Tabula Picta

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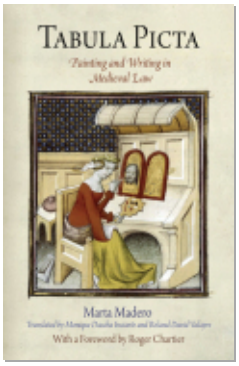

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Introduction

Who is the owner of a painting? He who painted the figures or he who owns the wood tablet on which the painter applied colors? Who is the owner of a written object? He who owns the parchment or he who wrote the text? From the twelfth century and until the end of the Middle Ages, jurists have debated these issues which seem very odd to us. Over the centuries, they have accumulated arguments and garnered references to support one position or the other. And, after them, legal historians have focused on this issue, traditionally known as that of the *tabula picta*.

Why revisit this classical issue today, in a book that would like to be more than a study in legal history? There are two reasons. The first relates to the long history of property rights over creative works, the landmarks of which should be kept in mind: in the last centuries of the Middle Ages, the emergence of the "book" in its modern form, which gathers the work (or works) of a single author in a single object, thus breaking away from the model of the miscellany, dominant from the seventh century on, which gathered texts very different in genre and nature into a single codex;[1] at the beginning of the modern era, the assigning of the texts to their authors for purposes of condemnation and prohibition, which Michel Foucault termed the penal appropriation of the discourse;[2] in the eighteenth century, the appearance, within guild rules in England or royal privilege in France, of the concepts of copyright and literary property.[3]

Revisiting the texts of ancient jurists means extending the genealogy upstream, with a focus on the rationales that allowed the transfer of property rights from the ownership of the material (parchment or wood tablet) to the work it supports, a written text or a painted work. Even if, in the Middle Ages, he who writes the text rarely is the author of the work—as the distinction between the work of the copyist and the invention of the author (as we understand it today) is profound—the legal texts nonetheless elaborate a first distinction between the materiality of the object and the intrinsic nature of aesthetic or intellectual productions.

The second reason for our inquiry goes beyond the sole issue of the *tabula picta*. In effect, the subtle disputes of medieval jurists on this issue open up a universe of strange and surprising thoughts. Their discourse is about concrete, material things and articulates categories and dichotomies built according to a very specific technical logic. Humanist and modern authors have often mocked those rationales, which link premises and consequences at a radical distance from common experience. However, in doing so, they reveal their imperfect knowledge. Indeed, the medieval gloss is in no way arbitrary or incoherent. It aims at formulating the principles necessary to characterize and classify things, and thus to subject them to legal operations. In order to allow sales or purchases, enjoyment of usufruct, transmission to heirs or legatees of rights over land, water, plants, buildings, and all kinds of manufactured objects, those things had to be envisaged in terms of resemblance or difference, wholes or parts, junctions and disjunctions. Evidence of the senses is insufficient to ground rights. Against their deceptive immediacy, legal discourse builds up the concepts and arguments of what one might call the artifice of the concrete. It permits the allocation of enjoyment rights over parts of a thing which, nonetheless, cannot be dismembered, and thus protects someone's property rights over the beam of a house or the arm of another's statue; or separates the purple from the garment, the belly from the body of a pregnant woman, roots from the totality of the tree, pure wheat from mixed grains, and painting from its support. The study of a specific example of the workings of these categories—here, the debate over the ownership of painted or written objects—gives access to the thought processes typical of medieval glosses that left durable imprints on the law. Moreover, it also allows us to observe an important moment in the development of the technique that established legal relationships between men and things. The goal thus is to contribute to the elaboration of a legal anthropology; however—contrary to the studies that focus on judicial processes and sociological dynamics accounting for the resolution of conflicts in a given society—the present work focuses on the technical processes specific to a modal understanding of the experiences and practices which, together, subjects them to the logical articulation of legal categories and gives them a reality removed from the evidence of the senses.

This book thus aims to fit a double perspective: a history of property rights over creative works and a history of thought as it relates to things. Switching from one to the other became a necessary process. Roger Chartier had proposed that I present the legal reach of texts written in the Middle Ages at the Oslo Historical Sciences Congress, in August 2000. At a seminar

on labor in Roman law at the École des Hautes Études en Sciences Sociales, I had heard Yan Thomas speak briefly of the *tabula picta* and found what he had said fascinating. Reading the Roman and medieval texts, I realized they seemed to turn inside out the statement of the famous New Zealand bibliographer Donald F. McKenzie, who stated, in his first Panizzi Lectures at the British Library, that "the task of the bibliographer is to show that forms effect meaning." This remark, which opened up an entire field of research that sought to understand how the material forms of written objects relate to the construction of their meaning, could, to my mind, be reversed: "meaning effects forms," and this inversion could allow us to characterize the Roman law gloss and commentary writers' conception of the materiality of written or painted objects.

The medieval file of the *tabula picta* evidenced how the legal categories constantly reformulated the classifications based on variable and crossed opposites; and the plurality of those rationales signaled that materiality was not a given. To say, however, that it is nothing more than a construction of discourse would immediately lead us onto the classic and somewhat exhausted grounds of the relativist debate. I will thus try to be clear and, to do so, will resort to Michael Baxandall's book, *Giotto and the Orators,*[4] in which he shows that the Latin categorizations of experience, salvaged and learned like a foreign language by the humanists, influence not only manners of speech but also the very manner of seeing paintings, as they offer concepts that focus the attention. Legal language partly functions like the neoclassical Latin of the humanists: "it was never intended as a breathless statement of fresh perceptions of the world."[5] As with every language, its application to "some area of activity or experience . . . overlays the field after a time with a certain structure."[6] This does not lead to a rejection of reality. It would be more appropriate to say that, like all languages, the lawyer's "is a conspiracy against experience in the sense of being a collective attempt to simplify and arrange experience into manageable parcels."[7] It is only in that sense, I believe, that one may speak of materiality as a construction of the discourse.

Throughout the Middle Ages, Roman law gloss and commentary writers inscribed the *tabula picta* issue into complex categories that structured the relationship between materials and *species*: to be one, to take root, to unite, to blend, to mix, to prevail. They posited rationales that governed the substances, the forms of value, and the relationship between wholes and parts.

What we today call the legal renaissance of the twelfth century constitutes one of the major intellectual hinges in Western history. This movement, associated to the foundational moment of Irnerius's teaching in Bologna

from the beginning of the twelfth century, was prepared by the Gregorian reform. Doctrinal thinking then developed around the legal *corpus* compiled in Byzantium by order of Emperor Justinian (sixth century) penetrates the West and serves as foundation, along with the development of canon law, for a normative discourse common to the European region. All the works we will cite belong to this monumental *corpus* generated between the seventh and fifteenth centuries.[8] With respect to the difference between gloss and commentary, one often cites the gloss proposed by grammarian Huguccio (twelfth century): "Glossa est expositio sententiae et ipsius literae, quae non solum sententiam sed etiam verba attendit" (the gloss is the explanation of a formula and of its very letter: it is interested not only in the formula but also in its terms); whereas the commentary is an "expositio verborum iuncturam non considerans sed sensum" (explanation of terms that takes into account not their alliance, but their meaning), quoted by Francesco Calasso.[9] One could say the gloss is an exegetic practice that "adheres" to the words and follows the order of the phrases—besides, we find them in the very margins of the pages of the manuscripts and of the later printed editions—whereas the commentaries are independent from it. The genre of the gloss dominates legal practice until the middle of the thirteenth century, in particular in the great school of Bologna. It was then replaced by the commentary. All the legal texts we will cite belong either to the gloss, or to the commentaries or *lecturae*, or finally to the *summae*, a genre that was widely popular outside of Bologna during the twelfth century. This variegated set of texts thus posited the issue of writing and painting in their most absolute materiality, but, due to the instability of the readings, it showed that no materiality was capable of imposing a logic inscribed within itself by nature. If the work of historians of books and reading has shown that real objects in which a text or an image crystallize, become visible or legible, impose constraints and take part in the elaboration of their meaning, we see here that materiality does not obey a necessary logic. It goes without saying that this approach is not meant to deny the pertinence of Donald F. McKenzie's affirmation. It is meant, on the contrary, to show its heuristic fertility by forcing us to ponder the diverse conceptions that have linked aesthetic and intellectual productions and their supports. In effect, if we can regard the *tabula picta* as a distant fragment from an archaeology of the rights of authors, we will see that the series thus constituted is very surprising.

Painting and writing, as envisaged by medieval jurists, bear on what happened when someone applied color or ink on a surface, *tabula* for the paint-

ing, *charta* or *membrana* for the writing. It was then necessary to decide which dominated by absorbing the other, to the extent that casuistry assumed the support and what was added to it belonged to different persons. It is, therefore, a discussion about the relationship between painting, writing, and their respective supports, about which one can already identify three characteristics: first, art or technique will not always be at issue; second, the contents of the writings will simply be irrelevant. There is an exception to this rule: a text by Ulpian (third century), D.10.4.3.14, which raises the issue of the supports used to write official acts. In this case, the rule that the support absorbs the writing does not necessarily apply. About this rule, Alberico de Rosate († 1360)[10] states:

Mirabile verum, quod si in charta tua est scriptum magnum creditum meum quod scriptura cedat chartae [. . .] Alii dicunt quod in hoc casu ubi est magnum creditum dominus chartae non dicat, sicut nec dominus tigni iniuncti. Ne urbs deformetur.

[It would be truly extraordinary that, if your *charta* bears the inscription of an important debt I contracted, writing should appertain to the *charta*! (. . .) Some say that in the case of an important debt, the owner of the *charta* has no claim, nor does the owner of incorporated construction timber, to avoid the disfigurement of the city.]

Third, for some, the object of pictorial representation will be a significant criterion.

Indeed, the jurists envisaged painting and writing within a conceptual framework that was either the relationship between materials, or the tensions between *materia* and *species* (a term one can often translate as "specific thing," and very rarely as "form," but the complexity of which, in the medieval world, should not be overlooked),[11] or the issue of price, a criterion that tended to cut short the debate on the logic of materials.

When they spoke of writing and painting, medieval jurists commented on a file composed of texts compiled by order of Emperor Justinian in Byzantium during the sixth century. For purposes of this study, we are interested only in Books 6 and 41 of the *Digest* and Book 2 of the *Institutes*, in which one finds a discussion of the modes of acquisition of the *dominium* ranging from the capture of wild animals or rights over tame ones so long as they are in the habit of returning to their abode, to islands born in a river, including increases of the riparian domain when the river ebbs; delivery; or usufruct . . . Moreover, painting and writing were always approached using categories that dilated the subject and circumscribed a Borgesian universe, since the list of objects that could include writing and painting also included soil or trees

carried by the river, plants and grains, buildings, the uniting of metals, the growth of fruits, construction timber, purple or the sleeves added to a garment, or gold threads or rows of pearls woven into a fabric . . .

Yet legal texts had an objective: to determine who owned the object. Therefore, they resorted to procedural rules dominated by two main lines of argument: on the one hand, all that relates to the criterion of *bona fides* in the subjects' actions; and, on the other, principles that respond to a way of thinking about things and materials.[12] Indeed, one of the main criteria of the judgment is the *bona fides* of he who applied those substances over a support that was not his;[13] and to this idea—which does not refer to a moral criterion, but to the state of mind of the subject when he is performing a given activity—should be added other manifestations of the disposition of the subjects that the law takes into account in order to adjudicate, such as two owners' common willingness to mingle materials they owned separately to create a common *acervus*, or deciding what should be regarded as principal or accessory in an object.

For the Romanists, in fact, the *tabula picta* raises an issue very many authors have tackled. It is what Vincenzo Arangio-Ruiz has called the *guazzabuglio gaiano.*[14] The *Institutiones* (2.78) of Gaius, a second-century jurist, offer contradictory propositions: if painting is in the hands of the *dominus tabulae*, the painter can get it back by paying the price of the *tabula*; if it is in the hands of the painter, the judge will return it to the *dominus tabulae* who paid the *impensa picturae*. In sum, he who is in possession of the thing is bound to lose it, which goes against the general criterion "possession is worth more than a claim." It also contradicts the rule by which "tabula picturae cedere" (the *tabula* appertains to the painting). Among others, Rudolph von Jhering and Pietro Bonfante have dealt with this issue, which concerns the *actiones* and has led to a hunt for interpolations in order to resolve the contradictions among the various texts.[15] Francesco Lucrezi submits that neither Gaius 2.78 (a manuscript from the second half of the fifth century), nor D.41.1.9.2, nor I.2.1.34 reflect the jurist's thoughts, and that the principle by which the *tabula* should appertain to the painting, which according to the author evidences the "victory of the artist," emerged not before the second half of the fifth century (p. 254). This could be confirmed by the statement of the *Epitome Gai*, drafted during the second half of the fifth century, which subjects painting to the principle governing writing, that is "what is above the soil is incorporated into the soil" (p. 32).[16] In this book, I will not address procedure and will also leave aside issues of will and intent. I will rather try to show the extraordinary diversity of what can be said about one aspect of materiality: that concerning

the union of things and substances, the tensions between *materia* and *species*. I am mostly interested in understanding the multiple configurations associated with these acts (painting and writing), inextricably made part and parcel of a debate on the way things "behave."

The architecture of the sources justifies this approach, which differs from that of Paola Maffei, the author of the sole work exclusively dedicated to the *tabula picta* in the work of the gloss writers.[17] She states, like Francesco Lucrezi before her for the classical and postclassical Roman period, that the *tabula picta* raises not only a legal issue, but also an issue in the social history of art.[18] One cannot disagree with her about the role painting and sculpture played as modes of production of images in the Middle Ages, which also had the social function of bringing multiple messages—religious, political, and moral—to illiterate populations, and which, due to the number of those who could not read, are equally if not more important than writing. Guillaume Durand, in his famous *Rationale divinorum officiorum*, said that images are "laicorum littere" (the writing of the lay people),[19] and being seen, they have greater emotional power than writing, which is linked to hearing.[20] In this largely illiterate culture of the manuscript, the importance of writing and painting causes Paola Maffei to hold that the *tabula picta*, during the Middle Ages and up until the invention of the printing press, must not be regarded as a rare and complex textbook used to train the mind rather than to adjudicate but, on the contrary, as a debate on a concrete and practical issue.

Indeed, both the painter and the scribe were regarded as craftsmen rather than as artists, generally working on commission according to specific instructions; and the *pretiositas* criterion, which allowed many authors to take side for the painter or the writer, reveals a concern for labor. However, one should not forget that the issue of the *tabula picta* was never considered within the framework of a task performed by contract, because there is hardly any reference to the figures of *locator* and *conductor*. In these texts, the *dominus tabulae* or *chartae* is not the funding party,[21] and in this respect the *tabula picta* raises a less obviously practical issue than Paola Maffei asserts.

The *tabula picta* is a textbook case that is useful in thinking about the relationship between humans and things—according to logic different from that of the work contract—and about the things themselves. The separation between contract casuistic and that of the logic specific to painting and writing is so clear that Odofredo († 1265)—whose *lecturae* to the *Digest* are fundamental in the *tabula picta* file—manages in his *lectura* at D.45.1.72.1 to eulogize the scribes whose art exceeds that of the painters and at the same time to say, in

the context of *locatio* and *conductio* contracts, that all copyists are "latrones et baratores."[22] By this, I do not mean to suggest that the *tabula picta* issue played no part in the practice, but it cannot be linked to work contracts, not only because it is removed from them by doctrine, but also because the *locatio operarum* contracts (in which the object is the term provisions of a work), and the *locatio operis* contracts (in which the object is the finished work) do not advance arguments specific to the *tabula picta*.

Rainiero de Perugia's *Ars notaria*, written in the 1220s, describes the *locatio operarum* formula, in which the funding party—*locator*—gives the scribe—*conductor*—the *exemplar* to be copied and provides him with the paper, a down payment, and a stipulation for two additional payments.[23]

De locationibus operum ad scribendum. Dominus Guido de Certona dedit et locavit ad scribendum unum Digestum Vetus Martino de Fano hoc modo et pacto, quod dictus dominus nec per se nec per alium ipsi scriptori auferret dictum opus nisi prius ab eo finiatur, et pro mercede dicti operis dabit eidem Martino prefatus dominus Guido x lib. bon., medietatem in principio operis, aliam medietatem expleta ipsius operis medietate, et cartas dabit ei ad scribendum ad sufficientiam quandocumque petet, et exemplar vel cartas habeat quando expediet preparatas, ita quod dictus scriptor non amittat opus; et si amiserit eo quod non exemplar vel cartas non habeat quando expediat preparatas, totum damnum debet ei dominus resarcire. Et dictus Martinus debet dicto domino Guidoni scribere et explere continue totum Digestum Vetus de adeo tam bono testo sicut ei demonstravit in quodam quaterno domini Iohannis Parisiensis, nisi forte acciderit occasione temporis vel cartule vitiose, bona fide, sine alicuius alterius operis scripture interpositione excedentis quantitatem x sol. bon., et rubricas et minora remittet ei secundum consuetudinem huius terre. Que omnia inter se ad invicem stipulantes promiserunt per se suosque heredes attendere ac servare; nec contra per se vel alium venire vel facere aliqua occasione vel exceptione: et sumptus omnes reficere, et expensas in iuditio vel extra sub pena c sol. bon.

[Work contracts for a work of writing. Master Guido de Certona has hired the services of Martinus de Fano and has given him the *Digestum Vetus* to be transcribed in one copy by a contract drafted as follows: said master shall not, neither personally nor through the agency of another, withdraw said work from the appointed scribe so long as it is not finished; the aforementioned master Guido shall, for said work, give said Martinus a salary of ten Bolognese pounds, one half on inception of the work, the other half when said work shall be finished; he will furnish him with writing paper in a sufficient quantity every time he will be asked; said scribe shall have the original and the paper in his possession upon finishing that given him, in order not to renounce the work; if he renounces it because he has neither the original nor the paper when he finishes that given him, the master must indemnify him entirely. As for said Martinus, he must transcribe to the end and without interruption the entirety of the *Digestum Vetus*, in a penmanship as beautiful as that shown to him on a *quaternion* by master Jean de Paris; if perchance circumstances associated with the delay or the bad quality

of the paper prevent him from doing so, when he is in good faith and has meantime performed no additional writing work, he will remit the sum of ten *soldi*, the red inks, and the objects of lesser value pursuant to this country's custom. The parties to the contract solemnly promised each other in their name and in the name of their legatees to acknowledge and abide by all these clauses; not to violate or breach them, personally or through the agency of another, under any circumstance or exception; to bear all costs as well as expenses in case of a lawsuit or additional costs under penalty of a one-hundred *soldi* fine.]

In Rolandino Passaggeri's *Summa totius artis notariae*, written in the 1260s, one finds the most common version among writing contracts in which the funding party holds, on the contrary, the part of the *conductor*, and the scribe that of the *locator*: the contract *locatio operis.*[24]

Hoc instrumentum locationis operarum ad opus scripture faciendum distinguitur per tres partes. Nam in prima locator paciscitur conductori scribere unum ff. vetus in textu de tali litera, ut ei ostendit in tali quaterno, et bene continuare literam praedictam, et hoc pro certa quantitate, cuius quantitatis partem iam confitetur habere locator. In secunda parte instrumenti conductor se obligat locatori ad residuum mercedis certo modo et tempore solvendum.

[This formula of *locatio operis* for a work of writing breaks down into three tiers. In the first tier, the *locator* commits to transcribe for the benefit of the *conductor* the *Digestum Vetus* in penmanship similar to what he showed him on a similar *quaternion*, to properly apply without interruption said penmanship, all for a specified sum, a part of which the *locator* acknowledges he has already received. In the second tier of the instrument, the *conductor* warrants he will pay the *locator* the rest of his salary at a specified date and according to specified terms.]

Writing contracts for the copying of legal books in Bologna, as analyzed by Luciana Devoti,[25] exhibit some diversity, but they are generally entered into for the totality of the work and specify a price per *quaternus*. For example, a contract signed in 1265 to "scribere totum apparatum Digesti veteris in glosa" (transcribe in its entirety the apparatus of the *Digestum Vetus* in the form of a gloss) specifies a unit price of 216 *bolognini* per *quaternus*—the division of the texts in *quaternus* corresponded to the official division in the scholarly world—and a total price of 9,120 *bolognini*. Out of four contracts for the copying of the gloss to the *Infortiatum*, only one, signed in 1269, proposes a global price of 13,440 *bolognini*; in the three others, the price set per *quaternus* is 180 *bolognini* in 1269, and 264 and 288 in 1270. Some funding parties pay little but agree to furnish lodging and food for the contract duration.[26]

According to the University bylaws, all the trades related to the book in

Bologna were subject to strict oversight.[27] The contracts used in Bologna have characteristics related to the *studium* constraints and tend to omit certain issues that could be raised outside of this particular milieu, such as the scribe's power to withhold the already copied *quaterni* if the funding party does not pay, even when the unpaid amount is relatively unimportant. A form drafted by Leo Speluncanus dating from the mid-fourteenth century, generated outside of the intellectual milieu of Bologna and thus unconstrained by the *studium* interests, elucidates some issues raised by this type of contract. He ponders four topics:

Oppono contra instrumentum, et dico, quod talis contractus est uenditionis, et emptionis, quia ubicumque interuenit pretium, est emptio, et uenditio [. . .] Resp. uerum est, quod ubicumque interuenit pretium, est emptio, et uenditio, tamen quandocumque pro pretio promittitur aliquid faciendum, ut in caso nostro, est locatio [. . .] Vlterius quaero, ecce, quod isti scriptori fuissent solutae per istum Sempronium conductorem, qui fecit fieri istum codicem, unciae quinque, et de uncia una esset residuum, posset iste scriptor retinet totum istum codicem pro illa uncia, quousque erit sibi soluta? Resp. potest [. . .] Secus in libro exempli secundum Bar. [. . .] Vlterius quaero, ecce, quod iste S. qui faciebat fieri istum librum, fuit mortuus, priusquam fieret liber iste, potuerunt dicere heredes istius S. huic scriptori, nolimus, quod facias nobis istum librum? Resp. non [. . .] Vlterius quero, iste scriptor potuisset scribere istum librum per subsitutum.s. per unum alium, et non scriberet ipse scriptor? Resp. non.

[I have one objection against this form and affirm that such a contract is a purchase and sale contract, since every time price intervenes, there is purchase and sale. (. . .) Response: It is correct that there is purchase and sale every time price intervenes, yet each time a work is promised for a price, as in the instant case, it is a *locatio* (. . .). I further ask the following: assuming five *unciae* were paid to the scribe by Sempronius, the *conductor* who ordered the work, but one *uncia* remains owed, could the scribe withhold the entire work as security until that *uncia* was paid? Response: Yes. (. . .) It is otherwise, according to Bartolo, with respect to the exemplar. (. . .) I further ask as follows: said Sempronius, who ordered this book, died before said book was completed; could his heirs have said to the scribe: "We refuse that you do it for us"? Response: No. (. . .) I further ask whether the scribe could have had the book transcribed by his substitute or by another scribe, instead of transcribing it himself? Response: No.][28]

On the contrary, the university environment tended to stress the serious breach of the scribe who failed to deliver his work. Rainiero Arsendi da Forlì—a character of great notoriety born toward the end of the thirteenth century, a professor in Bologna and later in Pisa and Padua where he lived until his death in 1358—proposed that the guilty copyist be likened to a debtor of the state. However, it is Signorolo degli Omodei, a fortunately obscure disciple

of Rainiero da Forlì's, who expressed the most radical condemnation by associating writing work with *honor ciuitatis*: the copyist could be condemned to decapitation:[29]

Imo posset argui quod deberent decapitari et sic propter inopiam librorum veritas celatur, hinc est quod antiquis temporibus pauci ex multis perficiebant lites suas [. . .] Propterea commitens circa libros legales uidetur esse dignus pena capitis.

[Better, one could demonstrate they should be decapitated, in that, in the absence of books, the truth remains hidden. For this reason, in ancient times, out of a large number of people, only a small number litigated to the end (. . .) This is why, guilty with respect to legal books, he seems to deserve capital punishment.][30]

This opinion was not followed by more recent jurists, and the seriousness of the fault concerns only public-interest books, that is to say books regarding the law, medicine, or other scientific matters. One can therefore attest to the fact that neither the doctrine nor the notarial forms nor the executed contracts refer to the rationales specific to the *tabula picta*.

The same applies to painting. The commission contracts (*prix-faits*), that is the contracts entered into for the execution of a work stipulating the conditions of its realization and its price, are very diverse as to the more or less precise description of the work to be accomplished[31]—subject, position of the images, colors, presence and quality of the gilding, preparation of the support, relationship to models seen by the funding party—and as to the modes and forms of payment—generally divided into a down payment at the outset, a second payment in the course of the work, and a last payment upon delivery of the finished work. The clauses governing default in the execution of the work allow attachment of the property of the painter or restitution of the amount paid but, as in writing contracts, they do not articulate a rationale specific to the *tabula picta*.

As one example of the details commonly included in commission contracts, one can review the contract between Master Philippus Gactus, painter, and Dame Margareta de Blanco for paintings to be executed in the Santa Catarina Chapel inside her palace, done at Palermo, on January 2, 1349.

Magister Philippus Gactus, pictor, civis felicis urbis Panormi, presens coram nobis, locavit opera sua servicia sue persone nobili domine Margarete de Blanco ad pingendum quandam cappellam suam sitam et positam intus hospicium dicte domine vocatum Sancta Catherina ut infrascriptum est, videlicet quod primo et principaliter debet facere Salvatorem in tribuna dicte capelle et alias picturas quae necessarie fuerint. Item debet pingere conam unam de lignamine, de auro fino et azolino ul-

tramarino et de omnibus aliis coloribus qui in dicta cona necessarie fuerint. Item debet facere sanctam Ursulam eo modo et forma prout est depicta in ecclesia Sancti Francisci. Item debet facere sanctam Elisabeth eo modo et forma prout est depicta in ecclesia Sancte Trinitatis, excepto quod non debet ponere follam de auro nisi in diadematibus et coronis tantum. Item debet pingere residuum dicte capelle ad voluntatem dicte domine in omni parte in qua expedierit [. . .] Item extra dictam capellam supra portam debet facere interlacos et in angulo facere sanctum Christoforum.

[Master Philippus Gactus, painter and citizen of the happy city of Palermo, before us, did rent his services to noble Dame Margareta de Blanco, to execute the paintings of a chapel located inside the palace of said lady and called Santa Catherina, as hereafter written: first and foremost, he must, on the gallery of said chapel, represent the Savior and execute the other necessary paintings. In addition, he must execute a wooden icon with pure gold, ultramarine blue and all the other colors necessary for said icon. In addition, he must represent Saint Ursula exactly as on the painting in Saint Francis Church. In addition, he must represent Saint Elisabeth exactly as on the painting of the Saint Trinity, except he must apply gold leaf on the diadems and crowns only. In addition, he must paint the rest of said chapel according to said lady's will in every instance where she gave instructions. (. . .) In addition, outside said chapel, he must paint entwined motifs above the door and represent Saint Christopher in the corner.][32]

The texts I will analyze range from the twelfth to the fifteenth century. They were written by Roman law gloss and commentary writers during the era commonly known as that of classical *ius commune*. My analysis ends with the emergence of legal humanism.[33] This periodization also corresponds to the dissemination of the printing press. Only Jason de Maino (1435–1519), whom I cite solely about the classification of *partes*, wrote after the dissemination of the printing press. The jurists I study thus share the common experience of manuscript culture. I do not mean to say this culture remained unchanged between the twelfth and the fifteenth century, and even less that it disappeared after Gutenberg; numerous recent studies demonstrate, on the contrary, the vitality of manuscript culture in the age of the printing press;[34] and a work such as that of Johannes Trithemius († 1516), the abbot of Sponheim, recalls with nostalgia the advantages of a manuscript culture that the unruly expansion of the printing press has marginalized. His arguments focus on:

—superior quality of parchment:

Sciptura enim, si membranis imponitur, ad mille annos poterit perdurare, impressura autem cum res papyrea sit, quamdiu subsistet? Si in volumine papyreo ad ducentos annos perdurare potuerit, magnum est.

[Indeed, if writing is applied on parchment, it will endure a thousand years, but a printed text, being on paper, how long will it endure? If a paper volume could last two hundred years, that would be a lot.]

—poor distribution of printed books, the freedom of the scribe who can evade constraints and censorship:

Non patitur constringi sub conditione impressoris. Liber est, et libertatis suae gaudebit officio.

[He does not have to bear constraining conditions imposed on him by the printer. He is free, and will rejoice in the freedom of his work.]

—lack of reliability of the printed book.[35]

However, the emergence of the printing press at least offers one alternative to the copyist.

Roman and medieval sources thus demonstrate that any history of artwork property implies a history of thought about things. The sources discuss the theme of the *tabula picta* in a context that does not always concern art and technique and, even when they do, the discussion addresses numerous forms of transformation of materials. The fragment (D.6.1.23) by Paul (second century) thus discusses the world of arts and techniques, as it mentions statues, vessels, tables, paintings and writings, things united by *ferruminatio*—welding in the same metal as that of the welded parts—or *adplumbatio*—welding in a material different from that of the welded parts—and construction materials. Yet the *Rerum cottidianarum* attributed to Gaius (second century) by Justinian compilers—actually the postclassical work of an unknown author—mentions slave escapees recovering their original freedom, things united by *alluvio* (everything the river removes from, or brings to, the riverbank fields), islands born of the sea, *specificatio* as a transformation process of things as diverse as grapes into wine, olives into oil, grains into flour, silver or gold into vessels, or wine and honey mixed into *muslum*. The text ends with the evocation of construction materials and, finally, plants.

In addition, when medieval jurists report the issues raised by those texts, they use categories that further broaden this world of things, materials, and *species*. The language and the rationales of the sources thus leads me to step back from any analysis too hastily focused on the craftsman and his production, as by doing so one settles too promptly into a modern approach to

artistic and intellectual property, which raises a double issue: that of the legal identification of creation; and that of the assertion of property rights over it. My approach is of a different nature and proposes to return to the world of things, to the categories that allow us to formulate a number of relationships between humans and things, of which writing and painting—being acts and artifacts—are examples.