004)

⁵ Barbara Larson, *Odilon Redon: The Dark Side of Nature*, (Philadelphia: University of Pennsylvania Press, 2005); Patrick Brantlinger, *Bread and Circuses: Theories of Mass Culture as Social Decay*, (Ithaca : Cornell University Press, 1983)

of the unconscious and sexual repression,⁶ and the rise of Victorian morality,⁷ all created an anxious art that attempted desperately to sublimate these new horrors. The Symbolists, the Decadents, the Secessionists, the Aesthetes, and other movements of this period can be seen as direct responses to the traumatic reception of modernism and its failure to meet its utopian claims. Indeed even modernism's road to abstraction and formalism has been redrawn as a reaction to these traumas. Albert Boime suggests that Impressionism was a means to sublimate the horror of the Commune, and was an artistic strategy supported by a conservative government scared of an art that would reference the 'socialist threat'.⁸ Even the formalism of Wölfflin, with the complete separation of art from the social, can be considered as a response to a bellicose social atmosphere; *The Principles of Art History* was published in 1915, a year after the beginning of the First World War and can be seen as a conscious 'confrontation' with the politically charged pre-war period in Germany.⁹ The work they produced was decadent, deviant and perfectly attuned to provoke Victorian mannered society.

Dada's approach to 'irrational modernism' was equally transgressive and in this transgression Dada becomes the exemplary (Lacanian) hysteric's art. On the one hand Dada clowning and excess responded to the birth of the self-created individual largely unrestrained by traditional forces of the master discourse, with the rise of industrial capital and the middle class. But like the Symbolists before them this liberal freedom created its own anxiety. The world of the 'anything is possible' created a dark underworld of anomic carnival. This chapter focuses on this first symptom of the hysteric, irrational modernism. The self-created individual becomes their own sovereign, for good or ill; it is a floating, free and orgiastic individuality. Instead of the stately images discussed in the previous section, this chapter tests the limit of the law and the State through artists who appropriate the imagery of the State. The phrase that sums up the work of Duchamp, Max Ernst and Tristan Tzara is, 'I am the State.' In a letter to Tristan Tzara, Man Ray wrote 'Dada cannot live

⁶ George Drinka, *The Birth of Neurosis: Myth, Malady and Victorians*, (New York: Simon & Schuster, 1984); Wolfgang Fischer, *Egon Schiele, 1890-1918: Desire and Decay*, (Cologne: Taschen, 2004)

⁷ The aesthete and the dandy respond in a disdainful way toward middle class values, which they see as hypocritical and oppressive. Denis Denisoff, 'Decadence and Aestheticism,' *The Cambridge Companion to the Fin-de-Siecle* (Cambridge: Cambridge University Press, 2007). James Eli Adams, *Dandies and Desert Saints: Styles of Victorian Masculinity*, (Ithaca: Cornell University Press, 1995)

⁸ Albert Boime, *Art and the French Commune: Imagining Paris After War* (Princeton: Princeton University Press, 1995)

⁹ This is the thesis of Martin Warnke, 'On Heinrich Wölfflin', *Representations*, Vol. 27, 1989, 172-187; at 178 Warnke writes: 'If in the last analysis we repeatedly find the observation "Seeing in and of itself has a history", then that signifies a resistance to the spirit of the times, a resistance suggested by his 1916 conception of 'a world thoroughly determined by art.' *The Principles of Art History* derives their icy pathos from this resistance.

in New York...All New York is dada and will not tolerate a rival.¹⁰ By pitting Dada imagery against that of the State, artists conjured an anti-authoritarian power that interrogates the belief in the symbolic fictions of the State. The second corollary of the hysteric which we touch on in this chapter but highlight fully in relation to Yves Klein, in the next, is that the borrowing of state metaphors and the constant transgression of traditional authority hides, in the 'free' individual, a paradoxical and still powerful connection to traditional authority. The hysteric does probe and provoke the belief in a master signifier and hence visually our faith in the effigy, but in order to be recognised by the master and for the master to reassert themselves, in an age of anxiety. The trauma of the modern caused the Dada to desperately find a master that would respond to them. This paradoxical tension between freedom and control, transgression and conformity, total authority and a form of infantilism, drives this chapter. Nevertheless whatever the reason for borrowing and playing with the metaphors, images and performances of the State, and by probing and provoking the 'irrational' that founds our belief in the master signifier, the master signifier is delineated like a photographic negative, clear but somehow in reverse.

DADA, STIRNER AND OWNNESS

To fully understand the Dada approach to a provocative sovereign subjecthood the connection to the philosopher of anarcho-individualism, Max Stirner, must be understood. It was from Stirner's text, *Ego and his Own*, that artists borrowed their metaphors.¹¹ While the influence of Stirner on these artists has not been focused upon in any serious way, he arguably represented an extension of the attack against modernist (Hegelian) transcendental absolutes that shares much with the Dada spirit:

But when the mystery is cleared up, and the otherness and strangeness removed, and established religion is destroyed, then comedy has its task to fill. Comedy, in openly displaying the emptiness, or better the deflation of the Object, frees men from the old belief, and so their dependency upon this exhausted being.¹²

Like the Lacanian hysteric, the Stirneresque question involves the relationship between the sovereign subject and the society. Although *Ego and Its Own* was written in 1844, its currency for the Dadaists was a 1900 translation into French. In it Stirner defines in an amorphous and idiosyncratic way the *Ego* and *Egoism*. For Stirner, *Egoism* is a phase of human development beyond the *Realistic* (the primeval, ancient man with his myths), through the *Idealistic* phase (of

¹⁰ Man Ray, letter to Tristan Tzara, postmarked 8 June 1921, *Collection of the Bibliothèque Littéraire Jacques Doucet*, Paris.

¹¹ Max Stirner, *The Ego and Its Own*, ed. David Leopold (Cambridge: Cambridge University Press, 1995)

¹² Max Stirner quoted in Lawrence Stepelevich, *The Young Hegelians: An Anthology*, (Cambridge: Cambridge University Press, 1983) 333

Hegelian conscience and Reason in the present) towards the final future phase of *Egoism* (a total escape from material and spiritual constraints). For Dadaists, Stirner represented a tool with which to negate the oppressive and constraining effects of regulated language and society. What is paramount in Stirner's philosophy is how the subject might escape subjection. Stirner's approach should be added to the thought of other nineteenth century philosophers who are seen as direct influences on Dada. It should be coupled for example with Schopenhauer's attacks on reason in favour of the 'will' or unconscious processes, such as personal desire and love. In Zurich and Berlin the Dadaists were additionally influenced by the socially and aesthetically antipathetic work of Friedrich Nietzsche. Yet in Paris, the work of Stirner was a significant influence for the Dadaists, and it is on this brief period that I wish to focus. Stirner outlines the importance of self-mastery and autonomy. For Stirner there is a radical antipathy between the State and the I.¹³ Even in a perfect democracy, the I should not for Stirner ever acquiesce to backing its vote because tomorrow the majority might change their mind.¹⁴ This approach has two bold assertions: first is a notion of total self-mastery, individual autonomy or self-government, which Stirner has called 'ownness' (*Eigeneheit*): 'I am my own master only when I am master of myself, instead of being mastered either by sensuality or by anything else (God, man, authority, law, state, church);'¹⁵ second, and by extension, the State is always illegitimate, because it tames and limits the I. In a way very similar to our reading of the founding myth, Stirner also highlights the coercive and violent nature of the State that haunts it. The State is a 'jealous God' who drives away the 'individual's own spirit'.¹⁶

For Stirner there is no acceptance that beneath this total freedom from the State is actually for the State to reassert itself nor does it seem much more than total anarchy. However David Leopold has suggested that Stirner's aphoristic and formally poetic philosophy of the ego is in the end not entirely clear; what is clear though is that it is an anti-normative position.¹⁷ A number of writers have begun to understand Stirner in relation to post-structuralist thinking.¹⁸ Saul Newman suggests that Stirner and Foucault, for instance, share an approach which is positioned against the notion of Kantian freedom:

¹³ Stirner, *Ego and Its Own*, 1995, 175

¹⁴ *Ibid*, 175

¹⁵ *Ibid*, 153

¹⁶ *Ibid*, 247

¹⁷ David Leopold, 'Introduction', Stirner, *The Ego and Its Own* xi-xxxii; see also David Leopold, 'The State and I: Max Stirner's Anarchism', ed. Douglas Moggach, *The New Hegelians. Politics and Philosophy in the Hegelian School* (Cambridge: Cambridge University Press, 2006) 176-199

¹⁸ Koch, Andrew M 'Max Stirner: The Last Hegelian or the First Poststructuralist', *Anarchist Studies*, Vol 5, 1997, 95-108

For Kant, as we have seen, freedom is the absence from coercion. However, for Stirner and Foucault, freedom is always implicated in power relations—power relations that are creative as well as restrictive. To ignore this, moreover, to perpetuate the comforting illusion that freedom promises a universal liberation from power, is to play right into the hands of domination. It may be argued, then, that Foucault and Stirner uncover, in different ways, the authoritarian underside or 'other scene' of Kantian freedom.¹⁹

Stirner questions the symbolic fictions of the State and it is Stirner's analysis – a prototype to Foucault's study – that every individual can embody and is the site of sovereignty:

In the time of spirits thoughts grew till they overtopped my head, whose offspring they yet were; they hovered about me and convulsed me like fever-phantasies, an awful power. The thoughts had become *corporeal* on their own account, were ghosts, such as God, emperor, Pope, fatherland, etc. If I destroy their corporeity, then I take them back into mine, and say: 'I alone am corporeal.' And now I take the world as what it is to me, as *mine*, as my property; I refer all to myself.²⁰

But there is a paradox in Stirner's complete disavowal of any constraints, in that his complete negation negates revolution. Stirner saw the revolutionary philosophy of the Left Hegelians like Bruno Bauer and Karl Marx, as merely a 'change of masters' forming modern types of 'religion.'²¹ Stirner clarifies his position and calls for what he labels as (merely) 'insurrection'; this mode of disavowal seems apposite for the Dada position:

Revolution and insurrection must not be looked upon as synonymous. The former consists in an overturning of conditions, of the established condition or *status*, the state or society, and is accordingly a *political* or *social* act; the latter has indeed for its unavoidable consequence a transformation of circumstances, yet does not start from it but from men's discontent with themselves, is not an armed rising but a rising of individuals, a getting up without regard to the arrangements that spring from it. The revolution aimed at new arrangements; insurrection leads us no longer to let ourselves be arranged but to arrange ourselves, and sets no glittering hopes on 'institutions.' It is not a fight against the established, since if it prospers, the established collapses of itself; it is only a working forth of me out of the established.²²

¹⁹ Saul Newman, 'Stirner and Foucault: Toward a Post-Kantian Freedom', *Postmodern Culture*, Vol. 13, No. 2 January 2003

²⁰ Stirner, *Ego and Its Own*, 1995, 17

²¹ *Ibid*, 55

²² Stirner, *The Ego and Its Own*, 279-280

It is this formulation of a 'union of egoists' that finds expression in the loose group of Parisian Dadaists. Similarly, Stirner's discussion of the 'un-man' mirrors Duchamp's idea of the 'anartist' – a retort to being labeled an 'anti-artist'.²³ The term correlates both to the anarchist and to the anomic. Duchamp explains the importance of this distinction for him, and for our purposes it highlights how the freedom of the individual still works *within* the symbolic order, critiquing, but not transgressing or conforming:

No, no the word 'anti' annoys me a little, because whether you are anti or for, it's two sides of the same thing. And I would like to be completely - I don't know what you say - nonexistent, instead of being for or against... The idea of the artist as a sort of superman is comparatively recent. This I was going against. In fact, since I've stopped my artistic activity, I feel that I'm against this attitude of reverence the world has. Art, etymologically speaking, means to 'make.' Everybody is making, not only artists, and maybe in coming centuries there will be a making without the noticing.²⁴

So although there had been some attempts to politicise Dada, particularly in Berlin and Zurich, the Dadaist approach in Paris and New York did not lend itself to concerted political action, merely 'insurrection' not 'overthrow.' Reading Paris/New York Dada via Stirner helps us understand that the terms commonly linked to Dada, such as anarchy and nihilism, are too simplistic. For Stirner, the relation to the State is a complex statement of negation and questioning, which is central to the relationship of the autonomous individual and the constraints of language and society. It is a particular brand of nihilism where the destruction of the State is not necessarily the goal, if for example the State's aims, for whatever reason, happen to coincide with those of the Ego. Stirner thought that a 'union of Egos' would ultimately move towards a grouping beyond the State system.

Finally, Stirner also wrote on art.²⁵ Although there is no proof that the Dadaists actually read this small essay, its conclusions are relevant to this thesis. Stirner directly contradicted the Hegelian position of the guiding spirit of the 'Idea' or Geist. Stirner writes:

²³ Duchamp to Richard Hamilton, 1959: 'I do not mind being an anartist'; see also Humble, Paul N. 'Marcel Duchamp: Chess Aesthete and Anartist Unreconciled', *The Journal of Aesthetic Education*, 32.2 (Summer 1998): 41-55. Randi Spiegel 'Marcel Duchamp, Anartist', *American Art Review* July-August, 1975 (Volume II, Number 4)

²⁴ Duchamp quoted in Judovitz, Dalia, *Unpacking Duchamp*, (Los Angeles: University of California Press, 1995) 110

²⁵ Stirner, 'Art and Religion' (first published in *Rheinische Zeitung*, 1842), Lawrence Stepelevich (ed.), *The Young Hegelians. An Anthology* (Cambridge: Cambridge University Press, 1983) 327-334; in this essay

Art creates disunion, in that it sets the Ideal over and against man. But this view, which has long endured, is called religion, and it will endure until a single demanding eye again draws that Ideal within and devours it. Accordingly, because it is a viewpoint, it requires another, an Object. Hence man relates himself religiously to the Ideal cast forth by artistic creation, to his second, outwardly expressed Ego as to an Object. Here lie all the sufferings and struggles of the centuries, for it is fearful to be *outside of oneself*, having yourself as an Object, without being able to unite with it.²⁶

Art, for Stimer, never goes beyond the ossification of 'Religion'. It is not clear what his alternative model of art production would provide, although the art of pure choice, disconnected from traditional notions of skill and the aesthetics of beauty, does seem to come close. In fact it seems that Stimer advocated the disappearance of the Object, in a manner reminiscent to Duchamp's move away from the 'retinal' towards an art of the mind. As Duchamp said of Dada, 'It is destructive, does not produce, yet in just that way it is constructive.'²⁷

THE TRIAL OF MAURICE BARRÈS AS THE APOTHEOSIS AND DEATH OF DADA

To recap then, there are three basic Dada positions: total nihilism and withdrawal, total anarchy and revolutionary destruction and the third Stimeresque position of 'insurrection.' The latter is our theme because it highlights the paradox of subjection where the subject is both the site of their own freedom but also their own oppression; the hysteric understands this very well. To clarify the distinctions between the philosophical positions within Dada we should examine the decisive Barrès Trial of 1921.²⁸ This trial is most often cited as the birth of Surrealism because it was after a now infamous disagreement with Tristan Tzara that Andre Breton broke away from the contrariness of Dada. The story is told that Breton was tired of the perceived nihilism of Dada which he saw as apolitical and fatuous. In its place Surrealism was to become a movement of theories, methodologies and links to the socialist movement. Here the reading of Surrealism as an anarchic tradition, itself coming from this strain of Dada, is misleading. Art historical explanations

'religion' becomes the representation of any authority structure in opposition to philosophy which is the way towards freedom.

²⁶ *Ibid*, 329

²⁷ Duchamp in an Interview 1925, in Francis M Naumann, *New York Dada 1915-23*, (New York: Abrams, 1994), 200

²⁸ The Trial of Maurice Barrès was held 13th May 1921. See *L'Affaire Barrès*, *Littérature*, no 20, 1921, 1-24. See also *L'Affaire Barrès*, ed. Marguerite Bonnet (Paris: Jose Corti Press, 1987), which is an annotated version of published and unpublished documents of the trial.

of the evolution of Surrealism from the 'ruins of Dada'²⁹ often suggest the positive political action of Surrealism, yet misread Dada as a cynical art of withdrawal which ignores the influence of Nietzschean 'nihilism', Stimer's 'insurrection', and Schopenhauer's ascetic 'will'.³⁰ Taking Tzara's testimony in the Barrès Trial seriously, and looking at the cause of his disagreement with Breton we can better understand the response of Dada to the law and the State. I place Tzara on the limit of what defines our prohibitions and belief. The Dada Justice, which Tzara himself did not fully avow, became in Tzara's hands the anomic, carnivalesque object of the law. If Picabia arrived at the trial only to absent himself in disgust, Tzara played within the limits of the trial, not in a Picabian nihilism but in a 'constructive destruction'.³¹ Tzara's *Dada Manifesto*, 1918 argued that although Dada was against logic and the constraints of language and morality, in *Stimeresque* fashion it was for an individual freedom and founded on an ethics of a 'purified humanity.' In the most *Stimeresque* phase, Tzara wrote 'I destroy the drawers of the brain, and those of social organization: to sow demoralisation everywhere...'³² But it is in Barrès trial that Tzara's most distinct relation to the State is described.

Breton had felt that Maurice Barrès, once a hero in French literary circles as an individualist and symbolist novelist, had become an arch-conservative nationalist during the First World War. For Breton this was a betrayal, accusing Barrès for an 'attack against the sanctity of the Spirit', and was tried *in effigie* (by a shop mannequin).³³ Tristan Tzara was notable in refusing to be called to the Bar as advocate or judge on the grounds that he had '...no confidence in justice, even if this justice is made by Dada.'³⁴ He took part as an aggressive Dada witness who finished his testimony

²⁹ This is an oft quoted phrase of Dawn Ades, 'Dada and Surrealism, *Concepts of Modern Art*, ed. Nikos Stangos, 3rd Edition, (London: Thames and Hudson, 1994) 121

³⁰ A recent reading which finds the political aspect of the Barrès Trial, even in Dada nihilism, can be found in Theresa Papanikolas, 'Towards a New Construction: Breton's Break with Dada and the Formation of Surrealism,' in *Surrealism, Politics and Culture*, ed. Raymond Spiteri and Donald LaCoss, (London: Ashgate Publishing, Aldershot) 2003. Here Papanikolas, writes that Stimer 'inspired a radically individualist strain of anarchism' leading to an 'anarcho-individualist' theory of anarchy (followed for example by Pierre Chardon and Emile Armand). Papanikolas notes that Barrès himself was a follower of Stimer. So that the very choice of Barrès put this sort of political action 'on trial.'

³¹ Picabia said two days before the trial, 'Maintenant Dada a un tribunal, des avocats, bientôt probablement des gendarmes et un préposé à la guillotine!' Quoted in Michel Sanouillet, *Dada à Paris, histoire générale du mouvement Dada*, vol 4 (1915-1923) (Paris: JJ Pauvert, 1965) 267

³² Tristan Tzara, *Dada Manifesto*, 1918

³³ This translation by the author has been 'performed' in September, 2008 at Chalk Horse Gallery, Sydney and in February, 2009 at Cat Street Gallery, Hong Kong.

³⁴ The verdict was proclaimed by Breton, judging that the time had come to endow its negative spirit with executive powers and exercise these powers against those who threaten its dictatorship.

with a song, embodying the spirit of revolt. Motherwell described the equivocal nature of the trial which Tzara seemed to exacerbate, 'Only certain parts of the testimony gave to the trial a Dadaist, anarchist, contradictory and humorous tinge... Once again Dada had been unable to reply categorically: the role of judge did not suit it at all.'³⁵ Something of this contradictory tone can be seen in Tzara's testimony:

Q: What do you know of Maurice Barrès?

A: Nothing

Q: You have nothing to add as a witness?

A: Yes

Q: What?

A: Maurice Barrès is for me the most unpleasant man I have ever met in my literary career. He's the biggest rogue I've ever met in my poetic career. The biggest pig I've ever met in my political career. The biggest crook that Europe has produced since Napoleon. I have no confidence in the law, especially DADA law. You must concur, Mr President, that we're all a bunch of bastards and that consequently the little differences, biggest bastard or smallest bastard, is not important.

Q: Do you feel any esteem for your contemporaries or anyone at all for that matter?

A: No, because, as I told you, they're all bastards. Naturally, we are accustomed to make some exceptions to our habits of sympathy and antipathy, but that's all.

Q: What is the point of your antipathy if you are never engaged on a social plane.

A: Are you saying that the social plane consists of the State, the country, the people or the army? In that case, as *I am* the State, the country, the people, and the army, my aim is only to give great pleasure.

It is this notion of the State as the 'I' of the subject that defines a Stirneresque Dadaist response to the State. Tzara was undoubtedly influenced by Nietzsche and more particularly Stirner in repeating the idea that he himself is the State and everything beside.³⁶ The subjectification process through the interpellation of the individual by the State is questioned. This sets in chain a reading where the sovereign State is not complete but merely a myth or belief. Tzara's testimony highlights that it is the subject that creates the State as much as the State interpellating or constraining the subject. The playfulness of Tzara's response is read through Mallarmé by Derrida in *Writing and Difference*.³⁷ When there was no ordering word, 'God' or other transcendental

³⁵ *Dada Painters and Poets: an Anthology*, 2nd edition, ed. Robert Motherwell, (Cambridge and London: Harvard University Press, [1951] 1981) 185

³⁶ For discussions of Max Stirner's influence on Tristan Tzara see *Surrealism, politics and culture* eds. Raymond Spiteri and Donald LaCoss (London: Ashgate Publishing, Ltd., 2003) 38-39; Geert Buelens 'Reciting Shells. Dada and, Dada in & Dadaists on the First World War' *International Journal for Literary Studies*. Volume 41, Issue 2, December 2006, 275-295

³⁷ Jacques Derrida, *Writing and Difference*, trans. Alan Bass, (Chicago: Chicago university Press, 1978)

signifiers, the system of signification 'extends the domain and the play of signification infinitely'. Derrida suggested response to this trauma is mirrored in the responses of the hysteric: nostalgia and a craving for the big Other to return, or in Derrida's terms, 'a truth or an origin that escapes play.'³⁸ For Derrida another response is total play, without centre, ground or security – in limitless play as in the work of Nietzsche.³⁹ Breton found this lack of the limit or theory or ground unfathomable and socially unaware.⁴⁰ At the level of language Tzara played with the words crime, punishment, Dada justice and of course the State. This playing with the order words of the law marks a searching and questioning of the legal fictions of the State and the subject's place within it ($\$ \rightarrow S1$) and following Lacan's matheme of the discourse of the hysteric, produces knowledge and criticality (S2).

HAL FOSTER, THE REAL AND MAX ERNST

Before moving on to a psychoanalytic approach to a Dadaist appropriation of the law, we should revisit Hal Foster's commentary on Max Ernst, as discussed in Chapter Three. Following the insights of Eric Santner, Foster uses Ernst to set out a methodology for questioning the symbolic screen without puncturing it. We can see now that this reading of the Symbolic Real has many similarities with Stimer's account. As in Tzara's work, the question is centred around constraining the Ego (in Stimer's terms), or symbolic castration (in the Lacanian sense). Foster designates Max Ernst's, *Old Lecher with a Rifle*, 1920, as metapicture to describe the crisis in the symbolic and concludes:

Ernst gives the sculpture a caption in the quasi-schizophrenic 'word salad' common in his contemporaneous collages: 'Old Lecher with Rifle Protects the Museum's Spring Apparel from Dadaistic Interventions [L'état c'est MOI!] [Monumental Sculpture]'. This is near nonsense, to be sure, but it is pointed non-sense. For in this moment of military defeat and social chaos the state is figured as an "old lecher" whose only authority is sheer force, 'the rifle.' And yet this pathetic state still attempts to protect the cultural patrimony, "the museums," from the attack of "dadaistic interventions." However, the performative magic of this state power ('l'état c'est MOI!') no longer functions; it is ridiculous, and here the Ernst-Éluard quintet, at once promiscuous and provocative, lies casually, almost insolently, indifferent to this emblem of police force. Moreover, the cultural

³⁸ Derrida, *Writing and Difference*, 292; the search for foundational myths in anthropology is an example of this response.

³⁹ Derrida, *Writing and Difference*, 280

⁴⁰ It is this short period of Dada that interests this chapter. Tzara did finally reconcile with the Surrealists in 1930. This coincided with the artist joining of the French Communist Party in 1936. This was a time of the Popular Front, however a concerted effort by French culture to combat the rise of Fascism was also taking place. Similarly Tzara was active in the Resistance and did not submit to Vichy.

patrimony that the state wishes to protect is already degraded: it is little more than fashion...It is this blinded insight—that the art of the mentally ill might point less to pure expression, originary vision, or vanguard transgression than to a given crisis in the symbolic order—that Ernst discovered in 'the no-man's land' of its representations.⁴¹

Again we here the same cry, aping absolutism, 'I am the State!' that we have already seen in Tzara and Stirner. The repetition of the kingly statement here, in the context of a completely 'irrational modernist' work of a deviant and disfigured father, 'I am the State' highlights the weakness of the State at its own performative moment or mythological founding. This is doubled by the 'tableau of castration' and the impotence of the 'Old Lecher'. This is a cruel critique against the traditional authorities; it is not a stretch to see again the 'ownness' of Stirner's philosophy here. In an interview Ernst talked of a rebelliousness against his teachers and his family,⁴² mentioning that he had read Stirner as a teenager.⁴³ An artwork from 1925 titled *Ego and Its Own* confirms this, and other early works, in John Russel's words, have a 'Stimeresque orientation.'⁴⁴ Beside this too there are many questioning images of the father, an image that Stirner linked directly to the *Papa State*. In *Revolution by Night*, 1923 the bowler-hatted father figure cradles the boy like a travestied pietà. Similarly in *Ubu Imperator*, 1924 a caged figure spins on a top. The *Ubu Imperator* also represents the bourgeois values of the father or the society at large, for the law loomed large for the young Ernst. Again using Stirner's paradox, and Lacan's paradox of subjection it seems the hysteric Ernst cries out for a real master/father to come. In August 1922, Ernst illegally entered France and could be arrested at anytime during this period (which coincides with the period in which these works were made); what Ernst asks for is recognition from the father/law he critiques.⁴⁵ He is at once sovereign but also bound to the big Other.⁴⁶

⁴¹ Hal Foster, 'Blinded Insights: On the Modernist Reception of the Art of the Mentally Ill' *October*, Vol 97, Summer 2001, 3-30, 30

⁴² William Camfield, 'Matters of Family, Education, Art and War', in *Max Ernst: Dada and the Dawn of Surrealism*, (London: Prestel Publishing, 1993), 34

⁴³ Uwe Schneede, *Malerei des Surrealismus*, (New York: N H Abrams, 1974) 10

⁴⁴ John Russel, *Max Ernst: Life and Work*, (New York: N H Abrams, 1973) 17-18, 56

⁴⁵ This was doubly relevant in the period of the conservative and anti-Semitic, Blue horizon government in France after the First World War.

⁴⁶ Uwe M. Schneede, *The Essential Max Ernst*, (London: Thames and Hudson, 1972) Schneede suggests that the rebellion against his family in order to paint was decisive, 'To resist it [their prohibition] was associated in his mind with a secret feeling of joy,' 7. That is far from being totally free Ernst shows clearly that it was through the prohibition that his *jouissance* was created.

COLLAGE AND THE HYSTERIC'S LINK TO THE WORLD

Ernst's use of collage and language questions the very foundation of the symbolic order.⁴⁷ As we saw in Tzara and Duchamp the hysteric interrogates the master signifiers, the traditional symbolic order, of State and bourgeois morality, church, marriage and social duty. Schneede suggests:

He reacts strongly to the present, never trying to conceal his hatred of authoritarianism, war and the Church. Max Ernst substituted complex technical operations for the painter's creative process; he substituted combination for 'inspiration'; he has expanded his repertoire of images to include the trivial areas not considered worthy of art; he has revolted against normative artistic pretensions... Ernst has no solutions to offer, only contradictions and tensions [contra Picasso].⁴⁸

Schneede sees Ernst's approach not as revolution but insurrection; apposite again to Stirner's strategy. In contrast to the anti-war art of Grosz and Heartfield 'Max Ernst sought to liberate himself from the impact of war through creative activity directed, not at society at large, but at his own world of emotion.'⁴⁹ Foster formally connects Ernst's approach to collage with the schizophrenic. The world is not overthrown but disjointed. For Foster, Ernst's paintings and drawings (like those of Klee and Debuffet) recall examples of art produced by patients in psychiatric clinics. The work can be seen as a symbolic mediating screen between the imaginary and desire. Foster discusses the work of Josef Grebing (a patient diagnosed with dementia praecox):

Grebing reassembled a symbolic order out of the perceived debris of the official one: he issued financial certificates, painted religious icons, drew 'world maps,' and, most extraordinarily, developed an entire calendar of the twentieth century— 'a chronology for Catholic youths and maidens'—replete with astrological tables.⁵⁰

Foster notes Freud's apt conclusion on the Schreber case, that instead of seeing the delusion and irrational drawings/collages as 'pathological products' that they were instead attempts at recovery, or a reconnection *with* the symbolic.⁵¹ Earlier Foster connects Ernst directly to this line of argument when he argues that Ernst must have been familiar with the Schreber case, and Freud's

⁴⁷ His most famous collage is Max Ernst, *Une Semaine de Bonté: A Surrealistic Novel in Collage*, (New York: Dover, 1976); Elizabeth Legge, *Max Ernst: The Psychoanalytic Sources* (Ann Arbor: UMI Research Press, 1989)

⁴⁸ Schneede, *The Essential Max Ernst*, 1972, 6

⁴⁹ Schneede, *The Essential Max Ernst*, 1972, 15

⁵⁰ Hal Foster, 'Blinded Insights: On the Modernist Reception of the Art of the Mentally Ill', 2001, 24

⁵¹ Sigmund Freud, 'Psychoanalytic Notes on an Autobiographical Account of a Case of Paranoia' (1903), *The standard edition of the complete psychological works of Sigmund Freud*, (London: Hogarth Press, 1974) 1-79

readings of it.⁵² Whether he had read Freud or not, Ernst's collages create a contradictory tension. On the one hand the original is never totally effaced, on the other the re-photographing for photo-engraving also erases the edges of collage and creates an alternative universe; a clean new print as opposed to retaining the trace of the collaged 'subversion.' The idea that the work is a cure or sublimation of the trauma of being decentered is something I would like to follow; the work of Ernst and Duchamp seem to be a hysterical response to the traumatic absence or impotence of the father figure.

Both Duchamp and Ernst play with other 'Objects' of the institution and here our subject, the effigy, becomes clear again. The hysteric 'sees' the effigy, perhaps an ineffective one or an inconsistent one, and asks for it to respond. For a study of the effigy, it is in the hysteric's discourse that the imagery of the master signifier will become clearest. In the disciplinary society the master signifier, the effigy, is effaced as much as possible, so that the knowledge/power *appears* neutral, but this is the subject of Part 3. When Duchamp challenges the State's right to set currency in works such as *Tzanck Check*, 1919; *French Military Paper*, 1918 and *Monte Carlo Bond (no. 12)* 1924 he finds the effigy there, the official seal, the State monopoly and questions it, producing the knowledge of the hidden effigy in these documents. He asserts his own sovereignty in the language of the State; such a negation occurs in *French Military Paper* through the crossing out of a list drawn up by a Captain in the French Purchasing Commission in New York. One aphorism is bizarrely legalistic:

Duchamp: 2: Laws and General Notes

[...] Establish a society in which the individual has to pay for the air he breathes (air meters; imprisonment and rarefied air, in case of non-payment simple asphyxiation if necessary (cut off the air).

On condition that (?)

By using official artefacts (for example, meter stick, the cheque, and journals representing bourgeois culture), both Ernst and Duchamp use the symbolic order in order to pierce it. Naumann reiterates that Duchamp probably read the popular 1900 French version of Stimer's *Ego and It's Own*, as that is the title the artist quotes. Robert Lebel also mentions Stimer, albeit mockingly, 'To be sure, by the irony with which he stamps them Duchamp criticizes his own pretensions; he thus clears them of any hint of megalomania, just as he blurs the slightly

⁵² Foster, 'Blinded Insights: On the Modernist Reception of the Art of the Mentally Ill', 2001, 18. Foster notes that Ernst uses Freudian terms in his text *Beyond Painting: And Other Writing by the Artist and His Friends* (New York: Wittenborn and Shultz, 1948)

embarrassing recollection of Stimer's imperatives.⁵³ This scepticism seems to be based on the fact that there is a misunderstanding of Stimer's writing itself and a mistrust of the 'seriousness' of this influence. A tangential argument is that other artists were also influenced by Stimer, not to mention other theorists and philosophers.⁵⁴ But it is clearly worthwhile taking Duchamp's comments regarding Stirner seriously.

THE HYSTERIC, STIRNER AND DADA LAW

By highlighting the Stimeresque aspect of the Dada position on the State a few conclusions become clear. First, the State and its relation to the subject are shown to be a serious area of Dada interest. Second, Duchamp and Ernst considered the individual to be too constrained by hypocritical and illegitimate rules. Third, the place from which to transgress is from the position of the subject or individual, here the artist, in a gestural insurrectionary mode rather than through organised revolution. Moreover this reading of Dada and its relation to the law sees the turn to Stirner as part of a hysterical pathology, which questions the efficacy of a dysfunctional and constraining State that does not recognise the full desire and subjecthood of the individual.

In the previous section I argued that through the Lacanian master discourse, Courbet and Daumier showed a faith in the Master. What was not completely present in their image of the Marianne was the inability of this master signifier to account for the whole subject or everyone; behind the master signifier is a fundamental lack. This is where we find the hysteric's discourse. The barred subject, the hysterical subject, is defined by their unsatisfied desire ($\$/ a \rightarrow S1$). The artist/subject realising the lack responds by questioning the master, 'who am I for you and what is my desire?' What is produced is knowledge about what she/he is as object ($S2 \rightarrow a$).⁵⁵ The

⁵³ Robert Lebel, *Marcel Duchamp*, (New York: Grove Press, 1959), 39

⁵⁴ See Saul Newman, 'Stirner and Foucault: Toward a Post-Kantian Freedom'. There is a suggestion that Stirner has been linked through taste to a varied number of theorists. For example, in the early twentieth century, he was seen as a precursor to Nietzsche, in the sixties, to existentialism, and in the present to post-structuralism. Yet it is impossible to prove that any writers had read or was directly influenced by him. What is known is that *Ego and Its own* influenced the left-Hegelians to rupture and secondly, greatly influenced the writings of Marx. In *The German Ideology*, 1845-46, Marx and Engels made an attack against contemporary philosophers including Stirner. In more recent times he has been very influential on anarchist works. See John Carroll, *Break out from the Crystal Palace. The Anarcho-Psychological Critique: Stirner, Nietzsche, Dostoevsky* (London: Routledge and Kegan Paul, 1974) and more recently David Leopold, 'The State and I: Max Stirner's Anarchism', Douglas Moggach (ed.), *The New Hegelians. Politics and Philosophy in the Hegelian School* (Cambridge: Cambridge University Press, 2006) 176-199. Also Leopold, 'Introduction', Max Stirner, *Ego and Its Own*, (Cambridge: Cambridge University Press, 1995), xi-xxxii

⁵⁵ Mark Bracher, 'On the Psychological and Social Functions of Language: Lacan's Theory of the Four Discourses' (ed.) *Lacanian Theory of Discourse: Subject, Structure and Society*, (New York: New York

hysteric simultaneously interrogates the power of the Master to name, and yet needs the Master to have something to interrogate, as evidenced in the above discussion of Ernst's collages or Tzara's appropriation of legal language. It is not a complete disavowal of the Master in anarchy or protest however, but rather recalls Lacan's response to the students position in 1968: 'You ask for a new master and you will get it!' The protest against the father, for Lacan, is not that the law is weak or castrated (as Ernst suggested in *Old Lecher*), but that it is not castrated enough, not symbolically powerful enough and merely human. Saul Newman addresses this paradox of the hysteric:

This is because while Marxism, in its revolutionary endeavors, neglected the master's discourse – the place of power and authority – which was why it remained caught within it, anarchism, like the hysteric, focused on this place of authority itself, seeing it as the main impediment to the subject's freedom and fullness. So just as the hysteric sees the master as the cause of her alienation, so the anarchist sees the State as the cause of the subject's alienation. However, despite - or more precisely through - its attempt to negate political authority, anarchism finds itself, paradoxically, reliant upon it in order to form its own revolutionary identity.⁵⁶

This voluntary attachment as opposed to the forced attachment in the master discourse produces the knowledge of the political and social world (S2). It is here that Dada illuminates the Real that underpins the master signifier. In this reading, behind Dada's Stimeresque proclamations, lies a doubt in equal measure. There is the doubt of the lack of recognition and the corollary of a mistrust of the belief in the big Other, pointing to the two Lacanian Reals in the law: the Real of the subject that can never be fully interpellated and the lack at the heart of the big Other itself. This interrogation of the Symbolic Real provides the powerful critique of the hysterical artist.

THREE STANDARD STOPPAGES: THE CANONICAL RULER

So again we start with the proclamation of the master and Stimer's hysteric, 'I am the State,' the phrase both Tzara and Ernst borrowed in their creation of an alternative 'irrational' modernity of self-sovereignty. We have asked though what is the visual equivalent of the master signifier, or master's enunciation, which we have called the effigy. In relation to Tzara, Ernst and Stirner, the visual equivalent, of the hysterical proclamation, 'I myself am State,' is the masterpiece of the hysteric's discourse, Duchamp's *Three Standard Stoppages* 1913 (Figure 33). Oddly no one has taken literally Duchamp's statement on this work:

University Press, 1994) 107-128; Slavoj Žižek, (1998) 'Four Discourses, Four Subjects', *Cogito and the Unconscious*, (Durham: Duke University Press, 1998) 74-113

⁵⁶ Newman, 'Interrogating the Master: Lacan and Radical Politics' *Psychoanalysis, Culture & Society*, Houndmills: Dec 2004, Vol. 9, Iss. 3, 298

I'd say the *Three Stoppages* of 1913 is my most important work. That was really when I tapped the mainstream of my future. In itself it was not an important work of art, but for me it opened the way –the way to escape from those traditional methods of expression long associated with art...For me the *Three Stoppages* was a gesture liberating me from the past.⁵⁷

The period that he is discussing relates to a period after travelling to Munich and reading Stimer's work in 1912, which marked a turning point in Duchamp's artistic career and personal life. Duchamp would later state 'My stay in Munich was the scene of my complete liberation.'⁵⁸ Thinking of the implications of such a statement, Thierry de Duve asks the relevant question 'a liberation from what?' answering that it marks a liberation from painting through the birth of the readymade.⁵⁹ Naumann suggests Duchamp's *Three Standard Stoppages* directly relates to Stimer, who was able to give Duchamp the unbridled anarchic freedom to proceed with the readymade.⁶⁰ Naumann suggests that, when asked what philosophical texts influenced him, Duchamp mentioned Stimer's *The Ego and his Own*.⁶¹ Stimer's notions of freedom and 'ownness' can be linked to Duchamp's assumption of sovereignty in *Three Standard Stoppages*, by assuming the sovereign right to set the standard measure. In this piece Duchamp images the dark, theological, and incense-laden, underside of the law, in a jurisprudential 'irrational modernism.' Against Enlightenment positivism Duchamp created, or uncovers, the inconsistency in the law, at

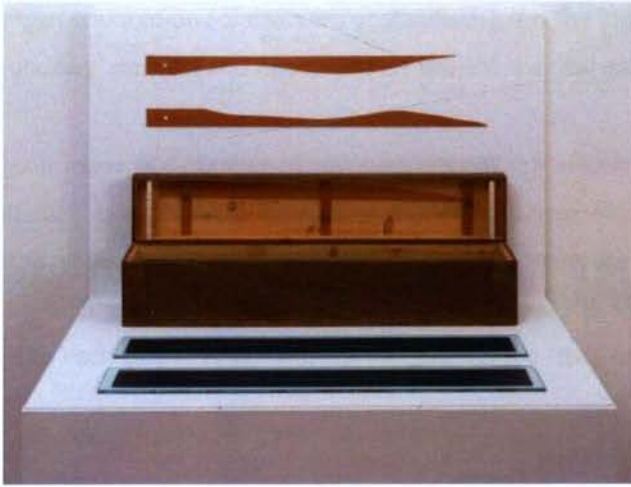
⁵⁷ Quoted in Moure, 1984, 232; also quoted in Calvin Tomkins, *Duchamp, A biography*, (London: Pimlico Press 1997), 131

⁵⁸ Marcel Duchamp, originally published *Marcel Duchamp*, d'Hamoncourt and McShine eds. (New York: Museum of Modern Art, Philadelphia: Philadelphia Museum of Art, 1973), 263; Allan Antliff, 'Anarchy, Politics and Dada', *Making Mischief: Dada Invades New York* (Whitney Museum, 1996), 212-213. Antliff directly links this to Duchamp's reading of Stimer in Munich and his subsequent revolt against the 'rules' of art.

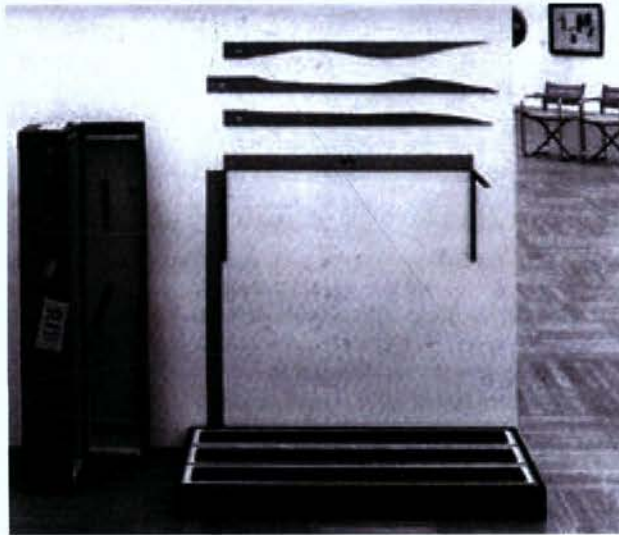
⁵⁹ For de Duve, the readymade is not a disavowal of painting but connected to painting. He maintains that Duchamp had a 'extraordinary and enigmatic concern for painting'. Thierry de Duve, *Pictorial Nominalism: On Marcel Duchamp's passage from Painting to the Ready Made*, trans. Dana Polan, (Minnesota: University of Minnesota Press, 2005) xvii

⁶⁰ Francis M Naumann, 'Marcel Duchamp, A Reconciliation of Opposites', *Marcel Duchamp: Artist of the Century*, ed. Rudolf E Kuenzli and Francis M Neumann, (Massachusetts: MIT Press, 1989), 29

⁶¹ Naumann mentions in 'Marcel Duchamp, A Reconciliation of Opposites' 1989, fn 15, 65, that Stimer's influence on Duchamp was referenced in a questionnaire about *Three Standard Stoppages* at the Museum of Modern Art, New York, circa 1953; and in 1981 to artist and critic Serge Stauffer. Stauffer, 'Hundert Fragen an M Duchamp,' in *Marcel Duchamp: Die Schriften* (Zurich: Regenbogen-Verlag, 1981) 290



33. Marcel Duchamp, *Three Standard Stoppages*, 1913 – 1914, 28cm x 129cm x 23cm, wooden box, thread, glass.



34. Marcel Duchamp, installation of *Three Standard Stoppages* showing method of creating curves.



35. Marcel Duchamp, *Network of Stoppages*, 1914, 149cm x 198cm, oil and pencil on canvas.

the point of the sovereign enunciation (of the rules/or standards); it is the legal equivalent of Odilon Redon's 'evolutionary' mutants and Egon Schiele's deviant 'medical gaze'.⁶²

The Standard Stoppages is made of a number of elements housed in a wooden box.⁶³ There are three pieces of thread, each exactly one meter long, glued on to Prussian blue canvas strips that are in turn stuck to glass plates. Based on these curves the next elements are three wooden 'rulers'. Finally there is a black leather label with '3 STOPPAGES ETALON/ 1913-14' printed in gold lettering attached to each canvas strip. Through the glass can be read, on the back of each canvas strip the words:

Un metre de fil droit, horizontal, tombe d'un metre de haut. 3 Stoppages etalon; appartenant a Marcel Duchamp. /1913-14.

A straight horizontal thread one metre in length falls from a height of one metre. Three Standard Stoppages belonging to Marcel Duchamp. /1913-14

A jurisprudential reading of the work, based on notions of sovereignty, proceeds by rereading the French inscription through the glass. The inscription is full of jurisprudentially loaded words. A meter 'de fil' or 'of thread' is a homophone for 'de fils' or of the son, which also has the meaning of the word of God, the logos as represented by Christ, as the second part of the trinity. 'Droit' represents straight but of course also talks to legal rights, quite literally a meter of legal rights. 'Tombe', it falls, also can be read as tomb or grave, as a noun. 'De Haute' means from a height yet haute is also defined by majesty and superiority. So you might read the second clause as 'Horizontal, the tomb of the majestic (royal) meter.' In this work Duchamp takes the place of the State's (constitutional) right to set standard measures.⁶⁴ The 'rulers' are signed 'appartenant a Marcel Duchamp'. The use of the word 'belonging' is strange for Duchamp who often signed

⁶² Barbara Larson, 'Evolution and Degeneration,' *Odilon Redon: The Dark Side of Nature*, (Philadelphia: University of Pennsylvania Press, 2005) 49-84; Gemma Blackshaw, 'The Pathological Body: Modernist Strategising in Egon Schiele's Self-Portraiture', *Oxford Art Journal*, Vol 30, Iss 3, 2007, 377-401. I use these two examples as merely two particular examples of a broad 'negative dialectic' in modern art history, or an 'irrational modernism.'

⁶³ Some suggest that the box was originally a croquet set, which alludes to the ludic imagery of Duchamp's oeuvre, from chess sets to puns, graffiti to transvestitism. See Pierre Cabanne, *Duchamp and Co*, (Paris: Editions Pierre Terrail, 1997) 88-89

⁶⁴ It is interesting to note in relation to the *Tzanck Cheque* that the effigy of the sovereign used to be connected directly to the sovereign's effigy. If one was to destroy or fraudulently reproduce a piece of currency this was seen as *crimens falsi*, which is an act against the sovereign, this is now usually prosecuted under statute in most countries.

'from'. The 'rulers' belong to Duchamp in the same way as a measure might belong to the (body of) king or to the state.

The curved profiles were determined by chance, allowing threads one metre long to drop freely from, the equally symbolic, height of one metre (Figure 34). Duchamp writes:

The Idea of Fabrication

- if a straight horizontal thread one meter long falls from a height of one meter onto a horizontal plane distorting itself *as it pleases* and creates a new shape of the measure of length
- 3 patterns obtained in more or less the similar conditions: *considered in their relation to one another* they are an approximate reconstitution of the measure of length.
- The *Three Standard Stoppages* are the meter diminished [emphasis original].⁶⁵

The use of chance was a common Dada technique.⁶⁶ Duchamp was to say of the piece, 'I keep the line and that gives me a deformed metre. It's a canned metre, if you like, a piece of canned chance...It's amusing to put chance in a can...'⁶⁷ So beside mocking and testing the limit of art it also tested the limit of the arbitrary measures and orders of the State, here the metre. The under-theorisation of this work may have something to do with the fact that it does not fit the usual pattern of the readymade in Duchamp's oeuvre. Analysis thus far has revolved around whether the work can be considered a readymade or not. Tomkins suggests that it is one of many 'debatable cases'.⁶⁸ Schwarz equivocates placing the work as an 'Assemblage, founded on chance', following a list of other readymades.⁶⁹ Ramirez, although listing the work as a readymade, also concedes that as the curves were actually transcribed onto other works (that there was a degree of functionality at least within the artist's own practice) that this was against the definition of readymade that Duchamp himself suggested, which was of functional objects rendered useless

⁶⁵ Quoted in *Salt Seller: The Writings of Marcel Duchamp*, ed. M Sanouillet and E Peterson, (Oxford: Oxford University press, 1973), 22. The strings are sown onto the Prussian blue canvas. It seems more likely that Duchamp fixed the two ends and then, still with chance, moved the strings until the curves were to his liking. See Rhonda Roland Shearer and Stephen Jay Gould, 'Hidden in Plain Sight: Duchamp's *Three Standard Stoppages*, More Truly a 'Stoppage' (An Invisible Mending) Than We Ever Realised, *Tout-Fait: The Marcel Duchamp Studies Online Journal* 1, no. 1 December 1999

⁶⁶ Duchamp similarly relied on chance operations to determine the sequence of notes in a number of musical scores that he composed in 1913, such as *Erratum musical*.

⁶⁷ Duchamp, quoted in Cabanne, *Duchamp and Co*, 89

⁶⁸ Calvin Tomkins, *Duchamp: A Biography*, (New York: Henry Holt, 1996) 159

⁶⁹ Arturo Schwarz, *The Complete Works of Marcel Duchamp* (Vol. 2), (New York: Abrams, 1970), 594

and artistic.⁷⁰ Similarly, Ramirez moves the work away from Dadaist play by arguing against the commonly held approach that the display box referenced games, in particular the croquet box. Citing a catalogue of W.F Stanley and Lietz as an example, Ramirez suggests that the case resembles those actually used to store rulers and patterns used in technical drawing.⁷¹

What is needed is an alternative category. Without relying on poststructuralist notions, which will be discussed in more detail below, a close analysis of this work could not help but take Duchamp's suggestion of an alternative meter seriously. He uses the curves of *Three Stoppages*, on the *Network of Stoppages*, 1914 (Figure 35), *Tu 'm*, 1918 and in *The Large Glass Stripped Bare of Her Bachelors, Even*, 1915-23 as the 'Capillary Tubes' which carry the 'Bachelors' 'Illuminating Gas'.⁷² They have been used as alternative measures in his own personal universe of artworks; he is the sole authorising author/ity of his works. The meter 'diminished' although a joke on the meter is a serious joke and is sustained through the other paintings. In this way the work is clearly not a readymade but is an effigy of Duchamp's sovereignty over his own work. Inscribed through 'the ownness' of his chance gesture and through his signature the formally presented rulers are presented as authoritative.

The doubling that occurs in 1953 exhibition at MOMA for the Katherine Dreier Bequest increased the anomic nature of these measures. Duchamp added two more elements first, two wooden meter sticks marked '1 Metre' and second a label by Alfred H Barr Jr reading 'In this exhibition [1953] three stretched threads and two meter sticks, one vertical and one horizontal have been added at the suggestion of the artist to clarify his procedure'. This 'clarification' highlights the starting point for the threads; which is the metre length supposedly dropped from a metre height. The two rulers also present the original and continuing authority of the standard measure within the outside world. Even *within* the work the meters work. It is a binary of the state and the outlaw, the *nomos* and the *anomic*. To put it in Stimeresque terms, the 1953 version highlights that what is being offered is merely insurrection, that the master signifier is operative and that this is merely a questioning from *within* that order.

Analysis of Duchamp's work can now move from art historical debates of form over function, the artist and the artisan, the original and the copy, toward the political. The *Three Standard Stoppages*,

⁷⁰ Juan Antonio Ramirez, *Duchamp: Love and Death, Even*, (London: Reaktion Books, 1998) 35

⁷¹ Ramirez, *Duchamp: Love and Death, Even*, 1998, 36

⁷² *Network of Stoppages* was itself a preliminary work for *The Large Glass*. It has been suggested by Richard Hamilton that the former was to be photographed on an angle to get the correct perspective needed for *The Large Glass*, yet in the end a perspective drawing needed to be made. See Richard Hamilton, *The Almost Complete Works of Marcel Duchamp* (London: Arts Council of Great Britain, 1966), 49

as seen by Ramirez and others, question these easy binaries. Ramirez suggests the work has a 'function' operative within a highly individualistic and imaginary universe. Similarly the three templates are created not found, so that the failure of the work as a readymade is doubled. The failure of *Three Standard Stoppages* can be seen more clearly against Thierry de Duve's reading of functionalism and aesthetics in *Pictorial Nominalism*:

It is not difficult, in retrospect, to see the extent to which the 'invention' of the readymade was tied up by subsidized symmetry, once again, to a functionalist aesthetic. This aesthetic tried to dissolve the autonomy and the specificity of art into a general practice of the environment that, paradoxically, it invested with all the purity, and disinterestedness that has been attached to the name of art. Conversely, the readymade attached the name of art to a banal object of the environment that had been conceived according to a functionalist aesthetic and, pulling it out of usual usage, brusquely conferred on it the uselessness and the disinterestedness of 'pure' art.⁷³

The original *Three Standard Stoppages* illustrates de Duve's approach. The 1953 version of the work, however, encloses the symmetry between the real object and its detouring, *within* the work itself. But in *Three Standard Stoppages*, as opposed to the readymade, a third aspect is created where the 'pure' art becomes useful but only within the world of other works of art. What is the nature of this function if not a parallel form of functionality? Can we think of functionality not in the traditional sense, but rather a ludic 'functionality'?

THE CANON AND THE APOCRYPHA

Duchamp in this work becomes both the artist and authority for the new standard measures. The artist has become sovereign. Besides the political ramifications of the overproximity of the sovereign to the subject as theorised by Foucault's *care of the self*, Butler's *paradox of subjection* and Lacanian *subjective destitution*, the tradition of art allows for such a conflation. It is a traditional motif in art to connect the artist/genius to the sovereign/king. In this case as Dali once said:

Marcel Duchamp could have been a king if, instead of making the *Chocolate Grinder*, he had made the *Holy Ampulla*, the unique, divine readymade, to anoint himself as king. Duchamp then could have been crowned at Rheims. And Dali would have asked his permission to paint a picture of the *King and Queen Traversed by Nudes at High Speed*.⁷⁴

The notion of a free or autonomous avant-garde then proceeds from the Kantian notion that the Genius creator is free. This freedom is granted by connecting the Genius to the Spirit. Formalist experiments are seen to be in the avant-gard instructing or leading the general society. What we

⁷³ Thierry de Duve, *Pictorial Nominalism*, 2005, 109

⁷⁴ Salvador Dali (1968), quoted in Pierre Cabanne, *Dialogues with Marcel Duchamp* (Da Capo Press, 1967)

have seen in the experiments of Courbet and Daumier is that the push towards modernism also entailed not a jettisoning of state patronage and control but merely its repression; the king exists, but he is disguised. Or in other words although the king is disguised, the connection between the legal sovereign and the artist remains, as many scholars have observed. Kantorowicz saw the advent of this conflation beginning in the Middle Ages. The secularisation of divine power in the king can be seen to have taken place with the rise of the professional class of jurisprudential scholars in the twelfth century. 'The equiparation, however, of poet and emperor or king— that is of the poet and the highest office representing sovereignty— began as early as Dante.'⁷⁵

Kantorowicz suggests that both were connected in Medieval thought through the simile of God as creator; both the sovereign and the artist shared the ability to make 'something out of nothing'.⁷⁶ The notion of both being divinely inspired drew the two together.

I cannot resist extending the jurisprudential sovereignty to the sovereignty of the genius and suggest that the ruler, in *Three Standard Stoppages*, is also a comment on the canon in art. Griselda Pollock sees the rise of the professional classes and universities as the starting point for a secularisation of the canon and its appropriation as a form by the humanities more generally.⁷⁷ Pollock suggests that the texts of the theological canon were treated as if they had 'if not divine authorship, at least divine authority' and that this approach to the divine hand was attached to the artist in the art historical canon.⁷⁸ Pollock held that the canon sees the artist as an 'ambivalent' creature founded both as the father figure of the Oedipal myth whilst at the same time being Oedipus, the hero, who threatens the power of the father and usurps him.⁷⁹ So again there is a neat connection between the metaphors of the state and that of modern art. In relation to her own interest, women's place within this canon, Pollock asks whether a maternal or less 'infantile' approach to an art history can be envisaged. These insights are useful in a discussion of the relationship between art and law. What occurs when the fathers of the law come up against the fathers of art history? In the same way as women have been written out of the canon, law/art history also forecloses any external stresses on the artist's ability to embody the father/hero

⁷⁵ Ernst Kantorowicz, 'The Sovereignty of the Artist: A Note on legal Maxims and Renaissance Theories of Art', *Selected Studies*, (New York: JJ Augustin Publishers, 1965), 362. See also 'Kingship Under the Impact of Jurisprudence', 161

⁷⁶ Kantorowicz, 'The Sovereignty of the Artist: A Note on legal Maxims and Renaissance Theories of Art', 361. Kantorowicz also goes on to link these two realms, art and legislation, through the term *uomo universale*, or the notion of the Renaissance man, which the artist and the Prince were expected to be. 363

⁷⁷ Griselda Pollock, 'About Canons and Culture Wars', in *Differencing the Canon: Feminist Desire and the Writing of Art Histories*, (London & New York: Routledge, 1999), 2-21

⁷⁸ Pollock, 'About Canons and Culture Wars', 13

⁷⁹ Pollock, 'About Canons and Culture Wars', 13-19

position. The repressive characteristic of the law exerted on the artist has been forbidden from this narrative. The repressive nature of sovereign authority is disguised and repressed, as in the Oedipal configuration, the father (sovereign power) is repressed to allow the freedom of the son (subject). As Pollock recently pointed out, the artist is presented both as the father and the hero (or revolutionary figure against the father). In this analysis the failure of the artist to extricate himself fully from the symbolic order is a truism and agrees with the paradox of Dadaesque and Stirneresque anarchism.

Three Standard Stoppages confuses the place from which the authority for the standard meter comes. The visual manifestations of power are directly linked to this authority; and, as the Law and Literature School have highlighted, a semiotics of the law is based on 'what is lived, accepted and made familiar through the images and signs, the rituals and sacraments, the liturgies and emblems of law's public presence.'⁸⁰ In a piece of interpretative criticism a number of metaphors coalesce with Duchamp's piece. The canon, from its etymological root meaning ruler, links State rule, religious rule and the artistic canon. Is this liberating gesture of the readymade an attack on all three canonical modes? What links them is the notion of belief. Duchamp played with the trauma of the arbitrary ordered rule at a moment when the modern psychology of time and measurement was causing a particular trauma, as Foucault theorised and Charlie Chaplin clowned.⁸¹ The ruler epitomised arbitrary measures, and was therefore the perfect object of attack on the indeterminacy of order. It is worth noting in this context how the shift from the monarch to a disciplinary society was mirrored in the story of the meter bar. In the pre-modern period the connection of the measuring stick and the sovereign body was direct. The Pharaoh Khufu was the first to decree that a standard unit of length be fixed. The standard chosen was made of black granite, called the 'Royal Egyptian Cubit' and its length was that of Pharaoh's forearm from elbow to the middle finger, and from this universal standard wooden sticks were made.⁸² The ruler (stick) was literally an effigy of the royal body (his arm or foot etc.). As part of the French Revolution's approach to the sovereign body the royal feet were abolished; as the king was executed so was his effigy as embodied by his rulers. In an effort to put a scientific and 'pure' base to the standard measurement the Revolutionary Government distanced the measure from the sovereign body. In order to relate this authority in a humanistic way, a meter was defined as

⁸⁰ Peter Goodrich and Yifat Hachamovitch, 'Time out of Mind: An Introduction to the Semiotics of Common Law', ed. Peter Fitzpatrick, *Dangerous Supplements: Resistance and Renewal in Jurisprudence (Post-Contemporary Interventions)*, (Durham: Duke University Press, 1991), 160

⁸¹ This hysteria and neuroses is outlined in Stephen Kern, *The Culture of Time and Space, 1880-1918*, (Harvard: Harvard University Press, 1983)

⁸² The lengths of the bases of the sides of the Great Pyramid of Giza vary by less than 0.05 percent from the mean length of 230.364 meters.

the distance from pole to pole of the earth divided by 10 million, a metric number. Two astronomers, Delambre and Méchain, determined the distance, and by 1799, yielded a standard platinum meter stick. Later Méchain found an inconsistency in his data, and terrified, kept trying to get consistent results. He told only Delambre about the problem. Finally, after Méchain died of malaria in Valencia, Delambre realized that the earth is not a perfect sphere.⁸³ The underpinning the 'reasoned' length was as flawed as the monarchical one is in the Kantian sublime: formless. The many variations over time for the recording of the meter retain the original flaw, based on the mathematical results of the 1799 survey.⁸⁴ The utopian International Bureau of Weights and Measures of 1889 was the modern gesture of standardization, efficiency and order.⁸⁵ In a Stirnerian reading, the constraint of the individual 'will' was as illegitimate as the ruler and canon is arbitrary.

DADA JUSTICE AND ITS HAPPY RECOGNISED SUBJECTS

By creating his own rulers Duchamp becomes the Sovereign who rules 'just because'. He becomes the master whose words, however arbitrary, become law. What Duchamp creates is an 'irrational modernism' and its ruler, but uncovers the 'irrational' present in the broader symbolic order; the extension is that Duchamp uses the strategy of Stirner to uncover the belief in law's effigies and the lack of any universality that can account for all legal subjects. His rulers' rule in some strange individualist universe were used on many of his paintings. It is a charming coincidence that another Lacanian term for the master signifier that binds it all is in fact the *point de capiton*, a sewing term which means quilting point, since Duchamp's notion of the 'Stoppage' – or the invisible mend – suggests a similar idea. The master signifier is generally invisible; a signifier without a signified, that at once mends or completes the discourse. In the end the act is hysterical, desperately desiring order in a world with none, and representing a particular Dada response to

⁸³ Ken Alder, 'The Mis-Measure of All Things'. *Invention & Technology*, Fall 2002, Vol. 18, 38-44

⁸⁴ Cochrane, Rexmond C, *Measurement For Progress: A History of the National Bureau Of Standards*, (Washington D.C.: U.S. Department Of Commerce, 1966). This includes a very informative appendix that describes the French origin of the metric system and some details of the construction of the 1889 meter and kilogram primary standards. See also Sydenham, P.H. *Measuring instruments: tools of knowledge and control*, (Stevenage, UK: Peter Peregrinus Ltd., 1979). This remained the standard until 1960 when the International Bureau of Weights and Measures adopted a more accurate standard for international science when it defined the metre in terms of the wavelength of light emitted by the krypton-86 atom, namely 1,650,763.73 wavelengths of the orange-red line in the spectrum of the atom in a vacuum. The meter was redefined again in 1983, this time as the distance which light travels in a vacuum in $\frac{1}{299,792,458}$ seconds.

⁸⁵ It had only been in 1884 that World Standard Time was arrived upon in the Prime Meridian Conference, Washington.

the traumas of modernity. Duchamp's piece embodies the hysteric's disbelief in the essentialism of the law. In his book, *The Private Worlds of Marcel Duchamp*, Jerrold Siegel writes: 'The standard stoppages operate in just this [individualistic] spirit, depriving the meter, and by implication all standard units of measure, of the quality that makes them a way for different individuals to develop a common account of the world, namely universal applicability.'⁸⁶ Siegel goes so far as to suggest that the *Three Standard Stoppages* represent a continuing series, where three becomes the marker for infinite possibility. It expresses the hysterical, the knowledge that the law cannot account for the entire subject. Žižek explains the hysteric: 'The hysterical question articulates the experience of a fissure, of an irreducible gap between the signifier that represents me... and the non-symbolisable surplus of me being-there.'⁸⁷ Hysterics have problems with being named. More than often they use many names, as if the big Other can never fully know them. They approach the Master, but only to find a way to master them, or to produce critique.

It is now easier to understand Tristan Tzara's position on Dada Justice, a position that has been read as mere contrariness. *Three Standard Stoppages* uses the Object of the institution in order to highlight its arbitrariness, in a Stimeresque gesture. The use of chance, the falling of the metre long string to create the curves highlights this arbitrariness.⁸⁸ As suggested by the framing of *Three Standard Stoppages* at MOMA, where the metre sticks are shown horizontal and vertical to show the process of dropping the string from a metre high; this process is repeatable and individualistic and in the end it is this individual, unaccountable subject that is celebrated in Duchamp's work. His irrational effigy shows that the modern effigy can never interpellate the subject fully. In Newman's words:

Freedom must, rather, be seized by the individual. For freedom to have any value it must be based on the power of the individual to create it. Stimer was one of the first to recognise that the true basis of freedom is power. To see freedom as a universal absence of power is to mask its very basis in power. The theory of ownness is a recognition, and indeed an affirmation, of the inevitable relation between freedom and power... A post-Kantian freedom, in this way, is not only a recognition of power but also a reflection upon power's limits – an affirmation of the possibilities of individual autonomy within power and of the critical capacities of modern subjectivity.⁸⁹

⁸⁶ Jerrold Seigel, *The Private Worlds of Marcel Duchamp: Desire, Liberation, and the Self in Modern Culture* (Berkeley: University of California Press, 1995) 165

⁸⁷ Slavoj Žižek, *Looking Awry: An Introduction to Jacques Lacan through Popular Culture*, (Massachusetts: The MIT Press, 1992), 131

⁸⁸ As an aside it is this arbitrariness of Dada chance (Tzara poetry, Jean Arp collages) that differentiates it from the experiments of chance and automatism in Surrealism used to tap into the unconscious worlds of the individual (Andre Masson drawings, exquisite corpse collaborative drawing).

⁸⁹ Saul Newman, 'Stimer and Foucault: Toward a Post-Kantian Freedom,' *Postmodern Culture*, Vol 13, No 2, 2003, Paragraph 37.

Newman is using Lacan's concept of subjectification to understand that the law moves through the subject, both as a source of the law and its object. There is no complete freedom from power's tyranny, so the concept of ownness becomes Stimer's way of accepting that power over the subject. Indeed, Stimer has a wonderful understanding of love in society as the union of egos – where unions between people are purely utilitarian and based on the ability to use the other for enjoyment.⁹⁰ This recalls the Sadean underbelly of Kant's legal subject.⁹¹ The lesson of Duchamp's rulers and of Stimer's philosophy is that there are no trustworthy transcendental norms, no essentialism. For Duchamp beauty could not be trusted but in this also there is a direct attack against the transcendental order of the State.

CONCLUSION

Both Duchamp and Ernst reacted differently to the trauma of the modern, though both were influenced by the theories of Stimer. In reaction to the trauma of the lack in the big Other, Duchamp and Ernst do not transgress this Other but instead play on the limit of this abyss. They do this through strategies of Foster's schizophrenic, creating for themselves a safer, less anxious present through the refuse of the fallen Symbolic order; in this they show the 'artistic' technique of the hysteric. If they both had more faith in their position under the paternal and symbolic structures of society, they would have been able to call to these structures for recognition. In the end they both realised that there is no universal recognition by the Law, the Law does not recognise them. In vain they became Sovereigns of their own worlds.

⁹⁰ Stimer, *Ego and its Own*, 1995, 258

⁹¹ Tentatively I might suggest that the *Network of Stoppages*, with the drawn lines from the rulers of *Three Standard Stoppages*, hides, erases and is founded on the (traditionally) painted nude bathers. This work then has a thought provoking conflation of order, arbitrariness, traditional art and the ready made, sex and sexless order.

CHAPTER 7: KLEIN AND MARKS OF THE INVISIBLE AUTHORITY

As I lay stretched upon the beach of Nice, I began to feel hatred for birds which flew back and forth across my blue sky, cloudless sky, because they tried to bore holes in my greatest and most beautiful work.¹

And always the loud angry crowd
Very angry and very loud
Law is We,
And always the soft idiot softly Me.²

KLEIN'S PRAYER TO THE VOID

In 1961 Klein anonymously deposited an ex-voto at the Convent of Santa Rita in Cascia, Italy (Figure 36). It was a devotion to aid his new commission for the Gelsenkirchen Opera House, Germany. The offering took the form of a small see-through plastic box containing five compartments: one filled with blue pigment, one with pink pigment, one with gold leaf, and the other two with the prayer text and three gold bars from his sale of the void.³ This object is clearly animated by belief. Although not an icon of a god, a commanding image, it is a supplementary image to belief. A votive – like a monstrance or pyx – is a small object animated by faith. The private prayer that Klein wrote asks for success in his new commission, protection from enemies, and the longevity of his art, 'that I may live in my works and that they may become ever more beautiful.'⁴ The ex-voto was never created as an artwork and was found by

¹ Yves Klein, quoted in *Yves Klein: long live the immaterial* ed. Gilbert Perlein, Bruno Corà (New York: Delano Greenidge Editions, 2000) 212

² W H Auden, 'Law, say the gardeners, is the sun,' [1939] (excerpt) *Selected Poems*, ed. Edward Mendelson, (London: Faber and Faber, 1979) 90

³ This relates to a performance where Klein sold the Void for gold leaf, *Zones of Immaterial Pictorial Sensibility*, made between 1959-1962. In a second part of this 'sale', if the buyer agreed to burn their certificate by throwing the gold back into the river the 'natural order' was restored.

⁴ Yves Klein, 'Prayer to Saint Rita,' trans W G Ryan, in *Yves Klein*, (Houston: Houston Institute for the Arts, Rice University and New York: The Arts Publisher, 1982) 257



36. Yves Klein, ex-voto, 1961, 21 cm x 14cm x 3cm, plastic, pigment, gold leaf, gold bars, paper.



37. Yves Klein, light installation at Obelisk of Luxor, Place de la Concorde, re-enactment for Pompidou Centre Exhibition, 7 October 2006.

chance in 1980.⁵ Alternatively it can be seen as a work of art by Yves Klein, or a small fetish.⁶ It does reference his works and each compartment is given a title, Blue, Pink and Gold as if they are referencing larger monotonies. The object can of course be both art and religion, depending on the reading, but the void, a belief in a certain master signifier, underpins the efficacy of either particular reading. The magic of the ex-voto, an offering that proves belief, 'Amen Y.K.' contextualizes the importance of belief in Klein's work. If the work 'functions' as a prayer it cannot be an artwork; if it is an artwork it cannot be a prayer. Like Dada, Klein's work plays on this limit, in a paradoxical loop. In an inversion of the regular reading of Klein's work merely as art, and not as 'true' belief, I choose not to italicise the term ex-voto, to treat it as a socially embedded act of faith rather than another artwork.

Rauschenberg wanted an art that worked in the gap between life and art, but this reading is too simplistic a binary for Klein. Klein 'encircles' the Real that founds our belief, by continually playing with our rituals and fictions within the makeup of society's laws and orders. The art world's consummate showman mined the normative order of the law for its theatrical fictions. This approach to play creates a visual analysis of the law's marks of authority and its structural underpinning. The power of the legal image is founded on belief. Through exploring belief, the Dada artists were able to point out that the traditional father figure, the big Other, is itself a phoney and that it is only by believing in the big Other that it exists at all. Although Klein refused to accept his connection to Duchamp, Klein shares his hysterical response to the law.⁷ Far from the promethean discourse that usually surrounds Klein's egotistical stunts, he is instead calling out for the leader or sovereign to reassert itself. The framing devices that Klein uses — contracts, stamps, Republican Guards, ambassadorial letters etc. — have been neglected as merely subsidiary to his practice. This chapter argues that they supplement an important lack for Klein, which is the inconsistency of the big Other: a major theme in the artist's oeuvre. In his hysteria, Klein

⁵ A conservator who was gilding a frame asked if the sisters had any gold leaf. One remembered a strange Perspex box with some in it. The conservator recognised the ex-voto immediately as Yves Klein's.

⁶ The object was recently shown in exhibition for the first time, at *Yves Klein. Corps, couleur, immatériel*, Paris, Centre Pompidou, 2006. In this exhibition the work was seen as 'both art and religion'. The votive is still in the collection of Saint Rita, Cascia.

⁷ Pierre Restany suggested that 'Neo-Dada' moved past the nihilism of Dada to a more positive engagement with real life. See the *Second Manifesto* [Nouveau Réalisme], May 1961 reprinted in Pierre Restany, *Les nouveaux réalistes*, (Paris, Editions Planete, 1968). I should noted that Klein arrogantly disagreed that he was 'following' Duchamp, see Rosenthal, in *Yves Klein: 1928-1962: Selected Writings*, exh. cat., ed. J Caumont and J Gough-Cooper, (London: Tate Publishing, 1974) 277

inadvertently reached out for images of the sovereign wherever he could find them. Like an ex-voto, he has produced facsimile icons of the law in order to call the sovereign to appear. Of course the sovereign never does appear and can only be noted as an absence. It is at this point of invisibility, dare I say the void, that the quality of play in Klein's work becomes so important. By focusing on the supplementary framing of Klein's art, the meaning is shown never to fully crystallise as a positivist truth. The logic of Klein's work is an extension of Duchamp's Stimeresque 'insurrection' from the previous chapter. In the previous chapter the hysterical self-creation, (self-sovereignty) was the focus; law was found to not only work through but to emanate from the subject. Duchamp by turning himself into the 'king,' whose 'rulers' in effect became an alternative Duchampian ideological apparatus, was able to uncover two things about the law: it is based merely on belief and is otherwise virtual and second, that the law cannot fully account for its subjects. It was the character of 'ownness' and individuality that Duchamp's work in the end celebrated. But in Klein's work the 'real' and the 'official' is crucial. In an effort to bring art and life together, he demands that the 'artwork' be truly authorised/recognised by officialdom. In his hysterical way he forces the master signifier to recognise him and 'authorise' his art; he is forcing the SI to create effigies. Instead then of merely asking the hysterical question, 'Who am I for you? When will you grant me investiture?' what Klein wants to know is, 'What aesthetic form will this ritual take?' 'Where is my effigy?'

KLEIN FRAMED BY THE CAPITALIST SPECTACLE

The paradoxical logic of Klein's work, half faithful, half clown, has troubled his critics. His theatrical framing, the *parerga*, is seen as fraudulent and duplicitous by some but it is this uncertainty that is Klein's insight into the law. Klein represents a subject who reacts to the inconsistency within the symbolic order; in focusing on the void he shows that the big Other never did exist, it always is a gap, a Real. A Lacanian reading as suggested by the previous chapter, argues for a quality of ludic 'insurrection' that offers insights into the functioning of the law. Our starting point is an acceptance that Klein's 'formalism' is supplemented by his theatrical performances, which in the end truly mark his avant-gardism.⁸ For example, Klein follows Rodchenko and repeats his work formally in a different context; Buchloh contends that it is in the register of the reception by the audience that Klein's work turns into an example of true neo-avant garde art, *pace* Burger.⁹ The general

⁸ Benjamin Buchloh, 'Formalism and Historicity', in *Europe in the Seventies*, (Chicago: Art Institute of Chicago, 1977), 83-111; Buchloh goes so far as to say that Klein is not a formalist [monochromes etc] in the way we think, arguing that he should not be hailed as one and that it would be limiting to see his oeuvre through such a lens.

⁹ Benjamin Buchloh, 'Plenty or Nothing: From Yves Klein's *Le Vide* to Arman's *Le Plein*', in *Neo-Avant-garde and Culture Industry: Essays on European and American Art from 1955 to 1975* (Cambridge, Massachusetts:

reception of this shift in Klein is to look at it cynically. Thierry De Duve and Buchloh see the project of Klein sardonically from the view of his total capitulation to capital and spectacle.¹⁰ Buchloh writes, 'The very same strategies that had developed within modernism's project of enlightenment now serve the transformation of the bourgeois public sphere into the sphere of the corporate state, with its appropriate forms of distribution (total commodification) and cultural experience (the spectacle).'¹¹ Or in other words as the gap between high and low was breaking down, and as the nature of bourgeois culture was homogenising, Klein returns with a highly ritualistic, cult 'transcendental negation.' De Duve also sees Klein's work merely as a symptom of late capital.¹² In the endnote to his article de Duve is his most positive:

Perhaps it took Klein's false devoutness and real economism to demonstrate that the judgment by which something is called art (or good art, or significant art) has no more— and no less— to do with values that it had to do with piety and devotion in the days when the field of aesthetics was congruent with the field of religion.¹³

On the whole though de Duve sees Klein's constant paradoxes and contradictions as not only the tattle of a 'mountebank' but also the illustration of the inconsistency of the 'kettle argument.'¹⁴ In line with Buchloh, de Duve views Klein's work as complicit with the ideology of late capital. The problem with art as religion for any post-Adornian is that it is just another 'false consciousness.' However what is suggested by our reading of Lacan is that fictions do indeed anchor society, and there is no 'truth' that lies behind them *per se*. This sort of Marxist or Situationist viewpoint is scathing of Klein's stunts. Buchloh writes for example:

The dubious distinction of having claimed a natural phenomenon (the blue chroma pigment, or of the sky) as private property, a brand name, and of legalizing this preposterous pretence by a

MIT Press, 2000); Benjamin Buchloh, 'The Primary Colors for the Second Time: Paradigm Repetition of the Neo-Avant-Garde', *October*, Vol 38, Summer 1986, 41-52

¹⁰ Thierry De Duve, 'Yves Klein, or The Dead Dealer', trans. Rosalind Krauss, *October* Vol 49, Iss 3, 1989, 73-90

¹¹ Buchloh, 'The Primary Colors for the Second Time: Paradigm Repetition of the Neo-Avant-Garde', 1986, 52 Buchloh sees that rather than integrating art into social practice Klein, oppositionally, relies on the spectacle 'as the provider of a mythical semblance of radicality...[and] the appearance of credibility.' 51

¹² De Duve, 'Yves Klein, or the Dead Dealer,' 1989, 74

¹³ *Ibid*, 90

¹⁴ The kettle argument is not only circular but also an argument in which its parts also contradict one another. For example four defences to borrowing and breaking a kettle in order: the kettle was never borrowed, the kettle was cracked before being borrowed, when the kettle was returned the kettle was not cracked, and finally there never was a kettle.

signature or by quest for a patent, is Yves Klein's. The property claim and the administrative, legalistic approach are a measure both of his mania and of the misery to which the neo-avant-garde would advance in postwar Paris (and by no means would he be the last in the decrepitude of his art).¹⁵

Pace Buchloh, it is this very sort of legal framing that is most interesting for Critical Legal Studies and worth exploring for a better understanding of the legal 'image' in visual studies. Buchloh goes on to call Klein's rituals 'aristocratic antics' made to win over the bourgeoisie. The failure of Buchloh's approach is that he can never reconcile the two sides of Klein's production. He cannot see that instead of kowtowing the establishment, Klein's work shows the weakness at its core. The legalistic, administrative, arcane, and aristocratic qualities of Klein's work indicate or pressure the 'Real' at the heart of the symbolic order.

Buchloh negatively identifies that Klein sees capitalism as an overarching power over art.¹⁶ In focusing his attention of the legal, structural framework surrounding the image, Klein is able to make a different kind of aesthetic discovery. It is a discovery not of transcendental absolutes of beauty and truth, nor some truth of a material dialectic. Yve-Alain Bois has positively characterised the play in Klein's work and called for its reappraisal.¹⁷ Bois calls Klein's strategy the 'true-false dance', and links Klein directly to clowning.¹⁸ Nan Rosenthal lays stress on the circular logic that undermines his beliefs and sees redeeming qualities.¹⁹ In a later article Rosenthal speculated on the possibility of publishing Klein's complete writing, '... such a book would also eliminate the tendency of editors to honour one kind of Klein over another—usually the utopian over the dystopian, when this artist's strength, and much of his interest for us today, lies in his consistent shuttling between the two.'²⁰ This breakdown is astute. The utopian notions of the void, the immaterial and the monochrome have been read in isolation from the stunts because the formal qualities of his works were received first in relation to Greenberg and the United States during the 1960s. Indeed it is his Duchampian stunts and his rebellion against the society that feeds Klein's

¹⁵ Benjamin Buchloh, 'Out of the Blue: Klein and Poses', *ArtForum* Vol 33, Iss 10, 1995, 92-97

¹⁶ *Ibid* 1995; Buchloh writes: 'Klein's vindictive certainty that the reality principle of capitalist patriarchal power will ultimately prevail against the liberatory potential of aesthetic practice and utopian thought aligns him historically on an axis that leads from Francis Picabia right down to later Andy. It seems that what generates Klein's lifelong infatuation with power (and inevitably also with its derelict visuality, kitsch) is the travesty of aesthetic aspiration itself.'

¹⁷ Yve-Alain Bois, 'Klein's Relevance Today', *October*, Vol 119, Winter 2007, 75-93

¹⁸ Bois, 'Klein's Relevance Today', 2007, 86

¹⁹ Nan Rosenthal, 'Assisted Levitation: The Art of Yves Klein', in *Yves Klein 1928-1962: A Retrospective*, (Houston: Menil Foundation, 1982) 189-135

²⁰ Nan Rosenthal, 'Comic relief—artist Yves Klein—Into the Blue', *ArtForum*, Vol 33, Iss 10, 1995, 97

popularity today. Increased interest in Klein led to a retrospective in 2006, at the Centre Pompidou in Paris and Museum Ludwig, Vienna where a major part of these exhibitions were the reconstruction of projects and 'rituals' from Klein's notes.²¹ Bois concludes his essay and draws out the revolutionary aspect of Klein's 'rituals' (here still in a more economic rather than politico-legal sense):

For his stunts were populist means— a bit repugnant, yes, but he might not have had many others at his disposal – by which he was able to fight against the equally pompous but even more hollow spectacle of the high bourgeois culture of his time (more hollow because it was levelled out by the culture industry while pretending to ignore it)....Herein lies Klein's relevance today: he shows us how to deflate the spectacle of the culture industry by staging an even greater hoax.²²

De Duve too is looking at the society of the spectacle. He focuses in part on the ex-voto and draws a conclusion that it is wrong not to take Klein's 'clownish theatre' seriously.²³ Arguably, we should move beyond the Adomian reading of society, whilst borrowing Bois and de Duve's attention to the logic of repeating, playing, and mimicking the trappings of the socio-legal structures.

CLOWNING THE LAW

Klein's play should be seen in light of Kant's *Critique of Judgement*. It is neither satiric nor parodic but rather a free play connected to aesthetic pleasure.²⁴ Derrida extends Kant's argument. As a painting or image the play of the viewing/reading is too limited. The response is limitless when the focus is changed to games and the subjects playing them. Derrida writes:

[U]p until the event which I wish to mark out and define, structure-or rather the structurality of structure-although it has always been involved, has always been neutralized or reduced, and this by a process of giving it a center or referring it to a point of presence, a fixed origin. The function of this center was not only to orient, balance, and organize the structure-one cannot in fact conceive of an unorganized structure-but above all to make sure that the organizing principle of the structure would limit what we might call the freeplay of the structure. No doubt that by orienting and organizing the coherence of the system, the center of a structure permits the freeplay of its

²¹ See the approach also of Christopher Phillips, 'All About Yves: A wide-ranging Yves Klein retrospective demonstrates the variety of the artist's paintings and sculptural objects, and attempts to re-create the ambience of Klein's gallery installations', *Art in America*, Vol 83, Iss 5, 1995, 86-91

²² Bois, 'Klein's Relevance Today', 2007, 93

²³ Apart from De Duve see also Pierre Restany, 'Yves Klein: The Ex-Voto for Saint Rita of Cascia', *Yves Klein: 1928-1962 A Retrospective*. Exh. Cat Houston, Chicago, New York, Paris. (Houston: Menil Foundation, 1982) 255-257

²⁴ Immanuel Kant, *Critique of Judgement*, trans. Werner Pluhar (Indianapolis: Hackett, 1987) 132

elements inside the total form. And even today the notion of a structure lacking any center represents the unthinkable itself.²⁵

Following this Derrida particularly looked at the use of repetition as a form of play, through a reading of Mallarmé and Phillippe Sollers.²⁶ Is it for these strategies of repetition and play (especially from the point of his own subjecthood) that Klein is often seen as an early post-modernist? It is the notion of symbolic castration and the symbolic interpellation of the subject that illuminates Klein's work clearly. The viewpoint of critics has been honed too tightly to the strictures of the avant-garde and the questions Klein's work poses for abstraction. If we wish to take his stunts seriously, it quickly becomes clear that the majority centres on the insignia of symbolic power and authority. He stages events, performances, rituals, contracts and authorisations in order to come to terms with the inconsistency of castration. Renata Salecl, talking of the 'perverse rituals' of contemporary body art, writes, 'Since for neurotics castration was effective, they create a fantasy scenario to cover up the lack, which is the result of castration: i.e. they try to show how they are not essentially marked by the law, since they can openly play with castration rituals on the stage'.²⁷ Not only does Klein perform castration rituals relevant to the symbolic order, insignia and authorisation, but also delves further into the inconsistency of the big Other at the point of sovereign authority. This approach to questioning the subject position through play has some parallel to Roland Barthes' description of the effect of aesthetic texts. Such a text (which for Derrida would have limited play) is connected to pleasure. The text Barthes privileged was the writerly text, which he saw as producing *jouissance*, breaking down the certainty of the symbolic order, and the subject position; text/painting/performance produces physical bliss rather than mere communication.²⁸ In this way Barthes preferred a lack of clarity, or 'unreadability'.

This approach to play illuminates Klein's relationship to the law. After symbolic castration, and the interpellation of the subject by the law, the subject is offered two consolations. First, they are offered a place within the greater symbolic order. Second, the prohibitions of the law in the end create *jouissance* in the law's attempt to repress and prohibit *jouissance*; it is unable to completely evacuate it, and it is around this failure that our drives are centred (primarily in the erogenous zones). My reading highlights the role of images in Klein's use of play, his fraudulent activities (or

²⁵ Jacques Derrida, 'Structure, Sign and Play' in *Writing and Difference*, trans Alan Bass, (University of Chicago: Chicago, 1978) 278-293, 278

²⁶ Jacques Derrida, 'The Double Séance,' in *Dissemination*, trans. Barbara Johnson, (University of Chicago: Chicago, 1981), 173-286

²⁷ Renata Salecl, 'Cut in the Body', *(Per)versions of Love and Hate*, (London: Verso, 1998) 159; I should note at this point that Lacan links the hysteric to neuroses.

²⁸ Roland Barthes, *The Pleasure of the Text*, trans. Richard Miller, (New York: Hill and Wang, [1973] 1975)

should we even say crimes?), that identifies two outcomes related to symbolic castration. First they are clearly calling for recognition, like the crimes of mass murder or even terrorism; they are spectacles for the big Other to act on the subject. Second, they represent the *jouissance*, which cannot be accounted for, the excess to the process of castration.

HYSTERIA AND THE CALLING FOR ORDER

As we saw with the work of Duchamp the primary logic of the hysteric is that of being for the big Other. The barred subject is searching for the 'father figure', the law, the symbolic order, so as to know what constitutes them. The father figure, as we have already stated above is also inconsistent, barred, and this leads to an endless search for more and new authorities. Klein represents this through his highly spectacular wedding, framed by the Knights of St Sebastian, of whose order he was a member; his obsessive interest in Rosicrucianism; judo; and the trappings of the law and pseudo-sciences. The double-sided nature of hysteria, which Klein embodies, is that the authority that the hysteric searches for is also the authority they wish to control and interrogate. We have already looked at this interrogation/transgression paradox in Dada, and Klein extends these experiments. As alluded to in the last chapter, the hysteric's call for recognition by the big Other is more obvious in Klein's work. This aspect of the hysteric is summed up by Renata Salecl in her essay 'Crime as a mode of Subjectivization'.²⁹ For Salecl, Lacan 'tries to explain a criminal act in terms that do not dehumanise the criminal', that do not take the criminal outside the symbolic order. Of most interest to us here, is her analysis of the Denis Lortie case, as discussed in Pierre Legendre's *Le crime du corporal Lortie*. In 1984 Lortie, on his way to parliament with an intention of murdering members of government, killed three and injured eight people waiting in the corridor. As Legendre notes, the image of the father was conflated with the image of government; asked why he committed the crime, Lortie said, 'The government of Quebec has my father's face'. Legendre sees the Freudian myth of killing the primordial father as a way in which the subject can elide the authority of the law and the authority of the symbolic order. It also highlights the visual analysis that could be made of this case. As quoted by Salecl, 'Legendre points out that in Lortie's case we must "analyse the murder of the Reference, the preposterous attempt...to strike at the very source of laws, the principle they follow: the Law of laws."³⁰ Following Legendre but expanding the analysis, Salecl concludes that, 'The murder of the authority figure (the government of Quebec in Lortie's case) could signify an act of separation. Though the

²⁹ Renata Salecl, 'Crime as a Mode of Subjectivization: Lacan and the Law', *Law and Critique* Vol 1, 1993, 3-20

³⁰ Translation by Renata Salecl from Pierre Legendre, *Le crime du corporal Lortie* (Paris: Fayard, 1989), 17, in Salecl, 'Crime as a Mode of Subjectivization: Lacan and the Law', 1993, 8-9

son kills to avoid identifying with the terroristic father, through this murder, he also searches for the father...What Lortie really demands is to be subjected to the law.³¹

The context of the hysteria in Klein's case can be seen in a particularly politico-legal context. The situation in France at the time was legally an anomic state. The exhibition of the Void occurred within the power vacuum, or interregnum, or legal void, at Galerie Iris Clert, 28 April 1958. It was at this infamous show that Klein painted the interior of the gallery white and left it empty. There had recently been riots on the streets, protesting the Algerian conflict. Klein's exhibition occurred between the resignation of President Felix Gaillard on April 15, 1958 and the establishment of General Charles de Gaulle's Fifth Republic on June 1, 1958. In this year too, De Gaulle reconfigured the role of the President to allow for the dissolution of the national assembly, appointment of Prime Ministers and the ability to call the state of emergency; he was an 'elective monarch.' It is within this setting, and as a framing of his show *Le Vide*, that Klein had asked to 'cover' the Obelisk at the Place de la Concorde with a blue sheet. This was later changed to the blue light tested successfully by *Électricité de France*, although on the night of the exhibition the police did not grant final permission (Figure 37). Perhaps the intervention was seen to be too contentious within a state already in interregnum, since asking questions of the nature of democracy would have been too provocative.³² As in the work of Duchamp, what Klein would have done was connect his own subjecthood to the Obelisk with his signature colour. From Klein's drawings we discover that the light would have begun above the plinth, which would have also made the Obelisk appear to float. Klein almost would have been too successful in claiming a right over the Obelisk while there was a vacuum at the placeholder of French sovereignty. In a note Klein stated that the official government response for the cancellation was due to 'the overly personal character of the manifestation and the publicity surrounding the gesture by radio and

³¹ Salecl, 'Crime as a Mode of Subjectivization: Lacan and the Law', 11-12

³² As an interesting aside the Place de Concorde and the Luxor Obelisk have always been politicised. See Darcy Grimaldo Grigsby, *Extremities: Painting Empire in Post-Revolutionary France* (New Haven: Yale University Press, 2002), where Grigsby suggests that objects from the Oriental campaigns, such as the Obelisk taken from the Luxor Temple in Egypt in 1831, were part of the *juste milieu*. The public monuments to French Glory suppress internal threats by focusing on nationalism above other political designations, such as republican or monarchical; see also Todd Porterfield, *The Allure of Empire: Art in the Service of French Imperialism 1798-1836* (Princeton: Princeton University Press, 1998). Porterfield dedicates his first chapter to the Obelisk, which he sees as an exemplary monument to show the contestation of power, and the process of *juste milieu*, where the Obelisk became 'a safe haven from the murderous Revolutionary dialectic,' 41. National pride was not only engendered from victory in the Orient but even by the technical facility needed to transport and raise the Obelisk in Paris as celebrated on its plinth.

newspapers.³³ However it also can be seen as a symptom of Klein's searching for the big Other, here represented by the Obelisk, and of course the official government approval that he sought and in the end did not get.³⁴ Similarly, although superficially the inverse, this Obelisk performance/stunt was part of Klein's 'Blue Revolution.' When the big Other is not operative the subject may invent other fantastical masters.

Extending the claim to sovereignty, Iris Clert was able to organise the use of two Republican Guards to stand guard at the same exhibition. The Republican Guards were the Presidents own particular attachment, so in effect the Republican Guards not only policed the exhibition like normal officers but actually suggested the sovereign presence of the president. Klein describes the political import of these guards:

On either side of the entry, under the dais, on opening night will be placed Republican Guards in presidential costume (this is necessary for the official character I want to give to the exhibition and also because the true principle of the Republic, if it were applied, pleases me, even though I find it incomplete today).³⁵

Not only do the guards represent the contemporary president's body, but, more importantly through their naming and their history, they represent the original founding auctoritas of the Republic; their job of protecting the president's body highlights the auctoritas surrounding the body of the president. They have become for Klein an embodiment of the auctoritas and not only the *potestas* (common police) of the French Republic. His questioning of the 'true principle of the Republic', which he finds 'incomplete', links the work directly to the political shifts of the day. Recent scholarship has connected the success of Klein's efforts to the acceptance of his work as a fresh art that pointed to a new France after Pétainism and Vichy had effectively hijacked the School of Paris to its own end.³⁶ In this way Pierre Restany, *nouveau réalisme* and Klein particularly were openly accepted by the establishment; Klein's hysterical comments about the incomplete

³³ In *Nuit Banai*, 'From the Myth of Objecthood to the Order of Space: Yves Klein's Adventures in the Void', in *Yves Klein*, exh. cat., Frankfurt, Schirn Kunsthalle, 2004, 25

³⁴ Of course Klein the hysteric was furious that he was refused approval. The piece was finally performed on 7 October 2006, as part of the Pompidou Centre Exhibition.

³⁵ Yves Klein, 'Preparation and Presentation of the Exhibition of April 28, 1958', Yves Klein and Gilbert Perlein, *Yves Klein: Long Live the Immaterial*, (New York: Delano Greenidge Editions, 2000), 74

³⁶ Michèle C. Cone, 'Pierre Restany and the Nouveaux Réalistes' *Yale French Studies*, No. 98, *The French Fifties* (2000), 50-65; Cone here also suggests the uncanny logic of the rebirth of both General de Gaulle and Duchamp during the fifties and sixties.

Republic followed the Fifth Republic's song sheet.³⁷ The birth of a new abstraction was a ramification of this shift in Vichy.

The shift towards a new France, and its connection to hysteria, provided a context for fastening Klein's abstraction to the art of his parents, who were both artists.³⁸ A psychological and biographical approach to Klein is mostly associated with the work of Thomas McEvelley. Among other failures, McEvelley sees Klein's failed baccalaureate as a reason for his constant search for recognition in various fields. When Klein first submitted the orange monochrome, *Expression of the World of the Colour Orange Mineral* to his mother's Salons des Réalités Nouvelles in Paris 1955, he was expecting to be rejected. When he was rejected, to very loud howls of protest from Klein, this became a final break from this group of French abstract painters and his mother's art. Many writers have seen this work and its failed entry into competition as 'parenticidal gesture.'³⁹ This was the first rupture, and in psychoanalytic theory a perfectly normal one, often called developmental hysteria. My point is that even here there is not a complete break. Right here in post-Vichy Paris the State and art were connected. The abstractions of Raymond were purposefully *art informel* and different to Vichy. Klein extends this distrust of tradition, as represented by the figurative paintings of his father and the 'bourgeois' abstracts of his mother. He still however seems to believe in France (the State) and art, as functioning symbolic orders; the hysterical subject is the quintessential believer.⁴⁰ From the point of view of art, Klein follows the normal avant-garde tradition of critique, while staying *within* the game. Klein desperately seeks an operative Statist order, in all the nooks and crannies where the law presents itself in images; like a truffle pig Klein moves from one image to another trying to find an adequately sized big Other. Klein is a hysterical effigy-finding machine. In the end, as we will see, it is the reactivation of these Statist images through play that stops these images reverting back to Vichy fascism.

³⁷ See Michèle C. Cone, *French Modernism: Perspectives on Art Before, During and After Vichy* (Cambridge: Cambridge University Press, 2001), particularly 'Abstract Art as a Veil' 81-100; Michèle C. Cone, *Artists under Vichy: A Case of Prejudice and Persecution* (Princeton N.J.: Princeton University Press, 1992)

³⁸ Fred Klein, a figurative painter, and Marie Raymond, whose abstracts during the fifties were well received and influential on Yves Klein.

³⁹ Bois, 'Klein's Relevance Today', 2007, 82; the reader will be reminded of the fact that Max Ernst, rebelled against his painter father. Duchamp too was rejected from an exhibition organised by his older brother.

⁴⁰ Paul Verhaeghe, 'The Collapse of the Father', in *Sexuation*, ed. Renata Salecl, (London: Duke University Press, 2000) 131-154, 136; I note in passing that Doubting (Saint) Thomas is also called Thomas the Believer.

SOVEREIGNTY AND MARKS OF AUTHORITY

Like Duchamp, Klein directly uses the founding mystical authority of sovereignty itself on many occasions. There are many aspects of legal sovereignty in Klein's work. The chronology of Klein's artistic career tends to start with a gang of artists, Klein, Claude Pascal and Armand Fernandez (Arman), in 1946. In the absence of any other constraints, in the direct aftermath of the war, they decided to divide the world between them. Klein chose the sky and said of himself, 'Once, in 1946, while still an adolescent, I was to sign my name on the other side of the sky during a fantastic "realistico-imaginary" journey.'⁴¹ Through his signature Klein became not only the 'owner' but the sovereign ruler of the sky.⁴² The paintings themselves are connected to this originary and founding act:

This is why space gave me the right to be the "owner," or rather, the "co-owner," with others of course, but others who have nothing to do with humans. And space consented to manifest its presence in my paintings in order to constitute them as *notarized* acts of ownership, my documents, my proof, my diplomas as conquistador. I am not only the owner of Blue, as one might believe today, no, I am the owner of 'COLOUR,' for it is the terminology of the legal acts of space. Of course, my incommensurable property is not 'only coloured,' it simply 'is': my paintings are there only as my visible deeds of property...I realized that the paintings are but the 'ashes' of my art. The authentic quality of the painting, its very 'being,' once created, is found beyond the visible, in pictorial sensibility in the raw material state.⁴³

So in this way Klein merely continues the tradition we have plotted previously, particularly in relation to Duchamp, where the artist conflates himself with the powers of the sovereign; the artistic genius as a godly creator. Klein confuses this set of terms though by appealing to the 'real' system of state and international law. The legal aspect of Klein's work has always been seen as a strange eccentricity and at worse a capitulation to the disciplinary society of capitalist democracy. In the context of sovereignty and semiotics of the legal image Klein's work should be revisited. The process of a floating, anomic outlaw subject seems to interest Klein. He shows that even the 'Blue Revolution' needs its rules and contracts. He authorises that his friends continue his work under the *International Klein Bureau*, which becomes particularly useful after his death. He sees that his 'Blue Revolution' also needs allies to work or at least the force of a founding sovereign violence.⁴⁴ The letter Klein writes to Eisenhower has often been cited as a mad prank but it has

⁴¹ Yves Klein, *The Chelsea Hotel Manifesto*, 1961, accessed 7/09: www.yvesklein.de/manifesto.html

⁴² Pascal received the air, and Arman the rulership over the earth and its riches, including its rubbish.

⁴³ Yves Klein, 'Overcoming the Problematic of Art', quoted in *Yves Klein: Long Live the Immaterial*, 71-72

⁴⁴ Sidra Sitch, *Yves Klein*, (Ostfildern: Hatje Cantz Publishers, 1995), 144; see also *Yves Klein 1928-1962: Selected writings*: 'I want to take as the canvas for my next picture the entire surface of France. This picture

real implications for a philosophical discussion of the Stimeresque difference between revolution and insurrection. Klein's letter asks for Eisenhower to place blue pigment in the next nuclear bombs so that the fallout has the aesthetic of Klein's void. It is a ludic force but at the same time maintains the connection to real sovereign freedom/power, the authority to push the red button and turn a city blue. According to his system [of the Blue Revolution] there would be:

Preservation and exaltation of the total freedom of the individual (the grain of pigment) joined together with others by a fixative medium that is no longer money—that actually welds like oil does with pigment in oil painting by altering its natural brilliance and its autonomous radiance, and by mummifying it—but a noncolored, stronger fixative medium: 'quality'.⁴⁵

Klein saw himself as a new sovereign leader bringing peace and prosperity to a new creative France:

Each individual in my system will be considered by me in the realization of my painting France like the grains of pigment that, completely free and not fixed in powder, have a brilliance and extraordinary radiance, and that, once fixed to the support, have less tone, are dead and dead, if the fixative medium has altered them. In order to fix the independent individualities of the great dynamic multitude to the surface of France, I want to make them discover that they are artists, everyone is an artist and creator, and a specialiser of sensibility without knowing it. I want each individual, whatever he does in France, to produce in a national, enthusiastic spirit, no longer for quantity but for quality. No more over production leading to unemployment or war, but quality superproduction.⁴⁶

But on the other hand the language of sovereign freedom that has had most attention was always mediated by marks of external authority. This hysterical strategy was obviously understood by his wife, who in an interview conflates Klein's artistic precondition to a conflict with his parents and to the figure of President Eisenhower:

In his consciousness and understanding of art Yves was far ahead of his time. He was born into a painters' family. On top of this there was the fact that the conflict between his parents about figurative and abstract art pushed him at an early stage into an ability to bear conflict and led beyond the avant-garde problematic without losing the love and resilience of his own spiritual life.In his generation of artists, a global collaboration on earth could be seen for the first time as a

will be called "The Blue Revolution". It isn't the fact of my taking power in France that interests me, but rather the possibility of creating a monochrome picture in my new manner', 42

⁴⁵ Sitch, *Yves Klein*, 1995, 145

⁴⁶ *Ibid*, 145

conscious possibility. Thus he could hazard writing a letter to President Eisenhower of the United States in 1958, when he was still an unknown artist.

What this quote innocently discloses is Klein's self-importance in writing to the president, a pride his wife obviously shared. Of course Eisenhower never wrote back, but as Salecl points out often with hysterical (most commonly love) letters, the letter need not be received for it to work, because the letter is actually addressed to the big Other, here the symbolic president and not the real man. 'Eisenhower' was connected directly to the master signifier of (the American brand) of freedom.⁴⁷ What is usually left unmentioned by theorists is that this letter writing was obsessive. He wrote to other Presidents, the Pope and the newly formed International agencies based at the United Nations. For example, the artist suggested that there should be a (Klein) Blue Sea, as there was already, on Klein's logic, a Black and Red Sea. He sent this suggestion in a letter to the Secretary General of the International Geophysical Arm of the United Nations. He would 'carbon copy' many figures on the same letter so that recipients would see the long list of people Klein had already sent the letter to. The sending was not hypothetical though and the replies were not forthcoming. It is my contention that this activity of letter writing be seen as a significant part of Klein's output. The letters were also well expressed in poetic prose, signed and well archived. This groping for symbolic father figures is entirely consistent with the other hysterical framing of Klein's work. In this case the letters are the best and most direct example of a calling for the father figure. In the constant repetition and 'cc-ing' Klein parodies the act of letter sending. His strange and clownish demands, such as the aestheticising of the nuclear bomb, show his strategy of détourning official avenues of communication in the name of art. This belies Klein's wife's suggestion that the letters were sent in all earnestness. But this need not be a paradox. On the level of knowledge and reason they are irrational but the calling of the father figure is as real as any letter to Eisenhower. Eisenhower functions as an authority with which to correspond regardless of what is sent to him. This is the earnestness in Klein's work, that the big Other, although perhaps fictional and ludic, may always be called upon, even without reply.

KLEIN BLUE AS LUDIC AUTHORITY

In 1956 with help from a chemist, Klein was able to construct a binding medium that would keep the dry presence of the actual pigment, without an obvious oil or acrylic residue. For Klein lines and forms were too connected to the world and constricting to transcendence, individual particles of pigment expressed through their colour a 'total freedom.' What was the limit of this freedom? The most obvious example of Klein's appeal to the 'real' law is in his oft cited patenting of his

⁴⁷ See Renata Salecl, 'Love Anxieties,' *On Anxiety*, (London and New York: Routledge, 2004) 73-93 for a discussion of hysteria, love and the 'unsent' love letter.

formula for International Klein Blue (or I.K.B.).⁴⁸ This eccentric move is separated out from the actual monochromes that were created with this colour, as a prank. However, if we remember the creation of such copyright and patenting laws in the nineteenth century, questions such as originality and authorship were directly related to the theoretical propositions of the aesthetic tradition. By the twentieth century the autonomy of art and the autonomy of law hid the connection between the Romantic logic underpinning both.⁴⁹ At the moment Kantian aesthetics allows for the separation of aesthetic judgment from other social and philosophical spheres the law tried to protect this autonomy; the paradox is obvious. In Klein's work this hidden gap, was revisited and highlighted. So where Sidra Sitch defines Klein's *The Void* as 'where there are no names, rules, boundaries, or definitions—this was the obsession that guided the life and art of Yves Klein', this is clearly half the tale.⁵⁰ The Blue Stamp, used on envelopes for the invitation to Klein's Blue Monochrome Exhibition at Iris Clert in May 1957, is a beautifully simple exemplar of how he called for the authorities' mark to complete his work (Figure 38). Sitch describes the process:

In addition, a special blue postage stamp appeared in place of the sanctioned government issue. The stamp clearly pushed the limits of artistic liberty as well as the legal use of the postal communication system. By adeptly negotiating with the proper personnel at the post office (and encouraging them with extra payment), Klein had arranged for his facsimiles ('facsimile' postage perhaps, but 'real' art) to function as valid stamps in the regular mail. He also made sure that the cancellation markings were placed directly over the stamps so that their 'authenticity' would be indisputable.⁵¹

What is wonderful about the symbolic investment in the 'cancellation marking' is that, in a Kafkaesque travesty, it does not matter that the markings were bought. Klein's small monochromes, supplemented by the markings, became a stamp sanctioned by the state. The

⁴⁸ The patent actually was for the particular type of see through acrylic binder used to maintain the sheen of the pigment. The I.K.B. patent is dated 19 May, 1960. This date is significant in that by this time a number of other legalistic devices had already become part of Klein's work. See Carol Mancusi-Ungaro, 'A Technical Note on I.K.B.', in *Yves Klein 1928–1962: A Retrospective*, 258–59

⁴⁹ Here the Kantian notions of aesthetic autonomy, authorship and originality are seen as precursors to modern copyright laws, which culminates in the Berne Convention of 1868.

⁵⁰ Sitch, *Yves Klein*, 1995, 13

⁵¹ Sidra Sitch, 'Blue, Blue, Blue', 91; also discussed in Pierre Restany, *Yves Klein*, (New York: Abrams, 1982), Restany writes '[Klein] reached an understanding with the postal authorities for the payment of a fee that allowed him to have an I.K.B. stamp of his fabrication cancelled on a postcard', 42. Rosenthal in 'Assisted Levitation: The Art of Yves Klein,' in *Yves Klein*, 1995: 'According to Iris Clert, these mailings were arranged by paying the normal required postage at the post office while simultaneously tipping the postal clerk to cancel the postcards or envelopes over or near Klein's stamps', 110

monochrome in this way doesn't merely push the limits of 'artistic liberty' but actually becomes *not* art. Having been transformed into the symbolic register by the postal markings they become, from one view, an effigy of the authorial second body of French State law.⁵²

Sitch sees the matter from the opposing view in which the works are 'real' art and fake stamps. From this viewpoint the stamp quickly returns to the Imaginary realm. Sitch continues, 'they are also logos, instantaneous signs, advertisements', and there is no analysis of the stamp in regard to their usage as stamps.⁵³ It is here that I would like to return to Mitchell's reading of the visual in terms of his triad of icon, fetish and totem (based as it is on Lacan's triad). Mitchell allows, as we have seen, that there can be a multiple reading of an object. On one level Sitch is correct; the work links directly back to the Monochrome paintings on display in 1957. But it is impossible to separate the framing devices, the parergon of this work, which is the authorising mark. Klein's work shows the transformative power of the law's text or mark in shifting an object's register; here from a personal imaginary object to one at the behest of the big Other. Finally there is another move which occurs which is in the realm of trauma. The hysteric calls to the real big Other, and that is why Klein insists not on a fake mark of authenticity, as we saw in Duchamp and Ernst's cheques and rulers, but the real mark. The mark is a supplement that fills a lack. It can be the lack of the hysteric who is not recognised fully by the symbolic order. For Lacan art is defined in its relation to the Thing: art is always organised around a central void that is the impossible-real Thing. Here the Thing is the Real of the symbolic. So that the art work functions within the gap between the Real and the symbolic – and here the Real is not the horror of the Abject Real but of the Sovereign real. Klein's stamp marked properly by the State makes two sorts of sublimation. It sublimates Klein's own lack of recognition and represents the State which is only ever brought into the social realm through these rituals of framing and legal theatre.

⁵² Like coins the stamp is the privileged place of the sovereign effigy. Even in the age of the European Union, the United Kingdom and other monarchies, place a silhouette effigy in their stamps bottom right corner.

⁵³ Sitch, *Yves Klein*, 1995, 91



38. Yves Klein, blue stamp on invitation, 1957, 16cm x 9cm, ink, paper.



39. Yves Klein, *Anthropometry* performance, Galerie International d'Art Contemporain, Paris, 1960.



40. Yves Klein, *Anthropometry* performance [white gloves], Galerie International d'Art Contemporain, Paris, 1960.

LAW AND REPRESSION AND THE RETURN OF *JOUISSANCE*

The subject is created by its recognition through the law, without this recognition the subject has no place within the symbolic order. The utopian vision that Buchloh or de Duve envisions does not exist outside our legal structures. In this way it could be the mystical and clownish Klein that is the realist. Both psychoanalysis and Foucault agree that the desire in the subject is created by its prohibition from the law. As pointed out by Salecl, the difference in Lacan and Foucault's approach is that, 'the subject produced by the law does not simply have a desire ... he also has a desire not to have a desire; he denies his desire. Psychoanalysis includes negation in the process of the construction of the subject, and this is what Foucault leaves out.'⁵⁴ This control of *jouissance* that even then sometimes shows itself and its connection to law is another subject that Klein's hysteria illuminates. We have already discussed Klein's calling for recognition as a one-way calling, but Klein suggests that this formation of the subject through the big Other and the big Other's formation through the subject is an ongoing and reciprocal process. *Jouissance* within the subject is directly connected to the symbolic castration of the subject.⁵⁵ Klein's oeuvre has many examples of this joyful repression.

A comparison with the rhetoric surrounding Pollock is interesting here. In relation to Pollock, Abstract Expression and *art informel*, Klein wrote, 'I despise artists who empty themselves out onto their paintings, as is often the case today. How morbid!'⁵⁶ In Pollock it is all ejaculated *jouissance*; in the work of the American Abstract Expressionists it has long been argued that this is a work of unbridled ego. The painting becomes an arena for the artist to 'act' in, for example, Pollock dances and trails paint in an expression of his 'genius self'. Michael Leja has described this return of the ego in painting as a response to the traumas of World War II, and more generally what Leja calls 'the modern man discourse,' which repressed the modern man through Fordism, as well as disciplinary society and other horrors. This work, for Leja, represses the real social traumas through the radical internalisation of art.⁵⁷ There is nothing in Greenberg's Formalist doctrines that

⁵⁴ In Foucault the prohibitive law encourages speech surrounding the prohibition which creates a desire that may not have existed before. See Lacan, *The Ethics of Psychoanalysis* (London: Routledge, 1992): 'In effect I would not have had the idea to covet it, if the Law hadn't said: "Thou shalt not covet it."' 83

⁵⁵ It is in the text 'The subversion of the subject and the dialectic of desire in the Freudian unconscious' that a structural account of *jouissance* is first given in connection with the subject's entry into the symbolic. See Jacques Lacan, 'The subversion of the subject and the dialectic of desire in the Freudian unconscious' in *Écrits: A Selection* trans. Alan Sheridan (New York: W.W. Norton, [1960] 1977)

⁵⁶ Yves Klein, *Monochrome Adventure*, quoted in Bois, *The Relevance of Klein*, 2007, 82

⁵⁷ Is this repression not seen in the incredibly violent end to Rothko and Pollock. The violence that they repressed in their work was displayed in self-destructive behaviour. There is present the same split between the Ego and the Superego.

reins in the freedom, or autonomy of the great genius artist. Klein on the other hand responds to the prohibition of the Superego within the work through supplementary rituals. Where Klein shows aspects of calling for the Superego to punish and control, in this case there is possibly a paranoia of self-punishment. Do we not see this fear of *jouissance* on a number of occasions? In regard to paint Klein is in absolute opposition to Pollock. Scared of the paint getting on him, Klein would direct the models, in the anthropometries (Figure 39), to lay the paint onto themselves.⁵⁸ So where Buchloh would see an 'aristocratic' gesture in Klein's wearing of white-tie formal gloves to the Gallery International show, these gloves can also be seen as a defensive strategy of symbolic sublimation and not merely a strange and clownish affectation. Klein used the white gloves of the aristocrat as an emblem of the law, and do not the traffic police conduct traffic like Klein conducted the models (Figure 40), which protected him from the *jouissance* of bodily contact with the paint?⁵⁹ Similarly the first event of the anthropometries was a dinner at Godet's apartment, and the sexuality of the intimate scene was too much for Klein. Sitch suggests, '...the event took on an aura of folly and lascivious entertainment, much to Klein's displeasure...such a performance was an ideal addition to an evening of social pleasure.'⁶⁰ In response to the sexual element in this presentation of the work Klein reinvested the scene with ritual staging. It seems that this is one reason why the Gallery International event was staged so highly with an orchestra, black tie, white gloves, and a seated audience.⁶¹ Perhaps the most telling example of this response to trauma within his art through a capitulation to the control of the Superego is Klein's destruction of his blood paintings. A total limit case, that would be very difficult to dismiss as a cynical response, Klein destroyed the works he did in blood, in 1960, because of the unsettling effect that they had on him, and because of superstition.⁶² Klein brings to formalist painting this aspect of the Superego. Contra to Buchloh and de Duve, Klein is not disengaged from the political and economic issues, but may in fact be incredibly astute at uncovering the power of the Superego, as represented by law, through 'clownish' rituals.

⁵⁸ Jane Blocker, *What the Body Cost: Desire, History, and Performance* (Minnesota: University of Minnesota Press, 2004), 93

⁵⁹ The response to the 'action' painting of Pollock can be seen in reverse through equating it with the bodily abject. For example, Warhol with his piss paintings (1977-78), or the famous canned shit by Manzoni (1961), respond to the lack of control on the *jouissance* of art through a capitulation to this excess. In Klein however, the excess is checked and controlled through a reestablishment for art of the Superego.

⁶⁰ Sitch, *Yves Klein*, 1995, 172-173

⁶¹ See Timo Vuorikoski, 'From Monochromes to Anthropometries,' in *Yves Klein*, MCA Sydney, exh Cat, 1998, 163-190, 179

⁶² Sitch, *Yves Klein*, 1995, 185

THE RETURN OF KLEIN'S *JOUISSANCE*

Klein's greatest achievement is the clownish theatre that, although connected to the legal order and other symbolic controls, highlights that the particular *jouissance* of the artist/subject can never be completely ordered. As Barthes sees *jouissance* in the readerly text, or the open text, Klein's work shows the open nature of the legal fiction. To return to our earlier image of the Republican Guards, what is rarely mentioned, and to my knowledge has never been theorised, is the fact that the Guards were also framed by another set of bodyguards. Dressed in black, the Republican Guards were guarded again by what seemed like professional bodyguards, however both men were in fact two of Klein's Judo friends. By creating another parergon, the Republican Guards are mocked in relation to this new framing. The Republican Guards symbolic import is diminished and co-opted as part of art; this dissolution can never be more than partial, however; the joke is two-fold. On the one hand the Republican Guard were guarding the Void, a void that talks to the void of the Sovereign but on the other hand is merely an empty room. The question of whether these symbolic fictions form a legal viewpoint is still correct. The question still arises as to the legal status of these guards. They are on one hand the real Republican Guards, however they are being used 'fraudulently' and through bribery. They also recall the problem first posed in relation to the court cases of Daumier and in the works of Courbet, which is: Can the sovereign's body merely be represented or is it always a presence? In other words, are the Republican Guards actually embodiments of *auctoritas* and the Republic or have they been consumed by Klein's art, and in the end returned to the Imaginary sphere of art? From the point of view of the reframing of the Republican Guards through another set of guards, the ongoing process of framing is referenced, and alludes to a constant reappraisal within art and the law of the connection between the *jouissance* of the subject and its sublimation through art/law.

Finally the example of the fire works is apt (Figure 41).⁶³ The fireman was there to douse the flame that emitted from Klein's phallic flamethrower, which directly burnt the cardboard (Figure 42). The fireman is a representative of the State, and is present to make sure that nothing dangerous happens (as insurance and to follow certain codes concerning the usage of flames). In broader terms the fireman is the Superego that keeps Klein's burning flames in check, in an act of symbolic castration (Figure 43). The final fillip to this scene is that the fireman was actually a friend of Klein's, merely 'playing fireman'.⁶⁴ Klein's reassertion of the ludic at the point of an

⁶³ Pierre Restany, *Yves Klein: fire at the heart of the void*, trans. Andrea Loselle (Journal of Contemporary Art, 1993)

⁶⁴ Sitch, *Yves Klein*, 1995



41. Yves Klein, *Untitled Fire Painting*, 1961, 145cm x 97cm, charred paper on board.



42, 43. Anonymous, Yves Klein making Fire Paintings, Centre d'Essais du Gaz de France, 1961.



44. Yves Klein, *Leap Into The Void*, 1960, 26cm x 20cm, gelatin in silver print.

assumption of legal authority is telling. Law itself is shown to be so close so as to be unfounded. The artist's *jouissance* and 'freedom' is seen to be inherently linked to prohibition. It is certainly not a funny détournement because Klein's fake fireman at one point is perfectly earnest. It is dishonest, artificial and faked but aestheticised and controlled through the authority of Klein himself. The subject – be it Klein, the fireman/friend, or President Eisenhower himself – is played with, framed, repeated and reframed. The questioning of Klein is on the gap between the mask and the insignia, the shiny helmet of the fireman, and the inability of that insignia to fully account for the subject. The subject's inability to see themselves in their own mask produces the ongoing process of questioning that sums up the neuroses of the hysteric and of Klein's art. When Klein jumps off the building in *Leap into the Void*, 1960, it finds later a resonant note with Derrida's claim that justice is such a leap of faith into the unknown (Figure 43). Justice must also try to account for the singular subject, the singular criminal to be judged, in a way that the ordered static law cannot. Klein's *Void*, especially framed by Klein's legal fictions, contracts and rituals, also points to this gap that can never be filled, between the subject and the symbolic order that tries to order it. All the clowning rituals of Klein embody this endless searching and limitless play.

MODERNITY AND THE HYSTERIC EFFIGY

We have used the discourse of the hysteric to help understand a strand of Marcel Duchamp and Yves Klein's work. The relationship between the barred subject and the master signifier has been interrogated. The interpellation of the subject by the effigy, the commanding image, or visual master signifier, is part of this relationship but it is a feedback loop. If the master 'commands' through effigies, the hysterical subject also calls for the visual representations of the master signifier to appear, but as the punishing, soothing or supportive voice of symbolic recognition. Duchamp called the sovereign to appear by threatening a *crimens falsi*, a fraudulent effigy, and by producing his own standard measure, a sovereign prerogative, and connected, directly (historically) to the sovereign body. The standard measure also brings into play the diplomacy between sovereign nations and the international law that binds them. In the aftermath of the First World War these national and imperial standards had been recently tested. Duchamp's work was contextualised in relation to the 'insurrection' of Stimer and similar experiments in working through appropriations of sovereign imagery, by Tzara and Ernst. The 'I am the State' of the master discourse which we saw in relation to Courbet and Daumier, becomes the 'I am the State' of the sovereign subject; the strategy draws attention to the paradox of subjection. Klein's entire body of work is haunted by this Dada strategy, in a neo-dadaist revival. Also responding to trauma and the testing of sovereignty, Klein reverts to images of the modern sovereign, and what is left of the 'second body' of Republican France, which we saw embodied by the Marianne in Daumier and Courbet. Republican (Presidential) Guards, French franking marks, and the symbol of nation in the Luxor Obelisk, become secular votives for Klein. His hounding and clearly hysterical letters to world

leaders, his foundation of the 'Blue Revolution' which was a bastardised international diplomacy of total 'blueness', and his appeal to sovereign power over the (blue) sky, was another way of working in the gap of sovereign power through imagery and letters. Between these two artists the modern effigy has been found in many places where imagery or marks of authority are used and performed. In the end the ludic and clowning quality of their particular appropriations only proved the virtual nature of the 'real' effigy, and the society's belief in this unfounded and unfoundable Thing.

The hysterical approach to power is still an important strategy in contemporary art. Duchamp and Klein's examples of the effigy seem somewhat quaint and nostalgic in the age of late capital, in a post-national phase. Regardless, the sovereign nation, is still operative and has become more so in the 'age of terror.' Again subjects call for the master signifier to reassert its position, again, primarily through imagery and military force (which as Baudrillard has shown is the same thing). The other corollary of late capital is that, where Duchamp and Klein could still appeal to the State effigy, the effigy has become so effaced by the disciplinary society that other new age father figures may supplement this lack: cult leaders, new age gurus, eco-warriors and masterful experts. It is hard to imagine that the arch-modernist Duchamp's brother died fighting for country while Duchamp was labelled a coward; such patriotic, masculinist notions have been almost forgotten in late capital, only surfacing at times of particular crises in national security. Still can we not see the hysterical call for the other in the sensational and scandalous contemporary art of the abject and spectacle? Does the artist as contemporary superstar, for example Damien Hirst or Jeff Koons, not call for global, popular, recognition as part of their practice — a level of popularity gained only through calling to the SI and through conforming to the society's concerns, rather than critiquing it as an outsider? Alternatively do the contemporary scandals of art not also call for the SI to punish and censor, which again brings infamy and is in the final analysis conforming? In the current 'war on terror' the effigy has become ubiquitous. The whole society embodied a hysterical calling for master signifiers (democracy, freedom, Nation) to *appear* as effigies. Presidents, mayors, flags and other framing insignia have all become more visible. These images of State sovereignty, that Foucault suggested were effaced and erased in the efficacy of capillary power, are visible again in a way suggested by the early modernism of Courbet and Daumier. The flurry of effigies in the 'war on terror' (or any period of democracy in a 'State of Emergency') can be described through the functioning of the discourse of the master and the hysteric.

Part Four returns to Foucault's disciplinary society, or Adorno's administered world. In this society there should be no effigies because knowledge/power becomes the means of control. The command does not come from the master but from society as a whole, through methods of surveillance and normalisation; the king is dead and the master is erased. Lacan's discourse of the

university, also describes this world where knowledge, S2, is in the agent position. For our purposes we have asked where is the effigy, the visual manifestation of the master signifier, and in this discourse, for the first time, the master signifier, is not above the line, but hidden, as the truth of the discourse. In a properly functioning disciplinary society (not in a state of crisis as in the 'war on terror' for example), the master signifier is not seen and is invisible, there is *no* effigy. It is this state that has led to the feelings in contemporary culture that we are in a post-ideological world. What Lacan adds to Foucault's disciplinary society is that the king is not truly dead but hidden, and that the master signifier is still necessary to make sense of the symbolic order, but it does so as an unheralded ideological position; this is the S1 in the position of truth, in the matheme. So where knowledge is presented as neutral, it cannot ever be unencumbered by the ideological underpinning of the S1.

Warhol was a master at showing that image (knowledge) may be *differenced* merely by copying. Warhol showed that all imagery was equivalent: from movie stars to flowers, from kitsch to Leonardo's *Last Supper*, from Coca Cola Bottles to the Queen of England. All images for Warhol represented the glut of pictures produced by mechanical reproduction with no privileging of certain images. Chapter Eight focuses however on selected Warhol images that push the limit of this *neutrality* of the disciplinary society, where we catch a glimpse of the S1 underneath. Warhol, through his knowledge of advertising and how it uses the logo function, describes how the master signifier can *invisibly* pin the subject's meaning. The other outcome of the supposed neutrality of knowledge in the disciplinary society is that we are turned into numbers, or bureaucratic data, because again equivalence is key. What Lacan's matheme of the university discourse shows is that the subject is ejected from the system. We are not a citizen but merely an unformed body or child (*a*). Duane Hanson through the form of the effigy tries to bring the bureaucratic number back to a place of honour, with all their idiosyncrasies and dreams. Perhaps what Hanson succeeds in doing is to actually show how, in the disciplinary society, this is quite impossible, the symbolic investiture of the subject always lacks a full understanding of the subject ($\$$). The effigy in this case is a parody and vestige of the kingly 'second body,' an effigy of the common man, raising the question of whether the effigy actually ennobles or defames.

PART 4

KNOWLEDGE, HIDDEN IDEOLOGY AND THE MODERN IMAGO

CHAPTER 8: WARHOL AND HIDDEN IDEOLOGY

The shots of leading figures in economic life and other prominent people in straw hats and padded suits can only be distinguished from gangsters by the fact that they take their hats off when they enter the room while they exploit the robust speech of the gangster for sake of popularity.¹

I was never embarrassed about asking someone, literally, "What should I paint?" because Pop comes from the outside, and how is asking someone for ideas any different from looking for them in a magazine?²

Andy's very royal. It was like Louis XIV getting up in the morning. The big question was whom would Andy notice.³

INTRODUCTION: TRAUMA, POP AND IDEOLOGY

The assassination of President John Kennedy (JFK) was, according to the writer John Barth, the beginning of postmodernism in America.⁴ Based on the assertion that JFK represented the hope and faith of modernism, the assassination brought this teleological faith in an overarching master discourse into recession and started a new era of critique. Postmodernism for our purposes marks the apotheosis of the disciplinary society where the sovereign king and other traditional authority figures became dissipated into a general plurality. It is worth marking Warhol's response to JFK's assassination:

I heard the news over the radio when I was alone painting in my studio. I don't think I missed a stroke. I wanted to know what was going on out there, but that was the extent of my reaction.... Henry Geldzahler wanted to know why I wasn't more upset, so I told him about the time I was walking in India and saw a bunch of people in a clearing having a ball because somebody they really liked had just died and how I realized then that everything was just how you decided to think about it. I'd been thrilled having Kennedy as president; he was handsome, young, smart—but it didn't bother me that much that he was dead. What bothered me was the way the television and

¹ Theodor Adorno, 'The Schema of Mass Culture', *The Culture Industry*, (London: Routledge, 1991) 91

² Andy Warhol and Pat Hackett, *Popism: The Warhol '60s* (New York and London: Harcourt Brace Jovanovich, 1980) 116

³ Henry Geldzahler quoted in Jean Stein and George Plimpton, *Edie: American Girl* (New York: Knopf, 1982) 201

⁴ John Barth made this statement on a panel on postmodernism, Denton, Texas, 1986. The address is quoted by Thomas McEvilley, 'Contemporary Art,' *Encyclopaedia of Aesthetics*, (New York: Oxford University Press, 1998) 435

radio were programming everybody to feel so sad. It seemed like no matter how hard you tried, you couldn't get away from the thing.⁵

Even at the death of the hero of space-age modernism Warhol still finds an ideological force that niggled him and responded in images to this 'official,' prescriptive reading of the event. He refused on the whole to image Kennedy at all, except for a few prints in the print portfolios known as the *Flash Suite Portfolio - November 22, 1963*.⁶ Most famously JFK became the invisible object of mourning around which the Jackie image hovered in the *Jackie Series*, 1964-66; Warhol made hundreds of small portraits of Jackie as the grieving widow from every angle. In a lesser-known unfinished film, *Since*, 1966, Warhol's revisioning of the 1963 events came to its head. He re-enacted the JFK assassination, parodying the news coverage, and situated the whole event on his studio couch. Ondine was Lyndon Johnson, Gerard Melanga was Jack Ruby and Ronnie Cutrone was the killer Lee Harvard Oswald, yet in this case the weapon was an oversized inflatable candy bar. Mary Woronov was the president/saint brought down in a pool of red crepe paper blood. John Giomo related that Warhol saw the assassination as 'the symbol of the catastrophe of our own lives.'⁷ But who knows with Warhol; his camp parody of the King Arthur of American Democracy highlighted that even the fall of Camelot was all media hype with little substance. Warhol's response illustrates Barth's thesis, on Warhol's couch the operating sovereign, 'second body' of the king, was killed off and not in a hysterical (critical) fashion, as suggested by Giomo, but through indifference.

It may seem blasphemous to see an ideological, political subject in Warhol's work. The traditional reading of Warhol is his cool detachment. In Warhol, though, detachment *describes* the ideology of the hidden master signifier. In merely repeating the Campbell's soup cans and other commodity products a complete levelling occurred between art and popular culture. The strength of Warhol's work in this vein was described by, among others, Thierry de Duve as an illumination that art, in the period of late capital, can offer no critique. Art becomes another commodity fetish, the connoisseur becomes the shopper, and art is exposed as a pure expression of 'exchange value,'

⁵ Andy Warhol and Pat Hackett, *PoPism: The Warhol '60s* (New York and London: Harcourt Brace Jovanovich, 1980) 60

⁶ The portfolio is made up of 14 images responding to the barrage of press surrounding JFK in the four days between his assassination and the funeral from 22 November to 25 November 1963. It is a small edition of 200.

⁷ John Giomo in 'A shock to the system: John Giomo interview, tape one, June 14, 1995, The Bunker, New York,' quoted in *Please Kill Me*, ed. Legs McNeil and Gillian McCain, (New York: Penguin, 1997) 411

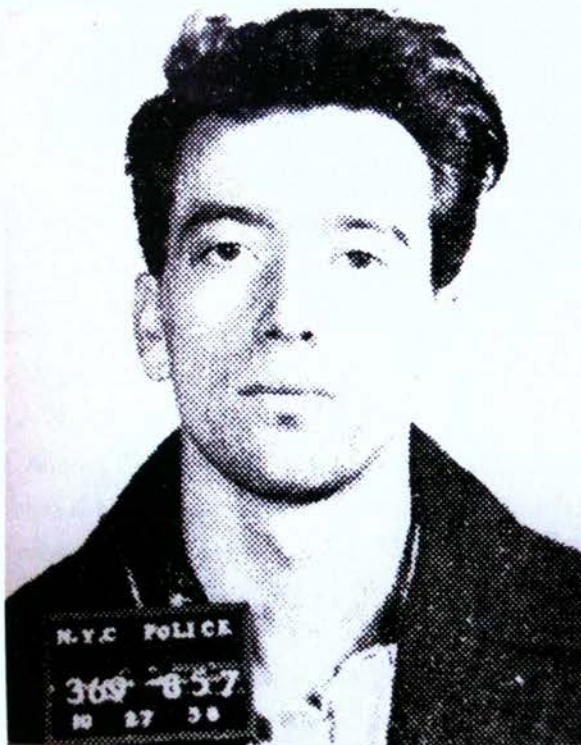
which Warhol directs the viewer to accept.⁸ The Warhol *Brillo Box*, 1964 has become the quintessential exemplar of this comment on art and late capital.⁹ In contrast, the *Death and Disaster* series, of which the Jackie works are considered a part, need to be carefully examined in regard to setting Warhol in post-ideological, late capital. The subject matter is so closely connected to the law and society on its limit, through riot and violence, through sovereigns and 'great' criminals, that as a series it is difficult to ignore their commentary on the power of these political and juridical acts and images. On the whole Warhol's work is about equivalence, the electric chair is on par with a flower from *Woman's Day*; however, in this series Warhol consciously focuses, I feel, on images that point to a failure in the smooth running of capitalist, disciplinary society. As Jacques Derrida and Walter Benjamin have noted, the State's monopoly on violence is a breach of the smooth running of neutral, well ordered bureaucracy. Indeed when disciplinary society *shows* that it has this power, the disciplinary method of control has failed; compared to the capillary power of normalisation, violence the sledgehammer supplement. These images of State violence and control though offer a small gap in the edifice of bureaucratic control where we may see still working the mythical sovereign authority. For this reason Warhol's *Death and Disaster* series may be used in a Lacanian sense to find the SI, master signifier, still working but hidden in the administered world. In this chapter there is no sovereign body, no effigy, only a process of ideological underpinning; in certain works Warhol seems to actively engage with showing this 'official' line, and how it underpins the images of disciplinary control. One such foray went so far as to engender official censor for the misuse and (dangerous) appropriation of State imagery; this work was Warhol's mural, *Thirteen Most Wanted Men*, 1964. Particularly as its reception was *not* in the art gallery (and hence not germane to Danto's critique) but in the public space at the New York State Fair (Figures 45 and 46), it more easily allows for a reading of critical and active social engagement. With this controversial mural, and I suggest in part the *Death and Disaster* Series, Warhol enters into a dialogue with the political and social import of images.

⁸ Thierry de Duve, 'Andy Warhol or the Machine Perfected', trans. Rosalind Krauss, *October* 48 (Spring): 4. 58, 1989

⁹ See Arthur Danto, *After the End of Art: Contemporary Art and the Pale of History*, (Princeton: Princeton University Press, 1997). Danto's reads of the *Brillo Box* as the end of art history. For Danto the *Brillo Box* in its almost exact replication of the real object becomes pure philosophy, which Hegel had already set as the goal of art, for art to become pure Spirit. Danto writes, 'What makes *Brillo Box* a work of art is that it incarnates, expresses, whatever idea it does express, hence is idea and mere thing at once, a box transfigured if only into the idea of a box.' Danto, *Disenfranchisement of Art*, (Columbia: Columbia University Press, 2004) 178



45. Andy Warhol, *Thirteen Most Wanted Men*, 1964, mural at New York State fair.



46 Andy Warhol, *Thirteen Most Wanted Men No. 11 John Joseph H.*, 1967, 23cm x 17cm, silkscreen on paper.

Pop art itself, as a socially engaged art allows for Warhol as an engaged citizen. Pop, Conceptualism and Minimalism countered Formalism by showing that an autonomous 'art for art's sake' was dangerously disconnected from political realities. Indeed if anything there were a number of cold war agendas that did underpin Abstract Expressionism.¹⁰ Pop explicitly added social references to art and started to work with political movements at the time— such as the response to consumerism, civil rights and the Vietnam War. This shift was also mirrored in the theoretical underpinning of the discipline of art history.¹¹

A number of theorists have seen Warhol as socially engaged. Looking at Warhol as a response to political upheaval, Hal Foster famously coined the term 'traumatic realism' to describe the images of violence and mourning in the *Death and Disaster* series, in relation to Warhol's response to the hysterical state of trauma at this time. For Foster, Warhol represents as clearly as possible an art of the mass subject who is chronically disconnected from the trauma of death and social realities of the day, where media has created a nihilism of equivalence.¹² Against Foster, this chapter sees instead, Warhol's 'machinic' distance and repetitions as providing a space for critique, through Deleuzian notions of *differance* and simulacrum. Warhol's process is like a contemporary version of the flâneur, viewing the scenes (here the mediated spectacle) without losing the position of the individual as a point of critique. Walter Benjamin cites Foucault who saw the difference between the strolling but critical flâneur and the badaud, or gaper. Foucault writes:

¹⁰ T.J. Clark, 'Clement Greenberg's Theory of Art,' *Critical Inquiry*, Vol. 9, No. 1, June 1974. Jane de Hart Matthews, 'Art and Politics in Cold War America,' *American Historical Review*, Vol. 81, October, 1976; See also Tony Bennett, *Formalism and Marxism*, (London and New York: Routledge, 2003); Robert Hobbs, 'Abstract Expressionism Reframed,' *The Art Journal*, Vol 53, No 3, 1994; Ann Eden Gibson, 'Individualism, Universalism, and the Cold War,' in *Abstract Expressionism: Other Politics*, (New Haven and London, 1997), 43-57; see for contemporary documents, Max Kozloff, 'American Painting During the Cold War,' *Artforum*, May, 1973; Eva Cockcroft, 'Abstract Expressionism, Weapon of the Cold War,' *Artforum*, June 1974

¹¹ See Stephen Polcari, *Abstract Expressionism and the Modern Experience*, (Cambridge: Cambridge University Press, 1991); Matthew Rampley, 'Identification and Difference: Jackson Pollock and the Ideology of the Drip,' *The Oxford Art Journal*, Vol. 19, No. 2 1996, pp. 83-94; T.J. Clark, 'Indifference of Abstract Expressionism', *October*, Vol 69, 1994, 22-48.

¹² Hal Foster, 'Death in America,' *October* Vol 75, Winter 1995, 39-59. Hal Foster relates his ideas of how Warhol reads images to Michael Warner's notion of the 'mass subject'. In this reading there is a new public sphere held together by shared mass mediated images and texts. The old body politic is done away with (ie the effigy) and ideology and politics no longer hold sway over the 'citizen'. This thesis, with others, believes that the body politic is still a useful construct for understanding contemporary politics, see particularly Mark Neocleous, *Imagining the State*, (London: Open University Press, 2003)

The simple flâneur is always in full possession of his individuality, whereas the individuality of the badaud disappears. [The world] ...intoxicates him to the point where he forgets himself. Under the influence of the spectacle which presents itself to him, the badaud becomes an impersonal creature; he is no longer a human being, he is part of the public, of the crowd.¹³

Foster's characterisation of the mass subject has more to do with the badaud than the individual; under the title of 'mass witnessing' he describes the 'strange new mass subjectivity'.¹⁴ Within the essay an alternative formulation of the public sphere is noted but not followed, namely a 'pathological public sphere.' Footnoting Žižek, Foster correctly assumes that this recent move in art history would have ongoing support, and this thesis engages with this pathological approach.¹⁵ As in Deleuze, the simulacrum is not fully equivalent but is made up of moments of idiosyncrasy in place and time. The individual in Warhol is clearly not totally subsumed under the mass of imagery, and like his response to the JFK death, Warhol is very clear that we do not have to be fully sucked in.

Warhol read through a Lacanian lens, as suggested paradoxically by Foster, offers an alternative to Foster's account; Warhol mines the mass-mediated imagery for its underlying ideology and refuses to be seduced by it into an unthinking 'mass subject'. In Foucault's reading of power/knowledge, the administration of control over information, science and education are ways of normalising and regulating the individual. There are two major provisos to this theory that Warhol helps explicate. First, each subject is a point of oppression under society's gaze, but the subject is also part of the capillary that exercises that gaze. The subject therefore may be the point of liberation as well as oppression. Foucault himself in his later work suggested that through the 'care of the self' the subject could resist normalisation. Judith Butler's 'paradox of subjection' highlights this point, insisting that the law cannot fully account for the individual.¹⁶ Following Foucault, through Lacan, Freud and Althusser, she alerts us to the paradox of subjectivity as founded on a subjection to language, images and laws. Through his repetition of images of the law Warhol plays with legal

¹³ Victor Fournel, *Ce qu'on voit dans les rues du Paris* (Paris, 1858), 263, cited in Walter Benjamin, 'The Paris of the Second Empire in Baudelaire', *Walter Benjamin, 1938-1940*, ed. Marcus Bullock and Michael Jennings (Cambridge MA: Harvard University Press, 2003) 41

¹⁴ Hal Foster, 'Death in America,' 1995, 39-59 at 48

¹⁵ Hal Foster, 'Death in America,' note 36, 48, Foster explains the project as, 'In this regard Warhol and Ballard point to an important concern in recent psychoanalytical art and criticism (eg. the work of Slavoj Žižek): the role of fantasy in the social imaginary and the body politic.'

¹⁶ Judith Butler, *The Psychic Life of Power: Theories of Subjection*, (Stanford, CA: Stanford University Press, 1997)

power and the symbolic order and it is the serial repetition of Warhol's imagery that forms the focus of this chapter.

Furthermore, it is here that we can examine the means by which Warhol uncovers the ideology that hides behind knowledge. This is another Lacanian corrective to Foucault's knowledge/power. Knowledge is never neutral, which Foucault would agree with, however Lacan highlights that beneath knowledge, in the disciplinary society of late capital, is the hidden figure of the master, or master signifier that underpins the discourse of knowledge. It is this aspect of the underpinning ideology in the mass media that Warhol uncovers by obviously shifting the underpinning ideology of the society to his own signature and brand: brand Warhol. We will look at various strategies of 'signing' or marking the image 'as a Warhol.' There is a subtle distinction to be made here between the Warhol signature as brand and Klein's signature as marks of authority. Although for the sake of Law and Literature we will focus on images that have traditionally been seen as 'ideological or repressive state apparatuses' the notion of the logo works across all imagery. The theoretical understanding of Warhol from Foucault to Deleuze, is that the copying or seriality is important not to highlight equivalence but indeed difference. Warhol's method is a process that we can bring to the law. Unlike Klein who uses traditional marks of authority, the effigy of sovereign masterful power, (hysterically) Warhol is unable to fall back so easily on the security and nostalgia of the father figure. The master is something that floats over the crowd *invisibly* like Pan's music; Warhol, as seen in his reading of the JFK mourning, has a distinct ability to sense when the mass is being manipulated (as can be seen from the response to JFK mourning). So in Warhol's oeuvre it is the *process* of pinning meaning, rather than an image or mark of authority that is important. This method of multiple interpellation in Warhol is an ongoing process of marking difference. I have called this a process of branding, marking with the logo, but it is the ability of anything, all knowledge (S2), to be marked that is important here. In Klein and Duchamp the hysteric subject is in direct relationship with the master. Only certain symbolically important objects can be marked: Guards, rulers, stamps, money etc; the hysteric Klein (or Duchamp) was always calling for the Father to show its face. Warhol is more interested in the effects of power. He shows the moumiers and Jackie not JFK; he shows the Hollywood star not the studio head; he presents Coca Cola as everyone's friend not as part of the corporate machine. In Warhol's work there is *no* effigy, only a hidden and implied brand.

UNIVERSITY DISCOURSE AND ADVERTISING IMAGERY

To understand the fantasy that underpins the disciplinary society it is worth looking in more detail at Lacan's *matheme* for the university discourse. In it S2 (neutral knowledge) as agent addresses

the *petit a* ('bare life'¹⁷ or a child like cipher) to create, in the place of the product, the barred subject, $\$$. The master signifier or power itself is hidden below the line in the position of truth in the matheme.¹⁸ Žižek gives a good example of how this matheme functions in the disciplinary society:

Perhaps the exemplary case of the Master's position which underlies the university discourse is the way in which medical discourse functions in our everyday lives: at the surface level, we are dealing with pure objective knowledge which desubjectivizes the subject-patient, reducing him to an object of research, of diagnosis and treatment; however, beneath it, one can easily discern a worried hysterized subject, obsessed with anxiety, addressing the doctor as his Master and asking for reassurance from him. At a more common level, suffice it to recall the market expert who advocates strong budgetary measures (cutting welfare expenses, etc.) as a necessity imposed by his neutral expertise devoid of any ideological biases: what he conceals is the series of power-relations (from the active role of state apparatuses to ideological beliefs) which sustain the 'neutral' functioning of the market mechanism.¹⁹

My reading explores Warhol's imagery for multiple 'ideologies' that alternatively organise the field of language and knowledge. 'Warhol the Advertising Illustrator' is the key to understanding how Warhol critiques ideology; the way advertising works is exemplary of the university discourse. Although camp, detached and cool, Warhol's hidden joke is that we both know what is *really* being said. This strategy is borrowed from Matthew Sharpe's reading of advertising since the 60s as exemplary of the university discourse.²⁰ In a nutshell, we do not buy toothpaste, as we did in the thirties, because the doctor says (the master discourse). Instead, Sharpe observes, after the 'Revolution' in advertising, we buy a product because 'it is as if the advertiser had winked at us across a crowded room'.²¹ The joke, or hidden meaning behind an advertisement means that the

¹⁷ This is a term used by Giorgio Agamben and will be discussed in more detail as the subject of the next chapter.

¹⁸ Refer to images of mathemes in Chapter Three. For an in depth discussion of this topic see Geoffrey Boucher, 'Bureaucratic speech acts and the university discourse: Lacan's theory of modernity', in *Jacques Lacan and the other side of psychoanalysis: reflections on Seminar XVII* (Durham, England: Duke University Press, 2006) 274-291

¹⁹ Slavoj Žižek, 'Homo Sacer as the Object of the Discourse of the University' *Lacan Ink*, accessed 7/09: www.lacan.com/hsacer.htm, accessed 6/09

²⁰ Matthew Sharpe, 'The "Revolution" in Advertising and University Discourse', in *Jacques Lacan and the other side of psychoanalysis: reflections on Seminar XVII*, 2006, 292-314; in this article Sharpe takes issue with Yannis Stavrakakis's article 'On the Critique of Advertising Discourse: A Lacanian View' *Third Text*, 15, 2001, 85 where Stavrakakis links advertising to the hysteric's discourse in which the viewer calls out to the master to provide the fix, the product.

²¹ Sharpe, 'The "Revolution"', 2006, 306

product and the viewer are of a like mind and therefore suited to each other. It is not merely the superficial look of advertising and commodity fetishism that Warhol appropriates. What Warhol does is use the double (or multiple) interpellation of the advertising image to ideological ends. He undermines the authority of the master discourse by connecting with the viewer through jokes and hidden messages, as in advertising. It is at once a mode of critique but also of friendship and kinship. Matthew Sharpe follows Baudrillard in suggesting that advertising is 'a tremendous effort to materialise the superego'.²² Lacan highlights that the superego is not S1 or the master signifier, but actually close to S2 or knowledge, as a means of enjoyment (so in the place of the agent, S2/S1). The jocular, cynical flavour of Warhol's work already directly copies the new turn in advertising at this time to transgress against the 'conforming' or mass subject in ads that were fun and less authoritative — a mode still common today. It is only beneath the line, behind the message that the master signifier is found, hidden and repressed, as the logo (the S1 beneath the S2 knowledge, S2/S1). As Sharpe concludes, '...this is because logos function as pure master signifiers (S1) within the advertisements. They are there merely to tie everything together, not to add anything new. To put it differently, they do not exist, they function'.²³ This Lacanian methodology gives us another way to access the idea of 'double interpellation,' or multiple interpellation; the master signifier that underpins the meaning of the image may guarantee meaning in different ways. So although we have seen the double interpellation within Klein's work, a clowning of authority, here it is repetition and difference itself, that becomes the primary mode.

We can use one of Warhol's own examples to see how the 'joke' and the hidden 'logo' work to create a connection with the viewer. Warhol's cover of *Art Forum*, March 1985, had a number of Life Savers on the page with a caption, 'please do not lick this page.' The ad works like this: because you know that you cannot and should not lick the page, you share a joke with the hidden big Other. You trust the big Other because of this shared joke and may then buy the product, in this case Life Savers. In Warhol's reformulation the joke is brought into the art world, which becomes another level of big Other. We get the joke of the joke in an ad on the cover of *Art Forum*. As art readers we see that it recalls many tricks famous in art history that play with mimesis (recall the Greek fable of the contest between Zeuxis and Parrhasius as to who could trick the other with their verisimilitude), and we share *this* joke. It is a direct copy of an ad but it also references Duchamp's *Please Touch*, 1947, and Magritte's *This is not a Pipe*, 1928-29. We share the joke then with another big Other, here *Art Forum* readers/editors are drawn to another hidden ideological quilting point, the signature of Warhol signifying *not* Warhol as such (as in Foucault's author function) but ART. Warhol's attitude may not be a machinic copying but an advertiser's double-speak; it is a double speak that Warhol would have been very aware of. The

²² *Ibid*, 307

²³ *Ibid*, 312

signature, the signature techniques of screen-printing, the brand recognition of the silver bob, the silver grounds, and the signature line (borrowed from Ben Shahn) all collate under one logo. This Warhol logo functions by teasing and enticing recognition from the viewer, drawing us all in as friends under the cover of a joke.

A number of writers have connected Warhol's work with advertising in a formal way. Indeed it is well known that his first 'paintings' were used in a window display. By the 1980s Warhol again returned to advertising.²⁴ Some look at the formal similarities between the two oeuvres of Warhol's work, eliding the difference between the two modes, as Warhol himself seemed to do.²⁵ Thierry De Duve describes brand Warhol:

As a commercial artist, Warhol worked and drew for the advertising industry. In this industry where social demand is motivated only by the prospect of exchange-value, where every return on investment dominates, and where photography is used because it increases productivity, he practiced a craft full of outmoded charm, recognised by the profession for its personal qualities but sold at its exchange value...He showed this by changing his work while he shifted to another market and by taking, in total realism, exchange-value as his subject matter. He thus proffered images of commodities, reduplicated ordinary consumer goods, made of his signature a brand name, and success came.²⁶

It is the shift from advertising to art brand that I think is crucial to considering Warhol's work as a methodology of advertising. His brand, like the advertising brand, becomes the new master signifier, shared by the viewer who gets the joke. It is the 'quilting function of the logo or brand signifier' where logos function as 'pure master signifiers' that I borrow from Sharpe.²⁷

I note too that this notion of a doubling or multiplying through repetition has long been seen as part of Warhol's method. Foucault and Deleuze's reading of Warhol focus on repetition as a mode of resistance and ethical play. Unlike Baudrillard, Deleuze's simulacrum is not so nihilistic, and the difference between the iterations of text or image explicate the possibilities of the singular rather than the essential. This is not limited to the singularity of the Warhol brand but it would encompass it. Warhol, for Deleuze, 'pushed the copy, copy of the copy etc, to the extreme point at which it reverses and becomes a simulacrum (such as Warhol's remarkable 'serial' series, in

²⁴ Pat Hackett, ed., *The Andy Warhol Diaries*, (New York: Warner Books, 1989)

²⁵ See Benjamin Buchloh, "The Andy Warhol Line," in *The Work of Andy Warhol*, ed. Gary Garrells, (Seattle: Bay Press, 1989)

²⁶ Thierry de Duve, 'Andy Warhol or the Machine Perfected', 12

²⁷ Sharpe, 'The "Revolution"', 310-312

which all repetitions of habit, memory and death are conjugated).²⁸ For Deleuze and Foucault Warhol is able, through repetition and *difference*, to critically engage with the simulations of mass media. Foucault writes:

This is the greatness of Warhol with his canned foods, senseless accidents, and his series of advertising smiles: the oral and nutritional equivalence of those half-opened lips, teeth, tomato sauce, that hygiene based on detergents; the equivalence of death in the cavity of an eviscerated car, at the top of a telephone pole and at the end of a wire, and between the glistening, steel blue arms of the electric chair. 'It's the same either way,' stupidity says, while sinking into itself and infinitely extending its nature with the things it says of itself; 'Here or there, it's always the same thing; what difference if the colours vary, if they're darker or lighter. It's all so senseless—life, women, death! How ridiculous this stupidity!' But in concentrating on this boundless monotony, we find sudden illumination of multiplicity itself—with nothing at its centre, at its highest point and beyond it—a flickering of light that travels even faster than the eyes and successively lights up moving labels and the captive snapshots that refer to each other to eternity, without ever saying anything; suddenly, arising from the background of the old inertia of equivalences, the striped form of the event tears through the darkness, and the eternal phantasm informs that soup can, that singular and depthless face.²⁹

So for Foucault Warhol's serial images represent 'similitude' and the 'infinite and reversible relation of the similar to the similar.'³⁰ Warhol is a key figure in showing that similitude points to the 'possibility of change' which Foucault calls difference, and it is Warhol's seriality that proves difference can present itself as an ethics of singularity and the self. The Lacanian notion of multiple interpellations based on varying master signifiers is similar. The copies – the branding of the self – put pressure on the transcendental reading of aesthetics as aesthetics of beauty, or as an image of transcendental truth or justice.

²⁸ Gilles Deleuze, *Repetition and Difference*, trans. Paul Patton (New York: Columbia University Press, [1969] 1994) at 293-294; see also Michel Foucault, *Theatrum Philosophicum' Language, Counter-Memory, Practice: Selected Essays and Interviews*, ed. Donald Bouchard (Ithaca, NY: Cornell University Press, [1970] 1977)

²⁹ Michel Foucault, 'Theatrum Philosophicum,' 189; see Gary Shapiro *Archaeologies of vision: Foucault and Nietzsche on seeing and saying* (Chicago: University of Chicago Press, 2003) for a good discussion of Foucault's similitude.

³⁰ Michel Foucault, *This is Not a Pipe*, trans. James Harkness, (Berkeley: University of California Press, 1983) 44. In this book, which focuses primarily on Magritte, Foucault distinguishes between resemblance and similitude. Resemblance suggests an origin/referent and copies in a hierarchical order. Similitude is closer to Deleuze's notion of the simulacrum.

ADVERTISING AND IMAGES OF LAW AND VIOLENCE

The methodology of iteration and double interpellation brings an ideological critique to Warhol's work, which for some theorists is unfounded. Briefly, it is important to place this reading in relation to the large body of work on Warhol. The approaches to Warhol are generally split between referential (subject matter) and simulacral (nihilistic, detached, camp cynicism) analysis. In a Lacanian reading of Warhol as brand the two options can be elided. What we are looking for is the hidden fantasy, and myth, that underpins the law, which Warhol's work especially encounters.

For a start we will focus on images of State violence and surveillance. Already the ideological implications of these images, as opposed to a cow in a field or a large dollar sign, are pointing in a certain direction. We focus on these images though for the sake of the jurisprudential interest. The methodology of SI underpinning will work with any image. For those that have looked at the politics in Warhol's work there is a general distrust of the simulacral contentions that an atom bomb may be equivalent in meaning(lessness) to a daisy. Simon Watney's far-reaching essay asks for a broader visual studies approach to Warhol, where the 'Warhol Effect' is based on a Foucauldian genealogy of ethics.³¹ Similarly, Rex Butler has pushed for a reappraisal of Warhol's art, suggesting that far from being the cynical Warhol of the simulacrum, it is worth looking at the artist as earnestly religious. Such an approach positions Warhol as a believer. Butler broadens his argument, following Hubert Damisch, to suggest that Warhol is trying to bring back art to an art before art – injecting contemporary art with magic.³² This is a very useful direction, and this chapter opens up a reading not of religious icons but of Warhol's icons of the law. Many authors have taken Warhol's religiosity and faith as icon maker seriously.³³ To avoid commonplaces and return to our question of juridical images, we must engage with images that respond to State power rather than religion. And yet, as we have seen through Kantorowicz the history of the State and Religion is connected.

The State does authorise the languages and images of the law but as a hidden, repressed force. It is this force that this chapter finds as a point of interest in many of Warhol's images. The violence of the law is a particular limit case for the disciplinary society and it appears, in the number of

³¹ Simon Watney, 'The Warhol Effect' *The Work of Andy Warhol* ed. Gary Garrels (Seattle: Bay Press, 1989)

³² Rex Butler, 'Two Warhol's' in *Andy Warhol*, Queensland Gallery of Modern Art, 2007, cat. Exh. 60-69

³³ See Jane Dillenger, *The Religious Art of and Warhol*, (New York: Continuum, 1998). Ruth Adams, 'Idol Curiosity: Andy Warhol and the Art of Secular Iconography,' *Theology and Sexuality*, Vol 10, No. 2, 90-98 2004; Joshua Delpuch-Ramey, 'The Idol as Icon: Andy Warhol's Material Faith,' *Angelaki*, Vol. 12, Issue 1, 2007, 87-96; for a contrary position on the impossibility of religion in contemporary art see James Elkins, *On the Strange Place of Religion in Contemporary Art*, (London: Routledge, 2004), Eleanor Heartney 'Andy's Icons,' *Art in America*, 87, no 6 1999, 35-37

images of State violence, that Warhol became aware of violence as an Achilles heal. By borrowing from the advertisers lexicon Warhol highlights this process of quilting the 'violent force' of the laws founding and its 'mystical authority' in a number of images, particularly in the *Death and Disaster* series. Walter Benjamin suggests that State violence becomes obvious in two types: as founding violence and as the conserving, preserving violence of ongoing repression, such as seen in the police force.³⁴ It is the State's monopoly over violence, that Derrida finds lurking in the transcendental, 'mystical' authority of the law upon which this force is based.³⁵ For our purposes then, the use of this force, is the small exceptional moment, when the founding force of the law, shows itself in the disciplinary society. To put that into Lacanian terms the use of violence, in the electric chair and atom bomb for example, allows us to see the hidden but operative master or SI. In Warhol's work the hidden unrepresented sublime object is the quilting point or authority of the founding violence. Agamben, borrowing from Derrida, has beautifully defined this force of law as the force-of-law.³⁶ In this reading the 'force of law' is a thing that can be played with in a Kafkaesque manner, or in relation to political power, 'be claimed' by either the state or the revolutionary powers (which act as counter-sovereigns). Violent force in this way is always extra-legal, a limit to the civilised functioning of the law. It is this juridical understanding of the law and violence that I want to tease out for Warhol.

Warhol's *Death and Disaster* series is usually read, in conservative art historical terms, as a twentieth century vanitas (Figure 47). The celebrity is warned that, *Et in Arcadia Ego*, or roughly translated, 'I (death) am even here in Hollywood.' But violence and the State are perhaps an under theorised theme in relation to these works. It is well documented that an alternative title for the *Death and Disaster* series was going to be *Death in America*; the explicit mention of the American State would have highlighted his socio-political concerns.³⁷ To begin simply, the subject matter of this series correlates directly to many of the examples offered by Benjamin (and Derrida) as instances of Sovereignty and the 'monopoly' of violence. *The Atomic Bomb*, 1965, is an incredible metaphor for State founding military power (Figure 48). The great criminal is present in *Gangster Funeral*, 1963 and *Thirteen Most Wanted Men*, 1964. The many riots that Warhol shows are evidence of the legally sanctioned strike or protest, here most commonly civil rights protest

³⁴ Walter Benjamin, 'A Critique of Violence,' *Walter Benjamin: Selected Writings, volume 1 1913-1926*, ed. Marcus Bullock and Michael W. Jennings (Cambridge, Massachusetts and London: The Belknap Press of Harvard University Press, 1996), 236-53.

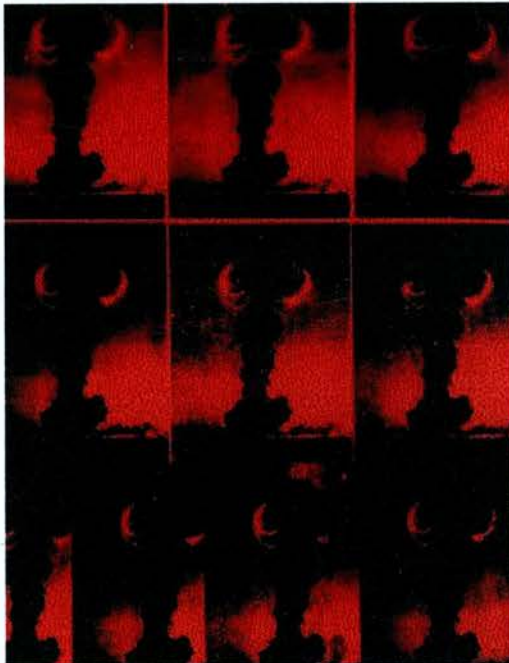
³⁵ Jacques Derrida, 'Force of Law: The "Mystical Foundation of Authority"', *Cardozo Law Review*, Vol 11, 1990, 919-1045

³⁶ See Giorgio Agamben, *State of Exception*, trans. Kevin Attell, (Chicago: Chicago Press, 2005) 38-39

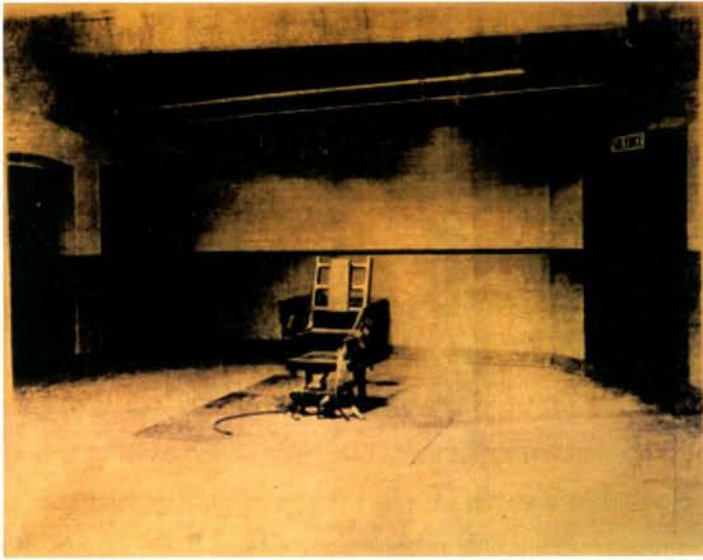
³⁷ This was the working title for his show in Paris, France. See Hal Foster, 'Death in America' in *Andy Warhol*, (Cambridge, Massachusetts: The MIT Press, [1996] 2001)



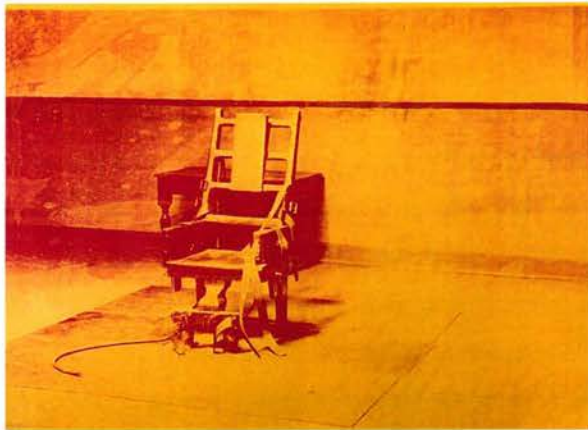
47. Andy Warhol, *Sixteen Jackies*, 1964, 203cm x 163cm, acrylic, enamel on 16 jpointed canvases.



48. Andy Warhol, *Atomic Bomb*, 1965, 264cm x 203cm, silkscreen on canvas.



49. Andy Warhol, *Little Electric Chair*, 1964, synthetic polymer paint and silkscreen ink on canvas



50. Andy Warhol, *Electric Chair*, 1965, silkscreen.

and in these images the concomitant act of police repressive violence. Finally, and most famously connected to Warhol, is the connection between violence, the state and the death penalty shown in his many iconic images of the *Electric Chair*, 1963-1981. Looking closely at the electric chair teases out some of our concerns in a preliminary way. There are actually two electric chairs. The first one re-images a photo done in 1954 of the electric chair in Sing Sing used for publicity purposes (Figure 49). The room is shown in toto with the 'Silence' sign visible on the right of the image. Who speaks thus? Is it an ironic silence, a spectral silence (for there is only the chair), or is it the imperative of the disciplinary society? The image was created while there was some discussion over whether or not the State of New York should persist with the death penalty. In the year Warhol produced his electric chair they legislated for the cessation of the practice, so perhaps the image is celebratory of a newly passed statute. In the second version, the photograph is the same but cropped to focus on the chair itself (Figure 50). The images that Warhol produces are not merely repeated photographic images. For one thing they are life size, or, in the case of Warhol's electric chair, about three-quarter scale, enough to imply the absent body. This is perhaps why on revision Warhol cropped the chair out of its room. The room was not replicated in a two-metre painting but the chair could be; in the end the image of the chair turns the gallery into the execution chamber. The chair also looks like a throne from a biblical or courtly painting; face on to the viewer the chair implies the sitter looking towards the viewer threateningly. So for work that is all about the *surface* the abject is still present here, or to put it in another way, the image is still able to pierce the viewer with a certain violence and horror. What underpins this violence, or, is it pure violence with no clear underpinning? Who authors the image?

THIRTEEN MOST WANTED MEN AND THE IDEOLOGY OF THE MUGSHOT

The complexity of Warhol's methodology of the brand, his direct confrontation with State violence and the importance of art as a point of critique are present in *Thirteen Most Wanted Men*. There is no doubt that in this work Warhol played with this joke of double meaning. Proposed, completed and hung for the New York State Pavilion at the World's Fair of 1964 in Flushing Meadows, it was based on a New York State pamphlet that 'advertised' or 'promulgated' the State's thirteen most wanted criminals. Warhol's transposition was composed of panels each with the screen-printed image of the wanted criminal on a silver ground. It was placed on the façade of the pavilion. In an uncanny nod to a breach in the 'neutrality' and 'scientific nature' of the mugshot, four of the thirteen appear in a more casual and informal manner, from a personal snap shot because there was no official photo on file. On the one hand the work can be seen as an extension of the celebrity portrait, suggesting a certain fame or infamy. It can be seen in relation to what Crone calls the 'documentary series',³⁸ or as an extension of the *Death and Disaster* series where the work is situated within the procession of suicides, deaths, gangster funerals, and other

³⁸ Rainer Crone, *Andy Warhol*, (London: Thames and Hudson, 1970)

nefarious newspaper stories. In *Thirteen Most Wanted Men* the violence of the image itself is directed towards the criminal; the mug shot is the forensic, surveillance image par excellence. Warhol confuses the State utility of the image in re-imaging the mug shot.³⁹ The requisitioned mug shot also questions the law's monopoly on this sort of (violent) imaging. A particular area of ideological monopoly is the imaging of State violence and law. Benjamin writes:

To counter it one might perhaps consider the surprising possibility that the law's interest in a monopoly of violence vis-à-vis individuals is not explained by the intention of preserving legal ends but, rather, by that of preserving law itself; that violence when not in the hands of the law threatens it not by the ends that it may pursue but by mere existence outside the law.⁴⁰

By branding these violent acts, Warhol questions the authority of this violence, showing the violence of his images to be *without* moral value, and extra legal; for Benjamin police violence and police mug shots are not legal in so much as they occur when the law (empirically) no longer can 'guarantee' order 'through the legal system.'⁴¹ But as a perverse corollary, what basis does the law found its authority on, if Warhol can so easily co-opt its process? It is this groundlessness that haunts the law's application because its own founding violence is without a real authority only a mythic one; in Derrida's terms the law is haunted by this spectre. It is this non-ideological point, this extra-ideological violence that is the antagonism or Real that Warhol explores in his images of violence. He attacks the fantasies that conceal this gap, critiquing the State through appropriation and re-branding. He draws us into his game; we know that the new image has been utterly altered although it still 'looks' the same. In the case of the *Thirteen Most Wanted Men* the loosening of the great criminal from the control of the police opens up the possibility of the outlaw celebrity, fun, and the threat of the failure of the state monopoly.⁴² In fact when the work was censored Warhol wrote, 'Now I wouldn't have to feel responsible if one of the criminals ever got turned in

³⁹ The work has an art historical precedent. In 1923, Duchamp had made a 'Wanted: \$2,000 Reward' poster of himself with two mug shots, casting himself as a criminal allegedly wanted for running an illegal gambling operation. Undemeath were written many aliases including Rose Sélavy.

⁴⁰ Walter Benjamin, *Selected Writings: 1913-1926*, (Harvard: Belknap Press, 1996), 239

⁴¹ *Ibid*, 243

⁴² Richard Meyer, 'Warhol's Clones,' *The Yale Journal of Criticism*, 7, no 1 (1994): 79-109; also *Outlaw Representation: Censorship and Homosexuality in Twentieth Century American Art* (Oxford: Oxford University Press, 2002) 128-156. Douglas Crimp 'Getting the Warhol We Deserve,' *Social Text* 59 1999, 49-66, especially 60-63; see also Julia Bryan-Wilson 'Pictures at a Deposition' review of Meyer *Outlaw Representation Art Journal*, Summer 2003, 102-105; Mark Lancaster, 'Andy Warhol Remembered,' *The Burlington Magazine*, Vol 131, No 1032, March, 1989 198-202

to the FBI because someone had recognized him from my pictures.⁴³ It was important to Warhol that his art would not be 'useful' or 'disciplinary'.

The mural was eventually painted over or 'whitewashed.' There are a number of suggestions why the work was received so poorly. Phillip Johnson explained that the work was unsuitable because the images of the wanted men were out of date and some of the 'criminals' had been exonerated; he recalls that he and the Fair were concerned that there was a threat of libel. Contemporary articles had contradictory reports from both Warhol and Johnson, who publicly fought over the work. It is reported that Robert Moses wanted the work taken down so as to not offend the Italian constituents of New York. Warhol has suggested Rockefeller himself asked for its removal as Governor of New York. Second, there was the aesthetic outcry. The Fair felt that what Warhol had proffered was not art; the threat that Pop posed was that the artist could *directly* quote from life. In this case the quotation was exacerbated by the fact that what was quoted was not a trademark or commodified object, nor a celebrity or a magazine photograph, but in a very rare move for Warhol, a quotation from a State authored image.⁴⁴ Kristin Fedders also lays emphasis on the public nature of the work.⁴⁵ What Fedders adds is the notion of Public space (particularly the Pavilion) in connection to how Pop was received. While the approach is admirable in its attempt to broaden art history's scope and respond to the cultural and physical context and framing of the work, Fedders conclusions are too centred on modernist art history. She notes that, 'Although Pop art drew its imagery from popular culture, when reinserted into the popular context of the Fair it proved either unrecognisable or offensive to many members of the public, suggesting how unfamiliar the mass audience was with Pop art in 1963.'⁴⁶ Indeed the response was terrible, with many editorials unhappy with the subject matter, which they saw as unpatriotic, irresponsible, neurotic, parodic, absurd, bizarre and unrepresentative.⁴⁷ Although Fedders is correct to look at the parergon of the work she neglects to see that perhaps the work was not received as art at all.

It is clear that this chapter contends that the censorship occurred mainly because the author(ity) underpinning the image was not 'official' and challenged the States monopoly on punishment and

⁴³ Hacket, *PoPism: The Warhol '60s*, 72

⁴⁴ Other examples of such quoting include the little known suite of lithographs dedicated to Kennedy, *The Flash Suite* (1968), where the Presidents seal is copied, as well the series of banknotes in *192 One Dollar Bills* (1962), and his appropriation of official portraits in *Reigning Queens* (1985).

⁴⁵ Kristin Utter Fedders, *Pop Art at the 1964/65 New York World's Fair (Philip Johnson, Andy Warhol, Roy Lichtenstein, James Rosenquist, Robert Indiana)*, unpublished Doctoral Thesis, University of Pennsylvania, 2005

⁴⁶ Fedders, *Pop Art at the 1964/65 New York World's Fair*, 2005, 4

⁴⁷ Adolph Block, "Bizarre 'Art' at Fair," *New York Times*, October 18, 1963

violence. What is the shock of the work, and why did it create a scandal? Beside the personal motivations of key players a few general assumptions can be made. Perhaps the greatest threat was that Warhol took the brochure of the State literally, as Žižek suggests, 'to the letter of the law.' If the state's intention was to make images (to create icons) of the criminals that needed surveillance/imaging by the state (and its obliging public) then what could have been the problem with this repetition? Can it not still work to promulgate the information (S2)? As a brochure it had what Žižek calls a reflective logic of ideology, creating a fear or a sense of community action. One agrees or responds because others respond in the same way. The brochure or ideological instrument is not to be seen only as an Althusserian interpellating ideological state apparatus but a rallying cry. As Žižek discusses, regimes can only rally behind common threats, the Mafioso being a particularly good one in 1964. The work shifted the register only slightly but with an effect that was shocking. The work's power was based on Deleuze and Foucault's point that the simulacrum is an effect of difference itself, it need not be 'authentic' nor alternatively directly parodic or transgressive. It is worth teasing out a few different outcomes of this process of differencing.

THE DESIRABLE CRIMINAL

The first obvious reading from a pun in the title itself is a movement from the neutrality of the mug shot to an embodiment libidinal force. The 'double coded' nature of this work has been illuminated by Richard Meyer who saw it as denoting a homosexual longing, moving between 'official surveillance and illicit desire'.⁴⁸ If we follow Susan Sontag's definition of camp as seeing something 'tender' in the everyday then this is a camp doubling; like a saint he has seen the beauty and humanity in a mug shot. Meyer sees the internal gazes and the position of each head's gaze to be important where the men looking at each other longingly across the grid.⁴⁹ The viewer too is implicated by what Meyer sees as a homosexual gaze. The criminality is seen as an extension of gay criminality, and contextualises the scandal by recounting that Warhol was under surveillance from the FBI for his films at this time; particularly those with illegal homoerotic content. Connections between Warhol's work and gay themes have been broadly established.⁵⁰ In this case the punning title of *Most Wanted Men*, shows an interplay between this more personal

⁴⁸ Richard Meyer, *Outlaw Representation: Censorship and Homosexuality in Twentieth-Century American Art*, (New York: Oxford University Press, 2002); for a close reading of *Thirteen Most Wanted Men*, see Richard Meyer, 'Warhol's Clones' *Yale Journal of Criticism*, 7.1 Spring 1994, 79-109

⁴⁹ This is similar to Richter's insistence on the position of gazes in *48 Portraits*. See Benjamin Buchloh, 'Divided Memory and Post-Traditional Identity: Gerhard Richter's Work of Mourning,' *October*, Vol. 75, Winter, 1996, 60-82

⁵⁰ See Kenneth E Silver, 'Modes of Disclosure: The Construction of Gay Identity and the Rise of Pop Art' in *Hand-Painted Pop: American Art in Transition, 1955-1962* ed. Russell Ferguson (Los Angeles: Museum of Contemporary Art, 1992), 179-203; *Pop Out: Queer Warhol*, ed Jennifer Doyle and Jonathan Flatley (Duke University Press, 1996)

interpellation of homosexual desire and the interpellation of the state towards the 'good citizen.'⁵¹ By referencing in its 'double code' both the private and the public individual, Warhol makes a wonderfully succinct statement on the political realities of homosexuality at this time. In an inverted way, if we see the author of the image as the State, the repressed homosexual desire of Warhol (in the image) towards *Thirteen Most Wanted Men* becomes a guilty secret. Locating this desire within a supposedly disciplinary/neutral image offers an answer to the stress of censorship and disavowal that the mural encountered.

The confusion of the juridical and the desirous image is also effected by the subject matter. The gangster is akin to Warhol, in that he too questions the monopoly of the violence of the State; he kills, steals and lives with impunity. It is this outlaw, sovereign quality that makes the gangster such a seductive subject in popular culture, turning Robin Hood into Sean Connery. To return to Benjamin on the 'great' criminal: 'The same may be more drastically suggested if one reflects how often the figure of the 'great' criminal, however repellent his ends may have been, has aroused the secret admiration of the public. This cannot result from his deed, but only from the violence to which it bears witness.'⁵² Similarly for Derrida the 'great criminal,' which the *Thirteen Most Wanted Men* definitely are, shows the law's founding violence as threat; it is what he calls a 'strategy of rupture'.⁵³ What Derrida sees in the criminal, the famous criminal, is the 'radical contestation of the given order of the law, of judicial authority...'⁵⁴ What connects the originary sovereignty of the artist, lawmaker, and criminal is Derrida's final word, 'The people's shudder of admiration before the 'great criminal' is addressed to the individual who takes upon himself, as in primitive times, the stigma of lawmaker or the prophet'.⁵⁵ Regardless of approach, Warhol's subject matter references the law at its limit. It is Warhol's subjects, from the 'great' criminal, to riots, the electric chair (death penalty), presidents and sovereign power, that have an uncanny connection to the examples used by Derrida in *Force of Law*. For Derrida the possibility of justice is a 'self-authorisation of law as the possibility of the exercise of deconstruction.'⁵⁶ In this way Warhol's bold appropriation of Repressive State Apparatus as embodied in the public pamphlet suggests the 'self-authorisation of law'. The neutral imagery of the university discourse is shown to have an ideological underpinning, a mythic, kingly point beyond the law, on which it is authorised.

⁵¹ Warhol repeated this title in two more films of 1966, *Thirteen Most Wanted Boys* and *Thirteen Most Wanted Girls*, which consisted of thirteen 'screen shots' of celebrities.

⁵² Benjamin, *A Critique of Violence*, 1996, 239

⁵³ Derrida, *Force of Law*, 1990, 987, 999. He borrows this term from the lawyer Jacques Vergès.

⁵⁴ *Ibid*, 987

⁵⁵ *Ibid*, 987

⁵⁶ *Ibid*, 945

CONTEMPORARY PORTRAITURE AND PICTURES OF INFAMY

Warhol's image and the surrounding controversy also say something about the way portraits are 'authorised' by an underpinning master signifier. The original pamphlet is a good example of how a Lacanian reading extends Foucault's disciplinary society. For Foucault the pamphlet spreads knowledge and helps to activate a public surveillance of criminals. It is a neutral dissemination of information (here the face of the criminal). Far from being neutral knowledge, the pamphlet is itself framed by official insignia, State Police Crests, and telephone numbers to call. By stripping the images of this framing and by extension their obvious use as surveillance, Warhol freed the image and allowed the mug shots to be read as iconic portraits. Jonathan Flatley has connected Warhol's art to an obsession with publicity.⁵⁷ Flatley uses the term 'prosopoeia', which is to make the face or person relate to 'fame and shame' alike. In concert with Foster's conclusions, Flatley writes:

Warhol saw the poetics of publicity were also those of mourning. To become public or feel public was in many ways to acquire the sort of distance from oneself that comes with imagining oneself dead. The 'self-negativity' that we experience by imagining ourselves as 'public' might be seen as something like attending your own funeral. You got to see yourself reified, eulogized, coherent, whole—and you get to see other people recognizing you.⁵⁸

I agree with Flatley, and to put it into Lacanian terms the S2/S1 represents the image of the sitter as it is received within the symbolic order, that is 'to become public.' Within art history the portrait as the purely symbolic but magical representation of the sitter finds some basis. Samuel Edgerton suggests that the rise of portraiture in Florence in the Thirteenth Century can be directly linked to the use of *pittura infamanti* at the time, which drove artists to link likeness to the efficacy of conjuring the sitter.⁵⁹ *Fama* and *infama*, terms that become incredibly important to late capital and Warhol, were at this time primarily legal terms. The *fama* was based on the unstained *dignitas*, dignity of the sitter and portraits then arose to celebrate the *fama*.⁶⁰ The use of defaming pictures (*pittura infamanti*) is well documented from Alberti onwards. Caricatures, hanging pictures and other exemplary images suggest that the power of images to create a magical substitution is part

⁵⁷ Jonathan Flatley, 'Warhol gives Good Face: Publicity and the Politics of Prosopoeia', *Pop Out: Queer Warhol*, eds. Jennifer Doyle, Flatley and Jose Esteban Munoz, (Duke University Press: London, 1996), 100-133

⁵⁸ *Ibid.*, 105

⁵⁹ Samuel Edgerton, *Pictures and Punishment*, (Ithaca NY and London, 1985)

⁶⁰ The *dignitas*, the reader will remember is the defining characteristic of the Roman *imago*, or the legalistic imagery of the ancestor. In this way we have seen Didi-Huberman already problematise the use of the word 'portrait' when discussing such images of *dignitas*. 'Portrait' may imply too strong a connection to an aestheticised image (connected to Lacan's real or imaginary) rather than the effigy (connected more directly to the symbolic, and here legal, order).

of a recent art history.⁶¹ It is this theme that Schlosser particularly picks up in his work on wax portraits, the subject of chapter nine of this thesis. Anton Bruckner highlights this alternative history of the image. What Bruckner suggests is that what is harmed in the *executio in effigie* is actually the *fama* of the criminal; his honour. They are only symbolically harmed. This comes close to the kingly attribute, celebrated in court portraits and in funerary effigies: the ruler's *dignitas*. That the outlaw and the ruler are connected in the making of the effigy seems less troublesome. Or as Freedberg summarises it, 'The parallel between honour and punishment could hardly have been more apt. All such punishment can be seen, on the simplest level to proceed from the assumption—whether articulated or not—that if one could be honoured by means of an image, one could also be dishonoured by one'.⁶² As Crone also points out, this mural can be linked to Warhol's celebrity portraits and to the *Death and Disaster* series. These images of infamy are also directly linked to Warhol's other effigies and icons, for which the artist has jokingly been called a 'court painter'.⁶³ It is difficult to conclude whether *Thirteen Most Wanted Men* is a picture of infamy or of celebration, and in the end it does not matter, for the subject was (in)famy.

ERASING THE BRAND

All of Warhol's repetitions reinforce the power of the advertising joke, the private joke between the viewer from the perspective of the shared brand experience. What makes *Thirteen Most Wanted Men* such a telling case is that in this instance the original authorial voice responded in disgust and created an adversarial showdown, whereas usually Warhol's simulacrum kept rolling on.⁶⁴ The controversy highlighted Warhol's logo. If we follow Warhol's reaction to the initial censoring and 'whitewashing' of his work in relation to a battle for the underpinning logo a number of details prove prescient. What in the end becomes the basis of Warhol's signature is the colour silver (in a similar vein to how companies build recognition through owning a colour such as Orange Phones or Cadbury purple). The re-imagining of the mug shots was accomplished

⁶¹ See Laurie Adams, *Art and Psychoanalysis*, (New York: IconEditions, 1994), 63 and chapter 7; E H Gombrich, 'The Cartoonists Armoury', in *Meditations on a Hobby Horse*, (London: Phaidon, 1971)

⁶² David Freedberg, *Power of Images*, 1989, 259-260

⁶³ Robert Rosenblum, 'Andy Warhol: Court painter to the 70s' originally published for Whitney Museum 1979, in *Andy Warhol Portraits*, (London: Thames and Hudson, 1993)

⁶⁴ There are other examples. There is an agreement with the Campbell's soup company to limit the Warhol Estate overusing the Trademark for uses outside art such as publicity etc. See John Carlin, 'Culture Vultures: Artistic Appropriation and Intellectual Property Law, 13 *Columbia VLA Journal of Law and Arts*, 1988, 103, at 130 n.108; Holly Crawford makes a similar claim regarding a contract signed between Warhol and Disney over his use of Mickey Mouse and other Disney copyright images: Holly Crawford, *Attached to the Mouse: Disney and Contemporary Art* (Maryland and Oxford: University Press of America, 2006)

simply by their screen-printing onto a silver ground. Silver was a signature colour for Andy.⁶⁵ Not only were his paintings often silver but as Mark Lancaster reported from his first meeting with Warhol in July 1964, 'A man sitting there directed me to an elevator. The interior was painted silver... The door it stopped at was silver. I pushed it open and entered the silver space. Andy got up from a silver stool. He was shy and charming... Jack Smith was nervously arranging furniture, lamps, mirrors and fake fruit, all silver [for a film]'⁶⁶ His 1966 exhibition at Leo Castelli, would have silver clouds, silver helium filled balloons. Notably many portrait works had silver grounds at this period, most notably being *Elvis*, 1963. Against all protestations the work was finally censored, before the Fair even opened. The artist himself called it a 'whitewash.'⁶⁷ But in the end it was not exactly a white wash. First, Warhol was asked to censor his own work, setting up the perverse scenario that Warhol would be his own executioner. Warhol could not stifle a last 'scaffold speech', a performance against the State, in painting over *Thirteen Most Wanted Men* in his signature silver paint. This silvered painting has not been theorised and should be seen as a work in its own right.

Warhol, at first, cheekily had the idea to replace the image with images of the censor, Robert Moses, the director of the Fair.⁶⁸ Lancaster recalls 'Andy Warhol had the images painted over, and then decided to replace the work with a massive multiple portrait of Robert Moses.'⁶⁹ Moses himself would become the subject of prohibition and expulsion, and would take the place of the criminal in a serial portrait of infamy. This suggestion was not accepted officially. It appears, though, that, Warhol did not wait for final approval and finished the work regardless; there are two pieces of photographic evidence of The Robert Moses portraits that were never released for public exhibition. Like a private joke, (think of Goya's *Nude Maja*, 1800), the Factory could laugh at the folly of the censor. Although stymied in public, Warhol was still free in his studio. This is perhaps a weak transgression but it suggests an alternative reading of the censored work. Warhol had *Thirteen Most Wanted Men* painted over in silver to produce another work, quickly and decisively,

⁶⁵ For a poetic reaction to this fact see David Antin, 'The Silver Tenement: Andy Warhol.' *Art News*, 65.4 (Summer 1966): 47-48, 58-59. Antin suggests that Warhol's next rumored work was to paint a whole tenement silver. He links the colour silver to photographic emulsion and describes Warhol as 'miruh' with chipped silver backing (a mirror reflection with subtle mistakes).

⁶⁶ Mark Lancaster, 'Andy Warhol Remembered', *The Burlington Magazine*, Vol 131, No 1032, March 1989, 198-202 at 198

⁶⁷ Andy Warhol and Pat Hackett, *POPism: The Warhol Sixties* (San Diego: Harcourt Brace and Company, 1980) 71

⁶⁸ Is there a joke here about a Golden Calf and iconoclasm; (Robert) Moses as the icon(oclast). This reading may not be so far fetched with Moses at the time seen as the driving force of modernism in New York City, a latter day Haussmann, who was destroying the tenements to make way for the new.

⁶⁹ Lancaster, 'Andy Warhol Remembered', 1989, 199

which as Lancaster suggests, 'anger had provoked.'⁷⁰ The act of painting over the work with silver therefore should not be read as a final capitulation but a new beginning; the silver-wash should be seen as the compromise work, which Warhol accepted in the public sphere in lieu of the Moses work.

The silver paint is not merely a white wash but a metallic, shiny, iconic colour. It erases but sanctifies the *Thirteen Most Wanted Men*, like the curtain of the Jewish Torah, an ark or cabinet. Most obviously it is the potential ground of another work; it is the beginning of the repeat, creating a palimpsest as seen in religious manuscripts. Or is it the 'silver screen,' twenty feet by twenty feet, in cinematic proportions ready to accept another image of filmic glamour. Finally, Warhol often produced multiple panel works that *did* involve monochromatic sections, such as one whole panel of silver, that in relation to the screen printed figure referenced an ongoing process of seriality. This reading is supported by reports at the time which reported the silver work as a compromise, one headline reading, 'So Nothing satisfies Warhol'.⁷¹ The positive nothing, an active erasure in silver paint becomes a Warholian gesture of creation and censorship. The silvering is a symbolic act of screening or veiling, and becomes a reaction to the normative screen of Lacan.⁷² Here it is a normative screen marked by Warhol's singularity where the 'silver screen' becomes an alternative potential symbolic order, literally another 'grounding' master signifier. The silver paint becomes a point where outlaw and sovereign meet and accounts for a strategy of Warholian brand. The normal, normative screen, the covering as phallus, is censorship by *black* paint not silver. Warhol has given us an alternative universe of individual will much like the fantasy of the 'great' criminal himself. It is interesting that the work was censored again. Marc Siegel describes its revival for the Berlin Fair in 2002.⁷³ The one image Siegel uses for a page reproduction is the image of the *Thirteen Most Wanted Men*. Siegel notes that for the Berlin retrospective the *Thirteen Most Wanted* were reunited on separate canvasses as well as being heavily advertised.⁷⁴ Siegel sees as significant the effect of September 11 on the decision of the director of Berlin, Heiner Bastion, not to put the mural together again and instead to present the

⁷⁰ *Ibid*, 199

⁷¹ Kit Kincade, 'Silver Square "'So Nothing"' at Fair, It Satisfies Warhol,' *New York World Telegram*, July 6, 1965; Mel Jaffe, 'Fair's "Most Wanted" Mural Becomes "Least Desirable"'. *New York Journal American*, 18 April 1964

⁷² Here the normative screen of Lacan would equate with a Foucauldian normativity where the symbolic order represents the social rules and languages through which society functions.

⁷³ Marc Seigel, 'Doing It for Andy,' *Art Journal*, Vol 62, Spring 2003, 6-13

⁷⁴ After the controversy Warhol did a limited run of the mug shots on canvas.

works as separate panels in a line.⁷⁵ The mug shot of the 'great criminal' in relation to New York still had great terrifying power that needed sublimating and controlling.

CONCLUSION: THE SILVER NOTHING INSTEAD OF THE EFFIGY

The silver painting becomes a metaphor of beginnings and the founding force of the law. It highlights, in Derridean terms, an aporia of the decision that must always make the law anew and reset the ground. The cognitive doctrine or idea, or in the case of a Derridean reading, the mystical founding force, is turned into artistic and cultural artefacts and rituals. It is through dealing with these artefacts and rituals that we internalise and believe the doctrine. State apparatuses act on us, through ideology, and are part of the process of legitimising the founding violence. Douzinas writes, 'Most legal systems are the outcome of force, the progeny of war, revolution, rebellion or occupation. This founding violence is either re-enacted in the great pageants that celebrate nation and state-building or forgotten in acts of enforcement of the new law and the interpretation of the new constitution'.⁷⁶ In other words the chasm of violence that haunts the law is covered by fantasmic supports which can be celebratory or repressive. *Thirteen Most Wanted Men* conflates both modes in the same image. Benjamin describes the utopian act as a striving always to separate the violence of the founding act and justice as a transcendental potential. But this contingency in the symbolic can, *contra* Derrida, never be achieved, if one follows the argument of Lacan. As Žižek explains, 'Such a reading of spectrality as that which fills out the unrepresentable abyss of antagonism, of the non-symbolisable real, also enables us to assume a precise distance from Derrida, for whom spectrality, the apparition of the Other, provides the ultimate horizon of ethics'.⁷⁷ For Derrida, the promise of messianic justice, yet-to-come, is the goal of critique. The problem with this stance for Lacan, and later theorists in this mode, is that as Žižek states the spectre already shows itself as a withdrawal from the horror of completeness, of complete freedom. Surely a blank silver painting is the image of this always potential becoming, never to be completed. Perhaps, as in this case, bearing the trace of the painting/law underneath, it pushes forward into a new space. As the viewer we accept Warhol's role as his own brand but it is tempered by the possibility of others too, it is not a special position but one of many. In *Thirteen Most Wanted Men* Warhol really marks this position as the creator and censor of the image. But he shows that this process is always in a state of flux. Underneath all knowledge and imagery in the disciplinary society is not neutrality but a position, the position of the hidden master. Even for a moment in *Thirteen Most Wanted Men*, through his mode of simulacrum,

⁷⁵ The show opened three weeks after September 11 and as Siegel suggests, 'Bastian found his retrospective to have unexpected contemporary political connotations, certain of which he wanted to dispel'. 9

⁷⁶ Costas Douzinas, 'Violence, Justice and Deconstruction', *German Law Journal*, Vol 6, No 1 January, 2005; accessed 7/09: www.germanlawjournal.com/article.php?id=546

⁷⁷ Slavoj Žižek, 'The Spectre of Ideology,' in *Mapping Ideology*, (London: Verso, 1994) 27

Warhol shows that the image is indeed pinned by a repressive state ideology that hides behind the neutrality of the image. But unlike the hysteric Warhol does not really call for the master to appear, although in a fit of anger he started painting Moses over and over; in the end Warhol shows that the image of the law is really the erased and hidden master, an invisible force.

CHAPTER 9: HANSON AND THE MODERN IMAGO

(To JS/07/M/378) This Marble Monument Is Erected by the State)

He was found by the Bureau of Statistics to be
One against whom there was no official complaint,
And all the reports on his conduct agree
That, in the modern sense of an old-fashioned word, he was a saint,
For in everything he did he served the Greater Community.¹

The Court makes no claims upon you. It receives you when you come and it relinquishes you
when you go.²

INTRODUCTION: EFFIGIES IN THE DISCIPLINARY SOCIETY

One way to begin, like Olympic television coverage and many concerts, is with Aaron Copeland's *Fanfare for the Common Man*, 1942 resonating in the reader's head.³ Like Copeland, Duane Hanson uses an outmoded, monarchical art form to create effigies of the common, average man. Hanson creates life-size figures of janitors, joggers, tourists, businessmen, museum guards and policemen. This chapter looks at the work of the hyperrealist artist not as sculptures but as contemporary effigies, as a resurrection of the kingly format. Although not the sacred body of kings, Hanson's effigies help elaborate Foucault's contention that the king's sovereign power has now been 'split' among us. Hanson assists in seeing the hidden workings of biopolitics operating behind the disciplinary society as extended in the work of Giorgio Agamben – in particular the idea that we are all *homo sacer*.⁴ Again we can use Lacan's university discourse to highlight the connection of power/knowledge to bare life.⁵ In this reading, Hanson's figures, far from referencing the Real, or the object, or the bodily, are closer to the symbolic 'second body'.

¹ W H Auden, 'The Unknown Citizen,' *Selected Poems*, ed. Edward Mendelson, (London: Faber and Faber, 1979), 85

² Franz Kafka, *The Trial*, trans. Willa and Edwin Muir (Harmondsworth: Penguin Books, [1925] 1977) 244; spoken by the Priest after the parable of 'Before the Law'.

³ Premiered March 12, 1943, on income tax day, Cincinnati Symphony Orchestra.

⁴ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen, (Stanford, CA: Stanford University Press, [1995] 1998)

⁵ This connection between the university discourse of Lacan and the bare life of Agamben has already been brought together in the work of Žižek; Slavoj Žižek, 'Homo Sacer As the Object of the Discourse of the University' *Lacanian Ink*, 2003, www.lacan.com/hsacer.htm, accessed 6/09

An apocryphal but popular story is related by Christine Lindey:

Rumour has it that a Duane Hanson sculpture was shot in a recent art theft; on being surprised by one of his figures the thieves panicked and 'killed' the interloper. Whether this story is true or false is of little importance; the point is, it certainly could be true, and the same could not happen in painting.⁶

The figure that is being referred to is one of Hanson's many security guards, in particular *Museum Guard*, 1975 (Figure 51). Criminals, in the imagination, are adept semioticians when it comes to signs of authority ('smelling' cops if one believes Hollywood movies). As Lindey suggests this could not have happened if the work was not a three-dimensional life-size body; however, in the half-light of the closed gallery, perhaps it was the shiny badge and the peaked hat that provoked the shots, not the effigy's 'lifelike' qualities. We should not think of the robber as a naïve fool who could not tell the difference between an artwork and a man. Instead, the story provides an alternative approach Hanson's work. Whether as a janitor or painter, a tourist or a businessman, it is our outward signs that position us in society, the way the law, to follow Althusser, interpellates us. To borrow from the criminal's insights, Hanson's figures artfully show how the State sees us. The State's viewpoint is directed through the lens of the surveillance camera, a photographic, scientific sight, supposedly neutral; here the cast, as an extension of photorealist painting, is a worthy sculptural method for an administered society. At a simple level even Hanson's subject matter seems to suggest such a reading. Across his collection of figures he is inordinately interested in signs of the disciplinary society: policemen, guards of all sorts, and doctors, all sporting realistic name tags and insignia.

Hanson's approach was prefaced by attacks directed against the law. His catalogue raisonné usually begins with *Abortion*, 1965, which depicted the aftermath of an illegal abortion with a figure on an operating table covered in a sheet. Other work followed based on newspaper reports of suicide, rape and murder, poverty and other social concerns. *Welfare-2598*, 1967 presents a figure in a shroud within a coffin, stamped with the uncaring moniker of the administered society, 'Welfare 2598'. The satirical and parodic nature of these works, the medium of plaster life-size sculptures and the use of tableaux, owe much to George Segal and

⁶ Christine Lindey, *Superrealist Painting and Sculpture*, (New York: Willain Morrow and Company Inc, 1980)



51. Duane Hanson, *Museum Guard*, 1975, 175cm x 53cm x 33cm, polyester, fiberglass, oil, and vinyl.



52. Duane Hanson, *Football Player*, 1981, 107cm x 76cm x 80cm, Oil on polyvinyl.



53. Madame Tussaud, Pablo Picasso wax sculpture.

Edward Kienholz. An important shift occurs in 1967 with the first polychrome casts.⁷ These early tableaux were theatrical and narrativised as in *Motorcycle Accident*, 1969 and *War*, 1967, or the exemplary *Race Riot* and *Football Players*, both from 1968. *Race Riot* continued Hanson's interest social issues while *Football Players* can be seen as a foil to the alternative 'American heroes' in the Vietnam War. In 1970 there is the final shift to the less sensational and less narrative work such as *Tourists*, 1970, and *Florida Shopper*, 1973. Between 1970 and 1996, Hanson produced 114 figures. When we compare Hanson's *Footballer*, 1981 in relation to the earlier tableau, it becomes evident that the figure is self-contained and in a nowhere place; there is no obvious expression of narrative (Figure 52). Hanson wrote of these later works, 'I show the empty-headedness, the fatigue, the aging, the frustration. These people can't keep up with the competition. They're left out, psychologically handicapped'.⁸ Although the humanist critique is still present, it no longer has the predetermined message of Hanson's early 'social realist' history.

The commentary and melancholy comes from a reality of the disciplinary society, that we are all in the end, a number. Far from the 'verism' and life-like nature of the work pointing to the individual, it is the failure of the work to account for the individual subject that is illuminated in Hanson's work; as the image approaches the Real its failure is more obvious. This is a new reading fitting somewhere between seeing the figures as the Real or as the Type. The first is founded primarily on 'verism'. Even recent texts have looked at Hanson as part of the turn to abject art, the Real, in the late part of the twentieth century.⁹ Hanson himself suggests, 'People like to people-watch, but they feel guilty about doing it. With my figures, they can go up to them, stare at the wrinkles, the hair, the skin tone, something they wouldn't dare normally'.¹⁰ Dennis Adrian agrees that, 'this emotional removal allows us to satisfy our voyeuristic nosiness without feeling that we are being rude or giving affront to the "subject," much as one comfortably rubber-necks at different types

⁷ Works such as *War* (1967), *Gangland Victim* (1967) and *Motorcycle Accident* (1969). There was some controversy surrounding this early work too; the Bicardi Museum refused to show them. See Martin Bush, *Sculptures by Duane Hanson*, (Wichita: Edwin A. Ulrich Museum of Art, Wichita State University, 1985)

⁸ Quoted in Bush, *Duane Hanson*, 15

⁹ Hanson is seen as an antecedent of Robert Gober, Marc Quinn, Ron Mueck and the Chapman Brothers. *Duane Hanson and Virtual Reality*, ed. Christine Giles, (Palm Springs: Palm Springs Desert Museum, 2000); *Duane Hanson: More than Reality*, ed. Thomas Buchsteiner, Otto Letze, (Ostfildern: Hatje Cantz, 2001)

¹⁰ Duane Hanson quoted in Martin Bush, *Sculptures by Duane Hanson*, 15. Some have of course seen an alternative viewpoint in which I do not agree. Thomas Buchsteiner and Otto Letze, write, 'Exhibitions of the work of Duane Hanson are especially important because his art allows us to reflect on our experiences in a world which is becoming increasingly impersonal. His sculptures show us life and do not permit us to view them coolly from a distance'. Buchsteiner and Letze, *Duane Hanson: more than Reality*, 13

on the bus or else as long as the scrutiny is unaware of being gazed at.¹¹ The approach can be summed up in De Andrea's statement, 'I want them to breathe.'¹² On the other hand more astute readers have noted the artificiality.¹³ As Joseph Mashek put it, 'Their fascination and disappointment is that they lack "souls"'.¹⁴ It is the clothing and the insignia that perhaps trick the eye the most and lead us to 'read' the effigies as types.¹⁵ Looking at the work as effigies borrows from both readings. They are individuated, interpellated individuals whose bodies become a ground for the insignia and signs of subjecthood. But these figures are not kings or ministers, or even celebrities of any kind. They have the strange melancholy of a waxwork in which no-one can quite work out just who is represented or what they did. This is perhaps the anxiety that underlines the work and continues Hanson's process of social commentary.

VESTIGIAL EFFIGIES AND THE IMAGO

David Freedberg and Georges Didi-Huberman have both examined the contemporary effigy. In two recent essays Didi-Huberman draws a line of sculptural history in the west that comes not from romantic notions of artistic creation but from the legally invested *imago* or effigy. The work is defined *not* in terms of verisimilitude and mimetic magic but as symbolically invested bodies. David Freedberg writing on wax sacred tableaux and king's effigies, gives a contemporary example from Madame Tussaud's Wax Exhibition.¹⁶ Is it an art-historical joke or simply a coincidence that of all figures, Freedberg chooses Picasso's wax figure – an artist known for turning away from verisimilitude and direct resemblance through the invention of cubist deconstruction (Figure 53). Freedberg suggests that the waxwork remains relevant for contemporary art theory and practice. Photorealism and minimalism shared a dislike of the gestured romantic flourish of abstractionist genius, pursued and personified by Picasso. Like the minimalist sculptor, the hyperrealist sculptor

¹¹ Dennis Adrian, *The Real and the Ideal in Figurative Sculpture*, Exhibition Catalogue, Museum of Contemporary Art, Chicago, 1974

¹² John de Andrea quoted in 'Interview by Duncan Pollock, Linda Chase and Ted McBurnett' *Art and America*, vol 60, No 6, New York, November-December 1972, 99-103

¹³ Joseph Mashek, 'Verist sculpture: Hanson and de Andrea' *Art and America*, Vol 60, no 6, New York, November-December 1972, 90-98; Naomi Schor, *Reading in Detail: Aesthetics and the Feminine*, (London: Routledge, 1987), Schor sees Hanson as a Balzac creating 'types'; Kim Levin, 'The Ersatz Object,' in *Super Realism*, ed. Gregory Battock, (New York: E P Dutton, 1975) 96, at 100 Levin feels that all super realist sculpture should still be seen in relation to the post-Minimal artificiality, framed by the gallery and the art institution, 'But appearance is not reality: deception is involved.'

¹⁴ Joseph Mashek, in *Super Realism*, 1975, 193

¹⁵ Naomi Schor, *Reading in Detail*, 1987, 138

¹⁶ David Freedberg, 'Verisimilitude and Resemblance: From Sacred Mountain to Waxworks', in *The Power of Images: Studies in the History and Theory of Response*, (Chicago and London: Chicago University Press, 1989) 192-245

asks, against the gestural and romantic, 'Can this cast be a sculpture?'¹⁷ Freedberg's interest in the wax figure as a contemporary exemplar of 'response theory', finds historical footing in the lineage to the king's wax effigy and sacred tableaux. He sees the response to the wax figure as important, 'We have learned to resist the attribution to such images [wax figures] of anything like rewarding or satisfying aesthetic status...[but] We are arrested by these images at least partly out of fear that they might just come alive, just open their mouths, just begin to move.'¹⁸ This interest is based on his close reading of Julius von Schlosser's essay 'History of Portraiture in Wax'.¹⁹ Freedberg argues that art theory should look at the wax figure as a worthy study of critical interpretation, a move since followed in the work of visual studies. This thesis takes visual studies as a given and we are able to follow Schlosser more directly. Beginning with the Roman wax portrait, and the description of the *imago* by Pliny, as we have already seen, the wax portrait/cast can be seen as a legal and sacred category rather than an artistic one; in other words the wax cast can be seen as an effigy rather than a portrait. Nor do we need to leave Madame Tussaud's to see such reactions. If, instead of Picasso's wax figure, we were to replace it with Hitler's wax figure we could see that the response to the leader's second body is still relevant. The viewers at Madame Tussaud's have always reacted as if some symbolic representation of the actual figure is being made; for example from the very beginning the Hitler figure needed to be carefully guarded against vandalism.²⁰ Indeed many have treated the waxes as images of infamy, a juridical designation looked at in the previous chapter.²¹

¹⁷ In a subtle reference to minimalism (and perhaps even hyperrealist sculpture) Freedberg writes: 'Since Schlosser's profound investigations in 1911, wax images have been neglected by art historians – presumably because of the (comparatively late) prejudices against verisimilitude. As it becomes more accurate, and then more like the reality of the signified, the image comes to be regarded as more 'mechanical,' and therefore less artistic. But attitudes are changing again, and the intrusion or extension of 'mechanics' into 'art' is perceived as less troublesome altogether'. Freedberg, 'Verisimilitude and Resemblance: From Sacred Mountain to Waxworks', 215.

¹⁸ Freedberg, 'Verisimilitude and Resemblance: From Sacred Mountain to Waxworks', 231

¹⁹ This essay has only recently been published in English as part of the study, Julius von Schlosser *Ephemeral Bodies: Wax Sculpture and the Human Figure*, ed. Roberta Panzanelli, (Los Angeles: Getty Research Institute, 2008)

²⁰ Pamela Pilbeam, *Madame Tussaud and the History of Waxworks*, (London and New York: Hambledon and London, 2003). Pilbeam provides a good biography and broad overview of the birth of contemporary waxworks to the present. The iconoclasm of Hitler's wax figure, as early as April 1933 is mentioned, 199; 'Madame Tussaud's to repair beheaded Hitler: Wax figure was attacked by visitor as Berlin exhibit opened Saturday', *Associated Press*, 7 July 2008, a man ripped off the head of Hitler's wax figure in Berlin's Tussaud's shouting 'No more war.'

²¹ A famous story of Tussaud's is of two wax heads, Jacques Necker and Louis-Philippe II, Duc d'Orléans, created by Philippe Curtius, Tussaud's 'uncle' and teacher, which were used on 12 July 1789 in a protest

Even within contemporary theory it is possible to see the figures as representing the symbolic order rather than the Real, regardless of their cast nature. A particularly apt reading of the fibreglass figure is Laura Mulvey's reading of the work of Allen Jones.²² In the essay Mulvey warned her reader *not* to simply see Jones' work as misogynist attacks (against the body) but on the contrary as projections of his own castration anxiety (the symbolic). This is a bold feminist approach. If we look at *Hatstand*, 1969 it shares many formal characteristics to Hanson's work as it is made of polychrome fibreglass, and then dressed in real leather-ware, a plastic top and a real wig (Figure 54). When seen close up, the work is not as 'mannequin' as you would suppose, with hands and facial features finely detailed. The hands have idiosyncratic finger placement and articulated nails rather than the approximated hands more commonly seen in shopping malls. Regardless of this level of detail, Mulvey insists that the figure is all phallus: '...Allen Jones throws a new light on women as spectacle. The message of fetishism concerns not women, but the narcissistic wound she represents for man'.²³ So the woman, regardless of the verism of the clothed and unclothed body is wholly objectified and not individuated. It is the projected fantasy of the male viewer, here the artist (Jones). Mulvey's reading allows one to look at Hanson's work in a similar way. They are the objectified, symbolic body as seen by the disciplinary gaze, a gaze that sees the body as a bearer of the mask and insignia of the symbolic order.

march as a form of punishment *in effigie*, at the beginning of the French Revolution. David McCallam, 'Waxing Revolutionary: Reflections on a Raid on a Waxworks at the Outbreak of the French Revolution' *French History* 16 (2) 2002, 153–173; the famous case of *Monson v Louis Tussaud* (1894) 1 QB 671, established 'libel by innuendo' a foundational case in defamation law, when Tussaud placed an effigy of Monson outside the Chamber of Horrors although he had been acquitted. The case established above all that 'publication' of defamatory comment may not just be in words, but may be through image or effigy, see also for this case, Pilbeam, *Madame Tussaud and the History of Waxworks*, 2003, 211; see also *Eyre v Franklin* (1878) 42 JP 68, which set the precedent that an effigy could be libelous.

²² Laura Mulvey, 'You Don't Know What You're Doing, Do You Mr. Jones?', 1st published *Spare Rib*, 1973, in *Framing Feminism, Art and the Women's Movement, 1970-1985*, ed. Rozsika Parker and Griselda Pollock, (London: Pandora, 1987) 127-131

²³ *Ibid.*, 131



54. Allen Jones, *Hatstand*, 1969, 178cm x 102cm x 35cm, painted fibre-glass, leather and hair.



55. Anonymous, Westminster Abbey, wax mannequin of Charles II.

The most sustained argument for this approach, and to which this chapter owes a debt, is the recent work of Didi-Huberman, in particular the two essays, 'The Molding Image: Genealogy and the Truth of Resemblance in Pliny's Natural History, Book 35, 1-7,' and 'Viscosities and Survivals.'²⁴ Both essays are based on a Warburgian argument that historical methods and visual modes may be trans-historical, latent in a culture even if not obvious.²⁵ In these essays there is an indirect suggestion that the effigy is still a useful category to look at as a 'survival.' The basis of his discussion is a total reappraisal of the birth of art in Pliny. Although Vasari framed art history as a resurrection of Pliny's terms, Didi-Huberman suggested that Vasari misrepresented Pliny's theory of the image, resemblance and art to fit his humanist project (which saw art as an autonomous and specific knowledge of objects). For Pliny, the aesthetic notion of art was not a primary concern – *artes* is defined broadly to include all activities that go beyond nature, and is totally embedded within social and legal use and ritual. I would add here that the art historical blindness to the judicial effigy stems from this original bias. Didi-Huberman resurrects Pliny's approach.

In summary for Pliny art is a genealogy of image and resemblance that he expresses in terms of law, justice, and right. The term *imago* is the term that most interests us, translated by Vasari to mean image, in reality it specifically related to the wax models of faces. They are not portraits in Vasari's concept of an optical illusion of the individual portrayed; the *imago* is an imprint which needed no skill, no originality and no artistry. Where Vasari judges work as good or bad, Pliny places the image juridically, under the *ius imaginum*, law of images, which dictated on the border of private and public rights. One of the main prerogatives of the Roman nobility was to have such *imagos* as part of ancestral worship. In this way the right to use mourning masks was not linked to a god-like status of the aristocracy but to the social status of the Roman nobility as a legal entity. Didi-Huberman highlights the distinction made between the two conceptions of the basis of resemblance and the image. He suggests, implicitly, that the history of art, through 'surreptitious' mistranslation by Vasari, then continued in this autonomous way as a distinct discipline, as a profane art of portraiture, primarily related to aesthetic concerns. As we have seen, the *imago* as a concept reasserts itself in the Renaissance in a particular way, in the wax cast of the king and other aristocracy and in the effigies of infamy (which is still most common today).

²⁴ Georges Didi-Huberman, 'Viscosities and Survivals: Art History put to the Test by the Material,' in *Ephemeral Bodies: Wax Sculpture and the Human Figure*, ed. Roberta Panzanelli, (with a translation of Julius von Schlosser's 'History of Portraiture in Wax') (Los Angeles: Getty Research Institute, [1998] 2008) 154-170

²⁵ Georges Didi-Huberman, 'Artistic Survival: Panofsky vs. Warburg and the Exorcism of Impure Time,' *Common Knowledge* Vol 9, Is 2, 2003, 273-285; Georges Didi-Huberman, 'The Surviving Image: Aby Warburg and Tylorian Anthropology,' *Oxford Art Journal* Vol 25, Is 1, 2002, 59-69

In a pendant essay Didi-Huberman makes another argument for the importance of the category of wax sculpture through a close reading of Schlosser.²⁶ He again relies on a Warburgian notion of survival with a proviso; with such long survivals he suggests that Schlosser saw a requisite 'declassing.' Against Vasari's teleological history of aesthetic progress, Schlosser wanted to look at the 'lower' arts of mannequins and Tussaud's as a 'declassing' of the king's effigy. Didi-Huberman adds that this declassing of course does not necessarily just go in one direction, away from 'art':

The royal portrait is declassified in the carnival mannequin of course, but the great art of Edgar Degas or Medardo Rosso — a contemporary of Schlosser, whom he unfortunately did not know — also knew how to declass the trivial effigy, to disorient it and, through that disorientation, open a heuristic field (think, for example, of the uses Bruce Nauman makes of wax) that we call contemporary art.²⁷

So for Didi-Huberman it is the material wax, its plasticity and shape shifting that has ritualistically allowed for its use as a magic *imago*. The polychromed resin and fibreglass of Hanson plays a similar role. In the end, this reading of Hanson's work is one of many, and a discussion of the abject quality and the 'hyperreal,' are also valid. If we examine Hanson's figures through the Lacanian triad suggested by Mitchell, we are again looking at the image as a member of the symbolic order, as an extension of the law, not of the imaginary or the real. Through the notion of the 'survival' of the effigy, this reading finds some grounding. Through the work of Hanson we can look at the way contemporary art has revived the experience of the effigy, but an effigy of the common man.

UNIVERSITY DISCOURSE, BARE LIFE AND THE EFFIGY

The final scholar of the 'survival' that is useful to our purpose, and who also worked for some time in the Warburg Library, is Giorgio Agamben. Agamben gives us a way to link the second body of the king to the common man through his concept of the *homo sacer*. It is the *homo sacer* that Agamben feels is the paradigmatic state of all legal subjects in the disciplinary society. To help explain this connection it is worth using Lacan's discourse relating to the disciplinary society, the university discourse. The top line of the university discourse shows, $S2 \rightarrow a$. Žižek describes this in terms of Foucault and Agamben's biopolitics, of 'expert knowledge dealing with its object which is *a* — not [as] subjects, but individuals reduced to bare life.'²⁸ For Agamben this 'bare life' has a

²⁶ Although only recently published in English, the essay was originally written in 1998, around the same time as 'The Molding Image.'

²⁷ Georges Didi-Huberman, 'Viscosities and Survivals,' 2008, 163

²⁸ Žižek in interview, in Rex Butler, Slavoj Žižek: *Live Theory*, (London and New York: Continuum International Publishing Group, 2003) 142

political import in living subjects, however that is as an actor *outside* the law (though connected to the law as an exception), the *homo sacer*. For Agamben the obvious example of such a person was the sovereign, but in a contemporary disciplinary society Agamben suggests that the *homo sacer* is the common paradigm. Bare life for Agamben is a state of being between the Greek concepts of *zoe* (pure animal life) and *bios* (political life).

Following the work of Schlosser, Ralph Giesey²⁹ and Elias Bickerman, Agamben is occupied with a link between the Roman *consecratio* of the emperor's effigy and the funerary rites and effigies of the Western medieval kings, particularly in France, which other authors, *contra* the erudite Schlosser, are unwilling to make.³⁰ Unlike Kantorowicz who explores the perpetual nature of sovereignty, the *dignitas* that passes and survives the body, Agamben sees the *homo sacer* as an important point to assuage through funeral rites. As Agamben continues:

The colossus [used in rites of the *devotus*] is not, therefore, a simple substitute for the corpse. In the complex system regulating the relation between the living and the dead in the classical world, the colossus represents instead—analogously to the corpse but in a more immediate and general way—that part of the person that is consecrated to death and that, insofar as it occupies the threshold between the two worlds, must be separated from the normal context of living.³¹

The colossus is that part of the *devotus* that was separated during the consecration. Insofar as he incarnates in his own person the elements that are distinguishable from death, *homo sacer* is, so to speak, a living statue, the double or the colossus of himself. Agamben thus notes the political character of this bare life. It is not 'dignitas', as Kantorowicz suggested, but rather as the cipher of the absolute and inhuman character of sovereignty that sacred life invests into the successor. Reading this into the modernity of Foucauldian disciplinary society, and through what he sees as Bataille's error in seeing the sacrificial acephale, the sovereignty of transgression, of violence as non-political, Agamben suggests:

²⁹ Ralph E Giesey, *The Royal Funeral Ceremony in Renaissance France*, (Geneva: Droz, 1961)

³⁰ Agamben writes in *Homo Sacer: Sovereign Power and Bare Life*, (Stanford: Stanford University Press, 1998), 93: 'But there was a different – and more secret – reason, and that is that nothing in Roman *consecratio* allowed one to place the emperor's effigy in relation to what is sovereignty's clearest feature, its perpetual nature. The macabre and grotesque rite in which an image was first treated as a living person and then solemnly burned gestured instead toward a darker and more uncertain zone, which we will now investigate, in which the political body of the king seemed to approximate – and even to become indistinguishable from – the body of *homo sacer*, which can be killed but not sacrificed.'

³¹ Agamben, *Homo Sacer: Sovereign Power and Bare Life*, 98

In modernity, the principle of the sacredness of life is thus completely emancipated from sacrificial ideology, and in our culture the meaning of the term 'sacred' continues the semantic history of *homo sacer* and not that of sacrifice...What confronts us today is a life that as such is exposed to violence without precedent precisely in the most profane and banal ways.³²

The sacred body is disseminated to exist in everyone in the horror of Foucault's disciplinary society.³³ This can be seen in the way that the modern subject of the law becomes the corpus of Habeas Corpus, in 1679, rather than a feudal subject or a subject of natural rights.³⁴ It is this subject as mere body that is seen by Žižek in the university discourse as *a*. Hanson provides the model of this sort of politicised body. His work is not only about the 'hyperreal' and the mimetic but is explained through $S2 \rightarrow a$. The 'bodies' are merely grounds (*a*), the corpus, on which to place the insignia (*S2*). If we look even at the formal characteristics of the effigy we can see this at work. An example used by Schlosser and Freedberg is the Mannequin of Charles II (Figure 55). The media is listed as, 'wax head and hands, stuffed body over wood and iron core, hair, garments etc.'³⁵ The effigy is staged on the surface to create the 'king effect' not to conjure the individual subject, (*\$*). Hanson's resin cast bodies also act in this way, not necessarily to become the Real but to become an armature for the real clothes and other symbols of interpellation. Hanson's work embodies the split between the *\$* and the legal subject that Althusser warns through his understanding of interpellation.

HANSON, TITORELLI AND INTERPELLATION

It is the *S2* of an image, the signs, insignia, crowns and medals, that the disciplinary society understands – the legal subject not the 'true' subject (*\$*). The *\$* in the university discourse is the 'indivisible remainder' of the discourse and *contra* Foucault, is not the result of power/knowledge but what cannot be assimilated by the discourse. If the subject is approached by the *S2* (knowledge) as the *a*, the unformed childlike subject.³⁶ The *S1* in the place of truth, the hidden political and ideological underpinning of the disciplinary society was the subject of the last chapter. This chapter focuses on another corrective to Foucault, that the subject is created by the law but

³² Agamben, *Homo Sacer: Sovereign Power and Bare Life*, 1998, 114; for example more people die in road accidents than in war yet those victims are not 'heroized'.

³³ *Ibid*, 11; Agamben envisions, 'a completely new politics – that is, a politics no longer founded on the *exceptio* of bare life.'

³⁴ *Ibid*, 75; 'The first recording of bare life as the new political subject is already implicit in the document that is generally placed at the foundation of modern democracy: the 1679 writ of *habeas corpus*... it is significant that at its centre is neither the old subject of feudal relations and liberties nor the future *citoyen*, but rather a pure and simple *corpus*.'

³⁵ Freedberg, 'Verisimilitude and Resemblance: From Sacred Mountain to Waxworks', 1989, 219

³⁶ Žižek, 'Four Discourses, Four Subjects', 78

that the interpellation, or symbolic castration, is never complete, without the remainder \$. The sadness or social critique that many have seen in Hanson's work is based on this failure. In the early work, such as *Abortion* or *Welfare-2598*, the mode is more hysterical. The work says, 'This is unjust, this subject is not recognised.' In the mature work the recognition is not at issue. What it illustrates is that even with recognition as a legal subject, this recognition does not fully account for the subject, (\$). Pierre Legendre perhaps sums up the effect of symbolic castration when he writes; 'We absent ourselves from ourselves and then master the resulting absence.'³⁷ The melancholic or anxious truth of this failure permeates all of Hanson's pieces, for instance, in the downtrodden philosopher *Footballer*, 1981. Here the great American hero is removed from any trace of victory – depicted without charisma and squatting defeatedly. Our question is doubled: why are you not celebrated like a hero or a colossus? There is a gap between the perceived \$ and his place within the symbolic order designated by S2/S1. The many *obviously* interpellated individuals in Hanson's oeuvre that play a part in the disciplinary society (the doctor, the policeman, the security guard for example) point to a double anxiety. For Žižek, the bottom line of the university discourse — the separation of \$ from the S1 (S1 | \$) — designates this failure of investiture, as described by Eric Santner.³⁸ This investiture is more heightened in 'official' posts, with a greater gap between the impossible 'real self' and the official position in the symbolic order.

The dark, fetid garret of Kafka's painter Titorello in *The Trial*, becomes a parable appropriate to Hanson's work. Titorello's garret is at once a studio, and as K gradually becomes aware, part of the apparatus of the court. Titorello is largely interested in insignia and costuming (S2/S1) or the symbolic order, his images come from designation rather than inspiration:

Yes, they're very vain, these gentleman,' said the painter. 'But their superiors give them permission to get themselves painted like that. Each one of them gets precise instructions how he may have his portrait painted. Only you can't judge the detail of the costume and the seat from this picture, unfortunately, pastel is really unsuited for this kind of thing.'³⁹

What is important in Titorello's portraits is not the individual subject but the judge's insignia, which needs to be based on historical precedent. The rules regarding court dress and insignia are passed down a hereditary line, at once public yet on the other hand secret. The paradox of the law's symbols is expressed through Titorelli's conformist and cloying portraits. The use of pastel in the image above for a client who 'intends the picture for a lady,' shows that when romantic notions are attached to the image they fail. Titorelli remarks later, in a moment of self-appraisal, 'Perhaps it

³⁷ Pierre Legendre, *Law and the Unconscious*, 214

³⁸ Eric Santner, *My Own Private Germany*, (Princeton: Princeton University Press 1996)

³⁹ Franz Kafka, *The Trial*, (New York: Penguin, 1977 [1925]), 162-163

strikes you that I talk almost like a jurist? It's my long association with the gentleman of the Court that has made me grow like that. I have many advantages from it, of course, but I'm losing a great deal of my *élan* as an artist.⁴⁰ When Titorelli shows K out an alternative door of his studio-garret it leads directly to the Law Courts, he says, to the shocked K he says, 'What are you surprised at?'⁴¹ Kafka at first presents Titorelli as a friend, confidant and expert in court protocols, but then Kafka shows that there is no way out, not even art can offer a point of critique.

Although the cast is from an actual individual they become merely the bearers of insignia; the cast is obviously artificial and plastic. The notion of casting read in this light is not a mark of the Real or verism in a Vasarian point of view. Indeed, although in some instances Hanson has been known to sculpt or change certain features, the cast instead moves the work away from the aesthetic, to frame the accessories coolly.⁴² Like the coolness of photorealism or Minimalism, they are actually closer to the disciplinary gaze (S2). This is what photorealism suggests, because the birth of photography gave the clinic and forensics a recording machine suited to the disciplinary society (such as the mug shots of the last chapter). As an extension, the cast can be seen as the sculptural equivalent to the photograph for use in hospitals, natural museums and in the forensic death mask.⁴³ Although there is an attempt at indexical veracity, it is again in the way of a mask (wrinkles, makeup, skin tone) that can further designate race, gender, age, class, employment, etc.⁴⁴ In other words the artificiality of the body, its disconnection to a 'subject' is always prefigured, it is merely, like its earlier formations, the straw and plaster of an effigy, ready to be dressed.

This lack of interest in an individuated subject also can be seen from other parts of the casting process. On the one hand there is an eye for incredible detail but on the other the figures merely play a part like an actor, they are interchangeable. Kirk Varnedoe, who has done the closest work on the actual process of making the figures, speaks of them as 'actors': 'This is why the initial 'casting' of the model— that is, the interview/'auditions' of individuals who may possibly pose for a given 'role' (delivery man, waitress, and so on) — is perhaps more important than the actual

⁴⁰ *Ibid* 168

⁴¹ *Ibid*, 182

⁴² Kirk Varnedoe, *Duane Hanson*, (New York: Harry N Abrams, 1985). Varnedoe calls this 'constructed synthesis.' 20. Hanson is quoted at 32, 'I do use wax, building up the forms. If I don't like the forms. I change a lot.'

⁴³ Madame Tussaud's teacher, Philippe Curtius was a Swiss physician and began wax modelling for anatomical purposes. See Pilbeam, *Madame Tussaud and the History of Waxworks*, 17

⁴⁴ Even in the nude work of John e Andrea, there is a strong sense that you can understand notions of class through hairstyle and skin tone alone.

mold-making that ensues.⁴⁵ An example of how Hanson arranges his work is the repetition of the 1984 black model in three guises: window washer, Custodian (with mop) and House painter (with roller), although all hold a cloth in their other hand. In some figures a white model is painted in one incarnation black. Similarly there is some humour. Hanson's son becomes the cop (a policeman in real life). Or *The Jogger*, 1983-84, who rubs his injured foot, in a cynical attack on healthy exercise as the opiate of the (Californian) people, is actually Hanson's doctor. Hanson's bodies represent the *a*, the unformed subject, of the university discourse that responds to all the injunctions of the disciplinary society (S2) that have to do with health, and other injunctions 'for our own good' and markings, such as our rank, or symbolic insignia. In a final statement, which in relation to our reading of Hanson as an effigy maker, Varnedoe states, 'It is the dialogue between body and the surrounding elements [clothes, props, beer brand etc.] that really makes a Hanson sculpture, and he is almost exaggeratedly attentive to those relationships.'⁴⁶ The Hanson effigy is aptly summarised through the top line of the university discourse S2 → *a*, or insignia/symbols/gesture → the fibreglass frame/*corpus*.

HYPERREALISM AND SIGNS SPEAKING TO SIGNS

From this point of view the real clothing and accessories become more than props but a primary concern. In the use of the real product Hanson follows the use of real objects in Pop art such as Jim Dine, and the use of industrial/real material in Minimalist sculpture, such as Carl Andre. Like the traditional royal effigy the clothes often actually belong to the model for the cast. We read these clothes *not* as art but part of the general visual culture. Legal insignia, nametags, badges, guns in holsters are perceived as the real insignia. These are not 'fake' like the bodies they adorn. Real clothes, accessories, name badges, authorial badges, hats, shopping bags emblazoned with brands give a new and accessible iconology with which to read these images; like Panofsky's tipping of a man's hat, the works stay at an accessible and untutored visual iconographical level. More so they ask the question whether a sheriff badge loses its authority in a gallery context, perhaps, but what about a painter's roller?

There is a Grandville caricature which helps describe this relationship with particular attention to clothing (Figure 56). Caricature comes from the Italian *caricare*, which means to charge or load, and points to the original use of the word where caricatures went beyond the norms of certain genres; in this way the term hyperrealism also carries with it an interesting connection to satire and caricature as a 'beyond realism.' In Grandville's *A quoi bon la personne?* (*Why do we need a person?*) 1844, some hats and boots speak to some bonnets on a hat stand out for a stroll. As caricature is about the signs of society, politics or fashion the cartoon works without people; or as

⁴⁵ Kirk Varnedoe, *Duane Hanson*, 21

⁴⁶ *Ibid*, 21

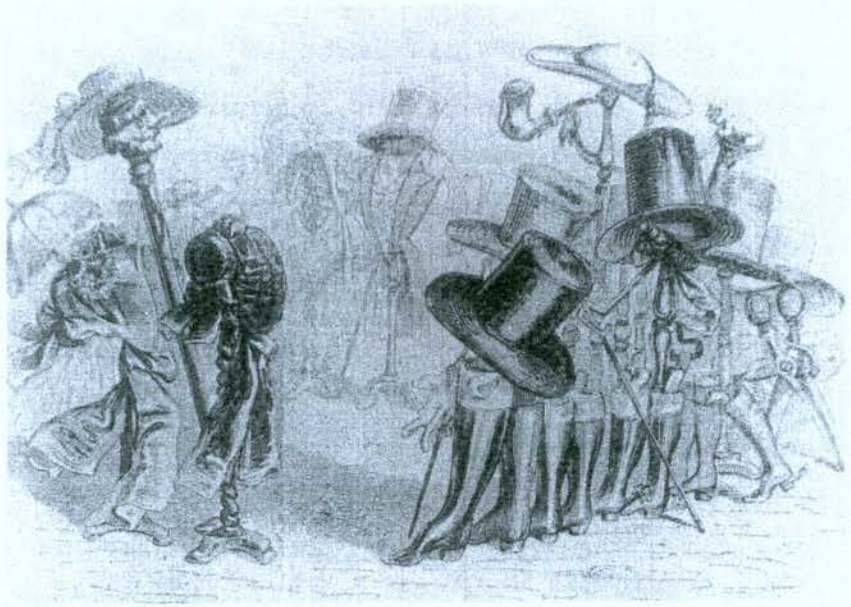
an extension of the portrait tradition, the supplement to the portrait that marks the picture as caricature is all that is needed, not the people themselves. First, the clothes have overcome the people and can get on quite well without them; it is the clothes that are speaking. Here the satirical argument is that people have been subsumed by fashion on the promenade – dissolved into the very things that designate their identity. Second, as a metapicture for the mode of social discourse, the caricature shows that we speak in a language, and that language includes words, fashion, gesture, which in a way are disconnected to the subject. This is a summary of the castration anxiety where to enter society, or the symbolic order, we must leave a part of our selves always unrecognised and unexpressed. There is always this split between our mask and the kernel of the Real in the subject. It is perhaps because of this reason that there is also a pun on the word *la personne*. This can be read as 'Why do we need a person', from the point of the hats speaking, or alternatively can it not be the repressed and plaintive cry of the human reader, 'Why do we need a persona?'⁴⁷

But of course we do need a persona or mask so as to work in society. For Lacan the law represents such a system of recognition and to return to the Grandville caricature, 'How do hats speak to each other?' Lacan writes, 'A signifier is that which represents the subject for another signifier.'⁴⁸ In other words if we look at the work of Hanson, the signs (clothes, gestures, accessories) work within a system of symbolic representation. We speak to each other through these signifiers. So that from a visual theory point of view (rather than sculptural art) for all intents and purposes, I respond to the Hanson as I would read the visual signification of a living person. We are all just numbers, $S_2 \rightarrow a$, for that is how we are seen by the symbolic order. Indeed anything more of the subject is in excess of the symbolic order, as Žižek notes, there is always a 'kind of surplus with regard to the concrete, flesh and blood addressee of my speech.'⁴⁹ Therefore the subject is only known within the system in which the recognition takes place. The gallery goer/viewer of Hanson is turned into the disciplinary gaze of the doctor, or scientist. We treat the object as the unformed subject (not sculpture) and read them like the supervising State or Foucault, but totally without limits to the inspection. In a dark metaphor we are like the concentration camp doctor. The underlying humanist tension in Hanson's work is the threat that we cannot fight this sort of viewing/inspection.

⁴⁷ The Latin word *persona*, meaning mask, is the basis of the word *person* in both French and English. Although 'persona' is *le personnage* in French, French readers would have known the Latin phrase.

⁴⁸ Jacques Lacan, *Écrits, a Selection*, trans Alan Sheridan, (New York: Norton, 1987) 316

⁴⁹ Žižek, 'Four Discourses, Four Subjects,' 74



56. Granville (Jean-Ignace-Isidore Gerard) *Why do we need a human person?*, 1844, lithograph.



57. Duane Hanson, *Janitor*, 1973, 166cm x 71cm x 56cm, polyester, fibreglass.

BROKEN DREAMS AND THE SADNESS OF MISRECOGNITION

A number of commentators have talked of Hanson's figures as exuding melancholy, disillusionment, and prostration, that they represent 'broken dreams.' Joggers are hurt, footballers sit on the bench and waitresses slump tired in the corner (Figure 57). The problem with this reading is that especially toward the end of his life Hanson pushed his figures toward the upper middleclass, the socialite wearing a pearl necklace, the well-dressed businessman, and the crisp doctor. This turn away from the obvious kitsch middle class and disenchanting working class cleaners and janitors shows the deeper truth of Hanson's melancholia. We are all disillusioned by the failure of our subjecthood to be accounted for in the symbolic order; the disappointment is the gap that can never be filled. This defines the crisis of investiture mentioned above, and the \$ as a remainder. The famous masterpiece *Self Portrait with Model*, 1979 states this theme directly. The artist clutches an empty bottle of Coke, opposite is a lady eating a chocolate sundae, reading the National Enquirer. Beneath a picture of Michael Jackson the headline reads, 'The Real Me Nobody Knows'.

Foucault describes the process of the misrecognition of interpellation in the disciplinary society: 'This form of power applies itself to immediate everyday life which categorises the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognise and which others have to recognise in him. It is a form of power which makes individuals subjects.'⁵⁰ The dystopia of Kafka's *The Trial* allows us to find a literary double to Hanson's poetry of misrecognition in the effigy of the common man. In Kafka's world the (mis)recognition of the subject by the law is all too apparent. In *The Trial* Joseph K is constantly under the pressure of an arrest which remain unclear – the law does not recognise him at all, except at the end of the novel, in the execution 'as a dog.'⁵¹ It is the parable of 'Before the Law' that has been discussed the most in regard to this paradoxical state of inertia before the law.⁵² As Derrida has noted though the position of the subject in regard to this 'before' has multiplied

⁵⁰ Foucault, 'The Subject and Power,' in H.L. Dreyfus and P. Rabinow (eds.) *Michel Foucault: Beyond Structuralism and Hermeneutics* (Chicago: University Chicago Press, 1982) 208-226 at 212

⁵¹ As Žižek has put it: '[t]he starting point in Kafka's novels is that of an interpellation: the Kafkaesque subject is interpellated by a mysterious bureaucratic entity (Law, Castle). But this interpellation has a somewhat strange look: it is, so to say, an *interpellation without identification/subjectivation*; it does not offer us a Cause with which to identify – the Kafkaesque subject is the subject desperately seeking a trait with which to identify, he does not understand the call of the Other'. Slavoj Žižek, *The Sublime Object of Ideology*, (London: Verso, 1989) 44

⁵² Kafka, *The Trial*, 235-244

possibilities.⁵³ The law is seen to be directly related to the personal subject but consistently also 'before' it. The countryman finally figures a question for the doorkeeper.

Before his death all the experiences of the long years assemble in his mind to form a question which he has never yet asked the doorkeeper... 'Everyone strives to attain the Law,' answers the man, 'how does it come about that in all these years no one has coming seeking admittance but me?' The door-keeper perceives that the man is at the end of his strength and his hearing his failing, so he bellows in his ear: 'No one but you could gain admittance through this door, since this door was intended only for you. I am now going to shut it.'⁵⁴

It is a transcendental 'radiant' absolute that can be suggested but not reached.⁵⁵ Žižek puts it in Hegelian terms of an absolute reflection:

... 'absolute reflection' is simply the name for this experience of how the subject, by means of his very failure to grasp the secret of the Other [that is, the law], is already inscribed in the Other's 'accountancy', reflected into the Other: the experience of how his 'external' reflection of the Other is already a 'reflective determination' of the Other itself.⁵⁶

But it is Margaret Davies writing in relation to Derrida that shows the anxiety that it induces:

To be 'before the law' as Derrida points out, means to be in a subject position which is laid down by the law: this being before the law is in fact the subject-in-crisis of contemporary philosophy. It is the being before/after the law which has so shaken our liberal assumption of a pre-existing human subject, and challenged the notion of rational agreement between subjects.⁵⁷

This is the wonderful insight of Hanson's effigies. It asks what is beneath all this clothing, racial signifiers, haircuts and other signs when these signifiers are what produce the interpellated subject.

⁵³ Jacques Derrida, 'Before the Law,' trans A Ronell and C Roulston, in D Attridge (ed.) *Acts of Literature*, (London and New York: Routledge, 1992), 188-89, 200-201. The English 'before' (and the German 'vor') imply before as meaning below or before the king, or brought before a court. But it also means before the law, what is before but the subject.

⁵⁴ Kafka, *The Trial*, 237

⁵⁵ 'Finally his eyes grow dim and he does not know whether the world is really darkening around him or whether his eyes are only deceiving him. But in the darkness he can now perceive a radiance that stems immortally from the door of the Law.' Kafka, *The Trial*, 236;

⁵⁶ Slavoj Žižek, *For They Know Not What They Do: Enjoyment as a Political Factor*, (London: Verso, 1991), 89-90

⁵⁷ Margaret Davies, *De-Limiting the Law: Postmodernism and the Politics of Law* (London and Chicago: Pluto Press, 1996), 71

The answer may well be the unformed body of bare life, to be presented as the symbolic body of the fibreglass effigy. Far from 'coming alive' as 'real' people which is the most immediate reading of Hanson's work, from the other view the figures reveal we are all nothing but a ground, an unformed subject. This leads to Davies' final warning that perhaps there cannot be 'any rational agreement between subjects.' This warning mirrors the caution of Lacan, that if we are all unformed how can we know, or 'love our neighbour.' So not only are the insignia connected to the symbolic order but even our desires, 'man's desire is the Other's desire'.⁵⁸ In a reading of this passage, Žižek concludes, 'beneath the neighbour as my mirror-image, the one who resembles me, with whom I can empathise, there always lurks the unfathomable abyss of radical Otherness, of one about whom I finally know nothing'.⁵⁹ Part of this is because as subjects we ourselves do not know our own desire, because it arrives in us from the Other. By setting up an effigy of the 'common man' we are supposed to relate to the signs of that subject, as another person(a). In the end, though the fibreglass body disappoints, there is no individual that you can reach – the figure is impenetrable. We will never know the sadness of the footballer or the janitor, in this case because they are not alive. Hanson's figures point further though to overarching despondency: that another individual is always an enigma, even if we relate to them in flesh and blood.

CONCLUSION: THE ANXIETY OF THE EFFIGY OF THE COMMON MAN

Finally, and returning to the previous chapter, where does the power of the master signifier within the university discourse play its part? This perhaps provides the last piece of sadness and anxiety in Hanson's work. In creating effigies of the common man, like Copeland's fanfare, he effectively kills the king or the traditional master figures. Although the big Other never existed it existed in our belief. The final anxiety of the university discourse is that the belief is not stable and as argued in the previous chapter, it may shift. This failure of the big Other, the SI, has created terrible anxiety in itself.⁶⁰ Twenty years after Hanson's death the viewer still fights against the soothing nostalgia of the quaint eighties jogger who lived in the period before the crash, while Ronald Reagan was President and we knew who our ideological enemy was. We should be dubious about seeing Hanson's figures in relation to a solid and masterful SI. Instead Hanson should be read strictly as a product of the *homo sacer* and the bureaucratic body. Agamben revisits Kafka for a summation of modern man as both sovereign and the object of biopower:

Being in force without significance: nothing better describes the ban that our age cannot master than Scholem's formula for the status of law in Kafka's novel.... Everywhere on earth men live today in the ban of a law and a tradition that are maintained solely as the 'zero point' of their own content,

⁵⁸ Lacan, *Ecrits, a Selection*, 1987, 300

⁵⁹ Slavoj Žižek, *How to Read Lacan*, (New York: W W Norton, 2007), 43

⁶⁰ Renata Salecl, *On Anxiety*, (London and New York: Routledge, 2004)

and that include men within them in the form of pure abandonment. All societies and all cultures today...have entered into a legitimation crisis in which law (we mean by this term the entire text of tradition in its regulative form, whether the Jewish Torah or the Islamic Sharia, Christian dogma or the profane *nomos*) is in force as the pure 'Nothing of Revelation.'⁶¹

The figures are neither heroic nor satisfied. There is insignnia but in the process of 'symbolic castration' it creates a gap between the individuated subject and their place in the symbolic order. Nothing can seem to place them as subjects and the art gallery setting, the fibreglass bodies, and the painted skin only heighten the artificiality and illegitimacy of all (living) subjects, who perhaps live not as the citizen/subject but merely as bare life, and outside the law.

⁶¹ Agamben, *Homo Sacer*, II, 51; this is why Agamben conclusively insists we must break away from the theological basis of our laws and politics, towards a new political system not based on the exception of bare life.

CONCLUSION: CONFRONTING THE ABYSS OF THE LAW

Then she drew up the wheeled table on which stood her paints and brushes and creams and concentrated breathlessly on the crucial phase of her art.

Within two hours the main task was complete. Head, neck, and hands were now in full colour; somewhat harsh in tone, somewhat gross in patina, it seemed in the penetrating light of the cosmetic room, but the oeuvre was designed for the amber glow of the Slumber Room and the stained light of the chancel.¹

'My name is Ozymandias, king of kings:
Look on my works, ye Mighty, and despair!'²

Spector: How is it that you always seem to get away unscathed from your escapades?

Cattelan: I just slide down the surface of things.³

ART AND TERROR

The terrorist attacks against the World Trade Centre in 2001 prompted a response that we still call the 'war on terror.' This event had far reaching effects on global politics and the laws of Western societies. Broadly speaking, one obvious outcome of the anxiety and uncertainty that the terrorist attacks engendered was a search for authority figures and a return to certainty. Although Al-Qaeda is a stateless, invisible enemy, more traditional and visible proxies were found and the West targeted Taliban-ruled Afghanistan and Hussein's Iraq – both wars are ongoing. The West's national borders were sandbagged and national security became a primary concern. There was a move to reassert publicly, through the media and legislation, the authority of constitutions, Presidents, and the master signifier 'democracy.' The two-pronged process was from a distance the creation of a binary of enemy/friend, as theorised by Carl Schmitt.⁴ Much of this process was visual. With the viral and amorphous threat of terror, the law set about 'creating' the image of the 'enemy'.⁵ The visual signs of terrorism, in the total absence of a useful textual definition, became a worryingly important supplement to anti-terrorist legislation, and has not been adequately debated or discussed by parliament, criminologists or society at large. The Australian

¹ Evelyn Waugh, *The Loved One*, (London: Penguin, [1948] 1951), 47

² Percy Shelley, 'Ozymandias' (excerpt), *The Norton Anthology of Poems*, 3rd ed. , (London: W.W. Norton and Company, 1983) 619

³ 'Nancy Spector in conversation with Cattelan,' *Maurizio Cattelan*, (London: Phaidon Press, 2003), 36

⁴ Carl Schmitt, *The Concept of the Political*, (Chicago: University of Chicago Press, 1996)

⁵ Laura Donohue, 'Terrorist Speech and the Future of Free Expression', *Cardozo Law Review*, Vol 27, Iss 1, 2005, 233-341

Government's approach, for example, was found in the very title of the national campaign from the Attorney-General's Department between December 2002 and March 2006 entitled 'Let's Look Out for Australia' [my emphasis]. This booklet and media campaign provided images as a template of what citizens should be suspicious of in order that the community could become better 'surveillers' of the terrorist threat. The images were notoriously vague and included among other things suspicious images of people video-taping known landmarks such as the Opera House or holes in fences. The lack of clarity in policing criteria of the illusive and invisible terrorist saw a number of artists, in the United States particularly, arrested for behaviour that was seen as suspicious and 'terrorist-like.'⁶ It was in this context that Warhol's *Thirteen Most Wanted Men* suggested itself as a mode of dissent. In the context of the war on terror any confusion regarding the Government's monopoly on certain images, technologies, or weapons, was vigorously quashed. Although Warhol's work can be read as the apotheosis of mere surface and indifference, the war on terror allowed us to see the underlying threat of such play when the law was in crisis. In this instance even the provocations of play and camp became meaningful and dangerous. Although occurrences of arrest or censoring were rare it is hard to quantify the extent that this vigorous enforcement had against cultural modes of dissent and many asserted that artists were self-censoring.⁷

From the 'friend' side of the binary of image creation, the icons of civic gods and the totems of nation abounded. In the Australian context, again, we saw the prevalence of the Australian Flag during the Cronulla Riots which were used to underscore the notion that the Lebanese victims were not 'real' Australians: 'Alcohol, the Australian flag and raw racism fuelled a violent rampage by thousands of young residents in Sydney yesterday,' began *The Age* report.⁸ It was the official and legal re-assumption of civic gods that was troublesome and it was this political response to the 'war on terror' that most influenced this study. The national orgiastic fervour of a riot or a sporting

⁶ Notable examples are Steven Mann, Steven Kurtz and Clinton Boisvert. Steven Mann's 'cyborg' wearable computer was mistaken for a bomb threat. Steven Kurtz' artwork relating to genetically modified food was mistaken for chemical weapons, in particularly tragic circumstances. Clinton Boisvert's 'fear box' was mistaken for a bomb threat and the New York metro was closed down. I have discussed these cases at length in, 'The image and the Terrorist,' *Law, Text, Culture*, Vol 10, 2006, 221-238; see also Julie Hilden, 'Fear Factor: Is Art that can be mistaken for terrorism protected by the first ammendment', *Entertainment Law*, Vol 2, no 3, Autumn 2003, 130 – 135; W J T Mitchell, 'Picturing Terror: Derrida's Autoimmunity,' *Cardozo Law Review*, Vol 27, Iss 2, 2005, 913- 925

⁷ For example no artist in Australia has been charged under the new sedition laws however this could be caused by self-censorship. See, 'Sedition Law in Australia: Anti-Terrorism Act (No2) (Cth)', *Arts Law Centre of Australia*, 2005, accessed 7/09, www.artslaw.com.au/_documents/files/SeditionLawInAustralia.pdf

⁸ Les Kennedy, 'Racist Furore as Mobs Riot', *The Age*, 12 December, 2005, 1

event was a common event, but the fact that these images and performative announcements had official acceptance bordered on Bonapartist /totalitarian rhetoric. As terrorism is an 'ideological' crime so the nation's response was ideological.⁹ Burning flags or effigies of presidents became again 'treasonous' and 'unpatriotic.' In Australia particularly it became a shock that our new sedition laws needed to refer to Queen Elizabeth II and her heirs, as well as to the Prime Minister. We had forgotten that we were in fact a constitutional monarchy. In the disciplinary society of Foucault's imagination the reassertion and protection of the sovereign body, in anachronistic protections such as the laws of sedition and treason came as a great surprise.¹⁰ It was in this context that it became clear that behind the neutral knowledge of the disciplinary society, and the freedom of self-creation in an era of late capital, were in fact these quasi-theological figureheads of the law. In the anxiety of terror a breach was made in the fabric of the bureaucracy; in the hysteria of possible further terror attacks traditional legal authority had been (re)found. The terrorists had uncovered the Symbolic Real of the sovereign authority and founding violence. So although we historicized the hysterical responses of Yves Klein and Marcel Duchamp, in their respective post-war and anxious societies, this symptom is very evident today.

THE PRINCE, THE ETHICAL ACT AND ART

The fantasies of the law that until the 'war on terror' had been more successfully repressed all of a sudden became more visible and an obvious target of the visual theorist. Through Lacan we have looked at the inconsistency of the law, the Symbolic Real, particularly at the site of the sovereign fantasy and image. The Real, represented by *object petit a* is directly suggested by Lacan's final discourse, that of the analyst in the place of agent. By beginning with the fantasy structures that veil the reliance on the father figure, a revolutionary and emancipatory political ethics can be outlined. It suggests a method to move beyond the interpellation of the Father figure. This has two effects: the total rejection of the existing symbolic order and the failure of the subject to be subjected to the law, which amounts to 'subjective destitution.' The discourse begins with the *petit a* in the place of the agent where *a* is the fantasy that veils and structures subjecthood. This study has examined the gap in the big Other from the point of the theological sovereign position, the mythical authority and founding of the law, and from the Real of the subject which is unsymbolisable. The analyst discourse 'produces' the master signifier (S1) which represents the

⁹ It has been noted that the terrorist laws do not cover anything that is not already in the criminal statutes. Hostage taking, murder, hijacking, bomb manufacture etc. are all covered. What the terrorist laws did was to merely add an 'ideological' supplement. The further corollary of this was that the *mens rea* became enough to prosecute, in the absence of the criminal act, *actus reus*.

¹⁰ I have written on the topic of treason and sedition in relation to the Australian *Anti-terrorism Act* (No. 2) 2005 in *Burning Effigies: Treason and sedition in visual culture*, (Melbourne: University of Melbourne, 2006) accessed 7/09: www.law.unimelb.edu.au/cmcl/seminars/Watts_Passages_final%20paper.pdf

unyoking of the subject from this particular controlling big Other. In some perverse way the threat of the 'war on terror' has heightened the distinction between the normal running of disciplinary society and the *a* of the law and the inherent connections between the master signifier and the Symbolic Real. An ethical art would try to begin, as in the analyst's discourse with the *a*, with this fantastical excess. This thesis has uncovered these fantasy structures of the law through the modernist canon. From the 19th Century to the present, artists have approached the fantasies of the law, probing, encircling and sounding the Real. For many commentators on Lacan's theories this is the limit of the ability of art and images to connote the transcendental and mythical Symbolic Real. Art and the image are by their nature within the symbolic order as is writing, poetry and other media of communication. The modes that we have noted have been historicized from early modernity to the present, primarily through the four discourses of Lacan, but all these modes need not occur in linear sequence and are concurrent. To truly 'traverse the fantasy' as a Lacanian ethics, an 'ethics of the Real' as discussed by Zupančič, there needs to be a symbolic break that art can not make. It is worth following the logic of the analyst's discourse in this conclusion if only to throw the machinations of the image and the symbolic law back into relief and to test this limit of an ethical image.

To explain the revolutionary and emancipatory power generated in 'traversing the fantasy', we must return to Žižek and Zupančič's notion of the ethical act. In Lacanian terms the ethical act is to come to terms with the Symbolic Real in a complete way. Zupančič describes Lacan's position: 'According to Lacan, the Real is impossible, and the fact that 'it happens (to us)' does not refute its basic 'impossibility': the Real happens to us (we encounter it) *as impossible*, as 'the impossible thing' that turns our symbolic universe upside down and leads to a reconfiguration of this universe.'¹¹ Žižek also discusses this act in bold terms. For example Žižek uses the example of Antigone and her wish to make a respectable burial for her brother Polyneices, even though he was an outlawed traitor.¹² The act that Antigone makes is therefore outside the law (but follows her personal desire). For Žižek this amounts to a Lacanian Act that sits outside of the symbolic order; the Act 'presents the only moment when we are effectively 'free': Antigone is 'free' after she has been excommunicated from the community.'¹³ This paradoxical freedom outside the law for Antigone is explained by Žižek and Zupančič. Moving through the Symbolic Real entails in the end a complete 'subjective destitution' where the subject can no longer refer to the law, or the

¹¹ Alenka Zupančič, *Ethics of the Real: Kant, Lacan* (London and New York: Verso, 2000) 235

¹² Žižek, *Enjoy Your Symptom: Jacques Lacan in Hollywood and out*, (London and New York: Routledge, 2001), 77-78; Žižek *Looking Awry: An introduction to Jacques Lacan through popular culture*, (Cambridge: MIT Press, 1991), 25

¹³ Žižek, *Enjoy Your Symptom*, 2001, 77

father figures; the subject cannot fall back on interpellation.¹⁴ It is difficult to find in the modernist canon such a disavowal and it is why the analyst discourse is not used extensively in this study. One example that comes to mind is Duchamp's creation of an alter ego Rose Sélavy. Man Ray photographed Duchamp dressed as a woman as Rose Sélavy in a famous photo of 1921 (Figure 58). Duchamp used this persona as an authorial signature on a number of works and in the title of his readymade *Why Not Sneeze, Rose Sélavy* 1921. Amelia Jones has read this alter ego, through Judith Butler's performativity, as a figure of alterity for Duchamp.¹⁵ In this reading Duchamp's alter ego goes through the fantasy structures of the society by literally becoming the repressed 'enemy' figure, of the binary suggested above. The alter ego is a woman and a jew (Levy is one of the original Jewish traditional family names).¹⁶ Amelia Jones sees this performance/act as a symptom of Duchamp's war experience where he was branded a traitor and coward for not participating. This, coupled with the guilt of his brother's death in the trenches, created feelings of deep (masculinist) inadequacy in Duchamp which lead to what Jones calls the art of 'irrational modernism,' modernism as a pathology of the trauma of war and the requisite disintegration of the symbolic order, which we already outlined in Chapter Five. Rose Sélavy is a complete disavowal of Duchamp's original symbolic position as Marcel Duchamp, son (of France) and brother, and an acceptance, as in Žižek's reading of Antigone, of 'excommunication'. Whereas the public Kantian law in Lacan's imagination says 'Do your Duty!' (which Duchamp's brother committed himself to in bodily sacrifice), Duchamp's Rose Sélavy does not follow this law. This reading can be contrasted to Chapter Five and our discussion of Duchamp as the hysteric, in the same context of the aftermath of the First World War. The *Three Standard Stoppages*, in their playing with the metre stick seemed, at the same time, to call for the standard authority to reassert itself. Arguably though a tentative reading of this work could allow for a complete alterity in his personalised metre sticks. I balked at such an extreme reading because the requisite 'subjective

¹⁴ Alenka Zupančič, *Ethics of the Real: Kant, Lacan*, 2000, 4, 5; Slavoj Žižek, *The Plague of Fantasies*, (London: Verso, 1997), especially the Appendix III: 'The Unconscious Law, 213-239. See also Jan Jagodzinski, *Music in Youth Culture: A Lacanian Approach*, (Basingstoke: Palgrave Macmillan, 2005)

¹⁵ Amelia Jones, *Irrational Modernism: A Neurasthenic History of New York Dada* (Cambridge: The MIT Press, 2004); Amelia Jones, *Postmodernism and the Engendering of Duchamp*, (Cambridge: Cambridge University press, 1994)

¹⁶ The punning nature of the name also suggests an obscene alterity outside the strictures of the symbolic order. The name also sounds like 'Eros, c'est la vie,' or 'Arroser la vie,' [to toast life].



58. Man Ray, *Rose Sélavy*, 1921, 15cm x 10cm, silver print.



59. Maurizio Cattelan, *Now*, 2004, 85cm x 225cm x 78cm, wax, clothes, natural hairs, wood.

destitution' did not in that instance seem appropriate. The work is still signed, Duchamp, and seems more to embody the Romantic, individualist artist genius/seer rather than an ascetic hermit.

Before leaving the reading of the Act as a complete traversing of the fantasy one final performance seems apt, in the context of the war on terror, and describes a failure or refusal of symbolic interpellation. This study began with Kantorowicz and his Tudor effigy, the 'second body' of the king, and the thesis looked for the vestiges of this Renaissance (Romano-Christian) image magic in modernism; as James Elkins recently states: '...we need the Renaissance as an "antidote to modern life".'¹⁷ We have noted that even in a democracy such an icon of transcendental founding of the law in sovereignty is suggested but often repressed by the 'post-ideological' trappings of the administered or disciplinary society. One small group of performance artists, the English royal family, live the fantastical structures of the law as their quotidian reality. Prince Henry (Harry), like certain Shakespearean Henrys, wanted to lead his men in Iraq in an outpouring of princely virtue and Renaissance civic humanism. The image was straight from Winckelmann's hymn sheet. Unfortunately, in the disciplinary age of a 'war with no casualties', Prince Harry, was considered too much of a security risk, not to himself, but to the men he would lead. Later he was sent secretly to Afghanistan and did see service, only to have his whereabouts leaked on an American news service and was pulled out again.¹⁸ But it was the last royal who saw active service in 1982 in the Falkland's, Prince Andrew, Duke of York, who gave the best performance of kingly exception in the age of terror. Refusing the interpellation of the disciplinary society, Prince Andrew neglected to accommodate an airport security check at Melbourne airport his way to New Zealand. He gave no reported reason but it was assumed that he was asking for a form of sovereign exception.¹⁹ A stalemate occurred (between the fantasy *a* of the sovereign master and the disciplinary power of the law), and an airport official reported that 'It was suggested to the prince that he sit down and think about it for a while.' To further highlight the tension between the two orders the *Daily Mail* was not so circumspect and reported one airport officials statement, 'Who does he think he is? What a pompous p****k. Screening is the law. He should set

¹⁷ James Elkins, 'Hugging the Shore,' *Renaissance Theory*, ed. James Elkins and Robert Williams, (London and New York: Routledge), 2008, 514

¹⁸ MoD [Ministry of Defence] to Review Harry's Iraq Role, *BBC*, 26 April 2007, accessed news.bbc.co.uk/2/hi/uk_news/6594223.stm; 'Prince Harry Aborts Afghan mission after web leak, *The Times*, Feb 29, 2008; accessed 7/09: www.timesonline.co.uk/tol/news/uk/article3454535.ece

¹⁹ Bernard O'Riordan, 'Prince Andrew in Row over Airport Check', *The Guardian*, October 3, 2005, 8; Accessed 7/09: www.guardian.co.uk/uk/2005/oct/03/australia.theairlineindustry

an example.²⁰ Of course Prince Andrew's act was to only take the the law literally and to assert a 'diplomatic immunity' based on his (uncertain) constitutional rights as heir of the head of state of Australia.²¹ In Lacanian parlance then this literality is a 'traversing of the fantasy' which insisted on the existence of fantastical authority.

Such a refusal suggests the limit of 'excommunication' a subject would have to undergo to move past the process of interpellation. As art is so institutionalised and socially the limit this thesis has set, as described in Chapter Three, was to merely highlight the inconsistencies and gaps in the façade of the symbolic order. The thesis has not called for a total revolutionary overthrow or excommunication, nor does it suggest the necessity of the artist's total 'subjective desitution.' Indeed the impossibility of this total overthrow of the symbolic order has been leveled at Žižek and Zupančič's ethics of the Real. For certain theorists it is impossible for the subject ever to be completely disconnected from the symbolic order. To return to Žižek's example of Antigone, Russell Grigg has recently criticized the notion of 'excommunication' and the total uncoupling of Antigone's subjecthood from the symbolic order. Grigg notes that Antigone appeals to another 'higher authority' so in effect replaces one symbolic order with another, she inscribes herself in an alternative symbolic system.²² Grigg goes further in suggesting that Žižek misreads the Lacanian reading of Antigone to his own purposes. The disavowal of one master signifier, but in the name of an other, will remind the reader of my exploration of the master discourse and the use of the effigy as the (visual) master signifier, in Daumier and Courbet; during the revolutionary periods of 1830-1835 and 1848-1852 respectively, the Republican effigy represented an alternative symbolic order from which to ground an attack. It was argued both artists kept the monarchical symbols from eliding all categories into itself as an absolute master signifier during this phase of 'founding a legitimate sovereignty' that became a revolutionary Lacanian act of sorts. It kept the revolutionary phase open, in a state of becoming, as an extended period of the 'manipulated' desublimation of the Symbolic Real. Like Grigg's reading of Antigone, neither escaped the intersubjective relations of politics towards the pure ethical drive of the analyst's discourse. On the contrary Courbet and Daumier were both heavily embedded in the socio-political machinations of Republicanism and

²⁰ quoted in Sandra White, Prince Pompous in Airport security Row. *Daily Mail*, 3 October 2005.

www.dailymail.co.uk/news/article-364178/Prince-Pompous-airport-security-row.html?printingPage=true

²¹ The wonderful precedent being the exception Canada granted in 1976 to Princess Anne as a member of the English equestrian team in the Montreal Olympics. In the only exception to qualifying standards in Olympic history, she was exempted from the mandatory physical examination testing whether female competitors were actually men.

²² Russell Grigg, 'Absolute Freedom and Major Structural Change,' *Traversing the Fantasy: critical responses to Slavoj Žižek*, eds, Geoff Boucher, Mathew Sharpe, and Jason Glynos, (London: Ashgate Publishing, 2006) 183-198

the Commune. Yannis Stavrakakis also criticises Žižek's reading of traversing the fantasy, and cannot accept an ethical act that does not involve a free thinking willful subject. If, in the Žižekian act of traversing the fantasy, the subject is destitute, Stavrakakis asks how can there be an act without a subject? Whilst Antigone moves towards death and pure drive, her 'act' never attempts to overthrow the political regime and is unsuitable as an example of 'ethico-political action.'²³ Rather the thesis borrowed Stavrakakis's term, 'encircling the Political,' or 'encircling the Real' to describe the artistic gesture that does not attempt to break free from the symbolic order but tangentially probes the fissure of the Symbolic Real. Art feels out the Symbolic Real through its functioning and presence within the law, particularly the effigy. What we are left with is an acceptance of the Oedipal law but a fractured and inconsistent one.²⁴

AN ALTERNATIVE POETRY

One further Lacanian possibility is suggested by the discourse of the analyst which does overthrow the reliance on the law of the father. In a late Seminar called 'The Sinthome' Lacan explained a poetry or language game that could question our presumptions about and interpellation by the Name of the Father.²⁵ In the analyst's discourse we begin with the inconsistency or gap (the *a*) that must be veiled. The SI is produced as this veil, or screen in this discourse. In describing the discourse of the analyst, Žižek suggests, 'What this discourse "produces" is then the Master-Signifier (ie, the unconscious "sinthome") the cipher of enjoyment, to which the subject was unknowingly subjected.'²⁶ For Lacan, particularly in Žižek's reading, there are two sides of this enjoyment. First is the duty to obey the public law, which we enjoy following. The second is the 'nightly law' or the obscene Superegoic supplement of the public law, where the law produces *jouissance* by the forced repression of desire. It is this movement towards the *sinthome* which Žižek calls 'traversing the fantasy.' The *sinthome* is for a Lacan a neologism which alludes to: symptom, saint homme (holy man), and (Doubting) Saint Thomas (Tom) or the one who probes the Real Thing with his finger.²⁷ For Lacan the *sinthome* was connected to James Joyce and his experiments *beyond* the normal usage of language. For Joyce language as the Name-of-the-Father was so strained (he had a well known dysfunctional relationship with his erratic

²³ Lacan *The Ethics of Psychoanalysis*, (London and New York: Routledge, [1959] 2008), 300-353

²⁴ Yannis Stavrakakis, *Lacan and the Political*, (London and New York: Routledge, 1999)

²⁵ The Seminar XXIII, 1975-76, 'Le sinthome.' See E. Ragland-Sullivan, 'Lacan's Seminars on James Joyce: Writing as Symp-tom and "Singular solution,"' *Psychoanalysis and... Feldstein and Sussman*, eds., (New York: Routledge, 1990), 67-86

²⁶ Žižek, 'Four Discourses, Four Subjects' 1998, 80

²⁷ Paul Verhaeghe, 'The collapse of the function of the Father and its effect on gender roles,' *Sexuation*, ed. Renata Selaci, (Durham and London: Duke University Press, 2000) 150

father) that he attempted to keep the triad²⁸ together by supplementing it with the *sinthome*, it is what allows the three to be 'held together' with or without the father figure. In this case what Joyce did was to create a totally different language outside the normal symbolic order, a poetic and playful language of games and neologisms; by extension this sort of artistic creation is a particularly effective approach to the *sinthome*.²⁹ Poetry for Lacan was connected to prophecy, as pure saying, which allowed traditional or given signifiers to say something new. For jurisprudence it gives hope to critique outside the normal jurisprudence of the Name-of-the-Father through 'subjective destitution,' through acceptance of the symptom the patient ceases to exist within the symbolic order, and is *beyond* it.³⁰ However I argue that there are limits to this subjective destitution in founding a political ethics. In discussing the images of the law we do not have to debate whether the Lacanian Act may be or may not be a basis for an ethical political, revolutionary act. It is obvious that art may *not* constitute such an Act. The closest art comes to an emancipatory Act is through the Lacanian *sinthome*, and I would offer, before concluding, two forays into presenting this strategy, one from both forms of law, the public and the 'nightly' superegoic.

JFK'S EFFIGY LYING IN STATE

The work of Cattelan attempts to traverse the fantasy, in visual terms. Cattelan takes the symbolic literally, without post-modern ironic distance, he uses a strategy of over-proximity:

I am not really sure satire is the key to my work. Comedians manipulate and make fun of reality, whereas I actually think that reality is far more provocative than my art. You should walk on the street and see real beggars, not my fake ones. You should witness a real skinhead rally. I just take it; I am always borrowing pieces— crumbs really—of everyday reality. If you think my work is very provocative, it means that reality is extremely provocative, and we just don't react to it. Maybe we no longer pay attention to the way we live in the world. We are increasingly...how do you say, 'don't feel any pain?'...we are anaesthetised.³¹

His work *Now*, 2004 (Figure 59) presented an effigy of John Kennedy (JFK). Cattelan sees JFK as a 'kind of secular saint' whose death marked a loss of hope.³² Curator Laura Hoptman invited

²⁸ The triad of the Imaginary, Real and Symbolic in relationship.

²⁹ For the notion of Joyce as mad see, Franz Kaitenbeck, 'Sublimation and the Symptom' in *Art: Sublimation or Symptom* ed. Parveen Adams, (London: Karnac Books, 2003) 103-122; also Genevieve Morel, 'A young man without an Ego', in *Art: Sublimation and the Symptom*, 2003, 123-146

³⁰ Jamie Murray, 'Sinthome Law: Theoretical Constructions upon Lacan's Concept of the Sinthome' *Law and Critique*, Vol 16, No 2, January 2005, 201-230

³¹ Maurizio Cattelan, in interview with Nancy Spector, in *Maurizio Cattelan* (London: Phaidon) 2003, 17

³² Quoted in Calvin Tomkins, Profiles, 'The Prankster,' *The New Yorker*, October 4, 2004, 80

Cattelan to show *Now* in the 2004 Carnegie International Exhibition in Pittsburgh,³³ where he referenced the effigy and the waxwork as a visceral and theologico-political response to the waxbody.³⁴ The work recalled the embalmed bodies of the Communist leaders: Stalin, Lenin, Mao Zedong and Ho Chi Minh lying in state. JFK was laid out in an open mahogany coffin, as if just assassinated; the experience was at once surreal and nostalgic.³⁵ The funereal nature of the work was highlighted by the fact that the work was installed in the museum's 'founders room,' away from the rest of the show, with the lights turned low. The obvious iconographic reading is that democracy is connected to the communist regimes which in cold war ideology were kept separate. On one level the effigy is JFK as the Fuhrer, 'Uncle' or 'Great Helmsman.' It cynically images the hypocrisy of democracy, and highlights, as we have studied, the theological aspects of the law even in democracy. It uncovers the totalitarian, violent and ideological belief that underpins the neutral democracy, as so obviously imaged in the response to the 'war on terror.'³⁶ But what is the difference between the totalitarian regime and democracy? This is the question that Carl Schmitt and Kantorowicz were looking at and that Agamben has revisited; how do you

³³ The exhibition ran between 9 October-20 March 2004-5; 54th *Carnegie International*, ex cat., ed Francesco Bonami, (Carnegie Museum of Art, 2004)

³⁴ *La Nona Ora* 1999 a wax sculpture of Pope John Paul II crushed by a meteorite; *Him*, 2001 a sculpture of Adolph Hitler kneeling in prayer; and a sculpture of 3 hanging children in Milan, 2004. The effigies of the Pope and Hitler work in an ironic and parodic fashion – the Hitler is quaintly undersized and Pope has been recently felled by a meteorite. The three hanging children work in a hysterical fashion, calling for the authorities to 'complete' the work which they dutifully did by cutting the 'children' down. This work especially connected to the almost 'magical' presence that comes through the tradition of the wax effigy, already discussed in the last chapter. What further links these works is that they were all made by a Daniel Druet, a master wax work specialist. See www.danieldruet.com/v_english/home.htm accessed, 7/09

³⁵ Perhaps the interest in the Kennedy body in this place is the fact that the assassination has always been presented as distant unknowable and open to speculation, see W J T Mitchell, *Picture Theory: Essays in Verbal and Visual Representation* (Chicago: University of Chicago Press, 1995), 401

³⁶ Agamben has highlighted how close democracy is to the totalitarian state and that to the letter of the law Hitler, or the Fuhrer, was merely a chancellor of a democracy, in a twelve year 'state of emergency' where laws were suspended; in other words democracy in Germany was never fully extinguished. Also from within the discipline of visual culture, art theorists have recently drawn connections between the modernity of fascist art and the modernity of Greenberg; they argue that fascist modernism has been mistakenly branded as crudely reactionary but allied their interest (perhaps classically) in a utopian 'Reich' and the universalising of virtue and race with a decided interest in modernity and industrialisation. See Mark Antliff, *Avant-Garde Fascism*, (Durham: Duke University Press, 2007) Brandon Taylor, 'Post-modernism in the Third Reich,' *The Nazification of Art: Art, Design, Music, Architecture and Film in the Third Reich*, ed. Brandon Taylor and Wilfried van der Will (Ontario: The Winchester Press, 1990); Roger Griffin, 'Nazi Art: Romantic Twilight or (Post)modernist Dawn?' *Oxford Art Journal*, Vol 58, Iss 2, 1995, 103-107; Paul Betts, 'The New Fascination with Fascism, the Case of Nazi Modernism,' *Journal of Contemporary History*, Vol 57, Iss 4, 2002, 541-558.

separate democracy from these violent and theological underpinnings? Cattelan's piece seems to suggest the answer.

Cattelan has achieved in this most recent effigy a work that uncovers the *sinthome*, the master signifier, as a veiling fantasy of democracy. Cattelan has imaged the sublime apotheosis of democratic fantasy, the *petit a*. The work can be situated as a response to two primary pre-conditions. First, it responds to the calling for patriotic images, especially in the United States, in the period at the height of the 'war on terror,' as already mentioned. This hysterical calling for the father figures, was a response to the anxiety of the breach created by the terrorist attacks; the veiling was almost, but not quite, immediate. It took only forty minutes for Fox News and CNN to 'frame' the images of the towers with flags and winged eagles in a desperate attempt to bring the Real of the towers back into the symbolic register. This nostalgic appeal of the traditional 'father' of the fifties and sixties has been mirrored in the return of this 'authoritarian father' laying down the law in popular culture.³⁷ Cattelan's work can be seen on a simple level as an embodiment of the society's hysteria whether as a general response to the anxieties of capitalist modernity or to terror. The second precondition is Ronald Reagan's state funeral which I link to Cattelan's work. In June 2004, only a few months before the Cattelan piece, Reagan was laid in state in the Capitol Rotunda on Capital Hill. Mourners from Mikhail Gorbachev to other former Presidents paid their respects as well as, for one day, the public.³⁸ It was not an open casket, as the Cattelan and Communist models specify, but a closed, flag draped coffin, of the military and democratic hero, lying on Abraham Lincoln's Catafalque of 1865. These two preconditions came together in a powerful way for the first State funeral since Lindon Johnson's in 1973 occurred during the 'war on terror' when images of United Sovereignty were ubiquitous.³⁹

This thesis has examined the theological underpinning of modernity: the classical figure of French Republicanism in nineteenth century France, the hidden ideology underpinning the disciplinary society and the images that spring up hysterically when belief in an invisible father figure falters. In all these situations democracy maintains the transcendental master signifier as a gap. The production of 'second bodies' to veil and sublimate this lack is part of modern democracy and its image production. Although there is a political ethics moving past such a theological underpinning of law, through Zizek's love, or Agamben's 'pure violence' for example, this thesis has not entered

³⁷ There is a slew of nostalgic television shows, such as *The Wonder Years*, *Mad Men*, *That Seventies Show*. See Verhaeghe, 'The Collapse of the Function of the Father', 2000, 132

³⁸ An estimated 200,000 filed past the casket in both Washington and at the Reagan Library in California. Mark Sherman, 'Thousand of Mourners Honor Reagan in DC,' *Associated Press*, 10 June 2004, accessed, 7/09: www.redorbit.com/news/general/63532/thousands_of_mourners_honor_reagan_in_dc/

³⁹ Richard Nixon, in accordance with his own will, declined a State Funeral.

far into that debate. Like Legendre and others it highlights the how and why of the modern images that veil and command. Cattelan's wax effigy of JFK is *not* a Fuhrer because although there is a body, it does not allow the gap to be closed; unlike Hitler it does not take the place of the vacuum of power and authority. What the JFK effigy becomes is a 'positive absence' as Lefort's gap has been described. Cattelan *begins* with the sublime thing, the *objet petit a*, as described by the discourse of the analyst, and like Joyce tries to put a (visual) language to it. Cattelan's waxwork is not a prosaic imaging of the reality of JFK as seen through countless documentaries and films. He does not begin with the facts or studies or scientific reports, but with the sublime image. The body is not real but clownishly fake.⁴⁰ First all ballistic traces have been removed and JFK is presented as perfect, a little too perfect, even on the standards of Madame Tussaud's. Although one reading may be a nostalgic for the utopian hope and modernity of JFK, there is something more. The presidential effigy is like a king's second body, and represents the Thing, the sublime object of ideology. This is highlighted because only totalitarian regimes have a Sublime body, democracy is supposed to share this position; it is an uncanny democratic fantasy. As Claudia Berger points out in Žižek's reading of Hamlet, if the king is killed then (as in Hamlet) the sublime aspect is not killed and his charisma is even doubled.⁴¹ It is not the king as the administrative voice, or the law but as the transcendental sublime; it not the godlike pointing finger of Rauschenberg's JFK. Cattelan 'slides down the face of things,' which in a rephrasing becomes traversing the fantasy or the sinthome. Berger herself is uncertain about Žižek's elision of contemporary leaders with the 'king,' suggesting that the reading is reactionary and conservative. But Žižek's conclusion does not amount to the total closing of the gap, on the contrary these rituals allow it to stay open. The seeming irony of the JFK face as all creamy and strawberry cheeked, only heightens this sublime, 'king effect.'⁴² It is incorrect to consider Cattelan's work a *sculpture* because it functions as an effigy, a total representation of the 'second body.' Cattelan, like Joyce, has identified with, and imaged the fantasy that underpins democracy; he has not tried to overcome the gap, like a totalitarian closing over, but gains a certain control over the alienating and always incomplete subjectivisation of the democratic system. The work's main effect lies in its failure. At the heart of this work is the misrecognition and inability of this small figure to represent democracy or nation, the sublime object of the United States. The small parlour that it was housed in would have added to this feeling. There is the requisite failure of the artwork, not the 'real' sublime object. Our understanding of the effigy in the master discourse can be thrown into relief by *Now*. The Cattelan piece wears the inconsistency of the law on its face. The master discourse attempts to

⁴⁰ I thank Professor Terry Smith for this observation, who experienced the work in this first outing of 2004.

⁴¹ Claudia Berger, 'The Leader's Two Bodies: Slavoj Žižek's Postmodern Political Theology', *Diacritics*, Vol 31, No 1, Spring, 2001, 73-90, 81

⁴² In this way it is not comparable to someone like Ron Mueck's hyperreal sculptures that revel in the abject: the pores of the skin, the hairs on the nose.

close over the gap and to produce a figure-head whether that be the Marianne of the Republican cause or the Fuhrer of totalitarianism; at the same time though for Žižek the king guarantees that the gap never totally closes over. This ability to keep open the gap sees the king in the final analysis more closely aligned to the *petit a*, rather than the SI, master signifier.⁴³ The rituals of the image, and the socially embedded performances of sovereign power, both veil and screen the Symbolic Real but also sublimate and let us come to terms with law's inconsistency. It is the ethical resistance to this closing over that has concerned this thesis; by understanding how we are interpellated by the master signifier some critical distance can be achieved.

SUPEREGOIC GODDESS

The other fantasy structure that Žižek has noted is the 'nightly' superegoic law that can not be openly, or officially accepted.⁴⁴ It is a corollary of the public law, and created by the repression of the individual desire through symbolic castration. The superegoic law for Žižek is part of all systems of law. I have already described the creation of 'the enemy' as part of a dark civic reality in democracy; this recognition of the reviled other, now the Muslim terrorist in the 'war on terror', that delineates the outside limit of nation, is a particularly dark and powerful system to interpellate citizens. Through shared transgressions a group is held together; for example the nation is 'enjoyed' through sporting events, drug taking (alcohol fuelled national days) and other small trespasses. This enjoyment (*jouissance*) Žižek connects to the superegoic injunction which he believes has become a powerful force in our political lives. For Žižek the uncovering of this fantastical underpinning defines postmodern art:

Here, again, as in the domain of sexuality, perversion is no longer subversive: the shocking excesses of part of the system itself. The system feeds on them in order to reproduce itself. Perhaps this is one of the possible definitions of postmodern art as opposed to modern art. So what then is superego, what is this superego injunction which is replacing more and more the old symbolic law of prohibition? Superego is the reversal of the permissive "You May!" into the prescriptive "You Must!", the point in which permitted enjoyment turns into ordained enjoyment.⁴⁵

This superegoic injunction is embodied in a work from last year, a work that I would also approach as an effigy, not a sculpture, Marc Quinn's, *Siren*, 2008 (Figure 60). The work is a cast of

⁴³ For a discussion of this paradox in Žižek's writing see Rex Butler, *Žižek: Live Theory*, 2005, 34-36

⁴⁴ For a good description of this superegoic law, see Jodi Dean, *Žižek's Politics*, (London: CRC Press, 2006) 158-161

⁴⁵ Slavoj Žižek, 'The Superego and the Act: A lecture by Slavoj Žižek,' August 1999 European Graduate School, accessed 7/09, www.egs.edu/faculty/zizek/zizek-superego-and-the-act-1999.html ; see also Žižek, *For They Know Not What They Do: Enjoyment as a Political Factor*, (London: Verso, 2008) 237 where he describes superegoic law as the 'obligation to enjoy.'

the supermodel Kate Moss, which was then recast in solid gold. The effigy is signified in part by the act of casting rather than sculpting but also by the 'royal' sublimity of the gold.⁴⁶ Marc Quinn explains:

The sculpture is called Siren because it represents everything that lures people to wreck themselves on the rocks: money, perfection, unattainable images...Siren is an image that gives out love and light but remains completely implacable and silent. I think of both of them [*Siren* and Tutankamen's Mask] as sculptures of a cultural super-ego.⁴⁷

Is this the true effigy of late capital? It is not the Marianne of reason, order and wisdom, but of the fateful injunction to enjoy and to self create. The anxiety created by this total freedom, the lack of clear order, is well documented.⁴⁸ One particular symptom that has been noted is the creation of 'new' authorities, such as cult figures and new age religions; in *Siren*, the new age yogic position suggests the anxiety of the lack of a big Other and a floating individualism. The law is shown to be sexual, transgressive, and excessive; Kate Moss herself has been vilified/sanctified as the quintessential excessive and sexual being (this characteristic which of course advertisers have also capitalised on, for over a decade). Here she is presented as pure gold which to Marc Quinn's surprise became the largest cast sculpture in gold ever made in the history of man, to our knowledge.⁴⁹ The sexual nature is highlighted by the very obvious crotch.

⁴⁶ Marc Quinn's most famous piece is *Self* 1991, a cast of his head then recast in 10 pints of his own blood. This work plays with the symbolic effigy in juxtaposition to the abject blood.

⁴⁷ Will Self, 'Mighty Aphrodite: Interview with Marc Quinn' *Harper's Bazaar* (Australia) March 2009, 182-183 at 183.

⁴⁸ A good starting point is Renata Salecl, *On Anxiety*, (New York and London: Routledge, 2004)

⁴⁹ Most large gold sculptures are gilded. The cast created quite novel technical problems and a new alloy was invented to allow the cooling of the sculpture to be even enough to set.



60. Marc Quinn, *Siren*, 2008, 88cm x 65cm x 50cm, 18 karat gold.

So like a God or Queen the gold sculpture although transgressive also suggests a 'royal' sublimity. Here again the connection between the superegoic law and public law (of the 'king effect') is beautifully paralleled by Žižek's discussion of Kafka. He notes that there is another parable of access to the law in *The Trial*, two gatekeepers not one. The second 'gatekeeper' is a woman in the court, a court in which an orgy is happening. This parable shows the law as 'obscene' and sexualised and transgressive.⁵⁰ The interdependence between the two laws, superegoic and public, is successfully conflated in the gold effigy of *Siren*.⁵¹

CODA: CONTEMPORARY EFFIGIES AND THE LAW

These two examples show a contemporary art that is an ethical response to the law, approaching the master signifier tangentially through the discourse of the analyst. The parameters of this thesis, however, have been more modest for art cannot traverse the fantasy, as an Act but has rather 'encircled' the Symbolic Real. The thesis has examined art's sounding out the commanding image, and the way the civic gods interpellate us and excommunicate our enemies. For our understanding of jurisprudence it has taken the work of the law and image seriously. If, as has been suggested, the image is the primary site of interpellation and ritualised belief in the law then this discovery would have effects on our visual culture. This thesis has explored art history's images for effects of the law's passage. It has employed another term by which to look at images – the effigy – to unpick the magic and the authority of an image, which must be treated as *art* on one hand but something legal on the other and theorised how these two positions may be elided or held apart. On the simplest level the thesis has offered a new approach to iconographical reading. But in a more complex way it asks whether we must see legal interpellation as a common response to the image. We have to be aware that there is a history of the jurisprudential image that runs parallel to art and has its own internal logic and history. Art may act as the law's reliquary, veiling and housing the divinity of its founding, and mystical sovereignty.

The interpellation of the legal subject (here the artist) has been scrutinized through categories suggested by Lacan's discourses. The most obvious interpellation is the commanding image, the father figure who paradoxically subjectivises and symbolically castrates. The thesis argued that the absolute ruler, and 'king effect' has been brought into the modern era. Although seemingly effaced by the disciplinary society, the image of the civic god has remained remarkably persistent. Daumier and Courbet both challenged the master signifier of the king, and like good activists suggested an alternative Symbolic order. They created alternative images that in a small way tried to prevent the king's effigy becoming the master signifier. I argued that Duchamp and Klein represented what

⁵⁰ Slavoj Žižek, 'The Obscene Object of Postmodernity,' in *Looking Awry*, 1991, 141-153, 150

⁵¹ One way of approaching this elision of the two sides of law is through a pendant piece *Sphinx*, 2006, another cast of Kate Moss, but sides more on the enigma of desire rather than command.

has now become a common psychopathology of our time, the hysterical calling for the traditional authority figure. Contemporary art is similarly populated with work that seemingly transgresses against the authority figures yet in such a hysterical way as to call the authorities to 'complete' the work. The events surrounding the 'culture wars' of the *Sensation Exhibition*, 1997, Andres Serrano, Robert Mapplethorpe and the Jeff Koon's appropriation cases are a few examples where the artist/curators have created a transgression to 'probe' the Symbolic authority for a response; in contemporary terminology they are art's version of 'death by cop'. The alternative reading of Duchamp and Klein is the freedom of total self-sovereignty and self-creation, which in the contemporary period creates its own anxiety of nostalgia for lost authorities. Warhol and Hanson, in extending Foucault's analysis of the disciplinary society, show how art and the image may illuminate the hidden ideology behind neutral knowledge. Warhol showed through a strategy of differencing how the image is underpinned at any given moment by singularity and that the law can not easily account for this shifting ground. The violence of the law became a crack in the law's edifice at the point that it could not account for this singularity. Hanson too imaged the terrifying paradigm of contemporary disciplinary practice that does not treat the subject as a citizen but as 'bare life'. The effigy returns as an exemplar of sovereign exception.

Art has an important connection to images of the law. The artists discussed give the Symbolic Real a body, not as merely 'king effect' but as a way of uncovering the inconsistency within the law; in other words, what does the 'king effect' cover over. Even within the master discourse these artists showed how art may counter one symbolic order with another on the picture plane. The law's effigy is a necessary mythic weakness in the law's monolithic façade. Artists, who are requisitioned to create the law's imagery also provide the strategies by which we can understand the power and authority of the legal image and how to respond to it from a point of critique.

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