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Devising Law: On the Philosophy of Legal Emblems

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*Pro lege et pro grege*¹

I. INTRODUCTION

There is a body of early modern legal doctrine, little studied and even less remembered, that deals with the definition and use of images. Inherited from classical Rome, the *ius imaginum*, or law of images, was most immediately concerned with heraldic arms and the hierarchy of military, social, and ecclesiastical precedence as represented visually and verbally in banners, shields, coats of arms, livery, color, crests and other images and inscriptions, and in trophies and insignia placed in both public and private spaces. It was, as John Selden puts it, the law that governed the “titles of honor” of the nobility.² While this *ius imaginum* may seem rather specific and particular, concerned with archaic details of greater and lesser social dignities, there is also a much more general interest and application to the doctrines governing the composition and interpretation of images, and thence the proper context and construction of the legal emblem tradition, which is the subject of this article. Why did lawyers devise the doctrine of images and what do these images mean for law?

It is sometimes argued that the juristic emblem, associated most prominently with Andreas Alciatus and his *Emblematum liber* of 1531, was an accidental invention, the inspiration of a publisher who whimsically added woodcut illustrations to a book of adages (moralizing maxims), but in fact the emblem belongs to a much older and better-established tradition of visual representation.³ While Alciatus was entitled to “baptize” his book with the novel name of *Emblemata*, the images that accompanied the epigrams stemmed, as Alciatus elsewhere acknowledges, to a much more diverse tradition of funereal, genealogical, military, and esoteric (hieroglyphic) figures. The *ius imaginum*, in its broadest definition, is the study of what Selden terms “the trophies of virtue,” the insignia of nobility, knowledge, honor, and law. This classical doctrine of images governed all aspects of the visual presence of governance and administration, the representation of family and lineage, private and public office, sovereignty, and *oeconomia* (domestic administration).⁴ The science of symbols, military and civil, was juristically a systematic lexicon, a collation of the lawful icons,

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1. “For the law and for the people,” a motto that is used in an exemplary emblem in HENRI ESTIENNE, *THE ART OF MAKING DEVISES* 7 (London, Holden 1650).
 2. JOHN SELDEN, *Preface* to *TITLES OF HONOR* (London, Stansby 1631) (noting that “Nobility . . . being rightly . . . the virtue of his Fathers” and then observing that in ancient Rome only the *Nobiles* could show the Images of their ancestors). The *ius imaginum* here meant the right to house the ancestral images and by extension the duty to maintain, which is to say stay true to, and keep faith with the image of the forebears.
 3. JOHN MANNING, *THE EMBLEM*, at ch. 1 (2002) (presenting a version of this genealogy). This view is corrected with great erudition in Pierre Laurens, *L'invention de l'emblème par André Alciat et le modèle épigraphique*, 149 *ACADÉMIE DES INSCRIPTIONS ET BELLES-LETTRES* 883 (2005). For a comprehensive study of the classical and humanistic roots of the legal emblem tradition, see VALÉRIE HAYAERT, *MENS EMBLEMATICA ET HUMANISME JURIDIQUE* (2008).
 4. GIORGIO AGAMEN, *LE RÈGNE ET LA GLOIRE* (2009). It is interesting to note that Antonio Nebrija distinguishes *oeconomus*, referring to domestic administration, from *iconomus*, which concerns

of such visibility. Colors, combinations, figures, and the relation of images to words were all coded and defined so that the proper order of things seen, the visiocracy, can be recognized and noted. The later common law systematizer, John Brydall, in his treatise of 1675 indeed defines the *ius imaginum* as the study of the names of nobility, that is the names of celebrity, whereby virtue is noted and social place represented.⁵

The emblem book was a legal invention of the Renaissance, but it belongs within a much lengthier tradition of heraldry, arms, and along with them the fame or notoriety that accompanied military heroics and political prominence. As the lawyer John Ferne nicely puts it, the inherited insignia were only as valuable as their current practices: “ancient statueas, smokie images, autentique coate armors, torne and rotten guidons, of the valiant and virtuous ancestors’ will not of themselves repel the enemy.”⁶ What was displayed had to be internalized, the images real, their interpretation so serious a matter as to be a subject of law. The disciplinary rules and lawful representations of what were variously termed *insignia armorum*, *symbola heroica*, *pictura*, and images generally, latterly being translated into impresses, devises, blazons, enigmas and symbols, required strict disposition. It is with this military and administrative context that I will start and then subsequently move to the so-called theatre of legal emblems.

II. ENSIGNS AND DIGNITIES

If war begins where language runs out, then it makes sense that the most basic science of signs must deal in forms of visible communication that can be seen in circumstances where language or, more exactly, diplomatic modes of conversation have become impossible. Heraldry was the science of seeing from a distance. The first logic of heraldry or, as it was also frequently termed, the law of arms, was thus an external one, namely that of indicating the difference between friend and foe, familiar and stranger, within the theatre of war. The study and systematization of insignia involved the classification and ranking of all the visible elements used to demarcate, distinguish, and transmit the identity of their bearer.⁷ Some of our early modern authors stressed the religious origins of armorial symbols, stating that “they go back before the flood to Seth the Son of Adam who took certain signs and marks to distinguish his family from the children of Cain.”⁸ For other authors, the symbols used were deemed to be “holy letters,” forms of “hierographie,” or more generally,

governance of the Church and matters ecclesiastical. ANTONIO NEBRIJA, *VOCABULARIUM UTRISUQUE IURIS* (Venice, Zalterum 1612).

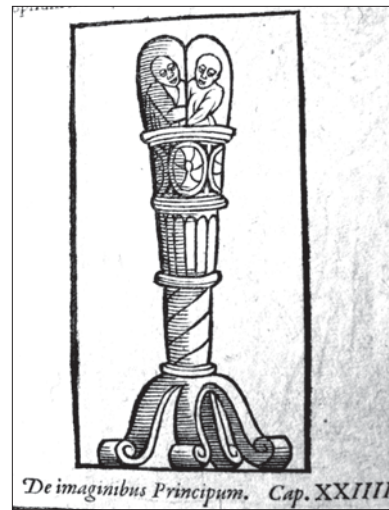
5. JOHN BRYDALL, *JUS IMAGINIS APUD ANGLOS; OR THE LAW OF ENGLAND RELATING TO THE NOBILITY AND GENTRY* 2 (London, Billinger 1675) (“Nobilitas . . . hoc est, nominis Celebritas”).
6. JOHN FERNE, *THE BLAZON OF GENTRIE* 19 (London, Winder 1586).
7. See generally Michel Pastoureau, *Stratégies héraldiques et changements d'armoirs chez les magnats Florentins du XIV^e siècle*, 43 *ANNALES ESC* 1241 (1998).
8. CHARLES SEGOING, *TRÉSOR HÉRALDIQUE OU MERCURE ARMORIAL: OÙ SONT DEMONSTRÉES TOUTES LES CHOSES NECESSAIRES POUR ACQUÉRIR UNE PARFAITE CONNAISSANCE DE L'ART DE BLAZONNER* 4 (Paris, Clouzier 1652).

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secret missives carried between the divinity and its subjects in war or in peace.⁹ Thus Marc de Vulson, in an intriguingly detailed work on the history of French heraldry, offers as his first definition of “Kings of Arms” that they were “Messengers of the sacred” who would convey “to all and indifferently, to friends and enemies with equal certainty, the announcement of peace or the declaration of war, and always under the protection of the law of nations [*droict des gens*].”¹⁰

To the extent that religion lay behind majesty and war alike—at least from the beginning of *nobilitas Christiana*, the Christian era—the military origin of the science of symbols does not preclude a theological derivation and interpretation. Early modern rhetoricians were all “Christian soldiers” and this was as true of the visual science of arms as of the art of speech.¹¹ What matters is that the identity of groups and persons needs to be visible—on columns, buildings, shields, machines, vestments, carriages, uniforms, banners, and more. Visible signs, and in theological terms, visible words, are key elements in the ritual ordering of public and private spheres, the realms of providence and fate alike. The image of the sovereign (*Principum vultus*), Pancirolus records in his commentary on the *Notitia dignitatum*, is to be put on pillars in the market and in other public places as well as in private homes (fig. 1). These images are to be honored and protected, and stringent punishment was meted out to those who defaced them.¹² Bartolus, in his treatise on insignia, the earliest but far from comprehensive juristic work, defines the sign as a name that is painted on coats of arms, banners, shields and the walls of the city.¹³ It

FIGURE 1 Guido Pancirolus at fol. 17v col 1 De imaginibus principum.



9. See ESTIENNE, *supra* note 1; Peter Goodrich, *Legal Enigmas—Antonio de Nebrija, The Da Vinci Code, and the Emendation of Law*, 30 O.J.L.S. 71, 78 (2010).
10. MARC DE VULSON, *DE L'OFFICE DES ROYS D'ARMES, DES HERAUDS, ET DES POURSUIVANS. DE LEUR ANTIQUITÉ, DE LEURS PRIVILEGES, & DES PRINCIPALES CEREMONIES OÙ ILS SONTY EMPLOYEZ PAR LES ROYS & PAR LES PRINCES* 2 (Paris, Cramoisy 1645).
11. See BERNARD LAMY, *THE ART OF SPEAKING*, pt. 2, ch. 2, at § 2 (London, W. Godbid 1676) (translated from the French the year after its original publication: “If Postures be propeer for defence [sic], in corporal invasions; Figures are as necessary, in spiritual attacks. Words are the Arms of the Mind . . .”).
12. GUIDO PANCIROLUS, *NOTITIA UTRAQUE DIGNITATUM* 17v (Lugudini, Gabiano 1608) (in the chapter *de imaginibus Principum*: “Principum vultus auratae pilae impositi . . . Hi in foro vel alio loco publico, ac privatis aedibus alias locabantur.”).
13. BARTOLUS DA SASSOFERRATO, *TRACTATUS DE INSIGNIIS ET ARMIS* (1358), *reprinted in* OSVALDO CAVALLAR ET AL., *A GRAMMAR OF SIGNS* (1994). For further discussion, see Peter Goodrich, *A Note on Icunculae*, *PŒLEMS* 3 (2009).

marks legitimacy, rank, and subjection. Referring to *Digest* 1.8.8, Bartolus also suggests that these signs are sacred.¹⁴

The representation of legitimacy must be by means of legitimate signs. While this might seem tautological, it in fact refers to the complex and forgotten details of the transcription of the full panoply of facets of domestic and social identity: the images of honor, virtue, office, rank, and local and national affiliations that define the administration of a territory. This is the visible and most basic *lex terrae*, or law of the land as common lawyers term it, and it finds its first expression in the insignia or *notitia* of administrative regions and offices. In the surviving Roman sources, these take the form of extensive listings of the imperial territories and the administrative offices—the dignities—through which they were ordered and maintained. The empire was represented in Pancirolus (fig. 2)—although Selden also reproduces this image—as being suspended under the armorial images of divine providence: angels representing military knowledge and virtue hold up the circular icon of the emperor’s face above the list, in the form of an array of books that represent authority and felicity.

Beyond this, every province has its map (or properly, chorography) and insignia of places—of towns, villages, routes, and borders. These then are depicted by way of listing their visible dignities and offices, literally their *viri illustris* and their *viri spectabilis*, translating for us as their manifest (we could also transliterate this as

FIGURE 2 Guido Pancirolus at fol. 109v *Notitia Imagines Armariorum*.



14. Dig. 1.8.8. (Marcian) (“Whatever has been defended and secured against human mischief is sacred (*sanctum*).”).

illuminated, embellished) and notable, meaning brilliant, remarkable, famous, and even spectacular men.

Every office in every territory listed in the *Notitia* had its mark, its image, and its *insignum* by which it was recognized and known. These were military and religious of course, but also legal, commercial, scriptive, and domestic. The *Notitia* were the signs of office and celebrity and included elaborate schemata for the Provost of the Sacred Bedchamber, the Master of Missives, Letters and Records, as well as innumerable clerks of *oeconomic* (domestic) duties, from maintenance of linens to stocking of the kitchen. The point here is structural. The notes of office (*dignitates*) formed the visual architecture of the social, carefully tabulated and inscribed by lawyers—a beginning was made by Bartolus in the fourteenth century and by Alciatus and Pancirolus in the sixteenth century—and available and visible in the buildings, designs, figures, statuary, ceremonies, and vestments of those who occupied the social and domestic roles that law purveyed. Celebrity emanated from and imitated the sovereign's court and what the herald Thynne termed the "*arcana imperii heraldorum*," the secrets of arms, were the rules whereby the *insignia* of the court and of all the lesser and imitative courts of the nobility were to be composed and interpreted as the manifestation of their lineage and legitimacy, their honour, virtue, and felicity.

The rules governing insignia are recognized and indeed deferred to by the common law and explicitly carry not simply the authority of life, death, and loss of liberty, *ius incarcerationis*, in their military uses, but also bear an important acclamatory function.¹⁵ Thus, to take one instance from the ceremony of investiture of honours, honorific preferment, here membership of the Order of the Garter is in recognition of "acts of the highest order of virtue, meriting the most praiseworthy status and dignity of honor."¹⁶ It needs, therefore, to be recognized that in addressing images in law, the *ius imaginum* in its various modes and expressions, the subject matter is that of ritual and ceremony, of praise and celebration, of honor and sanctification as inscribed in the architecture of the social and in the figures of administrative and political as well as legal presence. The image is extant in and through the living, through the exemplary ambulant image, but such charismatic personages in their nobility and majesty are but representative, the mere spectacle of the invisible

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15. FRANCIS THYNNE, A DISCOURSE OF THE DUTYE AND OFFICE OF AN HERALDE OF ARMES (1605), reprinted in THOMAS HEARNE, A COLLECTION OF CURIOUS DISCOURSES, WRITTEN BY EMINENT ANTIQUARIES UPON SEVERAL HEADS IN OUR ENGLISH ANTIQUITIES 260 (London 1720) ("& c'est bone Justificacione al comen Ley & Ashton & Moyle concesserunt, que comen Ley prendra notice del Ley del Constable & Marshall.") This is worth citing for the French law if nothing else, and recognizes, by citation to Justice Needham that the jurisdiction over social insignia, precedence, and honour is a civil law jurisdiction, expressly derived from "Bartolus the Lawyer in the Government of Charles the fourth Emperour" who incidentally, we are then told, "permitted to Gowne-men (or, as the French termeth them, of the longe Robe, for under that name were learned men, Clergie men, and Schollers comprehended) to beare Armories." *Id.*
16. Sir John Doderidge, *A Consideration of the office and dutye of the Heraldes in Englande* (1600), in CURIOUS DISCOURSES 275 (Hearne ed., 1720) ("[Q]ui per Acta fortia laudabilia virtutesque honores status & dignitates merebuntur.").

monuments, the unseen causes that exist ineffably and eternally. Honour, and also its attributes, office, rank, lineage and law are greater than the living—they are inheritances, they survive beyond the grave.¹⁷ The law and the *oeconomic* order are founded alike upon the “*Reverence and Honour, Fidelity and Subjection*,” the allegiance and obedience that is owed the sovereign and the parents, the heavenly and the temporal father in their impossible unity.¹⁸ *Dignitas non moritur*, the dignity, which is to say the image, the rite, the acclamation, the honour that inheritance passes on, that time carries as vestige, impress and relic, does not die. It belongs in the domain of dogma as Legendre interprets it, namely, the dream of the social, and the imaginings of law.¹⁹

III. VISIOCRACY

The early modern systematization of common law, the *mos Britannicus* that I will use as my example, inherited and elaborated a strict order for the composition and construction of visible rule as precedence, hierarchy, and acclamatory order.²⁰ The earliest source, already mentioned, was the late Roman *Notitia dignitatum* in its various Renaissance reconstructions, and Bartolus’ mid-fourteenth century treatise on signs. Bartolus is the earlier and more schematic work and his concern throughout is the legitimacy of representations of rank and office. The basic categories of the law of images concern the dignities that the earlier Roman *Notitia* had listed. Thus those of the specified rank could bear the insignia of that rank, be it proconsul, legate, bishop or doctor of law, but “if someone who is not of that rank bears them he incurs the charge of fraud.”²¹ Further rules govern the appropriate signs of subjection to Lord and King that the arms should insert. In addition to that, Bartolus notes the rules that governed how insignia should be composed, namely, that they should imitate the order of nature, which was to be supplemented by the requirement that representation of social dignities had to observe the hierarchy of the social order: “nobler things should be preferred and placed in a privileged position,” the right and

17. THYNNE, *supra* note 15, at 236 (citing the maxim “*quod consuetudo dat, homo tollere non potest*,”) (translated as “what custom—time immemorial, the invisible cause, the unseen mover—gives, man cannot take away”).

18. SIR JOHN FORTESCUE, *DE LAUDIBUS LEGUM ANGLIAE* 3 (London, Gosling 1453) (discussing the proper “filial fear” of law); *see also* SIR MATTHEW HALE, *THE ANALYSIS OF THE LAW* 42 (London, John Walthoe 1713) (a later and much more secular source, which lists these rights or duties as defining the subject).

19. *See* PIERRE LEGENDRE, *L’EMPIRE DE LA VÉRITÉ: INTRODUCTION AUX ESPACES DOGMATIQUES INDUSTRIELS* 25–34 (Fayard 1983) (tracing the etymological link between honour, decorum, dignity and dogma); PIERRE LEGENDRE, *L’AUTRE BIBLE DE L’OCCIDENT: ÉTUDE SUR L’ARCHITECTURE DOGMATIQUES DES SOCIÉTÉS* 55–59 (Fayard 2009) (elaborating on the theme from *L’Empire de la vérité* in interesting ways in relation to architecture and Vasari in particular); *see also* ERNST KANTOROWICZ, *THE KING’S TWO BODIES: STUDIES IN MEDIEVAL POLITICAL THEOLOGY* (1958) (offering an important discussion of the concept of dignity).

20. On the *mos britannicus* and the development of the English *ius commune*, *see* Peter Goodrich, *Intellection and Indiscipline*, 36 *J.L. & Soc’y* 460 (2009).

21. BARTOLUS, *supra* note 13, at 109 1.12.

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top of the coat of arms being nobler than the bottom and left.²² Similarly, colours have their proper order and meaning, descending from gold to purple and red, which latter colours were restricted, Bartolus states, to princes.²³

The basic elements of the heraldic art, the proper order of colours, metals, stones, and animals, form a simple lexicon of the visual signs of a highly regulated manifest social, military, and ecclesiastical hierarchy. The order of precedence and rank is arranged to reflect what is technically the celebrity of the bearer and is coded and collated to the order of virtues, the honours attained and inherited. It is worth emphasising this foundational moment, this visual schema of law, and observing that in the early systematizing works it is conceived explicitly to be a reflection of the order and hierarchy of angels:

[A]lmightie God is the originall authour of honouring noblilitie, who, even in the heavens hathe made a discrepance of his heavenly Spirites, givinge them severall names, as Ensignes of honour. And these heavenly Spirites, when they are sent of God, are called, *Angeli*, Angels, which in the Greek tongue signifieth, sent.²⁴

Pause for an example, taken from Legh, the earliest of the Inns of Court authors on heraldic law who offers an instructive image of a herald at the end of the 1572 edition of his *Accedens*. Here we can see what the legal scientist of symbols saw and follow his interpretation of the visual clues that the picture relays (fig. 3).

FIGURE 3 Gerard Legh, *The Accedens of Armory* at fol. 135v (Herald).



22. *Id.* at ¶¶ 116–117, 1.290–.294.

23. *Id.* at ¶ 117 1.323–.327. The same can be extracted in greater details from later systematic works, such as JOHN BOSEWELL, *WORKES OF ARMORIE, DEVED INTO THREE BOOKES, ENTITULED, THE CONCORDE OF ARMORIE, THE ARMORIE OF HONOR, AND OF COTES & CRESTES* (London, Totell 1572); and GERARD LEGH, *THE ACCEDENS OF ARMORY* (London, Totell 1562). Jones' edition of JOHN TREVOR, *LLYFR ARFAU/BOOK OF ARMS* (1943) is also important.

24. JOHN BOSEWELL, *WORKES OF ARMORIE* fol. 10r (London, Totell 1572) (continuing to note that “the Lawe of Armes was by the auncient heraultes grounded upon these orders of Angells in heaven, encorowned with the pretious stones, of colours, and vertues diverse . . .”).

The image of the angelic herald is not obvious—not immediately visible—to contemporary view. It is emblematic, though not precisely an emblem, as will be discussed later, because it lacks an explanatory verse. It is properly a “devise” (or *imprese*) and serves to devise, which is to say to invent and convey a message of art.²⁵ Initially the context of the devise or “holy letter” has to be reinstated. It is a representation, here in image and vernacular motto, of the earthly reflection of the “heavenly ierarches” and specifically of the system of law which Legh specifies in terms of “order, cunning and working.”²⁶ Order here represents office—dignity and recognized rank—while cunning is reason in the sense of disposition and administration, and working is service, obedience to the hierarchy, “following the conformitie, and likenes of god.” The nine orders of Angels duly acknowledged, and “the glorie of his countenance in heaven” properly imagined, amen, then the image can be viewed as the spectacle of the relation between the temporal order and the celestial hierarchy, between government, nature, and divinity, seamlessly joined in one image. This is a matter of signs and their laws as boldly presented in the figure of the herald in a white shirt dotted with black spurs (mulletts Sable, in the armorial argot).

The herald is the messenger, the master of signs and wears on his shirt an escutcheon or shield representing the arms of England devised by “holye Edwarde kinge and confessor.”²⁷ He is thus immediately identified and placed: our herald, the representative and distributor of common law. To this we can add a rod of office in his right hand, pointing to a flag, and in his left hand the tail end of a banner with words of criticism inscribed, effectively stating that in cold weather more clothes are needed. The herald responds, at the foot of the devise, by saying that any clothes will do in haste until more can be had. Legh cites Bartolus in support of this proposition, arguing that any clothes will do provided that the symbols that they bear are visible. What matters for the message is not the quantity of clothing but the visibility and legibility of the sign. Put more strongly, the messenger—text, shirt, skin, or coat—is subordinate to the missive which attaches properly neither to body nor materiality, but to the invisible and celestial source that sent it. It is for this reason, because of the intrinsically chimerical, “aereall,” or vanishing quality of the visible, that the science of signs is necessary and the place of the herald and latterly hermeneut is significant. The rod of office held in the right hand points to the flag on the standard that is held by the dragon. The two animals, dragon and panther, represent, respectively, ferocity and amiability, war and peace, fear and love. Between the two is the center

25. SAMUEL DANIELL, *THE WORTHY TRACT OF PAULUS IOVIUS, CONTAYNING A DISCOURSE OF RARE INVENTIONS, BOTH MILITARIE AND AMOROUS CALLED IMPRESE* 6r (London, Waterson 1585) (defining the prose of the art: “[to shadow] suerly their purposes and intents by figures . . . By a Serpent [they signified] pollicie. By an Olive peace. By a Gote, lust . . . This was the first foundations of Imprese . . .”).

26. LEGH, *supra* note 23, at fol. 135v.

27. *Id.* at fol. 136r.

image, a banner on which is inscribed the motto, familiar in some form to all common lawyers, “That lawe alloweth must needes be Reason.”²⁸

The most striking feature of the devise lies in the conjunction of law, reason, and the visible. The herald, the English herald, is the messenger of common law. He is the index and manifest spectacle of the order of reason and the architecture of legality. He is conceived as an image and presented as a devise for transmitting in a didactic and accessible form the power and the glory of law, its draconian force and its facilitative felicity, its conjunction of authority and reason, threat and allure. It is thus that the periphery of the image refers to clothes, to the question of vestment as a matter of the signification of identity in the visible realm. Law, we are told, allows these vestments; they are reason in the sense of being fit to the office of the herald and subordinate to the task of conveying messages. Then, in the center of the image, under the rod of office and authority, is the motto, technically the soul of the devise. Here we learn that what law allows is necessarily reasonable. This requires a little reconstruction.

First, as we know, what is reasonable is legal. At an allegorical level, what is reasonable is what is allowed. What is allowed is what is visible in the figure of the devise, the order of places, and the hierarchy manifest in the public and domestic spaces, within the providential and *oeconomic* spheres respectively. What is seen is “a spectacle of things invisible,” an enigmatic mirror, as St. Paul has it, onto a world unseen and still to come. The licit order of things, the visible status quo, is the manifestation of a presumed legality, an esoteric and covert order of being. Second, at the level of doctrine, the words convey a rationality that belongs to and refers more or less directly to prior and unseen causes. The image, which is variously termed a figure, a body, nature or event is to be understood as a glass, a lens onto *anima legis*, the soul of law that only the wise can see and then only in part. The devise, as a figure and as an image, thus represents a structural and necessarily absent order. In the case of the Roman *imago* or funereal mask, the structure represented by the image—the effigy—was that of lineage, of the ancestors and their nobility. For the authors of the devises the image is similarly a figure, a reason and law that gains a momentary materiality in the visible world. The devise is a *prosopopoeia*, according to Estienne, a personification of abstract and incorporeal ideas, the dictates of an unwritten law.²⁹ The image thus represents the exteriority of a larger and hidden design. It is the outer shell, the mark, vestige or impression left by the hidden order and structure of being as law.

The English philosopher and lawyer Abraham Fraunce, author of the *Lawier's logike*, also wrote on the philosophy of symbols. In the fourth book of his treatise on armorial insignia the opening sentence defines the symbol as “a representation by which something is concealed” and then proceeds to interpret the symbol thus defined

28. Plowden is often cited for the maxim *semblable reason semblable ley*—like reason like law; but it is EDWARD COKE, *INSTITUTES OF THE LAWS OF ENGLAND* (1797) [1628], who offers the best discussion of reason as the spirit of law and distinguishing *ratio vera et legalis* from merely apparent reason.

29. ESTIENNE, *supra* note 1, at 54.

as a species of synecdoche, the rhetorical figure of part for whole.³⁰ The image, meaning the figure used in the devise, is viewed by Fraunce as a literal mark, an impression left by the structure of being, by nature and law as orders that express a much greater but unfortunately invisible schema of causes. At its strongest, Fraunce defines the image as a legal bond, an obligation, and an undertaking, which the bearer of the sign will acknowledge and obey the intention of its unseen author, be it God, nature, sovereign, ancestor, or parent who devised the image and so left their mark upon the order of things seen and recognized as allowed by law and therefore reasonable.

Returning to Legh's devise of the herald we can note certain other features. Center stage, the herald touches the flag with his rod and the figure speaks. This signifies that what law strikes comes to life, is brought to speech, unveils and divulges meaning to its authorized audience. This, as the central banner and words disclose, is allowed by law and therefore is reasonable. More than that, this image of interpretation and transmission is emblematic of the art of law, which brings nature to life and dead letters to speech. The image is of the herald, the messenger of law, bringing nature to expression, ostensibly, as a personification, as power and glory, force and love. The visible and inanimate or painted realm, nature as dormant matter, together with the animals and standards, vestments and instruments shown, are all symbols that form part of an order of reason and law. The task of the jurist is to contrive the expression of an occluded intention, and to interpret the signs of the hidden legislator, be it the Christian *Deus absconditus*, Leviathan or *salus populi*, the will of the people in its immemorial and encrypted forms. All nature signifies and law is the pattern of that signification. At the same time all signs are synecdoches, marks of an anterior and interior intention and meaning. That is the nature of learning and the medium of law for the early modern era. As Plowden put it, and as Fraunce reiterates, even the word must be conceived as nothing other than the image of the legal rule, the sign of the legislator's intent, or the impression of the speaker's devise and desire.

IV. LEGAL EMBLEMS

Writing towards the end of the seventeenth century, the Jesuit scholar and systematizer François Menestrier opens his treatise *The Philosophy of Images* by observing that the art of devises is the single strongest taste of the century.³¹ This inspires Menestrier to produce a comprehensive selection of devises according to the twin criteria of justice and spirituality, law and theology. The devise, in this schema, is a liminal image, an envelope, the material exterior and visible moment of a spiritual cause that becomes, once manifest, law for us. The image as sign always in this tradition refers to an anterior structure, to the idea, ideal, and idiom that underpin

30. ABRAHAM FRAUNCE, *INSIGNIUM ARMORUM, EMBLEMATUM, HIEROGLYPHICORUM ET SYMBOLORUM* fol. M2r (London, Orwin 1588).

31. FRANÇOIS MENESTRIER, *LA PHILOSOPHIE DES IMAGES, COMPOSÉE D'UN AMPLE RECEUIL DES DEVICES, & DU JUGEMENT DE TOUS LES OUVRAGES QUI ONT ÉTÉ FAITS SUR CETTE MATIERE* fol. A I r (Paris, Caille 1682).

and explain it. Menestrier elsewhere cites Psalm 18: “he made darkness [*tenebras*] his hiding place and canopy,” meaning that there is an element of the esoteric and enigmatic to all signs, for their cause lies in shadow and darkness, in another realm, a theme that is taken up very explicitly in the systematizing works.³² The Cambridge scholar Philipot makes the same point eloquently: “The *Egyptians* folded up their Learning in the dark contexture of Hieroglyphicks, the *Greeks* wrap’d up theirs in the gloomy Vesture of Emblems, and the *Romans* lodg’d it behind the cloudy Traverse of Allegorical Allusions pourtrai’d in those Mysterious Signatures that adorn’d the Reverse of their Coin”³³

The emblem is a subspecies of devise. It has a lengthy pre-history of legal significance, being the term that jurists would use to refer to ornaments or other images inserted into objects. Antonio de Nebrija, in his legal dictionary from the very beginning of the sixteenth century, a quarter century before Alciatus’ little book, defines the emblem as the form of insets painted on vases, mosaic inlays in tiled floors, inserted images in vestments or any other marquetry or ornament put into and absorbed by a foreign surface. It is a term devised, according to Menestrier, by the jurisconsults, for any assembled image, combination of colors, that ornament an object, a surface, or a structure.³⁴ It is, by extension, the image of its cause, the meaning and message of the mosaic, habit, monument, or building in which it is inserted. Thus Philipot offers the concept of the emblem as *icuncula* or, little icon, the legitimate representation of office—in this case that of a priest—that is inserted into their vestments.³⁵ So too the trappings of positive law had their symbols, their legitimate modes of expression, their visible signs of provenance and authority. The legal emblem is most simply the legitimate image of law as a mixed knowledge and practice, as an expression of “things divine and human,” as rule and administration, legislation and *oeconomic* disposition.

If we look to the standard definitions of the distinction between devise and emblem, the devise is particular in that it represents a specific and identifiable person, family, city, or nation, while the emblem is general and at its best is “the art of painting morals, and of putting the operations of nature in images for the instruction of men.”³⁶ It is this instructional and didactic purpose of emblems that chiefly distinguishes them from devises. Thus, the devise uses a motto and such is expressly to be obscure, ideally in Latin, as a talisman or secret knowledge and key to the noble identity of the bearer. The words are thus to be “neither too intelligible, nor yet too obscure” and to this we can add, borrowing from Fraunce, that where the

32. FRANÇOIS MENESTRIER, *LA PHILOSOPHIE DES IMAGES ENIGMATIQUE* fol. A v r (Lyon, Baritel 1694).

33. THOMAS PHILIPOT, *A BRIEF HISTORICAL DISCOURSE OF THE ORIGINAL AND GROWTH OF HERALDRY, DEMONSTRATING UPON WHAT RATIONAL FOUNDATION, THAT NOBLE AND HEROICK SCIENCE IS ESTABLISHED* 1 (London, Tyler and Holt 1672).

34. FRANÇOIS MENESTRIER, *L’ART DES EMBLEMES OU SENSEIGNE LA MORALE PAR LES FIGURES DE LA FABLE, DE L’HISTOIRE, & DE LA NATURE* 2–3 (Paris, Caille 1684).

35. PHILIPOT, *supra* note 33, at 7.

36. MENESTRIER, *supra* note 34, at 3 (citing to Claude Mignault’s commentaries on Alciatus as his authority).

motto of the devise does not refer to the image, and so is enigmatic, in the emblem the words describe and interpret the figure.³⁷ Thus the emblem is designed to be relatively accessible, is more free in its use of images, and is constructed to achieve the end of making the foundations of law—its roots in nature, reason, and moral use—visible to a populace that was often unable to read, or as Fraunce formulates it: “letters just like languages are intelligible only to their own people, whereas the images of animals, plants and suchlike are known and patently obvious to all just like languages their own.”³⁸ Mignault, in his commentary on Alciatus, belabors the same point: “maxims are sometimes rather obscure, and may not be accessible to everyone; but the emblem, either because of the picture which is the subject, or through the explanation given by the poem or through the inscription, has some facility in which the mind can be at ease.”³⁹

Drawing out the implications of Mignault’s commentaries, we can note first and literally that Alciatus’ emblems begin with an emblem of dedication and authorization. These are lawful and hierarchically approved emblems. The first emblem, opening for content, is of the Duke of Milan, and depicts the ensign of the Duchy. The central figure of this emblem is a shield showing a twisting snake from whose mouth a child emerges. The verse below explains the image as representing nobility of pedigree—*gentilitiis nobile stemma tuis*. The verse then proceeds to explain that the figure of the snake indicates he is the progeny of divine seed. This is the lineage and visible majesty of law, its reference back, its place in the hierarchy, such as to allow the sovereign to promulgate by means of their authority, what the Digest terms “a knowledge of civil law which is a most sacred wisdom (*res sanctissima civis sapientia*).”⁴⁰ The fourth emblem (fig. 4), titled *In Deo laetandum*, one must delight in God, reinforces the message of the divine provenance of these images and their messages. Taken quite superficially, the figure shows Ganymede being borne through the heavens on the wings of an Eagle. The motto, in Greek, stipulates cryptically, as already noted, that one must delight in God. Travelling through the clouds, amongst the angels, Ganymede looks forward and upward. Below, on earth, a dog barks at the disappearing image.

FIGURE 4 Andreas Alciatus, *Emblemata*, at 61 (Ganymede).



37. ABRAHAM FRAUNCE, *SYMBOLICAE PHILOSOPHIAE LIBER QUARTUS ET ULTIMUS* 14 (John Manning ed., 1991).

38. *Id.* at 9.

39. CLAUDE MIGNAULT, *OMNIA ANDREAE ALCIATI EMBLEMATA CUM COMMENTARIIS* (Antwerp, Plantin 1577) (Letter to the Reader).

40. DIG. 50.13.5 (Ulpian).

Mignault prefaces his commentary on this emblem by noting that it is taken from Homer and that it is to be interpreted by reference to classical mythology, which is to say by reference to stories that “the early lawyers” used so as to acquire and increase their authority.⁴¹ That said, the image is followed by a verse explanation that, in most editions, was in the vernacular, and helped to explain the emblem as the means by which the minds of early viewers were “captured and charmed.” As to the image itself, the key feature is that Ganymede is a child, an innocent, carried to the heavens through his love of God and it is this filial devotion to divinity and law that the figure captures. The subject of law should be such a child, empty and open to being carried away at a literal level by the word of the father, and allegorically by the wings of an eagle, the queen of birds. The child comes to God and in doing so separates soul from body through joy and rejoicing (*gaudium*). To be carried amongst the clouds, symbols of angels, is to join the celestial choir, to sing praise through one’s being as such, and to attach to the divine in a spiritual friendship—*animae amicitiam*.⁴² It was this spiritual friendship, the amity and brotherhood of a law both spiritual and temporal that constitutes the first precept, maxim, or rule of the emblems that ensue.

Another common juristically directed emblem, number 18 in Alciatus, but the opening emblem in the first vernacular emblem book, given pride of place and principal import by the Toulousian humanist Guillaume Perrière, is the figure of Janus. The two-faced God directly represents past and future, backwards and forwards, but equally, and this is explicit in the symbolism of the vernacular figure, the two realms of governance, exterior and interior, secular and spiritual. It is to this end that the representation in Perrière, reprised in the English translation by Thomas Combe, shows Janus holding an image, in classical terms a funerary mask (*imago*), in his right hand—in *patribus visum est*, as Renaissance lawyers liked to say, meaning thus is the father seen. In his left hand, towards which the mask is seemingly turned, he holds the key, the mode of entry to the kingdom, *clavis regni* in the language of the Psalm.⁴³ John Selden explicates this division in terms of the divide between the interior and the exterior realms, the household and the *populus*, but it is also a distinction between providence and fate, rule and administration, legislation and *oeconomic* disposition.⁴⁴ The accompanying verse specifically refers to providence as the source of governance and the key held in Janus’ left hand is expressly an image of the mode of entry to the celestial realm of providence itself. Janus marks thus the two regimes of law, the

41. ANDREA ALCIATI, *EMBLEMATA* 61 (Padua, Petro Paulo Tozzi 1621) (discuss Claude Mignault’s commentary to Alciatus).

42. *Id.* at 64.

43. GUILLAUME DE LA PERRIÈRE, *LE THÉÂTRE DES BONS ENGINES* [1540] (Lyon, Denis Janot 1553); THOMAS COMBE, *THEATER OF FINE DEVICES* [1593] (London, Richard Field 1614).

44. JOHN SELDEN, *JANI ANGLORUM FACIES ALTERA* (London, I. Helme 1610) (using this image and the following motto: *e quibus haec facies populum spectat, at illa larem*). On the distinction between providence and fate, derived from Boethius, see AGAMBEN, *LE RÈGNE ET LA GLOIRE*, *supra* note 4, at 190–201, on the *duplex modus* of providence and disposition.

exterior and positive which is in Christian terminology but a shadow or image of the interior, invisible, and enigmatic cause (fig. 5).

The authority and lineage of the emblem established, its sacral and mysterious content presupposed and symbolized, the second feature of the emblem as presented by Mignault lies in the juridical character of its content. The emblem emerges out of a tradition of adages, maxims, precepts, formulas, and rules—whether the latter are termed brocards, *regulae* or commonplaces. These short and often poetic statements of moral and legal precepts were developed in part as an accessible species of mnemonic device but had their greatest authority and most visible presence as expressions of lawful conduct and of just reasoning.⁴⁵ The legal maxim was of the greatest legitimacy and indisputable prestige within common law where the Latin maxims collected by Sir Francis Bacon and relayed by Sir Edward Coke were expressly “conclusions of reason . . . aptly called *legum leges*, lawes of lawes,” and had both authority and majesty, power and glory, whether “penn’ed or dicted verbatim.”⁴⁶ The maxims were the principles, the underlying reasons of law and as such deserved emblematic expression. These were the discovered and self-evident grounds of all legality and judgment and it is these reasons, these precepts for living, these items of dogma and doctrine that the legal emblem takes up and conveys. Estienne in his discussion of the utility of devises also refers to the use of images “the contentment of sight” as a means of conveying doctrine and so promulgating not simply law but the reasons that constitute the law of law.⁴⁷ This space of pictorial representation of doctrine, this visible enactment of judgment, to borrow from Junius, occurs in a space of public spectacle where judgment is made visible and plain to see.⁴⁸

The notes of dignity and other armorial colors and signs, shields, crests, banners and the like, were visual identifications of place and lineage. The emblems expanded the scope of such visible marks to the project of moral identification and thus the inculcation of the primary norms, the customs and uses, that make up the unwritten and perhaps, we would say, the unconscious law. The emblems, no doubt ironically, promulgated and disseminated images of an invisible source, a law of law, which

FIGURE 5 Perriere, Le Theatre, 1 (Janus).



45. On the mnemonic role of poetry and the theatre of memory, see GIULIO CAMILLO, *L'IDEA DEL THEATRO* (Florence, Lodovico Domenicho 1550), reprinted in *LE THÉÂTRE DE LA MÉMOIRE* (Scheffer ed., 2007).

46. FRANCIS BACON, *THE ELEMENTS OF THE COMMON LAWES OF ENGLAND* fol. B2r & B3r (London, More 1630).

47. ESTIENNE, *supra* note 1, at 14.

48. HADRIANUS JUNIUS, *EMBLEMATA: AENIGMATUM LIBELLUS* (Antwerp, Plantin 1565) (dedication referring to *publicum iudicium videbis*).

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undergirded and authorized the extant books, rolls, opinions, and reports of the legal community. Thus, for Alciatus, “it is neither the words written on parchment nor those engraved on bronze that constitute the law, but rather it is that which justice dictates, and which equity directs that bears the true name of the law (*verum legis nomen habet*).”⁴⁹ The images and figures of the emblem tradition were didactic and popularizing modes of disseminating the moral content of law and the rules of spiritual amity and temporal civility that provided the context of law application and reception.

Viewed juristically, the legal emblem in its most general sense, that of a visual figure addressing topics pertaining to law, should be understood as a rhetorical device. As Hayaert elaborates it, choosing the Senneton brothers magnificently illustrated edition of the *Corpus iuris civilis* published in five volumes from 1548–1550, the images were a matter of elegance of style, of subtlety of disputation, and of force of persuasion. In the case of the Senneton edition, the images were broadly illustrative, representing specific titles—rubrics or principles of law—in carefully coded figures and gestures. This symbolic visual lexicon would please and engage the subject while also fulfilling the important role of making manifest the mythological roots of the legal injunctions. The illustrations were in this sense technically enigmas, meaning references to antique poetic and literary texts that were the sources of the rules of law.⁵⁰ The *Digest* title *de postulando* (rights of action) is illustrated by an image of a judge (*praetor*) whose left hand is held out staying a child and a woman who turn or are turned away. On the judge’s right, towards whom his face is turned, are two men appointed to defend the woman and child. The text illustrated spells out the prohibition of actions being brought by those under the age of seventeen or by women. As for the latter, the reason is given in terms of a “modesty in keeping with their sex” and then refers to the classical story of Carfania “a shameless woman who . . . brazenly made applications to the magistrate”⁵¹ (fig. 6).

FIGURE 6 *Corpus Iuris Civilis* (Senneton edition) (DIG. 3.1.5).



49. ANDREA ALCIATUS, ORATIO IN LAUDEM JURIS CIVILIS, IN OPERA OMNIA 1v, at 1022 (Bâle, 1582); see also VALÉRIE HAYAERT, MENS EMBLEMATICA ET HUMANISME JURIDIQUE 198–99 (2008).

50. See Peter Goodrich, *Legal Enigmas—Antonio de Nebrija, The Da Vinci Code, and the Emendation of Law*, 30 O.J.L.S. 71 (2010) (discussing the meaning of *aenigmata iuris* or legal enigmas).

51. DIG. 3.1.5 (Senneton).

The image itself is taken fairly directly from Alciatus' *Emblemata* and specifically, emblem 109, *In Studiosum captum amore*, a legal scholar (*iuris peritus*) overcome by love (fig. 7). The earlier emblem is if anything more explicit and in a relatively lewd manner portrays the threat of lust and here the lure of the lascivious and feminine undermining law. The enthroned scholar-judge is shown looking towards a naked Venus, his left hand stretched out towards her sex, his right hand pointing toward Eros who stands bow in hand to the right of Venus. On the other side of the scholar stands Athena with spear and shield to hand, representing justice in its classical definition as an art graced by both arms and laws.

FIGURE 7 Alciatus, *Emblemata*, (scholar captured by love).



The affective symbolic grammar of the emblem, to borrow Hayaert's locution, is one that depicts in visceral and memorable form the separation (and connection) of public and private spaces, *res publica* and *domus*, law and gynaeceum that the tradition constantly revises and relays. The emblem presents temptation and affective relation as the left hand of law, the unconscious and oceanic other scene, the realm of administration, of the law of non-law in Agamben's terms, that is kept at a distance, contained yet pressing at the chirological barrier of legality. The lawyer has been ensnared and of this the relevant maxim is *non bene convenit*—it leads to no good. This emblematic visual source is then transferred to the legal text, the holy writ of law in its day, to enliven, to figure and give effect to the juristic interdiction upon actions, "[t]he image has at least a triple status: a cordial or one could say expressive function, a pedagogic and mnemonic role and an affective and symbolic dimension."⁵² Here then, in interlinear or more accurately non-linear form, there is a more popular grammar, a guide to and glimpse of the poetic cause, the invention and motive of this institutional reason that captures the subject for law. It is the symbol, as Legendre has lengthily elaborated, that gets under the skin, that has effects, or in the Latin maxim, *id efficit, quod figurat*.⁵³

V. CONCLUSION

There is perhaps no better expression of the lure and the doctrinal ruse of the emblem than that to be found in Thomas Combe's edition of *The Theater of Fine Devices*.⁵⁴ The question posed in the preface to Combe's work is that of the differential effects of image and word. The written text, the linear and ever so insensible dictates

52. HAYAERT, *supra* note 3, at 205.

53. PIERRE LEGENDRE, DIEU AU MIRROIR: ÉTUDE SUR L'INSTITUTION DES IMAGES 191 (Paris, Fayard 1994) (translated as it enacts what it figures); *The Social Constitution of Speech and the Development of the Normative Role of Images*, 20 LEGAL STUD. F. 247 (Peter Goodrich trans., 1996).

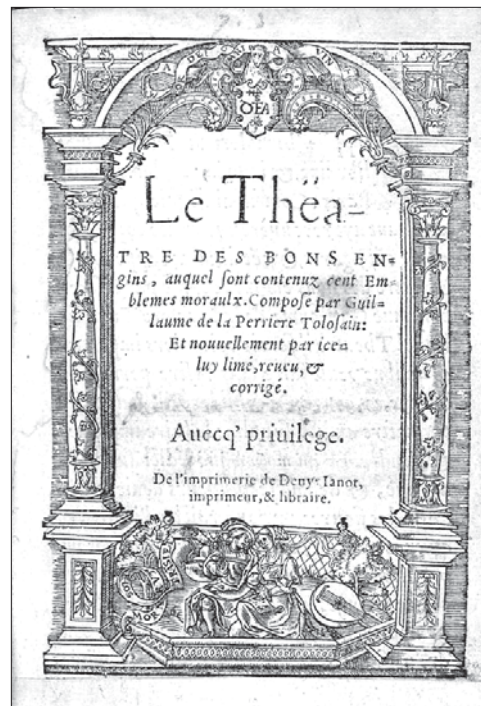
54. COMBE, *supra* note 43.

of prose, will all too often pass the reader by and thereby gain little or no consideration, let alone having any affective impact. Thus Combe moves to contrast the image to the word, detailing that “pictures that especially are discerned by the sense, are such helps to the weaknes of cōmon understandings, that they make words as it were deedes, and set forth the whole substance of that which is offered, before the sight and conceipt” of the viewer. The emblem is a mode of performance, not simply a speech act and illocutionary force but more than that, an enactment, a moment in the visible theatre of legal rule. Here, and quite vividly, the dead letter of legal prose comes to life, takes to the stage, gets up and walks, and in doing so becomes law for us, the viewers, the audience, the spectators of an administration of justice that has always been fairly expressly a theatrical mode of implementation replete with its aura of majesty, spectacle of place, agon of trial, and insignia of dissemination.

Returning to the lawyers who devised the emblem tradition, the performative character of law’s visual modes of presence and promulgation are very evident. The emblem is explicitly a theatrical device. Perrière’s *Théâtre* not only uses theater as its title but also invokes “engins,” which in this context refers to stage machinery, the engines, scaffolds, or props that are used to make actors appear in front of their spectators. The emblem is a dramatic machine that helps devise, if you will, the mode and method of performance. The emblems in Perrière’s work (fig. 8) are indeed presented as figures on stage, with the title page itself in the form of a theatre.

The lawyer Pierre Coustau takes up this theme in his *Pegma cum narrationibus philosophicis* of 1555.⁵⁵ The work consists of a collection and expansive philosophical annotation of emblems. The opening emblem is a portrait of justice—in *simulachrum Iustitiae*—and shows her holding a child to each breast, suckling war on her right nipple and law on her left. Seated on a throne with a curtain behind her, this pedagogic tableau evidently stages an image, a dramatic mask portraying the two orders of rule and governance, of providence and fate as understood by the Renaissance jurists whose

FIGURE 8 Perrière, *Théâtre*, title page.



55. PETRUS COSTALIUS, *PEGMA CUM NARRATIONIBUS PHILSOPHICIS* (Bonhomme, Lyon 1555).

tradition of images we inherit. Barthélemy Aneau, a year earlier had used a not dissimilar image of *Justitia* in his *Jurisprudentia*, a work that presented in visual and textual form the biographical history and portraits of great jurists as an introduction to the institution of law.⁵⁶ *Iustitia* in Aneau's image is interesting for being placed on a stone pedestal, the book of laws in her left hand, declaiming to an audience of blindfolded subjects. It is here again the staging, the theatrical natural machinery of presence and play, that are of significance.

For Coustau, justice is even more explicitly staged, a social performance upon the two scenes, external and internal, military and domestic, that his opening image portrays. In Anglican terminology law is a nursing father and passes an interior spirit of animation, a living voice, via its spectacles and stages. The concept of *pegma* is very much to the point and highly indicative, its reference being a pedestal, scaffold or other theatrical device whose origin lies in the shelves and cupboards that were used classically to display the *imago*, or mask, of the ancestors who ruled from the atrium of the house. The image was there the archetype of governance, a visible visage that overlooked domestic space and represented in spectral form the lineage and inheritance, the honor and virtue of the family and the place and genealogical as well as moral qualification of the subject. The law of images was the pattern of inheritance, the order and titles of honor, the symbolic grammar of governance as it inhabited the most proximate and interior domains of the subject. And then, as a last point, the tradition of legal emblems arrived on the social stage as a novel apparatus for the promulgation and dissemination of the idea of law. The emblem presented what Combe terms the "whole substance of that which is offered," meaning in contemporary jargon, "the big picture," the social face of the "concept" of law. The power of the image lay in its ability to carry and apply the abstract rule, the prosaic letter of governance to a terrain that law in its positive scriptural expression would never reach.

56. BATHELEMY ANEAU, JURISPRUDENTIA A PRIMO ET DIVINO SUI ORTU AD NOBILEM BITURGIUM ACADEMIAM DEDUCTA 10 (Lyon, Sagittaire 1554).