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Professor John Finnis

Martin Wilson

Professor Martin Kemp

Finally, we thank three individuals who played an important role in setting our direction.

The Rt Hon Lady Arden

The Rt Hon Lord Sumption

William Fulp



Desert, Ukrainian Money Project (Oleg Tistol 1997, mixed media, 39 x 56 cm).
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Foreword by Martin Wilson, Honorary Editor and Chief General Counsel at Phillips

As I read the insightful, entertaining, scholarly, and diverse articles in this issue of *The Cambridge Journal of Law, Politics, and Art*, I wonder to myself how these three elements have become so intertwined. Perhaps it is not surprising as art has always been an expression of power, human identity, perceived truth, and aspiration—qualities also shared by politics and law. This link is therefore certainly not new, but it is perhaps only in recent years that we have become so conscious of it.

25 years ago I answered an advertisement in *The Times* for the position of in-house lawyer at Christie's auction house. At that time, the concept of an art lawyer did not exist. There was, after all, no great need for lawyers in a discreet world based upon gentlemen's agreements, which functioned very smoothly on the basis of reputations, influence, and relationships. It was, in short, a world apparently untouched by the concerns of law and politics.

Over the following 25 years of my career as an art lawyer, all of that was to change dramatically. The catalyst for that change was not, as one might imagine, the evolving complexity of business in general. Rather, it was a series of historical, political, and technological events which catapulted art and the sale of art into the centre of wider discussions around justice, power, and identity.

The first such event was a belated realisation, in the late 1990s, that the war from 1933 to 1945 in Europe had been an assault not only upon nations and upon people, but upon culture and identity. That attack, which was accompanied by so many personal tragedies, had remained largely unaddressed in the immediate aftermath of the war, allowing artworks stolen by the Nazi regime to continue to circulate in the art market. By the late 1990s, prompted by the opening of European archives, museums, collectors, and the art market were hit with a wave of restitution claims by descendants of the victims of spoliation. Law, ethics, and commercial reality were all brought into play in resolving the resulting disputes.

On the heels of the wartime restitution claims came a focus upon ancient cultural heritage looted from conflict zones. While the 1970 UNESCO Convention had prepared the ground, the signatory 'art market' countries were very slow to introduce the national legislation necessary to put into practice the aims of the convention. As a consequence, cultural heritage in conflict zones all over the world continued to be the target of looting. Events in the Middle East would, however, challenge that inaction. Following the invasion of Iraq in 2003, unprotected archaeological sites and museums in Iraq were subjected to widespread looting. Afghanistan, Syria, and Libya suffered similar looting as law and order broke down amid their respective conflicts. Because this looting was widely reported in the West, the outcry was such that the art market was compelled to demonstrate that it had in place measures to ensure that looted antiquities from conflict zones were not finding their way into the salerooms. Politicians followed, albeit in the slipstream, introducing national legislation requiring the art market to carry out due diligence regarding the provenance of antiquities. None of these measures will stop the destruction and looting which are inherent to conflict, but they will perhaps help to prevent the fruits of that destruction appearing in the art market. Once again, progress was not achieved by any single measure but by the application of a combination of law, ethics, and commercial reality.

The third catalyst was the question of transparency and compliance. Discretion and confidentiality have always been central to the operation of the art world—and usually for good reason. Sellers understandably prefer not to advertise the circumstances which necessitate the sale of artworks, such as divorce and death. Buyers are also often keen not to advertise their wealth for reasons of personal security. Agents introduce a further layer of opacity, trying to preserve their commercial relationships by keeping confidential the identity of their principals. But in the modern art world, where huge sums are being transacted, a balance needs to be found between transparency and discretion. This need has been met by the passing of laws and regulations in many countries imposing onerous obligations on art market participants to carry out detailed due diligence on their clients and make disclosures to other art market participants. The art market is coming to terms with these critically important new obligations and, in doing so, having to acclimatise to a new environment of legal and compliance rigour—as well as a greater level of transparency, which is to be welcomed.

More recently, there has been a reappraisal of the display and ownership of art which was acquired—not in modern day conflict zones—but from colonies during colonial times or as a result of ancient conflicts. Many countries have, over time, been denuded of their artistic heritage and are understandably upset to see that heritage on display in the collections and museums of the world. This matters because, as the countries who have endured colonisation and invasion know all too well, art is closely linked to history and cultural identity. Politicians, collectors, and the art market are beginning to grapple with the question of 'who owns history?'. As a result, we are also hopefully progressing towards reconciling the role of the global museum with efforts to recover heritage which was lost in the context of power imbalances.

Even now law, politics, and art are moving into a new phase with the growth of cryptocurrency, non-fungible tokens, digital art, and online sales. In doing so, lawyers, politicians, and artists will test new boundaries and challenge our perception of authenticity, originality, ownership, and value.

As a result of these events, art law is now a recognised discipline, rich not only in legal questions, but also in the consideration of wider political, artistic, and ethical questions. This journal is a wonderful reflection of that, and illustrates, for me, why this is such a fascinating area in which to work and about which to write. It is a privilege for me to have been asked to write this foreword and I hope that you will enjoy diving into this collection as much as I have.

Foreword by The Rt Hon Lady Arden DBE, Former Justice of the UK Supreme Court

I am honoured to be asked to write a short Foreword to this Issue of *The Cambridge Journal of Law, Politics, and Art*. I was an enthusiastic contributor to the first Issue.

If you read that Issue, I welcome you back and feel sure that you will be pleased with the varied content of this Issue too.

If you are a new reader, you may already know why you have taken up this Issue. If not, I would like to explain in brief why I think its subject matter is important, and why it might be important to you.

It seems to me that the *Journal* is likely to expand our horizons because it brings together three subjects which often sit in splendid isolation from each other, namely the Law, Politics, and Art. We tend to think about issues and debate them only within their separate silos. The combination can give us new insights for many reasons.

It can shed new light on the strengths and weaknesses of each of those subjects. Literature and art, in particular, can be used to expose deficiencies in the law which are open to criticism and debate. The combination of law and literature is also an effective way of explaining the law. In addition, the combination of all three topics can be used to advocate change in the law. An obvious example of these points is the work of Charles Dickens.

By like token, the law itself can be used to uncover the boundaries of our unwritten constitution. It is sometimes used by litigants for exactly that purpose. In turn, politics must make judgments on matters which are in general beyond legal expertise, but it is often beneficial for there to be a rich discussion outside politics as well.

Space does not permit me to take more than a sample of the contributions to this Issue. Some articles focus on one of the three subjects or leave the possibilities for cross-fertilisation between them unspoken. Others confront the combination of some or all the subjects directly. A striking example of this is Alejandro Posada Téllez's thought-provoking contribution, 'Is Peace Merely about the Attainment of Justice?', on transitional justice. When conflict ends, war criminals may be made accountable by being prosecuted in domestic courts or (post the Second World War) in international courts and tribunals. Another solution is an official reconciliation process aimed at allowing the society to heal. Téllez points out that a reconciliation process may bring about justice for the individual and accountability, which is highly valuable in itself, but it will not necessarily produce a permanent political solution or lasting peace for the society. With the war in Ukraine, these questions are timely and apposite.

Another example is the topic of individual identity and autonomy, which arises in more than one contribution. If we truly believe in the importance of individual expression and personality, we should, I think, be very concerned to know about society's failings in this regard. These failings may be because politics and the law, operating within their respective domains, have not kept up with social change and expectations. We need to know more about what makes us different from one another and how to adjust for those differences. Contributions in this Issue are helpful to that end.

This is a new journal which is probably unique in making its focus the combination of the three separate subjects of the Law, Politics and Art. I congratulate the Founder, the editors, and the contributors on the excellence of their respective contributions.

Happy reading!

A word by Alexander (Sami) Kardos-Nyheim, Founder and Editor-in-Chief

The role of *The Cambridge Journal of Law, Politics, and Art* in current public discourse

I am often asked what I am trying to *do* with this journal. The expectation is that in a world full of action, the role of any consequential organisation is to be doing *something*, to be making a point, to constantly rationalise, to assert control in some way over circumstances or concepts that are within no one's control. This is in my view one of the great problems with the art world today, and also with the fields of law and politics.

In the art world, we feel a need to turn works of beauty, soul, and craftsmanship into objects whose meaning can be extracted, boiled down, and comprehensively explained. Art History courses today teach students to rationalise the artist's intention and explain a colour scheme or a brushstroke by reference to a political event or other circumstance. We leave nothing to mystery anymore. We do not allow ourselves to be haunted by the blurred, rufescent, august scene of J.M.W. Turner's *Rain, Steam and Speed* (opposite). Instead, we conclude that this is a painting "about" the Industrial Revolution and its mechanical destruction of natural beauty. Perhaps it is that too, but I suggest that we lose Turner's genius and the spiritual power of this object through attempts to demonstrate our own intellectual capacity for interpretation. We inappropriately confront mystery with logic.

In the law, the growing recourse to the judiciary for the resolution of essentially political questions is a different disease with the same cause. The law operates—or is meant to operate—in binaries, giving narrow answers to specific questions by reference to strict tests which adhere to clear and established principles. The law is essentially logical. Asking a judge to rule on whether it is in a child's "best interests" to continue living, or to interfere with an unpopular government policy, not only demonstrates a failure of the political system and creates an unhealthy constitutional reliance (as Lord Sumption argued so well in his contribution to our last issue), but also pits hard logic against questions of humanity and morality, which are inherently fluid.

Similarly, the increased politicisation of the arts, visible in everything from Fine Arts courses to Arts Council funding criteria, is a similarly dangerous phenomenon. The Arts Council now chiefly awards funding to projects with a political dimension: either the background of the artist or the nature of the work must appeal to a political objective, such as the overturning of colonial legacies. Many Fine Arts courses now require coursework to meet similar criteria. Besides the appropriateness of officials deciding on what is 'worthy' art (dare I say, think of the Nazis' 'Degenerate Art'), there is also a tragic opportunity cost. Think of the many struggling 'non-political' artists that are not supported; of the wealth of artwork born not out of politics but out of soul and personal meaning, that is not created, or ever seen. That is the true cost to our culture and it is the product of this inappropriate interaction.

The three domains of human pursuit that this journal covers—law, politics, and art—of course interact and overlap in fascinating ways. They add new dimensions and important perspectives to one another. However, the corresponding danger is that sometimes those interactions are inappropriate and in fact damaging to the individual integrity and nuances of those fields. Sometimes a work of art need not be more than an object of individual human meaning and power. Sometimes a legal ruling need not be more than a specific, anodyne conclusion on a point of law. Sometimes an artist-in-training or an arts awards body need not look to ticking political boxes but to valuing art that comes from a place of subjective struggle and truth.

Turning back to the original question of what this journal is about: this journal is aware of the opportunities and risks that come with placing these three fields in such close proximity. This journal is also aware of the risks of agendas, particularly political agendas. As such, as an institution the role of *The Cambridge Journal of Law, Politics, and Art* is to be nothing but a neutral vessel for the free expression of ideas and thoughts: a place of stillness and reflection at a time of constant motion and little self-awareness. Our editorial processes are rigorous and our activities around the world teeming with ambition. But this journal has no ambition or agenda other than to allow others to express themselves truly freely, constrained only by the limitless bounds of the English language.

I set up this journal because I was exasperated with censorship, at home and abroad. Censorship, however labelled, however well-intentioned, however (seemingly) morally-driven, is still a muzzle on free expression and ultimately free thinking, and is the necessary ingredient for the decline of any culture. We are defined by the quality of our thoughts and the quality of our thoughts is often determined by our ability to express them. This journal will never be bullied into taking a view. Nor will it ever tell anyone else to take or not to take a view. An antidote to today's problems is not to stymie debate but to improve the quality of public discourse and educate everyone, *God forbid!*, to be able to think for themselves. I want this publication to be the freest and purest forum in the world for the exposure of new, brilliant, daring thought.

In many ways the West is in decline. But if there is anything special left that we can offer the world, let it at least be that feeling of freedom and autonomy that leads to the greatest moments of genius and creativity; that rush of innovation and ideas that comes with feeling like there is nothing in your way, no moral-arbitering-Sword of Damocles hanging over you, waiting for you to make a mistake. That is why our editorial guidelines welcome everything from scientific research to black-letter law to creative writing. That is why the contributors to this journal include everyone from Sixth Formers to Supreme Court Judges, painters to politicians, archaeologists to advocates. That is why this journal has even developed its own technology to safely process sensitive information from political dissidents around the world.

Look once again at Turner's *Rain, Steam and Speed*. A mechanised train uncompromisingly steams forward against a mystical, classical background where a rowboat moves slowly by human effort across a quiet body of water. Metallic logical and (and perhaps moral) self-assuredness pierce a warm and hazy stillness that used to leave room for the unknown and for a slower, more contemplative pace. This was an atmosphere where truth, subtle thinking, and honest feeling did not have to battle against so much noise to be heard. This new journal is one of the last, determined remnants of that old, if romanticised, atmosphere. We will not stifle certain ways of thinking because we think better. We will observe, ponder, and respect what we see. We will publish *all* reasoned thinking because we believe that if we have moral courage and genuine openness to difference, then we can nurture and stimulate an improved quality of public discourse.

This second issue of *The Cambridge Journal of Law, Politics, and Art* is another important step in that direction, and dare I say, another work of cultural significance.



Rain, Steam and Speed (J.M.W. Turner 1844, oil on canvas 91 x 122 cm).
© The National Gallery, London.

A very special team

The staff of this journal are formidable. This journal started as an idea; then a one-man-band; then a team of six core editors who met in a dusty corner of a Cambridge restaurant; then a group of 36 editors and sub-editors across our three thematic departments; and now an international organisation of over 180 editors, designers, business developers, events managers, global ambassadors, and coordinators, only the core of whom can be acknowledged here and overleaf. This group of people, drawn not only from the University of Cambridge but from around the world, share an unreasonable ambition to turn an idea into a major international publication known for its academic rigour, prestige of contributors, and strength of character.

It is humbling to have worked with this remarkable group of people. Every single member of *The Cambridge Journal of Law, Politics, and Art* has worked hard, shown great skill, and above all has demonstrated enormous creativity and vision in bringing this journal forward.

Some special thanks are due.

Uma-Johanna Shah has stood in the gap during this journal's most testing periods. As Design Editor, Uma is responsible for the beauty, quality, and structure of this journal.

Stella Maria Sendas Mendes has had the unenviable but vital task of coordinating all of the journal's operations. As Managing Editor, Stella has energised and organised this journal, showing great leadership, humour, and panache in the process.

Jack Graveney is the intellectual force behind this journal. As Content Editor, Jack has led the Editors—a team that has ensured this journal has an almost unmatched rigour and precision in its editorial processes and the quality of publication we put out.

As her homeland came under attack by Russian forces and refugees swarmed to her beautiful home in leafy St Albans, Constance Uzywshyn did not flinch. In her capacity as Executive Editor, Constance continued to bring in the breadth and calibre of contributions that allows this journal to call itself world-class. She has also played a valued role in leading this journal's many talented staff.

William Fulp is the business brain behind this journal. A former New York stockbroker with a special talent for rearing funds and raising horses (or is it the other way around?), William has not only ensured the financial stability of the journal but has also provided and is implementing a vision for long-term growth and international distribution that, I hope, will make this journal a feasible global publication.

I can state with confidence that you would not be holding this journal in your hand had it not been for the extraordinary efforts, through thick and thin, of the five individuals named above. As much as I have been responsible for the birth of this journal, so too have I at times been its greatest liability. The personal friendship, understanding, and integrity of those mentioned above have ensured the life and growth of this journal in spite of that.

I must also warmly thank Michael Sandle RA for his sincerity, warmth, and humour. Sandle is one of the most important artists of our time. It is this journal's honour to have his work on our front cover.

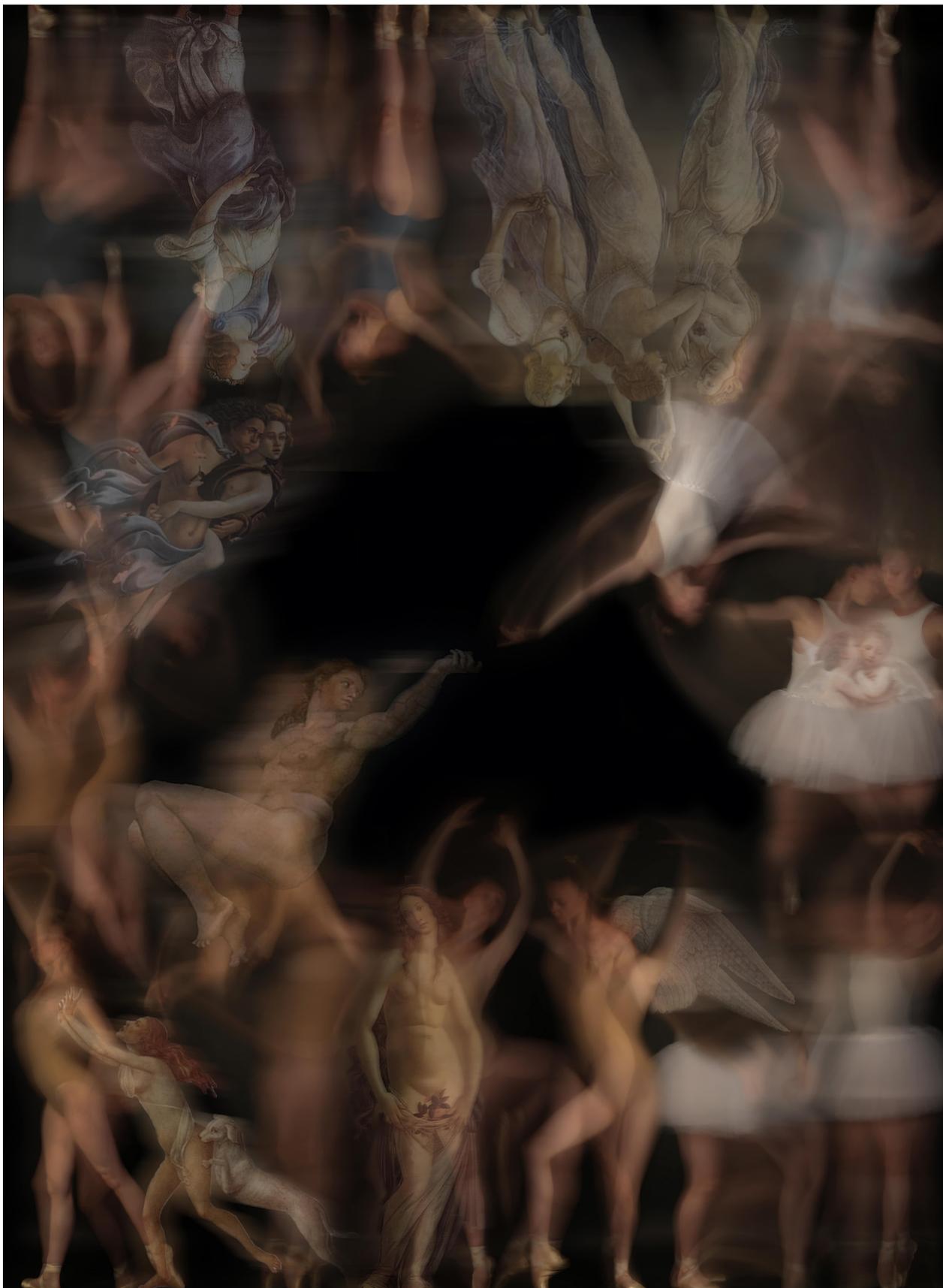
Additional thanks are due to those who, in an advisory capacity, have influenced the direction of this journal.

Martin Wilson has brought unique insights from industry and art law that will guide the direction for years to come. Sergiu Sall Simmel has provided applied and highly useful advice for the organisational effectiveness of this journal, as well as its future expansion to North America. Eduarda Gasparini's superb creative ability, inquisitiveness, and moral support have played an important role in bringing this journal to its final stage. Peter Dixon is one of the most remarkable men I will ever meet and this journal is lucky to have his generosity and creative input. Nathalie Edwardes-Ker's incredible intellect, strength, and warmth have given me the courage and inspiration to push through with this journal during its toughest times, and I will always be grateful to her for this: I owe her far more than can ever be expressed here.

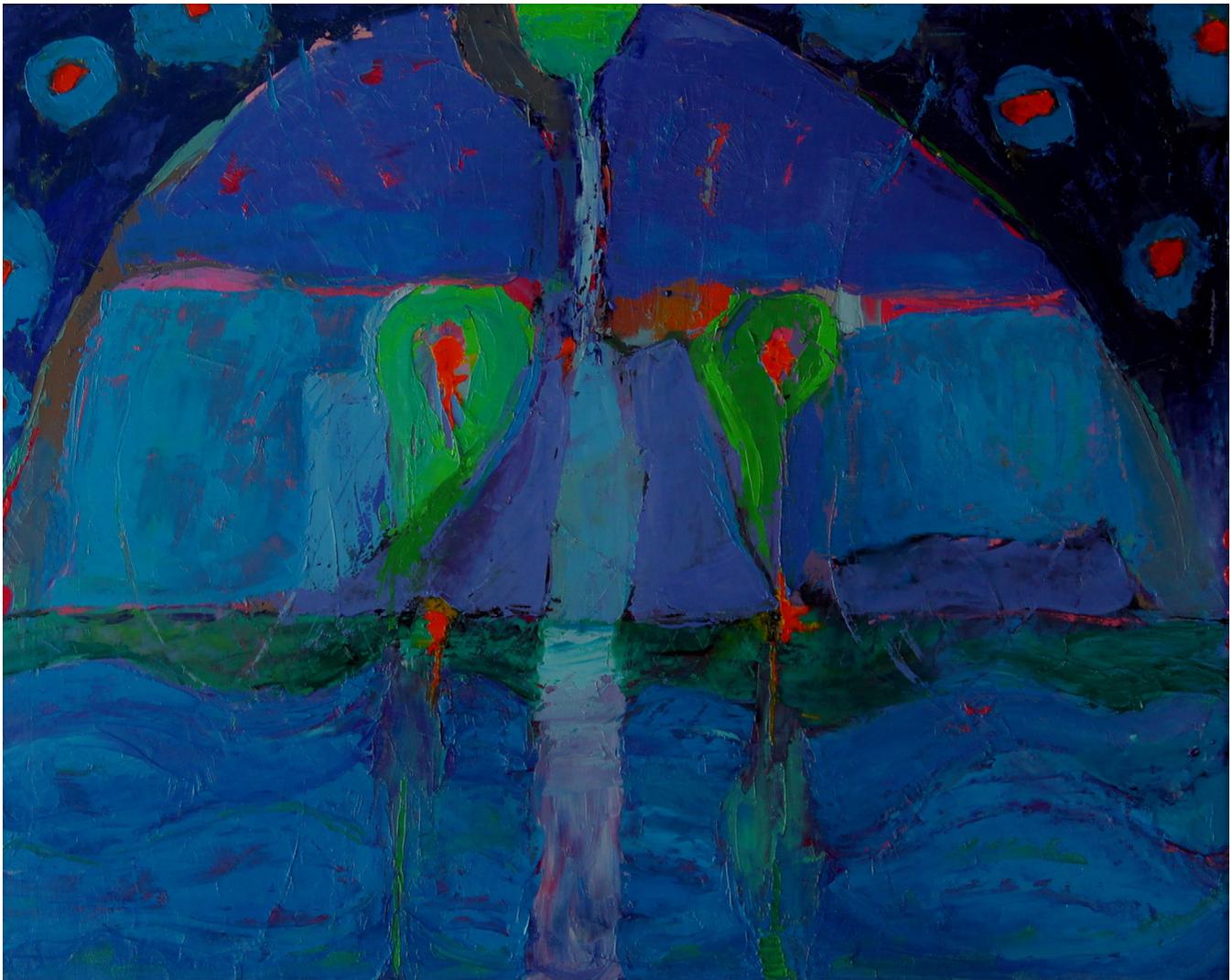
Lord Sumption, Lady Arden, Professor John Finnis, and Professor Matthew Kramer—some of the greatest legal minds of our time—have played an important role in ensuring this journal retains its moral courage to uphold freedom of reasoned expression, now and into the future.



The Premonition (Gabriella Kardos 2013, oil on canvas 170 x 170 cm).
© Gabriella Kardos. Photograph by Bindu Bhutani.



The Creation of Eve (Matilda Baxendale-Kirby 2022, Metallic ultraHD Photo Print 73 x 108 cm).
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Night (Birgitta Kumlien 2020, oil on canvas 80 x 80 cm).
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THE CAMBRIDGE JOURNAL OF LAW, POLITICS, AND ART

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Professor John Finnis is the leading philosopher of natural law. He also successfully nominated Aung San Suu Kyi for the Nobel Peace Prize and has been one of Australia's foremost constitutional advisors. He is Professor Emeritus of Law and Legal Philosophy at University College, Oxford.

Martin Wilson
Advisory Editor

Martin Wilson is a specialist in art law with extensive experience in global art transactions and resolving disputes. He currently holds the position of Chief General Counsel and Head of Fiduciary Services at Phillips, an international auction house with its headquarters in London and New York, and offices all over the world. He previously served as Global Managing Director and General Counsel to the President's Office for Christie's.

Professor Martin Kemp
Advisory Editor

Professor Martin Kemp is an art critic and an authority on Leonardo da Vinci. He authenticated the Leonardo painting *Salvator Mundi*, and attributed the painting *La Bella Principessa* to Leonardo. He is Professor Emeritus of Art History at Oxford and a Fellow of Trinity College, Oxford.

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Boy in Water (Matthew Krishanu 2012, oil on board 21 x 30 cm).
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An Allegory of Prudence (Gabriella Kardos 2019,
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Virgin Mary and Child, from the Series of Icons (Halyna Hryhoryeva 1997, oil on canvas, 100x 80cm).
Private Collection.

Ukraine's master painter, Halyna Hryhoryeva is recognised for her timeless and classical themes. "I aim to show the perfection of nature as well as the beauty of the woman." This particular painting is a contemporary rendition and reference to Kyiv's St. Sophia Cathedral's 11th Kyivan Rus mosaics and frescoes.

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