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The Power without Responsibility of the Gaze. The Letter and Spirit's Eye in the Humanities, from the Italian Perspective to the Robot

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Abstract: The paper identifies a continuity between the legal issue of the letter and spirit (or ratio) of the law and the invention of perspective as a symbolic form. The idea of perspective in Piero della Francesca's *Annunciation* and the concept of "Italian perspective" in Arasse's work are based on the aesthetic normativity of the painting in relation to the normative form of the norm, moving from the analysis of the invisible/visible nexus in legal theory. The notion of thirdness thus mediates between law as text and normativity as image, leading to the aesthetic enactment that conceives Italian playhouse as a form of theater, cinema, trial and university, as a symbolic form of knowledge and culture in the West. The simultaneously normative and aesthetic power of the gaze thus emerges as the removed from legal theory, until the problem of self-driving vehicles brings the issue back to the center of contemporary debate. The transition from frontal gaze to 360° vision suggests the theme of immersion as a new symbolic for the man–robot society.

Keywords: spirit of the law, symbolic form, Italian playhouse, Piero della Francesca, legal aesthetic, perspective, 360° VR

The topic of the nexus between the letter and the spirit of the law, and the transformation of the notion of spirit into the notion of *ratio legis* within the Italian philosophy of law is related to a volume on analogy by Norberto Bobbio in 1938.[1] After a centuries-long history in which, beginning with the Austrian Civil Code of 1811, the notion of principles of law was still referred, by philosophers of law, to the principles of natural law,[2] Bobbio's book, which preceded the current

1 Norberto Bobbio, *L'analogia nella logica del diritto* (Torino: Istituto giuridico della Regia Università, 1938).

2 Gino Gorla, "I precedenti storici dell'art. 12 disposizioni preliminari del codice civile del 1942 (un problema costituzionale?)", *Il Foro Italiano,* V, (1969), 112–32.

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Italian Civil Code by a few years, brought the problem of analogical interpretation back to its original source, the radical questioning of what the law is, between *ratio* and *voluntas*. I will indicate, moving from the perspective of law and humanities and legal aesthetics, how in the prevailing legal philosophical debate the aesthetic profile of the topic of the nexus between letter and spirit has been mostly absent, with the exception of Kantorowicz.[3] Starting from the distinction between letter and spirit and from the more complex hermeneutics of the four biblical senses, this nexus leads to identify the link between the invention of the perspective in the Italian artistic humanism and the permanence of the concept of the spirit of the law, represented as an eye. This political theological issue helps to indicate how the aesthetic and figurative representation of the notion of spirit has always represented a great power in persuasion and political communication, without its relevance for legal thought being perceived by modern post-Hobbesian legal rationalism. This reduction of law to command was operated by Hobbes' thought, which eliminated the traits referring to counsel and exhortation from the theory of law,[4] therefore its rhetorical dimension, reducing it to a matter of power, without recognizing the great relevance of those communicative and media powers that influence the will of the people.

Today, in the society of the spectacle, legal aesthetics, after the rhetorical turn of Perelman and the iconic turn of Mitchell, reintroduces the sphere of humanities and rhetorical methodology within legal knowledge, thinking together, as in humanism, the artistic issue of the gaze and the political one of persuasion through the resumption of the notion of "sovereignty of the artist"[5] and the normative mechanisms of fruition of the artistic experience. The gaze extends the hermeneutics of the medieval letter and spirit into modernity, through the invention of perspective in Italian painting and then in the invention of the Italian theater and cinema. A legal aspect could be found in relation to the resumption of the legal responsibility of the "robot gaze" in the current civil law problem of autonomous car driving.

The mechanisms through which the gaze has been normalized, directed, in a way completely equivalent to the direction in which the textual legal norm has played a normative function in orienting human behavior, has been a great power without any legal responsibility, in the modernity that pretended to be rationalistic – of the *ratio legis* and of the sovereignty of the state Leviathan. It is

3 Ernst H. Kantorowicz, *The King's two Bodies. A Study in Mediaeval Political Theology* (Princeton, N.J.: Princeton University Press, 1957).

4 Paolo Heritier, *Estetica giuridica. Vol. 2 A partire da Legendre. Il fondamento finzionale del diritto positivo*, (Torino: Giappichelli, 2012), 137–148.

5 Ernst Kantorowicz, "The Sovereignty of the Artist: A Note on Legal Maxims in Renaissance Theories of Art" in *De Artibus opuscola XL: Essays in Honor of Erwin Panofsky*, Millard Meiss (ed.) (New York: New York University Press, 1961).

precisely this aesthetic responsibility of "looking" and "making people look" that returns today in the society of images and social networks, with a paradoxical civil law outcome regarding the responsibility of the "gaze of the machine", in the case of self-driving cars.

The Italian playhouse was defined as that particular building, "with its rigorous perspectival principles, rigid separation of stage and house, and framing of actors within the proscenium box,"[6] that still is the most diffuse type of movie theater.

The two images through which Sugimoto photographs the event of the projection of an entire film, spatializing the duration with a single image – the result of which is a white screen light source in the darkroom, condensed from 170,000 frames – represent the dark cube, in the almost identical forms of a famous Sienese theater within the Palazzo Pubblico, the Teatro dei Rinnovati (Figure 1), and a Florentine cinema, the Cinema Odeon.[7]

Figure 1: Hiroshi Sugimoto, Teatro dei Rinnovati, Siena, 2014.

6 Gabriele Pedullà, *In Broad Daylight. Movies and Spectators After the Cinema* (London, New York: Verso, 2012), 32.

7 Hiroshi Sugimoto, *Theaters* (Bologna: Damiani, 2016), Teatro dei Rinnovati, Siena, 2014, https://www.artbasel.com/catalog/artwork/76159/Hiroshi-Sugimoto-Teatro-dei-Rinnovati-Siena-Stazione-Termini?lang=zh_CN; Cinema Odeon, Florence, 2013, https://www.artsy.net/artwork/hiroshi-sugimoto-cinema-odeon-firenze-2; George Wither, Sapiens dominabitur Astris. *A Collection of Emblemes, Ancient and Moderne: Quickened with Metricall Illustrations, both Morall and Divine: and disposed into Lotteries* … (London: Robert Allot, 1635), 31.

Juxtaposing the Italian-style room photographed by Sugimoto with the image of the eye of the "spirit that precedes the letter" represented in an emblem by Wither (Figures 2 and 3) reproduced by Goodrich in a recent volume,[8] has a specific meaning. The juxtaposition ideally connects a theme peculiar to natural law (the counterposition of letter and spirit) and the hermeneutics of the four senses of Scripture to the history of perspective in painting and to legal emblematics. In this way, a legal aesthetic itinerary is outlined, aimed at qualifying the normativity of the image in a historical vision that crosses almost the entire visual history of the second millennium, from Alberti to Planet Hollywood.

The invention of the "Italian playhouse" around the sixteenth century ideally follows the invention of perspective and represents in Pedullà's reading an attempt to provide an answer to the fear of not being able to reactivate the device of the

Figure 2: George Wither, Sapiens dominabitur Astris. *A Collection of Emblemes, Ancient and Moderne.*

Figure 3: George Wither, Sapiens dominabitur Astris. Detail.

8 Peter Goodrich, *Legal Emblems and the Art of Law:* Obiter Depicta *as a Vision of Governance* (Cambridge: Cambridge University Press, 2014), 17.

dramaturgical machine of classical tragedy, now confined to silent, individual reading.

Today, faced with the crisis of the theater and cinema in the age of cell phones and social networks, we are exposed to a similar fear. Even in post-covid online universities, one sometimes has the feeling of re-experiencing the initial phase of cinema, in which spectators, not yet convinced that they were witnessing a ritual, were entertained by moving images that served only as a background, while they were intent on drinking or eating or conversing. Today it can sometimes happen to find online students hiding behind a black screen, who knows, intent on studying other exams during the lesson, eating popcorn or busy in more fun forms of transgression. Not that the students' minds couldn't wander even in that second form of the "Italian-style playhouse" that is, after all, still the university lecture hall (as, moreover, is the court hearing room) in attendance, but at least the body was forced to have discipline and precise rules: no getting up, a controllable silence, not entering late, and so on. Even the advertising messages of the multinationals, however, with the orienting force of consumer behavior that they would like to convey, are today paradoxically confronted with a problem similar to that of the professors or TV zapping: that of activating minimal attention in the face of its decrease in a context of a continuous bombardment of messages that are addressed to users who are perhaps now too distracted even to be truly influenced by them. Hence the need to devise increasingly sophisticated data-mining systems aimed at profiling behavior via social networks and individualizing advertising offers.[9] Up to the conception of futuristic and mythical 360° immersive devices capable of entering even further into the mind (in the failed Google Glass project or waiting for the next Apple Glasses announced on the market in a couple of years as the new object designed to "complete" smartphones, conveying an advanced version, yet to be defined, no longer linked to perspective but to immersion, of the "Italian playhouse"). We are waiting for the "final" challenge à la Musk of the physical and transhuman penetration into the brain of the spectator through a device capable of "dialoguing" directly at a neuronal level. Moving from the aesthetic-legal juxtaposition, the article is only about demythologizing and clarifying the normative value of these new forms of mass persuasion and neurocapitalism, inserting them in the long history of legal emblematics. The Renaissance humanists, in fact, on the wings of Leon Battista Alberti's work on architecture and painting and the rediscovery of Vitruvius, were undoubtedly moved by their faith in the ability of buildings to influence the reactions of the public, to recreate the "global" experience of Greco-Roman theater, with its

9 Shoshana Zuboff, *The Age of Surveillance Capitalism. The fight for a human Future at the new Frontier of Power* (New York: Public Affair, 2019).

tragedy and comedy. They were therefore looking for an architectural and theatrical setting to convey a return to classicism: "The text was not enough, the actors were not enough, the plotting was not enough, the music was not enough. Something in addition to the scenic fiction was needed, and Renaissance men of the theater hoped that this something could come from a building expressly conceived as a giant spectacle machine capable of breaking the public's resistance."[10]

In this short itinerary, the intention can only be to indicate lines of research – moving from a top-down view, aimed at favouring analogies in search of commonplaces rather than forgetting the differences in observing historical phenomena – that show how legal aesthetics, or the normativity of the image, is a form of education that is at least as important as, if not more so than, the text, in configuring the phenomenon of the law and orienting behaviour, thus claiming a specific place for the Humanities alongside the legal, in configuring even the sources of law. This brief, imprecise and aporetic itinerary can be justified only by specifying its objective in this way: to show, even if only allusively, through some merely visual analogy, how the infinite variety of normative modes and techniques of the Roman and Canonical *Corpus Iuris* could be developed differently in the formation of the technique of perspective and in the creation of the legal emblems, starting from Alciato up to the "third" *Corpus Iuris* of Leviathan[11] and the last Vichian emblem of the Scienza Nuova.[12] Rooting itself, however, also in that architectural and scenographic structure of painting, theater, cinema, up to television, social networks and future immersive forms of 360°, through which robots "observe" reality and act in it. Legal aesthetics has been ignored by legal thought forgetting how the power of the gaze and representation affects human behavior as much as the text of the law. It is now a matter of recovering the irresponsible power of the gaze and bringing it back within the realm of powers that must be subject to law in the times of surveillance capitalism. The case of the Google glasses designed by Alex Pentland and the project of a social physics are an attempt to remove economic power from its responsibilities no less than Chinese state propaganda.

Following Kantorowicz, Legendre and Goodrich, the winged eye of the inventor of perspective Alberti can be visually compared to the eye of the spirit

10 Pedullà, *In broad daylight*.

11 Paolo Heritier, "Legal Liturgies: The Aesthetic Foundations of Positive Law", *Polemos*, de Gruyter, Dordrecht, 8 (2014): 137–52.

12 Paolo Heritier, "The Last Emblem. Vico's New Science Frontispiece in the Light of Sugimoto Theaters as the Other Side of Aristotelian Language", *Law and Literature, Cardozo School of Law* 33 (2021): 1–31.

placed before the law. The eye is placed in the above reproduced emblem of Wither, in the chest of the sovereign, as the ideal seat of conscience and heart – in echoing the Legendrian adage referred to the chest of the Medieval Pontiff from which all norms spring (just as from the Sacred Heart of Jesus springs the spirit): "omnia iura habet in scrinio pectoris sui" – the archive of his heart contains all laws within itself.[13] Here is the political theology of the image on which law (in the Wither/Rollenhagen image, the common law) has always fed:

> The eye of the spirit, the interior eye, has precedence over the exterior, just as, in common law, it is unwritten law – custom and use from time immemorial, the law of nature and of God – that has precedence over ratio scripta, written law, namely legislation … The key to the picture, front and center, is thus the eye in the sovereign's chest. Here is wisdom exemplified and embodied as the very heart of sovereignty, expressed as an interior eye. The sovereign, like Justice, has no need of bodily eyes or of exterior vision. What matters is the unwritten law, the reason of nature that is carried inside and seen by the eye of the spirit as it looks in before it emanates outward. Wisdom precedes vision, and knowledge comes before sight. We have, in short, to learn how to see and make sense of the external world. This is the political theology of the image as we inherit it and manipulate it in law. Vision is mediated and motivated.[14]

It is a question of understanding how this *internal* eye is, from a theological-political point of view, referable to the "same eye" ideally placed at the apex of the vanishing point beyond the painting, in which all the lines that allow for perspective representation converge.[15]

It might seem that there is no relationship between geometric rule and legal rule. A link between perspective and theory of the State can be deduced from Mazzotta's analysis of the relationship between Alberti's *De pictura* and Machiavelli's *Il Principe*. If Alberti places the observer at the center of the visual space, Machiavelli's problem is the author's non omniscient point of view:

> It is not so exaggerated to say that *De Pictura* is to the modern age as Plato's *Republic* is to the classical age … In this regard, it could be said that … Alberti rediscovered the importance of the 'place' one occupies in the city. This 'political' background turns out to be crucial for the elaboration of his aesthetic theory … In Machiavelli's case, perspective theory turns out to be applied in a strictly political sense … Machiavelli conceives politics as a theatrical performance. Therefore, if the prince is to act in such a way as to give the course of events the direction he desires, it is necessary to conceive of the world as the theater in which his desires

13 Paolo Heritier, *Estetica giuridica. Vol. II*, 17.

14 Goodrich, *Legal Emblems*, 16–18.

15 Robin Evans. *The Projective Cast. Architecture and Its Three Geometries* (Cambridge, Mass & London: The MIT Press, 1995), 131; Pierre Legendre, *De la société comme texte. Linéaments d'une anthropologie dogmatique*, (Paris: Fayard, 2001), 147.

> are transformed into reality. In my opinion, it is precisely this theatrical conception of power and its implications that constitutes the most important aspect of the political theory developed in *Il Principe*.[16]

Not being able to follow the precise parallel between the development of the political matrix of the artistic conception of perspective and the artistic and theatrical conception of the development of political theory and the state "as a work of art" identified by Burckhardt and followed by Panofsky, the indication of the proximity between the plane of the artificial representation of reality in painting and in the polis at the time of humanism and the Italian Renaissance can be easily intuited. The theme of the hidden responsibility of the gaze emerges, between the evolution of artistic representation and the transformation of the political sphere and the conception of power. In this context, we can place the juxtaposition between Wither's emblem and Sugimoto's image, in which light emanates from the *center* (of the heart of man, of the space of the theater). This is an interweaving of legal aesthetics and political theology at the same time: the interweaving of spirit and law that refers to the same junction recalled by the notion of figure and by the biblical hermeneutics of the four senses, and by Dworkin's analysis of the relationship between principle and rules. In the difference of the perspectives evoked, it is the problem of that which comes aesthetically before the law, which remains hidden and is not subject to political and legal responsibility. The legal emblems and the representation of sovereignty *à la* Kantorowicz is traditionally marked by the two bodies of the king (the physical, mortal one; the symbolic and fictitious, immortal one) where the sovereign represents the symbolic mediation between the human and the divine (the power exercised in the name of the divine) that "cannot die".

Goodrich elsewhere points out how the audience room also constitutes (for jurists) an emblematic room (emblematic cube), thus reconnecting it within the framework outlined by the evolution of the Italian-style theater room to the cinema room, mentioned by Pedullà in his work on the arts system in its relationship to spectators.[17]

As Pedullà points out, all educational processes, no matter if of an aesthetic nature or not, require an indispensable dose of constraint and violence. The Italian playhouse and its natural daughter, the movie theater, were not an exception to

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16 Giuseppe Mazzotta, *Cosmopoiesis. Il progetto del Rinascimento* (Palermo: Sellerio), 49–57, the article "Arte e Politica: la questione della prospettiva nel "Della Pittura" e nel "Principe" does not appear in the previous English version *Cosmopoiesis. The Renaissance Experiment* (Toronto, Buffalo, London: University of Toronto Press, 2001), translation by the author of the paper.

17 Peter Goodrich, Valérie Hayaert, "Introduction: the Emblematic Cube", in Peter Goodrich, Valérie Hayaert,eds., *Genealogies of Legal Vision* (Abingdon, New York: Routledge, 2015).

this principle: "unconsciously, the dark cube was maybe the last heir of that humanistic dream that viewed the Italian playhouse as crucial to the restoration and dissemination of the ancients' lifestyle among the moderns."[18] Understood as a utopia of integral re-foundation of man through a new discipline of emotions, cinema suddenly spreads – democratically – such a structure once again.

Following Cortázar, the binding features of the experience of the dark cube are the clear separation of the room from the outside world, the almost absolute artificial darkness, the stillness and silence of the spectator, the large size of the screen; last but not least, the collective nature of the cinematic experience. The cinematic standard of the theater as we know it took some 20 years to establish itself. Alternative solutions were discarded, where the spectators were not constrained, but for example sat at a table, intent on doing something else besides watching the show. These conditions are, perhaps, similar to those in which the use of advertising images takes place today, where the proliferation of screens in subway stations, airports, in squares like Times Square – but above all on the screens of cell phones that follow us in all our activities and on social networks – have contributed to privatizing the use of moving images, partly cancelling the social dimension but above all the collective ritual dimension of the theater and of shared use. Observations that today, we could say after Covid, extend also to the practices of fruition of the university lecture on line, in which just those classical traits of the emblematic normativity of knowledge, embodied by the professor, leaves the space to the zapping. It seems to me essential to reintroduce a social dimension within the *"mise en scène"* of the post-Covid university lecture, taking the "privatization" of individual fruition typical (of some forms) of the online lecture as a counter-attack. Perhaps opposing not only by appealing to a return to presence, (also) to technology through creative uses of the 360° immersive, all to be conceived. Trying to humanize the 360° vision of the robot, that total vision of the whole, which necessarily postulates the impossibility of a unique and contemporary vision of the material projected on the 360° screen: simply because the view – of man, not of the robot – is not 360°, but frontal. According to Pedullà, the crisis of cinema is "nothing but one of innumerable incarnations of a general crisis of pedagogical institutions (the Family, the School, the University, Criticism …)[19] linked to the conversion of the attentive and concentrated gaze into a simple superficial and distracted glance that characterizes contemporary experience. In the University, again, within 20 years it has become almost impossible to adopt certain books, because they were considered "too difficult", as well as useless and

18 Pedullà, *In Broad Daylight*, 57.
19 Pedullà, *In broad daylight*, 70.

outdated, realizing a real slide in the levels of concentration of the gaze in the process of reading towards the mere distracted consultation.

It seems possible today to add to this classification a fourth era marked by social networks, in which the extreme volatility of the viewers is even more accentuated. The very normativity of images should then be understood as a pathological phenomenon, as it is already necessarily superficial. Trying in this way to get out of the sterile opposition between radical detractors of the moving image and its enthusiastic and uncritical approvers, which risks eliminating a central phenomenological element: the work of the out of field (*hors-champ*), of that which is not visible within that which is given (normatively) to see, as it is imposed by the painter (or by the director) who imposes to "review" ~~for~~ his gaze on reality by watching the painting, or the film. The hermeneutic problem of the construction of the legal code in positive law proposes the same scheme: it imposes behavior through a text, just as the painter imposes his gaze on the observer.

The thesis that the article posits is precisely the indication that, in modernity, the power of the gaze has always been deemed legally "unaccountable". Its social responsibility has always been limited to the sphere of the cultural and the political, whereas today emerges clearly the relationship between control of vision and responsibility of action. The same juridical problem of the self-driving car,[20] so studied by contemporary robotics, indicates today the "legal" side of the problem of "seeing", highlighting the relationship between gaze, representation and action inherent in the history of the theater and cinema.

The non-visible is essential for "real" seeing. Total visibility is always pornography.

Pedullà stigmatizes the recent spread of the so-called "the aesthetic of the shark": that is, the need to increase the emotional solicitation and the rhythm of the images in order to capture the attention/desire of the spectator, typical of the media, and also of cinema. Based on the principle that showing a shark attacking or a naked pinup girl or a baby in swaddling clothes instinctively makes different audiences (markets) dilate their pupils and focus their attention, as it instinctively provokes animal reactions in the viewer even before they realize the fictitious nature of the stimulus aroused – predatory, sexual, maternal respectively – this principle nevertheless motivates the actions of advertisers in every media and advertising context. It inspires many media and social network bulimias of the contemporary subject.

Spirit, decision: terms that are inevitably (albeit out of field) theological-political and aesthetic-legal. Art historian Daniel Arasse's reading of the invention

20 Marcelo Corrales, Mark Fenwick, Nikolaus Forgó, *Robotics, AI and the Future of Law* (Singapore: Springer, 2018).

of perspective clarifies the point. Panofsky in the 1920s, moving from Cassirer's analysis of symbolic form[21] and Burckhardt's analysis of the Italian Renaissance, defined perspective as a symbolic form that implied a clear break between the medieval world and the Italian humanism-renaissance: as such, it expressed a conception of the world that was detheologized and aimed at anticipating Descartes' conception of rational space, formalized by Kant.[22]

In *The Italian Annunciation. A History of Perspective*, beginning with the reading provided of two Annunciations painted by Piero in polyptychs, respectively in Perugia and Arezzo, art historian Arasse recognizes the misleading character of this secularizing analysis, basing it instead on a conception of man as measure, in which the history of perspective, at least in Italy and not among the Flemish, is linked to the content of the Annunciation. The artistic problem is the relationship between the visible and the invisible:

> If the Annunciation, precisely insofar as it brings with it the event of the Incarnation, is the moment in which the Incommensurable enters into the measure, how could perspective, "symbolic form" of a commensurable world, make visible this (latent) entrance of the non-representable into the figure? Would it not be more logical to think that it would have prevented painters from depicting the Incarnation, invisibly present at the heart of the Annunciation?[23]

Following Arasse, a small number of painters, including Piero della Francesca, used perspective precisely to make visible the entrance of the immeasurable into the measurable thanks to an "intimate and irreducible gap" within the device itself. We will deal briefly with the analysis of Piero's *Annunciations* in complex polyptychs, respectively of Perugia and Arezzo.

Masaccio represents the beginning of a new spatial imagery of the Annunciation that confers, through the technique of perspective, a new function and a new sense to the traditional elements of the biblical story of the Annunciation. Through the articulation, in the scene represented, between an axis that places the figures of the Angel and the Madonna facing each other with a second plane, perpendicular to the first, enhancing the central area that separates the two figures. This is a median space conceived as a *third space* that builds a new rhythm to the scene, ternary and no longer binary, inserting depth through the creation of an intermediate space, not present in previous paintings, indicating "the non-visible sense of the visible historia of the Annunciation."[24]

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21 Erwin Panofksky, *Perspective as Symbolic Form* (New York: Zone Books, 1991), 41.
22 Panofksky, *Perspective as Symbolic Form,* 66.
23 Daniel Arasse, *L'Annunciazione italiana. Una storia della prospettiva* (Firenze: Volo, 2009), 21.
24 Arasse, *L'Annunciazione italiana,* 36.

Prefigured in Beato Angelico's *Annunciations* from the Museum of San Marco in Florence in 1450 and in Domenico Veneziano's *Annunciation*,[25] the prototype of the new spatial imaginary explored the analogy between the perspective – as a structure that allows the organization of the narrative in painting – and the narrative of the Annunciation, in which the Angel as spokesman is the delegate of the *Logos*.[26]

Figuratively connected to the same conceptual structure of Masaccio's *Trinity*, where the central figures of God and Christ do not obey the rule of perspective, Arasse's hypothesis of the central third space can be linked to ~~the~~ Legendre's idea of the eye as vanishing point: he identifies, in other words, a link between the technique of perspective and the third and symbolic foundation of the normative. This deviation from the rules of perspective (in some authors) signifies the presence of the invisible in the visible, through recourse to the introduction of a "tertiary" spatiality (the symbol of the door).

Within an aesthetic-legal perspective and leaving room for analogies between the images reproduced – from Wither to Piero to Sugimoto and beyond, as will be seen, to Nam June Paik – we can notice how the reference to thirdness (the third space) and the notion of the delegation to the work of the angel – as a messenger operating "in the name of" – is transposable within the legal device of the mandate, through which the earthly representative of God operates, a visual mechanism to which Legendre refers in the interpretation of the *Flagellation of Christ*. It is in that "depth" of the institutional and symbolic realm in which the invisible source of divine power is made emblematically visible in the body of the sovereign by the figure of the eye or spirit that we can find an aesthetic and legal analogy between the "vanishing point" and the third space of the symbolic foundation of the Law.[27]

Piero della Francesca continues the construction of a new imaginary third space inaugurated by Masaccio through the rules of perspective. In the Perugia Polyptych of 1470 (Figure 4) we observe the device at work.

According to Martone's study, Piero highlights the role of the intellect in the perception of perspective, that is, "the approach to perspective considered from the viewer's point of view."[28] Using his own vision of perspective, Piero introduces

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25 https://it.m.wikipedia.org/wiki/File:Annunciation_(predella_3),_fitzwilliam_museum,_Cambridge.jpg.

26 Arasse, *L'Annunciazione italiana,* 45.

27 Legendre, *De la société comme texte*; Paolo Heritier, "Law and Image: Toward a Theory of Nomograms" in Anne Wagner, Richard Sherwin, eds. *Law, Culture and Visual Studies,* (New York, Dordrecht, London: Springe 2014), 25–48.

28 Thomas Martone, *Piero e la prospettiva dell'intelletto,* in Omar Calabrese, *Piero. Teorico dell'arte*, (Roma: Gangemi, 1985), 173.

the fictional dimension into the painting, concealing the fact that the Madonna in the painting is not outside the convent, but placed behind the Christological symbol of the column, hidden from the view of the angel: "If art … is the 'lie' through which we learn the truth of reality, Piero's system … achieves this purpose eminently."[29] Piero constructs, through the use of the technique of artificial perspective (*De prospectiva pingendi*), a deception for the "sensitive eye" of the observer (Figures 5 and 6). The vision of the Angel who sees the Virgin behind the column – when in reality she is not hidden by the column – refers back to the "intellectual eye", capable of understanding the visible/invisible game. This is a conscious choice, made in order to paint "precisely the presence of the invisible in the visible, under the form of a figure and, more precisely, of the non-presentable itself, which enters the figure."[30] Piero uses a stratagem to deceive the viewer, as in the case of the aesthetics of the shark, playing between perceptual reality and intellectual understanding, between the sensitive eye and the intellectual eye (Figures 4–6).

For Arasse, Piero intends to show pictorially the introduction of the invisible into the visible: the textual biblical content from the scene of the Annunciation, in which is announced the incarnation of the divine in the human, of the infinite within the finite, as in the mystery of Catholic religion. Piero thus gives pictorial form to Cusano's philosophy, which the painter had met in Rome, going beyond the cognitive mode of seeing as understanding, towards a mode of vision

Figure 4: Piero della Francesca, *Annunciation*, Perugia Polyptych.

29 Martone, *Piero e la prospettiva dell'intelletto,* 183.
30 Arasse, *L'Annunciazione italiana,* 53.

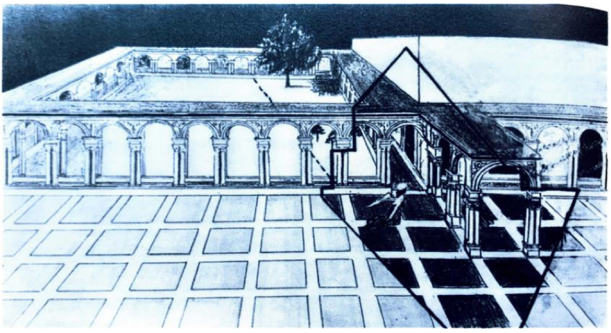

Figure 5: Martone's reconstruction of Piero's Annunciation of Perugia.

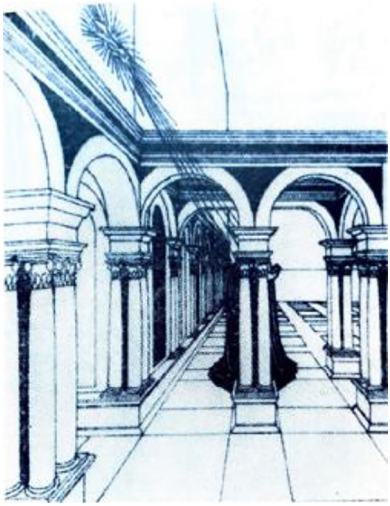

Figure 6: Martone's reconstruction of Piero's Annunciation of Perugia, Angel's vision.

understood in a mystical sense, in which seeing is equivalent to believing.[31] The idea "of an inclusive point of view, capable of containing in an indissoluble unity an infinity of particular points of view that partially develop it, had been explicitly formed, in 1453, by the cardinal and theologian Niccolò Cusano in a text with the significant title, *De visione Dei*."[32]

31 Agnès Minazzoli, *Introduction*, in Nicolas de Cuse. *Le Tableau ou la Vision de Dieu*, (Paris: Cerf, 1986), 18.
32 Arasse, *L'Annunciazione italiana*, 57.

We highlight here the same problem of the convergence of an infinity of points of view that runs through the history of painting – with Masaccio, Alberti, Brunelleschi, Piero della Francesca – but also in political theory, where power confers unity to plurality – for example with Machiavelli.

In this sense, the device of perspective becomes the manifestation of the operation of the invisible in the visible, concealing truth within itself through an artifice, a fiction – just as Kelsen uses the fiction of the fundamental norm to found the legal system.

For Arasse, perspective, far from being a detheologized symbolic form as Panofsky believed, is a form showing the advent of the invisible in the visible, connectable to the hermeneutics of spirit and letter:

Far from being merely a rationalization of pictorial space, linear perspective inaugurates a new type of spatial representation, capable of making itself the bearer of the "four senses" (literal, topological, anagogical, and allegorical) that the exegetical tradition did not fail to attribute to the Annunciation.[33]

In other words, perspective for Arasse ferries the hermeneutics of the four senses, of the letter and of the spirit, from the first to the second millennium, and crosses it, by means of the construction of the Italian playhouse and of the "ideal city" governed by perspective (the famous square of Pienza). Perspective is thus linked to the tradition of the spirit and the letter, the pictorial form of the hermeneutics of the four senses, and to legal emblematics itself. As Robin Evans notes, perspective accomplishes what theology aspires to, and what painting and architecture simulate, effortlessly amalgamating irreconcilable opposites: a central point indicated by an eye traced in the center of the painting, which Piero himself calls the eye.[34]

Legendre, referring to Piero's *Flagellation of Christ*, read as the paradigm in a symbolic theory of institutionalism, interprets this "third" position of the eye in the vanishing point of its normative function, conceived of its "holding together" in a single gaze different perspectives, to indicate the "perspective depth" of the symbolic foundation of the legal (the notion of the symbolic third). Just as the lines of architecture in the painting converge at the vanishing point, so institutions converge in a third, symbolic, imaginary foundation. Law poses by other means what perspective painting realizes in image. Or vice versa. It is a matter of converging in a fictional space[35] located beyond the painting, the ideal seat of the figure of the third founder of the institutions, represented by the eye that unites the convergence of the lines in the vanishing point located beyond the painting. This is

33 Arasse, *L'Annunciazione italiana*, 62.
34 Evans, *The Projective Cast*, 131.
35 Legendre, *De la société*, 150–154.

the symbolic eye inherent in the conscience of the King, and of the Pontiff, the spirit that comes before the letter. Kelsen's fictional construction of the legal system, with its only thought *Basic Norm*, represents nothing other than the occupation of this third founding space of the legal, just like the body of Hobbes' Leviathan.

Through this reference to institutional thirdness and the possibility of painting to achieve what theology aspires to, perspective can be understood as a form of (religious, political) propaganda. In fact, as Belting notes, the globalization of perspective, aided by the Western branding imprinted throughout the world by television and print media, has a long history in the colonization of other regions of the planet and in missionary activity on behalf of Christianity. Perspective was imposed on other cultures, overriding their visual customs. Father Matteo Ricci, who arrived in China in 1583, also used perspective drawing to campaign for the faith. Father Alessandro Valignano, Ricci's superior in Rome, explicitly pressured his subordinate to have Chinese and Japanese artists learn linear perspective, considering it linked to the Christian faith.[36]

To look through the lens of perspective is to look at the world through the Christian eyes as well, contrary to Panofsky's view opposing medievalism and humanism. What legal emblematics accomplishes with Wither, depicting the eye of the spirit placed in the heart of the sovereign to preside over his reading of the law as the "political theology" in which we are still legally immersed, is the introduction of the aesthetic-legal relevance of that device at once hermeneutical (the letter and the spirit of the law) and architectural (the construction of the Italian playhouse device – theatrical, cinematic, of the trial, of the university) on which the representation of the sovereignty of the artist, of the jurist, of the professor, is constituted in the Western tradition.

The image of the eye at the center of the heart, however, does not end here its historical run. Vostell and Nam June Paik, exponents of the artistic avant-garde movement *Fluxus*, resort to the media idea of the construction of consciousness, substituting the television for the eye. Even God introjects within himself the images of the media that influence him: this is consciousness, this is the spirit, the avant-garde artists seem to want to denounce. Vostell, in an installation at Nîmes, represents the desecrating image of a Christ inhabited *in interiore homini* by a television (Figure 7).

The Korean Nam June Paik develops the idea of empty images referring instead to the imagery of Eastern philosophy, in particular to Zen, conceiving the cinematographic analogue of the famous song "empty of sound" by John Cage 4′33″

36 Hans Belting, *Florence and Baghdad. Renaissance Art and Arab Science* (Harvard: Belknap Press, 2011).

Figure 7: Wolf Vostell, Exposition Carré d'Art, Nîmes 2008.[37]

through a feature film, *Zen for film*, in which the screen is completely white and no movement is recorded, the image remaining fixed, white, motionless. The Japanese photographer Sugimoto, in the images representing the Odeon Cinema in Florence and the Teatro dei Rinnovati in Siena (Figure 1), photographed with 170,000 snapshots in superimposition the duration of an entire film, the end result being nothing more than a single white image shining in the hall: the light that emanates comes from an invisible film that is projected within a visible space. Filmic time disappears in the static nature of photography, which thus denounces the vanity of the flow of images and the theater of illusions and time, within the aesthetic-legal structure of the Italian playhouse, continuing the work of denunciation and reference to the non-visible, typical of Nam June Paik's avant-garde. The device of Piero della Francesca finds here a culturally quite different articulation, but in which the image continues to convey the flashing of the invisible in the visible, in a different religious and cultural context.

The Korean artist then extends the figure of the spirit of man reduced to television to the image of the robot. He thus opposes Cartesian reason, exemplified by Rodin's thinker caught in the act of being represented on television in a closed circuit, to the meditation depicted by the Buddha, in which, however, the enlightened person stares at himself represented on TV. In other photographs he enigmatically inserts his body – the still sovereign body of the artist – between Rodin and Buddha, constructing a "third" space – in some ways similar to the third space constructed by perspective in Masaccio and later in Piero – in which it is the

artist's body that interrupts the closed circuit, whether narcissistic or meditative, of the void. The real body interrupts the closed circuit of the empty image.[38]

Nam June Paik takes up Vostell's motif and unwittingly replaces Wither's eye and Piero della Francesca's "perspective as propaganda" with the empty image of television as the constitution of contemporary man's consciousness. In *Becoming robot*,[39] he represents a virtual Buddha and proposes a "family of robots" constituted by televisions, in which the parents are built with old televisions from the 50s and the son, younger, with televisions from the 80s. The appeal of the sublime construction of the spirit of man, proper to humanism, is secularized by resorting to a representation of the robot–man that develops in a different direction the critique of the degradation of the human in contemporary society, literally edified by the images that nourish its vision.

The passage to reality of the Fluxus' artistic avant-garde visions occurs through two experiments actually carried out by Ishiguro. The Japanese creator of robots that look very similar to humans, the *geminoids*, has in fact actually built a Buddha-robot, conceived as an ideal substitute for a monk for the Buddhist temple Kodajii, in Kyoto, in 2019, remaining in the temple for six months to perform liturgical functions.[40] Nam June Paik's "family of robots" (Figure 8) was instead "implemented" in a previous experiment of building his own robot substitute, looking absolutely identical to himself, which he tried to make interact with his daughter and his wife: an experience witnessed by the 2007 documentary *Mechanical Love* by Phie Ambo. These experiments no longer belong to the artistic avant-garde, but to reality.

What is interesting about the introduction of the robot with respect to the history of perspective and our genealogical itineraries is that the robot does not "see" with a frontal plane, through the same "vision" of the human eye, but at 360°. This leads to the question of whether the itinerary, both aesthetic and legal, concerning the way of representing reality and thinking about institutions, can still be that of "perspective as symbolic forms", or whether we should not think that we have already entered a new "immersive symbolic form", proper to the 360° vision of a virtual helmet. And, consequently, if it is not configurable on the horizon a new

38 Paolo Heritier, "Body and Image. Vico, Suzuki, and Nam June Paik. Critique of Western Logocentrism", in *Diaphanes. Art and Philosophy*, Kyoto University 2020, p. 19;. Hans Belting, "Beyond Iconoclasm: Nam June Paik, the Zen Gaze and the Escape from Representation", in Latour, B., Weibel, P. eds., Iconoclash. Beyond the Image Wars in Science, Religion, and Art, ZKM, Center for Art and Media, Karllsruhe; MIT Press, Cambridge, Mass. And London, 402–404.

39 Melissa Chiu, Michelle Yun, eds. *Nam June Paik: Becoming Robot,* (Yale: Yale University Press, 2014).

40 https://www.japantimes.co.jp/news/2019/02/23/business/tech/robotic-kannon-unveiled-kyoto-temple/.

Figure 8: Nam June Paik, Family of Robots (1984).[41]

dimension of power relations, tending to the "robotization" or mechanization of the human, as a conclusion and integration of the itinerary that from cybernetics leads to cognitive sciences,[42] finally to neuroscience and neurovision and projects of machine brain integration. Wearing a 360° virtual helmet means visualizing an artificial environment around oneself, "immersing" oneself in a way – somewhat similar to the egocentric perception of the external environment typical of early childhood – in a world in which one places oneself at the center. The perception of one's own body, however, remains through one's own proprioceptive receptors that communicate signals to us from inside our body, such as the sensations of muscle or tendon contraction and the photoreceptors of the retina, which do not pass through the "gaze", but act, so to speak, from inside the eye. A completely different situation is instead the immersion. When we are "immersed" in a video game, or in a movie, or in a book, the "immersion" is heteroceptive, as the senses perceive, through sight, sound, smell, external objects at a distance (as in painting or traditional cinema). The term (somewhat normative/manipulative of "will" and "cognition", let's remember) immersion testifies to the two different modes of perception, internal and external. In 360° virtual reality (not in other forms of augmented or mixed reality) the heteroceptive sensory receptors give the impression of being in an artificial environment, when it is sufficient to close the eyes to resume the proprioceptive sensation coming from one's own body: it is therefore an ambiguity that is placed at the sensory level, in the articulation between perception "from the body" and "from vision." This point brings us back to the perceptual distortion induced by the use of perspective in Piero's paintings of the Annunciation and to theatrical fiction.

As Arcagni notes in *The Eye of the Machine*,[43] one of the main theorists of this model of surveillance capitalism,[44] Alex Pentland, moves precisely from classical

42 Jean-Pierre Dupuy, *On the Origins of Cognitive Science. The Mechanization of the Mind* (Cambridge, Mass.: MIT Press, 2009).

43 Simone Arcagni, *L'occhio della macchina* (Torino: Einaudi, 2018).

Computer Vision towards the foundation of that new field of research called Social Physics, placed at the origin of the phenomenon of the exploitation of the new gold, the commercial value of big data, where data "are an additional visual specification of computers."[45]

Arcagni highlights how the main superpowers of the Net (Google, Facebook, Microsoft and the others) work on algorithms aimed at recognizing and processing still and moving images[46] and how Disney has recently presented a neural network that "observes" viewers watching a movie in order to derive data useful to the production to understand the lines of attention and appreciation.[47] Without being able to elaborate on a line of critical thought effectively summarized in Zuboff's volume, which must, however, be read in continuity with the aesthetic-legal and theological-political history of perspective as a symbolic form, I will simply point out how Arcagni, in his work, recalls how the conventional character of the invention of perspective has many elements in common with the computational eye, in that it is defined as a symbolic device based on the scientific representation of the world.[48]

The hypothesis of continuity between perspective technology and the new "computational eye" advanced here seems to me to forget the normative role of the introduction of new customs, habits, conventions inherent in the transition from perspective to the new knowledge of computer vision. If, as Arcagni reminds us, the visual faculty guarantees a knowledge that is transformed into a power,[49] following Virilio, the robot's (360°) "gaze" intends to constitute an objectified vision, in a sense devoid of an intentional "gaze" of the "seeing machine", aimed at "mechanizing the human" rather than humanizing the machine.[50]

Through the new discipline of visionics and computer vision, the question becomes according to Arcigni, then, "what does the eye of the machine want?"[51] A question perhaps to be thought of as a rearticulation of that question "what do pictures want?" posed by one of the protagonists of the "iconic turn", William Mitchell.[52] If the machine eye converts a numerical representation of the image into

41 https://www.pinterest.it/pin/415457134361582853/.
44 Shosanna Zuboff, *The Age of Surveillance Capitalism. The Fight for a Human Future at the New Frontier of Power* (New York: Public Affairs, 2019).
45 Arcagni, *L'occhio della macchina*, 34.
46 Ibidem, 145–146.
47 Ibidem, 146.
48 Ibidem, 34–35.
49 Ibidem, 7.
50 Dupuy, *The Origins of Cognitive Science*.
51 Arcagni, *L'occhio della macchina*, 11.
52 Ibidem, 12.

a symbolic representation linked to form, it does so in fact to make "decisions" after "interpreting" and "understanding" digital images. The quotation marks are obligatory here because the language we adopt here is evidently metaphorical and does not refer to the meanings we traditionally attribute to "decision", "interpretation", or even "will" in reference to mankind. In the age of surveillance capitalism, the questions then risk multiplying and becoming, on the one hand, "what does the eye want?" – or again like children in first grade, more radically, "why the eye?", meaning that the eye we may be talking about is something that is no longer the human eye, but neither is it the eye of God or that of the machine. On the other hand, even more radically on the political side, the question is "what does Pentland's social physics want?".

Arcagni answers the question of what the machine eye wants. The reading provided by computer vision is aimed at indicating how the logic of the computer eye is an evolution of the mathematization and geometrization of the gaze of perspective, indicating the virtual tract (parallel but distinct from the real) of the representation of the computational image. Between perspective and computer vision there is some continuity, without forgetting, however, that even in Computer Science the construction of the gaze "is a cultural, social and even political choice because it responds to logics that we can define ideological."[53] Logics whose predominant trait is "to offer a dematerialized view, an eye that has as its only referent the formal language of Mathematics, which derealizes and that at the same time, precisely because of its derealization and "virtualization", rises to a unique potential."[54] The eye of the machine tends not only to autonomy – and therefore to a certain form of intelligence –, it also tends to be a quantitative eye close to a "philosophically" deterministic character that underlies a mimetic-type parallelism between machine and animal life forms: a vision that we can also define, in light of the power of data, "quantitative."[55]

Clearly the consolidation of new digital habits continues to be based on an attempt to institute new habits of behavior (new customs) through the control of vision and gaze, and how this attempt implies a shared faith – in Science and Technology.

Zuboff answers the question of "what social physics wants." She notes how Pentland's lab at MIT receives funding from the biggest names in industry and government such as Google, Cisco, IBM, Deloitte, Twitter, Verizon, the European Commission, the Chinese government, and the U.S. government."[56] According to

53 Arcagni, *L'occhio della macchina*, 36.
54 Ibidem, 38.
55 Ibidem, 147.
56 Zuboff, *The Age of Surveillance Capitalism*, 391.

Zuboff, the social physics of Pentland, the godfather of Google Glass – technology that Pentland said could intensify personal senses, improve memory and social life, and help her remain calm and composed – aims for people to become more machine-like[57] and at least as manipulable as robots. Ultimately, the goal is for the entire society to be built on the normative model of the machine, since in organizational processes, following the words of one journalist, "Pentland saw the factor that always messing things up was: the people."[58]

The ongoing technological transformation thus seems to have reached the avant-garde art of Fluxus, showing how the power, once considered invisible and irresponsible, of the gaze is becoming the very consciousness of man turned robot. Just as Nam June Paik represented his robot-television in the moment of origin of video-art. It is now a question of bringing out clearly the hidden political and legal responsibility of the gaze.

Bionote

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57 Ibidem, 388.
58 Ibidem, 399.