

BOOK REVIEW

Legal Theory and the Media of Law

THOMAS VESTING, translated by JAMES C. WAGNER

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As we navigate the interdisciplinary crossing of law and culture, it is not unusual to find mention of a double relation that mirrors those in other areas of socio-legal studies. In line with Max Weber's interpretive sociology, Clifford Geertz has defined 'culture' as comprised of the 'webs of significance'¹ that human beings have spun, which lend meaning to the institutional norms and practices that we now recognize as 'law'. At the same time, law remains irreducible to its reparative and remedial functions within a given culture, but rather moulds and circumscribes the everyday realities of its subjects. Law is

not so much ... a device or a mechanism to put things back on track when they have run into trouble, but ... itself a constructive element 'within culture' ... which in conjunction with a lot of other things equally 'within culture' ... lays down the track in the first place.²

In these observations made towards the end of the twentieth century, we already see an early intimation of the bidirectionality and complexity of interdisciplinary legal transactions today.

¹ C. Geertz, 'Thick Description: Toward an Interpretive Theory of Culture' in *The Interpretation of Cultures* (1973) 311.

² C. Geertz, 'Off Echoes: Some Comments on Anthropology and Law' 19 *Political and Legal Anthropology Rev.* 33, at 35.

What Thomas Vesting accomplishes in this monumental book is to introduce a third methodological coordinate that brings into focus an arguably even more basic thread in the tapestry of law and culture. From a media-theoretical perspective that draws on the studies of Marshall McLuhan, Friedrich Kittler, Niklas Luhmann, and others, Vesting suggests that cultural-legal evolution could only occur within the spatio-temporal possibilities afforded by communicative media such as speech, writing, print, and the computer. For instance, as Vesting remarks from the outset, it was the invention of the written word that allowed us to offset the ephemerality of speech and apprehend it as such:

Thus we are first able to recognize an object of language distinct from speaking (from linguistic usage, from verbal communication, from the act of speech) only when the fluctuance of spoken language is arrested and fixed in the medium of the written word. (p. 3)

Theory itself depends on the medial a priori of writing for its emergence, not to mention the legislations and case precedents that we continue to see as prototypical instances of Western law. ‘Media’ acts as a shorthand for those techno-infrastructure conditions of possibility for meaning in culture and law alike, which themselves often go unnoticed. ‘*Legal Theory and the Media of Law*’ is focused on just this hidden ground, on reconstructing the contexts that contribute to meaningful orders and structures while themselves remaining invisible’ (p. 443).

For those of us who are less familiar with media theory, it bears emphasizing that the concept of media advanced here exceeds, even inverts, the more commonplace understanding of the medium as that which merely communicates or transmits the message therein encoded.

Rather, in step with McLuhan's provocation that 'the medium is the message',³ Vesting sees the materialities of communication as so deeply involved in the (re)production of the cultural and epistemic orders from which law derives its significance that any cultural-legal or socio-legal account that fails to pay heed to the social and psychical determinations of media risks being inaccurate and misleading. To use Jacques Lacan's psychoanalytic idiom (which Vesting frequently cites), medial developments such as the transitions between orality and literacy (Part I Language and Speech; Part II Writing), scribal and print technology (Part III Print), printed books and mass media such as radio and film (Part IV Computer Networks, ch. 16), and the latest turn to computers and digital networks (chs 17–20) necessarily reconfigure the imaginary and symbolic referential contexts in which knowledge is generated. The experiential order of the image that fosters the illusory unities of individual and social identity, and that of the symbolic machinery that installs in its subjects their socio-cultural programs, mutate according to the new medial constellations that emerge between the epochs. It is in these fundamental alterations of the imaginary and symbolic registers of being that media unfold their co-evolutionary trajectories with law and culture.

By way of illustration, let us turn to Vesting's media-theoretical approach to the question of sovereignty in the middle chapters focusing on print culture (chs 13–14). In juridico-political studies of sovereignty, it has become somewhat of a cliché to review the philosophical literature on the topic, starting with Jean Bodin's *Les Six Livres de la République*.⁴ The first mark of sovereignty, as understood by Bodin, is the right of legislation: 'the power to make law binding on all his subjects in general and on each in particular ... without the consent of any superior, equal, or inferior being necessary' (p. 328). An unqualified discretion to enact laws may seem continuous with Bodin's concept of

³ M. McLuhan, *Understanding Media: The Extensions of Man* (1994, 1st MIT Press edn) 7.

⁴ J. Bodin, *On Sovereignty: Four Chapters from The Six Books of the Commonwealth* (1992). The following translated citations are taken from Vesting.

sovereignty as expressive of ‘absolute and perpetual power’ (p. 328). Yet, as Vesting notes, law making under monarchies like the *ancien régime* depended on social rules, institutions, and practices that preceded the monarch himself. Even in pragmatic linguistic terms, legislation relied on the subsisting language conventions and users to be understood in the first place. If the monarch was always already part of the symbolic order from which he derived the authority to govern his subjects, then sovereign power, too, must have been delimited by those techno-historical and socio-cultural conditions of possibility for its exertion:

The construction of monarchic law does not in fact allow for the emergence of sovereign power that would result in the total subjugation of the individual to a system of royal decrees. To argue otherwise is to ignore the fact that the law remains incontrovertibly bound to legal and social institutions, to the conventions and customs of everyday practices and the certainties rooted in them, as well as to commitments and obligations resulting from instinctual forms of intimate socialization such as sexuality, affection, and love. (pp. 329–330)

By thus calling attention to the wider historical context within which sovereignty operates, Vesting already moves beyond the hermeneutic tradition of endlessly reinterpreting the canonical texts of political philosophy.

As Vesting recalls, in the *ancien régime*, the monarch was understood as the sacred embodiment or ‘incarnation’ (p. 328) of sovereignty. The person of the king was seen as the corporeal unity of all of his royal subjects and substantial centre of sovereign power. Consider, for instance, Hyacinthe Rigaud’s magnificent portrait of King Louis XIV. Clothed in an extravagant coronation robe embroidered with the royal *fleur-de-lis*, the French king

stands in a central, upright position that parallels and overshadows the large marble column and throne behind him, manifestly displaying his sovereign majesty. However, so too does this example reveal that it was by means of a vast representational apparatus (or what Michel Foucault has called a *dispositif*⁵) that the importance of the king's body as the locus of sovereign power was instituted within the perceptual space of the *ancien régime*:

Epithets ('Louis the Great'), elaborate iconography, copperplate engravings, coins, historical medallions, eulogies and memorials of all kinds were combined with bold architectural and urban planning concepts, culminating in the monumental work of the Palace of Versailles. The palace and garden complex ... bore witness to the development of an enormous representational apparatus including dressing room rituals such as the morning and evening receptions (*lever, coucher*) and other courtly ceremonies, equestrian tournaments (*carrousel*), banquets, balls, theatrical productions, and ballet performances. ... King and courtly society together became objects of a comprehensive media spectacle that 'authenticated the *potestas absoluta* of the king' and at the same time 'formed a projection screen aimed at rendering invisible the weakness of power itself'. (p. 342)

The widespread circulation of portraits of the king, be they in the myriad forms of visual objects or printed royal treatises that gave praise to his glory, relied on the medial innovations of the printing press, screw press, and chalcography. It was the technological capacity to visually encode information such that it could be decoded without any loss of information and

⁵ M. Foucault, 'The Confession of the Flesh' in *Power/Knowledge: Selected Interviews & Other Writings 1972–1977* (1980) 194–195.

efficiently reproduced in large quantities in relatively short periods of time that afforded the historical emergence of monarchic sovereignty. Hence, the king's sacramental body was not only operationally inseparable from its visual and rhetorical staging, but also technically dependent on the communicative media that materially constituted the regime's imaginary and symbolic orders. In this sense, the incarnation of sovereignty in the king's body always already involved its exteriorization or 'excarnation' (p. 352) onto textual and visual media.

Print technology played a crucial role in propagating sovereign power throughout the *ancien régime* by enabling the mass reproduction and distribution of sacralizing portraits of King Louis XIV. Yet, as Vesting reminds us, the same medium prescribed and facilitated the decline of the absolutist regime and its transition to constitutional democracy. We might be familiar with a certain reading of Jürgen Habermas's history of the rise of the public sphere in eighteenth-century Western Europe.⁶ In the coffeehouses, *salons*, and *Tischgesellschaften* of England, France, and Germany, rational bourgeois subjects came together to engage in critical reflection and debate on socio-political matters. The public use of reason, so central to what Immanuel Kant had conceived as the project of the Enlightenment,⁷ historically subverted the monarchies of Western Europe and paved the way for democratic culture (even if the latter was destined to be arrested by the logic of capital unfolding in the nineteenth and early twentieth centuries). Even in the classical account, nonetheless, Habermas noted the importance of printed matter like moral weeklies and psychological novels for the cultivation of literate, rational-critical subjects competent to engage in such discourses.⁸ Consistent with his enduring interest in the medial a priori of cultural legal history, Vesting suggests that the formation of those publics could well be traced to the print machineries and representational

⁶ J. Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (1991, 1st MIT Press paperback edn).

⁷ I. Kant, 'An Answer to the Question: What Is Enlightenment?' (1784) in *Practical Philosophy*, eds. P. Guyer and A. W. Wood (1996).

⁸ Habermas, op. cit., n. 6, pp. 42–51.

dispositifs that, even during the *ancien régime*, had already begun to undermine and displace the monarchic model of sovereignty:

Louis XIV's representational politics also laid the groundwork for the rise of a collective resonance chamber of 'judgements' and 'opinions' on questions of aesthetics that now began to circulate independently of the king's own assessment, or that at least could not be centrally controlled by the royal court over the long term. (pp. 342–343)

As Vesting clarifies, during Louis XIV's regency, partly owing to his establishment of various academies dedicated to the arts and sciences, there had already been signs of a 'proto-public sphere' (p. 343) that exceeded the control and supervision of the absolutist regime. The rapidly expanding book markets of the eighteenth century and the widespread circulation of printed works of all sorts, including critiques and denunciations of the absolute monarchy, further shaped and intensified the debates of the bourgeois publics. With the subsequent rise of printed declarations and constitutions, sovereignty shifted from the monarch onto the impersonal, anonymous text and the ancillary practices of interpretation and revision. Especially in the United States and France, the imagination and understanding of national identity was deeply tied to constitutional documents like the Declaration of Independence of 1776 and the *Déclaration des Droits de l'Homme et du Citoyen de 1789*, which in turn relied on print technology and culture for their promulgation: 'The new political subject of the nation – the sovereignty of the people – points to a cultural framework that cannot be thought apart from printing' (p. 374). Liberal statehood and democratic culture, thus, was fundamentally bound up with the technical infrastructure of print and the socio-political possibilities that it prescribed.

When Geertz conceived of culture in a specialized, ‘essentially ... semiotic’⁹ sense of historically transmitted patterns of meaning, it was to reinvigorate a concept whose value seemed to be rapidly depreciating because of its semantic diffusion. The worth of theoretical ideas, Geertz suggested, was commensurate with how far it went towards ‘throwing up new understandings’¹⁰ in interpretive problems. The four parts of Vesting’s book dedicated to oral, scribal, print, and digital culture, each of which was based on a monograph originally published in German,¹¹ are infinitely suggestive of the new insights into law and culture that a concept of media could yield. Readers interested in any of the medial epochs could profit from a close reading of the pertinent section. However, the book as a whole forms a ‘cross-referential network’ (p. xi) that reflects, even embodies, the culture and epistemology of networks that Vesting sees as distinctive of the digital present, so any scholar keen on appreciating its stakes in the here and now would have much to gain from working through it from start to finish. For socio-legal studies, the book not only discloses a tendency to overlook the medium in both our theoretical and empirical investigations, but also points the way towards its necessary correction.

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⁹ Geertz, op. cit., n. 1, p. 311.

¹⁰ Id., p. 321.

¹¹ T. Vesting, *Die Medien des Rechts: Sprache* (2011); T. Vesting, *Die Medien des Rechts: Schrift* (2011); T. Vesting, *Die Medien des Rechts: Buchdruck* (2013); T. Vesting, *Die Medien des Rechts: Computernetzwerke* (2015).