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# Law, Culture and Visual Studies

# Chapter 19

## Daumier and Replacing the King's Body

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**Abstract** This chapter follows a politico-theological approach to the law, which also includes among other trappings of theology, icons. The law's image is based on command, authority and sovereignty and relates to the order of the Lacanian big other, or the symbolic order. Subjects, however, respond to this symbolic order in different ways: some may hysterically call out to be recognised and some may follow blindly. This chapter looks at art in early modernism when the authority of the law and particularly sovereign power is still effective. We will explore early modernism as the original attack against the State's right to make and control images. On the cusp of monarchical control and the birth of democratic freedom, a particular challenge was mounted by Honoré Daumier's paintings and caricatures. His battle and jailing for his terrible indignity against the king's body marks the birth of an emancipated space for the modernist artist (outside the power of the court). His freedom is guaranteed from some other sovereign body outside the frame. This chapter suggests a new approach to the modernist canon and the avant-garde. It suggests that modern art's seminal attack was an attack against the sovereign (monarchical) effigy and its replacement by the republican effigy or Marianne. In this way even in democracy the effigy is persistent; democracy was still imaged in relation to the monarch and an alternative sovereign body.

This is no longer a riot, this is a revolution!<sup>1</sup>

The trouble with this country is that there are many men who, like you, imagine to themselves that there was a revolution in France. No Monsieur, there was not a revolution; there was but a simple change in the person of the Head of State.<sup>2</sup>

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<sup>1</sup> Auguste Marmont, Duke of Ragusa, major general of the Royal Guard in a note to Charles X during the 1830 July Revolution.

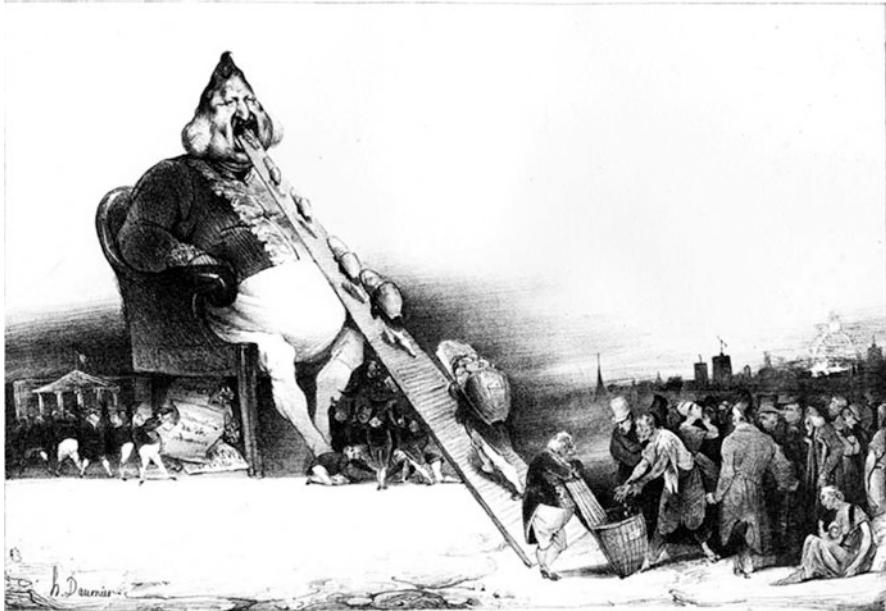
<sup>2</sup> Casimir Périer to Odilon Barrot 1831, quoted in Petrey (1991, 65).

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**Fig. 19.1** Honoré Daumier, *Gargantua*, 1831, 30 cm × 21 cm, lithograph

## 19.1 Finding the Effigy in the Modernist Canon

Honoré Daumier moved art inexorably away from the royal court towards everyday life and social themes. In responding to the common man (the peasant in a train carriage, the worker) and by pillorying the lawyers, aristocrats and academician snobs, art moves from a courtly, State-sanctioned purpose, to bourgeois autonomy. The artist fights for freedom, and the ‘halo of martyrdom’ was assured by Daumier’s trial and sentencing for depicting the king, Louis-Philippe, unfavourably in *Gargantua*, 1831 (Fig. 19.1). By placing Daumier on the limen of the *new regime* and the new, Daumier’s art relates to the revolutionary shift into modernity. The early period of Daumier’s career coincides with the July Revolution that created a *tabula rasa* upon which everyone tried to write their own ideology. It was an extremely volatile and unstable period with many competing political interests. Daumier was merely one of many gaoled and censored for questioning, through images and text, the king’s legitimacy (see Goldstein 1989). Beyond that he was merely one of a large popular movement against the Orléanist monarchy, which crumbled in 1848. Daumier’s trial will be used to delve into something beside his own legacy of modernist rebellion. The archaic charge of *lèse majesté* is the crime against the defamation of an effigy; it cannot exist without the belief in the ‘second body’ of the king. Early modernism is revisited as a response to this effigy as defamed by Daumier to create a republican polemic. In this extended revolutionary period the image was of primary propagandistic

importance to both the king and the artist. The king too had his artists, and there was a fight to see whose images would prevail.

## 19.2 Riot and Revolution in the July Monarchy

The substantial modernist blind spot in the reception of Daumier's work between 1830 and 1835 is that it relates to revolution not riot. Daumier's work is often determined from a modern viewpoint as a satirical critique against the government in an effort to petition for political change. However, this work – on the threshold of modernism – aimed for the complete disavowal and revolutionary overthrow of a governmental system. The period of 1830–1835 is characterised by a struggle for legitimacy. Louis-Philippe had to legitimate his accession to the throne and continually appease competing ideological positions. His reign was one of great tension and consensus building between 1830 and 1848 (Collingham 1988). The king's position was Orléanist constitutionalism, which became a desperately centrist position between monarchical and republican interests. The monarchical legitimists believed that only a Bourbon should rightfully accede the throne and championed a return to *ancien régime* tradition. This position had been greatly undermined by the July Revolution and the uprising against Charles X and his repressive, autocratic rule. The republican side broadly includes the Orléanist constitutionalists (the resistance party) but more usually refers to the Movement Party that was more radically republican and wanted to see the overthrow of Louis-Philippe (see Harsin 2002).<sup>3</sup>

The period transformed France into a modern capitalist economy. There was a consolidation of the power of the middle class and the rise of industry. This created a popular political consciousness and press power. It also created the shift towards a modern autonomous art, brought about by the middle class alongside the State-sanctioned academic art of the Salon. The shift from monarchy to a republic was ongoing and had begun with Napoleon, who Foucault sees as embodying this shift: 'The importance, in historical mythology, of the Napoleonic character probably derives from the fact that it is at the point of junction between the monarchical, ritual exercise of sovereignty and the hierarchical, permanent exercise of indefinite discipline' (Foucault 1975, 217). Underlying these regime changes was the effect of the 1789 French Revolution, but it was not until 1877 that the monarchy was totally overthrown and the crown jewels sold and melted down (Furet 1992, 510–511). The July Monarchy tried to maintain a synthesis of both the monarchical past and republican ideals, in what was called the *juste milieu* (the middle way), but in the end increased polarisation between the two positions leads to the overthrow of the July Monarchy (Fortescue 2005).<sup>4</sup>

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<sup>3</sup> There was an even more radical fringe the Montagnards.

<sup>4</sup> Fortescue sees the failure of the July Monarchy as the inability to reach a consensus. As a matter of interest, Fortescue, *contra* Furet, sees 1848 as the end of the monarchy because Napoleon III was forced to give away so many absolutist, monarchical rights.

Daumier and the satirical lithographic journals represent an example of the incessant republican questioning of the legitimacy of the regime. Buoyed by their role in the overthrow of Charles X, their revolutionary power was unquestionable (Kenney and Merriman 1991; Cuno 1985; Kerr 2000). This ideological positioning underpins any discussion of art in this period, for it was one important part of the juridical push to create belief and legitimacy in the regime. Revolution and democratic ideals drive the gradual retreat of the aristocracy to the rising bourgeois and the birth of the modern state (Rosanvallon 2007). Francois Furet explains the 1848 Revolution in these terms:

This bastard monarchy had never found its national footing: it was too monarchic to be republican, and too republican to be monarchic. This was evidenced by the new dynasty's inability to entrench itself as the founder of legitimacy despite all the efforts it had made to reunify national history to its advantage... Instead of terminating the French Revolution... it had given it fresh vitality. (1992, 385–386)

Following Furet, Pierre Rosanvallon recently theorised the import of this gradual shift from monarchy to republic during the nineteenth century (Rosanvallon 2006). Rosanvallon astutely draws the mystical and pseudo-religious underpinnings of democracy.<sup>5</sup> This void was held by a unified, absolute and undivided sovereignty where the individual will was replaced by a transcendent ‘common will’. It is my contention that this particular conception of democracy in France sees a direct transference of the king’s effigy, representing absolute sovereignty, to the profusion of the Marianne as a representative body of the republic (Ribner 1993). Both these ‘second bodies’ find themselves on the same page, though in tension, in Daumier’s lithographs.

### 19.3 The Middle Way: Steering a Course Between Two Poles

At the beginning of the July Monarchy, on August 7 the Charter of 1814 was revised and called the *Charter of 1830*. It was imposed by the nation on the king who then swore to uphold the *Charter* and accept his title ‘King of the French’, the Citizen King (Beik 1965). From the very beginning of his reign, there were many contradictions. Although there was no coronation, at the inauguration Louis-Philippe dressed in seventeenth-century costume so as to directly recall Louis XIV, to whom Louis-Philippe bore more than a passing resemblance (see Boime 1987, 302). Louis-Philippe had been chosen as a hopeful consensus builder between both sides of the revolution. According to the wishes of the allies, the Bourbon monarchy was restored in the figure of Louis XVIII by Talleyrand at the Congress of Vienna

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<sup>5</sup> Rosanvallon, like Pierre Legendre, is influenced by Claude Lefort on this score and sees the ‘unknowability’ of democracy as a primary characteristic. Rosanvallon follows Lefort and Francois Furet (a mentor of Rosanvallon) in seeing democracy in Rousseau’s terms as a unified popular sovereignty, which replaces the absolute sovereignty of the king.

between 1814 and 1815. He agreed however to rule under a *Charter* drawn up by the allies which allowed for a parliament, preventing the return to absolute rule. The freedom of the press, freedom of religion and *habeas corpus* were also assured. At his death, his brother Charles X became king. Unlike Louis XVIII, who had no coronation, the spectacle of Charles X's coronation was purposively linked to the *ancien régime*. Indeed the 1824 coronation even included the laying of the king's hands to heal the sick, in a resurrection of the divine right (Jackson 1984; Bloch 1973). He explained his monarchical position with the statement, 'I had rather chop wood than reign after the fashion of the King of England'. Although the reign started favourably, with freedom of the press and amnesties for political prisoners, the reign of Charles X became more conservative. Between 1829 and 1830 the Prince de Polignac programmed changes reverting back to before the revolution, giving more power to the church and aristocracy. Parliament opposed the changes, so Charles X dissolved parliament. When the dust settled, the new Parliament was weighted more heavily against Polignac. Clutching at straws, Charles X passed the *Ordinances of St Cloud* (1830), which tightened press controls, took away voting privileges from the majority and dissolved parliament again; the aim was to destroy rule by the *Charter of the Allies*. The Revolution of 1830 broke out, and events were moving to a republic when Thiers suggested an alternative monarch from a younger Bourbon line, Louis-Philippe. So instead of a republic, Louis-Philippe was the compromise: a constitutional monarch.

Louis-Philippe is an example of a notable and effective strategy that has been called the middle way or the *juste milieu*. Its aim was to keep the bourgeoisie on side and to stave off revolution. It was an important strategy in the nineteenth century in France and in other European nations, including England (Starzinger 1991). Francois Guizot, Louis-Philippe's primary advisor, expressed the strategy as one that 'rejects absolute principles, extreme principles; it is adaptable to the diverse needs of society; it manages to stay abreast of ongoing social changes, and in turn engages in combat whenever necessary' (Boime 1987, 272). Another contemporary source from Scotland saw the connection between England and France's new king in supportive light:

The cause of peace in Europe and of good government in France is staked on the stability of the throne of Louis-Philippe. The intermediate position which his government has taken up between two irreconcilable extremes is precisely identical with the intermediate position at present occupied by the administration of Earl Grey. (Quoted in Starzinger 1991, 6)

This chapter relies on the assertion that these two sides can never be fully conflated. Lafayette at the time tended to agree: 'To say the truth France likes not the *juste milieu* because she knows not *juste milieu* between the ancient and the new dynasty... – between the liberty and the censorship of the press – between the freedom and the monopoly of commerce... France thinks, in truth, that *juste milieu* means nothing when applied to questions of actual policy' (Lafayette 1833, 317). The split between the republic and the monarchy characterises France's approach to democracy. Both positions countered the other with an uncompromising absolute, the king or the republic, respectively.

## 19.4 Lacan, Art and the Attacks on the Master

This ideological battling is well expressed through the Lacanian idea of the master signifier and how it quilts meaning. As both ideologies are based on a transcendental other, the working of this master signifier fits strongly within the master discourse. The master rules as an absolute authority. To make the situation even clearer, the Revolution of 1830 provides a point from which no master signifier can yet claim total legitimacy. The starting point is the anomie of revolution, a vacuum of power or the violent foundation of the law. In this way a revolution is a violent breach, a suspension of law. In Lacanian terminology a revolution is an ‘act’. As Rex Butler asks: ‘Is the act the passage between two different symbolic orders or between two different states of the same symbolic order? Or is it, on the contrary what founds the symbolic order, but what must be covered over or effaced by it?’ (2005, 67). It is Žižek who suggests the act and the master signifier are intertwined in a ‘constitutive way’, where the master signifier is ‘being’ and the act is a ‘becoming’. The act opens up a space of potentiality through a complete cut in the symbolic field. For Žižek the French Revolution is such an act, and we have already argued that this act still haunts the July Monarchy (Zizek 2000, 136–137). The very designation of the July Revolution implies this event cannot be explained as mere knowledge but is a subjective proposition; it remains on the plain of the Lacanian (Symbolic) Real, which cannot be symbolised as knowledge. The peace treaty, including the inauguration of Louis-Philippe, is the beginning of the symbolic sublimation of this violence into something sociable and acceptable, which represses the violence of this founding in revolution. It is the beginning of the necessary ideological work so that the ‘becoming’ of the act turns to the ‘being’ of the master signifier. Louis-Philippe tried to turn himself into an all-encompassing *point de capiton* (as master signifier, the signifier with no signified); he emptied himself out as a signifier to become all things. The Citizen King attempted to be both a modern citizen and an *ancien régime* king, assuming the labels of revolution, liberty, freedom, democracy as well as those of stability, tradition, legitimacy and authority. In many political arenas, and especially in England and Germany, this process was very successful (see Sperber 2005). As Žižek notes, only by emptying the master signifier of all meaning can it most efficiently quilt the field of signifiers. Louis-Philippe’s aim was to elicit belief from all sides.

Readings of Daumier’s art, and that of other radical lithographers, have not fully addressed their relationship to these ideological processes. The most common reading sees Daumier as already ‘modern’ in what amounts to a circular definition. Daumier is on the cusp of the modern and represents a threshold in his mode of representation. Under the historicity of the four discourses, modernism is the gradual overtaking of the master discourse by the university and hysterical discourses (Zizek 2006, 298–299). To summarise, for Lacan the university discourse is the movement towards the disciplinary society, where scientific knowledge becomes the ruling force (Boucher 2006, 274). The hysteric’s discourse is the parallel rise of individualistic capitalism where the individual is the driver rather than overarching traditional authority. Although Lacan’s matrix of the four discourses suggests all modes coexist in tension, there is this historical underpinning.

Daumier is a good example of an artist, on the cusp of modernity, who acted in a few modes. The common reading of Daumier is influenced by the university discourse, where his lithographs 'show' the corruption of power. They declare the cruelty of the judge, the poverty of the poor and the nepotism of the king. In this reading Daumier is the declarative rebellious artist who depicts power for what it is.

A broader picture can be drawn through the master discourse, which sees Daumier's work as toying with the effigy. Here effigy implies the sacred presence of the king *in* the image, rather than merely a representation – a premodern belief in the power of the king's image to embody the 'king effect'. It questioned the authority of the king's effigy to represent France and kept the alternative image of the republic in play in order to render the king's effigy as illegitimate. In this sense, Daumier's art between 1830 and 1835 constituted a violent act and not merely a riotous protest. Instead of seeing 1830 as the birth of the July Monarchy, it is important to remember that it was still a period of flux and that Louis-Philippe's regime was under constant pressure from republican and legitimist interests. The period 1830–1835 was in effect an extension of the revolutionary period, a period of becoming rather than of being. If the master signifier is used to sublimate the founding laws, in this period no master signifier could definitively finish or sublimate the revolutionary phase. The art of caricaturists, such as Philipon and Daumier, can be seen here as Lacanian Acts, as an extension of the revolution, because they attempted to problematise the king's legitimacy and keep that legitimacy open to questioning. As Furet suggests, it was the spirit of the French Revolution that pervaded this republican political movement, and it is this authority that Daumier draws on to contrast the republic and the constitutional monarchy.

State reaction to Daumier and the other lithographers, and the popular uprising they spearheaded, was violent and efficient. This was because what Daumier and the others were suggesting was nothing short of total upheaval. Within the master discourse, Daumier is willing, like Hegel's slave, to risk his life in a struggle for mastery and domination. Although Louis-Philippe wins the struggle (at least until 1848), this does not diminish 1830–1835 as an important site of ideological struggle. To be sure, the king's reforms were popular, and the republicans did poorly in the elections of 1834. After 1835 and the attempted assassination of the king, the September Laws were harsh and thorough, and Louis-Philippe was finally able to exert enough control through the modern censorship laws to quash any dissent. There were to be no political cartoons at all between 1835 and 1848 in the Philipon journal *Le Charivari*, and *La Caricature* was closed in 1835 (Hanoosh 1992, 115). The virulence of the State response shows the battle was not merely fought in the arena of facts, but between two alternative and possible masters.

## 19.5 Daumier, Lèse Majesté and the Birth of Modernity

Two famous trials can be reassessed in relation to this understanding of the art of the period. Both published in 1831, the first relates to Charles Philipon's *The Pear*, 1831 (Fig. 19.2) and the second to Daumier's *Gargantua*. Daumier's appropriation of Philipon's image of the king transforming into a pear was widely circulated. Both

**Fig. 19.2** Charles Philipon, *The Pears*, 1831, pen and bistre ink sketch



artists were brought to court for *lèse majesté*. These trials, especially the trial and imprisonment of Daumier, are famous as proof of their modernist, transgressive credentials. However, we should not forget that these trials centred on a legal question that is central to the birth of modern art: whether the image of the king was an effigy or merely a representation. In other words, the way the law controlled the image as *lèse majesté* or later through censorship marks the shift between courtly and autonomous art and from the politics of the absolute master to the disciplinary society. The other issue it raises is the violence of the image and the importance of the legal image to quilt the society. *Lèse majesté* is a law that for the last time in Western society admits the use of the image to bind the legal subject; the God of Nation in the disciplinary society was framed by knowledge so that its mystical base was repressed.

Soon after the signing in of Louis-Philippe and the rewriting of the *Charter of 1830*, new press laws introduced in November 1830 included *lèse majesté*. Philipon's first trial in 1831 was over a simple cartoon called *Soap Bubbles*, which showed the king blowing bubbles like Chardin's boy (*Soap Bubbles*, 1734), but what was popping in the air were all the virtues of republicanism, including freedom of the press. In the more notable trial of 14 November 1831, for *The Plasterer*, Philipon was found guilty and gaoled; in this image the king is shown to be plastering over the virtues of the republic. Similarly on February 22, 1832, Daumier was brought to trial for composing *Gargantua*. The charge was breaking the press law of November 1830 by arousing hatred and contempt of the king's government and by offending the king's person, the crime of *lèse majesté*. Daumier's mercy plea was unsuccessful as his 'seditious crayon had traced the guilty image' (quoted in Childs 1992, 26–27).

Before further analysing the political context of these trials, it is necessary to discuss the largely archaic law of *lèse majesté*. The crime of *lèse majesté* is the criminal corollary of the cultural existence of the sacred ‘second body’ or effigy: it is the criminalisation of the unauthorised effigy. This crime can only exist in a functioning discourse of the master, where the master acts through the effigy; the crime cannot exist in a disciplinary society, other than as an anachronism. The crime of *lèse majesté* is shared by many civil law jurisdictions and is based on the Roman crime of *laesae majestatis*, literally injury that diminishes the majesty. Floyd Lear describes the many acts that this crime covered in ancient Rome including rules pertaining to the image, ‘respect for the images of the emperor, including unseemly acts real or alleged, committed in the presence or in the proximity of an imperial image; and the act of defacing, melting, or destroying a statue of the prince which had been consecrated’ (1965, 29). The destruction of or injury to the image of the prince was not seen merely as an insult or injury but as an impiety. It was a crime that involved the relationship between the individual and the public authority and so became a question of loyalty and trustworthiness. This squares with our notion of subjectivisation through the legal image; in Roman law this enemy *within* the symbolic order was different to the alien enemy and was called *perduellis*.<sup>6</sup> The crime was linked to early Roman religious sanctions against the killing of the father or head of the household (*parricidium*) (Lear 1965, 24). As the effigy is a sacred body, the act of treason or *lèse majesté* is close to a sacrilegious offence. Again the make-up of the law is connected to Pierre Legendre’s reading of the sovereign as conflated to the father figure.<sup>7</sup>

By 1830, *lèse majesté* was already itself in a threshold moment (between the absolute master and disciplinary power). The crime of an ‘imagined’ treason that is a form of (blasphemous) libel, as opposed to an actual regicide or planning for regicide, was already waning in France by the eighteenth century (Coleman 1990). Kelly suggests that after the French Revolution in France, there was a shift to limiting treason to merely attempts of *actual* regicide as a safeguard to free speech (1981, 270). So to some extent, the *lèse majesté* laws of November 1830 could be seen as a disciplinary style of censorship given legitimacy through the older absolutist idea. Regardless of the mode, the effect was a return to treason, and after 1835, the censorship laws were bolstered by a rule making it ‘illegal to advocate republicanism’

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<sup>6</sup>Literally ‘the hidden enemy’ as opposed to the *hostis*, which was a foreign enemy.

<sup>7</sup>In the English system, the crime is subsumed under treason and is presently based on the *Great Statute of Treasons*, 1351. Treason here is understood as distinguishable from the crimes of murder and even regicide; treason is a symbolic crime against a ‘symbolic body’ or ‘second body’ of the king. First codified in England by the 1351 *Statute of Treasons* (25 Edward III, St 5, c 2) during the reign of Edward III, treason has as a central aspect in imagining or compassing the death of the King. In 1534 Henry VIII passed legislation which made it possible to commit treason by words or writing (Act of Treasons Henry VIII c 13) further clarifying the ways in which such an ‘imaginings’ could manifest. In the English system, this was considered ‘treason by words’, a designation suggested by Henry VIII on his road to absolute power; the crime of *lèse majesté* was thus made redundant. This had the paradoxical effect in England, of increased debate and dissent over the definition of treason (see Lemon 2006).

(see Aminzade 1993, 55). So in the end, *lèse majesté* was stopped along Foucault's lines 'to punish less perhaps but to punish better'. The violence of the assassination was a perfect precipitant for the crackdown. Fieschi took lodgings on the Boulevard du Temple, and there, with two members of the Société des droits de l'homme, Morey and Pépin, contrived a *machine infernale*, consisting of 20 gun barrels, to be fired simultaneously on July 28, 1835. There had been numerous attacks on the king's life, and there were many apologists in the press. In September 1835, the National Assembly passed new press laws (the September Laws). Here the law of *lèse majesté* was redrawn in a modern guise; any reference to the king that tried 'exciter a la haine ou au méprise de sa personne ou de son autorité constitutionnelle' was seen as an attack against the State and punishable by up to 1 year in prison and a 5000 franc fine (Articles 2 and 4). The 'September Laws' remained in use throughout the July Monarchy.

In an 'Age of Terror', it is not all that difficult to empathise with a period in which distinctions between friend and enemy were being drawn. The reinvigoration of the premodern crimes of sedition across the world was surprisingly 'kingly'. *Lèse majesté* is still on the books in many countries and has been used most recently in Thailand, although in another kingly right, the criminal is often pardoned. What is common to both our contemporary perspective and the absolute monarch is the background of the Lacanian master's discourse. In the master's discourse, the master signifier is unchallengeable. It is the same iconoclastic imperative of the original Old Testament master-God. Identifying with this system is relatively intrinsic, having lived through the response to terror and the control of dissenting voices. Generally, however, the workings of contemporary society would not accept a crime of *lèse majesté*. Within the university discourse, the disciplinary society, criminal sanction is based not so much on imperatives as on power/knowledge. The crime of *lèse majesté* gradually gave way to the regime of censorship and control of information rather than the symbolic attack against the king's authority. The difference can be summed up with respect to the Danish cartoon that caused worldwide riots in 2006. On one level Western countries called for freedom of speech, but on the other hand, Muslims from around the world appealed to the blasphemy of imaging Mohammad. To argue that the image was a vilification of Muslims (i.e. calling *all* Muslims, represented by Mohammad, terrorists) was to miss the point of the protesters, who were not attacking the message but upholding the Islamic ban against images. The issue highlights the risk in forgetting the power of the effigy now and in modernism as a whole.

Charged with *lèse majesté*, little theoretical attention has been done to follow the logic of this indictment in the trials of both Philipon and Daumier. What was at issue was the very question that concerns art and sovereignty: can an image function as a presence or does it remain as mere representation? This question defines a major shift from courtly to modern art. Philipon argued that the second body of the king did not exist, insisting that the king was merely a symbolic representation. This issue was central to Philipon's famous image showing the head of Louis-Philippe metamorphosing into a pear. Philipon's argument, expressed through this image, was that it was not enough to draw the king's likeness (to defame him)

because it was not certain whether that was actually the king. The likeness for Philipon needed framing by text or insignia to prove the connection to the ‘second body’ of the king (Hanoosh 1992, 118). This argument follows the logic that an effigy, to act with ‘king effect’, must be clearly authorised by the symbolic order, through either State use, State promulgation or the use in State-sanctioned space or festival. The journal complicated this usage because it was not State sanctioned. Philipon argued:

A resemblance, even if perfect, is never an attack; you must not recognize it as such, and you must above all refrain from sanctioning it by conviction. The injury is precise and proven solely by the name of the king, by titles, insignia coupled with his image, which is then, whether there’s a resemblance or not, culpable and deserving of punishment...but it’s not the king. (quoted in Petrey 1991, 52)

He suggested that the king merely represented the government in symbolic guise. Indeed in the same tirade quoted above, Philipon wrote in *La Caricature*, November 24, 1831: ‘Yes we have the right to personify power. Yes we have the right to take for this personification, whatever resemblance suits our needs! Yes all resemblances belong to us!’ Similarly Elizabeth Childs has astutely seen that the issue of Daumier’s case turned on ‘whether or not *Gargantua* actually represented the king, or was intended as a more symbolic representation of the government’s swollen budget’. Childs has done the most to look at the relationship between Daumier’s images, the trial and the context of censorship laws (Childs 1999). She dismisses the importance of Philipon’s argument by calling it ‘a strained defense necessitated by the concept of *lèse majesté*’, as if any argument against the body politic was merely for pragmatic reasons (Childs 1999, 49). Childs suggests that the image was actually both the ‘second body’ and a representation, but does not take her own claim seriously. She understands the ‘hybrid figure’ of Louis-Philippe as both modern and absolute, an amalgam of *ancien régime* and the modern. Most importantly in relation to Daumier, Philipon and other caricaturists of the time, she notes their ‘humour of the body politic’ and footnotes Ernst Kantorowicz to highlight her meaning of the ‘second body’. Although this idea titles her article, it is not followed up, and the ‘body politic’ is treated as a symbolic representation of France, not as an effigy. This essay recovers the ability to use the term effigy; the caricatures of Philipon and Daumier respond to and point to the existence of the effigy in early modern art. It suggests to its existence in contemporary democracy but disguised. *The Pear* became famously known as an effigy. In *Les Misérables*, Victor Hugo wrote:

One summer evening, Louis-Philippe, returning home on foot, saw an undersized urchin straining on tip-toe to draw an enormous pear on one of the pillars of the Neuilly gateway. With the amiability which he inherited from Henri IV, the King helped him to finish it and then gave him a coin, a louis d’or. ‘There’s a pear on that too,’ he said. (Hugo 1976, 503)

Whether as a pear or as a Gargantua, the ‘second body’ of the king, his effigy, was alluded and indeed so serious was the misuse of the image that a bizarre law was passed outlawing any image of a pear in 1835. The pear symbol had become a commonplace, and one even found its way onto the pyramids.

## 19.6 Pears, the Master Discourse and Presence

Apart from the trials asserting the existence of *lèse majesté* (and the effigy), there are other examples of the confusion, in the early nineteenth century, between the image as presence (effigy) and as representation (portrait, image), a confusion explained by the shift from the courtly to the bourgeois autonomous art of modernity. Daumier's early cartoons and caricatures of 1830–1835 have been largely overlooked because they do not fit within the realist mould of his later work. Their overtly political character creates a blind spot for modern art history, but it is of particular interest to this chapter. After 1835, caricatures of manners became a popular response to the strict September Laws. The mode of caricature itself has a bearing on the question of the effigy and modernity that has also been broadly suppressed by art history. Ernst Gombrich suggests that 'One of the things the study of cartoons may reveal with greater clarity is the role and power of the mythological imagination on our political thought and decisions' (Gombrich 1963). As Gombrich reminds us, the portrait caricature can be linked to images of infamy:

The public enemy would be represented hanging from the gallows on the façade of the town hall, and such hangings in effigy, as Kris has reminded us, were still closer to witchcraft than they were to art. Their aim was to wreak vengeance on the enemy and to destroy, if not the person, at least the aura that was his honour (Gombrich 1963, 134–135).

The defamation of character is the opposite of the honouring of the *dignitas* found in the kingly portrait; both ideas are connected. For Gombrich and Kris, the caricature is an extension of the effigy (Gombrich and Kris 1940). Gombrich and Kris in their study of caricature see its very power linked to the magic and presence inherent to the image:

If we ask the psychologist he tells us again that, as with caricature, the hidden and unconscious aim of such fun is connected with magic. To copy a person, to mimic his behaviour, means to annihilate his individuality. The very word 'individual' means inseparable. If we succeed in singling out and imitating a man's expression or way of walking we have destroyed this individuality. It is as if we declare to our laughing fellow-creatures, 'Look, here is his whole secret. You need not be afraid nor even impressed; it is all a hollow sham'. (1940, 14)

Gombrich goes on to suggest that the caricature's late arrival as an art form was its success in conjuring the sitter; 'We think that the portrait caricature was not practiced earlier because of the dire power it was felt to possess; out of conscious fear of its effect' (1940, 15). So that caricature is part effigy belief, part modern naturalism and realism and part defamatory. It comes from the long line of images of infamy. But the difference was that the images of infamy were a legal remedy, a State-sanctioned violence. The move to creating your *own* images of infamy, for example, of a king, was tentative. Running parallel to the history of duelling, the image was seen as a direct attack against the enemy's *dignitas*, a slap in the face.

*The Pear* and the *Gargantua* represent the threshold moment between presence and representation (Petrey 1991, 2005; Cuno 1985; Kenney and Merriman 1991). It seems to express both modes. As Childs writes, 'The defiant pear thrived as a symbol of resistance in the margins of the law and the margins of the official culture' (1999, 49).

**Fig. 19.3** Honoré Daumier,  
*The Masks*, 1831,  
29 cm × 21 cm, lithograph



It was at one time the actual king and on the other just far enough removed. It should be remembered too that *Gargantua* was not published by Philipon in *La Caricature*, but was merely sold as a loose-leaf image, suggesting that even Philipon was weary of this particular image. On the level of knowledge (the university discourse), many art historians examine *The Pear* as a sign, a mere representation and symbol of monarchy. *The Pear* was attacked in the most obscene ways, and in Lacanese these responses could be seen as responses of the hysterical. They show that the king is not symbolic enough, not ‘castrated enough’ but has all-too-human corruptions and vices. Daumier’s *Gargantua* fuses these two approaches. On the one hand, it directs the viewer to read a story of avarice and greed. On the other, there is the directly scatological effect of the throne/toilet. The abject scatology points to the corrupted symbolic body such as Daumier’s *Royalty in Decline*, 1834 where the king sits on a chamber pot with a clysma tube or in another print where Louis-Philippe is shown in a torn and muddied ermine robe, *Your cape's in pretty good shape!... 1834*. This becomes a very popular method of satirising the king for artists (Weisberg 1993).

These modes have been utilised to discuss the work of Daumier, but if we go back to Gombrich’s reading of caricatures on the threshold of modernity, *The Pear* also becomes an effigy. For example, *The Masks* (Fig. 19.3) seems to illustrate the difference between the king’s effigy and a straightforward caricature, because it so readily recalls the laws of *lèse majesté*. Unable to draw the resemblance of the king, he is represented by a pear surrounded by likenesses of his cabinet. Compared to the other politicians, the king, as sovereign, was still seen as sacred, if at the very least by the courts. But *The Pear* becomes repeatedly used. The ones that are framed by insignia are meaningful in stretching the boundary Philipon set in his own court case (that it is *only* insignia, like crowns and medals that can mark the effigy as an effigy). On top of this, the pear is treated like the punishment of hanging *in effigie* in many of Daumier drawings, such as *Heave! Ho!... Heave! Ho! Heave! Ho!... 1832*.

## 19.7 Modernism and Censorship

The *control* of the image mirrors the shift from absolute monarchy to disciplinary society. There is no doubt that these images were powerful and were seen as a serious threat to the stability and legitimacy of the July Monarchy. Courtly art had enjoyed a quasi-monopoly on the king's image and the imaging of the State. The court maintained a phalanx of artists to image the July Monarchy, but the new autonomous art became an unwelcome disruption (Bezucha 1990). There was a huge growth in the dissemination of images through journals and posters and through the more autonomous art market (Chu and Weisberg 1994).

The birth of the author is the corollary of the birth of censorship. This tale has been read as an insistence on the modern right of freedom of speech, where Daumier becomes the freedom fighter for modern autonomy. But what Daumier was gaoled for was more political and dangerous; the actual political threat has been diminished in historical accounts. Similarly, censorship has been read within its own logic of the disciplinary society through crimes of defamation, obscenity or social corruption. In this threshold moment, it is clear that the actual rights of the author were a corollary of the need to name and control the author.

The philosophy of aesthetics and their categories of originality and individuality all feed into the legal framework of censorship. Martha Woodmansee conflated literary and legal perspectives on the notion of authorship through a sociological reading of the author in eighteenth-century Germany (Woodmansee 1984). Carla Hess has shown that in France, the idea of the individualistic 'author' as bearer of literary property rights was introduced as an instrument of monarchist repression, 'a legal instrument for the regulation of knowledge' (Hesse 1990). The French revolutionaries later sought to 'dethrone the absolute author... and recast him, not as a *private* individual (the absolute bourgeois), but rather as a *public* servant, as the model citizen' (Hesse 1990, 109). Jonathan Gilmore writing about mid-nineteenth-century France also saw a relationship between copyright protection and censorship; with copyright protection of lithographs in 1820, censorship laws were also instigated in tandem. The lithograph was seen as particularly dangerous in that 'working class' society could easily digest the satirical content of the lithograph (Gilmore 2002). Until French censorship laws were abolished in 1881, the government censored drawings in advance of publication, but not the printed word. High art was on the other hand seen as opaque and non-threatening. It was not as yet covered by copyright protection or censorship.

I suggest that this special control of middle class art responded to the threat and monopoly of ideological control offered by and through the image. Philipon's journals were the perfect bourgeois art. Indeed part of the appeal of Philipon's journals, to connoisseurs who collected the prints, was the banal fact that paper was especially suitable for collecting (Childs 1999, 48). This popularity threatened the stability of government, which up until this point had had a monopoly on image making, particularly the image of the king. High art still was largely State sanctioned through the academic control of commissions and the State control of the Salons.

The image was, unlike text, censored *before* the image was published. If the image was treated as knowledge, fact or satirical comment, like satirical novels, it would not have had this special treatment. The caricature was controlled, even here at the birth of censorship and disciplinary statutory control, due to a fear of its *magical* power as much as any satirical knowledge that it produced. As a response to the modern power of images, Terdiman notes that the government countered with increased administration. The journalistic image was a successful subversive technique and difficult to control, and the French government started its own journal, *La Charge*.

A primary reason for the fear of the image was an irrational notion that drawing directly affected the world as in an act, not as comment or rhetoric. When the French government requested the reimposition of prior censorship of drawings in 1835, the Minister of Justice, Jean-Charles Persil, argued that this request was constitutional, despite Article 7 of the *Charter of 1830*, which guaranteed the 'right to publish' and declared that 'censorship can never be re-established'. The argument that Persil made directly connects with the shift from effigy to image as outlined above. Persil argued that the *Charter* provision applied only to the 'free manifestation of opinion' but not to 'opinions converted into actions [my emphasis]'. He suggested that although opinions could be expressed in words, because they addressed 'only the mind', drawings however were 'when opinions were converted into acts'. As Persil continued, '[drawing] speaks to the eyes. That is more than the expression of an opinion, that is a deed, an action, a behaviour, with which Article 7 of the Charter is not concerned' (quoted in Goldstein 1989, 2). Supporting Persil's argument, the chairman of the legislative committee, Paul Jean Pierre Sauzet, considered the government's proposal of pre-emptive censorship of images through reference to the king's body as sacrosanct. In reference to Philipon's depiction of Louis-Philippe as a pear he wrote: 'No measure is more needed by the situation and desired by public opinion [than] putting an end to these outrages that corrupt the spirit of the population in degrading with impunity the royal majesty'.

At the birth of censorship, we witness a residual reliance on the laws of *lèse majesté*. Published in *La Caricature* (November 24, 1831) at the time when Philipon was first sentenced to a gaol term in 1831, he writes:

Men of power, you want to hide your hideous nakedness under the royal mantle. You demand, shivering, *an asylum in the inviolability of the monarch* [my emphasis]. Well, you will be chased from the temple that momentarily serves you as a place of refuge and you will find us always at the door armed with a whip to lacerate you.

There is something in Daumier and Philipon's caricatures that still recognises the magic and exception of the king and his effigy. The king is the inviolable sovereign who must be imaged either as a pear or not at all, who stands at the limit of what can be transgressed or questioned. In the next part of the chapter, I expand on this revelation. Daumier is not the transgressive modernist who hysterically calls out to the king; rather, Daumier approaches this subject via another mode of resistance. Only the king, following the logic of *lèse majesté*, can image himself. The State has a monopoly on the effigy. The effigy's job is to act as a visual master signifier, which interpellates the

subject and assigns a symbolic order. Louis-Philippe attempted to use his body as a point in which monarchical and republican claims meshed. What Daumier and Philipon were able to do was break Louis-Philippe's ability to unify these claims to his body as the master signifier. They managed to keep the republican master signifier separated and distanced from Louis-Philippe, stymieing the strategy of the State.

## 19.8 The State, Art and the Middle Way

Louis-Philippe, born into a family of regicides, was seen as a great hope. Delacroix's famous image, *28th of July: Liberty Leading the People* 1830, suggests how liberty overthrew Charles X in the three glorious days of the July Revolution. But the violent hope of the July Revolution soon reified into the July Monarchy of Louis-Philippe. Even Delacroix's work, exhibited with great pride and solemnity in the 1831 Salon (and bought by the French Interior Ministry for the Musée du Luxembourg), was secreted out of sight by 1832 due to a fear that it would incite sedition. In its stead, images that showed how the two warring parties could be brought together under the middle way were created. An exemplary piece is F.E. Picot's *July 1830: France Defends the Charter* (1835) (for image see Ribner 1993, 73). The Charter, which Louis-Philippe – the self-styled Citizen King – agreed to, sits between the two opposing parties: the masked republic (a phoney sovereign face) and the blind absolute monarch. Orléanist constitutionalism was the answer. It is the stellar work of the late Albert Boime that has most explored this notion of an art of the *juste milieu* (Boime 1993). Paintings and sculpture were severely circumscribed by the policies and preferences of the French Academy and the regime of Louis-Philippe. Seeking to discourage the creation of large-scaled, politically tendentious subjects taken from Greek and Roman antiquity, the State and the Academy encouraged the exhibition of easel-sized pictures representing nationalistic, patriotic and familial themes from past and present history. This style would be called *genre historique* by the Academy. For some writers *genre historique* predates the larger paintings of the worker and genre scenes in Realism. Sandra Petrey sees this style in the literature of the day as well. It is a 'hybrid style' of 'allegory and reality', which ushers in the birth of Realism (2005). Similarly, Michael Marrinan has made a very detailed study of the ideological control and money spent by the July Monarchy on commissioning works that fit within *genre historique*, or what Marrinan calls the 'history painting of the *juste milieu*' (Marrinan 1988). Artists such as Ary Scheffer and Antoine-Louis Barye, for example, sought to achieve a reconciliation of the 1789 Revolution with restoration through freedom and order, democracy and stability, science and faith, progress and 'business as usual'. This meant that such cogent bourgeois businessmen as Louis-François Bertin, or Madame Moitessier (married to the wealthy banker Sigisbert Moitessier), could be painted by Ingres alongside the achievements of the First Republic and the victories of Napoleon. According to Boime, the art and politics of the July Monarchy endeavoured to blend the irreconcilables of French society.

In terms of the king's body, there is a complexity that we have up to now glossed over. In the *juste milieu*, the king's body did not represent the monarchy. The Citizen King was trying to represent both political interests, republican and monarchical. The alliance with Lafayette was meant to smooth this transition and to give the king more republican legitimacy. In any case the king was chosen because his father was one of the few nobles who had voted for the execution of Louis XVI. The official imagery of the king followed this logic. Boime, for example, spends some time with Vernet's royal portrait, *Portrait du Roi* (1847) (1993, 303). He quite literally has on both shoulders the tricolour of Louis XIV, with his sculpture in the background. Louis-Philippe's body embodies their fusion. What Boime suggests is that Louis-Philippe intends to legitimise his rule so as not to be seen as a usurper and to link his family to the Bourbons. At the same time, he rides confidently out of the picture plane and into the future of France (Boime 1993, 303–304).

Todd Porterfield has also done some work linking the *juste milieu* strategy to the early rise of Orientalism. He sees the shift to Orientalism occurring as a way of having a common pride in France regardless of political persuasion (Porterfield 1998). Louis-Philippe commissioned many paintings based on the Napoleonic campaigns. Porterfield summarises the strategy:

Together they forged an official culture that provided a rationale for imperialism – based on images of France's moral and technological superiority – and an enduring project for Frenchmen of all political persuasions during an era of domestic instability. The allure of empire derived in part from its function as an alternative, surrogate, mask, and displacement of the Revolution. (Porterfield 1998, 32)

So that it was an effort to sublimate the revolutionary violence and again to quilt the empire behind the king and a unified France, in relation to its proud empire and against the Oriental Other. Louis-Philippe raised the Obelisk of Luxor, in the Place de la Concorde, very early in his reign. Desperately Louis-Philippe tried to stitch the regime to a greater notion of French Imperial might. Boime also sees this process in action. Again in Vernet's *Capture of Smalah of Abd el Kader*, Boime sees exactly the same process that Barthes discusses in the famous Paris Match cover of *Mythologies*; the Oriental *too* is willing to fight bravely for France, for everyone is bound together under the imperialist banner (Boime 1993, 351).

Patricia Mainardi also reads the politics of the Salon as a whole as a response to *juste milieu* politics. As the century progressed towards a modern autonomous art and away from the courtly art of the academy, there was tension between monarchist and the republican interests. In the Second Republic, the compromise became a bifurcated system of annually opened free shows, as called for by republican interests, and the less regular shows of historical monarchical academic painting (Mainardi 1993). Mainardi writes, 'By the 1820s it was assumed that liberals would support Romanticism, Constitutional Monarchs might or might not, and only Legitimists would continue to be as committed to classicism as they were to the *ancien régime*' (1993, 11). While attention has already been paid to the impact of the *juste milieu* on art history, the argument to follow is an extension of this scholarship.

## 19.9 The Juste Milieu and the Strategy of Unquilting

From the caricaturists' point of view, the *juste milieu* was a travesty. There were during the period of 1830–1835 two major parties on the left: the *resistance* party and the more radical *mouvement* party. The caricaturists, including notably Charles Philipon, were of the *mouvement* party (Kerr 2000, 70–73). What was at the heart of the tension between the two opposing parties was that the Orléanists, the resistance party, was for reasserting authority under *juste milieu*. The *mouvement* party wanted to reassert the position of revolutionary ideals of liberty and the republic. The *juste milieu* was caricatured in many ways in relation to this tension. The Orléanist king pear was pitted against the republican virtues. The pear itself has been seen as a marker of the liquid, unstable shifting of the Orléanist position; the pear is like a water drop before the splash. Similarly it was seen to be a soft, impotent skinned penis. Jules David's *L'escamoteur* (*La Caricature*, 13 May 1831) shows the king as an illusionist who, with a slight of hand called '*juste milieu*', is able to make the revolution and liberty disappear. Or in a scatological piece of Travies, *Juste Milieu se Crotte* (*The Juste Milieu Dirties Itself*, July 1832), the king pear is seen as a faeces pot carried by the poor (represented by Harlequin and Pierrot). In Daumier's *juste milieu*, the king pear hides the politicians under his robe, concealing their sins under the royal cloak. Similarly Philipon in his *Le juste milieu* (1830) has a pear with the tricolour hat, unsuccessfully hiding a Bourbon white cravat and *ancien régime* royal garb: the 'oxymoronic Citizen King'.

The major point is that what the caricaturists were able to do, and here Daumier and Philipon were at the forefront, was to keep the two master signifiers separate. They did not allow the king to quilt the terms of the republican movement onto the body of the king. First, the king was always represented as the enemy of these virtues, whether plastering over it, bursting bubbles or shitting on them. On one level, this is a hysterical response. For Daumier and the others, the king was not castrated enough and was too corrupt. More boldly they were calling for the complete overthrow of monarchical government. As a member of the *mouvement* party, Philipon wanted a reassertion of the republican ideals. They stopped the conflation of values seen in the *juste milieu*. Beyond this understanding of the bifurcated politics of the *juste milieu*, there was a more active strategy. Many cartoons insistently kept the king's body apart from those virtues of the republic he wished to accept. The effigy of the republic or liberty, as seen in Delacroix's rousing image, was kept very much apart from Louis-Philippe. The number of these images in Daumier's oeuvre is impressive, but it will suffice to focus on a few. Starting in reverse *The Main Actor in a Tragcomic Imbroglio* (29 March 1835, *La Charivari*) shows the bourgeois king gradually turning again into a king. All the trappings of the bourgeois king are falling away to reveal an absolute monarch: the umbrella becomes a sceptre, the top hat with cockade becomes a crown and the coat becomes an ermine cape. So although there is a doubling of the *juste milieu*, the king is unable to reconcile the two positions. It was this period in the king's reign that the press laws became harsher after the assassination attempt under the September Laws. The image can be seen as imaging the failure of the regime to adequately create consensus between the republican

**Fig. 19.4** Honoré Daumier,  
*A Modern Galileo, And Yet it Continues Its Journey*, 1834,  
23 cm × 27 cm, lithograph



and monarchical positions. Another late work during this period was *Posthumous Sentencing* (*Le Charivari* 1 March 1835), where the two master signifiers are placed on a scale; The Pear is outweighed by the republican Phrygian hat. The two master signifiers – monarchy and republic – are shown as two images that must be balanced but are not.

In other images, the two are shown as outright enemies. For example in ‘Barbe bleue, blanche et rouge’ (Blue, White and Red Beard), (*La Caricature*, April 11, 1833; design by Grandville (J.-I.-I. Gérard) and Bernard-Romain Julien, lithograph by Becquet) the scene is made obvious by a prosaic caption. The commentary explained: “It’s Louis-Philippe about to slaughter Constitution...” The Press leans out of her tower holding two republican papers, *La tribune* and *Le national*. Constitution calls to her: “Press, my sister, don’t you see anyone coming?” – “I see two knights riding at a gallop carrying a banner; it’s the banner of the Republic.” Louis-Philippe is seen as the enemy of the press but more importantly the enemy of the republic.

An example of how the republic is an alternative and heroic master signifier that may come ‘to the rescue’ at any moment is fantastically suggested by Daumier in *A modern Galileo, And Yet it Continues Its Journey* (*La Caricature*, 6 November 1834) (Fig. 19.4). A republican prisoner sits chained but alert in a prison facing a grave judge (who resembles Persil). Between the two figures, a sceptre of freedom flies onwards unabated and into the future, on it are the dates 1832, 1833, the present, 1835 and 1836. It seems to emanate from the prisoner to attack the present legal position. So where, for example, Daumier’s *Rue Transnonain, le 15 Avril* (1834), shows the horror of repression and gives the viewer information regarding State violence, this image works on the level of the master signifier. The master signifier represents either liberty, freedom or the republic. *France at Rest* (*La Caricature* 28 August 1834) makes this connection clearer. Behind a sleeping

Louis-Philippe, the republic is visible with her hands tied. There is the totemic cockerel without its feathers. Everything is in a state of hiatus. The king does not rule, but the republic is downcast and shackled. This image has almost a pendant in ‘Where are we going? What’s going to happen? There’s a volcano in our path... the abyss of revolution is about to open at our feet... The ship of state has gone dead in the water because of this surfeit bad feelings’. Two men are in front of Aubert’s shop, among the images is Philipon’s four pears. Finally the republic is separated out in one Daumier’s final political cartoons, *Looks like it was a lot of bother to have us killed!* (*La Caricature* 27 Aug 1835). This should be read in relation to Delacroix’s liberty as its antithesis. The three heroes of July 1830 survey the scene, watching innocent civilians killed, with irony and sadness. So the images I have chosen to focus upon all present the republic as separated from the king, or the present regime. The way to read these images is through the master signifier. Daumier refuses to let the two meet, to let the king quilt the ideas to his own effigy. It is this action that gives Daumier’s work its importance and strength. The work becomes not an act in Persil’s sense but connects to what Žižek has called an Act. Žižek suggests, ‘This is the key point: an act is neither a strategic intervention *into* the existing order, nor its “crazy” destructive *negation*; an act is an “excessive”, trans-strategic, intervention which redefines the rules and contours of the existing order’ (Butler 2005, 145). What Daumier and the other caricaturists were able to do between 1830 and 1835 is to keep the political field open so that Louis-Philippe was unable to take the authority of the republican position to his side. By keeping the republic separated, it always kept the option open for the republic ‘to come’. The republic was the little fairy that was not obvious, but nevertheless there in the prison, it was shackled behind the king but waiting. It is for this reason that finally in 1835 the crackdown was so severe. The act of Daumier and the others was so successful at keeping the revolutionary field going.

In light of the images discussed above, it is worth looking back again on the *Gargantua* as a revolutionary act. It seems hysterical (in a Lacanian sense), producing information and knowledge that ‘The king is selling titles and favours’ and that the ‘government is corrupt’. It is also hysterical in that it finds the king’s body repulsive and ‘not castrated enough’ (i.e. not purely symbolic as a king should be). Perhaps it is the government of Louis-Philippe who understood the image best by seeing it as treasonous libel or in French terms *lèse majesté*. What is disguised in the image is the little fairy of the republic and indeed just near the bucket on the ground, among the common people, a small woman looks away, wearing a Phrygian white cap. In the political circumstances of the time, merely a year or two after the new regime began, even Delacroix’s liberty was seen as seditious. The mistake has been to look at Daumier through the caricature of our own time. In this image, it is not the same as merely saying, ‘President Bush is nepotistic’; it would be the equivalent of suggesting that democratic capitalism, as an ideology, is wrong and illegitimate and should be overthrown. The art historians also discuss the effect of the censor, in contemporary terms such as the freedom of the press. The issue of Daumier’s early work is not one of free speech, as a modern right, but of regime change and revolution; the censor is the regime (in a state of emergency). I am reminded of Frantz Fanon

discussing the ability of the storytellers in Algeria to raise a unified revolutionary body: ‘The epic, with its typified categories, reappeared; it became an authentic form of entertainment which took on once more a cultural value. Colonialism made no mistake when from 1955 on it proceeded to arrest these storytellers systematically’. Similarly, Louis-Philippe made no mistake in his strict censorship. In the end, the caricaturists were proved correct, and the regime did end because the consensus was never quite reached between these two broad factions. 1848 marked the end of the monarchy.

## 19.10 The Repressed Rises Again

In 1848, when the July Monarchy ends, Daumier shows through his work that it is the republic that has been repressed the whole time and in whose name he was gaoled (not for some mere artistic autonomy). The work *Dernier Conseil des Ex-ministres* was drawn as soon as the regime was changed. The republic bursts through the door with a bright light behind her. At the table of State with papers and pen still on the table, the ministers of Louis-Philippe’s regime scramble to retreat, like moths uncovered behind a curtain. Although Baudelaire (and later modern teleology) preferred the ‘modern’ satirical works of lawyers, peasants and the bourgeois drawn from life, it was the gaoling for *lèse majesté* that made him a hero of the Third Republic. In his 1878 retrospective, his effigy of the republic hanging on the wall, Daumier was able to say that he had been gaoled for destabilising the monarchy, for opening the field in some way for the Third Republic to come into being almost 50 years later. So in Daumier’s work, the two effigies of both the monarch and the republic battled out briefly between 1830 and 1835. The field was successfully closed in 1835 through censorship backed up by intense violence. But for 5 years, Daumier’s works were the equivalent of the Lacanian Act. They showed the possibility against the running order of the Orléanist monarchy. Not in a hysterical voice but as a revolutionary calling for the republic. In 1848, when the revolution finally did come and the republic again stopped *becoming*, Daumier again imaged the republic as the Marianne of the Second Republic. *Lèse majesté* or treason actually marks you as the emancipatory outlaw. Their crime was the imagining of overthrow.

Indeed, in 1848, when the regime finally came to an end and in the first months of the Second Republic, the provisional government organised a competition to image ‘the republic’. Daumier entered with *Sketch for ‘The Republic’: The Republic Feeding her Children and Instructing them* (1848). Courbet and François Bonvin’s encouragement for Daumier to compete proved worthwhile, and this effigy was State sanctioned. In 1878 this was the only effigy Daumier exhibited at his retrospective and was well received at that time as a reassertion of republican values in the Third Republic; the exhibition of this work was a visualised version of the revolutionaries’ demand, lead by Léon Gambetta, that the 1848 Republic be restored. Although there was a Royalist majority, they could not restore a monarch to the

throne. The republican constitutional laws were passed in 1875 that proclaimed France would from then on be a permanent republic. The birth of the assured republic coincides with Daumier's retrospective (and Courbet's death) in 1877. Both artists had lived their artistic lives through both republican and monarchical governments and through many revolutions and political tensions in France. The feeling at this period is well summed up in the *Punch* Cartoon, 27 October 1877, *A Decided Preference*, where a Marianne finally puts on her republican garb for good. This image illustrates the end to an oscillation between the monarchical and the republican master signifiers where France finally settles on the republican democratic master signifier.

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# **Chapter 20**

## **Law, Code, and Governance in Prophetic Painting: Notes on the Emergence of Early, High, and Late Modern Forms of Life and Governance**

**Ronnie Lippens**

**Abstract** This contribution aims to demonstrate how forms of governance are inextricably intertwined with the forms of life that give rise to them and how such forms of life/governance tend to emerge, historically, in the sensory sphere – on canvas in particular – before they do so symbolically, or conceptually, in the spoken or written word. In other words, emerging forms of life/governance leave traces first in ‘prophetic’ painting before they do so in tracts, books, texts, film scripts, installation art, and so on. This is demonstrated with regard to three historical periods that, each, saw the birth of a particular form of life/governance, that is, early modernity (roughly from 1470 to 1520), high modernity (1750–1800), and late modernity (1940–1990). This contribution includes discussions of ‘prophetic paintings’ by early modern painters such as Jean Fouquet, Gerard David, Domenico Ghirlandaio, Antonello da Messina, and Quentin Metsys; high modern painters such as William Hogarth, Joseph Wright of Derby, and Henry Fuseli; and, finally, late modern painters such as Jackson Pollock and Mark Rothko.

### **20.1 Introduction**

The basic question this chapter addresses is whether paintings are the vehicle *par excellence* for new or emerging forms of life and the forms of governance that are inextricably part of them. In other words, do forms of life and governance appear as art before they do so in the sphere of the conceptual? To ask this question is to inquire whether forms of life/governance express themselves in the sensory sphere (e.g. the domain of the visual) before they do so in the domain of abstract symbols and concepts.

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The late art historian Francis Haskell asked himself a similar question in his essay on ‘Art as Prophecy’ (1993: 389–430). A close analysis of Jacques-Louis David’s pre-revolutionary painting *The Oath of the Horatii* [1784] led Haskell to surmise that the painting, in its depiction of solemn, stringent, virile, and merciless patriotism, might have foreshadowed the events of 1789. Ultimately, however, Haskell remained undecided on the issue of the possibility of prophetic painting. If there is such a thing as prophecy in art, he notes, the capacity on which it rests is unevenly distributed among artists and has less to do with the reasoned divination of things to come than with particular sensibilities accumulated in the individual painter.

Prophetic painting is not about an artist first picturing, in his mind’s eye, a scene in the future, or a vision of the future, which he then proceeds to compose and arrange on his canvas or panel. Prophetic painting is not – or at least, not necessarily – about painting events or scenes that are *deliberately* divined, imagined, and prophesied. There is another way of looking at prophecy in painting that holds that *all* painting, to an extent, is prophetic. This is because all painting somehow expresses at least to some extent *emerging* forms of life. By ‘emerging’ is meant here a transition from the realm of the virtual, from the not-yet-actualised, from sheer *intensity* to the actual and the *extensive* (Deleuze 2003; but see also, e.g. Murray 2006, 2007). This transition takes place, or so it could be argued, first and foremost through the senses. Painting in this sense might be regarded as the location *par excellence* of the actualisation, in matter, of emerging forms of life.

Haskell himself hinted at this when he fleetingly remarked that if there is anything like ‘prophetic power’ in art, it should reside in ‘sensitivity’, that is, in a certain non-reflective, nondeliberate, and nonconceptual emergence, through the bones and the flesh of the artist into actual matter. To be sure, much in painting *is* the result of symbolic or conceptual reflection, of reason and deliberation. But something in painting – in *all* painting, potentially – involves the sensory expression of the new, of that which is continuously becoming. In this sense, to the extent that painting expresses something of a newly emerging reality, it is prophetic. Perhaps art historian Michael Baxandall described it best in his *Patterns of Intention* (1985) when he spoke of the *charge* of the work (i.e. the will to find a new solution to an existing problem), its *brief* (i.e. the work’s historical, cultural, and technological context), and the nature of the *resources* which the painter perceives to be available and is able to marshal (i.e. painterly skill and biography). It is in this sense that we will consider prophetic painting here.

Emergent forms of life, or elements of it, are likely to leave traces first on panels and on canvases, before they do so in the symbolic or conceptual sphere. I hope to demonstrate this by taking a closer look at a number of paintings spanning five centuries. The main focus will be on the emergence of *modern* forms of life/governance, that is, in early (1470–1520), high (1750–1800), and late modernity (1940–1990). One might be able to detect, in modern life and governance, a certain preoccupation with the complexities of inner selves. That which is to govern, and which is to be governed, in modernity, is the complex inner self. That which lurks secretly underneath the surface of mass and mere organism – a complex of boiling potential, deliberations, aspirations, intentions, imaginary tactical manoeuvres, and so on – is what

governance (i.e. the governing self as well as the governed self) is to divine, reflect upon, work with, and put to productive use.

In what follows, I will focus first on the early modern emergence, on panels, of a form of life/governance that flows from the sudden discovery of the contemplative nature of the complex inner modern self. I will then move on to the emergence, on high modern canvases, of a new form of life/governance. This is one whereby the complex inner self gradually territorialises and codifies. The emergence of the final, late modern form of life/governance announces the actualisation of a process whereby the complex inner self, governed and governing, begins to engage in unrelenting de-territorialisation and de-codification.

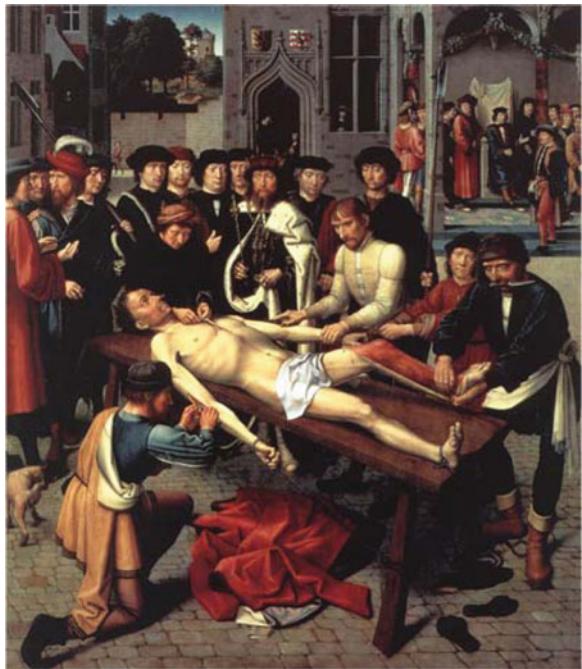
## 20.2 Complex Inner Selves: Their Emergence and Discovery

The work of a fifteenth-century Dutch-Flemish painter, Gerard David, is a good place to start. His diptych *The Justice of Cambyses* [1498], for example, captures, in our view at least, an emerging, indeed actualising early modern form of life/governance well (see Figs. 20.1 and 20.2). I have elsewhere analysed this painting in some depth (Lippens 2009). Briefly, both panels rehearse the story (first told by Herodotus) of the arrest, and subsequent execution, during the rule of the Persian king Cambyses III,



**Fig. 20.1** Gerard David, *The Justice of Cambyses* (1498). Panel 1: The arrest of Sisamnes. Groeninge Museum, Bruges

**Fig. 20.2** Gerard David, The Justice of Cambyses (1498). Panel 2: The flaying of Sisamnes. Groeninge Museum, Bruges



of a corrupt judge Sisamnes. The first panel depicts the arrest of the judge. His crime (accepting a bribe) is pictured in the backdrop (the past).

The second panel shows Sisamnes, in utter agony, being flayed alive. His son, Otanes, in his capacity as the newly appointed judge, is depicted in the backdrop (the future). He is seated on this father's throne which is draped with the latter's flayed skin. The first panel shows us events in a very static, indeed almost frozen, manner. The public square is barely visible in the background, and nothing worth of note seems to be happening there. The main events take place within the strict enclosure of the courthouse. The static, unchanging nature of royal authority and order dominates the scene.

On the second panel though, there is much more dynamism to be noted. All events take place in the open, in the public square. The seat of authority is placed at the fringes, at the margins of public life. The seat of authority, or the courthouse, is an open house. People move in and out freely, casually even. However, ambiguity seems to reign in the public square, particularly in the furtive, somewhat aloof glances which those who participate in public life seem to be throwing hither and thither. The new judge – new authority – allows himself or allows itself to be watched and scrutinised. But does he, and do we? He himself seems to be watching us, furtively, askance. But is he? It's not all that clear. There is a lot of ambiguity around. It's as if everybody in the square is wondering about something, wondering, perhaps, about what others might be wondering about.

Law is only skin-deep in an age when wonder, contemplation, and divination are beginning to take centre stage in life/governance. Law could never be more than a practical instrument in the hands of those who, whether governed or governing, are growing ever more tactile and tactical. This newly emerging, actualising form of life/governance is a *tactile* one: burghers and governors, in public squares, have just discovered, with something of a daze-inducing shock, the complexity of *their* inner self and are beginning to wonder about the complexity of the inner self of *others*. They are beginning to wonder about that which lurks – or which might be lurking – behind or underneath surfaces, skins in particular (do have another look at David's second panel). Their wonder is tactile: it tries to feel its way, in divination, behind the appearance of skin. This form of life/governance is also a *tactical* one. In the realm of possibility that has opened up in public life and in public squares, and in the complexity, or at least the potential for complexity, that has emerged in its wake, the issue for complex inner selves becomes to divine and contemplate the tactical opportunities (as well as the dangers) that could be hiding in them.

The newly emerged complex inner self is tactical also in the sense that it becomes important – whether one is governed or governing – not to betray one's tactical contemplations prematurely. In public squares, it is beginning to pay to project a seemingly indifferent, furtive, aloof, in short, ambiguous look. Such projections of course only fuel further divinations and contemplations. All this might be visible, at least to some extent, on the panels of David's diptych. Bret Rothstein recently (2008) claimed that *The Justice of Cambyses* stirs 'ruminative viewing' in spectators. Such ruminative viewing is quite normal before what Harry Berger calls early modern 'optical' and 'textural' paintings (rather than mere 'decorative' and 'graphic' ones), that is, paintings where the artist felt free to add his own optical perspective, or his own textural creativity, to the painting process. Such paintings tend to activate what Berger has termed an 'observer shuttle' (1998: 43) whereby the viewer moves back and forth between the painting and his or her imagination. But the point that is made here in the contribution at hand is that there is a lot of ruminative, indeed existential viewing going on in the very scenery of David's painting itself.

The way in which David painted the public square on his second panel was quite novel. A new form emerged there on that panel, in 1498; a new form of life/governance, one might say. If one compares David's panel with the painting, by an unknown master, of *The Execution of Savonarola* (painted also in 1498), the contrast immediately becomes clear. Whereas the former suggests movement, mobility, porous boundaries (e.g. between the open square and the courthouse), and deep ambiguity, the latter shows the Florentine square as a vast desert-like space where small groups of static, neatly delineated, separated groups or factions remain immobile around the scene of Savonarola's execution.

The close of the fifteenth century has often been read as a defining, existential moment in Western history. Some point to the impact of the catalyst year 1492 which will have prompted contemplative self-reflection on a massive scale. Others read Giovanni Pico della Mirandola's *Oratio de Hominis Dignitate* (published originally in 1486) as the event when existential, self-reflective, contemplative modern man – that is, man who contemplates options in order to choose and build his own

life – was born. That existential moment of self-awakening, it could be argued in passing, was probably first captured on Jean Fouquet's first panel of his Etienne Chevalier diptych, that is, *Portrait of Etienne Chevalier Commended by St. Stephen* [1450]. That panel depicts the rich courtier, painted against a backdrop in perspective (the emerging modern future), as he seems to be praying to and looking at the whitish immobility of *The Virgin and Child* [1453–1454] on the other panel, looking back, as it were, on a past of static, unchanging order whence he has just managed to wrestle himself from.

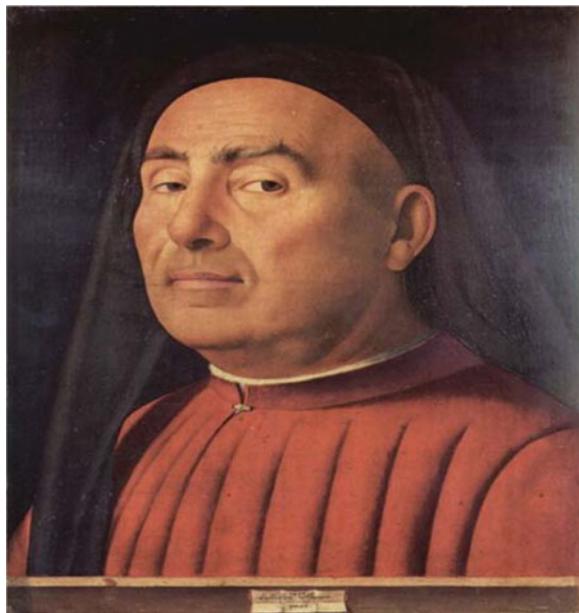
There is no point in discarding or rejecting these views on the birth of early modern 'existential man'. Here, we merely wish to add that David's diptych could be read as the visual harbinger of an emerging form of life/governance – the burgher form of life/governance – whereby complex inner selves suddenly, and slightly dazed still of the effects of their self-awakening discovery, had to come to terms with the existence of the complex inner selves of others as well and with the opportunities, risk, and dangers therein. The burgher, by the end of the fifteenth century, has come to realise that life is about opportunities and risks, about tactical manoeuvres, and about the uses of ambiguity in the tactics of social mobility. Those that govern are, they too, fully immersed in this emerging form of life/governance. They suddenly experience the need, indeed the practical necessity (as Machiavelli would a few decades later argue, in his *Discourses on Livy*), to read or divine that which lurks or hides behind the ambiguities in the body politic, in order to tactically mobilise it. They too are beginning to wonder about that which, in all its complexity, moves behind ambiguous surfaces.

The issue, in other words, in early modern life and governance is to contemplate ways to take account of or deal with others' likely *perspectives* in the ongoing construction of one's own (compare with Berger 1998, 32–33 in particular). What tactical ponderings are going on behind furtive glances, behind skins, behind the slightly ambiguous posture of those who walk past in public squares? David's diptych captures all this. But the preoccupation with surfaces and skins, and, more importantly, with that which might possibly dwell underneath or behind them, had already emerged on panels well before 1498.

Let's consider this early modern preoccupation with surfaces and skins, and with what those might be hiding. Domenico Ghirlandaio's well-known *Old Man and his Grandson* [1490] shows a grandfather who looks with a tender smile to his grandchild who, sitting on the man's lap, in turn looks him in the eye. The old man's face and nose are seriously disfigured by boils and warts. But that seems not to be an issue in this painting. What is important is the tender exchange of gazes between a loving grandfather and a grandson. It is as if their eyes are feeling their way through or behind the surface of skin. On Ghirlandaio's painting, a diseased and disfigured skin is no longer expressive of sin or moral depravity. It's only a surface. What is important is that which is hidden behind it, for example, motives, sentiments, and deliberations.

Now let us have a closer look at the early modern interest in the glance. Another Italian painter, Antonello da Messina, was, like Ghirlandaio, influenced by Flemish painting. He painted a series of portraits (during the 1460s and 1470s mostly) which

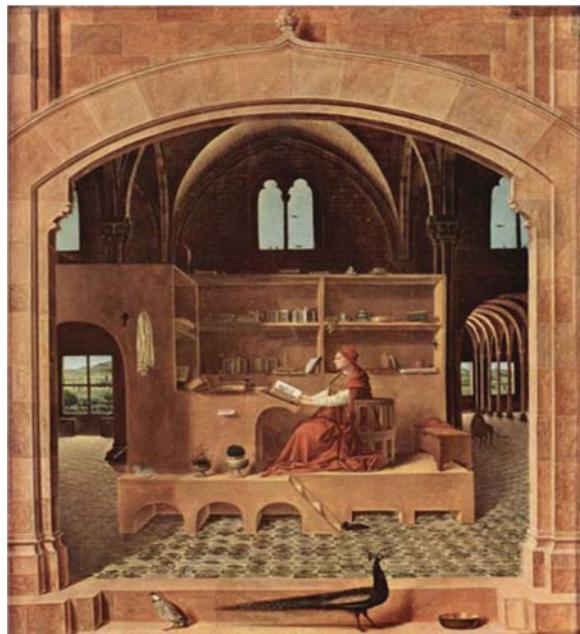
**Fig. 20.3** Antonello da Messina, *Portrait of a Man* (1476). Museo Civico d'Arte Antica, Turin



strike us as quite modern. The look in the eyes of da Messina's models, as they appear on his panels, goes way beyond what had hitherto been painted by his Flemish inspirers. There is a certain inquisitiveness to be noted in da Messina's painted glances which moderns will recognise. Do have a look at one of his many portraits, that is, his *Portrait of a Man* [1476] (see Fig. 20.3). The spectator is bound to wonder about what might possibly be going on behind this man's slightly aloof, slightly inquisitive look. One answer to that question might not be too far-fetched: the man is probably wondering about what is going on behind our own wondering eyes. This really is a qualitative leap from, for example, the Van Eyck brothers (1440s and 1450s mostly). Antonello da Messina even went so far as to endow the Holy Virgin, in his *Mary's Annunciation* [1475], with a similarly inquisitive, slightly enigmatic look in her eyes.

Da Messina's portraits, and the spectators who view them, seem to be caught up in a web of mutually shared wonder. They are bound to ask questions such as the following: What is going on behind the eyes? What is going on behind surfaces? What are others – complex inner selves just like me – thinking about? What plans are they contemplating? Which move are they likely to make next? The early modern *tactile* preoccupation with surfaces, skins, and glances – and, to be more precise, with the possible *tactical* contemplations that lurk behind them – would, in painting, find its ultimate culmination, or so it could be argued, in Flemish painter Quentin Metsys' work *Suppliant Peasants in the Office of Two Tax Collectors* [1515]. That painting shows two tax collectors and two peasants, all with grotesquely contorted faces and blemished skins, eying each other up with bewildered,

**Fig. 20.4** Antonello da Messina, *St Jerome in his Study* (1474). National Gallery, London



inquisitive, and suggestive gazes. Each of the characters in the painting seems to be trying to second-guess the motives, intentions, tactics, ponderings, and future moves of the others.

But let us return to Antonello da Messina. Before he embarked upon his series of portraits, he had already completed his *St Jerome in his Study* [1474] (see Fig. 20.4). The painting shows St Jerome translating the Gospel in his study. The painting is full of symbolism, but that is not what interests us here (on this symbolism, see Jolly 1983). St Jerome, the translator, and therefore also the bringer of new and as yet unknown, enigmatic tidings, is sat in a building which da Messina has broken open (not unlike Gerard David, on his second panel) in a Matruschka sort of way.

The spectator is able to look through the different layers of the building into its very heart. There, we find St Jerome. We may now wonder about what could possibly be going on behind the layers of the saint's flesh and blood, in the deep recesses of his mind. What is going on in St Jerome's mind? What is going on behind surfaces?

The small selection of paintings we have been discussing so far may go some way to showing how emerging modern complex inner selves, still stunned by their self-awakening, as well as by the very discovery of this self-awakening itself, produced a form of life and a form of governance (both inextricably intertwined) which materialised, from quite early on, on painted panels. On these panels, we are able to recognise typically modern preoccupations with the complexity of the self, with tactical manoeuvres, with the practical necessity to take the complexities of selves

into account, with the contingencies of opportunity and risk, with self-presentation, with the sheer indeterminacy of choice, and so on. All this happens quite a while before corresponding ideas emerge, conceptually, in print (e.g. in Machiavelli's *Discourses on Livy*). On such panels, one might indeed be able to witness the birth of modern, indeterminate, indeed existential man. Let us now move on to the emergence of a high modern form of life/governance.

### 20.3 Complex Inner Selves: Territorialising and Codifying

In his recently translated *The Eye of the Law* (2009), Michael Stolleis traces the symbolic deployment of the figure of the eye (usually depicted within the frame of a triangular shape) in successive regimes of authority and governance since the seventeenth century. First, it represented God's 'watchful eye', then the eye of the absolute Sovereign, later still the eye of the law (and the constitution), or the nation, *Volk*, 'the people', and so on. It is worth noting that the 'watchful' eye here stands, symbolically, not just for 'surveillance' or for 'warning' and 'punishment', but also, at least potentially, for 'protection', 'providence', or indeed 'formative' and 'productive'. During the eighteenth century, it is the law and the nation – or the constitution – that become the location of the watchful eye. The emphasis in its symbolic connotations gradually moves towards the formative and productive properties of the eye and the gaze (even though their other properties never completely disappear). It is this transition which will form the backdrop of this section here. The formative and productive dimension of the gaze forms part of what we call the high modern form of life/governance.

William Hogarth was one of the great diagnosticians of the eighteenth century. The word is used here in a Nietzschean sense (but see also Deleuze 1994). His works have great diagnostic force. Firmly embedded in a 'post-Newtonian universe' (Asfour 1999), Hogarth diagnoses what he believes to be a very serious problem in mid-eighteenth century (British) society, that is, the lack of a stable and stabilising centre or the lack of 'civilisation' amidst rampant 'savagery' (Dabydeen 1981). Let us consider his *An Election Entertainment* [1755] (Fig. 20.5). Again, I am not interested in the symbolic dimension of this painting. I do note, however, that the theme of the painting is politics or the political. The centre of this canvas is almost completely taken up by the white expanse of the empty table. The table is empty since one of the women has managed, in all her fleshy desire, to rake all foodstuffs and cakes to her side. The empty, blank centre is left vacated. All around the empty centre, the buzz of frenetic, uncontrolled activity – sheer disorder – reigns. The centre doesn't hold anything. Nothing seems to be keeping sheer bodily desire in check (see also Krysmanski 1998a, b). If there are any complex, inner selves present, they have decided to allow desire to play out.

The centre does not seem to structure, produce, or harness any of the available energies. This is a recurring theme in many of Hogarth's diagnostic works (his ironically named *Progresses* in particular; see, e.g. Momberger 1999): if left unchecked,

**Fig. 20.5** William Hogarth, An Election Entertainment (1755). Sir John Soane's Museum, London



desire shall, step by step, lead to sheer chaos. The early modern, self-aware, and reflective pondering self has all but disappeared. It could be that more than two centuries of absolutist rule had made tactile and tactical games with, within, and between complex inner selves rather obsolete and had installed forms of life/governance that were geared more towards the mere physical control and management of pure bodily desire. The Italian jurist Cesare Beccaria would, about a decade after *An Election Entertainment*, publish his *Dei Delitti e Delle Pene* [1764] in which he made a plea to replace the regime of fleshy desire and its control with a quantitative mechanics of calculation which, he hoped, would ultimately, and indeed *naturally*, bring about stability and order.

But it was not long before a newly emerging form of life/governance crystallised on canvases, for example, on those of Joseph Wright of Derby. His *An Iron Forge* [1772] is worth a closer look (see Fig. 20.6). Wright has often been dubbed the painter of the Industrial Revolution par excellence (e.g. Cieszkowski 1983). But there is more to his work than that. The very centre of the painting is, here too, taken up by whiteness. But unlike Hogarth's empty whiteness, this one here is of a productive kind. The light from the white-hot ingot radiates outwards, and as it travels to the corners of the forge, it not only throws light on objects and on those who are present, it actually *forms*, indeed produces, them. This is a light that, in the words of Bille and Sørensen (2007), has 'agency'. It produces pride in the blacksmith who owns the forge (have another close look at the smith's facial expression). It produces well-being in him and in his family. It produces a sense of security in them. It forms their selves. The radiating light is productive. The forge is productive. It not only produces objects. It also produces selves. Out of nature's raw materials, out of the chaos of nature, out of sheer desire, it produces stability and order (see also Solkin 2003). The selves that are forged out of nature's sheer chaos have something stable, orderly about them. The stability and order that are forged out of sheer natural

**Fig. 20.6** Joseph Wright of Derby, *An Iron Forge* (1772). Tate Britain, London



desire are, in turn, indistinguishable from the features of the selves that emerge from the productive process, the former depending on the latter, and vice versa.

It is possible to retrace a gradual build-up in Wright's work up to *An Iron Forge* [1772]. Wright had been painting similar chiaroscuro works which, all of them, have a bright light at their centre. This is a light that, in the poetics of Gaston Bachelard, 'takes its time to light the whole room progressively'. A light whose productive 'wings and hands (...) move slowly as they brush the walls' (1988: 68; see also Bille and Sørensen 2007: 279). At a time when Beccaria was writing his *Dei Delitti*, Wright was making preparations for his *A Philosopher Giving that Lecture on the Orrery* [1764–1766]. The light in this painting emanates from a mere mechanical clockwork, that is, an orrery. The clockwork merely mimics the natural law of physics (the orbits of the planets, to be precise). Around the orrery are gathered a number of people whose faces are partially illuminated – in chiaroscuro style – by the light that 'brushes' past them. Here, we are still in a natural mechanics. That which is produced by the light is produced by clockwork that merely mimics nature. That which is thus produced – the selves of spectators, for example, can therefore be nothing but the effects of the mimicry of those very natural mechanics.

However, a few years later, in his *An Experiment on a Bird in the Air Pump* [1768], Wright has the radiating light flowing from a lamp placed under a device (a vacuum air pump) used for scientific experiments. Again, the light illuminates a multitude of faces. The air pump seems to represent a station somewhere halfway between a mere natural mechanics and a mechanics of production. An air pump is, after all, a productive machine. It mobilises certain laws of physics to produce certain willed effects. That which is thus produced is then not the mere effect of a

mere natural mechanics. It is *also* the result of a certain productive will. A few more years later, Wright paints *A Blacksmith's Shop* [1771]. As is the case in *An Iron Forge* [1772], the whiteness of the light, again placed at the centre, comes from a glowing hot ingot. It illuminates the faces of the workers who – unlike the blacksmith's family in *An Iron Forge* – are still absorbed in their productive work (see also Solkin 2003: 179–180 on precisely this point). The faces (and the selves) of the workers are completely focused, full of concentrated, stable, ordered *will*. That which they are about to produce will be too.

Some have called Wright a painter of the sublime (e.g. Paulson 1969: 291; Solkin 2003). One could argue though that on Wright's canvases, a new form of life/governance is emerging. This form of life/governance is not just about laboriousness and about transforming brute nature into civilisation; indeed, authors such as Locke and Hume had already written on these issues well before Wright (on this, see Solkin 2003, *partim*). This is a form of life/governance that is, once again, based on an interest in inner selves. The inner self here has to be produced. It has to be kneaded into shape. Governance here is about the willed production of stable, ordered, indeed *centred*, inner selves. Those who govern, and those who are governed, in this form of life/governance, have an interest in kneading and shaping their (and others') inner self. They have an interest in stabilising it, centring it, and ordering it. The very aim of all this production is to make the inner self in turn *productive*. Indeed, neither fleshy desire, nor a mere mechanics of nature could ever be productive. Desire and natural mechanics don't need an inner self at all. Where they reign, the inner self is absent. For there to be production or better *productivity*, there needs to be an inner self that, willingly, takes part in the productive process. And for there to be willing inner selves, they, in turn, need to be kneaded, indeed *forged*, into shape.

This emerging form of life/governance, then, crystallises around a certain will to *produce* inner selves – one's own and those of others – into *productive* shape. The inner self then, in this very process of production, is to become less complex, more stable, ordered, and centred. In other words, the potentially limitless complexity of the inner self, for it the self to acquire any productive capacity at all, will have to lose some of its complexity. This may come about by organising it, or by allowing it to self-organise, around a centre. The productive light radiating outwards from this centre should then stabilise the potentially restless complexity of contemplating, ruminating selves, ordering them and preparing them for productivity as the 'wings and hands' of the light 'brush' past them – remedying, as it were, the lack so vividly diagnosed by Hogarth (see again Paulson 1969: 292).

Wright's paintings seem to have captured some of this emerging form of life/governance. This happened two decades or so before Jeremy Bentham published his *Panopticon* [1787]. It may be a bridge too far to point to Wright's paintings as the immediate preconceptual precursors of Bentham's tract. Indeed, there are many differences to be noted here. One of the distinctive features of Bentham's *Panopticon*, that is, its centrally located tower that houses the eye of power, is darkened. No light radiates from it. However, there *is* light in the *Panopticon*. It 'brushes' past the concentrically positioned cells where it performs its kneading, shaping work. It produces subjects, as Michel Foucault (1977) argued. It produces fitting, *productive*

subjects. With its ‘wings and hands’, it tries to reach the farthest capillaries, nooks, and crannies with an *eye* on doing its productive work. The ‘eye’ indeed...It is the ‘eye’, the organ of light, the eye at the centre that guides the light on its productive travels. It is the eye at the centre that, within the inner self, at its centre, installs a productive will or, to be more precise, a will to production.

All this could of course also be related to what Michael Stolleis (see above) has described as the move, during the closing decades of the eighteenth century and during the early nineteenth, towards a political imaginary whereby the ‘watchful eye’ of governance is gradually situated at the centre of the law of the nation – the constitution, if you wish – from where it is then supposed or even expected to perform more productively, that is, to *produce* fitting citizens. The constitution of a society is a work of intense labour; it is a *productive* process. The constitution of a nation does not come naturally. Desire – and the mere management of it – won’t suffice. Natural laws of physics – or the attempt to mimic them – will simply not do. The eye of governance, says Foucault, would move into the centre of the many, mushrooming institutions of society, where it was to perform its most important task, that is, the productive constitution of upright, dependable citizens and disciplined, normalised workers. And that task, as we have argued, is about organising and centring the inner self of ‘citizens’ and ‘workers’. The form of life/governance which we have seen emerging on Wright’s canvases is one that needs inner selves to be focused on or centred upon the productive will to production. For the constitution to be able to productively organise its territory – for it to be able to territorialise – it needs inner selves that are themselves territorialised (to borrow from Deleuze and Guattari 1984), that is, organised, structured, or arranged according to particular codes. For the constitution to be able to perform its productive task appropriately, it needs inner selves that are codified and that are willing to codify.

The constitution of societies, nations, and inner selves is a never-ending story. That which is repressed is bound to return in some way or other, at some point in time. The *return of the repressed* is inevitable. Henry Fuseli’s well-known painting *The Nightmare* [1781] is probably one of the first to depict this. The painting materialised on canvas some 6 years before de Sade started work on his *Justine* (another repressed returning). At the centre of Fuseli’s *Nightmare*, we find, again, an expanse of whiteness. This whiteness is impotent, non-productive whiteness (it’s the whiteness of a dress of a woman who is either asleep, having nightmares, in a coma, or experiencing sexual ecstasy; Moffitt 2002). The inner self has disappeared. The whiteness in the painting, once again, stands for emptiness. The centre of the painting is once again a vacated space. The animal-like incubi (rampant, uncontrolled desire; disorderly nature) have taken over. Some romantics who came after the ‘gothic’ Fuseli would focus, it should be noted, on nature in a more positive light.

Let us now shift our attention to the emergence, in the latter half of the twentieth century, of the late modern form of life/governance. Whereas the high modern form of life/governance was about the territorialisation and codification of nations and of inner selves, the late modern form of life/governance is about de-territorialisation and de-codification.

## 20.4 Complex Inner Selves: De-territorialising and De-codifying

Jackson Pollock, one of the so-called abstract expressionists, achieved his signature style a few years after the Second World War. His *Autumn Rhythm: Number 30* (Fig. 20.7) was completed in 1950. Pollock never made a sustained effort to write (or even talk) about his work. Much of what we know about his own thoughts derives from a few scattered statements of which the following string of words is perhaps the most telling: ‘technic is the result of a need...new needs demand new technics...total control...denial of the accident...States of order...organic intensity...energy and motion...made visible...memories arrested in space...human needs and motives...acceptance’ (published posthumously, cited, e.g. in Emmerling 2007: 69 and in Varnedoe and Karmel 1998: 56).

Pollock used the then quite novel ‘dripping’ technique (‘new needs demand new technics’) to paint his massive canvases which were placed on the floor when the artist was working on them. He allowed, in other words, the laws of physics – sheer and utter nature – to do much of the work. But that does not mean that he relinquishes control (Cernuschi and Herczynski 2008). On the contrary, Pollock’s work is all about achieving and maintaining ‘total control’. Nothing in his painting is mere accident (‘denial of the accident’) or chaos. Pollock wants to achieve total control in and through his very engagement with sheer, physical nature. Such engagement should allow one to acquire some level of mastery, not just over nature but also over oneself.

Explorations in sheer ‘organic intensity’, and the immersion of oneself in the sheer physical laws of ‘energy and motion’, should provide one with the capacity and with the abilities to exercise control over one’s life conditions. In immersing



**Fig. 20.7** Jackson Pollock, Autumn Rhythm: Number 30 (1950) (266.7×525.8 cm) (Courtesy of the Metropolitan Museum of Art, New York, ©The Pollock-Krasner Foundation ARS, NY and DACS, London 2009)

himself in the physics of nature (the sheer size of his canvases allowed for such ‘immersion’), Pollock however still maintains or attempts to maintain ‘total control’ over the painting process. He wants to decide and choose himself where and how the dripping paint is going to fall and how it will leave traces of trajectories on the canvas. It is Pollock, and not physics or nature, who is to make the choices and the decisions. ‘Total control’ here is about having the capacity and ability to choose, to decide in the sheer, naked presence of the raw physics of nature. This capacity and this ability can be acquired, and trained even, if one is prepared to venture into this naked physics of nature (e.g. in the sheer *Rhythm of Autumn*), that is, if one is prepared to abandon all human law and code. In order to be able to acquire and maintain the capacity and ability to choose and decide in ‘total control’, one must first relinquish *all* law and code.

‘Total control’ cannot be achieved or exercised if one is still in the realm of human law and human codes. Control here is not about subscribing to or adopting particular forms of human organisation. Control is not about territorialising and codifying a particular space. It is not about mobilising the force of particular laws and codes in particular territories. Control is, on the contrary, about giving up all belief in, and all dependency on, coded territories. One does not just abandon law and code with a measure of control. Control, or at least the potential for control, resides *precisely in* this very move away from all coded territory. It is, in other words, about achieving and exercising utter and complete *responsiveness*. Responsiveness can only be achieved if one is prepared to abandon all rigid code and law. One should even give up or flee from one’s inner self. The inner self, insofar as it is organised, or coded, or territorialised, diminishes one’s capacity and ability for responsive control. In other words, it diminishes one’s *sovereignty* (see on this in more detail, Lippens 2011a, b). One should even give up one’s gender or indeed biological code (e.g. in transgender choice).

It is worth noting that Pollock used to start his paintings by drawing the outline of human figures on the canvas. The figures would then be washed away under the unrelenting, energetic dripping of the painter’s natural, physical but ‘totally controlled’ choices and decisions (see, e.g. in Varnedoe and Karmel 1998: 87–137). Only in the ‘total’ relinquishment of *all* law, of *all* code, of *all* territorialisation (and that includes the territorialised self itself), away from all that is not sheer nature, can one hope to find ‘control’, that is, the capacity and ability to choose and decide properly, responsively, in utter sovereignty. Only there can one find, ‘accept’, and deal with real ‘human needs and motives’.

Pollock’s painting technique betrays his will to ‘subvert’ even the laws of physics. It suggests ‘a defiant refusal to conform, a stubborn resolve to “outwit” the very natural order with which his own abstractions were meant to be consonant’ (Cernuschi and Herczynski 2008: 635). ‘Total control’, that is, absolute choice and decision, requires utter and complete de-territorialisation and de-codification. Pollock’s paintings, then, are the actual, physical representation of such explorations in the free, un-coded zone of nature; ‘memories’ of what happened and of what was chosen and decided ‘arrested in space’.

This should not come as too much of a surprise to late moderns. Authors such as Stephen Lyng (e.g. Lyng 2004) have been able to show how much in what we now know as ‘edgework’ (i.e. risk-seeking behaviour such as base jumping), particularly since about the 1970s, is precisely about the search for a completely de-territorialised, code-free natural zone where the edgeworker then hopes to be able to build up his or her capacity, ability, and skills of responsive control. But Pollock’s and edgeworkers’ exploits are indicative of a broader late modern form of life/governance to which we will now turn our attention.

This form of life/governance implies a turn away from all law and all code and, indeed, from the self (a coded territory in its own right) itself. Life and governance are no longer about producing, fashioning, steering, or guiding inner contemplative selves. They are, instead, about allowing and stimulating the free circulation of desire and choice. In this form of life/governance, those who govern and those who are governed are no longer interested in the construction of coherent (i.e. coded and territorialised) selves. Selves no longer need to have a coded core. They have, in fact, already turned into collections of mere trajectories of choices. They have de-territorialised. They have been de-codified. Their trajectories resemble Pollock’s paintings. In consumer societies (which thrive on unrelenting, indeed relentless choice), there is little point in re-codifying or in re-territorialising selves, least of all one’s own. Echoing existentialism, one could say that selves *are* their choices. They are what they have chosen and what they continue to choose.

To be in control means to circulate freely, away from all law and code, and to exercise sovereign choice. To be in control means to have the capacity, and to be able to keep de-territorialising, and to keep de-codifying. It is to have the capacity and the ability to keep choosing *otherwise*. That goes as much for those who govern as for those who are governed. Seen in this perspective, Pollock’s *Autumn Rhythm* does not so much represent the *unconscious* (whether repressed, or disciplined, or set free) as, rather, natural, responsive, total control. That requires abstract ‘flatness’ in subjectivity (Joselit 2000), that is, a flatness that no longer hides and no longer has any use for interior depth and complexity, for ambiguity, or for centred inner selves. It is in that sense that Pollock’s work might perhaps be said to ‘address the non-human’ (Moses 2004).

But if the late modern form of life/governance has emerged around the potential for sovereign, totally *responsive* free circulation, indeed the quasi-permanent de-territorialisation of natural choice and control, then it has also produced quite paradoxical effects. If coded territories are to be avoided, fled even, in attempts to achieve natural responsive control, then the potential for de-territorialisation and de-codification must not just be stimulated and maintained but also safeguarded or protected. That which is to be kept at bay, neutralised, or, if necessary, destroyed is nonresponsive rigidity (more precisely, that which is *perceived* to be nonresponsive rigidity). And that can only happen, paradoxically, through coding and territorialisation. Two years after *Autumn Rhythm*, Pollock completed his *Blue Poles: Number II* (Fig. 20.8). Here, suddenly, the natural rhythm of choice and control seems to gradually territorialise. Admittedly, it is unclear whether the ‘blue poles’ represent older forms of coded social organisation that are disappearing under or



**Fig. 20.8** Jackson Pollock, *Blue Poles: Number II* (1952) (210×486.8 cm) (Courtesy of National Gallery of Australia, Canberra, ©The Pollock-Krasner Foundation ARS, NY and DACS, London 2009)

washed over by an emerging new, late modern way of life or whether it is this new way of life that, quite naturally or organically, produces newly emerging protective ‘poles’. The fact that this painting was completed only after a series of ‘signature Pollock’ drip paintings could lend support to the second hypothesis.

In what Guy Debord once called a *Society of the Spectacle* (1967), governance tends to take place by means of twin strategies which sociologists such as Zygmunt Bauman (e.g. 1993: 139) have recognised as *seduction* and *repression*. The basic strategy is one whereby one allows oneself to be seduced by circulating commodity/image. Those who fail to choose *responsively* (and responsibly) will be met with repression. One might add that repression takes two forms, that is, ‘hot’ repression whereby ‘offenders’, that is, nonresponsive organisms and their rigid desires, are made to *feel* and ‘cold’, detached repression whereby offenders, deemed to be nonresponsive, rigidly coded physical mass, are dealt with accordingly. Both strategies however share one feature: neither is based on an interest in the inner complex self.

Those who govern and those who are governed, those who seduce and those who are seduced, those who repress and those who are repressed all share a lack of interest in the complex deliberations of inner selves. There is no need to read the complex inner self. There is no longer any need to harness its energies. There is no longer any need to *productively* knead the inner self into shape. There is no longer any need for a contemplative inner self at all – or so script writers and directors of zombie movies have caricaturised from about the late 1960s or early 1970s onwards. Moreover, in late modernity, there is nothing to produce, build, or construct. There is nothing to work *towards*. Having arrived ‘beyond history’ (in Fukuyama’s 1989, words), there are no longer any projects to orientate selves towards.

The age ‘beyond history’ is a thoroughly post-constructive age. The smooth circulation of responsive, sovereign choice is not just the terminus of history, it has also become second nature; indeed, it is now sheer nature. ‘Beyond history’, the complex

inner self has turned natural. The form of life/governance in the post-constructive age, ‘beyond history’, is about natural, responsive interventions in natural, freely circulating flows. Like ‘edgework’, life and governance are *natural* life and governance. That which has to be kept at bay, controlled, destroyed, or otherwise dealt with is unresponsive, rigidly coded or ‘unnatural’ organism or mass.

This *natural* form of life/governance often leads to quite paradoxical outcomes. That which is deemed to be *potentially* unresponsive or rigid tends to be prohibited, or blocked off, out of precaution.

The ‘precautionary principle’ (Pieterman and Hanekamp 2002; Pieterman 2008) in governance has made quite some headway in our post-constructive age. Whereas in an earlier age one might have been prepared to calculate possible risks in order to deal with them in a number of ways, all with an eye on the construction or completion of overarching projects and end goals, ‘beyond history’ such calculations are now in the process of being abandoned. That which, in all its potential rigidity, might (just might) pose a threat to the free and responsive circulation of choice and sovereign control, should, indeed *must* be blocked off and nipped in the bud before it emerges, however paradoxical such precautionary measures may be. There is no need to calculate and manage risks. We have already arrived ‘beyond history’, into sheer nature. Calculations of risk serve little purpose in sheer post-constructive (second) nature.

The late modern form of life/governance may be one that thrives on de-territorialising and de-codifying choice and control; it cannot, of course, escape its own territorialisation and codification. It has itself territorialised and codified around its own perceptions of rigid, unresponsive, ‘unnatural’ organism and mass. However, such perceptions tend to modulate according to the fluctuations of circulating flows. In his ‘Postscript on Control Societies’ (1995: 177–182) – a reflection on Foucault’s work – Gilles Deleuze phrased it most succinctly when he claimed that a now bygone, disciplinary era which was coded and territorialised according to ‘order words’ has now been superseded by an age where circulations and flows are merely controlled by the modulated application of mere ‘passwords’ (see also Dillon and Lobo-Guerrero 2009). Passwords regulate circulation and flows according to perceived local or localised necessities. Their goal is not to order or structure populations at their very core (i.e. at the level of the complex inner self). They merely regulate mass and organism according to specific, local circulatory exigencies.

Much in what we have described so far in this section seems to have been captured by, if not prefigured on, Pollock’s signature canvases. But he was not the only painter who, in those immediate post-war years, allowed some of the late modern form of life/governance to emerge in paint (see Lippens 2010). Like Pollock, Mark Rothko had, until the Second World War, explored mythological themes in a bid to express something of the universal in human experience. Auschwitz made such attempts look very problematic and prompted artists such as Rothko to move towards abstraction as the format in which the tension between on the one hand the *tragic* particularity of each and every singular responsive *choice* and the ineradicable expanse of unfulfilled potentiality on the other, or, in other words, the tension *within* the will to utter sovereignty, could be expressed (see also Zucker 2001; Pappas 2007).

**Fig. 20.9** *Mark Rothko, No. 24 (Untitled) (1951)*  
 (236.9 × 120.7 cm)  
 (Courtesy of Tel Aviv Museum of Art, Gift of the Mark Rothko Foundation, Inc., New York, 1986,  
 ©1998 Kate Rothko Prizel and Christopher Rothko ARS, NY and DACS, London 2009)



After the war, Rothko moved to painting his so-called *multiforms*. In those paintings, Rothko had irregular shapes of different colours move and flow and sometimes coagulate on canvas. In a way, those multiforms somehow express the *tragedy* of life (Rothko had read Nietzsche). The movement of the flows suggests, on the one hand, creative potential and, on the other, eternal disruption. But the coagulations of the flows too suggest both creative potential and blockage simultaneously. It would not take long though for Rothko to develop his signature style. Let us have a closer look at his *No. 24 (Untitled)* which he completed in 1951 (Fig. 20.9).

On this painting, the irregular shapes and flows have crystallised into distinguishable shapes that float seemingly peacefully in each other's immediate vicinity. But that doesn't mean that the tragic tension within human experience has now gone. The shapes in this and similar paintings, according to Rothko himself, are entities that go 'without shame and embarrassment'. They are 'actors who are able to move dramatically without embarrassment and execute gestures without shame'. They do so 'with internal freedom, and without need to conform with or to violate what is probable in the familiar world' (Rothko 2006: 58–59). They don't allow themselves to be coded or territorialised. And they won't recognise any code or territory either. They just go 'without shame and embarrassment', not unlike Nietzsche's Zarathustra. They are unafraid to explore in all assumed sovereignty.

Note how canvases such as *No. 24* showed here have open borders. And the boundaries between the entities are irregular and porous. The tone of the colour

within each of the entities is unevenly distributed, suggesting, perhaps, internal heterogeneity or boiling tension.

The entities look the tragedy of life in the eye and abandon all code or law or even coherence. They may explore or perhaps only dream about exploring the outside (hence the open borders and porous boundaries). Internally heterogeneous and diverse, they float ‘without shame and embarrassment’. Like Nietzsche’s Zarathustra, they know that every move, every decision, and every choice made is one made in eternity and for all eternity. This is why they assume full sovereignty and refuse to submit to law and code. But this is also why they waver, hover, and float in a sea of sheer, yet-to-access potential, in the midst of what they perceive to be other, fearless sovereigns. *Other, fearless sovereigns...:* just so many sources of rigidity, just so many hindrances, so many quanta of mass and organism whose circulation must be controlled by mere ‘passwords’.

As with Pollock, in Rothko too, there is a tension between on the one hand the will to complete and utter sovereignty, that is, fearless, un-coded, responsive, ‘natural’ circulation and control, and, on the other, the perceived necessity for security, that is, for protection against any form of rigidity that threatens to undermine their very sovereignty. In other words, here, we see control playing out as the eternally recurring flight from all law, code, and territory, on the one hand, and as the very paradoxical institution of law, code, and territory, on the other. This tension, it should by now go without saying, is present – and *boiling* – within late modern selves, whether governed or governing. Rothko would later (e.g. already in his 1953 painting *No. 61: Rust and Blue*) produce canvases with shapes, or entities, that have less irregular, more pronounced boundaries. The borders of the painting would still remain open though, and the boiling internal heterogeneity of the entities would even increase (suggesting even more boiling tension and pressure). But the boundaries between entities would tighten.

## 20.5 Conclusion

The focus in this chapter has been on the emergence, in modern painting, of forms of life/governance (i.e. in early (1470–1520), high (1750–1800), and late modernity (1940–1990)). The aim was to detect the emergence, in ‘prophetic painting’, of forms of life/governance, before they did so in the symbolic or conceptual sphere. I have thus compared conceptual work on governance dating back to 1500–1520, to 1780–1800, and to 1970–1990, with a number of paintings from, respectively, 1470–1500, 1750–1780, and 1940–1970. I hope to have been able to contribute new insights, however small, to governance studies. Indeed, it may be fair to argue that efforts, within socio-legal studies and governance studies, to focus on painting as a source of information about law, justice, and governance, have been few and far between. Studies that focus on painting as the medium that *announces* (rather than illustrates) the *emergence* (rather than the mere existence) of *forms of life/governance* (rather than views on and practices of justice and punishment) are very rare

indeed. It is precisely this lack in current socio-legal studies that this contribution set out to address.

One might be able to detect, in modern life and governance, a certain preoccupation with the complexities of inner selves. That which is to govern, and which is to be governed, in modernity, is the inner self. That which lurks secretly underneath the surface of mass and mere organism – a complex of boiling potential, deliberations, aspirations, intentions, imaginary tactical manoeuvres, and so on – is what governance (the governing self as well as the governed self) is to divine, access, reflect upon, work with, and put to productive use. One could argue that the first traces of this mode of governance, as well as the form of life of which it is a part, appeared on panels sometime between 1470 and 1500, decades before conceptual works such as Machiavelli's appeared on the scene.

Later, in high modernity, paintings such as those by, for example, Joseph Wright of Derby (and others who painted between 1750 and 1780) seem to have been the harbinger of a form of life and governance whereby the self (again, the governing self as well as the governed self) sheds a mechanistic and calculative habitus to gradually emerge as that which is to be productive and that which is to be produced (i.e. kneaded or forged into normalised shape). Jeremy Bentham's 'Panopticon', some 20 years after Wright, would subsequently express this emerging form of life/governance conceptually.

Late modernity saw works from a variety of post-war (1940–1970) painters visually announcing a form of life/governance whereby any interest in the inner self (whether it be the governing self or the governed self) gradually faded away. Life and governance here emerge as mere control of circulation and flow. Late modern control encompasses all attempts, however paradoxical, to institute and protect natural, sovereign responsiveness through the mere management, destruction, or precautionary prevention of what is deemed to be rigid, inflexible law, code, and territory.

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**Part IV**

**Visualizing Law in Indigenous or Folk  
Loric Culture**

# **Chapter 21**

## **Signs at Odds? The Semiotics of Law, Legitimacy, and Authenticity in Tribal Contexts**

**Renee Ann Cramer**

**Abstract** Tribal sovereignty in the United States is consolidated and enacted in a plethora of physical spaces, within which tribes must establish both legitimacy and legality for their governance. In tension with this need, at times, is the need to simultaneously establish authenticity of tribal practices, perceptions of which may rest in an unreflecting view of these practices as premodern, prelegal, and historical – rather than mobile, adaptable, and contemporary engagements with contemporary life. However, the supposed binaries of modernity and tradition are much more complexly constructed and understood by tribal practitioners, than they have been by non-Indian observers. This essay examines the creative ways that tribal buildings and signs reflect and resolve the tensions perceived between modernity and indigeneity. Tribal semiotic practices construct legitimacy in ways that creatively avoid the false dichotomy between authenticity and modernity, and deploy multiple visual components to reassure a number of constituencies of their authentic claims to western legality and legitimacy, as well as distinctive tribal authority.

### **21.1 Authenticity and Legitimacy**

Tribal sovereignty in the United States is consolidated and enacted in a plethora of physical spaces. From the geographic boundaries of reservations to the demarcations of “checkerboarding” within those lands, Indian territories require signs to enforce jurisdiction, alert newcomers to customary practices, and establish homelands. In addition to these boundary signs, tribally owned public buildings offer spaces in which outsiders and tribal members meet, form relationships, enjoy leisure,

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govern, and engage in business practices. Tribal casinos, bingo halls, governance buildings, and tribal courts are important arenas for these interactions.

Within these physical spaces, tribes must establish both legitimacy and legality for their governance. In tension with this need, at times, is the need to simultaneously establish authenticity of tribal practices. The tension arises, in particular, when authentic practices are construed as premodern, prelegal, and historical – rather than mobile, adaptable, and contemporary engagements with modernity. Indian commentators and non-tribal peoples alike have noted the apparent tensions between representations of modernity and authenticity.

Yet recent scholarship has demonstrated that the supposed binaries of modernity and tradition are much more complexly constructed and understood by tribal practitioners. This essay examines the creative ways that tribal buildings and signs reflect and resolve the tensions perceived between modernity and indigeneity.

Drawing on Justin Richland's (2008) ethnographic study of Hopi tribal courts, Jessica Cattelino's (2008) ethnography of Seminole bingo and attitudes toward money, Renee Cramer's (2005) examination of casinos in relation to federal acknowledgment law, and Steven Feld and Keith Basso's (1996) classic work on the significance of "place" for tribal peoples, I argue that tribal semiotic practices construct legitimacy in a way that creatively avoids the false dichotomy between authenticity and modernity. Tribal practices in relation to land and buildings deploy multiple visual components to reassure a number of constituencies of their authentic claims to both western legality and legitimacy, and distinctive tribal authority.

This chapter comparatively examines actual spaces of tribal governance and commerce, examining several types of space and the semiotics working in and through them. Road signs demarcating reservation land and landmarks and tribal commercial sites marked as smoke shops, bingo halls and casinos, and spaces of tribal governance, including tribal court offices, all offer sites within which to understand tribal negotiations of the false dichotomies of modernity and authenticity.

For many observers, the semiotics of these spaces and the signs that represent them seem "at odds" with each other. It makes little cognitive sense, to some, when they see a reservation boundary marked by history and alluding to genocide, nearly adjacent to modern and shiny tribal court and governance buildings. Markers of premodern authenticity, such as teepees and feathers, seem at odds on signs for tribally owned gas stations and casinos. And the glamorous physical environs of some of the nation's largest casino can call into question the claim to tribal identity by those who operate them.

The average non-Indian American, stepping foot on a reservation, would expect – if not teepees – at least the reservation landscape popularized in some contemporary film treatments. Fans of *Dances with Wolves* would expect horses, no doubt, and a flat and arid landscape, and those who have ventured into contemporary American Indian cinema, viewing, perhaps, *Smoke Signals*, would look for a sparsely populated land, driveways littered with clunker "rez cars," and little industry. The reservation lands, then, of tribes like the Agua Caliente in California or the Mohegan in Connecticut, both tribes with exceedingly successful gaming operations, whose reservations feature large and well-appointed homes, with Jaguars and Porsche

Cayennes parked in driveways, might create dissonance in the unreflecting visitor. Such a visitor might wonder how it is that Indians can participate successfully in modern culture without diminishing their indigeneity or how other tribes, with less cash but just as much interest in survival, can square signs for tribally run casinos and gas stations with small shops selling baskets or beadwork.

In fact, the US Supreme Court doctrine has reified these oddities, as signifying moments and spaces within which tribal claims to legitimacy are indeed called into question. In cases spanning the history of federal Indian law and running a gamut of issues from sovereign immunity to boundary drawing, from tribal court jurisdiction to hunting, fishing, and whaling rights, Supreme Court language and decisions often rely upon a vision of tribal life that is primitive and impoverished, rather than contemporary and thriving. Chillingly, exercise of tribal power and access to tribal rights are often based upon how well tribal culture fits the premodern stereotype held by the Court.

In their recent study of the myths and realities in law and economics associated with exercises of tribal sovereignty, Kalt and Singer (2004) note, “Despite – or perhaps because of – the economic, social, and political success of Native self-rule, tribal sovereignty is now under increasingly vigorous and effective attack. Over the last decade, in particular, the Supreme Court has moved repeatedly to limit tribal powers over nonmembers. Lower courts,” they continue, “have fed this process with decisions that increasingly rein in the ability of tribal governments to govern commerce and social affairs on their reservations. Congress, too, has seen increasing numbers of bills introduced to abolish the tribes’ sovereign immunity, limit their taxation powers, and regulate their commerce” (Kalt and Singer, 2–3). Part of the basis for these incursions on the effective policy of tribal sovereignty is a misreading of economic progress as somehow anti-Indian.

The dominant American imagination and its recapitulation in the US law are not the only places where indigenous identity is particularly marked as primitive and premodern. Scholarship on Indian issues has also seen “Indianness” as holding a particular type of legitimacy and has tied tribal authority and legitimacy to so-called traditional practices. As Justin Richland has noted about the anthropological literature surrounding American Indian culture, there is perpetuated in such literature a “naturalizing dialectic of authority and legitimacy” (119).

Richland’s powerful work, as I have noted elsewhere, makes “an epistemological claim about the need to attend to interactions and details [in tribal life], instead of fixed and essentialized notions found in commonly deployed metanarratives.” Richland makes a further epistemological claim to avoid dualities and false dichotomies in favor of examining nuance, interstitiality, and processes of constructing meaning. He proposes a way of investigating claims to authenticity and legitimacy that understands what is being said, why, how, and by whom – and, more importantly, in what context. As Richland writes:

[A]nthropological theories that treat claims to cultural distinctiveness as binaries of resistance/hegemony – as either libratory or reifying, sincerely autochthonous or “merely” other-determined – tell only part of the story of culture’s political and juridical significance ... I suggest that an analysis of cultural difference that hews more closely to the sociopolitical realities and