

BLIND JUSTICE

*Desmond Manderson**

Transsystemic law takes as its starting point the idea that legal systems do not exist in isolation but in dialogue—sometimes contentious, sometimes creative. It is customary to think of these discourses as overlapping in particular places, most notably in mixed jurisdictions such as Quebec, but also of course in colonial and imperial settings. It is less well appreciated that these overlaps are also characteristic of particular times marked by the often fraught transition from one legal order to another. Transsystemic time generates its own symbols capable of distilling the anxieties of transition, and revealing the tensions between old legal frameworks and new; established legal contexts and emerging ones.

The fifteenth and sixteenth centuries were just such a transsystemic moment in the West. The reception of Roman law throughout the Empire—professional, state-based, and systematic—overrode ancient customs—localized and divinely mandated. But this transformation of systems was not met with unbridled enthusiasm. The first known image to show a blindfolded justice comes from a woodcut, possibly by Albrecht Dürer, published in *Ship of Fools*, a collection of satirical poems by fifteenth century lawyer Sebastian Brant. This 1494 image is not a celebration of blind justice, but a *critique*. A fool is applying the blindfold so that lawyers can play fast and loose with the truth. The urgent demand, which *Ship of Fools* articulated, to cleanse Europe's Augean Stables, ultimately unleashed a Christian revolution and the consolidation of secular, national, and legal power. But the religious reformers borrowed the word "Reformation" from its original context: the crisis of legal modernization of the previous century.

Yet the image of blind justice rapidly lost its satirical connotations. By the early seventeenth century, for example in the *Iconology* of Cesare Ripa, the blindfold is attributed to "worldly justice"; in later additions, it comes to signify justice *simpliciter*. From caterpillar to butterfly, in that

* Professor, College of Law, Australian National University. The original version of this entry was adopted as part of the *McGill Companion to Law* at a meeting in September 2015.

stunning visual metamorphosis lies all of modern law in miniature: abstraction from context, celebration of form, justice as due process, and the subservience of judgment to the state.

Pieter Bruegel was, like Dürer, one of the greatest artists of the Northern Renaissance. He prepared two series of etchings for the publisher Hieronymus Cock, *The Seven Deadly Sins* (1558), and *The Seven Virtues* (1559–60). Justice is shown in the middle of a crowded town. Lawyers and notaries scurry about amidst unsettling images of public torture, punishment, and execution. Far off, the scene intensifies, several gallows and a burning clearly in evidence. The real question is this: in 1559, right in the middle of that transsystemic moment, at the very point when the iconology of law began to shift irrevocably—whose side was Bruegel on? Does the blindfold he has placed on justice symbolize its virtue, or is it the veil of a vice?



Pieter Bruegel the Elder, *Justice*, from *The Seven Virtues* (series), 1559, engraving, 22.1 × 28.9 cm, British Museum, London (UK).

Some scholars insist that Bruegel's image merely reflects accepted legal thinking at the time, and note that his other *Virtues* likewise incorporate run-of-the-mill acts of hope, fortitude, temperance, etc. Such critics more generally minimize the political aspects of Bruegel's work, and insist either on prioritizing its aesthetics or their conventional normative content. Even as secular a work as *Children's Games* (1560) has been interpreted as a homily against idleness and folly.

Yet there is a clear political edge, to the mature work in particular. This is not a matter of intention but reception—that is, not so much what Bruegel might have “meant” but how viewers would have understood his

paintings. Given the unrest in Flanders as a result of Spanish rule, and the conflict between Protestantism and Catholicism, Bruegel's response was necessarily indirect. In 1567, the Duke of Alba arrived as Governor of the Netherlands at the head of a large army and determined to brutally punish the iconoclasts and discontents of the rebellious northern provinces. Around this time, Bruegel painted *Massacre of the Innocents*. It can hardly have been read as anything but a veiled attack on the brutality of Spanish rule.

Justice dates from some years previously but its critical elements are undeniable. The prominent position given to soldiers is surely problematic, given the growing sense that the Netherlands was subject to a foreign occupation. The very multiplicity of violent acts of legal punishment does not represent a scene from everyday life, but rather a kind of distilled and intensified atmosphere of violence. The escalation of this institutional violence as the picture recedes only adds to the sense of endless horror. *Justice* has more than a little in common with *The Triumph of Death* (1562–63), where the infinite ranks of the dead press with unstoppable force against the barricades of the dying.



Pieter Bruegel the Elder, *The Triumph of Death*, 1562–63, oil on panel, Museo Nacional del Prado, Madrid.

Indeed, the figure of *Justice* is notably different from Bruegel's representation of the other virtues, which appear as real figures in quotidian scenes. Not so *Justicia*. She is not an actor in her virtue. She is a statue, inanimate on her pedestal. In addition to the blindfold, she does not sport a crown but some kind of wimple topped by a sort of soldier's cap. She gives the sense of having been dressed up as a prop for those around her.

Three distinct axes intersect in Bruegel's image. Aspects of routine legal work are represented horizontally across the bottom of the picture, in-

cluding the scene of torture being carried out with such administrative indifference at bottom left, but also writing, negotiating, and lawyering at bottom right. A series of vignettes unfold in everyday space. Vertically from bottom to top along the left-hand side, we see a steady intensification of both punishment and people, leading towards an excessive sense of crowds and gallows in the distance. It seems to me that these convey a catacomb of deaths unfolding through time, stretching back, perhaps, into the distant past—or future. The third axis, less obvious but no less important, is transversal. It runs from the figure of justice, along her sword and up to the top left-hand corner. Cutting across time and space, it points to the crucifixion, with the two Marys in mourning at the foot of the cross.

Bruegel frames sixteenth century legality, represented through motifs of legalized violence and militarized order, against the story of the Cross, a world-shattering act of *injustice* which raises abiding questions of individual conscience and responsibility. Too often, critics of Bruegel tend to reduce his work to a normative position—either a conservative moral one or a critical political one. But Bruegel rarely answers questions in such a straightforward way. By carefully documenting local customs and practices, he *asks* questions and creates tensions. *Justice* creates a tension between its three axes: the eternal presence of the cross on the one hand, and the time and space of modern legal action on the other. The image asks viewers to think more carefully about their practices, and whether law in the emerging modern world was doing the bidding of Christ, or the Romans. Not everyone would answer that question in the same way, either then or now; but not to ask it would be the worst injustice of all.

Two features of Bruegel's work further guide my reading. The first is his treatment of history. *Christ Carrying the Cross* (1564), *The Conversion of Saul* (1567), or *Landscape with the Fall of Icarus* (1555), for example, differ from previous representations of these stories. In each case the central action is entirely hidden amidst a riot of other activities. No one is paying attention—indeed, you have to search very hard even to locate the moment they depict. Icarus is a tiny splash in a vast and indifferent sea. Christ carries his cross unnoticed by the hundreds of people that crowd around him. Bruegel allows us to see what those who were there *failed* to notice—and reveals above all their failure to notice it. He places epochal moments in an uncanny historical perspective. He is the painter of mankind's epic blindness.



Pieter Bruegel the Elder, *Christ Carrying the Cross*, 1564, oil on canvas, 124 × 170 cm, Kunsthistorisches Museum, Vienna.

In this light, the real subject of *Justice* is the crucifixion; another world-historical event the significance of which went largely unnoticed at the time. Jesus was one execution amongst many; one part of a long campaign of occupation and subjugation. Men and women went about their business wholly absorbed in the here and now. Bruegel's *Justicia* cuts *across* time and space, demanding of us a mindfulness as to the wider significance of our own actions and of the actions around us. Otherwise justice becomes nothing but a form or a prop to ennoble our routines.

The second feature is Bruegel as a painter of crowds. His pictures convey the steadily urbanizing life of northern Europe, lived increasingly with many others and amongst many strangers. His paintings powerfully convey this noise and density; not one story but one hundred, jostling for recognition on the canvas. Yet there is something unsettling in Bruegel's depiction of the masses. The figures sometimes appear to be going through the motions. This obliviousness is rendered nostalgic in *Peasant Wedding* (1568), *The Wedding Dance* (1566) and *Children's Games*. As we have seen, it is given an altogether darker hue in *Christ Carrying the Cross* and *The Conversion of Saul*, in addition to *The Suicide of Saul* (1562). Bruegel's *Justice* belongs to these essays in mass psychology. It is not portrayed as idealized or abstract, but as an everyday event—indeed, as a multitude of everyday events undertaken by a multitude of people. The figures appear engaged in routine actions without self-reflection. As one moves one's eyes back into the distance along the temporal axis, collective action gives way to mere spectacle. Punishment loses its singularity.

ty—that is, its relationship to justice—and becomes a spectacle intended for mass consumption.

So the social dimensions of law and justice are integral to Bruegel's interrogation. Presenting *Justicia* as a kind of inanimate cypher that seems destined to dignify without challenging conventional wisdom, Bruegel shows himself uncannily attuned to the dangers—and the utility—of a newly-minted rhetorical figure. He seems to foreshadow how the image of justice might become a cliché in the play of rhetorical justification, at the mercy of those best able to appropriate, dress, and position her. But at the same time, isolated by location, pose, and gender, the transversal axis succeeds in recalling another standard against which to measure conventional legal action—not just the decisions of kings or of judges, but the daily gestures of complicity and involvement in which we are all implicated.

Bruegel's image emerges at a pivotal moment in the transformation of Western law: exactly when the religious Reformation was turning the balance of forces from image to text, from symbol to form, and when the legal Reformation was turning from custom to structure, from individual responsibility to institutional accountability, and from an all-seeing to a blinded justice. This transsystemic moment, neither neat nor unproblematic, was accompanied by a new legal iconography. *Justice* stands on the cusp of that change, pointing back to a different set of underlying normative principles, as well as forwards to the ways in which the old rhetoric would be co-opted by the new symbols, and justice reduced to instrumentalism and performance. Bruegel does not provide a definitive evaluation of these transformations. He makes visible questions of the changing social context and the symbolic foundations of those changes, precisely by revealing the *invisible* responsibility we all bear for the forms that justice takes.

Bruegel's blindfold therefore serves not as a metaphor but a metonym for the image as a whole. The people in the scene are equally blind to the implications of their actions and to the drama of injustice, quotidian and historical alike, being played out. This greater blindness is the true subject of the work. But Bruegel also turns this critique on his viewers, including us, demanding that we interrogate our own judgments and our own involvement. One might therefore suggest that blind justice is neither a virtue nor a vice, but rather a predicament. If *Justicia cannot* see clearly then it is not her responsibility to seek out the information and context that would turn a routine judgment into a good one. The eyes blind justice needs are not hers—but ours.

References

- Brant, Sebastian, *The Ship of Fools*, translated by Edwin H Zeydel (New York: Columbia University Press, 1944) (first published in Basel, 1494).
- Bruegel the Elder, Pieter, *Children's Games*, 1560, oil on wood, 118 × 161 cm, Kunsthistorisches Museum, Vienna.
- , *Christ Carrying the Cross*, 1564, oil on canvas, 124 × 170 cm, Kunsthistorisches Museum, Vienna.
- , *Justice*, from *The Seven Virtues* (series), 1559, engraving, 22.1 × 28.9 cm, British Museum, London (UK).
- , *Landscape with the Fall of Icarus*, c. 1555, oil on canvas, 73.5 × 112 cm, Royal Museums of Fine Arts of Belgium, Brussels.
- , *Massacre of the Innocents*, c. 1565–67, oil on wood panel, 109.1 × 158.1 cm, Royal Collection Trust, Windsor (UK).
- , *Peasant Wedding*, c. 1568, oil on wood, 164 × 114 cm, Kunsthistorisches Museum, Vienna.
- , *The Conversion of Saul*, 1567, oil on wood, 108 × 156 cm, Kunsthistorisches Museum, Vienna.
- , *The Seven Deadly Sins*, 1558, series of engravings, British Museum, London (UK).
- , *The Seven Virtues*, 1559–60, series of engravings, British Museum, London (UK).
- , *The Suicide of Saul*, 1562, oil on panel, 33.5 × 55 cm, Kunsthistorisches Museum, Vienna.
- , *The Triumph of Death*, 1562–63, oil on panel, 117 × 162 cm, Museo Nacional del Prado, Madrid.
- , *The Wedding Dance*, 1566, oil on wood panel, 119.4 × 157.5 cm, Detroit Institute of Arts, Detroit.
- Ripa, Cesare. *Iconologia*, first printed in 1593 (Padua: Pietro Paolo Tozzi, 1611), reprinted in *The Renaissance and the Gods: A Comprehensive Collection of Renaissance Mythographies, Iconologies & Iconographies, with a Selection of Works from the Enlightenment*, edited by Stephen Orgel (New York: Garland, 1976).
- Unknown Artist (sometimes attributed to Albrecht Dürer), *The Fool Blindfolding Justice*, 1494, woodcut illustrating Sebastian Brant's *The Ship of Fools*, Beinecke Rare Book and Manuscript Library, Yale University, New Haven (Conn).