Preface and acknowledgements

Human beings have been cultural beings for as long as we have existed, culture being the medium in which those webs are spun that lend life its orientation and meaning. This web of significances includes the registers of both the imaginary as well as the symbolic order, identity-forming as well as behavior-guiding practices. The law has its share in all of this, particularly when it comes to normative practices that guide behavior. Law itself is part of the normative order of society, part of its culture and forms of life. This is precisely what the American anthropologist Clifford Geertz meant when he insisted over 20 years ago – in Off Echoes: Some Comments on Anthropology and Law – that law constitutes an artificial and constructive element within culture. Law, Geertz argues, is a style of thought that establishes a particular relationship between human beings and their behavior toward the world that is not merely a mechanism of social control and conflict management, but contributes to the ordering of reality.

Law doesn’t just mop up, it defines. It doesn’t just correct, it makes possible. What it defines, the meaning frames it sets forth, is an important force in shaping human behavior and giving it sense, lending it significance, point and direction. It is this sort of thing—law not so much as a device or a mechanism to put things back on track when they have run into trouble, but as itself a constructive element ‘within culture,’ a style of thought, which in conjunction with a lot of other things equally ‘within culture’… lays down the track in the first place.

In American cultural anthropology, culture is always spoken of in the plural. Clifford Geertz titled perhaps his best book The Interpretation of Cultures (1973), and the use of the plural here is by no means accidental. The modern understanding of culture is closely linked with the rise and the concept of the (modern) nation, which ever since the first manifestations of national identity in sixteenth-century England has always been conceived as part of a consortium of other nations, a web of international relationships that produces both commonalities and differences. The plurality of cultures is thus more than a purely quantitative phenomenon. Culture also means that the shared understanding of reality which constitutes it creates an interior space that “we” live in, and that is difficult to describe from the outside. In particular, our own liberal “Western” culture (already a crude oversimplification given its many diverse manifestations) cannot be resolved into universal scientific objectivity. That is to say, culture cannot be interpreted on a global scale or outside historical time, but only ever from within a particular culture.

This book considers the media of law within just such a framework of cultural theory. It seeks to show that media such as writing, print, and computer networks have played and continue to play a role in the evolution of liberal legal culture – and that legal orders can be described and distinguished from each other on the basis of
characteristics such as orality and literacy. However, the aim here is not to conceive of either historical or contemporary legal cultures in monomedial terms – e.g., as either an oral culture or a writing culture – as the practice of law always involves medial constellations, the simultaneous use of multiple different media such as spoken language and gesture, writing and speech, print and computer networks. At the same time, it also makes a difference whether or not a culture possesses an alphabetic writing system in which law can be written down. In considering such issues, the book draws on media theory research as advanced since the 1960s by authors such as Marshall McLuhan, Walter J. Ong, and Eric A. Havelock, while also incorporating ideas from various theories of written language as found in the work of Jack Goody, Jacques Derrida, and – within the broader framework of systems theory – Niklas Luhmann. What Geertz calls the constructive element of law within culture is here reformulated as a movement separating the present from the past, a process in which innovations (including legal and juridical innovations) come to supplant traditions. The connections between media and law are thus reconstructed in a practical way and with an eye toward the future; this is particularly the case in the third and fourth parts of the book, which are concerned with the rise of print, mass media, and computer networks, and in which I attempt among other things both to define the present age as a network culture and to test out how this metaphorical framework can be of use in thinking about issues such as constitutionalism, human rights, the state, democracy, education, and the ordering of media. A secondary, almost incidental aim is thus also to reconstruct a “new” history of liberal “Western” law in which the history of media is considered an integral component. Hence historical references are not limited to Rome and Roman Civil Law – as has often been the case in the past – but rather quite deliberately take into consideration the kingdoms of the ancient Near East, Greece, and Israel. The Mosaic tradition in particular – the Ten Commandments, written on stone tablets by God himself – plays a major role in liberal law to this day.

The English-language audience should also be made aware that this work was initially published serially, in four separate, relatively slim volumes whose overlapping themes formed a kind of cross-referential network; with this, I hoped to lend a monumental shape and form to the total project from the beginning. Legal Theory and the Media of Law seeks not to create a new system with media now at the center – as opposed to Kant’s “reason,” or Hegel’s “spirit” – but rather to bring together diverse disciplines such as media theory, theory of culture, anthropology, communication theory, theory of language, etc., calibrate their insights, and reformulate them in order to be able to shine a new light on the phenomenon of liberal law, its evolution, and its various forms. Part of the aim here is not least to offer to legal theory a new perspective that could also be productive in confronting practical issues, such as national and global regulation of the internet.

I would like to thank all those who contributed to the success of this translation. In James C. Wagner (New York), I found a congenial translator who was able to convert my German text into plain English that marvelously preserves the sound of the original books. In Frankfurt, Isa Weyhknecht-Diehl meticulously and conscientiously coordinated all of the work necessary to produce this translation, in addition to compiling the footnotes and managing and formatting the text itself. My assistants Ricardo Campos, Andreas Engelmann, Cara Röhner, Tim Wolff, Lea Welsch, and Sören
Zimmermann scoured all of the footnotes, seeking out English editions to replace texts originally cited in German wherever possible. Finally, I would like to thank the German Publishers and Booksellers Association, along with its members, for their financial support of this translation.