On the Visualisation of Law and Authority

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The courtroom is a strange place, when you think about it. For someone like myself, educated in the tradition and pageantry of the English common law, pictures of robed and wigged judges and barristers in the news and media, and even in art and television, appeared quite normal, if a little quaint. However, as Leif Dahlberg writes in the introduction to this volume, judicial proceedings allow us to grasp the abstract notions of law and authority (p.1). The spatial and temporal organisation of the trial gives meaning to 'law' and 'authority'. The different courtroom architectures found in different countries and in different legal systems show how law and authority are constructed differently in different places. Dahlberg contrasts the compartmentalised courtrooms of England and Wales, with their strict control of the movements of the defendant, witnesses and the public, to the more open architecture of French courts, where members of the audience are free to come and go as they please (pp.1-2). Despite these differences in layouts, dress and architecture, Dahlberg makes the point that the meaning of these manifestations of law and authority is revealed not by simply contemplating the aesthetic differences but by participating in those activities, and being aware of the gap between physical appearance and functional meaning (p.3).

In 'The Defence of Poetry', Percy Bysshe Shelley declared that 'poets are the unacknowledged legislators of the world'. *Visualizing Law and Authority* brings together essays first presented at the international conference 'Law and the Image', held in Stockholm in September 2010. The contributors to the collection are drawn from disciplines across the humanities, including law, media studies, art history and cultural studies. Instead of inverting Shelley's claim, the contributors to this volume provide a number of different approaches focusing upon the necessity of creating a legal aesthetics, discussing the complex relations between law, media and visual culture (p.5). The question each contributor addresses, in their own way, is to ask how we see, and how we learn to see, legal institutions as constituting law and authority (p.4).

As Dahlberg explains in the introduction, the authors all share a hypothesis: namely that law is constituted primarily as an aesthetics, and in order to properly understand law, one has to study the ways in which law as a societal institution has comprehended and constructed the world which surrounds us (p.4). This construction has occurred through the various representations which embodies the law in its different cultural and social contexts. As such, the aesthetics of law is the phenomenon of law (p.4). Law functions through material and visual representations (p.4). For Dahlberg, this necessitates a need to study the relationship law has with these representations, as well as how these representations perceive law.

The volume is divided into four parts. The first, 'Towards a Legal Aesthetics', examines law itself as an aesthetic object. The second, 'Images of Law and Authority', focuses upon how visual art is used to represent political power. The third, 'Law and Authority in Art', considers the normative and legal structures in the artwork itself. The fourth and final part of the volume, 'The Authority of the Image in the Law', looks at the use of images and imagery in the juridical process itself.

The essays themselves cover a broad range of topics: they range from Chiara Battisti examining the use of iconology in the television series *Law & Order: Special Victims Unit*, to Leif Dahlberg examining how old maps of the city of Stockholm represent and constitute

judicial space, and from Sadia Fiorato examining the use of *mise en scène* and dance in Sir Kenneth MacMillan's production of *Romeo and Juliet*, to Daniela Carpi looking at Jean Baudrillard's work through the prism of photography as forensic evidence. The diversity of both contributors and topics is one of the main strengths of the volume. This diversity allows the volume to deal with law and authority in all of its guises – from television to art to theatre to the law itself.

No overarching philosophy of law is put forward; neither is a common philosophy followed or directed here. Crucially, this should not be seen as a criticism. The contributors have all contended, in their various approaches, that philosophy can be seen as restless, and rebelling against the established order of the law.

There are a number of very rewarding chapters within this volume. The chapters on modern art, for example, open up new ways of thinking about the political and legal possibilities of art, and how art can represent law and authority. In particular, these chapters focus upon how art can make us think about law, and authority, in a less abstract and more concretised way. I would like to look at two in more detail here. Max Liljefors chapter looks at the artwork of the Taiwanese artist Tehching Hsieh. Hsieh's art performances in the 1970's and 1980's involved him setting strict rules for how he would conduct his life (p.205). Here, Liljefors reads Hsieh's work as illustrating how law and art are connected. Liljefors considers the institutional theory of art, which relocates the power to decide what is 'art' from the artist to an external authority, who exercises a form of Schmittian decisionism in deciding whether each work is 'art' (p.206). Here, Liljefors draws a parallel to the institutional nature of the law, which was the target of Walter Benjamin's 'Critique of Violence' – the law, through acting and punishing, validates its own acting.

Liljefors sees in Hsieh's work how artworks which mimic law and legislation can allow the institutional nature of law to emerge more directly (p.214). Hsieh's works include one-year performances. In *Time Clock Piece*, lasting from 1980 to 1981, Hsieh had to punch a time clock in his apartment on the hour, every hour, for a year. In *Cage Piece*, from 1978-1979, Hsieh sealed himself for a year within a cage measuring 11'6" x 9' x 8'. Here, Hsieh's work speak to his identity as an illegal immigrant in the United States. Liljefors notes that Hsieh's work does not, however, side with those, like the illegal immigrant, who are excluded by law. Rather, it sides with the law itself (p.227). Liljefors sees here a parallel with the work of Giorgio Agamben, who in *State of Exception* spoke of the law's *auctoritas* and *potestas*. *Potestas* seeks to apply the rule of law to all situations in life. Liljefors sees this in Hsieh's overall procedural approach in his work. *Auctoritas* is authoritative and seeks to assert itself through suspending the law in the state of exception. The power of *auctoritas* in Hsieh's work rests in the written statements with which he inaugurates his performances (p.228). The power of these statements rests only in Hsieh's following of them. The law's institutional nature is at the same time powerful and not powerful – if the law's commands are not followed, the law loses legitimacy.

Given the intricate nature of Hsieh's artwork, and the fact that Hsieh attempted to regulate every aspect of his life, controlling his movements and freedom, there could be mention and reference made to the thought of Michel Foucault's disciplinary power in Liljefors' arguments. Foucault's use of Bentham's Panopticon in *Discipline and Punish* could be seen to be paralleled in Hsieh's art. In many ways, the illegal immigrant is placed in a cage, but in a cage created by the self, through fear of the law, or of power structures, finding out the truth about their status. Foucault's thought, and the paradigm of the Panopticon, is explicitly taken up by Karen-Margrethe Simonsen in her chapter on *Global Panopticism*. Simonsen uses art to explore the growth of surveillance in Western democratic States since the terrorist attacks on the United States in September 2001.

The idea of 'global panopticism' is drawn from the work of Larry Catá Backer to describe the idea that surveillance today has become a self-proliferating phenomenon (p.232). Simonsen views two artworks. The first, *The Orwell Project*, was made by Hasan M Elabi. Elabi was placed under surveillance for six months by the FBI after 9/11. Elahi decided to make his entire life available on the internet, detailing where he is and what he is doing every day of his life. Elahi's artwork thus exposes the logic of surveillance – the individual being observed is not guilty of a crime but at the same time the individual is not completely innocent (p.238). The sheer amount of information and photographs Elahi provides allows for the viewer to observe Elahi's life, but these events are trivial and ultimately not very important. The details of Elahi's meals and flight tickets ultimately tell us nothing, and no patterns can be discerned (p.242). Secondly, Simonsen views the Surveillance Camera Players' (SCP) work *1984*. The SCP protest against the use of surveillance cameras and their effect, which they believe serves to hinder political activities (p.243). Their play, *1984*, was performed in 1998 in front of surveillance cameras, and transformed George Orwell's book of the same name into a truncated play. Simonsen makes the point that both works question the relationship between surveillance and human rights today (p.248). Here, art shows us the importance of observation for creating normative structures, or, following Norman Bryson's term, *visuality*, the construction of symbolic signifiers that condition our understanding of the world. In understanding the power of these normative discourses, we are able, as spectators, to question these fields of knowledge. This act of questioning, and having the individual understand how they see the world, can be seen as an ethical experience – it is art which can help us experience this in a way that law and rules cannot.

As well as art, contributors to the volume question how we can move towards a legal aesthetics, if such a move is even possible. These contributions ask how the law treats images of authority, and also how images of authority give force to the law and its actions. Martin A. Kayman uses his chapter to look at 'iconic' texts and how they are represented in law in his '"Iconic" Texts of Law and Religion: A Tale of Two Decalogues' (pp.13-22). Kayman's iconic text is the Ten Commandments, and his subject is the jurisprudence of the United States Supreme Court. Specifically, Kayman looks at two cases which came before the Supreme Court in 2005: *McCreary County, Kentucky et al v American Civil Liberties Union of Kentucky et al.*, 545 U.S. 844 (2005), and *Van Orden v Perry*, 545 U.S. 677 (2005).

In *McCreary*, the Supreme Court ruled, by a 5-4 majority, against McCreary County for their practice of exhibiting a printed copy of the Ten Commandments in their courthouse. The Court so ruled consistently with prior precedent which prohibited the display of posters containing the Commandments in public schools, stating that to do so would violate the strict separation of Church and State. However, in *Van Orden*, the same Court found that Texas had the right to maintain a monolith depicting the Ten Commandments next to the State capitol.

Kayman considers how the Court was disturbed by the confrontation between religious and legal icons of law, and in particular why one Justice, Justice Breyer, change his vote between the two cases (p.19). Breyer's vote switched between *McCreary* and *Van Orden* not due to personal preference, but, Kayman contends, due to the need to preserve the different between the Bill of Rights and the Biblical Decalogue as different types of iconic documents (p.19). For Justice Breyer, the Bill of Rights needs to be read flexibly, lest it lapse into the mere recitation of dogma. Kayman makes the forceful point that the 'shifting majority' in both cases, with Breyer's vote being decisive in each, is symptomatic of way in which legal icons cannot co-exist with religious icons. For Justice Breyer, the reason the Ten Commandments could be kept next to the State capitol in *Van Orden* as they were displayed alongside a number of secular monuments, including one commemorating the Alamo. Here, the Ten Commandments had lost their religious essence, and could be relegated to another

secular memorial which did nothing more than reflecting the historical 'ideals' of Texans (*Van Orden*, 702). The Ten Commandments had to become a secular icon in order to co-exist with the law. Such a provocative view is certainly true in the United States, with its separation of Church and State. Kayman's thesis would need testing in the United Kingdom, where there is no separation of Church and State, and there exists an established Church.

Nevertheless, there is a definite connection between Kayman's thesis and that delivered by Gary Watt, in a thought-provoking and stimulating contribution. Watt, in 'Law Suits: Clothing as an Image of Law', pauses to question how we view clothing as an image of law. In English courts, this is taken literally – Watt notes that without the appropriate gowns and attire, the barrister is officially 'invisible' to the judge in court (p.23). Watt contends that dress is as pervasive in human societies as laws themselves (p.24). For Watt, law and dress are the same cultural phenomenon. Focusing on etymology, Watt traces the linguistic origin of 'law' to the same Proto-Indo-European root as 'order' or 'what is fitting'. It is Watt's contention that lawyers, far from being able to play with language, are having language play with them (p.29).

Here, Watt points to the power of clothing to denote authority. From literary examples such as Dickens' *Bleak House*, to Herodotus' *Histories*, Watt indicates how dress can fashion the body to conform to social conventions (p.34). The epitome of legal covering is the mask, or the veil. The mask, or *persona* in Latin, is a way in which a barrier is created between the face and the reader, the other. In a sense, masks are used to control a means of communication. The law deals with individuals not on the level of singularity but on the level of abstraction – the law strips you of your individual characteristics and assumes that legal personality is an essence shared by all, individuals and companies alike. The law is so reticent to lift this veil that it very rarely lifts the 'corporate veil' to reveal the reality of a company's operations (p.38).

Crucially, however, this imposition of a legal mask must be enacted by the law. This is why the Islamic veil poses such a challenge to the authority of the law. Not only, as Watt contends, does the veil try and control social regulation (as dress is the key site of that regulation) (p.39) but the veil has come to be viewed as a religious icon which, in Kayman's terms, comes to challenge the supremacy of the legal icons we hold so dear. The veil questions both law's primacy over religion and law's authority over the sphere of dress.

We can perhaps pause here to view the decision of the United Kingdom House of Lords in *R (on the application of Begum) v Denbigh High School Governors* [2006] UKHL 15 as a further stage in this on-going battle. Here, a Muslim student challenged the dress code of a British State school, which refused her the right to wear the Islamic *jilbab*. Interestingly, the School was willing to allow their female students (who were drawn from a variety of faiths) to wear the *shalwar kameez*, in part because several faith groups could wear the garment. In so doing, the differences between the different faith groups would be minimised. We can see here the authority of the law to regulate clothing in order to create a form of acceptable, secular personality.

Begum challenged the policy on the grounds that her freedom of religion under Article 9 of the European Convention on Human Rights had been interfered with by the School's dress code. The case reached the House of Lords, who decided by a three to two majority held that the school's uniform policy did not infringe Begum's Article 9 rights. The most interesting part of the House of Lords judgment, and the part which chimes with Kayman's and Watt's theses, was the insistence by the House that even if Begum's Article 9 rights were infringed, the limitations were justified.

Baroness Hale's opinion here is indicative. Baroness Hale noted that British Muslim women were exercising their own autonomy by choosing whether to wear the veil or not and this decision should be respected. If a woman chooses to dress herself freely, no-one can

question this decision. However, of concern for the Law Lords was whether Begum had exercised a free choice. In particular, Lord Scott was concerned that Begum's decision was not autonomous, but was following the coercive directions of her older brothers (*Begum*, paras. 79-80). Baroness Hale referred explicitly to the Parekh Report on the Future of Multi-Ethnic Britain, published in the UK in 2000, which states that: "in all traditions, religious claims and rituals may be used to legitimise power structures rather than to promote ethical principles, and may foster bigotry, sectarianism and fundamentalism" (see Parekh Report (2000), available at http://www.runnymedetrust.org/publications/29/74.html). What my concern here is not whether the Report was correct, but rather to note the fact that Baroness Hale relied upon this statement to conclude that a strict Islamic dress code is imposed upon women to legitimise a male dominated power structure. This conclusion was strengthened by noting that Begum was a child, not an adult (*Begum*, para. 93).

Here, in Baroness Hale's opinion, we can see both the danger posed to the law by the Islamic veil (which, although created by *a* legal system, Sharia, was not created by the UK legal system), and how the law treats the veil as an iconic image of authority. As such, the veil presents a twin threat to the authority of law. First, it displaces the law's power to create a mask – the veil prevents the law from abstracting the individual and creating a legal person. Baroness Hale, in preventing Begum from wearing the *jilbab*, can be said to be reinforcing the law's force, its authority. Secondly, the Islamic veil, just like the Ten Commandments, symbolises another legal order, and another authority, religious in origin, which challenges the supremacy of the secular legal order. The House of Lords reasoning in *Begum* can be read alongside Justice Breyer's reasoning in *Van Orden*. The *shalwar kameez*, itself originally a piece of religious dress, was reduced to a secular uniform which had no specific religious connotations. In this way, the House of Lords could conclude that the *shalwar kameez* was acceptable, but the overtly religious *jilbab* was not.

This brief exposition has attempted to show the diversity of this volume. We can see in these contributions an attempt to open a space for questioning and thinking relating to the entrenched social orders and functions of law and authority. As such, it should be required reading for any course on law and aesthetics, or for those scholars broadly interested in how authority is visualised and relates to the law. Those who spend time investigating the questions posed by the authors will find the experience richly rewarding.