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Keenan, Bernard (2021) Carrier Bag Law. In: Goodrich, P. and Zartlaoudis, T. (eds.) The Cabinet of Imaginary Laws. Discourses of Law. Routledge. ISBN 9780367566586.

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Carrier Bag Law

Bernard Keenan

Law is a medium for the production of a certain type of subject who inhabits a certain type of world. This makes law appear to work as a technology. As the world of the singular heroic subject burns around him, is it possible to imagine a different kind of worlding? A different concept of the relationship between technology and culture may offer a way.

The departure point is perhaps to consider law as we know it as a technical project. The law understood as technology operates in two registers: social functionalism and normative representation. As a social function, law is a machine for producing specific outputs from given inputs. To re-imagine law while remaining within this register is to imagine a different set of machine programmes, whether at the level of a minor adjustment or at the level of radically reinventing the social order. As in Borges's story of the lottery in Babylon, the reader is invited to apply the law by thinking through the outputs resulting from whatever symbolic inputs are stated in the rules.¹ One imagines law like one imagines an algorithm, a process for making conditional jumps: if this, then that.

Law as a technology of normative representation means that law imposes or signifies some underlying political decisions, social customs, or moral values. Modern law also signifies its own legitimacy. The laws produced by a legislature are made via constitutionally mandated procedures and are enforced by courts that unfold disputes according to flexible procedural rules. Thus, law works technically to convert aspirations into actions and to inform an imaginary community about itself. An imaginary law in the representative register could serve to celebrate or satirise a political ideal or its perversion, or to indicate the values of some other metaphysical order.

By drawing attention to law as technology, we can see that both the functionalist and representational modes presuppose certain techniques by which a legal text may be made and actualised. In cybernetic terms, the functional view presupposes the first-order techniques of the jurist, who reads the law and applies it to the environment. The representational approach is then a second-order perspective, reading the law not simply for what it actively does but for the meaning that it holds in relation to a moral, cultural, or political environment.² In both modes, the legal text serves as a metaphorical infrastructure for the enactment of something

¹Jorge Luis Borges, 'The Lottery in Babylon' *Fictions*, tr. Andrew Hurley (London: Penguin 2000) 51–58.

²The allusion here is to Niklas Luhmann, (1992) 'Operational Closure and Structural Coupling: The Differentiation of the Legal System', *Cardozo Law Review* 13: 1419–41.

beyond the text. This is why for Levi-Strauss, the lawyer's account of the world is 'like an animal trying to explain to a zoologist the workings of a magic lantern'.³ Law is a rhetorical performance for those who are already captured by the misapprehension that law, 'sandwiched between theology... and journalism',⁴ describes or enacts social reality. For Levi-Strauss, it ought to be noted, if one really wants to know the world or change it, law is the last place to look.⁵

The relationship between technique and cultural reproduction lies at the heart of the theory of cultural techniques. An elaboration on so-called 'German' media theory,⁶ this approach draws attention to the law's medial substrata and the techniques through which it is made to function as if it describes the world. Recent years have seen scholars turning to the study of the technicalities and materialities engaged by legal practices as a way of seeing how rhetoric and textual exegesis are in themselves modes of world-making, in which the law is assumed to act as a technology.⁷ According to the outline provided by Cornelia Vismann, the law in its modern form operates through the enactment of textual media via particular and contingent sets of inherited and teachable cultural techniques.⁸ Laws are not determined by the conditions media of transmission, storage, and reproduction, but law in its particularities and genealogies can be productively interrogated through media-technical analysis.

In setting out her methodology, Vismann draws attention to the peculiar role of the 'medium voice' in Greek grammar. In the medium voice, a verb's performance is not ascribed to the subject of the sentence but to the medium through which they act. Thus, for instance, a bather:

...is carried by the water. As opposed to a spear, which is released from the hand of its thrower, the trajectory of bathing remains bound to the medium of water. The grammatical form of the medium indicates that very relational quality. Spear-throwing, on the other hand, represents a classic case of active verb formation.⁹

³ Claude Lévi-Strauss, *Tristes Tropiques*, tr. John Russell (New York: Criterion Books, 1961) 57.

⁴ Ibid.

⁵ I owe this observation to Alain Pottage, (2014) 'Law after Anthropology: Object and Technique in Roman Law', *Theory, Culture & Society* 31, 2–3, 147–66.

⁶ Bernard Dionysius Geoghegan, (2013) 'After Kittler: On the Cultural Techniques of Recent German Media Theory', *Theory, Culture & Society* 30, 6.

⁷ For a summary, see Hyo Yoon Kang, 'Law's Materiality: Between Concrete Matters and Abstract Forms, or How Matter Becomes Material', in *Routledge Handbook for Law and Theory*, ed. Andreas Philippopoulos-Mihalopoulos (Abingdon: Routledge, 2018).

⁸ Cornelia Vismann, (2013) 'Cultural Techniques and Sovereignty', *Theory, Culture & Society* 30, 6: 83–93; see also Cornelia Vismann, (1999) 'Jurisprudence: A Transfer Science', *Law and Critique* 10, 3, 279–86.

⁹ Vismann, 'Cultural Techniques and Sovereignty', 85.

This is the media-technical precondition of scripting for a law that can be transmitted and simultaneously enacted over time and space. When legal scripts and protocols are technically performed, the peculiarly legal quality of law is reproduced: this is the re-inscription of the difference between the legal and the non-legal. In other words, the operation and continuation of modern law depends first upon protocols, which precede any symbolic effect.

One function of modern legal protocols is to mediate the idea of the active and singular legal subject. This is the same subject that projects its will onto the world, either as an individual or as an abstract sovereign legislator. The imaginary subject can serve to represent a community or an Empire, or it can be the repository for a list of rights:

The ballistic perspective (the active voice, the spear) corresponds to the logic of the law, which continuously associates means with their ends. Moreover, it also partakes of a legal narrative according to which an operation may be attributed to an agent as the source of a conflict or a legal matter.¹⁰

This figure in turn underpins the law as a connector between means and ends, and the stability of this figure is what allows specific rules and procedures to be flexible, reflexive, archived and re-writable.

One could connect this to other critiques of law's foundational violence. It is consistent with law as the imposition of reason on the world and of the metaphysical Idea over desire. The law reproduces the paternal master who monopolizes not only violence but normativity and reason. The spear-throwing subject underlies the history of global law. Planetary modernity made it possible to conceive of one world legal system with regional variations. This in turn raised the problem known at least since Kant of speaking for the other via the same, which remains a problem even where others' indigenous legal practices are either maintained or recuperated after decolonization.¹¹ The reinvention or the maintenance of non-modern, non-individualistic modes of normative judgment can in themselves only be apprehended by the world system in contradistinction or comparison with itself so that the other becomes describable only in system terms, and recuperation is always reinvention.

But it is the comparison between law's subjectivity and the spear that I would like to draw out here.¹² If law is the technology that underpins the subject that *uses* technology to

¹⁰ Ibid., 85.

¹¹ For a recent example of comparative scholarship see, Hermann Amborn, *Law as Refuge of Anarchy: Societies without Hegemony or State*, trans. Adrian Nathan West (Cambridge, MA: MIT Press, 2019).

¹² The isomorphism that Vismann and Krajewski elsewhere identify between law and technology should be understood in these terms, see Cornelia Vismann and Markus Krajewski, (2008) 'Computer Juridisms', *Grey Room* 29, 90–109.

master the world, then the relationship between technology and political subjectivity might be reimagined via a different imaginary of law. And if planetary world systems are now in crisis and collapse, then such reinvention is urgently necessary. Is it possible to depart from a media-technical analysis to imagine a different world trajectory?¹³

One such departure might be found in Ursula Le Guin's carrier bag theory of fiction, which shifts attention away from the techniques of the spear thrown by a subject towards the techniques of holding, carrying, filling and reusing.¹⁴ In an essay describing the ethics behind her authorship, Le Guin positions the container (as in a bag, a holder, a recipient) as the original cultural technology. She explicitly refutes traditional Euroamerican origin myths in which primitive man ascended to mastery of the world through the tools he wields: the axe, the knife, the club, the spear; that is, the tool as the extension and projectile of the will of the subject. Hegemonic western culture rests upon the singular hero having radical struggles with alterity, discovering the unknown, surviving the outside, taming the different. Such narratives surround and infuse the legal order and sovereign power, and here lies the resonance with Vismann:

... the Hero has decreed through his mouthpieces the Lawgivers, first, that the proper shape of the narrative is that of the arrow or spear... second, that the central concern of narrative, including the novel, is conflict; and third, that the story isn't any good if he isn't in it.¹⁵

The hero story of course persists, not least for its drama and its exceptionalism. But its continued triumph means the reproduction of the same and comes at the expense of stories and storytellers who do not conform and those whose worlds are occluded from its trajectory.

In contrast the carrier bag theory draws on a different type of story to establish different kinds of subjects. The theory is based on a simple observation: that culture did not begin with tools and weapons used to direct force outwards, but with devices for bringing energy home. The pre-condition of the hero-weapon is the humble carrier bag, the sling, or the basket. These tools assemble and contain whatever is needed. They allow seeds to be gathered and water to be collected and the baby to be carried all the while. And home, after all, is nothing if not a container for life.

Le Guin's suggestion is that fictions that dwell on the bag can germinate different imaginaries. This way, a more complex and nuanced account of human relations might unfold

¹³ Put differently, is a different 'cosmotechnics' possible? See Yuk Hui, *The Question Concerning Technology in China: An Essay in Cosmotechnics* (Falmouth: Urbanomic, 2016).

¹⁴ Ursula K. Le Guin and Donna Haraway, *The Carrier Bag Theory of Fiction* (London: Ignota Books, 2020).

¹⁵ *Ibid.*, 34.

within it. In any case, the hero can no longer dominate. The Hero ‘does not look well in this bag. He needs a stage or a pedestal or a pinnacle. You put him in a bag and he looks like a rabbit, like a potato’.¹⁶ The sovereign subject must learn to accept he is not sovereign but always needs to make and share space and time with other existing things. This way, an explicitly feminist technique of fiction-writing engenders a different cultural imaginary.

The use of fiction in worlding or re-worlding is gaining traction.¹⁷ It matters, as Donna Haraway insists, what stories tell stories.¹⁸ What would it mean for a legal order that consciously does not re-inscribe the singular hero, the active agent, the ballistic subject of law? What would it mean to start from the techniques required to stay with, in Le Guin’s words, ‘what is in fact going on, what people actually do and feel, how people relate to everything else in this vast sack, this belly of the universe, this womb of things to be and tomb of things that were’?¹⁹ It would not necessitate a revolution, but a shift in the technical parameters through which law reproduces itself. Perhaps it is merely a restatement of the ‘ethical’ turn familiar to critical legal studies.²⁰ Techniques of complementarity, reciprocity, synchronous and sequential on-goingness of the world, paying attention to the indeterminate interaction of persons and things. No more human exceptionalism. Irreducible to traditional ideas of anarchism, although perhaps sharing with them a certain ethical predisposition. A law of action, but the source and the effect of the action would be different; an action that does not ballistically project itself in time and space but aims to bring things home, so to speak. It seems worth a try. If teleological human progress is in a death spiral, perhaps it is time to imagine the law without the technical imperative of the hero’s progress.

¹⁶ Ibid., 35.

¹⁷ See Simon O’Sullivan, Henriette Gunkell, and Ayesha Hameed, eds., *Futures and Fictions: Essays and Conversations That Explore Alternative Narratives and Image Worlds That Might Be Pitched Against the Impasses of Our Neo-Liberal Present* (London: Repeater, 2017).

¹⁸ A concept most fully developed in Donna J. Haraway, *Staying with the Trouble: Making Kin in the Chthulucene* (Durham: Duke University Press Books, 2016).

¹⁹ n 12, 37.

²⁰ Luce Irigaray’s hopes for an explicitly feminist law spring to mind, see Alain Pottage, (1995) ‘A Unique and Different Subject of Law’, *Cardozo Law Review* 16, 1161; similar pitfalls may then apply, see, Nicola Lacey, (1996) ‘Normative Reconstruction in Socio-Legal Theory’, *Social & Legal Studies* 5, 2: 131–57.