

Law, Culture, and Society: LatCrit Theory and Transdisciplinary Approaches
Critical Approaches to Legal Reform: Toward Social Justice?

*639 LET THERE BE JUSTICE: THE DOUBLE STANDARD OF APPLICATION OF LEGAL
NORMS

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I. Within a World of Images

The image of the world we build is one of the ways to know what we think of it. Every image means a possible world we would like to be in or we would like to reject. In this way, images tells us of our dreams, our nightmares, our hopes and our fears. So if we want to comprehend what they mean in our lives, how they affect our relations, and the society that looks at them, it is useful to look at the arts, as they reflect our thoughts and beliefs about the world.

Images depend on the beliefs of individuals and these images tend to be the foundations of a social system. This is what we will analyze in this work. First, images are useful to explain how things and individuals are and are organized. You can find this when Berger takes note of the karma-sansara: "it legitimates the conditions of all social strata simultaneously and, in its linkage with the conception of dharma (social duty, particularly caste duty), constitutes the most thoroughly conservative religious system devised in history." [\[FN1\]](#) The image of the world is a wide explanation of the social order held through different generations until it surrenders its place to another image, more useful than the older. So images are construed to be the fictitious foundation of a given society. They display elements used in the process of socialization and support the basis of many of our actions. That is the way they should be understood.

*640 If you look at the movie "West Side Story," you can classify it as a musical or as a dramatic movie, and perhaps you can realize there is a hidden story behind the scenes; but you do not observe that, besides its dramatic narration, it reflects a social hierarchy within the context of a social Darwinist conception of life, in which poor living conditions lead to fatal violence between gangs. The ones who maintain law and order only watch this cycle. In a kind of circular history; poor people learn that their way of life never ends. There is only a change of roles within a given context that they cannot escape.

The arts - or more precisely, artists - construe the world they live in or how they think it really is. This is not a privilege for Hollywood filmmakers, as Argentine film history could demonstrate. [\[FN2\]](#) Second, images are also the way to discover how different kinds of norms - social, moral, religious, legal - have been construed and are applied. If an individual takes time to think about why he or she takes certain actions, he or she could question the convenience, or the opportunity, of a prohibition on or the duty to perform that act.

As individuals of society we perform acts without measuring what we really do, that is why arts are able to oblige us to stop and to look at the world we are in. The arts give us reasons to doubt the norms we have to follow. In this way we - like the Greeks - face our lives confronting with the power, but unlike them, we are challenged by a Hobbesian kind of power that protects us while we do not defy its presence. So people can choose -

or they are supposed to be free to choose - the plan they live by; but often things are different from those images that we learnt to be true. Like a popular Rolling Stones song tells us "All of my friends at school grew up and settled down. And they mortgaged up their lives. One things not said too much, but I think it's true. They just get married cause there's nothing else to do, so . . ." [\[FN3\]](#)

Images - someday - are confronted with reality and the result of this event can be astonishing. We may find that our conducts are led by images that hide our vision of reality. In this moment we are ready to ask with William James,

what difference would it practically make to anyone if this notion rather than that notion were true? If no practical difference whatever can be traced, then the alternatives mean practically the same thing, and all dispute is idle. Whenever a dispute is serious, **641* we ought to be able to show some practical difference that must allow from one side or the other's being right. [\[FN4\]](#)

Paintings, as movies or as narrative fiction, are not only images but micro-worlds useful to explain the macro-world we call culture. We have to take more seriously what these micro-worlds mean and it does not matter if they are photographs, drawings on a wall or popular lyrics. For example, if you listen to the Rolling Stones song "Street Fighting Man" or Simon and Garfunkel's "The Boxer," you are able to know what a child's life is in the streets without an expert's guide. Though this does not mean that the expert's view is unnecessary, you can deduce from lyrics or photographs or films how our culture has been constructed and endures. Perhaps this is more comprehensive than the expert's point of view, as its language is common, so people do not need to decode the message. Comprehension is an important characteristic that ought to be remembered in order to understand what the word justice means.

Images are not the only means to consider how the world is understood - as we have said - but in order to examine the importance and the meaning of the validity and efficiency of legal norms, they are important ones. Images are an interesting - and challenging - invitation to look within the world as it is supposed to be. This critical way of looking could reveal many a prejudice, as we will see in the following paragraphs.

As a result of the proceeding introduction, we must advert that the following analysis is not from an aesthetic point of view; it is an analysis that considers paintings as symbols of a determined conception of justice and - simultaneously - symbols of the legal world as it is seen by the layman. This distinction appears to be useful in distinguishing between two worlds, one that has representation and other that shows how it really is. As William James wrote we must turn away "from abstraction and insufficiency, from verbal solutions, from bad a priori reasons, from fixed principles, closed systems, and pretended absolutes and origins. He turns towards concreteness and adequacy, towards facts, towards action, and towards power." [\[FN5\]](#) One we call the "world of legal norms" and another we name the "world of justice."

The world of legal norms is the world where jurists, professors of law, law students, judges, and practitioners live and think. It is a place where every member thinks and supposes that legal norms are applied after due process of law, protecting citizens under a rule of fair play guaranteed by judges who look for justice. By contrast, the second one - the world of **642* justice - gives place to a particular situation, that while every member accepts the existence of the world of legal norms, at the same time, they distrust it based upon a philosophical, ethical, or religious foundation. This conception - in many cases - relates to profound religious beliefs, and supposes that, at last, justice will win and evil will disappear.

The image of justice versus evil endures throughout many films, like "Dracula," where Van Helsing did not hesitate to do the butcher's work in order to kill the vampire. [FN6] It means that if you commit a homicide, you have to pay with your life for the life you took. The tradition of the avenger or the "justiciero" - the name given to these individuals in Argentina - as it appeared in the movies known as "Death Wish" could be explained with the help of this concept. However, this also means a primitive conception of penal law, extremely dangerous as it removes the rational approach of legal norms.

This conception is used to measure the world of legal norms, because the world of justice is the measure with which to contrast how legal norms are applied in the real world, as the movie ". . . And Justice For All" reveals when Al Pacino, as legal practitioner, fails to help his black client. [FN7] Because we are accustomed to talk about norms that guarantee the due process of law, we do not see we may be living within a whole legal mythology that relies on a superlaw we know as the U.S. Constitution, whose existence protects us as far as we are concerned. To realize this is a myth is to discover how, in certain historical circumstances, this superlaw authorizes legal restrictions that leave us without privacy or freedom or life. This contradiction must be explained if we want to show its consequences and how this mythology is still alive.

How can it be explained that the U.S. Constitution simultaneously protects human dignity and yet allows the death penalty to coexist with it? It is like Shiva performing his dance of creation upon human skulls. [FN8] Now we can face a kind of legitimation that needs symbols that images can provide through the ages, and through human generations, without specific learning. They are internalized as human beings grow within a given society. As Berger writes "all legitimation maintains socially defined reality." [FN9] In this way we have two kinds of legal minds that collide and whose results are - frequently - harmful for the individual. These two kinds of legal minds live within the same individual, and their existence can explain the delicate balance we face daily, in the world we rely on. *643 How they influence legal procedures and our perceptions of law will be analyzed through the following paintings.

II. Where Justice, Violence, and Legal Norms Converge

The first painting we will analyze is "Death of Marat" by French painter Jacques-Louis David. [FN10] What this painting suggests to us is a world where justice, violence, and legal norms converge in a place where human beings find there is a quest for justice beyond legal norms. The classical work of Rene Girard about the double meaning of violence relates to our propositions about the double standard of justice as applied to individuals. [FN11] Girard writes there are two conceptions on violence, one that is good and another that is evil; one that acts as a medicine and the other that is unrelated to justice. The principle shown says that "men who are eager to terrorize others will inevitably become frightened of the very people they are intimidating." [FN12] So violence unrelated to justice only brings about terror.

This remarkable painting shows us the break of the delicate balance we mentioned before. The "Death of Marat" displays three important subjects: i) the tragic aspect of death, ii) the story behind the scene, and iii) the inexorability of the violence associated with a particular conception of justice. We will explain these three subjects in the following paragraphs.

First, as Lessing wrote, [FN13] the tragic aspect of death can be looked through the view of the physical injury that causes it. This judgement can be extended to any injury. The representation of injuries seems to be understood when they are part of a whole drama. The tragedy of death is combined with the lethal fate of certain human beings. This implies that injuries represented without a reference to a person's tragedy is

nonsense. So when injuries are represented, they need to be related to a certain human being's tragedy. Therefore, picturing tragedy reminds the individual of the tragic life he, she or someone else may lead. In this painting, the death of Marat speaks of the tragic fate of any revolutionary, just as photographs picturing a death row could do. Awaiting the application of the death penalty is an injury itself, maybe the kind of injury that relates to the victim's membership in a minority group. So these *644 images remind them what they can expect from society if they do certain acts, just as describing a rape could be a way to remind women of a means of domination over them. Such is the effect of Delacroix's "The Death of Sardanapalus," based on Lord Byron's poem, which shows that, along with the Assyrian king's death, every one of his possessions must die or be destroyed in a funeral pyre, including his women. [\[FN14\]](#)

The conclusion is that these kind of injuries are the ones minorities have to bear, which is why their lives are represented as tragedies in themselves. But, what is worse, members of these minority groups - or of any similar group - could be inclined to accept that these injuries are unavoidable. Such a way of accepting social Darwinism by those who advocate it may be explained - partially - by the influence of how injuries are represented and who the ones who must bear them are. The way the image is construed is the way that is generally accepted until someone demonstrates the message within.

Second, images are not mere images; they are open gates to the stories behind the scene. David's painting suggests that the assassination of Marat is a consequence of the previous death penalties he ordered. The lonely death of Marat - betrayed by Charlotte Corday - signifies the lonely existence of the executioner because of his filthy work, as Caillois pointed out. [\[FN15\]](#) But it also tells us about the never ending cycle of violence. This is why violence - once accepted - stands in spite of the legal system, and in certain situations, is within the foundations of the legal system. When Charlotte Corday decides to take Marat's life, in the name of the dead girondins, violence and death appears to be a common fate for those who are unjust; but as Lessing noted, the kind of human misery that is bore by an individual may be the one we, too, suffer one day. [\[FN16\]](#) But the same could be told about the "The Death of Sardanapalus." What is the place for women in such a royal court? To be treated like objects. This also means that women are subject to men. They do not challenge their fate, as the painting shows. It is a given destiny, learnt through the processes of socialization, a social hierarchy that reveals an ontological hierarchy. The victim cooperates with his/her execution. Then we can ask if this representation differs from the ones that pornography shows? I can see no difference.

Images tend to last in memory, and are associated with the feelings and emotions they cause. Thus a judicial decision can rely on this hidden *645 principle as on any other rule of law. This socialization establishes the kind of conduct that certain individuals should engage in; for example, all men are equal but you have to rest separately. That is why Cicero mentioned truth as the judge's business, because of its relation with justice. The image construed goes beyond legal norms, opening the gate to the application of a double standard of justice.

Third, this reminds us of a forgotten rule of conduct: prejudice - like injustice - once tolerated, spreads like a flood, and the only way to change this status quo is to defy its presence through violence. But this is not an evil violence - born in the world of legal norms - it is rather the use of "good violence," the type that tends to refound the basis of society. One example is the painting from Caravaggio that shows Judith beheading Holofernes in order to bring peace to her people. [\[FN17\]](#)

So when a judge settles a conflict attending to other interests than those of the parties - the hidden foundations - the due process of law vanishes into thin air. Being a member

of a minority group cannot be seen as an inborn illness, but what reality demonstrates is that it is an inborn condition that affects the outcome in judicial decisions, especially in criminal trials.

The inexorability of a tragic fate is, therefore, filled with injuries that lead to: a) a violent world where disputes are not settled; for example, who really cares about the poor as victims? As many novelists write, if the accused gets a good lawyer - and this means a rich or famous one - he or she will succeed in obtaining a "not guilty" verdict. But if it happens that he or she cannot get a good lawyer, the future will be prison or paying a considerable sum; b) a legal world where judges are not necessarily acting on behalf of the legal system. This is why some have written about classist justice; the status quo one individual has leads him or her to different kinds of results in the judicial process. It does not matter what conduct has been done, but depends on the principle of "who does what," contrary to the statement described by Cicero that "anyone who wants to enjoy a genuine reputation is obliged to fulfil the obligations demanded by justice;" [\[FN18\]](#) and c) a world where common people rely on force only to survive. As another Rolling Stones song asks, "what can a poor boy do?" [\[FN19\]](#) Maybe for many, violence is the only way to get rid of poverty. For the victim's family, violence is the way to get rid of the wrongdoer; however, "the wrongdoer must be convincingly condemned, but this condemnation ^{*646} must also serve to justify the judges." [\[FN20\]](#) It is the image socialized within a society. So when the principal character in the film "Death Wish" plans to avenge his family's death, he acts the way many a viewer would. But the worst image is the one that shows judges acting as avengers, as the film "The Star Chamber" portrays.

The importance of a world scarce of consistency - because of the coexistence of these worlds - appears when judges apply a double standard of reasoning, and the condemned fits within the stereotype the judge has in mind. But it also exists when people demand justice through lynching minority group members. The justification of violence as a legitimate means in the quest for justice reduces the ability to create alternatives, "to imagine alternative universes to the one we know, in which the most various grades and types of union should be embodied." [\[FN21\]](#) There emerge two kinds of legal minds, the one that is taught in law schools and the one that is learnt in the streets. As many legal novelists - like Scott Turow - write, if you are rich or famous or powerful, is it possible to be condemned when legal norms collide with your conduct?

III. Legal Norms Versus Justice

It is significant to say that paintings disclose a world behind them, richer than the image itself. If we consider the "Death of Socrates," also by David, we can find another way of explaining how the world of legal norms collides with the world of justice. [\[FN22\]](#) In this picture we can distinguish a general meaning and many particular meanings derived from the different parts of the painting.

The general meaning leads us to regard the Greek tragedy. This kind of tragedy reflects the familiarity of the Greek audience with injustice and evil. In this aspect - as Hamilton pointed out [\[FN23\]](#) - Greek writers represented the world the only way they could, how it really was. Given this consideration we can understand what the death of Socrates means. [\[FN24\]](#) Socrates is about to die because of an unjust condemnation. Because of his vocation to teach young people, David shows him teaching them about the ^{*647} consequences of an unjust judicial decision. Or, maybe, we can imagine he wants to teach about the consequences of the "evil violence" done by the judges, where due process of law has no place. We will explain this painting considering three subjects: i) the tragic aspect of death; ii) the story behind the scene, and iii) the inexorability of violence associated with a particular conception of justice.

First, this kind of death seems to be more tragic because of the ones that have caused it; they are the ones who were charged with settling disputes fairly. This representation shows the suspicion that judicial activity may bring upon itself when the members of the world of legal norms work in this world as if it were closed to laypeople. Such a way of working makes common people inclined to distrust the system. Legal techniques are distant and - sometimes - they are strange to the people. They begin to comprehend legal norms the moment they are harmfully applied, and when they are the victims. As Alan Dershowitz writes, "even many lawyers have little real understanding of what advocates are expected to do in a hotly contested criminal trial." [\[FN25\]](#) Criminal trials are where these different worlds are most obvious. So it should not be surprising that minority groups supply the population for prisons. Not every condemned is a Socrates, but the reason behind his death reflects those that are. In fact, this is the effect of the double standard of application of legal norms.

Second, the story behind the painting displays the imaginary order that underlies the legal system. What the condemnation of Socrates demonstrates is that challenging the foundations of the legal system is dangerous work. While Socrates's disciples try to stop what he will do, and some of them offer him an escape, Socrates's conduct cannot be other than the one he chose. Injustice is again associated with "evil violence," while the suicide of Socrates is looked on as a result of a "good violence," the violence that harms his own life but nobody else's.

Third, it seems the injustice tends to last in spite of Socrates's death. Perhaps he thinks of the scandal of the judicial decision and the likely effect on citizens. This happened in the biblical story of Susanna and the elders, painted by Artemisia Gentileschi. [\[FN26\]](#) Her refusal to have sexual relations with the elders put Susanna on trial. The question is, who is going to blame the elders, as they represent prudence and wisdom? Only a divine intervention helps Susanna when young Daniel appears to save her from the malice of the elders.

**648* But - as happened to Susanna - people are inclined to look the other way when injustice is done. The imaginary order that people believe in is stronger than reality. This is the massive effect of images. People are inclined to uphold an imaginary world for it provides safety and wealth, "wherefore, security being the true design and end of government, it unanswerably follows that whatever form thereof appears most likely to ensure it to us, with the least expense and greatest benefit, is preferable to all others." [\[FN27\]](#) This conception reminds us of Hobbes' perceptions about the state's foundations. That's why the "world of legal norms" endures. The double standard is useful in this way.

We are now able to consider the people behind the scene. We find the people of Athens and the judges. People may distrust judicial decisions, but they prefer some kind of security instead of pleading justice. Judges are conservative persons. Their role favors the status quo of a society and their function - to settle the disputes - gives them a kind of power over men and women who look for their intervention. Therefore, they are able to settle conflicts by applying a fragmentary and hopefully just solution. This fragmentary solution - in most cases - is accepted, but when this kind of solution is less than what is expected, violence emerges, the "good violence" that tries to restore the "world of justice." So what happens in our societies when even this minimal justice is denied? If you ask for bread and they give you a snake, as the Bible says, what will individuals choose to do?

IV. A Journey into the Light

In one of Camus's plays, one of his characters, Caligula, says the world as it is made is unbearable. [\[FN28\]](#) This judgment reminds us of the pain that follows human existence. Pain always accompanies injustice as it is shown in two paintings from Pieter Bruegel the Elder: "The Triumph of Death" [\[FN29\]](#) and "The Massacre of the Innocents." [\[FN30\]](#) The familiarity with violence tends to lessen the effects of its occurrence. When it becomes the solution for every problem, confrontation between ideologies are resolved with its use. This leads to many ways to die, as the first painting shows, but also many ways of cruelty where the least protected are the first to suffer.

**649* Therefore, when someone chooses violence as a means to restore universal justice, there arises a conflict. Because we do not want to praise violence, we must address whether there is to be some kind of reply to the double standard of legal norms. This requires entering into the world of images by confronting them with reality. This is what is shown in Joseph Wright's "Orrery." [\[FN31\]](#)

First, there is a chance to change the legal mind if law professors, law students, and judges consider how the world is. This means that teaching law should reflect the passions, the interests, the evil, and the goodness that lies inside every legal conflict. When you have to manage conflicts, you find the underlying causes, interests, and images learnt in the processes of socialization. Then you can ask yourself where the burden of proof must lie. Many a judicial process is solved on the basis of mythological foundations of society. The judge has the power to restore justice, so without power justice cannot be brought about. It seems there is an internal necessity that judges must use physical or moral power to ensure justice can be obtained. It seems also that justice is granted to the individual who fights for it. In this way this image of justice relates to the historical kind of government where all governmental functions lay in one person, the monarch. That is why justice is thought to reside, ultimately, in God, as suggested by William Blake's portrayal of God judging Adam. [\[FN32\]](#)

Second, legal practitioners should discover that images, lyrics, and drama can show the underlying foundations of many legal norms, or, more precisely, the obstacles in the application of due process of law. It is relevant to decode the messages within the images, which we have learnt are the true conceptions of reality. Jurists should know that "historians often forget that the proper study of history is men" and should avoid falling into the same trap. [\[FN33\]](#) This is a relevant element to take into account in every judicial decision-making process. As Cicero wrote, "men in charge of our national interests . . . must ensure that poor men are not swindled because they are poor." [\[FN34\]](#)

Third, this path to reality can allow us to end the coexistence of two worlds in conflict. Reality can teach us more than the ideal worlds we created to explain how the world is. In doing so we can place arts as a **650* legitimate way of knowing the legal mind, taking notice of the words spoken by Thomas More to Cromwell in Robert Bolt's play A Man for All Seasons: "what you have hunted me for is not my actions, but the thoughts of my heart. It is a long road you have opened. For first men will disclaim their hearts and presently they will have no hearts. God help the people whose Statesmen walk your road." [\[FN35\]](#)

Footnotes:

[\[FN1\]](#). Professor of General Theory of Law and Researcher, Instituto de Investigaciones Jurídicas y Sociales "Ambrosio L. Gioja," Facultad de Derecho, Universidad de Buenos Aires.

[\[FN1\]](#). Peter L. Berger, The Sacred Canopy: Elements of a Sociological Theory of Religion

65 (1990).

[FN2]. For example, comic films during the 1970s tended to hide what was really occurring.

[FN3]. The Rolling Stones, *Sitting on a Fence, on Flowers* (Decca Records 1967).

[FN4]. William James, *Pragmatism* 18 (1995).

[FN5]. *Id.* at 20.

[FN6]. *Bram Stoker's Dracula* (Columbia Tristar 1992).

[FN7]. *And Justice for All* (Columbia Tristar 1979).

[FN8]. Berger, *supra* note 1, at 73.

[FN9]. *Id.* at 32.

[FN10]. Jacques-Louis David, *Death of Marat*, available at http://www.bc.edu/bc_org/avp/cas/his/CoreArt/art/resourcesb/dav_marat.jpg (last visited June 30, 2004).

[FN11]. Rene Girard, *La Violence et le Sacre* (1972).

[FN12]. Cicero, *On Duties*, in *On the Good Life* 132 (1979).

[FN13]. Gotthold Efraim Lessing, *Laocoonte: O Sobre los Limites en la Pintura y la Poesia* (1985).

[FN14]. Eug ne Delacroix, *The Death of Sardanapalus*, available at <http://www.ibiblio.org/wm/paint/auth/delacroix/sardanapal.jpg> (last visited June 1, 2004).

[FN15]. Roger Caillois, *Instintos y Sociedad* (1969).

[FN16]. Lessing, *supra* note 13, at 64.

[FN17]. Michelangelo Merisi da Caravaggio, *Judith Beheading Holofernes*, available at http://www.english.upenn.edu/~schreyer/Caravaggio_Judith.html (last visited June 30, 2004).

[FN18]. Cicero, *supra* note 12, at 142.

[FN19]. The Rolling Stones, *Street Fighting Man, on Beggar's Banquet* (Abkco Media 1968).

[FN20]. Berger, *supra* note 1, at 31.

[FN21]. James, *supra* note 4, at 60.

[FN22]. Jacques-Louis David, *The Death of Socrates*, available at http://www.bc.edu/bc_org/avp/cas/his/CoreArt/art/resourcesb/dav_soc.jpg (last visited June 30, 2004).

[FN23]. See generally Edith Hamilton, *The Greek Way to Western Civilization* (1949).

[FN24]. I must advert that my analysis is different from that of Romano Guardini, who takes a theological point of view to demonstrate what this death means. Cf. Romano Guardini, *La Muerte de Socrates* (1997).

[FN25]. Alan M. Dershowitz, *Reasonable Doubts* 157 (1996).

[FN26]. Artemisia Gentileschi, *Susanna and the Elders*, available at <http://www.usc.edu/schools/annenberg/asc/projects/comm544/library/images/062bg.jpg> (last visited June 30, 2004).

[FN27]. Thomas Paine, *Common Sense* 3 (Dover Publications, Inc. 1997) (1776).

[FN28]. Albert Camus, *Caligula* act 1, sc. 4 (1944).

[FN29]. Pieter Bruegel the Elder, *The Triumph of Death*, available at <http://www.masterpiece-paintings-gallery.com/bruegel-death.htm> (last visited June 30, 2004).

[FN30]. Pieter Bruegel the Elder, *The Massacre of the Innocents*, available at <http://www.eldritchpress.org/mm/mass.jpg> (last visited June 30, 2004).

[FN31]. Joseph Wright of Derby, *A Philosopher Giving That Lecture on the Orrery, In Which a Lamp is Put in Place of the Sun*, available at <http://www.dalefield.com/mwes/orrery/Orrerypaintlarge.jpg> (last visited June 30, 2004).

[FN32]. William Blake, *God Judging Adam*, available at http://www.tate.org.uk/collection/N/N05/N05063_9.jpg (last visited June 30, 2004).

[FN33]. Hamilton, *supra* note 23, at 95.

[FN34]. Cicero, *supra* note 12, at 169.

[FN35]. Robert Bolt, *A Man for All Seasons* act 2 (1962).