

# CAN ART INSPIRE AND GUARANTEE BETTER LAWS AND LAW-MAKING?

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## **Abstract**

This introductory text reflects on some relations between art and law, and particularly transitional justice, and presents the collection of articles of this special issue on ‘Art & Human Rights’.

## **Keywords**

Law and Art. Historical Legal Iconography. Iconology. Law & the Humanities.

## **Summary**

1. Law and Art. 2. A Selection of Contributions. 3. A Call for More

## 1. LAW AND ART

Can art save the world? Can artists save the planet? Can artworks make people better? Hundreds of artists, art critics and philosophers have raised the question and have tried to deliver answers, some more optimistic than others. Optimistic creative people fight for a better world every day, bringing engaged art to the fore, in the form of simple newspaper cartoons and internet memes, literary texts and poetry, or even entire biennials of contemporary art. Pessimists, however, make the objection that museums are bombed, artists prosecuted, age-old architecture destroyed, poets censured... Art can probably not stop war, but has the law proven to be able to do so?

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What if we do not stress the differences between law and art (a rational system of objectively applicable rules, open for interpretation, but clear to most jurists because of its repetitiveness, *versus* a subjectively appreciated feeling of beauty towards original creations to be appreciated by each beholder individually), but look for common ground? What if we look for synergies between art history and legal history? Humanist jurist Andrea Alciato, for instance, was not only a ‘new’ thinker in a legal sense, stressing the historical and textual idiosyncrasies of the *Corpus Iuris Civilis*, but his *Emblemata* was also the start of a new *genre* in artistic literature, bringing image and text together. In Belgium, prominent lawyers such as Edmond Picard and Octave Maus founded both legal periodicals as well as art journals, around 1900.

There has, actually, always been a very strong link between art and law, particularly if we look at both of them as means of social ordering. Just like their royal predecessors of the *Ancien Régime*, today’s parliaments and courts use art as part and parcel of the pomp and circumstance giving their work a charismatic aura, to use a Weberian category. It comes as no surprise that much of the imagery and *décor* used by religion was transposed from temples and churches to the buildings of lawmakers and judges. The use of the ‘table(t)s of the law’ is a remarkable example, which has already been studied by many historians, art historians as well as legal historians. We see the tables in medieval churches as the representation of *Synagoga* (opposed to the Catholic Church), in early-modern painting as a symbol of secular legislation, and regarding the *Déclaration des Droits de l’Homme et du Citoyen* (1789) in Jean-Jacques-François Le Barbier’s painting (*Musée Carnavalet*) they become the image of a new and fundamental constitution, a novel paradigm for State building and citizen rights. In the same vein as the tables of the law, sword and balance have an age-old

history going back to Antiquity and Christian faith (see, among many other contributions, the text by Dr. Eszenyi in this issue). Parallel there is the sceptre, the Divine Eye, the lily flower, the fasces or bundle of rods, etc. For centuries, judges and legislators have been using images of law and justice, particularly to strengthen the message of the law itself, to inspire, to warn, to inform, to convince.

Probably just as old as these positive and legitimizing symbols, signs and representations, are the images criticizing law and justice administration, and especially professional jurists. In the tradition of Western art, as early as the fifteenth century, the ‘men of laws’ are represented as ‘men of money’, vultures, wolves, and foxes. Pieter Breughel the Younger’s *Peasant Lawyer* was one of the most popular paintings of the seventeenth century, and today around one hundred copies (most of them signed by Breughel himself, as he was the head of a large painting workshop) still are preserved in public collections around the world. In the painting, the lawyer is listening to several clients at the same time (can he serve them all impartially?), and his whole office is covered by a big mess of loose papers and procedural bags. Innumerable cases are (literally) ‘pending’ on hooks against the walls. The peasant clients bring the meagre fruits of their labour, such as potatoes and a slaughtered duck, to pay their counsellor.

In Marinus Van Reymerswaele’s *The Lawyer’s Office*, the mocking of the financial greed of the jurist is even more explicit. Whilst the fat lawyer willingly smiles at his client, the old man in front of him is emptying his pouch, throwing his last coins on the counsel’s desk. Whereas some legal historians have tried to identify the other two men on the client’s side of the table as a proctor and a notary or clerk respectively, it seems more correct to interpret the three men as one and the same client, represented in the ‘three ages of man’, young-middle-aged-old... yes, indeed,

proceedings can continue for such a long time that, meanwhile, the litigating parties grow old.

The complexity, the duration and the costs of legal proceedings are traditional points of criticism on the judicial system, as has been revealed by many artworks, pamphlets, newspaper and magazine cartoons... Jurists are greedy, particularly proctors and barristers, while judges are corrupt, lazy, or stupid. The engravings by William Hogarth or Honoré Daumier are classics on these points. But artists have criticized many other weak points in legal systems as well. They often became the mouthpiece of social contestation or moral resentment against the state of the law, or the law of the State. One could even say that, today, the critical element in artworks has become quintessential. For most curators, today, art has to be critical. And this critical view is very often directed toward inequality, racism, censorship, poverty..., or, generally spoken, violations of human rights.

Belgian star painter Luc Tuymans's *Mwana - Beautiful White Man* series, presented at the 2011 *Biennale di Venezia* (Italy), for instance, might have been just 'beautiful' or 'aesthetic' in the eyes of some beholders, but was essentially a critique on Belgium's colonial policy. Even though an art biennial is originally meant to be showcasing a country's most beautiful side, Tuymans brought one of his State's most dark historical pages to the international attention, as violations of humans rights were enormous in Congo under colonial rule. In Kassel (Germany), in 2012, American artist Sam Durant presented his sculpture *Scaffold* for Documenta 13. It later moved to other places, with amongst them the street of the International Criminal Court at The Hague (The Netherlands). At first sight, many visitors enjoyed climbing its stairs and admiring the view. When reading the accompanying text, however, there is no fun at all. *Scaffold* is a gigantic

puzzle of unpainted wood and steel structures: not a children's play, but a composition of real-size gallows used in executions that took place in the United States between 1859 and 2006, including those of the abolitionist leader John Brown (1859), four anarchists in Chicago in 1887, and deposed Iraqi president Saddam Hussein in Camp Justice, Baghdad (2006). The artwork also contained the gallows used for the United States' largest mass execution in Mankato, Minnesota, in 1862, in which thirty-eight Dakota native Americans died. It is clear, Dunant wanted to make a statement, but to get the message, the beholder needs some explanation. While old artworks in many cases speak for themselves, as they 'represent' mimetically, many contemporary artists have to add comments. Many of the artworks commented on in this special issue also only 'speak' when well contextualized. This is the added value of the articles in this bundle.

They can be situated within the Law & the Humanities movement and shed a light on how art can play a crucial role in legal awareness in general, and need for legal change in particular. It should thus not be surprising that many artworks try to play a role in processes of transitional justice. In the recent *Oxford Handbook of Law and Humanities* (Stern *et al.* 2020), contributions such as "Law, Visual Studies and Image History" and "Trauma, Memory and the Law" explicitly address the relationship between law, art and transitional justice. The relation between visual arts and law and ethics is part and parcel of Law & the Humanities. Within the visual arts, iconography scrutinises signs, symbols, allegories and attributes, and tries to 'explain what one sees'. Iconology goes a bit further and also investigates the networks of art patrons and artists, and their interactions with policy makers, non-governmental organisations and the public at large, it comments on the reception, or rejection, of artworks, and their influences on public opinion.

South-Africa is a clear example of how, both at the official and more popular level, law and art interact, and contribute to legal transitions. The relationship between public visual art and transitional justice within post-apartheid South Africa, has been studied by judge Albie Sachs (“Art and Human Rights in the Constitutional Court of South Africa”, in: S. Ristovska *et al.* (eds), *Visual Imagery and Human Rights Practice. Global Transformations in Media and Communication Research*, 2018) and Elisabeth Garnsey (*The Justice of Visual Art: Creative State-Building in Times of Political Transition*, 2021), for instance. Also Buikema wrote an interesting paper (“Performing dialogical truth and transitional justice: the role of art in the becoming post-apartheid of South Africa”, *Memory Studies*, 2012) on the potential role of the arts. She stated that the dialogic, materiality and medium specificity of art pieces ensure that contested truths can be shown. Golebiewski (“The Arts as Healing Power in Transitional Justice”, *E-International Relations*, 2014) wrote that transitional justice is not only a matter of law but also and in the first place a process of making sense of the past. Art can help make sense of the past as it can “open up the victims’ imagination, refresh their memories, and produce new experiences.” By doing so, hidden traumas are uncovered. The exposing of these traumas is an essential step within the process of transitional justice. In short, the arts, in addition to the principal role of law in the transitional justice process, can create “a time and space to remember, to mourn, to forgive, to heal, and to get a glimpse of a new future”.

In her already mentioned book on the relationship between art and transitional justice in South Africa, Garnsey tries to understand the relationship between art and justice in times of transition; how the past shapes the present, how the present shapes the past, and how the present envisages the future through, specifically visual, art: “there are aesthetic

and creative ways to pursue transitional justice”, she claims, by implementing a case study analysis of post-apartheid South African visual art in two institutions: the Constitutional Court of South Africa and the South African Pavilion at the International Art Biennale in Venice.

The Constitutional Court of South Africa, indeed, has a well-known art collection. Also the architectural design of the courthouse contributes to transitional justice. Law-Viljoen (*Light on a Hill. Building the Constitutional Court of South Africa*, 2006, and *Art and Justice: The Art of the Constitutional Court of South Africa*, 2008) has examined the art of the Constitutional Court; judge Albie Sachs, known for his legacy as an anti-apartheid activist, is the driving force behind this art collection. The link between South-Africa and its own Constitutional Court is obvious; studying the South African Pavilion at the *Biennale* in Venice is, at first sight at least, much less evident. Garnsey explores three areas of the relationship between visual arts and transitional justice: the theoretical framing of art and justice, the visual jurisprudence of justice measures developed in and emerging out of transition, and cultural diplomacy practices of states emerging from conflicts. She does not claim that “art should or could replace legal mechanisms”, nor is she “advocating for art to be instrumentalised in the pursuit of justice”. She does claim that (visual) art has different purposes in its relation to transitional justice, such as enabling and supporting transitional justice and communicating justice in powerful and meaningful ways.

Can art, indeed, inspire and guarantee better laws and law-making? The essays of this special issue on both old and contemporary artworks hope to answer the question positively.

## 2. A SELECTION OF CONTRIBUTIONS.

Before dealing with visual artworks, however, the first article, written by Rotterdam assistant professor of law Emese von Bóné, is a musical *ouverture*. Her contribution links law to opera and is situated in a period of European transitional justice, between the end of the *Ancien Régime* and the early-nineteenth century, when ideas of Enlightened philosophers are put into political and legal practice. Although, at first sight (or first hearing), the *libretto* is a simple love story of a woman who, in disguise, frees her husband from the prison of a corrupt despot, Ludwig van Beethoven's *Fidelio* can also be seen as a representation of one of the ideals of the Enlightenment. The composer alluded on human rights and criticized the law of his time. Central to the opera's theme is the French revolution's motto 'liberty, equality, fraternity'. As Von Bóné explains, the opera's success was partly due to the fall of Emperor Napoleon. Many performances took place in Vienna, including one at the prestigious opening of the Congress of Vienna on September, 26, 1815.

Edina Eszenyi, Ph.D. in Medieval and Early Modern Studies, contributes, in the second article of this issue, to the established literature on justice's main symbols. The sword and the scales both have meanings going as far back as Antiquity, but were brought together in medieval times in the hands of two cardinal figures: the representative of divine justice in Christian art is Saint Michael, the Archangel, while the representative of justice in profane legal contexts is the female figure of Justitia. The two figures rarely ever appear in the same context. A singular exception is Jacob Jordaens's oil on canvas *Human Law Founded on the Divine Justice* (1665), where the Archangel has come down to earth to deliver his attributes to a seated Lady Justice. Eszenyi's article discusses the

iconography of the two figures from a comparative perspective, and she wonders how an angel and a personification can be regarded as persons at all? What ties the figures to the concept of justice, and to what extent can their artistic attributes entitle the bearers to the concept they represent?

That the interaction between Christian religion and justice administration in the Late Middle Ages and the Early Modern Era is strong in European history, is not only witnessed by common symbols such as the mentioned sword and scales, but also by the fact that justice was often administered in the church porches. And when benches of judges were installed in town halls or court houses, they had their deliberation and audience rooms decorated with paintings, reliefs or tapestries representing the Last Judgment, or other biblical judgments, like the one of Solomon or the one of Daniel. This last one, often better known as the story of the Chaste Susanna, is the subject of Duarte Manso's contribution. Using Erwin Panofsky's iconographical method of analysis, his article on the panel painting *O Profeta Daniel e a Casta Susana* investigates the choices made by both its author, the Portuguese painter of Flemish descent Francisco Henriques, and his patron, Portuguese King Manuel I. The sixteenth century panel, as Manso argues very well, reveals how art can be subtly manipulated to serve political interests. In Henriques's *exemplum iustitiae*, Daniel, according to the Bible a young prophet, is represented as a royal judge, having the physiognomy of the King himself. Manso explains how, in this particular artwork, an absolutist monarch could make use of religious imagery as an instrument for judicial legitimation, via the appropriation of a popular biblical narrative, slightly altered to fit an intended narrative.

Following the chronological order, while staying in the Portuguese empire, Paulo César Pinto de Oliveira, professor of Philosophy of Law and

History of Law at the Federal University of Viçosa, Minas Gerais, Brazil, studies one of the masterpieces of Brazilian baroque, by sculptor Aleijadinho. The author makes an iconological analysis of the architecture and statuary of the *Santuário de Bom Jesus de Matosinhos* in Congonhas do Campo, Minas Gerais. His central hypothesis is that Aleijadinho's statuary may have anticipated a recurrent iconological element in the images of freedom hero Tiradentes in the Brazilian Republic. Tiradentes is attributed features traditionally linked to the figure of Christ, thus characterizing a dimension that transcends justice and revolves around martyrdom that brings salvation.

With Marieke Vercaemer's text we enter the nineteenth century, when a new legal and State paradigm is installed in most European States, in this case Belgium. The article describes, analyses and comments on an oil on canvas by painter Joseph Geirnaert. Typical for the artist and his period, the genre painting represents a realistic, but also critical and dramatic, depiction of a scene of everyday life: a family being expelled from its home due to debts, and their movables being seized for auction. Particularly some legal elements in the composition are described and analysed, such as the clothes and signs of the court usher and the local policeman. Vercaemer perfectly contextualises the artwork and sees it not as a merely artistic or aesthetic creation, but also as a social critique. Comparing the painting to *Distraint for Rent* by Scottish painter David Wilkie, analogies and differences are observed.

With Alysson Bezerra Miranda's contribution, the lens, focused in the former articles on Western art, is widened. Also in this text, however, the narrow bonds between art and law, as well as between art and religion are underlined. Historical legal iconology traditionally mainly studies the symbols and images of European origin, notably Greek, Latin, and

Christian. Seeking to contribute to the study of societies on the global periphery, Alysson Bezerra Miranda analyses the symbolism of justice from the perspective of Afro-Brazilian religions. Comparable to earlier (western) historical periods, when there were high rates of illiteracy, images are intended to educate the population and reinforce political power and the law. The object of study in this contribution is the representation of the orisha Shango, who is according to Yoruba mythology the main entity responsible for the application of justice, “the great judge of the Yoruba pantheon”. His main symbols are the colour red, a bag divided into four asymmetrical parts, and a two-sided axe.

The series of articles ends with two contributions on contemporary art. João Motta Guedes is not only a legal scholar, but also a creative artist. The main research question presented in his text is to know to what extent aesthetics can move people to fight for rights, in order to contribute to a change in the social, legal, and political paradigm. Considering that the process of law formation is composed of rational and emotional elements, the essay explores how aesthetics can contribute to law formation, both through the analysis of literature on the one hand, and images on the other, trying to explain how the reception of images can move people to fight for their own, or someone else’s, rights. The author elaborates on the theory of the ‘image act’ (that considers images as acts), trying to frame how aesthetics are able to provoke emotions, and how consequently these emotions call for action and legal change. He comments on recent artworks by David Hammons, Jenny Holzer, Alfredo Jaar, Pedro Reyes, and others, all of them internationally renowned artists, be it probably lesser known by the general public.

This surely cannot be said of the artist discussed in the final article of this special issue. Banksy is without any doubt one of the most famous,

intriguing and challenging artists of our time. His creations appear in Ukrainian ruins and on the Israeli-Palestine wall; his street art is auctioned at amazing prizes, and he shocked the world by ‘destroying’ one of his works at the very moment of its public sale... or did he actually create a new and unique work on the spot?

As Tycho van Sanwijk states, “Banksy has a complex relationship with the art world and the law. His works make use of cynical subversion and humour to criticize aspects of contemporary society, often the law or those who wield its authority.” The author describes and analyses Banksy’s 2009 *Devolved Parliament*, a satire of the United Kingdom House of Commons, composed in the style of history paintings of the neoclassical age, but in which all human politicians are substituted by chimpanzees. The irony of the painting is obvious, already at first sight. But the author invites us to take a closer look and he explains how the oil on canvas has an interesting history, and fits into Banksy’s greater oeuvre of works that criticize authority or the law. As one of the most influential and accessible contemporary artists, Banksy’s provoking messages are able to reach an enormous audience and raise public awareness.

If art can, indeed, inspire and guarantee better laws and law-making, Banksy seems to be able to bring the message to the public at large.

### 3. A CALL FOR MORE

The eight articles of this special issue on Art & Human Rights may hopefully inspire our readers to engage in research on the crossroads of law and the humanities. From an interdisciplinary perspective, *Human(ities & and) Rights - Global Network Journal* is aimed at connecting scientists of

both law and humanities. Our review wants to open dialogues on various aspects of both the theoretical concepts of human rights, and their practical applicability as subjective rights in a wide range of national states and legal systems. Interdisciplinarity is highly esteemed and the network welcomes studies originating from the paradigms of history, philosophy, psychology, economy and sociology of law, but also from literature, theatre, poetry and art.

And yes, we believe that art can inspire and guarantee better laws and law-making.