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## Passages, or the medium of authority

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## Passages, or the medium of authority

### **Abstract**

The work of passages evokes movement — the constitutive actions of passing on, across, over, through a space or medium, as much as the performance of their arrest. These are movements of voyage and migration, transit and flight. Movements within and between tradition and translation, appropriation and transformation, rights of passing and rituals of law; the dissemination of border crossing and transgression, surveillance and forgetting, territory and terror, subject and subjection, verdict and sentence, enactment and performance, mimesis and poesis. In short, passages — whether conjuring the movement of bodies, affections, concepts or texts — speak to questions of politics and aesthetics, the mediating relations of life and law.

## Passages, or the medium of authority

Peter D Rush and Andrew T Kenyon

The uncanny or unhomely ... leeches familiarity from the familiar. The uncanny ghosts or undead of history are not refugees from another place but are homeless in a more profound sense. Not simply displaced from their real homes, which exist or once existed elsewhere, they give body rather to a certain displacement or out-of-jointness in the homely place where they appear.

Joan Copjec 2002: 97

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Consider this. In the darkness before dawn, the Metropolitan Police raided houses in London and arrested some nineteen men and women. Among them were the 'lynchpins' and 'key lieutenants' (mostly Turkish Kurds) of a human trafficking ring involved in bringing into England 'tens of thousands' of illegal immigrants (also mostly Turkish Kurds).

## Rush and Kenyon

The arrests, juxtaposing the flow of humans across the porous borders of nation-states with the rights and rites of passage that constitute current immigration and refugee law, were reported by the media and police to be the culmination of a two year investigation. It was led by the Metropolitan Police Service's Specialist Crime Directorate and involved seven European law enforcement agencies, including 30 separate prosecutions across Europe.<sup>1</sup>

In the aftermath of the UK prosecutions, Detective Chief Superintendent Maxine de Brunner of the Covert Policing Unit was reported in *The Guardian* as saying:

Human smuggling is an appalling crime. The criminal networks have no regard for the safety of those being smuggled. The smuggling of humans often involves them being transported for days or long periods of time without food or water in dangerous concealed compartments on the undercarriage of a lorry (Cowan 2006).

The investigation was codenamed Operation Bluesky.<sup>2</sup> The codename has obvious associations with a managerial idiom for unrestrained planning, for forgetting the way things have been done and for imagining new opportunities and enterprise. Yet it is also a meteorological figure of appearance and disappearance. Blue skies appear leached of distinguishing marks and contours; they are immaterial surfaces from which the bodies of clouds have been cleared, leaving only the unpunctured line of the horizon to distinguish figure from ground. In short, the purity of blue skies promises the obliteration of borders in the transnational operation of state police forces, and in the same figure foretells the erasure of the immigrant who is imagined as obscuring the clarity of a national polity (see further Appadurai 2006, Anderson 1983). The meteorological idiom indicates we are not simply dealing with solid bodies, bodies that can be touched and tasted. We are also dealing with the irreality of clouds,<sup>3</sup> the insubstantiality of the image and the persistence of ghosts.

Image, cloud, ghost — these are condensed and displaced through the force and authority of a singular photograph; more precisely, an *x-ray* image provided by the police and disseminated by the media. Inset

## Passages

among the words of reportage, the matte-black background of the image throws into relief the blurred textures of a truck and its inhabitants. Beneath, sentences provide the denotation: ‘An x-ray image of a truck carrying illegal immigrants at a British channel port’ (Cowan 2005), ‘Secret compartments were built inside lorries’ (Foster 2006), ‘People would be crammed into lorries’ (BBC News 2006), ‘Secret cargo ... outlines of illegal immigrants show inside lorry at Channel port in police X-ray image’ (Sullivan 2005, ellipses in original), ‘Lorry x-ray machines would have shown passengers, police say’ (BBC News 2005).



We will stay with this image, this x-ray, these ghosts, these unreal bodies, and offer several remarks by way of introduction to this collection of essays. First, and in a now familiar and thoroughly obvious way, the police function as the primary definers of the story for the various media outlets and bloggers that picked up the item, such as in *The Sun*'s take on the news — ‘Smuggled in Crate Britain’ — which stressed the UK's status as ‘the number one destination for Third World illegal immigrants’ (Sullivan 2005). The police are extensively quoted in the media reports. But also the x-ray image that draws our attention is initially provided by the police to the media in what *The Guardian* characterises as a ‘police handout’ (Cowan 2005). These reports sidestep the possibility of different encodings in as much as they simply recycle the police narratives of the operation codenamed Bluesky (see Hall et al 1978).

## Rush and Kenyon

Irrespective of the story and its definition, the x-ray itself has a strange force of attraction for the viewer. This has multiple dimensions. Its location inset in stories about Operation Bluesky and its aftermath suggests that the x-ray refers to the specific smuggling operation carried out by those arrested, to that police investigation. The x-ray image is framed as having a referent located in the specific time and place reported by the media. Of course, we were not immune to this suggestion. We too took this to be the case. But in email correspondence with the Press Bureau of the Metropolitan Police, we were informed that the image ‘illustrates the capability of the lorry X-Ray machine similar to those based at Dover and Calais and is a/v [available] from press bureau — quote ref: “Pics 1: CO628-05xraylorry”. *Please note this image is NOT in any way related to this particular case and is a generic example*’ (personal communication, italics added).

But of what is it an example? This is a question of its style, its way of telling the story, a story of human suffering. It is an example of a genre, and it is the genre that holds the viewer before the image. Disaffected as we are with the formal rule-bound and bureaucratic syntax of law and order, the x-ray provides us with an image and culture of sensibility in which the hero of the story is heroic precisely because she or he can empathise with the pain and suffering of others. This genre of humanitarianism has a history. It takes up and passes on the ‘pornography of pain’ that has defined humanitarian reform literature since the late 18th century.<sup>4</sup> It promises the viewer immediate access to the spectacle of human suffering. The x-ray, as a medium of communication, achieves this fantasy of authoritative presence through its reconfiguration of the appearance of solidity and the disappearance of flesh. In this instance, what insists in the image is both the proximity of suffering (here it is) and the transportation of the viewer to it (where it was, there we are).<sup>5</sup> This is re-enforced by the matte-black background and blurred textures of the truck and its inhabitants. It is as if the image as an x-ray presents the unadorned horror of trafficking in — or, as one judge puts it,<sup>6</sup> commodification of — humans. The horror of calculating minds that would go to such lengths to dissimulate the passage of

humans across borders; of the conditions in which humans are smuggled; of the suffering of those smuggled. The x-ray is important precisely as an image, then, because it holds the viewer before the force and authority of human suffering. Importantly, though, it does not do so without the dimension of fantasy — here, the fantasy of transparent reference and presence.

All of which is to say that there is something uncanny about the image which we have taken up and passed on as our frontispiece and emblematic figure for this collection.<sup>7</sup> If there is a human idiom to the image, it dwells with the ghostly figures that haunt the x-ray and the viewer. Joan Copjec provides a reminder of the force of the uncanny:

The uncanny or unhomely negates the homely not from outside, not by returning from an elsewhere, but limits the homely from within. It leeches familiarity from the familiar. The uncanny ghosts or undead of history are not refugees from another place but are homeless in a more profound sense. Not simply displaced from their real homes, which exist or once existed elsewhere, they give body rather to a certain displacement or out-of-jointness in the homely place where they appear. They thus hold open or maintain a gap or limit within history, which gap ensures the very contingency of history, that it will proceed unpredictably and cannot be manipulated from some other place apart (Copjec 2002: 97).

The uncanny is passing strange. The uncanny is not a matter of travelling from one preconstituted space to another across borders which include or exclude. It is not so much that ‘no one is untouchable’ as DCS de Brunner remarked of the new policing model for human smuggling (Metropolitan Police Service 2006). Rather the uncanny is ‘unplaceable’ in the geometry of modernity (Dolar 1991: 7). The image, the ghost, the *unheimlich* come before the law and are reconstituted as an excess of law. They are the innermost exteriority of life and law, history and sovereignty.

Clouds, images, ghosts — it is through these irreal figures of non-being that law passes, if it passes at all. We have taken up this x-ray image as a technological and divine image of human suffering as a way into the concerns of this collection of essays. The collection

## Rush and Kenyon

continues a project which we began several years ago (Kenyon and Rush 2004). In that collection, *An Aesthetics of Law and Culture: Texts, Images, Screens*, we argued that the law is taken up and inherited as the scenes, sites, appropriations and screens that constitute the contemporary orders of legal speech. In this collection, we extend the project by foregrounding two dimensions of the question and questioning of law. One dimension concerns the *medium* of law. Hence, the settled territories and terrors of law are displaced by these articles — with different politics, to be sure — onto works of art, literature, cinema, and advertising, but also onto the scriptural features of the case files and judgments of law. In so doing, the articles delimit the technological and divine idioms of law with which we are all-too-familiar. In their various ways, they interrogate our responses to the demands of injustice. In passing on law, have we passed over its human idiom? Another dimension concerns the structural competence and sites from which to speak in the name of law. This is the dimension of *authority*. Against the possibility that the only options are muteness and madness, the articles interrogate the force and authority of passing on a place before and in excess of law.

The collection is divided into three parts. The first carries the title PASSING ON: IMAGES. In this part, works of art — sculpture, site specific installations, paintings — as well as contemporary cinematic production provoke a series of reflections on the status of the image in contemporary law and culture. Rebecca Scott Bray turns to the work of Teresa Margolles to explore a forensic and aesthetic history that culminates in the artist's testimonials to the dead women of Ciudad Juárez on the Mexico/US border. Art becomes a forensic site of mourning, and life lived in the shadow of law becomes posthumous. Janet Chan also addresses site-specific installations, and the controversies that surrounded these public performances in the wake of the 'war on terror'. Her article then expands into an investigation of the cultural and legal constitution of the suspicious package and our interpellation by the images of advertising campaigns by public authorities that demand that we, as citizens, pay attention to the unnoticed objects of everyday life. 'Every pixel of information helps',



## Passages

as the Australian poster of counter-terrorism announces. Here, the artwork and the advertising image are situated at the digital crossroads of a dialectic of safety and danger, belief and suspicion. The prevalence of disbelief is the concern of the final article in this part. Richard Sherwin, in a magisterial overview of current jurisprudential sensibilities, returns the force and authority of the image in contemporary culture to a war between symbolic forms — a battle between iconography and iconophobia. Drawing his examples from, *inter alia*, baroque painting, contemporary cinema and video-games, he diagnoses the ‘iconoclash’ that provides the underside or reverse face of metaphysics (see further Latour and Weibel 2002, 2005). The legitimacy of law, he suggests, depends on what we take up and pass on from this neo-baroque war of images.

PASSING: SUBJECTS is the banner under which the second part proceeds. Whereas the first part drew on the disciplines of art criticism and philosophy, this part takes philosophy and psychoanalysis to be its primary points of departure for thinking about law. The focus of reflection is the genealogy of the legal subject and the void — lacks, absences, and gaps — around which it is articulated and played out. Rick Mohr stages the question in terms of the split between knowing and doing, experience and consciousness that rends Enlightenment philosophy’s inheritance. Turning to Cervantes’ *Don Quixote*, the question of the missing subject is directed towards the extreme difficulty of reconstructing judgment according to law. We imagine a subterranean conversation between this article and that by Michael FitzGerald. It would be a conversation about the problematisation of the human — of its relations to itself, to its world and its life — that we have inherited from the early moderns. FitzGerald’s article excavates the work of the exiled Catalan humanist Juan Luis Vivès, and its relation to the Aristotelian oeuvre. As befits the law, this is serious stuff. But as FitzGerald argues, the complicity between law and seriousness is structured by the formal differences between the rules of the game and a law of play, earnestness and jest. Law is played for real, we might suggest, and the outcome is the tears of laughter that so entranced the early moderns.

## Rush and Kenyon

Juliet Rogers and Maria Aristodemou open a psychoanalytic interrogation. Aristodemou returns to her previous work on the relation between law and literature, and invokes marriage as the figure for that relation. She wonders how we are to understand the marriage if, as Lacan argued, there is no sexual relation. Have law and literature been divorced, or is this question too legal? Perhaps both parties are in the process of seeking an annulment, or is this just a civil break-up? Taking up Fernando Pessoa's *The Book of Disquiet* (2002), Aristodemou argues that the relation between law and literature can be understood as a structure of desire, where desire is always already the desire of the other. Law recognises its own image in the text of literature, as much as literature recognises its own image in the text of law. This doubling process is uncanny and, as such, replete with anxiety. Rogers also turns to the question of affect in the constitution of relations. The specific relation with which she is concerned is that between the subject and sovereign. The liberal democratic subject imagines itself to be free. In fact, this imagined freedom is constitutive of legal subjectivity. But Rogers argues that this imaginary betrays an orientation of the subject towards the sovereign understood as the personal embodiment of the exceptional decision. Enlightenment man is held before a whimsical Other. Setting up a dialogue between the history of psychoanalysis and the history of Enlightenment, Rogers excavates the 'imaginary servitude' which structures the claims of freedom by the political and legal subject of the democratic state.

Law passes by way of violence — both the violence of foundation and the violence of preservation. The third part of this collection takes on the rights and rites of violence in *PASSING OVER: VIOLENCE*. Its concern is with the movement of law and its arrest by the institutional sites of its reproduction. The places of law are disseminated across the literary text, the case file, the claims of law reform and litigation. The articles traverse the construction of terror and the problematic of law (McDonald), the refugee and asylum law (Parker and Loughnan), indigenous rights and rites (McAllan), reform of the criminal law (Tyson) and the melodramatic subject in personal injury litigation

## Passages

(Hardy). Both Danielle Tyson and Samantha Hardy pay attention to the narrative structure of law. For Tyson, the narrative that governs the attribution of criminal liability for murder in provocation cases, as much as in its doctrinal reform, is a narrative of insult. Hardy explores the ways in which personal injury litigation is limited by the genre of melodrama and, specifically, its text of muteness with which it establishes the role, gesture and causality of suffering. Violence, even when it is the physical violence of injury and death, only takes on meaning through the forms of narrative and their instruments. Fiona McAllan tells a story of law's narrative of foundation. Taking up the tensed relationship between sovereignty and common law in the context of indigenous legal relations, she excavates the colonial foundations and the continuing legislation of subordination. James Parker provides a fine-grained, nuanced and first person account of the researcher encountering the archive of case files in asylum law. Paying attention to the ellipses and misprisions of a modern textuality of law, which breaks the relation between the eye and pain, Parker recalls the flickering spirit of the textual transmission of law. One reading of these articles would suggest that the violence of law becomes legible and measurable when pitched against the injustice of a universal law. Claire Loughnan introduces a turn to an ethics of alterity in the context of the Australian detention of asylum seekers. She reminds us how detention centres are inhospitable dwellings. For all the law and politics of refuge, the ethical encounter of asylum is yet to come. Angus McDonald, in the lead article for the final part, introduces a sense of play into our normative understandings of violence. He takes up the child's (or is it parental) game of scissors/paper/stone to explore the genetic combination and recombination that violence, power and secrecy pass through. Reading work by Bram Stoker, John Buchan and Andrew Greig in the context of the law on torture, McDonald demonstrates the truth of his analysis that 'law's blind spot is power's secret violence ... where the challenge of, for example, terror, is received on our part not as a challenge to our values but as a challenge to our power, and responded to accordingly, by means not of a reassertion of our values but by a deployment of violence'.

## Rush and Kenyon

### Notes

- 1 A total of ten defendants were charged in the UK with conspiracy charges under s1 of the *Criminal Law Act 1977* and s25 of the *Immigration Act 1971*. All pleaded guilty and the three 'ringleaders' were sentenced to between 6 and 10 years imprisonment.
- 2 Bluesky was conducted under the auspices Operation MAXIM, a London-wide program involving a partnership between the Metropolitan Police Service, the UK Immigration Service, and the Crown Prosecution Service. Its target was organised immigration crime; see [http://www.met.police.uk/op\\_maxim](http://www.met.police.uk/op_maxim) accessed 14 October 2007.
- 3 For Aristotle, clouds present the problem of an intermediate space. They 'gather at the point where reflected rays disperse in the infinity of space and are lost' (*Meteorology*, Book One, Part 3). For commentary on this in the context of law, see Hachamovitch 1994. She remarks, 'the cloud marks the space of non-being' (47), it is 'an icon of the decomposition, the disintegration, which afflicts an economy of images' (46). She argues that 'the law, one might say, is an hallucination ... every experience is a logical cloud, a phantasm' (45).
- 4 One point of origin would be the emergence of the culture of sensibility in the late 18th and early 19th centuries in England, which 'redefined pain as unacceptable and indeed eradicable and thus opened the door to a new revulsion from pain, which, later regarded as "instinctive" or "natural", has in fact proved to be distinctly modern': Halttunen 1995: 304.
- 5 Luc Boltanski has diagnosed this dialectical structure more broadly: 1999; while Esther Milne has examined recurring fantasies of presence in varied epistolary communication practices and technologies: forthcoming.
- 6 Judge Ainley, in delivering the sentence of Ramazan Zorlu for trafficking, said that Zorlu considered people 'more as commodities rather than individuals': BBC News 2006.
- 7 It was also the image, suitably manipulated and repeated, which was on the conference flyer, website and program.

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## Rush and Kenyon

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