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ARTICLE

Media, Cultural Techniques, and the Law: The Other Cornelia Vismann

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Abstract

In the Anglophone world of law, the German legal historian and legal theorist Cornelia Vismann (1961–2010) is best known as an acute interpreter of French high theory, especially of Jacques Derrida, Jacques Lacan, and Michel Foucault. This type of reception is, I argue, somewhat distorted. For her English-speaking colleagues, French "poststructuralism" provides the interface that enables Vismann to enter into shared discursive constellations with her Anglo-American critical legal colleagues. But at the same time, such a reception also downplays the very specifically German soil from which her unique scholarship arose. This Article discusses Vismann's German background as *media theory*, the discipline that she was mostly associated with by her compatriots. The Article then assesses what Vismann's media-theoretical contributions potentially offer to the contemporary study of law. For this "other Vismann," the media-theoretical study of law was, I suggest, a practically oriented critical discipline that focused on law's "cultural techniques" and how they operated. I also briefly touch upon what is generally known as "German media theory" through key figures such as Friedrich A. Kittler and Bernhard Siegert.

Keywords: Media theory; law; cultural techniques; Cornelia Vismann

A. Lost in Translation

"A medium is a medium is a medium. Therefore, it cannot be translated. To transfer messages from one medium to another always involves reshaping them to conform to new standards and materials." Friedrich A. Kittler.[1]

In her obituary for the German media theorist Friedrich A. Kittler, 1943–2011, Gill Partington wrote:

> In [his] late years at the Humboldt [University in Berlin], [Kittler] even found himself something of an inspirational figure. Kittler became cool; the new name to drop. As the eccentric, white-haired guru of *Mediawissenschaft*, he was surrounded by a coterie of artists and young intellectuals. Ironically, for someone who reveled in his outsider status, he became the center of a group. Members of this *Kittlerjugend*, accompanying him to conferences and augmenting his papers with outlandishly costumed performance pieces, provided an element of the perverse and the provocative, which he enjoyed.[2]

[1]Friedrich A. Kittler, Discourse Networks 1800/1900 265 (1990).
[2]Gill Partington, *"Switch Off All Apparatuses" Friedrich Adolf Kittler, 1943–2011*, *in* Radical Phil. 66, 69 (2012).

Kittler's name was first "dropped" to me in the early 1990s in conversations about French theory with a friend from Berlin. I was slightly surprised because even though I considered myself reasonably well read in all matters theoretical, I had never heard of Kittler before. Neither did his name come up in any of the Anglophone legal theoretical texts that were being written at the time. Nonetheless, based on what I learned from my friend, Kittler was clearly to be reckoned with if one wished to have a well-informed understanding of recent developments in continental theory.

At one point or another, I found a copy of one of Kittler's books.[3] In terms of discipline, the book was difficult to nail down. Although it resembled the type of literary theory that was being written at the time, there was clearly something else going on, as well. In addition, Kittler's style of writing echoed the type of *Sturm und Drang* that only Germans usually get away with. For my legally conditioned mind, that style was somehow reminiscent of Niklas Luhmann, but clearly on steroids. As it turned out, I wasn't too far off the mark. Geoffrey Winthrop-Young, one of the leading English-speaking Kittler experts, notes that while Kittler and Luhmann may share common ground, one shouldn't jump to conclusions too quickly. In Germany, there were allegedly even calls for an *über*-theory that could somehow fuse a sophisticated theory of technology with systems theory, that is, an intellectual covenant between "Kittlerian hardware and Luhmannian software."[4] But the differences between the two German "king-theorists" would always outweigh their similarities.

Even so, I decided that one day I would do my bit to get Kittler on the legal theoretical map.

Decades went by, but nothing happened. I seemingly needed some external trigger to get my Kittler project off the ground. And eventually such a trigger did come along. During the turn of the millennium or so, texts by the German legal historian and theorist Cornelia Vismann, 1961–2010, started appearing in English translations. One of Vismann's earliest publications in German is a short report from a critical legal studies conference that she attended at Birkbeck College, London, in 1999, published in the journal *Kritische Justiz*.[5] Vismann reports on a positive note of the seemingly disparate and unconnected papers that especially the British "crits" presented. In addition, she notes the strikingly international character of the event and the resulting "ambassadorial" nature of many individual contributions: "In my country, CLS is . . . .". She then asks somewhat rhetorically: "Why not in Germany, too?" In a way, a considerable part of Vismann's subsequent work turns out to be an attempt to define critical legal scholarship from a specifically German perspective. What would a German take on the critical study of law be? And this is where media theory comes in.

The potential of such a disciplinary cross-contamination is, I would argue, too often "lost in translation." Admittedly, it had escaped me, as well. Although I knew that Vismann was German and could have focused on her German texts, her translated articles and chapters seemed to mainly deal with continental theorists like philosopher Jacques Derrida and psychoanalyst Jacques Lacan and their counterparts in law like legal historian and psychoanalyst Pierre Legendre. On the face of it, to me Vismann's texts were just an addition to an already existing abundance of secondary interpretations of what was all too lightly bundled together under the term "poststructuralism." I didn't pay as much attention then as I perhaps should have. What I hadn't first realized was that Vismann's intellectual home in Germany was with Kittler and his kin. On the one hand, in her native German environment, Vismann was just as much a media theorist as she was a legal scholar. The appreciation of Vismann's work among her Anglophone colleagues, on the other hand, appeared to be curiously limited to the same French "poststructuralists" that

[3]It was probably Friedrich A. Kittler, Gramophone, Film, Typewriter (1999). Kittler's other well-known monographs and essay collections available in English include Kittler, *supra* note 1, Friedrich A. Kittler, Optical Media: Berlin Lectures 1999 (2009), Friedrich A. Kittler, Literature, Media, Information Systems: Essays (2010), Friedrich A. Kittler, The Truth of the Technological World: Essays on the Genealogy of Presence (2013), and Friedrich A. Kittler, Operation Valhalla: Writings on War, Weapons, and Media (2021).

[4]Geoffrey Winthrop-Young, *Silicon Sociology, or, Two Kings on Hegel's Throne? Kittler, Luhmann, and the Posthuman Merger of German Media Theory* 13 Yale J. Criticism 391, 391 (2000).

[5]*See* Cornelia Vismann, *Critical Legal Studies: Ein Tagungsbericht*, 32 Kritische Justiz 602, 604 (1999).

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were already being discussed by Anglophone authors elsewhere who did not seem to be aware of the media-theoretical side of things. Kittler had been sidelined again even though at least for even an English reader who dug a bit deeper into Vismann's work, Kittler's media-theoretical presence should have been easily detectable.[6] Be that as it may, Vismann gives me the opportunity to work through something legal using a framework that is indebted to Kittler and so to also fulfill the promise I had made myself earlier.

This Article has two interrelated aims. First, I present a self-reflexive corrective concerning Vismann with which I wish to "update" my own slightly inadequate understanding of her work as a legal scholar. Reading Vismann as a media theorist is at the core of this corrective. Second, by integrating Vismann the media theorist with Vismann the legal scholar, I hope to be able to make a modest contribution to the development of a multidisciplinary approach to law that treats legal artifacts as media and cultural techniques. This, I argue, is exactly what Vismann did.

In the first main Section, B, I discuss this curious thing called "German media theory" and why its main ideas run the risk of getting "lost in translation." This has less to do with the lack of accessible technical terminology and more with the incompatibility of academic cultures. To paraphrase the Kittler quote cited at the top of this Introduction, German and Anglophone academic cultures are themselves different media. Translating from one to the other will also involve a "reshaping" that inevitably "loses" something along the way. The first main Section below includes a brief introduction to Kittler and German media theory more generally to the extent that such an introduction is necessary for framing my subsequent arguments. I do this at some risk because packaging the eccentric corpus of especially the mercurial Kittler into a few soundbites is a Herculean task to say the least.[7] In the second and third main Sections, C and D, I draw on specific texts by Vismann arguing that if we understand law and its artifacts as media and their cultural techniques, we can perhaps better understand why the posthumanist and new-materialist premises of German media theory are such a radical challenge to the hermeneutic preoccupations of even most critical legal scholarship and why something unique about Vismann may have gone missing along the way. I conclude in Section E by suggesting some starting points for the proposed multidisciplinary approach.

B. From Media to Cultural Techniques

As Germany was approaching reunification in 1990, the discipline of *Kulturwissenschaft*, literally the "science of culture," was awarded a new lease of life. This study of culture should not be confused with what the Anglo-American tradition calls "cultural studies" or "cultural theory."[8] Originally it had more to do with the philosophical study of German literature and culture, and its representatives came from a wide range of social sciences and humanities.[9] Although culture in

[6]Kittler was explicitly present already in those very early articles translated into English. *See, e.g.*, Cornelia Vismann, *Cancels: On the Making of Law in Chanceries*, 7 L. & CRITIQUE 131, 132 n.8 (1996).

[7]Introductory analyses of Kittler's influence include THE TECHNOLOGICAL INTROJECT: FRIEDRICH KITTLER BETWEEN IMPLEMENTATION AND THE INCALCULABLE (Jeffrey Champlin & Antje Pfannkuchen eds., 2018); MEDIA THEORY AND CULTURAL TECHNOLOGIES: IN MEMORIAM FRIEDRICH KITTLER (Maria Teresa Cruz ed., 2017); MEDIA AFTER KITTLER (Eleni Ikoniadou & Scott Wilson eds., 2015); KITTLER NOW: CURRENT PERSPECTIVES IN KITTLER STUDIES (Stephen Sale & Laura Salisbury eds., 2015); and GEOFFREY WINTHROP-YOUNG, KITTLER AND THE MEDIA (2011). The English editions of Kittler's main texts also include introductory essays usually written by the translators. See also the special issues: Mike Featherstone, *Special Issue: Annual Review*, 23 THEORY, CULTURE & SOC'Y 1 (2006); Alex Fliethmann, *Special Section on Friedrich Kittler*, 107 THESIS ELEVEN 3 (2011).

[8]*See* Ansgar Nünning, *Towards Transnational Approaches to the Study of Culture: From Cultural Studies and Kulturwissenschaften to a Transnational Study of Culture*, *in* THE TRANS/NATIONAL STUDY OF CULTURE: A TRANSLATIONAL PERSPECTIVE 23 (Doris Bachmann-Medick ed., 2014).

[9]See Lawrence A. Scaff, *Weber, Simmel, and the Sociology of Culture*, 36 SOCIO. REV. 1 (1988), for more information on how sociologists Max Weber and Georg Simmel contributed to the birth of the German "science of culture." The term is thought to have been introduced by neo-Kantian philosopher Heinrich Rickert as a critical counterpart to Wilhelm Dilthey's "human sciences." *See* HEINRICH RICKERT, SCIENCE AND HISTORY, A CRITIQUE OF POSITIVIST EPISTEMOLOGY (1962).

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this sense had traditionally been studied in all German universities, at that point in history the discipline had lost its standing in the West. By way of contrast, the discipline was still alive and well in East German universities. After reunification, such a study of culture was, in fact, one of the few eastern academic specializations that managed to gain new prominence in the West.

Subsequently, the discipline's objects of study diversified. They were now, perhaps misleadingly, referred to collectively as "media." The choice of the term was at least partly a polemical snub against the naive affiliations that the critics of the Frankfurt School had forged with the hermeneutic humanities represented by the likes of Hans-Georg Gadamer.[10] At the outset, media theory was, in other words, a decisively anti-hermeneutic and anti-humanistic contestation of the critical tradition of German university scholarship. Media did not mean simply mass media because any cultural artifact could be understood as a medium, as something that "mediates." This new "media theory" also introduced French "poststructuralism" into German academic debate through the likes of Michel Foucault, Gilles Deleuze, Derrida and Lacan, but without trying to forcefully adjust the theory into domestic paradigms like the Anglo-American reception did. German media theory treated these as sources of inspiration rather than authorities and put them to very specific uses which partly accounts for why the resulting scholarship is so deficiently understood outside of Germany. As David Wellbery notes in his fine introduction to Kittler, a striking feature in Kittler's approach to the "poststructuralists" compared to his Anglo-American counterparts is the "absence of any partisanship and schoolishness."[11] One should also keep in mind that, unlike in the humanities departments of world-renowned American universities, French theory was frowned upon with hostility by the German academic establishment.[12]

We need to be cautioned about a common misunderstanding or oversimplification. Kittler is not merely a media theorist, and vice versa, German media theory is not limited to Kittler although he may be its best-known representative. Others include Markus Krajewski,[13] Sybille Krämer,[14] Bernhard Siegert,[15] Anna Tuschling,[16] and, of course, Cornelia Vismann herself. Kittler's personal history does seem to have certain parallels with the discipline that he is best known for. He was born in Rochlitz, Saxony, in 1943 just before the end of the Second World War. After the war, the city was left east of the Iron Curtain. When Kittler was in his teens, he and his family fled to West Germany where Kittler finished his high school degree specializing in both STEM subjects and modern languages. This somewhat uncommon coupling of "man and machine" would characterize Kittler's later work, as well. Kittler went to university at Freiburg, best known at the time as the hub hosting many of Martin Heidegger's famous students: Gadamer, Hannah Arendt, Herbert Marcuse, and so on.[17]

[10]*See* Jürgen Habermas, The Theory of Communicative Action: Reason and the Rationalization of Society 102–41 (1984) (providing a good example of such an "affiliation").

[11]David E. Wellbery, *Foreword*, *in* Discourse Networks 1800/1900 i, xi (1990).

[12]*See* Robert C. Holub, Crossing Borders: Reception Theory, Poststructuralism, Deconstruction 39–49 (1992); *see also* Wellbery, *supra* note 11, at 97–107.

[13]*See, e.g.*, Markus Krajewski, Paper Machines. About Cards and Catalogs, 1548–1929 (2011); Markus Krajewski, The Server: A Media History from the Present to the Baroque (2018).

[14]*See, e.g.*, Sybille Krämer, Medium, Messenger, Transmission: An Approach to Media Philosophy (Anthony Enns trans., 2015).

[15]*See, e.g.*, Bernhard Siegert, Relays: Literature as an Epoch of the Postal System (Kevin Repp trans., 1999); Bernhard Siegert, Cultural Techniques: Grids, Filters, Doors, and Other Articulations of the Real (Geoffrey Winthrop-Young trans., 2015).

[16]*See, e.g.*, Anna Tuschling, *Historical, Technological and Medial A Priori: On the Belatedness of Media*, 30 Cultural Stud. 680 (2016).

[17]*See, e.g.*, Geoffrey Winthrop-Young, *"Well, What Socks Is Pynchon Wearing Today?" A Freiburg Scrapbook in Memory of Friedrich Kittler*, 8 Cultural Pol. 361 (2012) (providing an example of Kittler in Freiburg).

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Although Heidegger was always a huge influence,[18] Kittler's Freiburg was not this concentration of humanistically oriented philosophy that the list of names implies. The city and the university were also among the few "alternative-cultural" hotspots in Germany at the time.[19] The media-theoretical cocktail that Kittler's work represented gliding effortlessly between high and low culture, literature and technology, poet Friedrich Schiller and information theorist Claude Shannon, author Thomas Pynchon and Pink Floyd's Syd Barrett[20]—such combinations could have surfaced only in either Berlin or Freiburg. Kittler completed his doctorate in the history of modern German literature,[21] and later, in 1982, he submitted his "scandalous" postdoctoral *Habilitationsschrift* thesis translated into English as *Discourse Networks 1800/1900*.[22] After a few way stations, Kittler was appointed Professor of Media Aesthetics and History at the Humboldt University of Berlin in 1993.

Media theorist Bernhard Siegert describes the development of German media theory through two phases.[23] The first he sees as an "anti-hermeneutic" media analysis that ranged from the 1980s to the end of the 1990s, whereas the subsequent and still ongoing second phase is "post-hermeneutic" with media and technology now reconceptualized as "cultural techniques."[24] The main objective of German media theory was originally to salvage media from the technophobic ghetto of "systems" that the hermeneutically oriented humanities and social sciences had isolated them into. At the same time, the chosen objects of study of this emerging field—the typewriters, televisions, cinematic and printing artifacts, and so on—all these media, now redefined in terms of cultural techniques, could henceforth be studied independently outside of the humanities departments. The intellectual hub for this emerging discipline became the Institute for the Study of Culture and Art (*Institut für Kultur- und Kunstwissenschaft*)[25] at the Humboldt University in Berlin where Kittler was professor until his death in 2011. With its new standing and conceptual independence centered on cultural techniques, German media theory could now develop

[18]*See, e.g.*, Friedrich Kittler, *Towards an Ontology of Media*, 26 Theory, Culture & Soc'y 23 (2009).

[19]Freiburg is still today thought of as the "model green city" of Germany. *See* Wulf Daseking & Dale Medearis, *Freiburg, Germany: Germany's Eco-Capital*, *in* Green Cities of Europe: Global Lessons on Green Urbanism 65 (Timothy Beatley ed., 2012).

[20]For information on Schiller, von Kleist, and Pynchon—all at once—*see* Friedrich Kittler, *De Nostalgia*, 11 Cultural Pol. 395 (2015); *see also* Geoffrey Winthrop-Young, *Krautrock, Heidegger, Bogeyman: Kittler in the Anglosphere*, 107 Thesis Eleven 6 (2011). In an interview, Kittler himself explained that "it was very hard during that time in Germany to move beyond the study of dialectics and the self's relation to itself. Consequently, I had to cover up all I wanted to say with nice stories about young German poets." John Armitage, *From Discourse Networks to Cultural Mathematics: An Interview with Friedrich A. Kittler*, 23 Theory, Culture & Soc'y 17, 18 (2006)

[21]*See* Friedrich A. Kittler, Der Traum und die Rede: Eine Analyse der Kommunikationssituation Conrad Ferdinand Meyers (1977).

[22]Friedrich A. Kittler, Discourse Networks 1800/1900 265 (Michael Metteer trans., 1990). The German title of the book speaks of an *Aufschreibesystem*, a "writing-down system," which is a direct reference to the jurist Daniel Paul Schreber whose psychoses Freud made famous. *See* Daniel Paul Schreber, Memoirs of my Nervous Illness 122–24 (Richard A. Hunter & Ida Macalpine trans., 2000); *see also* Peter Goodrich, Schreber's Law: Jurisprudence and Judgment in Transition 84, n.53 (2018). *See* Florian Sprenger, *Academic Networks 1982/2016: The Provocations of a Reading*, 63 Grey Room 71 (2016), for information on the extraordinary circumstances that surrounded the examination of Kittler's rebel-rousing thesis.

[23]*See* Siegert, Cultural Techniques, *supra* note 15, at 1–7; *see also* Bernhard Siegert, *Cultural Techniques: Or the End of the Intellectual Postwar Era in German Media Theory*, 30 Theory, Culture, & Soc'y 48 (2013).

[24]*See* Geoffrey Winthrop-Young, Ilinca Iurascu, & Jussi Parikka, *Special Issue: Cultural Techniques*, 30 Theory, Culture, & Soc'y 1 (2011).

[25]Today, part of the Institute for Music and Media Studies with media theorist Wolfgang Ernst at the helm. *See, e.g.*, Wolfgang Ernst, Technológos in Being: Radical Media Archaeology and the Computational Machine (2021); Wolfgang Ernst, Chronopoetics: The Temporal Being and Operativity of Technological Media (Anthony Enns trans., 2016); Wolfgang Ernst, Stirrings in the Archives: Order from Disorder (Adam Siegel trans., 2015). Media theory is also prominent at TU Berlin and the University of Potsdam, making the metropolitan Berlin region a veritable hotspot.

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independently and freed from the post-war anthropocentric and humanistic emphases of critical theory.

German media theory deals with ontological differences, but it is quite different to, for instance, the more subtle deconstructionist readings of Derrida that do more or less the same thing. Rather than critiquing the notion of ontological difference *per se*, German media theory insists that all such differences are radically technical by nature. To paraphrase Siegert's own example,[26] Captain Ahab's gradual transformation into the raging whale that he is hunting with his whalebone prosthetic leg, blurring the line separating human from non-human, does not follow from any "bioethical" position that Herman Melville may have held as the author of the novel. It results from whale hunting, understood as a cultural technique that produces the human/nonhuman distinction. Without this technological "decentering," ethics would be nothing more than a soppy sentimentality reinvesting the humanity that the vengeful and raging Captain Ahab has lost into the consequently "humanized" animal.

In Germany, the word "*Kulturtechnik*" has its origins in agricultural engineering.[27] In that context, it refers to technical procedures like irrigation and drainage that aim to improve soil conditions. Human evolution is marked by a series of such cultural techniques that operationalize distinctions such as human/nonhuman, nature/culture, and so on. Taking this a step further, we can claim that this being we call "human" cannot exist "as such" in relation to its nonhuman counterparts, but that cultural techniques like the use of farming utensils are required to execute and mark the required distinction. In a similar way, we might say that time can exist only by way of the cultural techniques that measure it like an agricultural calendar marking the harvests even if the seasons pass by cyclically in the background. More appropriately for this Article, we can say that law can come to being through only the cultural techniques that enable it to function, like the courthouses, the case files, the archives, and so on. According to media historian Thomas Macho's by now almost "canonized" formulation, cultural techniques like writing and reading are always older than the conceptualized media they generate. We have, for example, read and written long before we achieved any conceptual understanding of an alphabet.[28] By analogy, the regulation of human societies precedes the media that we today think of as essential for it, be it through codes or courthouses. Operations like reading, writing, or regulation presuppose historically determined technical objects that are capable of performing these operations. Siegert provides a telling illustration:

> An abacus allows for different calculations than do ten fingers; a computer, in turn, allows for different calculations than does an abacus. When we speak of cultural techniques, therefore, we envisage a more or less complex actor network that comprises technological objects as well as the operative chains they are part of and that configure or constitute them.[29]

The materiality of these technological objects and operative chains is noteworthy here.[30] By analogy, parliamentary enactments which are materially inscribed on and communicated with scrolls of calfskin vellum will allow for different laws than enactments printed on cellulose-based

[26]*See* Siegert, Cultural Techniques, *supra* note 15, at 8–9.

[27]*See, e.g.*, Geoffrey Winthrop-Young, *The Kultur of Cultural Techniques: Conceptual Inertia and the Parasitic Materialities of Ontologization*, 10 Cultural Pol. 376 (2014); *see also* Cultural Techniques: Assembling Spaces, Texts, and Collectives (Jörg Dünne, Kathrin Fehringer, Kristina Kuhn, & Wolfgang Struck eds., 2020) (describing cultural techniques).

[28]*See* Thomas Macho, *Zeit und Zahl: Kalender und Zeitrechnung als Kulturtechniken*, *in* Bild—Schrif—Zahl 179 (Horst Bredekamp & Sybille Krämer eds., 2003).

[29]Siegert, Cultural Techniques, *supra* note 15, at 11.

[30]*See* Jussi Parikka, What Is Media Archaeology? 63–89 (2012); Jussi Parikka, *New Materialism as Media Theory: Medianatures and Dirty Matter*, 9 Commc'n & Critical/Cultural Studs. 95 (2012) (providing information on media theory and new materialism). *See* Jannice Käll, *A Posthuman Data Subject? The Right to Be Forgotten and Beyond*, 18 German L. J. 1145 (2017) (providing information on the materiality of law).

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archival paper, a change that happened in the UK as recently as 2017.[31] A media theoretical approach allows us to consider law in the context of its cultural techniques as they historically change from the Law Code Stele of Hammurabi carved on polished black diorite[32]; to the Aramaic legal papyri[33]; from the vellum of the Magna Carta[34] to the parchment of the Torah scroll[35]; and, finally, from different and often legally standardized[36] varieties of "permanent paper"[37] to legislation and caselaw that is digitally recorded as binary code.[38]

C. The Cultural Techniques of Law

Cornelia Vismann, legal historian, legal theorist, and media theorist, died at the age of 44. Having passed away so young, the body of work that she left behind is not vast, but it is significant. Readers familiar with the GLJ will also recognize Vismann as a member of the Journal's editorial team.[39] Moreover, her "reception" in the English-speaking world appears to be tainted by a similar distortion as Kittler's and German media theory's more generally. To her Anglophone legal audience, Vismann is mostly known as someone who participated in reworking French "poststructuralism" for critical legal purposes. But her more explicitly media-theoretical insights have gone largely unanalyzed.

The main bulk of Vismann's work published in German has now been collected into three volumes. The first is her doctoral thesis *Akten*,[40] translated into English as *Files*.[41] The subtitles of the German and English editions may betray something that is, once again, "lost in translation" when German media theory is transplanted into Anglophone soil. In the original German, that subtitle is literally "media technology and law," whereas in the English edition, the coupling has been reversed into "law and media technology." The editorial decision to reverse the conjuncts can hardly be a mere coincidence. It more likely functions as a relatively simple cultural technique in itself, a coordinating logical operator that is meant to overturn one preference into its opposite. So perhaps in the English edition, we are asked to focus on how law as the primary conjunct is related to media and technology rather than vice versa.

[31] *See, e.g.*, Alec Samuels, *Vellum or Paper?*, 37 STATUTE L. REV. 279 (2016).

[32] *See, e.g.*, Kathryn E. Slanski, *The Law of Hammurabi and its Audience Representing and Contesting Ideologies of the Public Spheres: Ancient Public Spheres*, 24 YALE J. L. & HUMANS. 97 (2012).

[33] *See, e.g.*, ANDREW D. GROSS, LAW AND RELIGION IN THE EASTERN MEDITERRANEAN: FROM ANTIQUITY TO EARLY ISLAM 129–64 (2013).

[34] *See, e.g.*, David Noble, *Magna Carta: From Calfskin to Tablets—Improving the Accessibility of our Legislation*, 23 AUSTRL. L. LIBR. 124 (2015).

[35] *See, e.g.*, Marianne Schleicher, *Engaging All the Senses: On Multi-Sensory Stimulation in the Process of Making and Inaugurating a Torah Scroll*, 8 POSTSCRIPTS: J. SACRED TEXTS, CULTURAL HIST., & CONTEMP. CONTEXTS 39 (2017). According to the kabbalistic doctrine of *Torah kedumah* ("primordial Torah"), "[t]he mystical white space between the letters on the Torah parchment is the written Torah, but the black letters—the orally transmitted Torah—make the knowledge of a higher world accessible to man through the human language of narratives and laws." NATHAN T. LOPES CARDOZO, THE WRITTEN AND ORAL TORAH: A COMPREHENSIVE INTRODUCTION 72 (1997).

[36] *See, e.g.*, U.S. Permanent Paper Law of 1990, Pub. Law 101-423, 104 Stat. 912.

[37] *See, e.g.,* Robert W. Frase, *Permanent Paper: A Progress Report*, 17 IFLA J. 366 (1991).

[38] A media-theoretical account of the databases serving as repositories of primary legislation and case law remains to be written.

[39] *See* Peer Zumbansen, Russell Miller, & Alexandra Kemmerer, *Obituary: Cornelia Vismann*, 11 GERMAN L. J. 965 (2010).

[40] *See* CORNELIA VISMANN, AKTEN: MEDIENTECHNIK UND RECHT (2000).

[41] *See* CORNELIA VISMANN, FILES: LAW AND MEDIA TECHNOLOGY (Geoffrey Winthrop-Young trans., 2008); *see also* Cornelia Vismann, *Files, Not Literature*, *in* FIGURES OF LAW: STUDIES IN THE INTERFERENCE OF LAW AND LITERATURE 163 (Gert Hofmann ed., 2007). For a well contextualized review of the book, *see* Liam Cole Young, *Files, Lists, and the Material History of the Law*, 30 THEORY, CULTURE & SOC'Y 160 (2013); *see also* LIAM COLE YOUNG, LIST CULTURES: KNOWLEDGE AND POETICS FROM MESOPOTAMIA TO BUZZFEED (2017).

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A second monograph, *Medien der Rechtsprechung*,[42] literally "the media of jurisdiction," but more speculatively "the media through which the law is spoken," was written during the final years preceding Vismann's death, edited and finalized by colleagues, and published posthumously. The book develops themes that Vismann had already analyzed in her first book, but this time with a specific focus on particular cultural techniques such as courtroom furniture, interpreters, the interplay between voice and silence, and analyses of legally relevant arts and culture.

The third volume, *Das Recht und seine Mittel*[43] ("the law and its tools"), is a collection of selected writings, mostly in German but some even in English, that cover topics ranging from Roman law and Antiquity to high theory and technology. Some of the individual texts of the collection have also appeared in English elsewhere as either articles or as chapters in edited volumes.[44]

It would be misleading to suggest that Vismann's work has not been appropriately recognized in Anglo-American legal scholarship. In many ways, it's rather the opposite. During the decade or so preceding her death, Vismann gradually became a household name in especially critical legal circles. But the interpretations of her work seemed to be somewhat underdeveloped. An Anglo-American understanding of French "poststructuralism"—Derrida, Foucault, Lacan, and so on—was forged into an interface through which English-speaking "crits" and Vismann, the German media theorist, could communicate. While working with such an interface does not entirely miss the mark, it does run the risk of excluding something that is unique in Vismann's work: Namely, its specifically media-theoretical dimension. For example, *The Archive and the Beginning of Law*, one of Vismann's widely discussed texts available in English, is not primarily about a theoretical authority like Derrida, as some interpretations seem to imply, but rather about the archive as a legally relevant material medium and cultural technique. In fact, Vismann is rather critical of Derrida's reading:

> The etymology of *arkhé* is not at all indicative of a commencement. Greek archives attest neither to mythic layers of meaning nor to the power of interpretation; they contain clay tablets, lists, lead rolls, and nothing else. Thus, no more can be said about them other than that they exist.[45]

Peter Goodrich, also apparently referring to this particular text, points out that:

> [I]t was Cornelia Vismann, an anarchist leaning, German, Hellenophile feminist jurist who wrote the major study of the historical materiality and continuing significance of files and their archival storage. *Her* presence opened up a novel discipline for juridical science in its most archontick rigour, its anti-Romanism. She shows in detail how the juristic sense of archive and text as equivalent of law, as origin of authority, is paradoxically predicated upon the destruction of the archive in its Greek sense, recuperated by Heidegger, of *aletheia* or truth.[46]

[42]*See* Cornelia Vismann, Medien der Rechtsprechung (2011).

[43]*See* Cornelia Vismann, Das Recht und seine Mittel: Ausgewählte Schriften (2012).

[44]*See, e.g.*, Cornelia Vismann, *The Love of Ruins*, 9 Persp. on Sci. 196 (2001); Cornelia Vismann, *Out of File, out of Mind*, *in* New Media, Old Media: A History and Theory Reader 97 (Wendy Hui Kyong Chun & Thomas Keenan eds., 2006); Cornelia Vismann, *Three Versions of a Defendant's Final Statement to the Court*, 23 Law & Literature 297 (2011); Cornelia Vismann, *Starting From Scratch: Concepts of Order in No Man's Land*, *in* War, Violence and the Modern Condition 46 (Bernd Hüppauf ed., 1997); Cornelia Vismann, *Image and Law: A Troubled Relationship*, 14 Parallax 1 (2008); Cornelia Vismann, *Cultural Techniques and Sovereignty*, 30 Theory, Culture & Soc'y 83 (2013) [hereinafter *Cultural Techniques*].

[45]Cornelia Vismann, *The Archive and the Beginning of Law*, *in* Derrida and Legal Philosophy 41, 50 (Peter Goodrich, Florian Hoffmann, Michel Rosenfeld, & Cornelia Vismann eds., 2008).

[46]Peter Goodrich, *Heretical Archives: Heterotopic Institutions and Fictive Records*, 22 L. Text Culture 53, 56 (2018).

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While this may be true, Goodrich's tribute does not mention either media theory or cultural techniques which, I would claim, are both at the heart of Vismann's originality as a legal scholar. Towards the end of that chapter, Vismann argues that the etymology of the word "archive" is more equivocal than is usually admitted. It can be Derrida's choice of *arkhé* or beginning, but it may just as well be *arca*—that is, a sealed ark, a container, or a repository. If Derrida's *arkhéology* deals with the interpretation of texts that refer back indefinitely in search of an authoritative foundation, Vismann wishes to complement it with her *arcaology*, a "material archaeology of the archive" that is more indebted to Foucault than to Derrida.[47] Furthermore, in a volume on law and new media coedited by the same Goodrich, there is only one very general reference to Vismann on the opening page of the introduction[48] even though a whole chapter should have been dedicated to her as a leading media theorist working in law. Kittler doesn't even get a mention.

Because Anglo-American readings of Vismann's work steer the interpretations so decisively towards that "poststructuralist" interface that is taken as the common denominator, her more media-theoretical insights are largely ignored.[49] What would this "other" Vismann's most proper contribution to legal scholarship be? She begins her seminal article "Cultural Techniques and Sovereignty" in the following way:

> Cultural techniques describe what media do, what they produce, and what kinds of actions they prompt. Cultural techniques define the agency of media and things. If media theory were, or had, a grammar, that agency would find its expression in objects claiming the grammatical subject position and cultural techniques standing in for verbs.[50]

It is worth pausing here to consider the full meaning of this passage. First, according to the "grammar" of Vismann's media theory—*if* it had a grammar—cultural techniques are to media what social action is to a social actor. The primary agency of media is to literally mediate something through the cultural techniques that are at its disposal, while at the same time the materiality of the medium conditions whatever is being mediated. Second, Vismann's media theory is a decisively "descriptive" discipline. It cannot at the outset commit itself to political or ethical ends like social justice because such a teleology would override the material conditions of the medium. In this sense, Vismann is much more a Foucaultian than her English-speaking colleagues. Even if Foucault's choices of topics already betrayed political commitments that were at least tacitly intertwined with the analyses,[51] for the most part, his critical politics emerged only as a consequence of the detailed description of, for example, the apparatuses with which

[47]Vismann, *supra* note 45, at 51–52. *See* Cornelia Vismann, *Derrida, Philosopher of the Law*, 6 GERMAN L. J. 5 (2005) (providing information on Vismann's appreciation of Derrida).

[48]*See* Christian Delage et al., *Introduction: West of Everything*, *in* LAW AND NEW MEDIA: WEST OF EVERYTHING 1, 1 n.2 (Christian Delage, Peter Goodrich, & Marco Wan eds., 2019).

[49]In my mind, Vismann's closest media-theoretical kin can be found in the Legal Materiality Network. *See* Hyo Yoon Kang & Sara Kendall, *Legal Materiality*, *in* THE OXFORD HANDBOOK OF LAW AND HUMANITIES 21 (Simon Stern, Maksymilian Del Mar, & Bernadette Meyler eds., 2020); Hyo Yoon Kang & Sara Kendall, *Special Issue: Legal Materiality*, 23 LAW TEXT CULTURE 1 (2019); Hyo Yoon Kang, *Law's Materiality: Between Concrete Matters and Abstract Forms, or How Matter Becomes Material*, *in* ROUTLEDGE HANDBOOK OF LAW AND THEORY 453 (Andreas Philippopoulos-Mihalopoulous ed., 2018); *see also* LAW'S DOCUMENTS: AUTHORITY, MATERIALITY, AESTHETICS (Katherine Biber, Trish Luker, & Priya Vaughan eds., 2021).

[50]Vismann, *Cultural Techniques*, *supra* note 44, at 83. For information on the study of law through its cultural techniques, see Fabian Steinhauer's "programmatic" project. *See* Fabian Steinhauer, *Kulturtechniken des Rechts*, *in* FORMATE DER RECHTSWISSENSCHAFT 255 (Andreas Funke & Konrad Lachmayer eds., 2016), partly translated as Fabian Steinhauer, *Excerpt from Cultural Techniques of Law: Remarks on a Format of Legal Studies*, 23 LAW TEXT CULTURE 79 (2019).

[51]For information on Foucault's "local critiques," unhinged by "totalitarian theories," *see* MICHEL FOUCAULT, "SOCIETY MUST BE DEFENDED": LECTURES AT THE COLLÈGE DE FRANCE, 1975–76 6 (David Macey trans., 2003); Anne Orford, *In Praise of Description*, 25 LEIDEN J. INT'L L. 609 (2012).

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individuals were disciplined into docile bodies.[52] Although this is simplifying the issue somewhat, Vismann's "prescriptive" critical legal politics can be said to arise from her "descriptive" media-theoretical account of law rather than to include an activist commitment that could somehow precede and inform the analyses.

Vismann continues that the media that set cultural techniques into motion contradict the notion recognized and embedded in law that only a subject can rule over things through action. There is a preexisting relation between media and cultural techniques that determines the way things are to be handled even before they allow themselves to be submitted to a subject's will. As a tool, a cultural technique, then, dictates its own use. Even if we could identify its preexisting conditions of usage with the subjects who have designed and built the tools to carry out certain tasks in predefined ways, these conditions can never be completely independent of the tool's conditions of production, its materiality, or its spatio-temporal circumstances. So, as Vismann points out, one must distinguish "between persons, who *de jure* act autonomously, and cultural techniques, which *de facto* determine the entire course of action"[53] between legally determined actors and factual techniques. In this sense, Vismann's brand of media theory shares certain aspects with Latour's judicial ethnography[54] as she insists that:

> To inquire about cultural techniques is not to ask about the feasibility, success, chances and risks of certain innovations and inventions in the domain of the subject. Instead, it is to ask about the self management or auto-praxis [*Eigenpraxis*] of media and things, which determines the scope of the subject's field of action.[55]

When we turn our eyes from ideas to media and cultural techniques, we also shift our analytic gaze from nominally defined entities such as "law" or "justice" to the processes through which these entities are produced or executed, that is, to the individual steps that are included in a given operation. Execution, as Vismann points out, implies proceeding in a structured way and following a certain plan. Even if an action like throwing a snowball at a passing car may on the face of it seem completely spontaneous, the media involved—snow, hands, arm, and so on—require a planned execution. As actions are repeated, these planned operations reveal their almost algorithmic quality. So a certain "procedural conformity" is involved in even the most seemingly unique and spontaneous operations through the media that are involved in their execution: "To derive the operational script from the resulting operation, to extract the rules of execution from the executed act itself: that is what characterizes the approach of cultural techniques."[56]

All media contain their own rules of execution, their own "material" instructions of operation that are not under the agent's control.[57] They function independently from the actors that operate them and, at the same time, enhance their own reproducibility communicating the processes

[52]*See* Michel Foucault, Discipline and Punish: The Birth of the Prison (Alan Sheridan trans., 2d ed. 1995). For information on how Foucault's anti-prison activism informed his theoretical work, *see* Marcelo Hoffman, Foucault and Power: The Influence of Political Engagement on Theories of Power (2013).

[53]Vismann, *Cultural Techniques*, *supra* note 44, at 84.

[54]*See* Bruno Latour, The Making of Law: An Ethnography of the Conseil d'Etat 263–64 (Marina Brilman trans., 2010).

> [T]he Council of State is not made "of law" but consists of walls, corridors, frescoes, files, a body of members, texts, careers, publications, controversies. If there is law in it, if it is capable of saying the law, it is surely not because it belongs to a system distinct from the rest of the social world, but because it stirs it in its entirety in a *certain mode*.

See also Bernard Keenan & Alain Pottage, *Ethics in Rehearsal*, 23 J. Royal Anthropological Inst. 153 (2017).

[55]Vismann, *Cultural Techniques*, supra note 44, at 84.

[56]Vismann, *Cultural Techniques*, supra note 44, at 87.

[57]For information on the materiality of law, *see, e.g.*, Alain Pottage, *The Materiality of What?*, 39 J. L. & Soc'y 167 (2012), which is one of the few texts in law to actually mention Kittler. *See also* Anna Leander, *Technological Agency in the Co-Constitution of Legal Expertise and the US Drone Program*, 26 Leiden J. Int'l L. 811 (2013), where the role of the "media actant" is taken up by the military drone.

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involved towards different opportunities and actors. Sybille Krämer echoes this idea by noting how the ongoing debate about media that began already in the 1960s remains multivocal and heterogeneous with no consensus about its phenomenal domain, about the required methodological approach, or even about the concept of media. Regardless, she identifies a certain unifying tonality that she calls the "*bon ton* of the media debate"—that is, an attitude committed to, citing media philosopher Lorenz Engell,[58] "generativity":

> in contrast to a marginalizing perspective, which treats media as negligible vehicles that add nothing to the messages they convey, this maxim [of generativity] signals a change in perspective that turns towards the media themselves rather than their contents. By shaping their contents, media fundamentally participate in the generation of messages—when not entirely producing them.[59]

D. The Media of Jurisdiction

For Vismann, all cultural techniques aim to be reproduced and learnable. Academic disciplines where knowledge emphasizes the importance of transferrable skills are all rooted in cultural techniques. Think of, for instance, law in its most conventional "black letter" sense. By systematizing a plethora of normative units to enable the practitioner to produce interpretive propositions, law involves compressing complex data together into doctrines or "dogmas," to use the more common word from German jurisprudence that Vismann is also fond of.[60] Dogmas ensure that legal operations are executed in a uniform manner and independently of the individuals that may be involved. They are, then, "the linguistic expression of particular acts of execution."[61]

If we view the law in this way, our gaze will, in other words, focus on the practices with which the law is applied. Acknowledging her indebtedness to the Weberian tradition, for Vismann, the essence of law is revealed in its administrative offices and courtrooms, but now understood specifically as cultural techniques.[62] In order to demonstrate what we can achieve by focusing on legal phenomena in this way, Vismann considers particular media that, she insists, are just as fundamental to the working of the law as the legal file is to the state. A good example is the courtroom table:

> Without making any explicit decrees, it decrees nonetheless how the law is to be practiced. And without making even the slightest claim to be establishing a particular technology of culture [cultural technique], by the mere fact of providing the conditions for the simple act of standing and sitting, it becomes central to the practice of law. The table determines who is placed where in the courtroom, and thereby determines who is to speak in the courtroom and in what way. The table authorizes the court to speak and authorizes one to speak before the court. Rules of procedure, legal commentary, debates overdue process are all secondary in comparison.[63]

[58] *See* Lorenz Engell, Thinking Through Television 29–50 (Anthony Enns trans., 2019).

[59] Krämer, *supra* note 14, at 27.

[60] *See* Alain Supiot, Homo Juridicus: On the Anthropological Function of the Law 3–40 (Saskia Brown trans., 2007).

[61] Vismann, *Cultural Techniques*, *supra* note 44, at 87; *see also* Cornelia Vismann, *Jurisprudence: A Transfer Science*, 10 L. & Critique 279 (1999) (providing a juxtaposition of "legal dogmatics" and deconstruction).

[62] *See, e.g.*, Vismann, *Out of File, Out of Mind*, *supra* note 44, at 97.

[63] Cornelia Vismann, *In Judicio Stare: The Cultural Technology of the Law*, 23 L. & Literature 309, 310 (2011). The title of the original German text speaks of *Kulturtechniken*, so it should be "cultural techniques" rather than "cultural technology." Cornelia Vismann, *In Judicio Stare: Kulturtechniken des Rechts*, *in* Rechtsanalyse als Kulturforschung I 323 (Werner Gephart ed., 2014).

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We can well do without the rules, the commentaries, and the debates. But if the table is removed, the whole process simply comes to a halt. Moreover, a rectangular office table behind which the defendant is usually required to face the authority of the law is different to a round table that at least on the face of it is more suited for civil proceedings that involve arbitration.[64] As a cultural technique, the courtroom table determines the proceedings involved in a trial without being a legally regulated object itself. The table is "simply there" vanishing into the background network of co-related tools and reveals itself occasionally only if it somehow malfunctions or becomes a problem, perhaps in a Heideggerian sense of "unhandiness."[65] In a similar way, we can see how the different chairs used in the judicial environment ranging from the defendant's plain office chair designed for submissive static sitting and the adjudicators' thronelike seats produce and maintain the hierarchies that are deemed necessary for the law to function.[66]

The socio-legal tradition has produced many excellent "material" analyses of, for example, tribunals and courthouses.[67] But they don't involve the type of theoretical framework that Vismann's approach provides. Figuratively speaking, instead of taking a whole courthouse as an object of study, an approach involving cultural techniques would prefer to "section" the architectural unit off into a network of its constituent elements and analyze them all separately: The courtrooms, the furniture therein, the corridors, the waiting rooms, the chambers, the archival folders and the paper files inside, the storage rooms, the audio equipment, and so on. Each element is a cultural technique in its own right and imposes its proper material conditions to how the law operates.

Apart from the above-cited hugely influential article "Cultural Techniques and Sovereignty," there is no single book or text where Vismann would give us a coherent account of her media-theoretical approach to law. Some "reconstruction work" is accordingly required. Perhaps the best starting point for this work is Vismann's second monograph, *Medien der Rechtsprechung*. Although the book includes the clearest makings for putting together such a media-theoretical approach, it is also interleaved with more or less independent chapters on, for example, theatre[68] or cinema[69] that sometimes serve merely as illustrative examples of what has been argued previously. Due to the circumstances in which the book was put together, another reader may come up with a different reconstruction.

As a critical legal theorist, Vismann knows all too well that equality before and behind the courtroom table is hardly established when the accused is either seated or standing before the authorities even if the lofty preambles of constitutions often proclaim that all are equal before the law. How should we understand this "before" more precisely? Does one wait indefinitely like the man from the country in Kafka's parable standing in front of some imaginary gate without ever being admitted in?[70] Are we seated on a chair, or do we stand? Do we signal with body language? Are we silent? Can we communicate electronically? What kind of furniture is best suited for the positioning of the protagonists? What are the more specific media and cultural techniques that either facilitate equality or prevent it from taking place despite those lofty preambles? How do these cultural techniques function?

[64]*See* Vismann, *In Judicio Stare: The Cultural Technology of the Law*, *supra* note 63, at 321.

[65]*See* Martin Heidegger, Being and Time 67–71 (Joan Stambaugh trans., revised ed. 2010).

[66]Vismann, *In Judicio Stare: The Cultural Technology of the Law*, *supra* note 63, at 317–18.

[67]*See* Linda Mulcahy, Legal Architecture: Justice, Due Process and the Place of Law (2011); Linda Mulcahy & Emma Rowden, The Democratic Courthouse: A Modern History of Design, Due Process and Dignity (2020).

[68]*See, e.g.*, Heinrich von Kleist, The Broken Jug (1806); Vismann, *supra* note 42, at 38–71; Cornelia Vismann, *"Rejouer les crimes"—Theater vs. Video*, 11 L. & Literature 161 (1999).

[69]For example, Hollywood courtroom dramas like Vismann, *supra* note 42, at 190–214. For information on law, photography, and cinema, *see* Cornelia Vismann, *Flashback and Eyewitness*, 14 Parallax 90 (2008). For information on "tele-tribunals," *see* Cornelia Vismann, *Tele-Tribunals: Anatomy of a Medium*, 10 Grey Room 5 (2003).

[70]*See* Jacques Derrida, *Before the Law*, *in* Acts of Literature 181 (Avital Ronell & Christine Roulston trans., 1992).

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Vismann studies the courtrooms and courthouses, the different types of tables and chairs used in the courtrooms, the use of voice, the microphones, the cameras, the monitors, and so on, as the cultural techniques that allow the law to function as it does. As a legal historian and media theorist, Vismann is a rare and elegant crossover scholar challenging the multidisciplinary line separating the unlikeliest of fields. Vismann the legal historian is mostly interested in procedural law, a discipline with a somewhat stuffy reputation that has a much weaker presence in the common law world than in a "pandecticist" legal culture like Germany. Thus, Vismann's focus is often on how cultural techniques affect the ways in which the legal process develops, that is, on the formal aspects of the trial.

In *Vom Griechenland*, coauthored with Kittler,[71] Vismann traces her legal historical interest in the trial to the law in antiquity where its main media also originate from. Jurisdiction as in "speaking the law" or "pronouncing the verdict" can be traced back to two paradigmatic scenarios or *dispositifs*, one relating to theatre, and the other to the contest of the *agon*.

For Vismann, the administration of justice over the course of the trial follows the basic outlines of theatre. When a crime has been committed—Vismann is specifically interested in the criminal trial—the transgression is subsequently reenacted symbolically in court. The staging of the committed crime suggests that whatever has happened should subsequently be staged and submitted for negotiation.[72] Here Vismann uses Lacan's seminar *The Ethics of Psychoanalysis* to explain the process through which the crime as raw fact becomes something negotiable in court. In that seminar, Lacan refers to Freud's use of the two German words for "*la Chose*" or "the Thing" as "*das Ding*" and as "*die Sache*."[73] This goes back to Freud's distinction between *Sachvorstellungen* and *Wortvorstellungen* or thing-presentations and word-presentations. The former can be found only in the unconscious, whereas the latter are bound to their unconscious counterparts at the preconscious and conscious levels.[74] For Lacan, "*Das Ding*" is the Thing in the real, "beyond the signified," whereas "*die Sache*" is that thing as it is represented in the symbolic order. Vismann argues that only this transference that translates the "*das Ding*" of the real into the symbolic of "*die Sache*" can make the crime negotiable and offer it for jurisdiction.

But there is also an "agonistic" struggle in the administration of justice which is at the core of Vismann's second *dispositif*.[75] As a medium, the amphitheater of the Greeks creates a spectator who makes decisions on what is presented on stage. In this way, humans can at least defer the power of the gods to pronounce judgement. The tragedies of Antiquity stage the postponement of judgement themselves. In Aeschylus' *The Eumenides*,[76] the final decision becomes a matter for mortals as a secular order takes the place of the myth. Vismann calls the tragedy the "zero hour of law [*Recht*] that celebrates the transformation of the goddesses of revenge."[77]

Vismann follows this oscillation between the theatrical and the agonal far into contemporary legal history continuously using illustrations and examples from literature and film. In her analysis of the development of orality in the legal process,[78] Vismann explains how the 19th century fetishistic fascination for immediacy led to the prioritization of the voice over the written document. The voice is, of course, a medium among others, albeit with its own rules of

[71]*See* Friedrich A. Kittler & Cornelia Vismann, Vom Griechenland (2001).

[72]*See* Vismann, *supra* note 42, at 19–37.

[73]Jacques Lacan, The Ethics of Psychoanalysis: The Seminar of Jacques Lacan Book VII 44–46 (Dennis Porter trans., 1992).

[74]Sigmund Freud, *The Unconscious*, *in* The Standard Edition of the Complete Psychological Works of Sigmund Freud: On the History of the Psycho-Analytic Movement, Papers on Metapsychology and Other Works (1914–1916) 159, 201–03 (James Strachey trans., 1964).

[75]*See* Vismann, *supra* note 42, at 72–84.

[76]*See* Vismann, *supra* note 42, at 85–96.

[77]Vismann, *supra* note 42, at 92.

[78]*See* Vismann, *supra* note 42, at 112–29.

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employment. The confessing subject is not only heard in terms of what she says, that is, the audible words, but also in terms of her suspicious throat clearings and even her silences.

Vismann illustrates well the differences between what we might call traditional courts (*Gerichte*) and new forms of courts that she calls tribunals (*Tribüne*) as exemplified in the Nuremberg trials and the ICC proceedings in The Hague.[79] In more traditional jurisdiction with its drama-like unity, the theatrical reigns supreme. But the tribunal manages without a neutral third-party authority allowing for the agonal dimension to prevail. Cameras, videos, and monitors are eagerly accepted to witness the trial and to enhance the publicity of the proceedings. Vismann, for example, examines how IBM's system of simultaneous interpretation affected the events of the Nuremberg trials. IBM's system had to be either sped up or slowed down at times, and this wavering created glitches into the timeline that was supposed to be in sync with the actual events.[80] At the trial against Milošević, Vismann argues that the ICT delegated the technical direction of the process to an outsourced media company and, by doing do, created a show of "sad astonishment" grossly underestimating the procedural power of the tribunal itself.

Vismann aims to demonstrate the power of technical media in both types of courts, in both the traditional court and the tribunal. But she is far from a legal technophile. She cautions that:

> The history of the media of jurisdiction is a history of the informalisation of the process. Whoever allows the media into the legal process deprives the judiciary of its own mediality. Technical media evade the theatrical logic of the judiciary and place the parties involved in the process in a place that is anything but a scene—amid cables and monitors. They dictate the process through their own pace, their own requirements, and their own publicity.[81]

E. A Media-Theoretical Approach to Law?

In conclusion, I would like to emphasize four specific features that are, in my mind, characteristic of Vismann's approach to law. All these features are presented in a somewhat simplified manner, and each would require much more detailed work. In addition, they can by no means be taken as the *only* features typical of Vismann's intellectual versatility, but they do provide one starting point.

First, although Vismann was an extremely well-read author with published texts ranging from Roman law and the tragedies of Antiquity to philosophy, literature, film and television, the main theme that sets her apart from her legal peers is the *media-theoretical* dimension that she developed together with the likes of Kittler and that runs through like a red thread binding most of her individual publications together. This is the specifically "German" component that, I claimed, has not been sufficiently understood in English-speaking legal circles. She may, for example, be writing about a play by von Kleist or a film by Otto Preminger, and her English publishers will be all too eager to silo these texts into some already existing "law and humanities" container. But just as often, Vismann treats a play or a film as a vehicle for developing a media-theoretical argument that is then lost in that container. Moreover, Vismann's German texts have been collected into three volumes that are explicitly labelled as media-theoretical, while her article-length English texts are ghettoed into either media-theoretical outlets or legal journals leaving little possibilities for genuine crossovers.

Second, as theory-laden as Vismann's texts are, her media-theoretical contributions make up, nonetheless, a *practical* critical project rather than a theoretical one. Her theoretical sophistication is part of the multidisciplinary framework with which she approaches material media like files and courtroom tables in their everyday settings and then offers us detailed analyses of how these legal

[79] *See* VISMANN, *supra* note 42, at 146–83.
[80] *See* VISMANN, *supra* note 42, at 222–40.
[81] VISMANN, *supra* note 42, at 374–75.

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media function. One can, of course, focus solely on that theoretical framework as I have done in this Article, and I have done so to highlight some possible shortcomings in both my own understanding of Vismann's work and in the way in which her Anglophone colleagues have read her. But ultimately the aim would then be to proceed from the framework to the analysis of legal media and their cultural techniques in a way that would better explain how they condition the ways in which the law functions.

Third and related, even if Vismann is clearly a critical legal scholar, her criticism is not the result of a normative commitment that could somehow precede the analyses. Rather, the criticism arises from a Foucaultian position that begins with a detailed *description* and only then proceeds to a possibly critical evaluation of what the description may have revealed. This sequencing that takes us from description to prescription rather than the other way around may also appeal to critical socio-legal scholars who wish to review the evidence before pronouncing judgement. But it may be at odds with the type of critical legal scholarship that takes the critique of, for example, neoliberal capitalism as a foundational starting point on which everything else is then built. If what we aim to study has already at the outset been deemed a "bad medium," then we smuggle the assessment into the analysis as if it was a part of the medium's material makeup.

Fourth and finally, media and cultural techniques are not synonymous even if they are closely related. To once again paraphrase Vismann's own definition, media stand in for media theory's grammatical subject while cultural techniques provide the verbs. The cultural techniques of law are, in other words, the observable and analyzable ways in which media function in legal environments. Even if, as Sybille Krämer noted, there is no unanimous agreement about the definition of a medium, we can safely assume that if we break the way in which the law operates into the material elements that are involved, we are still left with an abundance of neglected communicative artifacts that would require further attention. As far as I know, media-theoretical analyses of, for example, databases like Curia and judicial press releases are yet to be written. At the same time, Vismann's media-theoretical framework could be further developed by incorporating the work of other contemporary media theorists like Markus Krajewski and Jussi Parikka into the mix.

As the intrusion of digital media into law accelerates, Vismann cannot be said to be either a technophile or a technophobe. Her media-theoretical project is, perhaps, best described as a plea for a historically informed understanding of how media relate to law. Even if Vismann was worried about the effects of new extrajudicial media like AI in the administration of justice, crude notions of good and bad media bring nothing new to the table. Vismann simply cautioned us that if we allow new types of media to impose themselves on judicial proceedings, these artifacts must be analyzed and understood better. Although such a media-theoretical approach to law was never envisioned in a comprehensive way, Vismann's groundbreaking work provides us with enough signposts to take it further.

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