

# Legal Theory

Vesting

2018

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Legal Theory



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by

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Aaron Shoichet  
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## Foreword to the English Edition

Appearing now in its second edition and for the first time in English translation, *Legal Theory* is conceived as a textbook for courses at universities. It is conceived for law students and for students of those disciplines in which law is taken up as a theme in the respective subject, for example, in philosophy, sociology, economics, politics or literary studies. The book aims at providing an overview of some of the central themes that twentieth century legal theory repeatedly focused on: legal norms, legal system, legal validity, legal authority, legal interpretation and legal history. Yet in contrast to analytical legal theory, legal theory currently assumes these themes cannot be treated in isolation from their historical context, and that contextuality is not merely an 'argument'. On the contrary, the history and evolution of law are closely intertwined with the history and evolution of forms of shared knowledge, of a constant flow of shared practical relations of meaning such as language, customs, traditions and conventions. This also holds for legal theory. Or, to take up Hegel's well-known phrase from the preface to the *Philosophy of Right* from 1821: like the individual, legal theory is necessarily a child of its time, and its textuality is 'its own time comprehended in thoughts'.<sup>1</sup>

For Hegel, supposition of the historical nature of law is closely linked to the concept of the spirit's experience of itself, forming a collective subject aiming at the realisation of reason and freedom. It is well known that Hegel believed this possibility had realised itself in the Prussian state of 1820.<sup>2</sup> The present *Legal Theory* is admittedly neither a new version of the Hegelian philosophy of history, a dialectic sublation of all contradictions and differences, nor a theory of law that would define itself in relation to the state or politics. Rather, *Legal Theory* tests an approach based on cultural studies and media theory – an approach that has established itself today in the most diverse fields as a new possibility of (interdisciplinary) thought. This entails the epistemological supposition that the formation of theory cannot dispense with its own historicity and eventfulness, which implies, in turn, that the conventional theory of knowledge gives way to a historical epistemology, which precludes every possibility of subjugating law to transcendental preconditions or even an a priori norm. Law must instead be grasped from out of its specific cultural and historical regime.<sup>3</sup>

Legal theory can no longer be solely the product of architectures of *thought* and of a solitary subject as author. Rather, legal theory is always already entangled in the world and its practical contexts of meaning, and only on the basis of a 'concatenation of openings, of the systems of metaphors that make possible and qualify our experience of the world' can legal theory be conceived and written.<sup>4</sup> If legal theory recognises the necessity of the historical employment of its thought in this radical (hermeneutic) sense, then it must accept the rise of a global culture of networks as the phenomenon that enables and determines *our* openings and systems of metaphors, and proves itself in its response to this message to be a legitimate child of its time. Put differently once more: today legal theory is challenged in its identity and its self-conception by a network of open, technical objects, by a worldwide cluster of digital media, based on the computer as a universal machine and on networks, generated in a spontaneous and decentralised

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<sup>1</sup> G. W. F. Hegel, *Elements of the Philosophy of Right* (1991) § 4, 21.

<sup>2</sup> Cf. the classic study by F. Rosenzweig, *Hegel und der Staat* [1920] (2010).

<sup>3</sup> Cf. H.-J. Rheinberger, *On Historizing Epistemology: An Essay* (2010) 3.

<sup>4</sup> G. Vattimo, *Beyond Interpretation* (1997) 108.

manner, that are constantly being rewritten. In this way, all previously known media – language, writing, print, photography, radio, film, television etc. – converge with one another in the omnipresence of digital streams of communication.

Similar to the invention of writing and printing in the past, the omnipresence of computer networks and digital streams of communication has triggered a rupture in the evolution of culture, indeed a comprehensive ‘unsettling of cultural meaning’.<sup>5</sup> A new epistemology is emerging, a new kind of collective perception of factual as well as normative relations of meaning, from which the themes of legal theory must be thought through anew. This is the background – formulated very generally – against which the particular sections of *Legal Theory* were composed, developed perhaps most clearly in the final chapter of the book. That chapter contains the outline of a research programme that I have attempted to depict in greater detail in a series of recent publications in *Legal Theory and the Media of Law* (forthcoming in 2018). According to the methodological message of this programme, the new kind of culture of networks can only be managed by opening legal theory to disciplines like cultural theory, media theory, communications theory, anthropology, literary science, film and television theory, image science etc.<sup>6</sup> It thus essentially comes down to changing perspectives, which may help legal theory respond better to the legal challenges of the remodelling of modern society through the rise of the new culture of networks.

The first German edition of *Legal Theory* appeared in 2007. In 2015 the second edition and also Brazilian and Japanese editions were published.<sup>7</sup>

Aaron Shoichet translated the German Edition into English with enthusiasm and accuracy. Isa Weyhknecht-Diehl helped me get the manuscript ready for print. Cara Röhner, Lea Welsch, Ricardo Campos, Andreas Engelmann, Tim Wolff und Sören Zimmermann reconsidered numerous translations and made helpful suggestions for additions and improvements. I am grateful to all of them. I would also like to thank Thémis, Centre d’Etudes de Philosophie du Droit, de Sociologie du droit et de Théorie du droit, for its generous financial support.

Frankfurt/Munich in August, 2017

Thomas Vesting

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<sup>5</sup> Cf. E. Hörl, ‘The Technological Condition’ (2015) 1 et seq.

<sup>6</sup> See also T. Vesting, ‘Medialität des Rechts’ (2012) 149–171. This insight has also gained in importance in other disciplines. Recently, for instance, Yaron Ezrahi has called for such a reorientation for the analysis in political science of liberal democracy and its ‘contemporary culture of fast moving images’. See *Imagined Democracies* (2012) 306.

<sup>7</sup> *Teoria do Direito. Uma Introducao* (Sao Paulo 2015: Saraiva); *Rechtstheorie* (Tokyo 2015: Seibundo-Publishing).

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