
PART I

INTRODUCTION

Law, in places that derive their institutions from England, depends on a positive foundation. In jurisprudence, this foundation holds that law comes as commands from the sovereign rather than from nature. In this “occidental logic,”¹ the positivism of science also plays a role by positing a world made up of facts on the one hand and values on the other. This positivism makes it hard to see the interconnectedness of law and things. Here, the ways we know things get mixed with the power of government. In “theorizing material life,” the chapters that follow attempt to make connections. We can, if we are careful, trace the influence of laws on the construction of a building (where it sits, how high it goes, how many fire escapes it has, etc.). In the Anglo-American tradition, we tend, however, not to see laws in the building or see law as the sort of thing that contributes to making buildings what they are.

This part of the text also delineates what it means to see materiality and law as constitutive. It problematizes the positivist frame that sees law and culture as different spheres by showing how the material is constituted and contingent in both. The chapters placed in this part also theorize a sphere of politics that operates on the construction of reality. This politics is over the nature of modern law, and it emerges where law itself is contested, where issues like culture or class press on the agendas of law. This part of the book

1. Augustin Lao and Arturo Escobar at the Sociology Colloquium, University of Massachusetts, Amherst, November 3, 1999.

introduces the possibility of seeing the material world as things that are at least in part constituted or made by law. It is the initial foray into a comparative jurisprudential world that challenges the universalism in the claims made for “law’s empire.”

The first chapter is somewhat autobiographical. It chronicles the development, over the last half century, of a desire to see the interconnectedness of the two poles of positivism, to join fact and value. No subject makes this more explicit than abortion, particularly as its reality has developed since 1973 in the United States. Finally, the issue of capital punishment is examined with reference to its life in law. Thus, theorizing begins with semantics and semiotics, looks to the constitutive relationship between law and fetal life, and concludes with the interrelations of the judicial and the criminal body as they come together in the penalty of death.