

On Cameras, Videos, and Law: Seven Theses and a Meditation on Method

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Today, to be “before the law” is to be before the camera: police bodycams and dash-cams, security cameras, courtroom television cameras, bystander phone cameras, and more. Video has become central to policing, trials, and Supreme Court opinions. At the same time, we are subject to law on demand, 24/7: Law&Crime Network, *Judy Justice*, *COPS*, or the countless videos we take with our phones. It is these that produce us as legal subjects. We are surveilled, subject to a culture of policing never dreamed of in Foucault’s disciplinary society, hailed by the law at once ideologically and affectively from both cameras and screens. It is not so much a world of surveillance as a world of “toutveillance” (in one theorist’s coinage [Fan 2017: 908]) or, rather, what we could instead call “heteroveillance”—a system that is heterogeneous but fragmented, disaggregated, without the totality that “toutveillance” implies. We are a countless multitude with kaleidoscopic vision, watching and performing for one another, posting ourselves on Instagram and TikTok, using AI to generate ourselves, judging one another in that affective economy called “likes,” selecting from the multiple-choice emojis that express our mass attitudes. We cast our votes according to our pleasures, as if in a great theater where applause governs. Plato (1963: 1294 [*Laws*, 700c–701c]) had a word for this: “theatrocracy”; government by theater. We seem to be living Plato’s teatrocracy as capitalist phantasmagoria.

This essay is, first, an attempt to map out a larger project on cameras and videos as both instruments of law and documentary mirrors, reflecting law back to itself in the moment of its unfolding. In that project, my principal objects are not legal regulations (as in traditional legal scholarship, for instance First Amendment, intellectual property, or big data legal analysis). Nor are my principal objects the kinds of consciously crafted fictional or documentary representations of law pro-

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duced for entertainment or the culture industry (as in much film or literary scholarship). My project is instead about what cameras and videos do in what we could call “legal scenes”: in police cars and on the streets; in interrogation rooms, courtrooms, and prison cells. It is not primarily about cameras and videos as objects but rather as actors, appearing in legal arenas, recording and reflecting encounters. And it is about the people—police officers, those they arrest, judges, lawyers, civil litigants, criminal defendants, jurors, trial audiences, guards, prisoners—who appear as both the camera’s subjects and its interpreters.

Cameras have, of course, long been legal instruments: used to take mug shots or shoot crime scene photos. But media today are not just updated versions of the old methods of audiovisual legal capture. The last quarter century has seen a media revolution. We no longer live in a world in which only state actors or major TV news networks film legal events but one in which our cameras and screens are available round-the-clock, showing us law, inviting us to comment on, edit, post and repost its life in video. In this world, cameras are instruments of a shared and continuous stream of production and reproduction, inseparable from the videos we play on them. The screens that act as viewfinders are the same as those on which we watch, rewatch, and edit what we have recorded on them. Because of the speed of our digital culture, shooting, sharing, and watching can take place almost simultaneously. My project’s central question is, What does this media revolution mean for law?

This essay, which attempts to sketch out the beginning of an answer, responds to *Public Culture*’s invitation to offer “theoretical elaborations of the law derived from social contexts,” to reflect on objects that “bridg[e] speculative and material-juridical orders,” and to consider legal “imaginaries and practices that constitute new social spaces, subjectivities and temporalities” (to quote *Public Culture*’s call for papers for this issue). As I have suggested, the social spaces that I am attempting to theorize here are those of legal arenas themselves: “material-juridical” spaces in which officials, legal subjects, and spectators encounter cameras and videos. But they are also the spaces of the screens on which we watch these, the virtual spaces these create, and the invisible spaces they reference.

Cameras are not, of course, mere tools for the recording of legal events, nor are videos merely a medium for their replay. Cameras and videos are part of a constellation of legal operations and effects that are integral to what these tools and the media they produce are and do, inseparable from the “imaginaries and practices, . . . subjectivities and temporalities” they generate. If they are embedded in a vast and powerful material and ideological apparatus, they are not merely submissive subjects of this apparatus but agents—not passively cloning law but doing things with law. They may act as speculative bridges: framing, zooming, transform-

ing the operations of law they observe. In so doing, they may produce new practices and imaginaries, new social spaces, and new subjectivities and temporalities.

These practices, imaginaries, spaces, subjectivities, and temporalities are so heterogeneous as to resist reduction to a schema. They are material, spatial, temporal, conceptual, phenomenological, psychodynamic, political. They act on law in countless ways. I have nevertheless identified in that heterogeneity several broad phenomena or effects: things legal cameras and videos represent, objects they mediate, experiences they produce, effects they generate, ways they make our world for us. These observations take the form of seven tentative theses (a word I use with a somewhat tongue-in-cheek nod to its lofty history), each identified with a rubric: a few keywords that point to its gist. I will discuss these in the third section of this essay, but to give a preview that may guide the reader through the reflections that precede that discussion, three of these are about how we experience the legal camera (Heisenberg's camera, camera-as-third, and the anti-narrative camera), two are about how video creates audiovisual counter-legalities (audiovisual counter-publics and audiovisual counter-chronotopes), and two are about how video may be a tool for projecting the legal future (screen futurity and the projective V-effect).

While this essay began as an attempt to map out my larger project, along the way it also became a meditation on methodology: a response to *Public Culture's* invitation to generate "theoretical elaborations" that consider how law is "construed." Like my larger project, the essay is (among other things) about how legal officials, their subjects, and the broader culture construe law. But it is also about how scholars, theorists, and critics construe law. While it explores law's encounters with cameras and videos, it also offers a meta-reflection on the different critical modes that shape such explorations.

That meta-reflection emerges, in part, from my own methodological struggles: struggles that I encountered when—in writing this essay—I attempted to articulate and justify my own critical process. When I began the essay, I thought I knew what I wanted to say about the continuities between my past and future scholarly practice. But as I proceeded, I grew less and less certain. The new materials seemed to be protesting, or maybe I myself was (I'm not sure). I found myself struggling to repress what would not be repressed. By the time I had arrived at the end of the essay, it no longer aligned with my initial claims. It seemed (to adapt what Shakespeare's Antonio says of long-winded Gonzalo) that "the latter end [had forgotten] the beginning" (*Tempest* 2.1.160–61).

Rather than eradicate all trace of that struggle, I have allowed it to remain, in all its rawness, in the meta-reflection that constitutes the first two sections of this essay. A more sanitized essay would have obscured both the critical questions that

my methodological quandaries raise and the difficult braiding of disciplinary conversations that will, I hope, ultimately emerge in the larger project. From one perspective, this may appear as two separate essays: a reflection on cameras, videos, and law; and a meta-reflection inserted in the middle. But in fact, that meta-reflection is not at all peripheral to my project, or to this special issue more generally. For it is about how we study law: about objects and archives, perspective and voice, aims and values. Echoing the opening question of *Public Culture's* call for contributions (“what is law?”), the first two sections of this essay ask, in effect, “what is law in the mirror of our methodologies?”

From *Law as Performance to Cameras, Videos, and Law:* Six Methodological Principles

My attempt to answer that question begins with a discussion of the methodological strategies that this project shares with my two recent books, *Law as Performance* (on theatricality and spectatorship in ancient, medieval, and early modern trials and punishments) (Peters 2022), and *Staging Witchcraft Before the Law* (on the staging of witchcraft in early modern trials as proof against skepticism) (Peters 2024a). The distance between these books and my new project may seem vast: After all, what do ancient legal brawls, medieval punishments, or early modern witch trials have to do with our culture of cameras and streaming media? In some ways, very little materially or ideologically. But in fact a great deal. For (from one perspective) what these two books offer is a prehistory of our culture of legal media spectacle. They also share with my new project a concern with law as a thing that unfolds not only through rules but through events and encounters, a concern with law as a demonstratively expressive visual, auditory, and kinesthetic practice, and a set of premises, attitudes, interpretive methodologies, scholarly proclivities, and more: principles (for lack of a better word). These principles do not act merely as useful frames or tools; rather, they are integral to my broader claims about what law is and how it works. However different the materials of the new project (video versus the viva voce, interviews versus archives), they continue to guide me. Without attempting to explain them fully, I offer in what follows brief sketches of six of the most central.

First, ***legal events and practices (versus aesthetic representations)***: In both my past and present work, my objects are historical or contemporary legal events and practices, not aesthetic or commercial representations of them (that is, not literature, theatrical representations, paintings, cinema, or entertainments). I have sometimes said that—while I deploy literary and visual methodologies and look at the aesthetics of events and practices—I focus not on representations of law but on legal

events as, themselves, representations (Peters 2017, 2022: 21–22). I recognize the artificiality of this distinction (for representations of law cannot be fully sheared off from “law itself”), and my new project’s focus on law’s entanglement with media makes the distinction still harder to sustain. Nevertheless, while I believe that aesthetic texts are key to the creation and reproduction of law, focusing on them can distract one from the patient gathering of fragments required to piece together the scene of law and ponder its expressive registers. Aesthetic texts are tempting objects: they offer themselves up, complete and ready-to-hand, demanding interpretation. But there is a unique value in focusing on the recovery of actual legal events and practices (historical or contemporary)—those modes of expression that happen in law’s name, in its various domains, and under its dominion—and dwelling on them in an attempt to recover their meaning.

Second, ***law as on-the-ground experience***: While recognizing that law is made up of a complex set of beliefs and practices, traditional legal scholarship still tends to treat it as a body of rules or doctrines. My work instead treats legal encounters and visceral, moment-by-moment experience as the central locale for understanding how law works: how it unfolds in the moment, how its participants act and feel. In this my work is not perhaps unique. But it does differ not only from traditional legal scholarship but also from dominant paradigms in even like-minded fields or sub-fields: for instance, sociology of law, which often attends primarily to institutions and demographics; or anthropology or microhistory, which often attend primarily to representative stories, typical practices, cultural beliefs, or social structures. There is, of course, a long tradition of legal thought that stresses the centrality of “experience,” beginning with Oliver Wendell Holmes’s (1881: 1) famous assertion, “The life of the law has not been logic: it has been experience.” But for Holmes and those who followed him, while the word *experience* might point outward to the world at large, what it really designated was the judge’s or legislator’s superior knowledge of the world. For others in the legal realist tradition, *experience* might denote socio-political or demographic data. What I mean by experience is something much closer to what Mariana Valverde (2012) describes as “everyday law on the street”—not law’s experience of people in the world but people’s experience of law. In looking at such experience, I strive to zoom in on the immediate, concrete reality of events, whether live events or their capture on video. Such experience may be conceptual, but it is also emotional, sensory, phenomenological, and very particular; it is not a set of data points or a basis for sociological generalization but uniquely lived by those who come before the law.

Third, ***popular lawmaking on the fly***: In both my past and present work, I start from the premise that law is made not only by legislators and judges (law “on the

books”), not only through the social norms, economics, discourse, or “micro-physics of power” (Foucault 1995: 26–27) that interdisciplinary legal study has long told us make law. It is made by ordinary people, through encounters in local time and space, and through the “experience” that is “the life of the law,” through the screens that change what people see and how they think. In such encounters, law emerges in an accidental, haphazard, impromptu fashion. It may take the form of an addendum, modification, or variation on a theme, or act as a swerve or mutation. It may appear in the form of “illegalisms” (to use Foucault’s [2015] term) or micro-subversions (to use the term associated with Michel de Certeau), subversions that may sometimes simply disappear, but that sometimes instead act cumulatively and eventually begin to take effect.¹ Encounters with the law can be (to quote Robert Cover’s [1986: 1601] famous line) “fields of pain and death,” but they are also places in which law may be born.

Fourth, **law as performance**: In both my past and present work, I start with the premise that law is a demonstrative practice that unfolds not just through doing but also through “showing doing” (in Richard Schechner’s famous formulation): moments of legal doing that both engage with law and express an attitude about it.² Speech act theory long ago identified law as *performative*: its speech acts (edicts and verdicts) enact things; it does things with words. *Performativity* long ago became a critical legal keyword (on the inspiration of Judith Butler’s [1990] work), pointing to the performative production of normative legal identities, gendered, racial, and otherwise. While these two ideas of the performative inform my work, my attention has been primarily on performance as expressive, visible “showing doing”: not covert performativity (of the kind that often invisibly, nefariously shapes identity) but overt performance. Law does its work (as a technology of power) in part through intentional, visible staging. Those who come before the law may express their demands through responsive forms of staging. Our era of streaming media—in which law appears on our screens with a newly irrepressible theatricality—offers constant reminders that overt staging may be at least as powerful as the covert theatricality we associate with gender performativity. It also offers constant reminders that staging is not always subject to control. Like words, it can sometimes go awry, exceed its intended function, escape attempts at discipline, and produce unforeseen effects, disasters, marvels, or things whose future is uncertain.

1. Certeau (1984: 200) does not actually use the word, but he repeatedly returns to what he describes as the “uncodeable difference” that may “insinuat[e] itself” as “a common and silent, almost sheeplike subversion.”

2. Schechner (2013: 28, 2) writes, “‘Showing doing’ is performing: pointing to, underlining, and displaying doing”; “the underlying notion is that any action that is framed, enacted, presented, highlighted, or displayed is a performance.”

Fifth, ***legal theatricality-antitheatricality***: In both my past and previous work, I trace a dialectic that has been formative for law: legal theatricality (law must “not just be done, but be seen to be done”) and legal antitheatricality (“this courtroom is not a theater!”). Legal theatricality and antitheatricality are symbiotic; they are mirror images of each other. While legal theatricality unabashedly uses performance as its key tool, legal antitheatricality uses it more covertly, putting demonstrative legalism on display, a legalism that declares, “this is not a theater!” Theatricality and legalism are not merely demonstrative devices; they also signify themselves. A virtuoso performance of legalism—for instance when a copwatcher offers a dazzling recitation of state penal code provisions and case law—may seem to say, “I stand for law against mere theatrics!” Virtuoso theatricality, like that in the trial of the Chicago 8, may announce, “this courtroom is a farce!” In this, legal theatricality may act as a kind of “dangerous supplement”: an overflow or excess that accretes itself onto law’s own demonstrative practices, acting as hyperbolic caricature or revealing “law itself” as chimera.

Sixth, ***law as comedy***: Less a principle than a matter of historiographic proclivity, my attention to law as comedy is a response to what I think of as the two dominant strains of legal historiography. Traditional legal history tends to offer us a progress narrative in which liberal concepts gradually take hold, brutality disappears, and law becomes kinder and more humane. Radical legal history counters with a narrative in which so-called progress conceals the savagery of liberal norms in the modern industrial-capitalist state. We could call this kind of critique a historiography of catastrophe: legal modernity leaves tragedy on tragedy in its wake. We of course know that—in the age of mass incarceration—the progress narrative is false: a comforting institutional delusion. But tragic legal historiography is also in some ways unsatisfying. It tends, for instance, to treat those people subject to the savagery of legal modernity as a de-individuated mass, usually a mass of helpless victims without will or spirit. It also rarely has that ingredient so essential to perspective on historical ironies: a sense of humor. In this, it is quite unlike the people it supposedly champions—people who can be outrageously funny, do not always see themselves as victims, and can take immense pleasure in thumbing their nose at the law. Such moments of bad legal behavior appear with what is probably disproportionate frequency in my work: my own historiographic deformation, perhaps, but an attempt at a corrective, as well as an expression of my fond belief in the power of such moments—the power of comedy to mess with law.

The Macro-Theoretical, the Micro-Jurisprudential, and Me

While identifying the continuities between my previous and current work, my new project is not *about* methodological continuity. It is about change: about the twenty-first-century audiovisual media revolution and the question, what does that revolution mean for law? Before beginning this essay, I felt I should look at what other academics had to say. I found that there have generally been two kinds of academic answers to the question I was asking, reflecting modes of scholarship so different from each other that they were more or less mutually unintelligible.

(A warning to the unwary reader: what follows is extreme caricature, with apologies to the wiser adherents of each mode of scholarship, and a blanket disclaimer; “all quotes in the two paragraphs that follow are pastiche to the point of parody; any resemblance to real texts, living or dead, is purely coincidental”).

We could call the first mode *the macro-theoretical*. This is the zoomed-out perspective of social and media theory, of the resonant pronouncement and apocalyptic critique, rare in law schools but resoundingly present in the critical humanities and social sciences: “Juris-Capitalism as Scopic Violence” or “The Ciné-Dispositif Dialectic and Surveillance Spectacle.” The macro-theoretical eschews small-minded logic and petty empiricism, instead acting on the reader affectively, enigmatically, with oracular force. Lofty philosophical predecessors and theoretical terms fly in wild ricochet, as abstractions disappear into the horizon of thought, leaving one with a hazy but breathlessly exalted idea of the author’s claims (for instance, “the matrix of Deleuzian juris-hyper-mediation within the regime of late capitalist post-scriptive ethics fragments the Leibnizian monadic paradigms of surveillance and visibility between the disciplinary gaze and its Other, a panoptical Žižekian jouissance—that apparatus of desire as void, in eternal difference and repetition, or rather, *difference-in-itself* not of but *as* the screen,” and so on).

We could call the second mode *the micro-jurisprudential*. This is the zoomed-in perspective of legal scholarship, with its own insider references, its own enigmas: “A Post-Huron Analysis of 18 U.S.C. § 2511” or “Surfing the Waves of Federal Rule of Evidence 901.” The micro-jurisprudential can propose narrow remedies with potentially wide consequences, but it cannot challenge the institutions of legal interpretation generally or risk asking fundamental questions, for if it did, its foundations would collapse. Even in historical or theoretical forays, it tends to act like a funnel: a dazzling historical analysis of cameras in the courtroom might end as a proposal for the revision of Judicial Administration Rule §10.c.3(a)(2); a brilliant theoretical analysis of the concept of photographic “capture” might end as a proposal for a word change in the Federal Rules of Evidence. Despite the insertion of folksy plain-

speech or the occasional metaphor (“surfing the waves”), the micro-jurisprudential cloaks itself in technocratic impenetrability (for instance, “the key doctrinal pivot in the ‘diminishment’ standard meets the threshold recalibrated by algorithmically facilitated surveillance modalities as detailed in *Jones*, *op. cit.*, constituting a ‘search’ under 101(c)(5)(b), and contravening the *Harris* ‘plain view’ doctrine, problematizing applications of the *Smith* test and engendering a noteworthy bifurcation within Rule 802 admissibility, necessitating vigilant application of both the Rational Basis Test and *Johnson*’s balancing standard,” and so on).

Caricature notwithstanding, I suspect that these two modes of scholarship are recognizable to readers: recognizable as opposite poles on the spectrum of legal thought. At the same time, they share certain features. The archives of both consist primarily of authoritative texts generated by the people in positions of highest authority in their respective fields, mostly men (the macro-theoretical’s venerated theorists, the micro-jurisprudential’s Supreme Court justices). Both deploy a technical language unintelligible to the ordinary reader. Both are heavily top-down, working deductively rather than inductively from claims built largely on preexisting agendas. In both, actual individuals are scarce, invisible behind generalizations and the thick curtain of disciplinary discourse. If they pay attention to their imagined beneficiaries—those who might benefit if only the system were to recognize their authors’ genius—it is generally to make a claim for them as members of the underclass, with little or no attention to the particularity of their individual experiences of law.

These two modes obviously do not represent legal scholarship as a whole, with its myriad interdisciplinary conversations. But what they *do* represent is the two main scholarly approaches to thinking about cameras, videos, and law. What they also represent is something more personal, or at least more specific to my own scholarship: a kind of Scylla and Charybdis I had always been determined to steer safely past. The micro-jurisprudential whirlpool would not suck me into its vortex, nor would the macro-theoretical monster lift me to perilous heights (to stretch the mythic figure to the breaking point). I would hold fast to my “principles”: maintain stylistic clarity without technical terms (theoretical or legal); work inductively rather than deductively (suspend judgment, remain open to learning from my materials rather than fitting them to my template); use an archive made up primarily of the felt and lived experience of ordinary people; keep quirkily unique individuals rather than abstractions at the center of my attention.

I was determined, but also sometimes grumpy. On days when I felt particularly cantankerous, I thought, the entire legal system is a fragile edifice, propped up on micro-jurisprudential analysis, which is the only kind that judicial institutions rec-

ognize as legitimate, and which a vast body of jurisprudence authorizes and justifies, but it is a house of cards. And on even more cantankerous ones, I thought, the macro-theoretical is built for gatekeeping, with occult mystifications and the citation of master thinkers as its sentries. (Adding a few key names—Fred Moten, Sylvia Wynter—to the list of aggravatingly European men does not change the vatic mode or attitude of reverence.)

Not long ago, I received an email inviting faculty members at Columbia Law School to share work-in-progress at one of the twice-weekly faculty lunches. As an “affiliated” member of the Law School faculty but still feeling like an outsider, I thought, I should do this! But what could I share? I had been reading the papers. Almost all of them were peppered with case names, statutory rules identified only by number and letter, and phrases like *Chevron deference*, *the Lemon test*, *parens patriae*. One referred to “a Pigouvian tax,” another to “the jurisprudence of footnote four.” (I recognized that one: a small victory.) They had lines like the following (fill in the blanks): “We propose reforms to the doctrinal framework that would ____.” “We offer guidance for judicial review of ____.” “Our proposed judicial framework balances ____ with ____.” “The law’s present understanding of ____ must be ____.” “This paper puts forward a pragmatic design for ____.” Almost all of them turned on such words and phrases as *should* and *ought to*. Almost all of them had “revisionary implications for law.”

My work had no “revisionary implications for law” (or at least not in that sense). It did not propose a judicial framework, put forward a pragmatic design, or make a policy proposal or anything faintly resembling one. I had certainly never cited footnote 4. I thought, if I send them what I’ve written, it will be unrecognizable.

But perhaps I could *make* it recognizable? I remembered that in the 1990s Elaine Scarry had decided to prove that she could write a law review article with the best of them. The *University of Pennsylvania Law Review* duly published her “War and the Social Contract: Nuclear Policy, Distribution, and the Right to Bear Arms”: “The constitutional protection of the population’s direct authorization of war [resides in] article I, section 8, which stipulates unequivocally that Congress, not the President, has the obligation to declare war,” she wrote (Scarry 1991: 1265–66). But there is also a “critically important consensual requirement [that] has its doctrinal location in the second amendment,” which “supplements and reinforces article I, section 8 in the arguments against the United States strategic policy of presidential first-use” (1266–68). Definitely recognizable with “revisionary implications for law.”

Unlike Scarry, I had a law degree. I had in fact recently written half a dozen (plus) closely doctrinally argued pages on two Supreme Court cases (Peters 2024b: 71–79), and another half a dozen on the word *public* in a Fourth Circuit opinion

(albeit unpublished). If she could do that, so could I! Multiply by a factor of at least ten and add the monstrous footnotes that are de rigueur for law review articles—no problem. But did I want to?

Also not long ago, my friend Jesús Velasco invited me to produce a blog post on my recent book. Noting that Plato and the other theorists I reference explicitly had all been dead for at least three hundred years, he urged me to muse on the more contemporary theoretical undercurrents of my book. Thinking, “why not?” I wrote a few paragraphs—with (I confess) a certain ironic glibness—which I will shamelessly reproduce here (part paraphrase, part self-plagiarism).

In my blog post, I explained that I *could*, of course, write on the theoretical subtext of my work. I could, for instance, say that if one writes a history of policing or punishment, one cannot escape the long shadow of Foucault, but that my attention to the instability of legal power—the heterogeneity of law’s manifest expressions and the semiotic play at law’s heart—stands against the macro-analytic critique of power that is central to his critical legacy. I could say that one finds this (for instance) in Achille Mbembe’s revision of biopower as necropolitics (Mbembe 2019) or Michael Hardt and Antonio Negri’s (2009) evocation of biopower’s anti-capitalist antithesis, “altermodernity.” I could say that Mbembe, Hardt, Negri, and others in this tradition may illuminate the marriage of capital and violence that uses law as its handmaiden, but that the quasi-technological macro-analysis that is their principal critical mode comes strangely close to replicating the chillingly dehumanizing social theory they denounce: the turn to problem-solving through social engineering that emerged from the nexus of the human sciences and the scientific state (with its power to “massify”), issuing in such innovations as industrial Taylorism, mass population transfers, death camps, and more. I could say in this light that, ironically, a text like Giorgio Agamben’s *Homo Sacer* (1998)—with its protest against the perpetual state of exception and the world of camps in which only “bare life” is possible—in some ways reenacts the dehumanization it purports to critique. I could also say that my work contests the kind of Althusserian ideology critique recycled in revived accounts of interpellation as subjugation, with Butlerian performativity (for instance) as the central agent of interpellation, constituting the subject through punitive social norms that look much like Althusser’s (1971, 2014). (I went on for a while in that vein.) “I could say all that and more,” I wrote, “about how I have both absorbed and resisted the work of Marxism, psychoanalysis, semiotics, the anthropology of ritual, critical legal studies, media studies, affect theory, actor-network theory, critique and post-critique, and many people with very French names. But I’d rather not.”

I meant that to be funny, and the end of the story. But both my friend Jesús’s

challenge and the Law School lunch invitation remained with me, as both irritants and inspirations. On days when I was feeling less satirically inclined, I asked myself, Who was I to malign these modes? Was there not perhaps an arrogance in my refusal to pay homage to the great ideas that were (after all) everywhere in my work? If they were there mostly silently, I had to acknowledge that, even in my declaration of counter-macro-theoretical “principles,” somehow Foucault, Certeau, and Butler (along with Valverde, Schechner, and Holmes) had reared their theoretical heads. Even the First Amendment had gotten in there. Maybe instead of being funny, “I’d rather not” on both fronts was simply a cop-out. At the very least, I had to articulate *why* I’d rather not. And as I began to do so, it became more and more apparent to me that I could not really keep these critical languages out of the new project. Without them, there was too much that I would not be able to say. Maybe they were not really incompatible with my methodological commitments because, after all, they had always been there, hovering in the background.

From the macro-theoretical perspective, as I have attempted to answer the question, “what difference does this technological revolution make?” I have found that certain theoretical conversations have in fact been inexorably present, revealing invisible networks of visibility and invisibility, power and subjection, mediation and immediacy. I find I cannot really do without them when (for instance) I strive to taxonomize legal documentary modes, or when I discuss the Kuleshov effect in the editing of police videos. I need them to explain why my first principle—the line between “real” legal events and palpably fictional or self-consciously aesthetic representations—remains important, while describing its breakdown in the face of the hybridization of liveness and mediation, hypermediation and multimodality. I need them to name with one or two words that thing I would otherwise have to describe as something like the following: “the constellation of forces converging in the culture of cameras, videos, and law—the conjunction of the camera as apparatus (in both the narrow and broad senses), the video as both medium and message, and all of the heterogeneous practices, imaginaries, spaces, subjectivities, and temporalities, material, spatial, temporal, conceptual, phenomenological, psychodynamic, political, and legal.” (Should I really use fifty-four words to say what I can say with one, however ostentatiously orphic that word may be?) I discover, to my surprise, that I need even that compound I maligned above, the *ciné-dispositif*.

From the micro-jurisprudential perspective, I find I cannot answer my key question without discussing the crucial doctrinal issues that encounters before the camera give rise to, issues whose technicalities matter, for technicalities sometimes decide whose body is free and whose caged, who lives and who dies. These issues can, of course, be framed as very simple questions: Can you livestream the police at

a traffic stop? When are victim impact videos prejudicial? Can juries ever be sequestered? Are Zoom trials fair? But in our world as it is, the most powerful answers may need the micro-jurisprudential, for that is the only language recognizable to judicial institutions with the power to decide. I have always thought that Audre Lorde's (2007: 112) famous contention (reproduced on countless T-shirts and mugs)—“the master's tools will never dismantle the master's house”—was wrong: sometimes the master's tools do; and other kinds of tools rarely stand a chance. I have never been certain that academic answers had much purchase. But since November 2024 it seems more urgent than ever not to give up—to try, against hope, to pull out even one nail in the house the current masters are building.

Seven Theses on Cameras, Videos, and Law in the Age of Streaming Media

That said, the theses about the legal camera and video that follow are not conclusions so much as tentative beginnings (as their brevity should indicate): initial sketches of ideas about what cameras and videos do to, for, and with law. Whatever micro-jurisprudential consequences or “revisionary implications for law” they may have remain largely implicit; in these, I am still finding my way. Their macro-theoretical debts are, on the other hand, fairly overt, both in the key phrases that serve as labels and the discussions that follow them. While the key phrases may, in themselves, appear oblique, the statements in italics that follow each of these—summarizing my theses—are deliberately simple to the point of bluntness (in an attempt at clarity at the expense of the seductive poetics of the theoretical). The three clusters in which I have distributed these (“The Legal Camera,” “Audiovisual Counter-Legalities,” and “Legal Projections”) serve more heuristically than analytically, organizing seven phenomena that in fact intersect, crossing over the implied boundaries of their respective categories. However abstract these theses may be, they emerge not solely from theoretical ideas but from the lived experience of close encounters with the legal camera and screen.

The Legal Camera

First, **Heisenberg's camera**: *The legal camera's presence alters the event, inviting performance*. Viewers often believe that the camera records what “really happened” in an encounter: a police encounter, a trial. But the “really happened” has already been changed by the presence of the camera. This thesis is a specific application of what is sometimes called *the observer effect*: the principle that the act of observation dis-

turbs what is being observed. Scholars often trace the origins of the concept to early twentieth-century experiments in factory productivity; social scientists noticed that workers behaved differently when they knew they were being watched; the scientists realized that what they were observing was not worker behavior but worker behavior under the eye of the observer. Although the observer effect appears as a principle in a wide variety of contexts, most people associate it with the theoretical physicist Werner Heisenberg, who developed it as a principle in quantum mechanics (where it is often referred to as the *uncertainty principle* or the *principle of indeterminacy*). Because academics in the humanities and social sciences tend to recognize references to *the Heisenberg principle* more readily than references to the observer effect, I use Heisenberg's name here as a readily identifiable tag. To put this thesis in its bluntest terms: The camera isn't a passive, transparent, or invisible device for recording legal encounters. It is an active agent. This is quite obviously so when the camera itself is at issue, as in encounters between copwatchers and the officers they capture on camera. But the camera is always an actor in the scene, invariably inviting performance. It actively changes those who come before it, even when participants engage in a pretense of "absorption" rather than "theatricality" (to borrow Michael Fried's [1980] formula), a pretense that they are unaware of the camera's presence and thus behaving naturally. The camera invites performance. Where the camera is present, we're not seeing "how law works"; we're seeing how it works under the eye of the camera.

Second, **camera-as-third**: *The legal camera acts as an omniscient spectator*. The camera may be an actor implicated in the scene, but at the same time (and somewhat paradoxically), it represents the ideal spectator, one who seems to objectify and make sense of lived experience. My label here draws on the Lacanian conception of "the Third": the figure of the father in the Oedipal triangle, who comes between the seeming immediacy of the child-mother relationship. This paternal Third announces the entry into the symbolic, that is, the space of a world ordered by rules, the space of law (the Law of the Father). So, while the Third appears as an enabling force, making exchange possible, it is also a regulatory force: objective and all-seeing. The concept of the Third is useful for thinking about what the camera signifies, without requiring us to swallow Lacanian cosmology whole (a cosmology that may appear preposterous at times). We know that cameras are not omniscient or objective, but a camera may nonetheless signify the omniscient and objective observer: a third point of reference outside the encounter that promises to make sense of it—that promises to show "what really happened" even to those who do not really believe it can. The camera is double: an all-too material actor *and* an imagined omniscient spectator who, in its omniscience, is the ultimate judge.

Third, the **anti-narrative camera**: *The legal documentary camera seems to refuse to narrate*. If the camera-as-third appears to have a god's-eye view, the anti-narrative camera appears as its inverse, a void. It seems to affect nothing and know nothing. It is devoid of a subject or the power to narrate. In this, it gives us a reality effect that transcends that of cinematic naturalism or even cinéma vérité, whose shaky camera reminds us of the human hand behind it. The anti-narrative camera's apparent objectivity lies not in its imagined omniscience but in its imagined emptiness: it is an empty technological instrument that films all while seeing nothing. Because of its apparent emptiness, it seems unable to force the world into the symbolic register, to turn noumena into phenomena. But it is precisely that seeming incapacity that promises to show us things beyond the symbolic. In this potential evasion of the symbolic lies its power—imaginary or real—to take us outside of what we think we know. Here the camera is objective not because we project an objective author onto the camera (as in the world of the camera-as-third) but because there is no author: in the world of the anti-narrative camera, authorship has disappeared, even that of God.

Audiovisual Counter-Legalities

Fourth, **audiovisual counter-publics**: *Video changes our understanding of what constitutes the legal “public.”* The modern legal conception of “the public” derives from two incompatible ideas that converged in modernity but arguably never aligned. In one sense, “the public” is made up of the authorities (government officials and other elites) who rule the rest. In the other, “the public” is made up of the body of private individuals who have claims on the government, and whom the government must serve. These two incompatible conceptions of the public appear side-by-side in the US Constitution. We have retained the first idea in such routine legal phrases as “public safety” (ensured by public safety officers). But the second is the one we envision when we speak of the public. This public is an effect of the sensible-spatial imaginary, coming into being through a “public sphere” (in German, the *Öffentlichkeit* [Habermas 1962]) imagined as an open arena. The aspirational historical model of that space is the Athenian agora: a space that is like the *polis* (in Aristotle's description) in having a magnitude “neither overly small nor . . . excessively large” but just the right size for male citizens to hear the crier and come together to hear one another in debate (Aristotle 2017: 165 [*Politics* 7.4.1326b]). This is the vision that Hannah Arendt replicates in her discussion of true politics as the “space of appearance,” which “comes into being wherever men are together in the manner of speech and action” (Arendt 2018: 199). The question is: who doesn't appear there? Who lies presumptively on the other side of the boundary that divides public safety

from public danger? Who is invisible? Or rather, who was, for the camera may begin to make visible a different public. When, for instance, the subject of a traffic stop streams Facebook live and his friends gather there to confront the officers from his screen, it is a very different “space of appearance” than the one Arendt envisioned. That space, in the camera and on the screen, may be one in which an alternative audiovisual public appears, not as an aftereffect, but in the very moment in which the officers—“public servants”—must consider the public they are bound to serve.

Fifth, **audiovisual counter-chronotopes**: *Video changes the framing of legal time and space, the visible and the invisible*. In *Chronotopes of Law*, Valverde (2015) adapts Mikhail Bakhtin’s use of the word *chronotopes* to identify the ways that legal discourse configures time and space. For Bakhtin (1981), chronotopes are discursive renderings of space and time that reflect particular ideologies. Spatial and temporal chronotopes reinforce each other: space takes on movement; time takes on body and dimension. While Bakhtin was primarily interested in literary chronotopes, Valverde’s work speaks to the particular and very concrete kind of power that legal chronotopes have in the life of law, without, however, addressing the flood of audiovisual legal chronotopes that appear on our screens. In observing the relationship between the legal chronotopes she observes and the audiovisual legal ones that produce our legal worlds, I am, in a sense, extending her work into the audiovisual lawsphere in which we live. While such chronotopes may reinforce formal legal texts, they also sometimes act as counter-chronotopes, offering alternative “distributions of the sensible” (in Jacques Rancière’s [2006] phrase): making things once invisible visible and things once inaudible audible.

Legal Projections

Sixth, **screen futurity**: *The imagined future screen proleptically shapes the event*. This thesis extends my thesis on the camera-as-third, with a different imagined audience and temporality. While participants may experience the camera as an omniscient spectator, they may also imagine watching themselves on future screens, taking on the role of the omniscient future spectator themselves. *Futurity* here “connotes not just what will happen or a time that is not yet,” as Rebecca Wanzo (2020: 119) writes, but “is laden with affective attachments such as hope and fear” and may be “understood in relationship to the other words that are often proximate to it, such as ‘time,’ ‘horizon,’ ‘utopia,’ and ‘dystopia.’” Screen futurity projects such visions onto the screen, making the imagined future screen—for those who act before it—into the locus of a projected future, imaginatively liberated from the constraints of law-as-it-is into a vision of alternative legalities.

Seventh, the **projective V-effect**: *The camera's ability to project images outside the frames of law may act as an alienation effect, revealing just how strange law is.* This thesis draws on Brecht's famous theorization of the *V-Effekt* (*Verfremdungseffekt* or alienation effect)—a radical variant on Russian formalist “defamiliarization” (“estrangement,” *ostranenie*)—a fundamental aesthetic principle that was for Brecht also a historiographic principle (see, e.g., Brecht 1964: 91–100, 157–59). All modes of aesthetic experience (acting style, dramatic form, staging), he felt, should be directed toward alienating us from our assumptions about the way things are—our assumptions that they have to be as they are—allowing us to envision things otherwise. Brecht was preoccupied by the apparatus of the film industry, which he found dangerously hegemonic, but he was also fascinated by the potential power of the screen. He could not (of course) have foreseen the advent of phone cameras and the world of streaming media in which we live, but perhaps if he had, he would have allowed the *V* of the *V-Effekt* to stand as a double reference, pointing to the power of video to defamiliarize. In showing us how strange law is, how alien its modes to the modes of life, the camera can sometimes show us an alternative future.

Conclusion That Is Not a Conclusion

While writing about specifically legal cameras and videos, I have found that I am also writing about our culture of omnipresent cameras and video more generally. Law itself becomes a screen on which we see projected our life in video, with its paradoxical conjunction of visibility and delusion, protection and danger; with its demand that we decide and its undecidability; with its power of familiarization and defamiliarization. While video may help alienate the legal present, law may also help alienate the audiovisual present. So in that sense, this is also a project that considers what law can tell us about our media culture.

Writing in 1967, Guy Debord argued that mere estrangement—unveiling illusion and revealing its underlying mechanisms—was inadequate to the task of revolution. One needed instead what he called *détournement*, the turning (or returning) that the camera could achieve by repurposing and thus subverting the images produced by “the society of the spectacle” (Debord 1967). As Rancière (2013: 130) puts it, *détournement* strives to “take back from the enemy those properties that the enemy has transformed into weapons against the dispossessed,” to transform “the alienated predicate into subjective possession,” to reappropriate “what has been put at a remove in representation.”

But neither the *Verfremdungseffekt* nor *détournement* necessarily behaves as it should (as we know all too well in this political moment). Estrangement can alien-

ate us from the good; and when things turn, they sometimes turn ugly. This last point takes me back to one of the fundamental theses of my previous work, which applies here as well: law's media are political wild cards; they can be used for good or ill, exploited, deformed, reformed, transformed. Like legal performance, they are indeterminate, capable of manipulation: they can swing both ways. So, to ask the other question that must arise from any study of our culture of omnipresent legal cameras and streaming legal videos, the one with micro-jurisprudential implications: will cameras ultimately redress law's structural inequities? Probably not. Law, like capitalism, has tremendous elasticity: it breaks people without itself breaking. But can cameras sometimes redress law's structural inequalities and act as agents of audiovisual justice? Yes, every so often. A line from a Leonard Cohen song keeps coming to me every time I think about this. "There is a crack, a crack in everything / That's how the light gets in."

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