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Aesthetics of Law as 'Iconic Legal Theology': Legendre, Schmitt and Vico

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Abstract
The article locates the aesthetics of law within modern legal knowledge, moving from the analysis of Kelsen's and Schmitt's theories. Schmitt's reading of Hobbes becomes the starting point in which political theology can be understood as an iconic legal theology, since the image of Leviathan. Legendre expands the reconstruction of the legal aesthetic model to the entire second millennium, moving from the appropriation of the imperial role of the Roman Pontiff. The article reads the frontispiece of Vico's Scienza Nuova as a possible alternative to the Hobbesian model and as the foundation of contemporary visual legal studies.

Keywords Image · Dogma · Anthropology · Acclamation · Third

1 The Aesthetic and Dogmatic Foundation of the Legal: From Tribonian to Gratian

Different theoretical positions, referring variously to the thought of jurists such as Schmitt, Kantorowicz, Legendre, consider the practical legal reasoning in this way: it proceeds by placing fictitious continuities that are handed down, moving from the assumption of a tradition that cannot question. The fiction of the continuity of a tradition is an empty and malleable place, susceptible to assume any content. This *forma mentis* is present even when the jurist believes he or she is innovating the law through interpretation. Law can never die [42]: this is the intellectual conviction from which the jurist-interpreter proceeds in justifying his position as a subject who formulates law *in the name of* a normative text. Keeping in mind this hermeneutic disposition, the jurist succeeds in projecting existing texts of law on new phenomena, altering in the pretense of maintaining them. By virtue of this single technique, he possesses a presupposition that allows him to transform any event that technology or history presents before his court into the object of legal knowledge. The dogma

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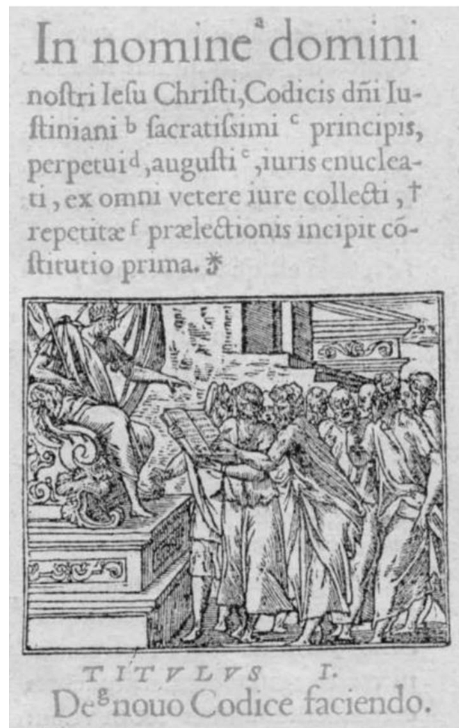

In nomine[a] domini
noſtri Ieſu Chriſti, Codicis dñi Iu-
ſtiniani[b] ſacratiſsimi[c] principis,
perpetui[d], auguſti[e], iuris enuclea-
ti, ex omni vetere iure collecti, †
repetitæ[f] prælectionis incipit cō-
ſtitutio prima. *

TITVLVS I.
De[g] nouo Codice faciendo.

Fig. 1 *Justinian handing down the law*, from *Corpus Iuris Civilis* (Senneton edn.). De novo Codice faciendo at 1

of the completeness of the legal system is but one of the many manifestations of this fundamental epistemological attitude of the jurist in his reasoning.

This is the knowledge of which it does not appear legitimate for the jurist to doubt, his specific knowledge within society: the fictitious affirmation of the continuity of the normative, always liable to be imperceptibly changed thanks to the techniques of manipulation of the norm that the theory of modern interpretation provides (Figs. 1, 2).

Legendrian analysis seems to reiterate this dogmatic trait of the jurist of all times, including the modern positivist and the postmodern relativist, who believe they have emancipated themselves from all beliefs. Much older authors such as Giambattista Vico and the emblematic tradition, conceive the normative text, before modernity, as showing its iconic and dogmatic root. The Vichian *Scienza Nuova* [New Science, 72] exhibits this device by returning to a rhetorical vision of law, which is opposed to the Cartesian model in philosophy and to the Hobbesian model in legal theory: configuring an anthropological aesthetics based on a different articulation of the link between the true and the certain with respect to Cartesian philosophy of doubt, to Spinozian philosophy of nature and to Hobbesian *homo homini lupus*.

In the article I will attempt to indicate the connection between the Vico's aesthetic-philosophical project and Pierre Legendre's legal aesthetics, extending it beyond the understanding the economic phenomenon [27, 52] as rooted in the pontifical revolution of the eleventh century. The analysis will refer only to the

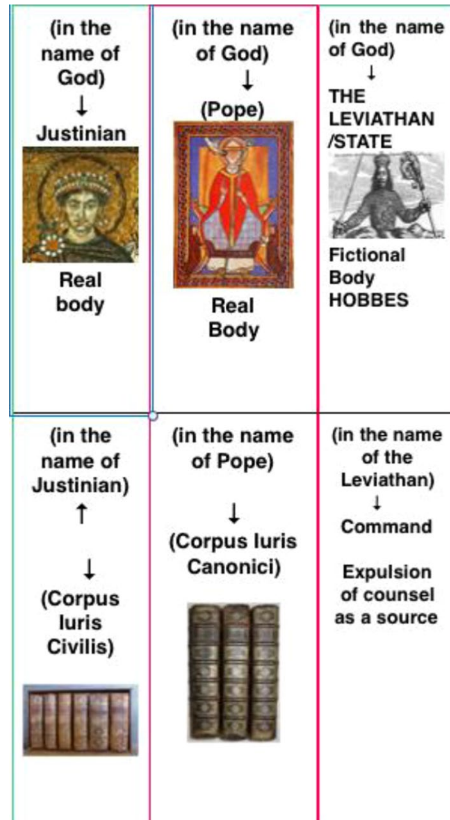

Fig. 2 From Tribonian to Leviathan. A former version of this scheme is located in (17: 140)

Vichian frontispiece to the *Scienza Nuova* [72], as part of an ideal history of the legal emblems of the foundation. The theoretical aim will be integrating the Legendrian model, focused on the connection between the two *Corpus Iuris* of the western juridical experience referred to Roman law and canon law, extending it up to Hobbes (the third fictional corpus of the West) and the Vichian one [5: 2–21, 17: 87–125]. The paper itinerary will stop here, without completing the ideal history of the images of the foundation of the legal in the post-modern and contemporary era. Two foundational images of contemporary law, linked to the theories of Kelsen and Schmitt, the pyramid of norms and Hobbes' crystal will be taken into account (Figs. 3 and 4).

Two main interpreters of Hobbes' *auctoritas non veritas facit legem* principle in the twentieth century, Hans Kelsen and Carl Schmitt, inserted in that history of legal emblems of which Vico is perhaps the last representative, are thus connected to the aesthetic-legal perspective. The images of the foundation of the legal, from Justinian up to today, construct the outline of an image-based legal theology, taking into account the normativity of the image allows the passage from 'political theology' (from Kantorowicz to Schmitt) to a different pattern,

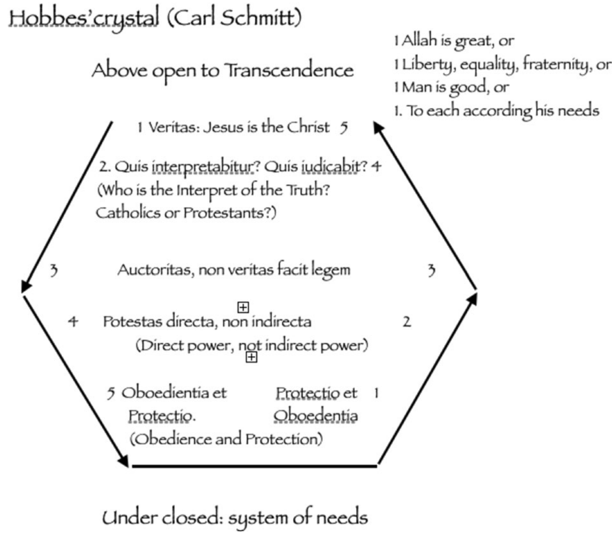

Fig. 3 Hobbes' crystal

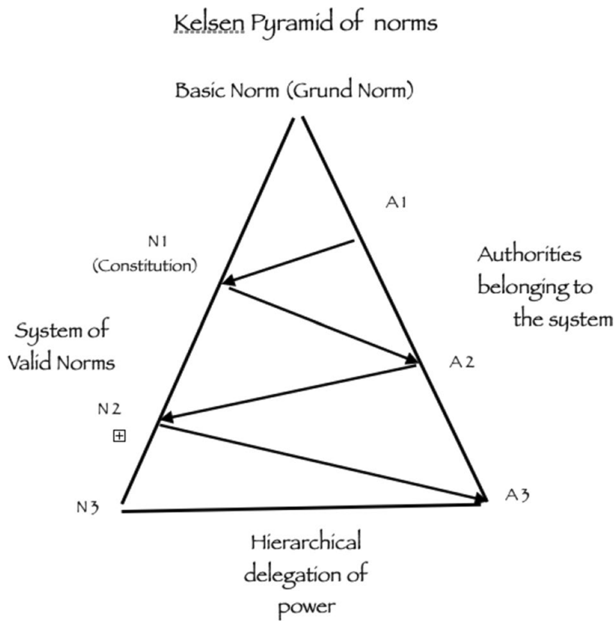

Fig. 4 Kelsen's pyramid of norms

'legal iconic theology', as the symbolic representation model of the law's foundation still operating in our contemporary societies.

The origin of the historiographical scheme is identified by the Parisian canonist precisely in the recovery of the sacral model constituted by the Reference to the Roman Emperor.

Roman law interests Legendre as the first moment in the construction of a myth [27: 135]. The history of Roman law constructs a structure [27: 135], from which it is not possible to depart when analyzing the industrial system. The history of Roman law' analysis is tantamount to interrogating the discourse of truth characteristic of the industrial order of today's society, of multinational corporations and the global market [27: 138].

In *Leçons IX, L'autre Bible de L'Occident: le Monument romano-canonique*, Legendre specifies the features of the legal device. The mythical legacy of Rome, which also carries the idea of the technicality of law at the origin also of modern scientific development [27: 14–17] is a history of successive transference. Law, in the historian's analysis, that rational assemblage defined and developped on as a technique by the Romans, resurrected and perfected by the Middle Ages "became the material and compulsory framework for the normative creativity of states until it infiltrated, before our eyes, the constitutive legalism of world management" [39: 174].

The history of the Western revival of the mythical reference to Roman law, well known to jurists (Glossators, jusnaturalists, pandettists) is still witnessed by the presence of chairs of Roman law in the Faculties of Law. Even Hitler's Third Reich [27: 137–138] deliriously appeals to the continuity of an imperial tradition implies a reversal of that historical model [16].

The legal aesthetics perspective moves from this device to make it a critical tool against the replacement of legal knowledge with other forms of normative, such as economic, scientific, and technological, which represent the unwritten foundation of our societies. Such a historical scheme seems to be the ideal aesthetic projection of Carl Schmitt's device of centers of reference[1] and sovereignty [58: 81–88], read from an aesthetic point of view. In this sense, legal aesthetics as legal iconic theology, within this schema, can only be understood as the ideal extension of Schmitt's political theology and Kantorowicz's two King's bodies theory [42, 43]. In this sense, revolutions [3][2] indicate the invention of new masks, new disguises superimposed on the problem of the foundation by Modernity, without, however, ever erasing the palisades erected by Christianity, namely the search for legitimacy inherent in the separation of theology and law [39: 491].

[1] Successive stages of changing central domains [58: 81].

[2] Helping to remove the prejudices of modern historiography, the author reintegrates the Pontifical Revolution within the framework of the development of the West among the other significant "revolutions" (indicated for example by Berman as the German Reformation of 1517, the Glorious English Revolution of 1640, the French and American Revolutions of 1789 and 1776, the Russian Revolution of 1917 (to which we should now add the "Soft Revolution" of 1989 that triggered Globalization), qualified as the "first revolution of the interpreter". Thus, Legendre's overall reconstructive strategy emerges, aimed at conceiving the Pontifical Revolution and its organizational and power management model as the first revolution of the interpreter (i.e., founded on a technique of using texts), and then inserting a second "revolution of the interpreter," the Freudian one [3: 21].

The textual and institutional device that presupposes the writings of the *Corpus Iuris Civilis* is the scenic feature of writing and textuality. It is a matter of understanding how a specific text fits into the theater of the book, the *Corpus Iuris* [39: 342], that is, into a text that metaphorically refers back to the body of the emperor in whose name it was placed. It is precisely the composition of the Justinian *Pandectae* or *Digesta* that allows us to identify this mechanism. Tribonian, by appointment of Justinian, collects the texts by adapting the ancient law. He cuts up the texts in order to make annoying or hindering passages disappear, producing a change of status [27: 147], of legal truth of the texts, which because of their inclusion in the *Corpus Iuris* are mythicized, showing the appearance of an architecture of power, the scenographic place of the founding Emblem and the discourse that is based on this mythical place: "the universal logic imposing the theatricalization of the foundation as a condition of the advent of the norms" [39: 128].

The Parisian author specifies how these fragments inserted into the code change in meaning while remaining identical [27: 148]. The textual root of the mechanism of transposition-manipulation of fragments is created. Justinian stages the mythical Place foundational to the origin of the Law, he "makes present something that is not there, an absolute Author whose name—his name alone—constitutes the proof, also absolute, that the law has its origin in this author"[27: 150]. Author who thus becomes the mythical foundation of law, the origin of its legitimacy in occupying the emblematic place that gives rise to the scenography of writing. The mythical author, "Justinian", however, Roman emperor, is at the same time, literally, a place-holder of the divine, where he introduces the *Digesta* with the first two words: "*Deo auctore*". The Trinitarian Christian God, fictitiously the author of the *Pandette*, of the *Digesta*, theatrically represents a Name, the name of an absence. This is the divine place in whose name the Emperor operates, through which the mythological space of the Law is constructed, the space in which Roman law first settled after the conversion of Emperor Constantine (Fig. 2). This is a fictional assemblage, where dogmatic communication by the Power consists "in a liturgical maneuver that supposes a fictional recipient, the *laós*, that is, the People, not as an agglomeration of countable individuals, but as a mystical unit to which the absolute Place—any god—addresses itself" [27: 149]. Goodrich re-proposes this mechanism of establishing the *in the name of* by reproducing the emblem De novo *codice facendo* (Justinian handing down the law), which depicts Justinian from the Senneton edition of Corpus Iuris Civilis: the most sacred prince Justinian "has collected the kernel of the antique law and now passes it on to the people" [13: 151] *in nomine domini nostri Jesu Christi*.

As Goodrich notes Justinian "is crowned and robed with a rod of office in his right hand while his left he points to scribes, notaries, and lawyers who are inscribing his law in a great book" [13: 151–153].

There is here a first important theoretical point to be made, whose philosophical scope can be understood later. The scene of the foundation of the juridical, originally taken into account in its aesthetic and ritual dimension even when considering the law as a phenomenon of writing, is part of a "scenic" vision of reality in which the world is a "universe of messages" [39: 220]. The "spectacle of the real", of the world, is a representation, the theater of a fiction, in which the world is constituted

as an Other that speaks, as a fictitious entity (in our legal language, e.g., the legal person, the State) that communicates. From the outset, this representation has a dual aspect: a classically legal one of delegation of power (the device of 'in the name of') instituting the juridical, a classically legal one of delegation of power (the device "in the name of") instituting the juridical and the other eminently aesthetic one of the play of emblematic images, of mythical scenes [39: 53] that are based on the space of the sacred, that is, of the representation of a divine place from which the gods communicate with men[3].

The historical analysis of the process of constituting the *Corpus Iuris Civilis* thus serves to show how "the aestheticization of writing is inherent in the phenomenon of the sacralization of a set of normative texts" [39: 343]. Implicit in the collection of laws in which the Roman legal conception culminates is an aesthetic trait that will replace the *Corpus Iuris* with the *Systema Iuris* through the Hobbesian image of Leviathan. The aesthetic component will become a purely dogmatic component, a system of abstract concepts, *scientia iuris* that is superimposed on the text, orienting its interpretation.

Legendre indicates the inaugural and mythical function assumed by Roman law in the following Western tradition. In this operation we can observe the consecration of a device that will maintain its influence in the conceiving law in the following epochs up to modernity and postmodernity: the position of the *Third Empty Place* of Reference. It is aesthetically and juridically configurable through the double meaning of the concept of representation (delegation of normative power and the play of institutive images of the human). Further Legendre notes how the technique of transposing textuality is a continuation of Greek oracular practices (*ta thesphata*), pointing out how the Roman Empire produced this institution of "sovereign oracular power", which then became "the juridical strength of the Western Church, a true doubling of the Empire"[27: 145].

The reference to oracular power confirms the grounding in the mythical absolute, proper to the interpretation of the sovereign, who is able to lay down laws and interpret them. In fact, the structure of the *Corpus Iuris Civilis*, distinguished in collection of laws (*Codex* and *Novellae*) and fragments such as the *Pandectae*, has an obvious hermeneutic implication: the distinction between two types of texts that can be traced back to two different legal functions. The "assemblage" of the Roman emperor-representative of God-legislator stipulates a double founding recognition: (a) of the Law as the logical principle of the juridical function, (b) of the imperator in order to humanize and aestheticize him, effectively enacting the normative discourse with reference to the divine foundation. This device leads, from a structural point of view, to the identification of two levels:

(1) the plane (mythical and divinized) of the foundation;
(2) the plane of the discourse (human and of power) that proceeds the concept of '*in the name of*' the foundation (in the name of God, in the name of the King, in the name of the People) on which the interpreter of the law operates (and in

[3] Legendre, following Le Bras, specifies the device of delegation of power leading from the Roman praetor to the medieval pope [39: 333, n.1].

> particular, still today, the judge, who issues sentences as the representative of the State "in the name of the People"). From this second plane proceeds the political theological and aesthetic legal nexus between the notion of *corpus (iuris)* and the symbolic value of the body as a source of law (of the King, the Pontiff, the Leviathan, the Dictator).

This is the structural legal aesthetic point that, according to Legendre, has not been fully perceived by Romanist scholars expunging tribonianisms according to the scientific criteria of modern textual criticism: the mythical value of this Reference and the structural significance of the establishment of a division of planes between the mythical texts and the interpreters. Where the science of interpretation (legal hermeneutics) plays the role of mediating between a supposed absolute (the foundation, the in the name of), and a casuistry (a theory of interpretation). Legal hermeneutics and legal aesthetics are thus united in the legal device put in place by Roman law at the moment of its concluding synthesis in the Justinian drafting.

As a dividing principle that socially binds and establishes two positions in the enunciation of law, Roman law then ideally stands as an inaugural law, that is, literally, connected to the science of augurs, as a discourse that supposes an omniscience, a divine Reference communicated in liturgical form, as an emblematic imperial position, a theological-political mediation between the divine and the human.

The second moment identified as central in the development of the cultural history of the West is the first revolution of the interpreter observable with the Gregorian Reformation that reorganizes the Church, at the beginning of the second Christian millennium.

Legendre, already in his doctoral dissertation in canon law, notes how the authority of the princeps is placed at the center of the theory of the sources of Roman law at the moment of the concluding synthesis, in the Justinian *Corpus Iuris Civilis*: with the reference to the emperor, the system finds its symbolic (aesthetic and hermeneutic) unity in its head. The emperor, in fact, has here the central role of founding and interpreting the laws: Justinian, fictitiously, is not only the author (*auctor*) of the laws, but he is their founder (*conditor*). The attribution of the *jus condendi* to the emperor "thus allows its holder to introduce new rules, to make new law, as well as to interpret the law already founded" [25: 53]. And it is precisely this double function that belongs, as a peculiar characteristic, to the emperor alone (*Solus princeps habet potestatem condendi leges et interpretandi*). Here lies the embryo of the complex evolution of Legendre's thesis, which draws all the implications inherent in identifying how the imperial position can be considered the mythical and sacred foundation of law, and how, consequently, the princeps could appear as the Lord of this law, the emblematic Representative of the divine.

According to Legendre the "royal and religious" trait ascribable to the Roman emperor can give an account of the maxim at the origin of the modern state. He specifies how the Latin expression *Princeps legibus solutus* can already be explained by referring to the founding position of the Emperor as Reference. From Justinian to Hobbes' Leviathan, from Roman law to legal positivism, it is possible to identify a line of development already well traced, as a series of steps intervened in the

"aesthetic" place of the mythical foundation of power and the discourse referred to it through the device of the in the name of as a legal iconic theology.

In Roman law understood as mythical knowledge, it is historically identified the position of the sovereign interpreter who occupies the position of guarantor and foundation of all legality, taken up by Hobbesian modernity and the absolutist conception of the State, but many centuries before Hobbes, by the medieval Church, in its opposition to the Emperor.

It is precisely on this passage and its relevance that we need to dwell in relation to Hobbes's political theology and the legal iconic theology and aesthetics that I propose: it is here that, through the notion of malleability of the Founding Reference, a (theological-iconic-legal) device is triggered that inserts the theory of the symbolic foundation of law within the normativity of the image (of the body of the Emperor, the Pontiff, the Sovereign).

We then see how Legendre specifies how the transition from Emperor to Pope indicates the structural process of the Malleability of Reference.

The rediscovery of the *Corpus Iuris Civilis* and the role of the Roman Emperor as a living *vox iuris* is historiographically to be linked, in Legendrian analysis, to the position of the Roman Pontiff. It constitutes the historical antecedent useful—at the time of the drafting of the *Decretum Gratiani* (about 1140) and later of the *Corpus Iuris Canonici* symmetrical to the Roman *Corpus*—to justify the position of mythical Reference that the Pontiff assigns himself starting from the first centuries of the second millennium. The historian notes how the Romanist theory of *jus condendi* justified pontifical dominion; the *Pope became "princeps"*. The work of Romanization in the Church cannot be understood without noting how in the twelfth and thirteenth centuries the Church, heir to the Roman Empire imitated its power of organization, making "the Pope its emperor" [25: 142].

The Church at the dawn of the second millennium reorganizes itself by making the Pope its Emperor: this passage of roles and functions in the mythical and sacred place of power provides a key moment for understanding the Western institutional dynamics of the entire second millennium. Legendre 'anticipates', projecting it to the beginning of the second millennium, the Schmitt's theory of the *successive stages of changing central domains* [58: 81], understood as an evolution of the theories of the three stages of Vico and Comte: "Great interpreters of human history, Vico and Comte, generalized this unique European occurrence into a common law of human development subsequently propagated in thousands of banal and vulgar formulations, such as the "law of three stages"-from the theological to the metaphysical, and from there to the scientific stage or positivism". [58: 82]. According to Schmitt, however, after the sixteenth century Europeans have moved in several stages from one central domain to another and everything that constitutes our cultural development is the result of such stages [58:82]. In the past four centuries the thought of the active *élites* which constituted the respective vanguards moved, according to Schmitt, around changing centers (of Reference). He describes the stages through which the European mind has moved as the various intellectual domains in which it has found the center of its immediate human subsistence: "There are four great, simple, secular stages corresponding to the four centuries and proceeding from the theological to the metaphysical domain, from there to the humanitarian-moral, and,

finally, to the economic domain" [58: 81–82]. At the end, he will then extend the reference to the technical as the central domain for the twentieth century as an evolution of the religious domain: "The twentieth century began as the age not only of technology but of a religious belief in technology. It is often called the age of technology" [58: 85].

It is interesting how Schmitt roots his reading, which locates the center of legal knowledge in another form of knowledge shared by elites, in Vico's historical theory of courses and recourses. It remains open to transcendence even when science and technology are the references. Legendre anticipates the historical root of this (legal-iconic) scheme at the beginning of the second millennium, making it a model that extends its explanatory scope to the entire history of Western culture. It is rooted in the pontifical revolution that initiated the process of drafting the *Corpus Iuris Canonici*, where the position of clerics begins the role of elites [35].

This is the mechanism of succession, of continuous fall and reconstitution, in the emblematic imperial position, placed in the sacred place of the foundation in whose name the jurist operates by reading and interpreting the law on a daily basis. It becomes susceptible to take on any content, up to the trademarks of contemporary multinationals who found their economic operations on an industrial religion [27, 52].[4]

Legendre provides an emblematic example of this juridical device [32] designed to illustrate the jurist's proper role in his own *dicere jus* in the name of the mythical foundation. He refers to the *Decretum Gratiani*, a collection of texts composed around 1140 in the wake of the eleventh-century Gregorian reform [3, 39]. The monk Gratian identifies canonical texts (to be included in the collection) and texts to be excluded (apocryphal texts), and classifies them according to a twofold criterion: origin (*origo*) and authority (*auctoritas*). He operates in the name of the Pope, the living Scripture. Heir to the position of the emperor in the Roman tradition, the pontiff fictitiously becomes the source of all law, ideally incorporating all legal writings into his breast ("*Omnia iura habet in scrinio pectoris sui*"). He assumes here the position already proper to the Roman emperor with regard to the legal texts as living Scripture, origin and foundation of all texts, *Corpus Iuris*. The pontiff acts in the position of Christ, in the name of Christ, as *vicarius Christi,* according to a "continuous" historical chain of descent from the first *vicarius*, Peter, appointed by Jesus Christ. Vicarius according to a chain of continuous descent, the pontiff does not lack the *origo* that places him in the genealogical position of *Pater legum*. As in Roman law, the texts chosen can therefore be canonized, that is, included in the collection, thanks to the fact that Gratian acts in the name of the pontiff. This pontifical position implies *auctoritas*, the authorial qualification, being *auctor*, that is, occupying the position that authenticates, that guarantees the truth of the texts themselves (as opposed to the texts that the pope, or those who work in his name, reject—the apocryphal texts). Fictitiously, in this hermeneutic device, it is the pope who composed

[4] Legendre also made a documentary dedicated to showing the concept; *Dominium Mundi, L'empire du Management* [38].

Fig. 5 From Leviathan to Dictator's bodies. A former version of this scheme is located in (17: 140)

the Acta annually published by the Holy See, which is therefore as if they came out of his chest: the metaphor of the *corpus* keeps here intact its aesthetic value (Fig. 2).

2 The Aesthetics of the Foundation in Modern Legal Science, between Hobbes and Vico, Schmitt and Kelsen

This mythical third place occupied by the Pope and made manipulable is precisely the sovereign place, the mythical place of power inherited from the Roman emperor, but also, thanks to the historical succession of processes of substitution, that occupied by the modern state. In this regard Legendre observes that the underlying theatrical dynamic of speaking *in the Name of* (of the Roman Senate in relation to the Empire, of Christ—in relation to the Church, of the people—in relation to modern democracies)—i.e. the recourse to the Reference legitimizing the staging of legal discourse—is still perfectly present in the fiction according to which the people of the nation become the authors of the Texts—through their elected representatives—when (at least in Italy) they are published in the Official Gazette. The Kelsenian basic norm itself fits into this structural logic as a transcendental device legitimizing the State, in the empty place previously occupied by the Emperor, the Pope and Hobbes' Leviathan. The emergence of the modern state as an autonomous normative source of law after the Middle Ages can be

Fig. 6 Antonio Vaccaro, Frontispiece of G.B. Vico "Scienza Nuova", 1744

seen within a logic of substitutions of the empty place of the foundation of power (Figs. 5, 6).

In this operation of Christianization and the use of a structure of legal reasoning in canon law already present in Roman law, one can thus observe a typical feature of the emergence of Western legal thought, characterized by the historical malleability of the Reference. The malleability of the empty place of the Third becomes a merely abstract reference. Progressively, there is a conceptualization of the foundation, in the transition from the papal reference to that of the modern legal system (through the reference to the Leviathan, which is still, precisely a body-machine and technically an Emblem).

Legal aesthetics identifies the succession of different contents that the Reference has shown, in the history of law following the *Decretum Gratiani*. Even the concept of State, in fact, is not exempt from this mechanism; taking into account the process of mythicization of Reason with regard to the moment of the emergence of the notion of State and culminating in the French Revolution, one can identify a structural continuity between the Revolution of the medieval interpreter—the position of an interpreter as a living *vox iuris*—and the role of the modern State.

Legendre connects the identified mechanism to legal modernity and its myths [15]: "the contribution of the Revolution of the interpreter consisted, from the point of view of legal repetition, in making the categories of the Romans' Civil Law totally abstract, in detaching the legal conceptual capital and its progressive enrichments of the imperial and pontifical conjuncture, in a word in making possible the technocratization of the normative system up to the use that has become ours nowadays, where we speak of Law as a techno-scientific regulation" (29: 254). This is the scope of the notion of secularization, which, particularly through the figures of Grotius and Pufendorf, detach the foundation from the reference to the divine (secularization) at the same time giving explicit reference to the aesthetic (the corpus), in the name of the new deity, the Goddess Reason (rationalization) and to the point of conceiving law as a rational *systema iuris*.

I have indicated elsewhere how it is possible to identify in Hobbes the third Corpus Iuris of Western history, a body no longer to be understood in a physical sense, but as an emblem made of men, the virtual image of the State [4, 18: 145–147, 13: 116–120] and how this image is still an aesthetic device operating in the communication techniques of corporations such as Fiat-Chrysler (now Stellantis) [19].

Here I intend to show how Schmitt's interpretation of Leviathan in the Hobbes' crystal helps us to understand how the aesthetics of the foundation is also present in modern law. Several chapters of legal iconic history are represented by Kelsen's pure theory of law –with the positivistic divinization of logic, of the norm and of science, already identified in Comte's thought and in deism, in which the goddess Reason replaced religion, up to the image placed by Vico on the title page of *Scienza Nuova*, the last emblem of the iconic-legal tradition that started from Alciato [1].

I refer to other contributions for an examination of different directions in legal iconic theology, which analyze the passage from the fictional body and the return of the physical body as a different form of the aesthetic foundation of the juridical, starting from the Schmittian theory of sovereignty, understood as a decision on the state of exception. In modern societies, the theme of the *corpus iuris*, of the symbolic foundation of the legal understood as a living emblem, returns in the body of twentieth-century dictators (from Mussolini to Hitler, from Stalin to Mao) and in their twenty-first-century offshoots (from Erdogan to Putin). According to a dynamic that helps to understand the ongoing processes related to media communication, advertising and the use of the body of VIP, who represent the new elites holding power [17, 22, 23].

Legendre's theory historically identifies the legal aesthetic foundation of law as a malleable and manipulable empty place, susceptible to being occupied, from age to age, by different figures of the founding Reference: the Emperor, the Pope, the State. Finally, Science, Market and Communication seem to constitute the latest version of the Reference, from the medieval revolution to the current process of globalization [33].

He shows, in the course of his work, how the dogmatic device of the malleable Reference can be communicated through ways that escape the sphere of the merely rational-logical, normally considered the proper language of modern law. Ways that instead reach the system of the founding figures, of the Emblems [14, 31: 132, 162, 177]. They have the function of "throwing in"—to include within a group under

the aegis of a symbol, as the etymology of the verb *emballo* indicates—of leading the subject to the mechanism of identification with power through a representative emblematic image (precisely the Pope, the Emperor, the Flag, etc.).

Moving from such an aesthetic point of view there is a continuity between the emblematic representations of the Pope and the Emperor and contemporary one. The figures of the fictional foundation today placed in a third and mythical position in the digital society are, after the State, Market, Science-Technology or Communication, concluding a millennial process of evolution [34, 38]. Corporate brands are the new emblems. The global market system refers to the same mechanism of psychological identification with the empty place of the malleable foundation that was to be seen with the Papal authority or the State: it is still at work today, but in reference to a fictional entity, the "market". Corporate brands today function as empty emblems that convey the founding Reference, the sovereign place (even if it is a "sovereignty" that is directed, as it were, toward the consumer, not the citizen). Other icons of communication are also identifiable as vehicles of the new socially recognized forms of the sacred (think of models for the fashion system, endowed with an idealized representation, or the same public role played by the effigy of a pope like John Paul II in the media). This does not mean, of course, to place all emblems on the same level, but to highlight their common anthropological, social, and legal functioning and the role they play in contemporary societies [30].

The normativity does not only pass through the ways of the text, but also through a kind of writing in images, representative of the 'in the name of' that refers to the empty place of the foundation. This is the field studied by legal aesthetics. Law, considered from this perspective, cannot be defined as knowledge of an exclusively rational-argumentative nature, but, on the contrary, is a form of normative communication that is also based on a circuit of networks of symbols which use the language of the signifier: the sphere of the image and the iconic capable of influencing the irrational part of the human being (for example, the advertising system) [19, 24, 26].

Moving from an aesthetic point of view, the text-image dichotomy can thus be superimposed on the modern dichotomy between rational and irrational. Reason and passion can be connected to the Hobbesian distinction between hierarchical command from person to person (in Schmitt's scheme, Fig. 3, point 4: "Potestas directa, non indirecta") and counsel, based on the idea that command refers to obedience, counsel on the other hand acts on the passions moved through rhetorical persuasion. After all, it is precisely the opposition between reason and rhetoric that constitutes the main difference between Descartes' method and Vico's method: the former denying rhetoric any role in rational knowledge, the latter reintroducing rhetorical knowledge as the defining feature of law. This historical reconstruction, which cannot be pursued further here, makes it clear how it is possible, from an aesthetic point of view, to identify a link between rationality and text, obedience and command, on the one hand, and irrationality and image, passion and counsel, on the other [17, 19, 22].

The emblematic images placed in the empty fictional place of thirdness and yet malleable, with which men and societies entertain a commerce, shows the essence of the "dogmatic" device of Legendre's theory. And it is precisely this last element

that leads to identify the point of the structural division into two kinds of men understood as the specific organizational structure of the history of the West, from the Pontifical Revolution to Management.

According to Legendre in fact "every legal system is guaranteed to be what it is by a founding supposition, whose explicit content may vary for social and political reasons, but which draws its strength from being in some way a general presupposition or, one might say, an axiom on which particular axioms would depend" [28: 240].

Such a general axiom is a general normative statement that corresponds to myth, that is, it is an element placed outside the possibility of criticism. It is subtracted from rational criticism, placed therefore in the position of pure fiction, of mythological Reference, of empty founding place. Historically, God, the People, Science, and today the Market, as already noted, are examples of concepts-embodiments that, showing the origin and foundation of power, have occupied, from time to time, this empty and malleable place that is the Reference. In my reading, Legendre reads in an aesthetic key the Schmittian theory of founding centers of reference, the successive stages of changing central domains [58: 81].

Thus, contrary to the generalised idea of a radical separation between an obscure and irrational legal "premodernity" (the Middle Ages) and an enlightened, rational and positivistic legal "modernity", which would find in the idea of the State the place of maturation of legal science, Legendre believed that there is a continuity between the medieval revolution of the interpreter and the modernity of States: the modern State is only one of the versions, certainly not the last, that have occupied the mythical place of the founding Reference [29: 114].

Moving from this perspective, the different successive versions of the Reference in the West function, at the emblematic level of the social third [46], on the basis of the same principle: the distinction of two hierarchically differentiated classes of interpreters. Thus, in the various historical periods, the distinctions between clerics and laymen [39], between jurists and citizens, or between scientists (or technicians) and laymen, or even between management and consumers are all expressions of the same underlying organizational logic. It goes back to the medieval canonical distinction between clerics and laymen, closely linked to the theory of historical succession within the same structural model of relationship. Legendre formulates the definition of a dogmatic system, which he posits as applicable to all the different spheres mentioned (church, state, science, market) as an organization in planes of interpreter positions [32: 71].

This distinction of interpretive levels, just like the malleability of the historical reference, can traverse different epochs: the system of management (or advertising) is a system that conveys and reproduces in secularized forms (in the sense of referring to a different mythical foundation) the liturgical function of rituality. It divides society into two classes. The historical origin of this structure of division of mankind still in force is founded by Legendre in canon law, which distinguishes between two kinds of Christians ("*Duo sunt genera christianorum*" reports the Decree of Gratian): clerics and laity.

The staging of legal spaces and the consequent distinction of types of interpreters observable in Legendre's theory is in first place the sovereign Reference, God, followed by the clerics, insofar as they are dedicated to God, and finally the layman.

This is where the foundation of an antecedent of modern advertising communication is laid,and liturgical discourse, in the sense of being addressed to the *laos*, the liturgical people, and not to the *demos*, that is, the people in their political functions. The discourse of pure legitimacy becomes public, ritualized, that is, communicated in liturgical form [27: 62], belonging to the sphere of the non-rational and the sacral. Liturgical then means dogmatically communicated in ritual form, addressed to the people liturgically, ritually, in the same sense in which the media play, in our "rational" and supposedly "secularized" societies, the role of communication and liturgical or ritual presentation of the subjects of power legitimizing them [27: 63, 37] before the mass-media liturgical people. The *laos* traditionally overlaps with the *demos*, the people gathered in electoral and deliberative function, with different, but equally essential functions: as Legendre notes, "dogmatic communication, is nothing more than putting to work a system of writings of truth" [26: 22], to produce a fictional truth capable of imposing itself communicatively.

The first aesthetic legal model identified can therefore be superimposed on a second theological juridical one, aimed at showing how the integration between Schmitt's political theology and Legendrian dogmatic anthropology allows Kelsen's pure theory to be read in an aesthetic sense, logically placing the basic norm on the same level of the foundation open to transcendence that Schmitt identifies in his Hobbes crystal [59: 122]. The conflict between Protestants and Catholics in relation to the interpretation of religious truth in the name of which power is exercised points in two different directions. On the one hand it raises the question concerning the replacement of the reference to truth with the reference to authority, indicated in point three of Hobbes' crystal, *auctoritas non veritas facit legem*, a motto placed at the origin of the conception of the absolute state and also of legal positivism (Fig. 3). The Schmittian reading of the legal in Hobbes then emphasizes the central role of direct command (opposed to an indirect form of command, see Fig. 3, point 4: "potestas directa, not indirecta") where it is possible to fully represent the community through acclamation as a form of liturgical legitimation of power: whose contemporary similar form is public opinion [60: 272–274,[5] 41, 67: 103–118, 47].

[5] "The genuinely assembled people are first a people, and only the genuinely assembled people can do that which pertains distinctly to the activity of this people. They can acclaim in that they express their consent or disapproval by a simple calling out, calling higher or lower, celebrating a leader or a suggestion, honoring the king or some other person, or denying the acclamation by silence or complaining. Even in a monarchy, the people inevitably appear in this activity, so long as the monarchy is a vibrant state system generally. When indeed only the people are actually assembled for whatever purpose, to the extent that it does not only appear as an organized interest group, for example, during street demonstrations and public festivals, in theaters, on the running track, or in the stadium, this people engaged in acclamation is present, and it is, at least potentially, a political entity. Often enough, experience has confirmed that every popular assembly, even one that initially appears nonpolitical, intrinsically contains unexpected political possibilities.

Only through such simple and elementary appearances may the essential concept of the public, which, though rather obscure, is essential for all political life, especially for modern democracy, again secure for itself its authority and recognize the actual problem of modern democracy. For genuine popular assemblies and acclamations are entirely unknown to the constitutional regime of contemporary bourgeois democracy. The right of assembly still appears as a bourgeois liberty right that is guaranteed [60: 272–273].

Public opinion is the modern type of acclamation. It is perhaps a diffuse type, and its problem is resolved neither sociologically nor [60:247] in terms of public law. However, its essence and political

On the other hand, in the Hobbesian covenant direct power provides security and peace, it realizes order and protection, it can satisfy material needs.

Hobbes's crystal scheme shows its linkages to legal aesthetics. The openness to transcendence, the absence of reference [9: 802, 50: 206], which Schmitt links to various religious, philosophical, or political ideals (Allah is great; liberty, equality, fraternity; man is good; from each according to his ability, to each according to his needs) can also be extended to the Kelsenian logical version of the foundation of the legal, albeit limited to its aesthetic location (Fig. 3). Without entering into the debate between legitimacy and legality [73] we do not intend to deny the value of the hierarchical theory of the sources of law for contemporary legal science,[6] or equating it to the Hobbesian-Schmittian notion of direct command.

From the aesthetic point of view, however, logical syllogism of the basic norm is placed exactly on the level of other values (expressed in the fundamental propositions) founding the legal system, with the difference that the knowledge of logic, for Kelsen, is placed on the same level as the proposition 'Jesus is the Christ' in Hobbes' crystal. As it were, Kelsen, in trying to solve the problem of why norms and the legal system must be obeyed, placed logic on the very level of the symbolic and iconic foundation of the legal [18]. Alongside his contribution to legal science through the formalization of the system of delegation and the hierarchy of norms, his reference to the presupposed norm, to the syllogism founding the existing constitution can be considered,[7] from the point of view of legal aesthetics, within the historical scheme as one of the relevant episodes.

Footnote 5 (continued)
significance lie in the fact that it can be understood as acclamation. There is no democracy and no state without public opinion, as there is no state without acclamation. Public opinion arises and exists in an "unorganized" form. Precisely like acclamation, it would be deprived of its nature if it became a type of official function. This is not to say that it arises in a secret manner out of nothing. It is influenced and even made by parties or groups. Nevertheless, that can never be recognized legally and made official, and, in some sense, it remains uncontrolled. In every democracy, there are parties, speakers, and demagogues, from the *protatai* of the Athenians up to the bosses in American democracy. Moreover, there are the press, film, and other methods of psycho-technical handling of great masses of people. All that escapes a comprehensive set of norms [60: 275].

[6] I mean the delegation of normative power was conceived by Kelsen as a mechanism of hierarchical and undirect delegation: as Celano notes where N stands for norm and A for authority, the norm N3 is valid only if it has been imposed by a legitimate authority belonging to the system (A3); A3 in turn belongs to the system only if the particular function of enacting the given norm (N3) from a superior norm (N2) can be attributed to it, from which A3, so to speak, derives. N2, then, is also a norm produced by means of an authority at a higher level (A2) which, as a result, delegates its normative production to A3 through N2. It is possible represent the hierarchical structure of the delegation of power by means of a pyramidal figure, an isosceles triangle where the basic norm is placed [8, 18: 147, 44, 45].

[7] "In the normative syllogism leading to the foundation of the validity of a legal order, the major premise is the ought-sentence which states the basic norm: 'One ought to behave according to the actually established and effective constitution"; the minor premise is the is-sentence which states the facts: "The constitution is actually established and effective; and the conclusion is the ought-sentence: "One ought to behave according to the legal order, that is, the legal order is valid" [45: 212].

It seems then possible to understand, after this analysis, how it is possible to continue to develop the legal aesthetic model that comes from Schmitt's political theology and Legendre's dogmatic anthropology moving from the question of who, today, in the current system of knowledge, occupies the place of the cleric [32, 36]. That is, to which discipline the predominant elite in our societies belongs, within the aesthetic-legal framework in which technology is immersed. The image of the robot as another *corpus iuris* [23, 24], the normative role of big data and social networks continue to move within the legal theological scheme, providing a first configuration of the field of study of legal aesthetics.

Remaining within the topic of the representation of *Corpus Iuris* in the history of Western law, without delving into its evolution in contemporary post-totalitarian societies [16, 52], the scheme, which moves on from (Fig. 2), and its ideal extension, referring to the transition from the physical bodies of the emperor and the pontiff to the fictional body of Leviathan, could then have the following form:

The fictional body of Hobbes' Leviathan ideally continues in the 'logical' depiction of the foundation that Kelen's 'basic norm' locates in the thought of the syllogism of the constitution operated by each man in his own mind. The depiction of the delegation of power that is operated by the inclusion of the subjects in the body of the sovereign is replaced by the Kelsenian 'naturalist' idea that each man has thought the basic norm (or the syllogism that grounds the necessity to obey the existing constitution) in the moment in which he has asked himself the question why obey the law.

The return to a real '*corpus iuris*' in the totalitarianisms of the twentieth century is explained by the Hobbesian theory of direct command as read by Schmitt, who re-proposes acclamation as a form of delegation of the crowd to the leader as the source of (absolute) power.

In this sense, the emblem with which Vico opens his theory of the law of nations ".

"Principles of New Science around the common nature of nations" represents a real alternative to the image of Hobbes' Leviathan. In it we find a conception of pre-modern legal aesthetics that leads to reopen, today, the link between legal aesthetics and rhetorical methodology in law.

3 The Frontispiece of the New Science and the Rhetorical Configuration of Legal Aesthetics

Vico introduced the 'allegorical painting', designed by Antonio Vaccaro under the supervision of the same Vico and engraved by Antonio Baldi, in the second edition of *Scienza Nuova*, in 1730, in the place of a literary Novel of a hundred pages, which was lost to us due to a controversy with a printer. This suggests that it was a somewhat baroque habit, against the letter of the Vico text, which explicitly indicates, in the Explanation of the painting proposed on the title page maintained in the third edition of 1744, which is used for the Introduction of the Work, that the Painting "may serve to give the reader some conception of this work before he reads it, and,

with such aid as imagination may afford, to call it back to mind after he has read it," [72: 785, 21; en. trans. 3].

In Vico's own words, the simple vision of the image would have the function of conceiving the idea of the work before having read it and, later, of remembering it, but not in a simply mnemotechnical way, but with the help of imagination, thus assigning to the image its own vitality and not merely a summary which becomes possible after reading. Vico's suggested use of this image would therefore be that of a first "holistic vision" of the text that would imprint itself on the minds.

Without being able to enter into a true and proper explanation of the Painting, and immediately leaping to the conclusion of the explanation, once again to use Vico's words, "to state the idea of the book in the briefest summary, the entire engraving represents the three worlds in the order in which the human minds of the gentiles have been raised from earth to heaven. All the hieroglyphs visible on the ground denote the world of nations to which men applied themselves before anything else. The globe in the middle represents the world of nature which the physicists later observed. The hieroglyphs above signify the world of minds and of God which the metaphysicians finally contemplated". [72: 815, en. Trans. 23].

Among the many commentators on the pages of explication that Vico devotes to the *Dipintura*, Paci acknowledges that the idea of the work could be called the plastic and musical overture to the *Scienza Nuova*. The 'allegorical frontispiece' drawn by Vaccaro under Vico's direction appears to him "truly a mirror of Vico's mental structure" [53: 185]. He specifies that the value of the image is not aesthetic with regard to the form of the engraving's display, but mythical and symbolic.

What each reader of this article who is not a previous reader of Vico could notice in the meantime is that Vico's final explanation (the identification of the three worlds of nations, nature, mind, and God) is probably not exactly what went through one's mind at first. To our gaze, as postmodern baroque image devourers immersed in the contemporary society of banal images and social networks, this image is not at all clear; at least as far as the depiction of the world of nations in the hieroglyphics placed under the altar, at the feet of Homer, is concerned. Something of the reference to the world of nature and the world of mind and God will probably have been somehow intuited, without, however, understanding the philosophical meaning and the global sense of the refractions of the rays between the figures of the characters (God, Metaphysics, Homer); although a generic radiating of light would be recognizable for both the Platonists, and the Thomists, and even for the Enlightenment and the Romantics, but probably not in the philosophical sense concerning the link between *verum factum* [70] and civil Providence [49, 63]. How, then, should we evaluate Vico's statement on the role, in some way revelatory and eternal, of the frontispiece image? It is a question of understanding the sense, or non-sense, of this singular and provocative assertion.

If we observe the image more carefully, we can notice that the refraction of the ray of light starts from the divine symbol of Providence to pass in the chest of Metaphysics, from where it refracts on the shoulders of Homer.

Having therefore assigned a name to the three figures (God or Providence, Metaphysics placed in equilibrium on the globe, Homer in front of the symbols of the nations scattered and dispersed on the earth), we can suggest an interpretation,

which will remain the only explanation of the image in the article. Papini, in his valuable book dedicated to the *Dipintura,* provides a reading of Vico's thought, observing how the ray departing from the divine eye is reflected on the convex jewel that adorns the heart of Metaphysics to symbolize the purity of the metaphysical heart unable to deny divine Providence: "Between Metaphysics that scrutinizes the divine eye and the latter that radiates a light on the mirroring jewel of the former, a complex symbology of the look: a sort of reciprocity, whereby the divine ray, which centers the breast of the woman with the winged temples, gives the latter the strength to look at him and to charge herself with his image; at the same time, it is the fixed gaze of Metaphysics that seems to arouse that visualization of Providence, which is translated into the luminous ray which, striking Homer, gives form and meaning to the emblematic moments of the nascent human civilization. We will see that this reciprocation or conversion is precisely the keystone of Vico's way of philosophizing, which finds its most famous statement in the methodological principle of *verum et factum convertuntur*. There is a superior reciprocal function that allows the fact to become true and the true to become factualized: this high capacity to project effectivity into ideality and vice versa is the very essence of metaphysical science, which in Vichian terms means the understanding of human temporality in the light of eternal truth" [54: 68].

These few lines already allow us to understand, with sufficient approximation, the meaning of Vico's initial statement regarding the image, related to his book, and even to his entire thought. Paci synthesizes in another way the meaning of the Painting, taking up again in some way the reciprocity, underlining however the novelty of its "moving from below":

"The light of God radiates on the chest of Metaphysics and from this is reflected in the poetic wisdom of Homer, illuminating all the hieroglyphics of human history. This is the enunciation of the theme. The structure of Vico's thought is such that it can only start from myth. While in the '*Dipintura*' and in the 'explanation' God is indicated as the beginning, in reality Vico begins from nature, from the 'thing in itself active', from existence. Until now, says Vico, one has seen Providence in natural things, and not in civil things… in reality that globe in unstable equilibrium on the altar really does have a strange effect, all the more so since it is moved towards darkness and death symbolized by the cinerary urn… That globe sustained only by the Providence of nature would evidently fall. It is saved by civil Providence, that is, history, since, in history, as we have seen, nature enters as the active power of primitives and political force… The true and only Providence is civil and is based on the essence "most proper to men, whose nature has this principal property: to be sociable" [53: 185–186].

If the Platonic ideas seen in God are, in Spinozian terms, modes of our human mind, "Vico differs from Spinoza in that the Vichian ideas are modes of the human mind. In fact, the ray of light does not descend from God but goes from Homer, namely from poetic wisdom, from myth, to Metaphysics and from metaphysics to God…whether Vico denounces it or not, the composition of his work reveals that Vico's God fulfills a methodological function, is the reunifying principle of forms" [53: 187]: ultimately, of the symbols of the nations dispersed at the feet of Homer, through his metaphysically inspired poetic wisdom.

In the final part of Vico's Explanation, we see that *Scienza Nuova* is the synthesis of the obscurity of historical matter and the divine categories elicited by God. Paci, in translating Vico's device into philosophical terms contemporary to him, thus specifies how the thing in itself, understood as nature in activity, is expressed in the phenomenon, a phenomenon that for Vico must be understood as the myth, God acting as a methodological principle.

In an examination of the very reasons for Vico's writing of *Scienza Nuova*, Sanna specifies how Vico intended to overthrow with the book the systems of natural law of the people presented by Hobbes, Pufendorf, Selden and Grotius: systems that do not take into account Divine Providence. Vico's intention is to configure a natural law of peoples and nations, inspired by Roman law, showing how the doctrine of the natural law of peoples conforms to the Catholic doctrine of grace [57: 128, 129].

This simple examination, exemplifying different readings, indicates how it is possible to relate to Vico from one's own theoretical perspective [7]. Vico conceives of a game that envelops the reader iconically suspended timelessly upon entering, but already within, the *Scienza Nuova*. Each reader's mind lingers on the vision of the image, trying to fully understand the aesthetic-legal sense of this unusual beginning to a text, in its deliberately presenting logical paradoxes and difficulties from the very beginning, as if to warn and discourage the unwary reader.

From the perspective of legal aesthetics, it is impossible not to notice how much the incipit of the work shows the structure of the Baroque evolution of an emblem. We are dealing with a fusion of image and text that is quite particular and certainly not reducible to the contemporary conception of positivist, neo-constitutionalist, realist, or even hermeneutic modernity that is typical of jurists with regard to the image: a conception that considers law as phenomena mediated by the text—and certainly not by the image—in arriving at the facts. Vico stands outside of this reductionism, the beginning of his explanation is as arcane and obscure as can be imagined for a Cartesian mind.

With respect to this oddity of beginning a work, it is then necessary to take into account the hermeneutic point just specified.

According to Papini, the gaze should not refer to a memory understood as a "passive registration of a set of notions". Memory illuminated by imagination is placed in a dimension that rhetorically stands beyond time, assigning some meaning to the idea of 'conceiving the idea of the work before reading it' [54: 108]. Papini's thesis is that the reciprocal gazes between God and Metaphysics—in the preceding quotation ascribed to the same capacity for conversion of *verum* into *factum*, the great idea around which Vico's thought revolves throughout his work [2]—constitutes the timeless representation, insofar as it is iconic, of the circularity within a mythical image.

The relationship between the eye of God and the pure heart of Metaphysics (portrayed as a winged woman) and the ray that she emits reverberates in Homer's poetic wisdom indicate precisely the circular function of Providence. Beyond Papini, the Painting is a dogmatic image and, as such dogmatic, normative and timeless. Providence' is precisely the circular function, which transforms the moment of apparent senselessness or inhumanity (the possibility of the world balanced on the altar to fall into the Dark Forest) into an oikonomic scheme, ''reasoned civil theology of

divine Providence'. Papini notes: "It is evident that such a view cannot be tested in the usual sense of the term. It is a matter of a 'heroic' exploration of the mind… so the obtuseness of those who do not come to see the superior Providence, is but a moment, through which Providence itself passes" [54: 112].

Thus, we understand the apparent logical paradox posed by Vico [20, 21, 63]. In the face of the Painting, the explanations offered by third parties to those who insist on remaining unaware are not valid. It speaks only to those who decide, heroically, to already know its meaning. Like a Sphinx, what it presents are enigmas: "There is nothing to do for those who do not want to 'see': metaphysics is not an ostensive or demonstrative science" [54: 112].

Papini then commendably shows with an impressive chapter dedicated to the enterprises, emblems, hieroglyphics—moving from Giovio, up to Ripa and Tesauro and Kircher—how Vico's technique is indebted to that history of enterprises, emblems and hieroglyphics. What Papini was unable to see was the properly normative meaning of Vico's proceeding, linked to the normativity of the image. A notion to be placed within legal theory and not outside it, as an oddity: this is what the emerging field of Visual Legal Studies and the European Law and Humanities movement allow us to grasp today [55, 62–64, 68].

Papini finds in Vico's images the circularity of the gaze; the mind discerns in ideas what its eidetic capacity projects and constructs there. It enlightens ideas as ideas enlighten the mind; it is precisely from this reciprocity or conversion that we need to move. A point on which Vico "must have meditated profoundly", Papini observes, "to the point that it seems to us that one of the fundamental matrices of *verum ipsum factum* must reside precisely there" (54: 302). Heir to the humanistic and Platonizing tradition of Italian humanism, a connoisseur as a rhetorician of the literature on feats, emblems, hieroglyphics, and brocards, connected to the classically legal theme of the divination of augurs, Vico [70] reacts to the process underway in his time of abandoning that tradition. Criticizing Cartesian rationalism, he denies an approach to images of a technical or mnemotechnical, functional nature, and projects them into a dimension of 'discovery of the true'. Images, as residues of certain forms of civilization, have the function, in front of the reflecting mind, of "tracing the way for an itinerary that gives a resolving and satisfying sense to the present/past relationship, to the great cycles of transformation that language and the human mind have gone through, passing from one epoch to another" [54: 303]. Studying images means realizing that their language is incommensurable with the verbal one, placed at the antipodes of both potential univocality, logicality and non-contradictory: "Even the sixteenth-century treatises on images show that the possible ways of reading and deciphering a hieroglyph, or even an enterprise (which also has, in the motto, an albeit mutilated verbal expression), are practically infinite, and even potentially contradictory. This does not detract from the poignancy of the image, but rather increases its level of depth and wisdom" [54: 303].

In 1984 Papini could not have imagined that, starting with the progressive development of the law and literature movement in the field of legal thought, in Europe and in America, and the contextual iconic turn in philosophy, the recovery of the tradition of normative images in the field of legal knowledge would begin. Today it allows us to provide a complementary reading to the one offered by Papini, starting

from the recognition of the juridical character of literature on images, not by chance originating from the famous text by Alciato [1]. Legendre begins each of the *Leçons* by moving from an image which is placed on the cover of the book. This method is certainly very close to that inaugurated by Vico in his *Scienza Nuova*, in which the image appears linked to the philosophical content of the text.

The closest antecedent of this technique in which text and image are composed philosophically and iconically is the pegma of Coustau [12], which is portrayed as the mature fruit of the emblematic legal tradition, just as the image and the motto are joined by a comment in prose, of a philosophical nature. Legendre states that the image is joined to the dogma; this is a form in which the dogma appears. The statement must be interpreted, but it can certainly be helpful in continuing Papini's effort to understand the meaning of the Painting.

If law is a textual phenomenon, the aforementioned iconic turn, ever more forcefully, asserts that justice "must be seen to be done" [12: 2]. The challenge of the aesthetics of modern justice is to realize that justice must be visible and represented in order to be believed and followed: law has always lived on visibility, once the metaphysical sense of the concept of justice was lost, reduced to a mere consequence of the textuality of the law.

It is a question of recovering the visibility of justice while retaining a realistic vision, this is the goal that the topics, thought and iconography of Vico, the tradition of contemporary Law and Humanities after the iconic turn have fully recovered. The revival of the rhetorical method in legal reasoning after Perelman recovers an element already configured by Vico, concerning the relevance of persuasion and the centrality of image in the formation of human thought [10, 11, 51, 56, 71].

We need to understand the connection between the dogmatic and the iconic, which Papini could not have grasped. 'Dogmatic', for Legendre, is not the commonly used sense of 'traditional', 'authoritarian' or 'anti-democratic' to which the communicative or the rational (à la Habermas) should be opposed, nor is it in the traditional sense of Pandectic legal dogmatics. By "dogmatic" Legendre means that specific device, linked to the statute of the image and the text, common to the various historical epochs, from antiquity to the postmodernity of globalization. Dogmatic is the construction of an accredited truth through its staging, at the antipodes of a scientific demonstration [36: 33], which "supposes the construction of human identity as a scene, at once interior and socialized by culture" [36: 352]. It is assumed as myth, it is sacralized, placed out of rational discussion, reaching a dogmatic status, in the precise sense, that helps to understand the enigma of the image of the Painting. Even science, in modernity, enjoys this dogmatic status in public debate. Vico's attempt [49, 61] is to reformulate the classical knowledge of the rhetorical tradition in law in the terms of a New Science, capable of opposing the Cartesian model. Science is also an institution, and does not appear 'pure' at all, but conditioned by social and political dynamics, even though it is the only shareable form of common truth in modernity. According to Legendre, institutions are made, so to speak, of the same stuff as the self: they too occur, they can exist, insofar as we collectively access the mythical place of fiction, which transits through the dogmatic plane of the image. Dogmatic is "the dimension of evidence sustained by fiction" (34: 64), the place from which institutions and subjects descend aesthetically. Simplifying the

discourse, that I am me, that my body is my body is evidence that I dogmatically assume, i.e., take for granted. We are thinking here with Legendre Vico's criticism to Descartes' cogito. It also passes through a theory of the specific image and consequently requires a New Science, which recovers the plane of the topical, of the verisimilar, aimed at devaluing rhetorical knowledge, opposing Cartesian reductionism. To understand the aesthetic and institutional functioning of the dogmatic, it is sufficient to recall how something like a "legal person", a joint stock company (whose members act according to the scheme of the mandate in the name and on behalf of the company), is considered real. The jurists have taken centuries, millennia to arrive at this construction, the legal person, which today, for us, is obvious, taken for granted, real: first through the elaboration of the Roman technique of the *fictio legis*, then the canonists through the elaboration of the notion of *universitas*, up to the modern elaboration of the trust and of the commercial society [42]. The scope of the distinction between the real and the fictional is at once referable to the dimension of the subject and the institutions: as Legendre notes the as if, the dimension of fiction has an anthropological scope, it implies a 'dematerialization of the materiality of the body and the world' (34: 64). In this sense 'the image is the dogma', it is normative insofar as it is the fictional foundation of a thing held for self-evident and undiscussed. The image is fiction because it represents an absence: the image makes present in representation what is absent [40: 23]. The text represents the absence of the author of the writing. The enigmatic, Sphinx-like nature of the image of the Painting can thus be understood within the history of the legal tradition. Representation, as already noted, is not only a legal concept that refers to the delegation of power from one subject to another who operates in the name of the first, it refers at the same time to the mental functioning that we call the play of images, but also to the theatricalization inseparable from the dematerialization of materiality made by the talking animal [40: 25]. That is, it refers back to the complexity of the question posed by human self-identification.

The recovery of the medieval tradition of legal emblematics, thus, from Alciato onwards, allows to show how the content of the law has always been conveyed through emblematic images to which a sacred and founding value is assigned. Vico does nothing but modify this tradition by inserting himself in it, with his theory of *verum factum* and of civil Providence as a form of justice. Through the sacredness of the image and of the aesthetic, placed and maintained within the legal tradition, classicism and the Middle Ages have been able to hand down to western democracies, alongside the rational circuit that presides over the political and legal dimension: a channel of government of the human, parallel and subterranean, that modernity itself had considered expelling, confining it to the sphere of the irrational and mythological. This aesthetic, ritual and sacral dimension has survived, continuing to reign precisely in today's societies dominated by publication and communication. If no society has ever governed itself without the help of rituals and nomograms (songs, music, dances, literary and theatrical works), this indicates that next to the demos, the people gathered in liturgical function, there is always necessarily the *laos*, the people gathered in liturgical and ritual function. This is the same architecture of the Athenian polis, in which the forum and the market are unthinkable without the theater and the temple, and each place has its own precise function.

Going backwards, the phenomenon of the cult of dictators in utilitarian states, the Freudian analysis of crowd phenomena that legitimize the leader, the procedures of acclamation, are areas that can help us understand how the image, linked to the cult of personality, has always been present in the legal experience as a factor of legitimization of power. We are outside the proper modern legal experience, characterized by precise procedural and then constitutional guarantees and by a theory of legal sources almost exclusively textual (written norms). In other words, the prevailing opinion tends to think that Kelsen's formalization of the theory of sources, and the consequent delimitation of the legal system to norms validly posed according to the model of the "pyramid"—the hierarchy of sources—has in fact confined outside of law those same phenomena just described, rejecting them in politics, morals or marketing: in any case outside the rational purity of legal reasoning, characterized by the adoption of written norms, of a real "logical-rational" legal language, scientifically controllable from a linguistic point of view. Those behaviors that in the past were considered internal to the legal phenomenon have been pushed back, through the progress of twentieth-century legal science, outside the "scientific" knowledge of law: to flow into sociological and cultural spheres where they continue to do damage (political, psychological, religious, moral phenomena or even those pertaining to the sphere of the market and the commercialization of products), leaving, however, the "pure" sphere of law unscathed. In conclusion, it would be inconceivable to conceive of legal phenomena in which the image shows its own normativity; these would be phenomena other than law, simply to be stigmatized with severity. The foundation of the legal, even if linked in the past to the founding image of the legal system in a *Corpus Iuris*, would become, with Kelsen's theory of the basic norm the object of rational thought, dominated wherever possible by the rules of formal logic. Jurists, from the height of their Pandectic rational dogmatics, could therefore afford, so to speak, to look down on these popular phenomena of manipulation and suggestion, the images and even Vico's philosophy, coming from a sphere dominated by other logics. To the personal foundation of personal legitimation (the Roman emperor, the medieval Pontiff, the King of the absolute state)—and consequently to the celebratory and foundational use of their image—the advent of modern science and Enlightenment rationality would have substituted the authority of reason and logic (from image to logic). There would remain only a decorative and argumentative space, that of legal rhetoric, in which echoes of the previous culture would be present, to be considered, however, of minor importance and not able to affect the basic conceptual scheme. The theory of argumentation, relevant to legal discourse, would also be inspired by logical-rational criteria, maintaining only a reduced space aimed at obtaining the persuasion of the legal actor (be it the party in the trial, the judge, or the public decision-maker and interpreter). When Norberto Bobbio acutely began to introduce Perelman's rhetoric into the Italian legal debate, he did so by exactly following this model, inspired by the idea that the domain of rhetoric began, so to speak, where the logical one stopped, without grasping the topical scope of Vico's teaching, despite his studies on jurisprudence.

In reality, this reading appears superficial and conditioned by the emergence of a merely positivist conception of law, when not by wishful thinking. In particular, the theoretical presupposition on which one can build this way of understanding the

problem of the normativity of the image in such a reductive sense is in fact Hobbesian theory and its way of reading the problem of the foundation of law. A theme that Vico seeks to reintroduce, opening a different path through Providence, and not yet traveled, towards the constitution of a philosophical jurisprudence (Vico, 1720).

The image that Vico places as the frontispiece of the *Scienza Nuova* represents an iconic synthesis of his entire work, and depicts his vision, realistic but at the same time providential, of justice. It represents the two movements described in the work: "the one from above to below, from God to metaphysics, to the history of the Gentile nations, and the other contrary, from the *ingens sylva* to God, as one and the same movement" [74: 14], The problem Vico posed by configuring the unity/identity of the two movements, Vitiello notes, is arduous: it involves the logical problem of "understanding the totality, as a totality, in the part" [74: 22], a conundrum of which the *Dipintura* is a depiction offered primarily to the reader. Valagussa takes up some of Vitiello's and Papini's formulations, arguing for the archetypal and transcendental character of the role of Providence in the *Scienza Nuova*: Vico is already describing the nature of the transcendental, but according to different nuances with respect to the Kantian and idealist approach: the figure of Providence embodies a hypothesis capable of being valid for all possible worlds [69]. This reading of the image leads Vico's position back to the aesthetic legal scheme, showing a possible alternative declination of law to the Hobbesian one.

The reference to the image of Leonardo's *The Explosion of a Mountain* recalled by Bredekamp can perhaps give form and iconic value to the very Vichian principle of *verum/factum*, understood as an internal movement of history, insofar as it is internal to the very image constructed by its author. According to Bredekamp's theory of the intrinsic iconic act [5], the central problem with Leonardo's iconic theory is that representations of a powerful nature, whether interior or exterior, do not aim at mimesis as a perfect reproduction of nature, but at a true *creatio*: "drawings like Leonardo's explosions of billows emerge from the imagination, but once seen they never leave you… and can trigger an affective rapture that does not imitate reality, but creates it" [5: 201]. As if it were an iconically conceived *verum factum*, which Vico in the *Dipintura* attempted to reproduce as an iconic synthesis of his work.

Bredekamp's theory of the iconic act targets precisely the theory of the linguistic act, which, from Austin to Searle, has also monopolized part of recent philosophy of law. According to Bredekamp, the theory of the iconic act differentiates the image from the word by placing itself on the level of the speaker, even if the image, by its nature mute, cannot act as the speaker of the linguistic act: "The problem of the iconic act consists in identifying the force that allows the image to leap, through a visual or tactile fruition, from a state of latency to the external effectiveness in the sphere of perception, thought and behavior" [5: 36].

The problem of the dogmatic normativity of the image, in Legendre, in Vico, may find in this juxtaposition an interesting explanation. Norms, just like images, and like the Painting of the New Science, watch us and await our acts, without our actions having the total capacity to thwart their force.

We can thus arrive at a final configuration of the notion of legal aesthetics, in an attempt to situate the discipline beyond the still dominant Hobbesian perspective.

In a contribution of the 1960s, Norberto Bobbio wonders about the reasons for the discredit into which the notion of counsel, as opposed to that of command, has fallen [6].

According to Bobbio, the chapter on the notion of counsel, customary in natural law treatises, has disappeared from the manuals of general theory of law, at most "relegated to some corner of canon law" [6: 39].

The conclusion of the general theorist from Turin is that the distinction between command and advice is provided by three elements: (1) the first is issued by one who has coercive power, therefore by the hierarchical superior, the second also by a peer; (2) the command obliges one to execute the conduct, the advice only to not despise or disrespect it; (3) the precept is followed by the obligation to do or not to do, the advice to third parties not to prohibit what is advised [6: 42–3]. In the absolutist conception of Hobbes, the delimitation of the command from the non-command becomes the distinguishing criterion between what is legal and what is not. This approach is no longer formally rejected by positivism and is one of the reasons for the discredit towards legal aesthetics. Bobbio indicates that the distinction is central to the English philosopher by noting how it represents the core of the difference identified between the kingdom of God (in which there is advice through teaching and persuasion) and the kingdom of Caesar (in which there is command). With the well-known consequences that follow as regards the distinction between state and church (he who holds supreme power is head of both). The general theorist notes that in *De Cive* the government by which Christ rules his faithful in this life is not really a kingdom. It consists in a pastoral function, in the right to teach [6: 43]. That is to say, Christ does not have the power to legislate, but only to counsel, in keeping with the Pauline idea that the law is the fruit of sin and that in the kingdom of God there are no laws. Legendre, moreover, when he notes how Christianity was devoid of laws, and for this reason borrowed the Roman legal system [39] followed precisely this approach.

For Bobbio in Hobbes the distinction between command and counsel is that the former is an obligation given in the interest of the one who issues it and imposed on those who recalcitrate, the latter a faculty pertaining to the interest of those who receive it and desire it [6: 44]. He further articulates the difference, concluding his discourse by noting the fact that in every society, for the survival of law and social ties, advice is as necessary as command. Bobbio effectively summarizes, "command without counsel risks plunging society into tyranny; counsel without command is insufficient to amend it" [6: 46]. This observation ties in perfectly with Legendre's observation that it is never seen to govern a society without recourse to dances, music, rituals, which are one of the means by which the council is exercised: a series of nomograms.

The difference between Bobbio and Hobbes is a distinction between an appeal to reason and an appeal to the passions, as motivations for action. The general theorist from Turin, following Kelsen and his mythicization of logic, shares a myth of modernity, that of rationality. Undoubtedly, unlike many other later legal positivists, he has a clear perception of the relevance of the passions, not confined only to the sphere of the "political use of the image", but, through the notion of advice, open to the dimension of rhetoric (as he shows by introducing Perelman's thought in Italy).

Starting from Bobbio's analysis, the problem of a legal aesthetics is to show how it is internal to legal discourse. In this sense, the distinction between command and

advice today appears at the heart of the phenomenon of the evolution of law. There is law, there is advice to man also in other social systems, economics, morals, religion, art, science-technology, information-communication; the appropriate language to understand the point is that of legal aesthetic analysis, rhetoric, semiotics, of communicative phenomena.

Therefore, as we showed about the distinction between command and counsel in Hobbes (Fig. 3, item 4: 'potestas directa, non indirecta'), if we wanted to provide a definition of legal aesthetics, we could say that it is the part of legal knowledge that studies the council, and its evolution in contemporary society, as a source of law.

Vico's *Scienza Nuova* and the civilization of civil law, to which Legendre often refers, has the task of preserving the difference between the conception of law as command and the conception of law as advice, which must be integrated again in order to provide a credible image of law in contemporary complex society. They should not be confused, but neither should they be conceived as in conflict with each other; the traditional distinction between custom and law has always kept this dialectic within the sources of law and not outside it. Legal aesthetics is a legal philosophical knowledge that can help maintain this vital relationship between *laos* and *demos*, understood as equally relevant components in the building of the social compact, and also between reason and, rather than passions, affects, on which the world of law is founded [65, 66]. If Bobbio observes how the sleep of reason generates monsters, the failure to recognize the relevance of affects also generates monsters, as the twentieth century has demonstrated all too effectively with its totalitarianisms. The reintroduction of legal aesthetics can be of some use in this process of identifying new sources, which cannot be configured within the rational-irrational dichotomy, in the sense of simply bringing what would be irrational (the passions) back into the sphere of the rational (reason). The anthropological direction to be taken, anticipated by Vico's *Scienza Nuova*, is rather that of showing the rationality intrinsic in the affections, placed beyond the modern separations between reason and faith, between rational and irrational, between text and image, through the resumption of the rhetorical method in legal reasoning, after Perelman [48].

Legendre conceives of the notion of nomograms in this regard. As if to testify and justify the originality and the innovative trait of his own theoretical itinerary, he notes: "My wanderings among medieval Latin manuscripts… the study of dance, of emblems and rituality have opened up to me the comparative field of *figuralia* (things that give form and shape, but also postures, clothes, dispositions, symbolic machines)" [31]. "I drew this conclusion: book, dance, emblem and rite are variants of the same writing phenomenon, I designate it with the term nomograms" [29: 60], (to which cinema will be later added).

The notion of nomogram, understood in an enlarged perspective and not restricted to the specific field of law placed, implies then to study the phenomenon of legal writing in new ways, depending then on the social construction of the Third, construction of normative essence. Today more than yesterday, we have to deal, "in every cultural system, with a system of nomograms, diversified but dominated by the representation of the third founder, unifying the scriptural productions. It is this system of nomograms that today's research has the task of circumscribing" [29: 60].

Legal aesthetics can contribute to renewing in an anthropological sense the problem of the normativity of the image, in order to arrive at a map of nomograms, that is, of all the forms of normative writing that have influence on the social and institutional devices in which the contemporary individual moves. Its influence on actions, which legal knowledge, in its interrelations with economic and political knowledge, can no longer ignore. Perhaps contributing in this way to the understanding of the significant social and legal changes underway.

Legal aesthetics then appears to me as the part of legal knowledge that crosses the boundaries of law, pushing towards other social systems, the economic, the moral, the religious, the artistic, the communicative, the political, the technological-scientific: identifying new forms of the normative and a new system of sources of normative advice, placed alongside and not necessarily against the sources of legal command, inserting the increasingly broad movement of law and (economics, literature, cinema, etc.) within a framework that has its roots in the very history of Western law. Thus, raising the problem of a rearticulation between passions (or rather affections) and reason, between rationality and irrationality, between text and image that goes beyond the Hobbesian model of man, in the field of a philosophical anthropology of law as Vichian's *Scienza Nuova*, which cannot be analyzed here.

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