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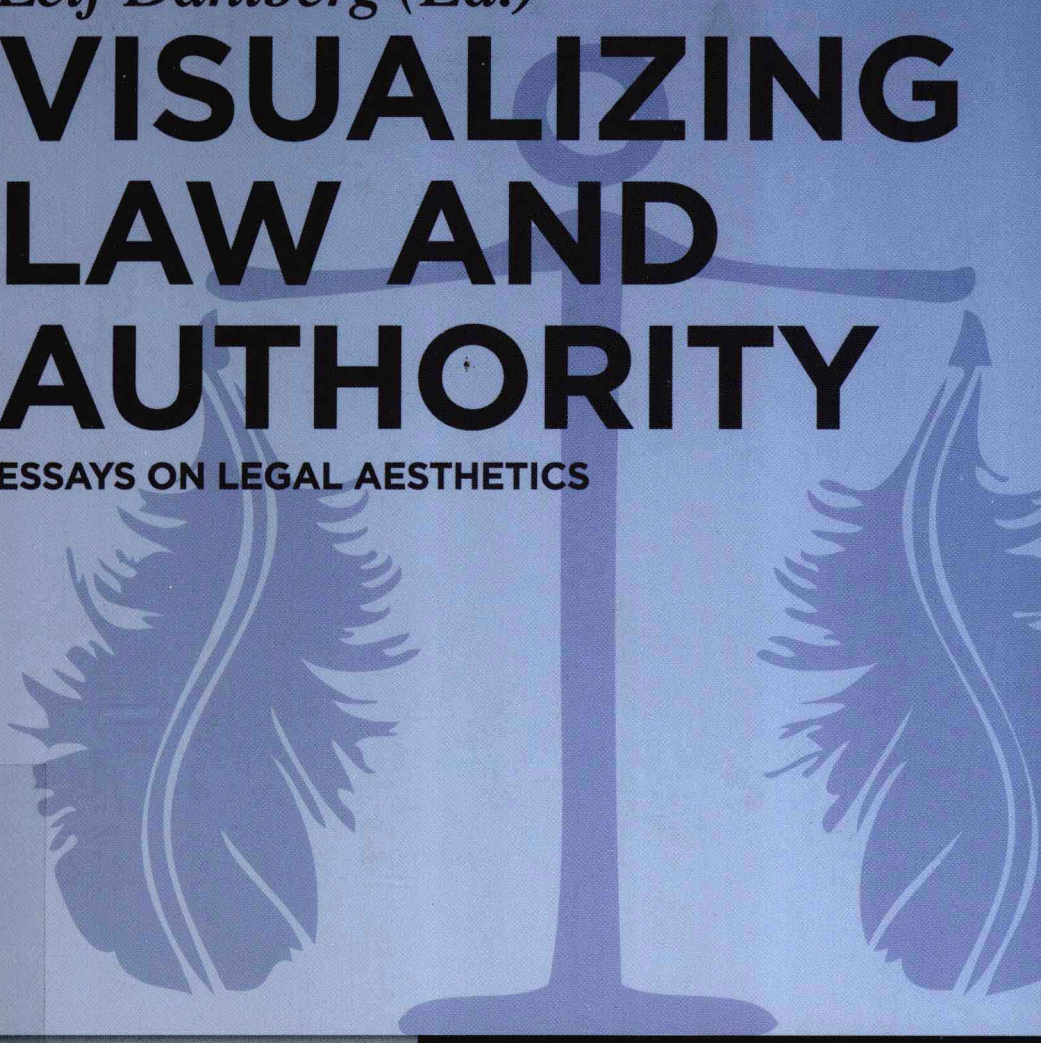
Leif Dahlberg (Ed.)

VISUALIZING LAW AND AUTHORITY

ESSAYS ON LEGAL AESTHETICS



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Essays on Legal Aesthetics

Edited by

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Introduction. Visualising Law and Authority

The most immediate way to grasp the abstract notions of law and authority is perhaps to enter a courtroom during juridical proceedings. In the courtroom, the different actors in the legal system are present in the flesh: parties, legal counsel, prosecutor, judges, jury, and audience. Also the spatial and temporal organisation of the trial gives meaning to the terms law and authority, including the decorations of the courtroom. The social dynamics in and architecture of the courtroom also manifest differences in how law and authority is constituted in different times and places – as well as revealing cultural and historical palimpsests. For instance, in the criminal courts in England (primary instances: *Magistrate's court* and *Crown court*), the courtroom is highly compartmentalised, confining the actors to narrow and boxed-in spaces. The defendant is placed in a barred-in or glassed-in space separated from the rest of the courtroom. Likewise, the audience is also marginalised, either by being separated by a glass wall or by being placed in a gallery high above the other actors.[1] The use of elevation is a general architectural feature in the courtroom, the judge occupying an elevated position from which he or she can look down and control the proceedings. The equation of the eye and justice is indeed one of oldest (concrete) representations of justice (the "all-seeing eye"), a figure that have been paradoxically subverted by the modern image of justice as "blind".

In contrast to England, where the placement and movements of the defendant and the audience is confined and marginalised, in France the criminal courts (primary instances: *Tribunal correctionnel* and *Cour d'assises*) have a more open architecture organised around a central aisle, not confining the defendant to a barred or glassed-in space and also giving greater room and central place for the audience. The public prosecutor has an individual desk, placed perpendicular to the judge's and equally elevated. Also, in contrast to England, where the coming and going of the parties (and of the audience) are controlled and carefully monitored, in France the defendant typically waits in the courtroom itself for his or her case to come up, and the members

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[1] Cf. Linda Mulcahy, *Legal Architecture: Justice, Due Process and the Place of Law* (London: Routledge, 2011).

of the audience are free to come and go as they please. Hence, in the French courtroom there is significantly more movement than in the English courtroom. In Sweden, the organisation of criminal proceedings is again different. Whereas the physical architecture of the courtroom (primary instance: *Tingsrätt*) appears open and non-hierarchical – the judges and lay judges (slightly elevated) and the parties are placed facing each other around a rectangular empty space, the audience placed on the same level as the parties – the parties and the audience are only allowed to enter the courtroom when the court (judges and lay judges) are seated.

Another concrete and visual manifestation of a legal system is how the actors are dressed. Whereas in England and in France the judges and legal counsel have special garments – and in England even wigs – in Sweden there is no such ceremonial dress. These and other differences in the physical architecture of the courtroom, the social and temporal organisation of the proceedings, and the different dress codes, are open for interpretation. Thus, the highly compartmentalised English criminal courtroom, marginalising both the defendant and the audience from the juridical process, can be seen as expressions of a legal system offering limited access to the public. This impression is enforced by the highly ritualised procedures and the ornamental dress, as well as the regulations limiting who can function as legal counsel. In comparison, the French criminal courtroom gives an impression of being more open and accessible, but also here the physical architecture and the dress code signal law and authority; and when a party or witness is questioned, he or she has to stand directly in front of the judge.[2] The criminal courtroom in Sweden could be placed at the other end of the spectrum, with less emphasis on authority (both in terms of architecture and dress) and more emphasis on functionality – but at the same time it should be remembered that the parties and the audience only are allowed to enter the courtroom when the court is seated.[3]

It is not only the interior of the courtroom and the social dynamic of the process that make tangible the abstract notions law and authority, also the

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[2] See further Antoine Garapon, *Bien juger: Essai sur le rituel judiciaire* (Paris: Odile Jacob 2010); Denis Salas, *Du procès pénal* (Paris: Presses Universitaires de France, 2010).

[3] For a historical presentation of the Swedish courtroom, see Eva Löfgren, *Rätt och rum. Tingshus som föreställning, byggnad och rum i förvandling 1734–1970* (Stockholm: Institutet för rättshistorisk forskning, 2011). See also my essay "Emotional tropes in the courtroom. On representation of affect and emotion in legal court proceedings", *Law and Humanities*, Vol. 3, No. 2 (2009), 175–205.

exterior and the location of the courthouse may be read as visualisations of the legal system. Ever since the revolution in 1789, French courthouses have been housed in palace-like buildings (often modelled after Greco-Roman temples), signalling the independence of the judiciary in relation to other state institutions. In England and Sweden the architectural style of the courthouse is less marked, and the design is typical of administrative government buildings (with notable exceptions such as the Royal Courts of Justice in London and Rådhuset in Stockholm). In certain periods, in particular around the turn of the century 1900, it was not unusual that newly built courthouses were surrounded by gardens in order to separate them (symbolically) from the urban environment.

However, the actual meaning of these and other physical and social manifestations of law and authority is not so much revealed by aesthetic contemplation as in participating in the activities and being absorbed by the environment, hence suggesting what may be called an aesthetics of distraction.[4] In other words, one should be aware of – and be critical of – the gap between physical appearance and functional meaning. It may well be that the striking physical and ceremonial differences between legal institutions in England, France and Sweden conceal an inner functional similarity, and that the differences are more apparent than real. Nevertheless, it is clear that legal systems have an aesthetics all their own, and that it manifests itself differently in different cultures and in different times. Such legal aesthetics represents ways of seeing, and the question is how we see – and also how we learn to see – legal institutions as constituting law and authority.

In an unfinished work, the French philosopher Maurice Merleau-Ponty presented the following paradox: "It is at one and the same time true that the world is *what we see* and that, all the same, it is necessary to learn to see it."[5] That is, in our everyday perception of and interaction with the world, we maintain a belief that the world is what appears to us (what Merleau-Ponty calls "the perceptual belief")[6] – both directly to our senses and indirectly through various media – and at the same time that we see and decode the world through structures and categories that we have learned through ex-

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[4] Cf Walter Benjamin, "Das Kunstwerk im Zeitalter seiner technischen Reproduzierbarkeit" (1936), zweite Fassung, in *Gesammelte Schriften I:2*, ed. R. Tiedemann *et al.* (Frankfurt: Suhrkamp, 1974), 504f.

[5] Maurice Merleau-Ponty, *Le visible et l'invisible* (Paris: Gallimard, 1964), 18. ["Il est vrai à la foi que le monde est *ce que nous voyons* et que, pourtant, il nous faut apprendre à le voir."]

[6] Ibid. *passim* ["la foi perceptive"].

perience and education. This is true both for everyday perception and social interaction and for the artist making the human lifeworld visible and intelligible for us. However, equally paradoxical is that in seeing and learning to see, we transform the world: the world is not unaffected by being observed and interpreted. The act of seeing produces images of the world, which then themselves become part of the lifeworld. Although it is frequently argued that the works of artists affect the way we perceive the world – for instance in Percy Bysshe Shelley's dictum that the "poets are the unacknowledged legislators of the world" (*A Defence of Poetry*, 1821) and in Martin Heidegger's essay on the origin of the artwork (*Der Ursprung des Kunstwerkes*, 1936) – it is less common to maintain that law constitutes a visual and aesthetic field of cognitive and normative world making. Such a claim calls for a phenomenological investigation of the scopic field and of regimes of visibility, and for the necessity to develop a legal aesthetics. The essays in this volume respond in various ways to such a demand to investigate both the image of law and the legal imaginary.

It could be argued – and this is the shared hypothesis of the authors to the essays collected in this volume – that law is constituted as much, if not primarily, as an aesthetics; and in order to properly understand law – and also to critically engage with law – one has to study the ways in which law as a societal institution has comprehended and constructed the human lifeworld, as this is manifested and sedimented in material and visual culture, in legal codes and in juridical praxes. Instead of considering law (as) an abstract concept, a transcendental form or an ideal, the essays consider law through the various forms of representations in which it is embodied in different cultural and social contexts. In this regard, the aesthetics of law is not contingent to the law since it is the phenomenon of law. Material and visual representations of law are the empirical frames through which law appears and functions in society. If one were to take away – to destroy – the aesthetic form of the courtroom and the courthouse, the functional efficiency of law would immediately collapse. In other words, if law as social phenomenon only can exist as law through its visual and material representations, one need to study the different relationships law maintains with them as well as the different perceptions of law that are sedimented in its various representations. This can be done by studying the visual culture found in the courtroom, the visual and material representation of law and authority in socio-political contexts, in art and in popular media.

The German art historian Hans Belting has emphasised that images are both internal and external phenomena: "An 'image' is more than a product of perception. It is created as the result of personal or collective knowledge

and intention. We live with images, we comprehend the world in images."[7] According to Belting, this calls for an anthropology of images, revealing among other things that "we are not masters of our images, but [are] rather in a sense at their mercy." Images both reflect and affect the changing course of human history and they show in an indubitable way how changeable human nature is.[8] In ordinary language and also in academic discourse, the terms *image* and *picture* are often used interchangeably, and in German the word *Bild* can mean both *image* and *picture*. In order to distinguish between the image and its physical manifestation, Belting suggests the terms *image* and *medium*, defining the picture as "the image with a medium." However, the image medium is not only external, but also consists of images existing in an individual or a collective. In fact, the image requires a spectator "who is able to animate the media as though images were living things."[9] Indeed, according to Belting image perception is a form of interpretation, a symbolic act guided by cultural patterns and pictorial technologies. In other words, our concrete and conceptual images of law and authority are both internal and external, and are mediated both through physical media – including courtroom design and courthouse architecture – and through the living and active memory of human actors. The images of law and authority are not static but are changing with evolving conceptions of law and justice.

The majority of the essays in this volume were presented at the conference *Law and the Image* at the Swedish National Library, Stockholm, 24–25 September, 2010.[10] The conference brought together scholars from Europe, America and Asia to discuss the complex relations between law, media and visual culture. The participants in the conference belonged to academic disciplines such as Art history, Cultural studies, Law, and Literary and Media studies.

One way to answer the call for a legal aesthetics consists in examining law itself as an aesthetic object. Martin Kayman (Cardiff University) and Gary Watt (University of Warwick), discuss the power of law to produce icons, in the sense of unreadable texts or textiles. In the essay "'Iconic' Texts of Law

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[7] Hans Belting, *An Anthropology of Images*, trans. T. Dunlap (Princeton: Princeton University Press, 2011), 9.

[8] Ibid. 10.

[9] Ibid. 11.

[10] The conference was organised by Leif Dahlberg, Håkan Gustafsson, and Pelle Snickars (see http://www.kb.se/Forskning/2010/Law-and-the-Image/). The conference received generous support from the Swedish National Library, the Royal Academy for the Fine Arts, the Wenner-Gren Foundations, and the Embassy of the United States of America in Stockholm.

and Religion: A Tale of Two Decalogues", Kayman discusses how an 'iconic' text – in the sense of a document whose value lies not only in its content but in its visibility as a symbol of what it stands for – asks to be read. He takes as his example how American law circumnavigates the prohibition against public display of religion by declaring certain religious texts as 'iconic' and thereby transforming a text into an illegible image.

Gary Watt analyses in his essay "Law Suits: Clothing as the Image of Law" legal argumentation as a form of dressmaking in which the primary purpose is to hide rather than uncover naked reality, and that the "textiles of law" may be considered another form of legal text. Similarly, to wear clothing is to obey a foundational unspoken law of civil society and constitutes a legally instituted and legally regulated frontier between society and self, and the uniformed guards of this frontier are the lawyers.

Several contributors to the volume focus on the way that visual art can be used to present political power, as well as to question it or even to put it into question. Paul Raffield (University of Warwick) investigates the semiotics of Medieval and Early Modern English portraiture and its capacity both to constitute and to subvert traditional perceptions of law, legality and kingship. His essay "Law and the Equivocal Image: Sacred and Profane in Royal Portraiture" studies the Wilton Diptych (c. 1395–1399) in order to enhance understanding of the complicated metaphysical notion of divine kingship. While the imagery of the interior of the diptych implies the existence of irrefutable monarchic authority of Richard II, that of the exterior suggests that the crown is restricted in its exercise of power, bound to the realm by its office and restricted in the extent of its powers. Here the crown is subject to *lex terrae* and to the unwritten constraints of the ancient constitution.

Sidia Fiorato (Università degli Studi di Verona) analyses the choreography of modern classical ballet, in Kenneth MacMillan's *Romeo and Juliet* (1965), as a way of reading individual resistance to patriarchal political power. In the Elizabethan period "dance" referred to the practice of courtly and popular dance and, at the same time, constituted a recurrent symbol of order and harmony in the imagery of the period's cultural production. The medium of the body and its dancing movements create images that express and reinforce the social and hierarchical order of the period. Fiorato underlines the gendered codification of movements and how dance mirrors the patriarchal structure of society. Leaving the leading roles to men, it emphasises female containment and subordination. Focusing on the Capulet's ball, Fiorato shows how the choreography turns into a meta-dance discourse, which reproduces a Renaissance political masque and its affirmation of the social order.

Leif Dahlberg (Kungliga Tekniska högskolan, Stockholm) brings into play the relationship between law and cartography in his essay "Mapping the Law of Stockholm. Reading old maps of Stockholm as representing and constituting judicial space". The essay investigates the representation and constitution of law in eighteenth century maps of Stockholm, focusing in particular on Jonas Brolin's "Grundritning Öfver Stockholms Stad" from 1771. He argues that political powers during the Modern period made use of maps to comprehend and constitute both a national political space and a national legal space.

Elina Druker (Stockholms universitet), in her contribution "Mapping absence. Maps as meta-artistic discourse in literature", discusses the use of the map as an intertextual and meta-fictional figure in literature by examining the fictional maps in Lewis Carroll's mock-epic *The Hunting of the Snark* (1876) and in Tove Jansson's novel *Moominpappa and the Sea* (1965). Both works include fictive maps that connect to cartographic traditions in different ways, but most importantly are used as symbols for adventure, power and control.

Chiara Battisti (Università degli Studi di Verona) explores the iconology of law and disorder in the American television series *Law & Order Special Victims Unit*. The essay discusses how this series offers narratives of law which may be "seen" if we are willing to question how a given legal narrative not only shapes and informs, but also represses, disguises, and displaces, through the flow of images, our desires for certainty, closure and order. Battisti argues that the series "Law & Order" ambiguously plays with the need to control the raising scepticism and disenchantment regarding law's ability to render justice.

From discussing how images and visual art may (re)present political power, as well as put it into question, the next series of contributions analyse the normative and legal structures inherent in the artwork (and the artworld) itself. In four different essays – by Ari Hirvonen (University of Helsinki), Max Liljefors (Lunds universitet), Christine Poggi (University of Pennsylvania), and Karen-Margrethe Simonsen (Aarhus Universitet) – contemporary artists and artworks are discussed in terms of disclosure and deconstruction of law. In the essay "Body Politics. Normative Gaze, Carnal Intimacy and Touching Pain in Vanessa Beecroft's Art", Ari Hirvonen discusses the Italian artist Vanessa Beecroft's provocative use of female bodies to uncover the relation between corporality and individuality, which ties the human to both the moral and the legal norm. Bodies are differences, therefore forces, not identities, placed and stretched one against the other. They cross paths, send signals, press against each other and collide with one another. Hirvonen argues that in Beecroft's works we not only confront the question of the rela-

tionship between bodies and law on multiple levels and in provocative ways, but also that the ethics of her work lies beyond this kind of moral argumentation.

Similarly, in the essay "Mirroring the Law: Michelangelo Pistoletto, Santiago Sierra, Tehching Hsieh, and Chantal Akerman", Christine Poggi discusses how the relative autonomy of the aesthetic sphere has allowed artists to transgress or blur juridical boundaries, often in ways that paradoxically reproduce the law in mirror reversal, bringing invisible individuals to hypervisibility or repositioning legitimate citizens as undocumented aliens. She analyses Michelangelo Pistoletto's 1979 mirror piece "Tables of the Law", Tehching Hsieh's one-year performances of the late 1970s and early 1980s, Santiago Sierra's use of underprivileged people in his artwork, and Chantal Akerman's video "From the Other Side" (documenting the Mexican-American border). According to Poggi, these works seek to ground assertions to citizenship or political legitimacy in nothing more than the enunciation of a common "humanity", rather than in ethnic identity or birthright, and point to the incompatibility of "local" and "universal" juridical and ethical norms.

Max Liljefors analyses how contemporary artists directly or indirectly violate laws not only in order to create art, but also to break into – and become recognised by – the artworld. In his essay "Body and Authority in Contemporary Art: Tehching Hsieh's One-Year Performances", Liljefors first discusses two much-debated Swedish artworks – Lars Norén's play *Seven Three* (1998) and Anna Odell's *Unknown, woman 2009-349701* (2009) – that have brought about confrontations between individuals and social institutions. The second part focuses on Tehching Hsieh's series of one-year art performances (1978–1986), in which the artist instated rules for himself that brought him in conflict with societal law, but at the same time reproduced some of its *modi operandi*. In the essay Liljefors discusses on the one hand what happens when the law is called upon to decide the question "what is art?" and on the other the role/rule of law in the artworld – and on connexions between the two domains.

Karen-Margrethe Simonsen, in the essay "Global Panopticism. On the Eye of Power in Modern Surveillance Society and Post-Orwellian Self-Surveillance and Sousveillance-Strategies in Modern Art", discusses images of power in modern society, focusing on artworks that thematise the idea of surveillance in reflective and ironic ways. She looks primarily at artworks by Hasan Elahi ("Tracking Transience") and at performances by the Surveillance Camera Players. According to Simonsen, the artworks expose the conception of absolute visibility in traditional surveillance as an illusion and as a misconstructed ideal that fits badly with modern mobility and political cul-

ture. Following Gilles Deleuze, she suggests that we do not any longer live within a disciplinary society with "sites of confinement" and all the disciplinary institutions, but in "control societies" ruled by codes and "modulations".

The last two contributions focus on the use of images and imagery in the juridical process, explicitly invoking the need for a legal aesthetics. Daniela Carpi (Università degli Studi di Verona) analyses in her essay "Crime Evidence: 'Simulacres et Simulations', Photography in Forensic Evidence" the use of photography in criminal trials and the problematics of contextual fragmentation. When photography was invented in the mid-nineteenth century it had a special power of persuasion and claims to mechanical objectivity, so much so that visual evidence played a central role in many legal cases: It was conceived as an objective and impartial witness of facts. People confided in its authority. However, in the course of time photography started to become a threatening art. Photographs were declared to produce distortions and law courts began to exclude certain visual proofs from trials. To exemplify the unreliability of photos as forensic evidence, Carpi analyses the photography of the police killing of a rioter in Genoa in 2001 and the picture of the slaughtered woman in P. D. James' novel *A Certain Justice* (1997).

Richard Sherwin (New York Law School) extends this discussion into the domain of moving images from CCTV and video surveillance cameras. In both cases, the presumed naivety of the legal eye should not remain unchallenged, but instead be exposed as the scopic dress of a legal aesthetics. His essay "Constitutional Purgatory: Shades and Presences Inside the Courtroom" discusses how new visual technologies are transforming the practice and theory of law. Visual evidence together with visual arguments are increasingly taking the place of words alone inside the courtroom. Sherwin argues that the visual digital turn in the current legal culture will eventually lead to a more rhetorically sophisticated response to law as image. In order for this to happen, the legal profession must attain both better understanding of images and of visual culture.

The essays in this volume attempt in different ways to understand and to question the image(s) of law and authority in society, both historical and contemporary. Images are produced and transmitted by the media technologies available in their own times. The interplay between image and technology, old and new, constitutes a symbolic act. The response, the audience's perception of the image, is also a symbolic act. This dynamic is best illustrated by pictures found in public places and spaces and in a medium chosen by some authorised institution. In analysing the aesthetics law and authority, the essays in this volume help us to come to terms with the notions of *law* and *authority* and the role and function of legal aesthetics in human society.

Part 1. Towards a Legal Aesthetics