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Video Conferencing Platforms (VCPs) and the *Cohesive Distinctiveness* of Legal Proceedings

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Abstract: This article examines the essential difference between a hearing held in a court, physically attended by the parties and their lawyers, and a hearing held through Video Conferencing Platforms (VCPs) VCP. The premise pursued here is that virtual hearing lacks an important quality of the trial as a cultural phenomenon – *cohesive distinctiveness*. The poetics of the virtual hearing relies on such a different concept of space and time that it produces not an approximation of the traditional court hearing, but as a simulacrum, which undermines important elements of the legal hearing, and deprives it of its unique cultural power and function. The paper concludes with enhancing the necessity of a new digital poetics of law through which the *cohesive distinctiveness* of the legal process will not be reduced, but reimagined.

Keywords: video conferencing platforms; simulacrum; cohesive distinctiveness; poetics of law; courts; technology

1 Introduction

This article deals with the poetics of the visual representation of justice. Our central claim is that the digital condition and the environment of simulacra it encourages raise doubts about the long-established ability of any legal system to be an authoritative and even preferred meaning-maker in the arena of visual representations of justice.

The superiority of visual means of representation as a tool for constructing meaning was established as early as the beginning of the 20th century, with the advent of cinema. Initially, this development suited the interests of the law; it improved the ability of the legal system to make use of visual representations of reality to achieve a higher degree of verisimilitude and reinforce its legitimacy. In recent decades, accelerated technological developments related to visual culture

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have led to far-reaching changes in the meanings ascribed to visual representations. In distinctly non-hierarchical and multi-polar modern visual culture, the power of traditional visual legal representations, which have engrained in the past the legitimacy of the legal system, is waning.

The digital condition tends to expose the gaps between reality and representation that the legal system has hitherto tended to conceal. These gaps are deepening and intensifying in light of the use of advanced visual simulations that enable the creation of alternative realities via video conferencing platforms (VCPs). Lately, VCPs have also infiltrated the legal domain. During the Covid-19-stricken period of the early 2020s, the ubiquity of VCPs took off unprecedentedly. Such platforms, particularly Zoom,[1] used through various devices, allowed physically isolated people to connect and conduct professional, educational and personal activities of all kinds. In many countries proceedings conducted via VCP platforms became commonplace, and took hold even after the COVID-19 era.[2]

These technologies, combined with the changes brought about by earlier digital technologies, may constitute a turning point that will irreversibly disrupt the ability of the law to generate meaning that serves its purposes and adequately represents the doing of justice.

Increased awareness of the epistemological processes the digital condition ensues may turn out to be essential in the search for appropriate checks and balances, which will allow an optimal use the digital possibilities, and at the same time reduce the simulacrum effect in court.

In the next section, we will unpack the way the law operates as a system of visual representations. Three concepts will be discussed – the visibility of justice, cohesive distinctiveness, and simulacrum. We will then describe the concrete problem that arises from the use of VCPs, and analyze it through the lens of Melvin Kranzberg's "Six Laws of Technology".[3] To conclude, we will put forward the

1 VCP technology has been successfully deployed by several companies, including Google (Hangouts/Meets) and Microsoft (Teams). The Zoom platform managed to acquire a status as one of the leading platforms, when in the first month of the pandemic (March 2023) its number of downloads jumped from 2.1 million to 27 million. See: Daniel Harley, Stefan Grambart, Rodrigo Skazufka Bergel & Ali Mazalek "Together Alone: A Tangible Online Narrative," in *Sixteenth International Conference on Tangible, Embedded, and Embodied Interaction*, (2022): 1–11, 1.

2 See, i.e.: Dorcas Quek Anderson, "Taking disputes online in a pandemic-stricken world: Do we necessarily lose more than we gain?" *in Law and COVID-19*, eds. Aurelio Guerra-Martinez, Mark Findlay & Goh Yihan (Singapore, Singapore Management University, 2020): 215–234; Esther Nir & Jennifer Musial, "Zooming In: Courtrooms and Defendants' Rights during the COVID-19 Pandemic," *Social and Legal Studies* 31.5 (2022): 725–745; Alicia L. Bannon and Douglas Keith, "*Remote Court: Principles for Virtual Proceedings During the COVID-19 Pandemic and Beyond*," *Northwest University Law Review* 115 (2021): 1875–1920; Bart Jansen & Agnes Schreiner, "Captured by Digitation: Algorithms, Law, and Media" *International Journal for the Semiotics of Law*, 36 (2023): 2179–2191.

proposition that new technological capabilities at large, and VCP platforms in particular, bear the potential to both disrupt and improve the quality of representations of justice. Increased awareness of the epistemological processes involved in the digital condition may prove vital in the search for appropriate balances and brakes, which will allow on the one hand to make optimal use of the digital possibilities available, while on the other hand reducing the simulacrum effect of digital legal proceedings.

2 The Visibility of Justice, *Cohesive Distinctiveness* and Simulacrum

Legal systems lean upon some shared conception of justice. Society grants judges the authority to articulate this shared conception through its application on specific cases. To endow validity to judicial decisions, the entire legal mechanism invests great efforts to obtain and maintain its legitimacy.

The appearance of justice in the courtroom reinforces the legitimacy of the judicial act just performed. Yet, as justice is not a concrete object that can be "seen," the "appearance of justice," is essentially an image we associate with justice. Thus, a judicial system wishing to demonstrate that it does justice, must regularly present images of the abstract concept of justice accepted by the members of the community.

The law must choose the optimal means of representation that will create in its recipients the belief that justice has been done, through various performative strategies, including narrative, rhetoric, and ritual. Through prudent use of these means of representation, the law seeks to concretely instantiate the presence of the abstract concept of justice within the courtroom. Without such representation, the concept of justice will remain nonconcrete and opaque, and the legal system will have difficulty creating the impression that it is indeed doing justice.

A central means used by the law for this purpose is visibility – the translation of the nonconcrete notion of justice into n occurrence the community can experience and see. The more convincing the rendering of justice visible, the more likely its recipients will agree, at least for a limited time, that abstract justice has been done. Thus, the better the legal system can convince that it is acting on the real subject of the discussion, and not just on its representation, the greater the legitimacy of the judges' decisions.

3 Melvin Kranzberg. "Technology and History: 'Kranzberg's Laws.'" *Technology and Culture* 27.3 (1986): 544–560.

Lord Chief Justice Hewart's famous dictum "Justice should not only be done, but should manifestly and undoubtedly be seen to be done," is highly relevant in this context.[4] As Richardson Oakes and Davies note, during the 21st century, "seeing" justice is crucial as ever to achieve public confidence in law as well as the legitimacy of law.[5] Interpretations of this aphorism vary and spread toward different directions. Our take here is a poetic one. Up to the digital age, one of the main vehicles used to create an approximation of reaching justice was the legal proceeding, taking place at a certain time and a certain place, where all concerned parties are physically present. A legal proceeding is then a type of one-time performance by means of which the legal system attains authority, validity and public trust.[6]

To do that, poetic devices within the legal domain produce an effect that we label *cohesive distinctiveness*.[7] *Cohesive distinctiveness* denotes proceedings that are idiosyncratic, as they apply to the resolution of a conflict between specific sides or litigants and their idiosyncratic circumstances, and at the same time function as a symbol representing the general norms and previous precedents. Mastering legal poetics facilitates the formation of such multifaceted representations. From a wider perspective, the question is whether the digital condition initiated a significant and sustainable shift regarding the poetics of law. The concept of simulacrum is helpful at this point.

The term "simulacrum" (in Latin: image, shadow or mask) is drawn from Plato's cave parable.[8] The inhabitants of Plato's cave see shadows on the walls of the cave, and having no access to the origin of these images (which lies outside the cave), perceive the shadows not as mere representations but as reality itself.

Since Plato, our ability to identify the essence of justice depends to some extent on the ability to carefully examine images of justice, whether created by law or popular culture, and identify the extent to which they reflect and participate in the abstract concept of justice. The postmodern claim is that the uncontrollable richness of representations covers the epistemological lighthouse that Plato erected in isolation from these representations, and does not allow us to assess their legitimacy and validity.

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4 R v Sussex Justices; Ex parte McCarthy [1924] 1 KB 256, 259.

5 Anne Richardson Oaks and Haydn Davies, "Justice Must be Seen to be Done: A Contextual Reappraisal," *Adelaide Law Review* 37 (2016): 461–494.

6 For elaboration: Shulamit Almog & Ely Aharonson, "Law as Film: Representing Justice in the Age of Moving Images," *Canadian Journal of Law and Technology* 3.1 (2004): 1–18.

7 Shulamit Almog, "Creating Representations of Justice in the Third Millennium: Legal Poetics in Digital Times," Rutgers Computer and Technology Law Journal, 32.2 (2006): 183–245.

8 Plato, The Republic, trans. Tom Griffith (Cambridge: Cambridge University Press, 3rd ed., 2018), 220–225.

The concept of simulacrum first appeared in art criticism, and later spread to popular culture. It was developed by several thinkers, including Jameson,[9] Baudrillard,[10] Deleuze and Guattari,[11] that described contemporary culture as a continuous flow of images or copies "whose relation to the model has become so attenuated that it can no longer properly be said to be a copy."[12]

A perpetual flow of visual imagery currently permeates every aspect of our lives, influencing the way concepts, opinions, beliefs and perceptions are constructed. An example of simulacrum is the contemporary incessant news and updates flow, comprising a sequence of fragments that relate indiscriminately to the trivial and the substantial, the horrifying and the pleasant, the amusing and the disturbing, the real and the fake, the verified and the speculated. Each of those fragments is endowed with an equivalent value. The fragments relating to real-life tragedies seem highly reminiscent of images from computer games, video clips or reality shows. The reliability and authority of the images brought up as valid signifiers is corroding, as is the ability to differentiate between the images according to cogent criteria and to form evaluating judgments.

Are VCP events any different than any other digital image we may be exposed to during our daily digital routines? Can we still relate to the very real events and interests the digitized court hearing embodies as we would if the hearing took place with corporeal attendance, in a court of law?

These are the stages that Baudrillard describes in the creation of the simulacrum, which seem to perfectly describe the way VCP events relate to trial proceedings:

it is the reflection of a profound reality;
it masks and denatures a profound reality;
it masks the absence of a profound reality;
it has no relation to any reality whatsoever: it is its own pure simulacrum.[13]

Baudrillard describes the simulacra's flow of images as a transition from the Kantian regime of rational judgment which derives from "grounds deep-seated and shared

9 Fredric Jameson, *Postmodernism or, The Cultural Logic of Late Capitalism* (Duke University Press, Durham 1991) 53.

10 Jean Baudrillard, *Simulacra and Simulation* (Sheila Faria Glaser trans.) (University of Michigan Press, Ann Arbor 1994).

11 Gilles Deleuze & Felix Guattari, *Anti-Oedipus* (Robert Hurley, Mark Seem & Helen R. Lane trans.) (The Athlone Press, London 1977).

12 Brian Massumi, "Realer Than Real: The Simulacrum According to Deleuze and Guattari," in *Couplets: Travels in Speculative Pragmatism*, (Duke University Press, Durham, 2021): 15–24, 16.

13 Jean Baudrillard, "The Precession of the Simulacra," in *Postmodernism and the Contemporary Novel: A Reader*, ed. Bran Nicol (Edinburgh University Press, Edinburgh, 2002): 91–109, 95.

alike by all men, underlying their agreement in estimating the forms under which objects are given to them."[14] Towards a world in which -

> All the great humanist criteria of value, all the values of a civilization of moral, aesthetic, and practical judgment, vanish in our system of images and signs. Everything becomes undecidable. […]his is the generalized brothel of capital: not the brothel of prostitution but the brothel of substitution and interchangeability.[15]

Some see this transition positively, as a challenge to Kantian aesthetics which mainly reflects a rigid western male point of view.[16] We claim that the hyper-real digital influx affects the ability of the legal system to establish legitimacy by relying on the visual imagery that law itself produces.

This echoes a broader cultural change that began in the early twentieth century and gained momentum towards its end, characterized by a shift from a field of production of meanings conducted mostly in defined and limited spaces like courtrooms, movie theaters or museums, to a decentralized field devoid of rigid interpretive hierarchies. In the first type of cultural production, expert meaning-makers held autonomy and authority within their defined field of practice. In contrast, contemporary, decentralized production yields a wealth of representations that appear everywhere at any given time, but without structural hierarchies that assist in deciphering them. The viewing experience characterized by clear roles and boundaries is replaced by an experience of dissipation, in which the audience's role as a detached spectator is no longer clearly distinguished from the role of representation creator. The iconography changes, as every object on the screen becomes an icon in itself. This abundance collapses the divide between reality and image, disrupts the inter-institutional balance of power, and undermines the exclusivity of the "legal" conception of justice.

Consequently, there is a need to examine how does legal procedure, especially the traditional poetics of performative adjudication, cope with the demanding task of representing justice in an age where concepts of visual representation are undergoing such dramatic transformations. In the following, such examination will be attempted by focusing on VCPs.

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14 Craig Owens, "The Discourse of Others: Feminists and Postmodernism," in *The Anti-aesthetic: Essays on Postmodern culture*, ed. Hal Foster (Bay press: Port Townsend, 1983): 57–82, 58.

15 Jean Baudrillard, *Selected Writings,* trans. Jacques Mourrain and others (Stanford University Press, Stanford, 1988), 128.

16 Owens, "The Discourse," 58.

3 VCP's as Generators of New Legal Poetics.

Two Zoom-related episodes involving criminal proceedings that took place during that period will serve to illustrate the nature of the issue taken up here. The first one is a Zoom-declared death sentence. In May 2020, Punithan Genasan, a Malaysian citizen, was sentenced to death in Singapore. The proceeding, including the declaration on the sentence, was conducted by a Zoom VCP. It was the first time the death sentence has been delivered remotely in Singapore. Human rights organizations brought up severe concerns. For example, Phil Robertson, deputy Asia director at Human Rights Watch stated: "It's shocking the prosecutors and the court are so callous that they fail to see that a man facing capital punishment should have the right to be present in court to confront his accusers."[17] Eventually Genasan was acquitted in the Court of Appeal, that did not mention the Zoom sentencing,[18] yet the outcry the remote death sentence evoke still lingers.

The second episode is of a very different nature. In February 2021 a Texan lawyer, Rod Ponton, appeared before the district court in a criminal Zoom hearing, using a device in which a filter that changes the speaker's image into an image of a cat was previously installed. During the hearing, Ponton tried to get rid of the filter while convincing the judge that he is indeed a lawyer, certified to appear before the court. The comical session was aired on YouTube, and received worldwide attention.[19] The video is indeed amusing, yet the concern it reflects is serious did the bizarre imagery obscure the fact that a serious legal matter – criminal responsibility of a man who attempted to leave the US with contraband cash – was at stake?

What is common to the two different incidents is the instinctual discomfort they evoke regarding employing VCP to conduct legal proceedings, and even more so criminal proceedings. To augment the nature of such discomfort, let us consider the symbolism of non-VCP announcement of a death sentence in Singapore, to the Zoom sentencing to which Genasan was subjected. Following British tradition, a Singapore judge will put on a black cap before issuing a death sentence, and repeat the ages-old text – "The sentence of this court upon you is that you will be taken from this place to a lawful prison to be hanged by the neck until you are dead. And may the Lord have mercy on your soul."[20] It seems that this somber ritual loses much of its essence and gravity and is transformed into a quite different articulation in Zoom, even if the

17 "Inmate sentenced to death through popular Zoom app," *ABC7NEWS* (May 20, 2020) https://abc7news.com/crime-general-news-human-rights-and-civil-liberties-social-issues/6199171//

18 CrimApp 12/2020 Genasan v. Public Prosecutor, https://www.elitigation.sg/gd/s/2022_SGCA_71

19 Nir & Musial, "Zooming In," 726.

20 David T. Johnson, "The Jolly Hangman, the Jailed Journalist, and the Decline of Singapore's Death Penalty," *Asian Journal of* Criminology 8.1 (2013): 41–49, 45.

same words are uttered by the judge. Similarly, it seems that a defense attorney's arguments lose their edge when the attorney appears as a cat. Was justice served in these proceedings? And if not, why?

There is extensive writing in regard to adjusting VCP proceedings to constitutional concepts of the rights of the accused in the criminal procedure, especially the right to confront the accuser – the state. In the United States this right is anchored in the Sixth Amendment to the Constitution.[21] Such issues are often framed as technological challenges, and addressed accordingly. Our inquiry here is of a different nature. It is an essentially poetic one: can justice be seen and done during a VCP conducted criminal proceeding?[22] Can we maintain the *cohesive distinctiveness* of legal proceedings in an era when the VCP hearing is just one of multiple hyper-real images in an endless flow of simulacra on our digital screens?

4 Kranzberg's Laws and Beyond

In the 1980s, technology historian Melvin Kranzberg proposed "the six laws of technology".[23] Kranzberg's laws, that hone the "profoundly mixed nature of technology's blessings,"[24] though drafted when VCPs were relatively novel, suggest some useful insights. Kranzberg's second law states: "technology is the mother of invention."[25] It might have been the pandemic that accelerated the use VCP into the legal system, but it is here to stay. Much like the automobile or the textile inventions of the eighteenth century discussed by Kranzberg, once the initial technological breakthrough is achieved, further technological innovations soon appeared to render it fully effective. Thus, issues of failing Wi-Fi connection, freezing or disappearing images and other imperfections are not the issue. Existing technologies will accelerate novel modifications and inventions that will improve VCP legal proceedings. The real issue is the conceivable influence of VCP proceedings on the ability of legal proceedings to represent justice, especially in the criminal domain.

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21 See i.e.: Andrea Roth, "The Fallacy of 'Live' Confrontation: A Surprising Lesson from Virtual Courts," *University of Illinois Law Review* 2023.5 (2023): 1657–1674.

22 For elaboration on legal poetics see: Shulamit Almog, "Creating Representations of Justice in the Third Millennium: Legal Poetics in Digital Times," *Rutgers Computer and Technology Law Journal*, 32. 2 (2006): 183–245, 183; Shulamit Almog, "Windows and Windows: Reflections on Law and Literature In the Digital Age," *University of Toronto Law Journal* 57.4 (2007): 755–780.

23 Kranzberg. "Technology and History".

24 Howard P. Segal, "Technology, History, and Culture: An Appreciation of Melvin Kranzberg," *Virginia Quarterly Review* (1998): 641–653, 649.

25 Kranzberg, "Technology and History," 549.

Going further, let us consider Kranzberg's first law "Technology is neither good nor bad; nor is it neutral."[26] Technology's consequences, "… go far beyond the immediate purposes of the technical devices and practices themselves."[27]

How does VCP affect then the societal perception of the institution tagged "trial"? We maintain that VCP brings about new concepts of space and time, basically alien to traditional legal proceedings. This is not necessarily a "bad" or "good" development, yet it is a development that necessitates thinking about the feasibility of creating cohesive distinctiveness representations while employing VCP tools.

Since olden times, trials took place at specific time and space – where the judges sat, litigation took place, sentences were issued, and sometimes carried out.[28] One of the earliest references to trials at the city gate can be found in the Bible, in the book of Genesis.[29] Another famous example is the trial scene mentioned in the *Iliad*, when Homer describes a judicial-like scene engraved upon the Shield of Achilles.[30] The book of Genesis and the *Iliad* arrive from ancient eras. Yet, the images of judges sitting in trial is still a central part of our culture, reverberating the eternity of the law from the beginning of human civilization. Judeo-Christian culture is only one of many ancient cultures in which the trial, in one form or another, was a central part.[31]

The basic way in which trial is being conducted has not changed fundamentally since ancient times. The city gate was replaced by courts designed exclusively to accommodate legal procedures. The old and the wise were replaced by professional judges who go through years of professional training. But still, the elementary, awe-inspiring experience has not changed much. The last hundred years have introduced fundamental technological transformation that penetrated the legal domain. Recordings of proceedings, electronic evidence, computerization of databases, have infiltrated the halls of justice in recent years, obliging the legal system to adapt. Thus, for example, the rules of civil procedure in the United States were changed in 2006 to allow reference to electronic evidence.[32] Not all these altered the basic idea that

26 Kranzberg, "Technology and History," 545.

27 Kranzberg, "Technology and History," 545.

28 Cat Quine, "On Dying in a City Gate: Implications in the Deaths of Eli, Abner and Jezebel," *Journal for the Study of the Old Testament* 40.4 (2016): 399–413.

29 Genesis, 19, 1.

30 For elaboration see Raymond Westbrook, "The Trial Scene in the Iliad," *Harvard Studies in Classical Philology* 94 (1992): 53–76, 76.

31 Beyond the cultures of the Mediterranean basin and the Fertile Crescent, one can mention, as one example among many, the Chinese legal culture that begins in the Xia dynasty in the twenty-first century BCE. See: Shen Deyong, "Chinese judicial culture: From tradition to modernity." *Brigham Young University Journal of Public Law* 25.1 (2011): 131–141.

32 See: Benjamin D. Silbert, "The 2006 Amendments To The Rules Of Civil Procedure: Accessible And Inaccessible Electronic Information Storage Devices, Why Parties Should Store Electronic Information In Accessible Formats," *Richmond Journal of Law and Technology* 13.3 (2007): 1–24.

underlies the trial – *cohesive distinctiveness.* Each trial deals with the unique circumstances and narratives of the parties. Sometimes individuals bring their case before the court and sometimes the state is a party to the proceedings. Each trial is a singular event, with specific time and space. At the same time, each trial functions as a cultural and social link between the individual experience and circumstances to the vast reservoir of past trials and proceedings. The uniqueness of the event in place and time merges with everything that preceded it, thus rendering the unique experience of the parties into a part of a collective experience. Legal poetics, with all its familiar features, from the robe donned by the judges and lawyers, to the elevated podium of the judges and state's flag hanging beside the judge, is all about maintaining *cohesive distinctiveness*.

Is it possible to preserve *cohesive distinctiveness* in a trial conducted via VCP? Is the experience of space and time provided by VCP comparable to the experience of conducting the trial in court? According to our premise, many features of traditional legal poetics can be expressed and replicated into a virtual process. One might imagine, for example, an interface with equal spatial slots for all participants, replaced with an interface that allocates the judges enhanced space that serves as an approximation of the elevated sit of judges in a court. Such interface will locate the plaintiff on the right side of the screen, and the defendant on the left side, will enable a distinct space for witnesses, and may include visual features adapted to the cross-examination, which will achieve optimal approximation of the traditional proceeding.

Dovetailing Kranzberg's the projection in second law – technology is the mother of invention – we might assume that Technological modifications will possibly make the experience of virtual trial to be as close as possible to the experience of a legal hearing in court hall designated for this purpose. Yet, the question remains valid – will VPC proceedings eventually replace courts that in some point of history replaced the city gates of ancient times?

5 Conclusions

Following Walter Benjamin, it seems that the defining nature of technologies derives to a large extent from their influence upon the production of meaning. Digital technology was perceived from its first appearance as carrying a potential to significantly change the traditional systems by which meaning is produced. In his seminal essay "The Work of Art in the Age of Mechanical Reproduction," [33] Benjamin

33 Walter Benjamin, "The Work of Art in the Age of Mechanical Reproduction," (1936) in *Philosophers from Bergson to Badiou:* A Critical Reader, ed. Christopher Kul-Want (Columbia University Press, New York, 2019): 44–79.

maintained that sequences of moving images disrupt the ability to reach valid judgments and assessments. Kafka may have held a similar view.[34] Both referred to cinema as an innovative mechanism that constraints perception, and channels it towards a certain direction, while blocking all others. The tremendous technological developments since these ideas were brought up and the immense cultural changes, demonstrate how far-sighted these notions were.

Benjamin compared a unique work of art, created manually with effort and talent that produce what he famously tagged as "aura,"[35] with mass-produced aura-less art forms such as photography and cinema. As he put it, "In even the most perfect reproduction, one thing is lacking: the here and now of the work of art – its unique existence in a particular place."[36]

The aura that Benjamin attributes to art, according to our suggestion, is the *cohesive distinctiveness* produced by each legal proceeding held according to long-lasting legal poetics. Indeed, some have argued that by the end of the nineteenth century both the aura of art and the aura of law are lost.[37] Baudrillard admitted that he owed much to Benjamin's writings in shaping his concept of 'hyper-realism', his concept of the reality created in a world of representations that have lost their origin.[38]

The utmost challenge that Benjamin's contemporaries faced was fascism. Benjamin concludes 'The creation of art in the age of technical reproduction' with a call for the "politicization of the aesthetic", the use of the new, reproduced art, as a way to fight fascism, and its perception of war as a form of art.[39]

In the third decade of the Twenty-first century, further challenges emerge. The era of the contest between great ideologies transpired into a new technology augmented existence in which judgment of reality is often distorted, and the difference between truth and falsehood is no longer clear. Legal proceedings lose their original meaning. They float in the space of images, struggling to fulfill their traditional role – convincing audiences that legal machinery is still capable to do justice.

The supremacy and authority associated with the old legal poetics and its ability to represent the pursuit of justice stemmed largely from the power to create autonomous spaces by employing these poetics. The spaces in which traditional legal poetics operated – the courts – were closed enclaves, cut off from the outside world while the proceedings took place. Within these enclaves all is subjected to these

34 Gustav Yanouch, *Conversations with Kafka* (New-York: Praeger, 1953), 86

35 Benjamin, "The Work of Art," 62.

36 Benjamin, "The Work of Art," 54.

37 Schreiner, "Captured by Digitation," 2186.

38 Jean Baudrillard, "The Work of Art in the Electronic Age: Interview with La Sept," in *Baudrillard Live: Selected interviews*, ed. Mike Gane (Routledge, London and New York, 1993): 145–151, 146.

39 Benjamin, "The Work of Art," 71.

poetic rules. VCP proceedings mean relinquishing this autonomy and subordinating it to an outer command that designs the new legal performance, operates it and dictates its rules. This external command enables certain actions and prevents some. It delineates the frame of legal proceedings, determines basic obligatory rules for conducting the process, and renders all participants into kind of disciplined minions on a huge game board, where it is not clear who is running the game. There is no more private versus public. Space and time coordinates are blurred. All spheres become the realm of VCP's "owner", whose command must be obeyed, even if it is hidden, embedded within the code of the VCP's software.

When the legal process becomes a simulacrum, a gap emerges between it and everyday reality, within which the traditional process once operated. A trial conducted via VCP distances itself from its relevant audience – both the immediate parties to that proceeding and the general public as a whole, who need a cohesively distinctive process as a synecdoche representing the power of the law to make a valid decision that comes as the climax of the effort to strive for justice.

A process that turns from a one-time performance characterized by *cohesive distinctiveness* into a recording, becomes background noise, a documentary. It becomes "content" that can be filtered, fast forwarded and rewinded, sampled and consumed in different ways and in different dosages. It has little to do with a valid representation for the pursuit of justice.

The looming danger is a poetic failure, which occurs when there is a between the intent of the producers of the message, and the way in which the message is received by the target audience. In this particular case – a message produced about the judicial institutions and supposed to be received by the entire public of consumers of the law.

Two options emerge. The first is to resist the technological change, and aim to preserve the old traditions of legal poetics. It seems yet that following the unyielding presence VCPs in our lives during the pandemic and after, this course of action is not feasible. In the contemporary digital condition, practicing solely traditional legal poetics seems a naïve gesture against the technologies and the vogue of our time. Digital technology is likely to expand as a dominant source of knowledge, data, images, information and representations that will increasingly permeate any sphere of social and cultural existence. Law, like other institutions, is bound to follow the dominant epistemology of the historical period.

The second option is internalizing VCP, while focusing on finding novel ways for creating cohesive distinctiveness in each VCP conducted legal proceeding. A more elastic legal system, very different from the one we know, and based on other principles might be established. To close the circle, we will come again to Kranzberg's first law – technological change is neither good nor bad, neither is it neutral. If we will find our way through the maze of mirrors that technology created, we may be

able to maintain *cohesive distinctiveness* in a digital, hyper-real world. We may find means to preserve the distinct nature of the legal proceedings, with the understanding that just as the days of wise men at the city gate are over, so are the days of the judges' presence in actual court. The emphasis should be the exclusivity and uniqueness of the procedure, and new legal poetics, through which the *cohesive distinctiveness* of the legal process will not be reduced, but reimagined.

Bionotes

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