

Foreword

BEFORE DEATH

It is not customary, I know, to write one's own foreword. Perhaps it suggests a control freak, or just a sad lack of friends. I hope that neither is true in this case. It is rather that the idea of a before-word, a temporal marker that sits both outside the text proper yet propels it into the future, moving with and shaping its momentum, captures so well the productive tensions at the heart of this book. *Danse Macabre: Temporalities of Law in the Visual Arts* is about time, and how it manifests and governs our experience of art and law alike. It performs a delicate dance that intertwines three distinct parameters, three distinct points of view: a legal subject, a visual object, and a temporal predicate. As we will see, for every foreword there is an afterword, for every 'before' an 'after' that likewise embodies complex temporal ambiguities, voices that haunt and shadow us from beyond the grave. We are always beforehand: before death, before God, before the law. We are always after, 'always late', as Levinas said, 'for the rendezvous with the neighbour'.¹ And we are always perched between two voids, like a book between bookends, held in place and framed by other times, other lives.

Georges Didi-Huberman provides an excellent point of departure, an excellent way forward:

Whenever we are before the image, we are before time. Like the poor illiterate in Kafka's story, we are before the image as *before the law*: as before an open doorway.²

There is a complex doubleness at play in Kafka's story 'Before the Law', and in Derrida's reading of it; they evoke a relationship which is both temporally *prior* to its object and yet already spatially *subject* to it. Janus-faced, to be 'before the law' looks in two directions at once: towards a state of nature and a state of subjection, an

¹ Emmanuel Levinas, 'Language and Proximity', in *Collected Philosophical Papers*, trans. Alphonso Lingis (Dordrecht: Martinus Nijhoff, 1987), pp. 119–26, at p. 119.

² Georges Didi-Huberman, 'Before the Image, Before Time: The Sovereignty of Anachronism', trans. Peter Mason, in Claire Farago and Robert Zwijnenberg, eds., *Compelling Visuality: The Work of Art in and out of History* (Minneapolis: University of Minnesota Press, 2003) pp. 31–45, at p. 34.

innocent freedom and a guilty prohibition.³ With time as with law, we are in the presence of something that exerts a force over us while – indeed, *by* – eluding our grasp. *Noli me tangere*, warned Christ when he appeared before Mary Magdalene in the Garden of Gethsemane, a scene that likewise explores the difference between seeing and believing, withholding as a form of desire, and absence as a magnified form of presence.

But this is certainly not the end of it. On closer inspection, the author posits a complex triangulation. To begin with, ‘[if] we are before the image, [then] we are before time’. The relationship is not so much causal as inherent, a question of definition or essence. To be before the one, he seems to imply, is inevitably to be before the other. But this temporal subjection, he straightaway goes on, is itself a mode of *law*: ‘like the poor illiterate in Kafka’s story, we are before the image *as* before the law’. Is the comparison just an analogy? He does not say that time’s relation to the image works ‘like’ a law, but that in both cases, before the image and before time, we are positioned ‘like’ the man from the country – before the law. The relationship is not analogical but structural. Law, the text seems to suggest, is a form that structures time – and vice versa – and we experience both ‘before the image’. The image already summons us before the bench of time, to be subject to its cross-examination, force, and judgement, like ‘the poor illiterate in Kafka’s story’, which is to say, implicitly, necessarily, and against our will. In short, the image is a mode that manifests time as a law, and law as time.

Time, art, and law are the partners of this interdisciplinary dance. But what *kind* of dance are we talking about? What is its genre, its character? – waltz? polka? tango? No; the answer is surely something stranger and more gruesome – a *danse macabre*. Death will be our constant companion throughout this book. Consider Artus Quellinus’s mid-seventeenth-century Vierschaar (or tribunal chamber) in the old Town Hall of Amsterdam (Figure 0.1). This is where sentences of death were passed. It is both lofty and claustrophobic, small yet cavernous. Weeping, distraught children ornament its podium. Double height, and carved entirely out of cold, pallid marble, the walls of the chamber are decorated with images of deaths-heads and serpents, and supported by carved caryatids, their heads bowed and their eyes covered. This blindness has nothing to do with the ‘blind justices’ of Brant or Bruegel or Reynolds. If anything, *Oedipus* or *Lear* or *Equus* might come to mind. The law is not shown in the pose of a just authority, but neither does it signify corruption or ignorance or disregard or distance or pride or arrogance or neutrality or faith or reason. *This* is not blind justice but blind grief, staggering under the shocking blow of law’s

³ Franz Kafka, ‘Before the Law’, in *Collected Stories*, trans. Willa and Edwin Muir (New York: Knopf, 1993), pp. 173–4; Jacques Derrida, ‘Before the Law’, in *Acts of Literature*, trans. and ed. Derek Attridge (London: Routledge, 1992), pp. 181–220; Panu Minkkinen, ‘The Radiance of Justice: On the Minor Jurisprudence of Franz Kafka’ (1994) 3 *Social & Legal Studies* 349–63.



FIGURE 0.1 Artus Quellinus I, sculpture in the Vierschaar ('Weeping Angel'), c. 1660. White marble, Paleis op de Dam, Amsterdam (Photocredit © D. Manderson, 2014)

fateful decisions. We are at a funeral, where mourners weep inconsolably and bury their heads in their hands. Here the tribunal pronounced its decisions as if from beyond the grave, as if the voice of the law was emanating from *inside* a tomb. Executions took place immediately afterward, in the room next door that opened onto Dam Square, centre of public life in the city. Like some chamber of horrors, the dead summon the dead. Discussions of this extraordinary space have not fully absorbed its aesthetic implications.⁴ The caryatids, who literally carry the burden of the legal institution on their heads, are pall-bearers.

⁴ See the discussion in Judith Resnik and Dennis Curtis, *Representing Justice* (New Haven, CT: Yale University Press, 2012), pp. 48–61, esp. pp. 54–6.

Law is a place of mourning.⁵ We are not in a courtroom; we are in a mausoleum. The Vierschaar does not represent or illustrate or ‘signify’ the court’s function, but actually embodies it, constituting, as the source of its violent authority, the temporal tithe which the dead extort from the living, dragging its victims into its gaping maw. In this *partage du sensible*, to speak the law is to speak of death.

Artists have always seen the law through a veil of blood. Recall the *Judgement of Cambyses* (1498), Gerard David’s lovingly detailed image of a judge being flayed alive – the dreadful phylactery, literally flesh transformed into the body of the law as if by some gruesome alchemy, clearly visible in the background. In this book, I focus on other images, but they share David’s morbid fascination. A *danse macabre* runs like a threnody through the images discussed in this book. Pieter Bruegel’s *Justice* is crammed with the dead, so many scenes of execution and torture piled one on top of the other that, as one commentator put it, we seem to have stumbled onto a ‘festival of sadism’. In nineteenth-century Tasmania, *Governor Arthur’s Proclamation* is a celebration of British legal principles that comes from the same time and place as the annihilation of its Indigenous inhabitants. It visualizes the rule of law by means of a spearing, a shooting, and a hanging or two. This equation of law and gallows, like its conflation of justice and genocide, has haunted colonial art and law in the Antipodes ever since, as the work of the modern Australian painter Gordon Bennett makes clear. J. M. W. Turner’s *Slave Ship*, which commemorates a famous legal case and famous piece of legislation, features dismembered body parts being devoured by fish. In Gustav Klimt’s *Jurisprudence*, an abject man is being embraced by a monstrous octopus. Here, perhaps, is a festival of masochism. In Chapter 7, the disturbing murals of Rafael Cauduro in the Supreme Court of Mexico bring this litany of violence to a gruesome climax – law as a ghost story or a horror movie.

In the three sections that follow, I propose to sketch in broad outline the particular questions and scholarly constellations which animate this book, asking in turn why we might be interested in the relation between visual images and time, between time and law, and between law and images. These three axes form the sides of the triangle that comes together for the first time in this book, and whose distinctive features will I hope be of interest to readers. As we will see, along each of these axes the shadow of death is never far away. We are always walking in its valley.⁶ Law’s bloody undertow of violence underpins the representations that give affective life to its structures, and justify its acts. Death makes law *matter*. As Robert Cover famously puts it, law ‘takes place in a field of pain and death . . . A legal world is built only to the extent that there are commitments that place bodies on the line.’⁷ The shadow of death dramatically raises the stakes and focuses the mind for the methods and theories articulated and practised here.

⁵ Robert Cover, ‘Violence and the Word’ (1985) 95 *Yale Law Journal* 1601; Austin Sarat, ed., *Law, Violence, and the Possibility of Justice* (Princeton, NJ: Princeton University Press, 2001).

⁶ Psalm 23:4. This footnote insults the intelligence of my readers. Apologies.

⁷ Cover, ‘Violence and the Word’, 1601–5.

BEFORE THE IMAGE, BEFORE TIME

So it is no surprise that the focal point for the representation of time in the visual arts is so often death. Death, as Elisabeth Bronfen puts it so forcefully, is ‘the navel of the image’, the ‘knotted scar’ that records ‘the mutual implication of representation, mortality and maternity’; which is to say, an ever-present physical mark that ‘reminds us of the loss of the mother and prophetically warns of our own death’.⁸ Michelangelo’s *Pietà* shows the body of Christ in the arms of his mother (Figure 0.2). But his mother is still clearly the young woman who gave birth to him; she has not aged a whit. This is not simply an aesthetic choice or a bit of poetic licence or a conventional trope.⁹ No; Michelangelo’s temporal compression profoundly alters the meaning of the work as a whole. The sculpture speaks to the doom of predestination that hangs over the whole Christian tradition: Christ’s death was already immanent in his birth. These two embraces, the first and the last, are inextricably linked to one another, theologically speaking. Christ’s whole life, one might say, was played out ‘before the cross’, prior to and in the shadow of death. But quite aside from the religious significance of the sculpture, Michelangelo taps into a universal emotional truth. Mary cradles Jesus, dead, just as she did when he was a baby. There is nothing fanciful about this. The relationship of parenthood, once initiated, never goes away. To parents, a child is always their baby. To a child, their mother arouses the tender associations of that first caress and bond. And at the moment of any child’s death, be they ever so old, I think we find ourselves transported back to that primal scene, summoned to its recollection by the utter dependence and passivity to which their baby has been so dreadfully returned. Birth inaugurates a responsibility and a vulnerability that never leaves us, even in death – never goes away, never gets old, never dies.¹⁰ In our birth our death is already foretold; in our death is our birth recalled.

There is something frozen in time about the parent–child relationship, or perhaps, better yet, something forever trapped in amber. Michelangelo gives us access to this terrible truth as it cuts across the orthodox logic of time, like the topology of a ‘crumpled handkerchief’ that brings together distant corners – or the crumpled skin of a navel. “Two distant points suddenly are close, even superimposed.”¹¹

⁸ Elisabeth Bronfen, ‘Death: The Navel of the Image’, in Mieke Bal and Inge Boers, eds., *The Point of Theory* (Amsterdam: Amsterdam University Press, 1994), pp. 79–90, at pp. 80, 85–6.

⁹ Neil MacGregor and Erika Langmuir, *Seeing Salvation: Images of Christ in Art* (London: BBC, 2000); Joanna Ziegler, ‘Michelangelo and the Medieval *Pietà*: The Sculpture of Devotion or the Art of Sculpture?’ (1995) 34 *Gesta* 28–36; John Pope-Hennessy, *Italian High Renaissance and Baroque Sculpture* (London: Phaidon, 1996), p. 304; William Wallace, *Michelangelo: The Artist, the Man, and His Times* (Cambridge: Cambridge University Press, 2009).

¹⁰ See Tina Chanter, *Time, Death and the Feminine: Levinas with Heidegger* (Stanford, CA: Stanford University Press, 2002); Robert Manning, ‘Thinking the Other without Violence’ (1991) 5 *Journal of Speculative Philosophy* 132–43; Lisa Baraitser, *Maternal Encounters: The Ethics of Interruption* (New York: Routledge, 2009).

¹¹ Michel Serres in Michel Serres with Bruno Latour, *Conversations on Science, Culture and Time*, trans. Roxanne Lapidus (Ann Arbor, MI: University of Michigan Press, 1995).



FIGURE 0.2 Michelangelo Buonarroti, *Pietà*, 1498–9. Carrara marble, 174 cm × 195 cm, St Peter's Basilica, Vatican City. (Manuel Cohen Art Resource, NY)

Michelangelo achieves this strange but faithful juxtaposition using the materials of his art. The paradox of marble is that it looks so soft but feels so hard; looks so warm but feels so cold. The *Pietà*, with its cold white skin and the organic, luminous orange light that suffuses the grotto around it, gives shape to a temporal experience

that is paradoxical yet true. Madonna and child are caught in the amber of time. Aren't we all?

Michelangelo shows us how deep and complex, and how human, is the representation of time in the visual arts. It is a line of inquiry pursued by many contemporary writers on art and art history: Georges Didi-Huberman, Christopher Nagel, and Alexander Wood certainly, their work strongly influenced by the pioneering contributions of Mieke Bal and Hubert Damisch; but also Chiara Bottici, W. J. T. Mitchell, and others. Indeed, one could well conclude that temporality is one of art's central concerns precisely because, as opposed to music or dance for example, the frozen tableau of a painting or sculpture already constitutes, in its unnatural stillness, a crisis for representation. Supposing that art might be defined as the struggle to interrogate and transcend the limits of genre, then time is surely a compelling aspect of that struggle and those limits.¹² Within the confines of a single frame, time is not frozen at all; it is *distilled*.

To clarify: temporality is not just a synonym for time. If time is habitually conceived to be something external and objective, temporality attempts to capture our experience of it; if the former can be measured by an instrument, the latter is indicative of a culture.¹³ Temporality is to time as mentality is to mind – it denotes habits of thought and feeling.¹⁴ Temporality focuses on the particular representations that structure how groups and discourses frame the passing of time, how they situate themselves in relation to it, and with what social, conceptual, and normative consequences. It is not an ever-fixed mark, a single star in the night sky, a thing. It is a constellation, or a zodiac: on the one hand, a set of relations that allow us to chart the infinite expanses of the cosmos, and on the other hand a cultural framework for instilling the mythologies, values, and memories that matter to us. Temporality in this sense is not the oceans of time so much as the barks we build to set sail on it.¹⁵

'But how are we to be equal to all the temporalities that this image, before us, conjugates on so many levels? . . . What plasticities and fractures, what rhythms and jolts of time, can be at stake in this opening of the image?'¹⁶ Didi-Huberman asks. Good questions, yet too often brushed aside as 'non-existent' or 'meaningless' in favour of a reductive obsession with the historical conditions surrounding the creation of the artwork, or to parsing iconographic details within it. Attribution, explanation, description, historicism. This limited terrain fails to do justice to the

¹² See Jacques Derrida, 'The Law of Genre', trans. Avital Ronell, in (1980) 7 *Critical Inquiry* 55–81.

¹³ See, among a broad literature, esp. Norbert Elias, *Time: An Essay*, trans. Edmund Jephcott (Oxford: Blackwell, 1993); Niklas Luhmann, *The Differentiation of Society*, trans. S. Holmes and C. Larmore (New York: Columbia University Press, 1982), particularly 'The Future Cannot Begin', pp. 271–89, and 'World Time and System History', pp. 289–324; Barbara Adams, *Time and Social Theory* (Oxford: Blackwell, 1990).

¹⁴ Peter Burke, 'Strengths and Weaknesses in the History of Mentalities', in *Varieties of Cultural History* (Cambridge: Polity, 1997), pp. 162–82; Roger Chartier, *Cultural History: Between Practices and Representations* (Ithaca, NY: Cornell University Press, 1988).

¹⁵ The analogy draws on Elias, *Time: An Essay*, pp. 11–12.

¹⁶ Didi-Huberman, 'Before the Image, Before Time', pp. 31–45, at pp. 33–4.

many complex ways we actually experience the relationship to time in art. Neither, and just as importantly, does it account for the mysterious power that emanates from an artwork, generating something like an electric current that jumps across the synaptic gap from its time to ours.

Mieke Bal, for one, has pioneered similar themes. She seeks to radically incorporate the *afterlife* of an image – its reception, quotation, citation, evocation, and transformation by viewers – into our understanding of art’s meaning, force, and normativity. She invites us to ‘take the image not as an illustration of a narrative that is already around, but as the production of a narrative that would necessarily be new or different, as a result of the pictorial gesture folded into the viewer’s compulsion to read’.¹⁷ Such an approach to history is ‘preposterous’,¹⁸ she concedes (for reasons that I develop in Chapter 6, I prefer the word ‘fabulous’) but nonetheless ‘necessary’.

Perhaps originally coined by its enemies as an insult, and lately reclaimed by its friends as a compliment, the term ‘anachronism’¹⁹ has in this context a long history going back to the pioneering work of Aby Warburg.²⁰ He never tired of drawing our attention to the *Nachleben* – afterlife, again – of images across time. Ditto Walter Benjamin, who saw in the *montage* a visual embodiment of the unconscious, images piling up, colliding, and overlapping without regard to any temporal sequence.²¹ This creative spark was somewhat repressed or at the very least disciplined by the next generation, led by Erwin Panofsky who was keen to secure for his chosen field the legitimacy afforded to a positivist science.²² But more recent writers—first Damisch and Bal, then Didi-Huberman and Nagel and Wood—have embarked on a revisionist project. On one level, they have reminded us that so-called ‘anachronistic’ or ‘anachronic’ representations of time were in fact part and parcel of the orthodox conception and practice of art in the Renaissance. That is to say that the bringing together of different temporal moments, for example by introducing images of patrons or mentors into historical or biblical scenes, was not evidence of some kind of temporal muddle but on the contrary captured the ways that past and present were seen, particularly in religious experience, as being contemporary, mutually implicated, or continuous. Time is *topological* not linear.²³ On another level, a similar insight can likewise be seen to have influenced Renaissance ideas

¹⁷ Mieke Bal, *Travelling Concepts in the Humanities: A Rough Guide* (Toronto: University of Toronto Press, 2002), p. 267; see also her, *Quoting Caravaggio: Contemporary Art, Preposterous History* (Chicago, IL: University of Chicago Press, 1999).

¹⁸ Bal, *Quoting Caravaggio*, pp. 1–7.

¹⁹ See Didi-Huberman, ‘Before the Image, Before Time’; Alexander Nagel and Christopher Wood, *Anachronic Renaissance* (New York: Zone Books, 2010); Bal, *Quoting Caravaggio*.

²⁰ See Georges Didi-Huberman, *L’image survivante: histoire de l’art et temps des fantômes selon Aby Warburg* (Paris: Minuit, 2002).

²¹ Walter Benjamin, *The Arcades Project*, trans. Howard Eiland and Kevin McLaughlin (Cambridge, MA: Belknap Press, 1999), Convolute N.

²² Didi-Huberman, *Confronting Images*, pp. 50–5. The contrast between Panofsky and Warburg is drawn strongly throughout *Confronting Images*, as well as in *L’image survivante*.

²³ See Serres with Latour, *Conversations*.

about the impact and legacy of art. In other words, time bleeds not just across the pages of the past but seeps into the future. The old masters, no less than the young theorists, understood perfectly well that art transcends the moment of its creation, radiating power and relevance like a force field.²⁴ Summing up the work of many scholars, Didi-Huberman insists: 'You cannot acknowledge the memorial dimension of history without accepting at the same time both its anchoring in the unconscious and its anachronistic dimension.'²⁵

Fra Angelico's *Annunciation*, to take a famous example, does not simply portray a historical episode, situating it in the distant past, like a document or archive.²⁶ The delicate tonal colouration that suffuses the background of the fresco creates a connection between the light as it is represented in the picture and the light experienced by the viewer in the very space on which they stand to look at it. The light that bathes the fresco is inseparable from the light that pours in from the convent windows, uniting spectator and spectacle in a single field, a single experience incapable of being reduced to one temporal moment or another. The presence of God is an event that takes place both in the historical past that Fra Angelico describes, and in the present, in the viewer's own experience of it. He creates a visual space which reaches beyond the narrative confines of the artwork, in the prayerful hope that God might again put in an appearance – not just *then*, in the presence of the Virgin Mary, but *now*, in the presence of the viewer.²⁷

The Annunciation, an announcement or presence, was that moment when the angel of God became present to the Virgin Mary, and moreover, the moment when God took on the physical form of a child in her womb. It is thus the instant that the holy spirit – word, symbol, referent, image, idea – 'came down to earth' – was incarnated, embodied, made real, made flesh. The figure of annunciation, then might even be thought to embody something essential about artistic creativity more broadly. Almost sixty years ago, Hans Gadamer made a remarkably similar point in the course of his magisterial *Truth and Method*.

For Gadamer, the task of an artwork – its *work* so to speak – is to clear a space . . . in which an unseen or overlooked transformative possibility concerning *this* world can appear. Primacy is given to aesthetic appearance as a means of transforming our understanding of the *real* . . . Recollection is not repetition but *annunciation*. Inverting the standard interpretation of Plato, Gadamer insists that 'imitation and representation are not merely a second version or copy but

²⁴ Didi-Huberman, *Confronting Images*, p. 27.

²⁵ *Ibid.*, p. 37.

²⁶ Fra Angelico, *Annunciation* (fresco, Convent of San Marco, Florence, 1437–6).

²⁷ See Georges Didi-Huberman, *Fra Angelico: Dissemblance and Figuration*, trans. Jane Marie Todd (Chicago, IL: University of Chicago Press, 1995); Hubert Damisch, *Théorie de la peinture. Pour une histoire de la peinture* (Paris: Seuil, 1972); Louis Marin, *On Representation* (Stanford, CA: Stanford University Press, 2001).



FIGURE 0.3 Gordon Bennett, *Valley of the Ghost Gums*, 1989. Mixed media on hardboard, 40 cm × 122 cm, State Art Collection, Art Gallery of Western Australia. (Image courtesy of Art Gallery of Western Australia; © Estate of Gordon Bennett)

a recognition of the essence ... they are not merely repetition but a bringing forth'.²⁸

The actual material – the physical stuff, the clay, dye, stone, or fibre – that was used to *incarnate* the artist's image or idea, to bring it to life or announce it, comes into direct contact with the viewer, notwithstanding the passage of hundreds of years. As Louis Marin writes concerning another *Annunciation*, this time by Piero della Francesca, 'the voice of saying comes to meet the seeing of the gaze ... [and] the voice conquers the virtuality of its presence'.²⁹ He means by this rather Levinasian formulation that what is 'conquered' by the signifier (the author, the 'voice' which is 'saying') understood as separate from, yet wholly embodied in the signified (the object they made) is the gap that separates that voice from later spectators, whose 'gaze' is doing the 'seeing'. In other words, what art conquers is time. In this important respect, an act of artistic creation is itself a species of divine annunciation: word made flesh, then and now. At stake is not a mode of representation but transubstantiation. Before the image, we are before time – before God, before death. This, Fra Angelico surely knew.

BEFORE TIME, BEFORE THE LAW

A contemporary Annunciation (as I see it) graces the cover of this book. It is part of *Valley of the Ghost Gums* (Figure 0.3), a triptych by the Australian artist Gordon Bennett, whose work is discussed in detail in Chapter 6. The painting as a whole tells a complex story around the work and life of Albert Namatjira, an Indigenous artist whose westernised paintings gained national recognition in the middle years of the

²⁸ Nicholas Davey, 'Gadamer and the Ambiguity of Appearance', in Francis Halsall, Julia Jansen, and Tony O'Connor, eds., *Rediscovering Aesthetics* (Stanford, CA: Stanford University Press, 2009), pp. 147–62, at 150–2.

²⁹ Marin, *On Representation*, p. 350; see Piero della Francesca, *Annunciation* (fresco, Basilica of San Francesco, Arezzo, 1464).