

Ancient Egyptian Wisdom for the Internet:
Ancient Egyptian Justice and Ancient Roman Law Applied to the Internet

by Anna Mancini

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With its intriguing title, this slim book sets forth an appealing and profound proposition: look to the past for the law of the future. Commencing from the supposition that current Internet law lacks wisdom, the author invites the legal establishment to humbly consider the elegant simplicity of ancient justice in approaching modern legal dilemmas. Perhaps, as Mancini suggests, our inability to effectively regulate cyberspace stems from our inexperience meting out justice in a virtual realm. Then again, what legal insight could more primitive societies have that could be applied to something as technologically advanced as the intercommunication of millions of people around the globe?

As this book's existence implies, the eventual path of Internet law remains to be charted. Among the obstacles preventing a direct application of traditional law to the Internet is the perplexing task of analogizing the abstract computer network to more conventional forms of communication. The judiciary employs various metaphorical references to the Internet in attempting to fit it for legal analysis. Judges have described it as an information highway, a telephone system for computers, a virtual supermarket or railroad, and an electronic environment.¹ The metaphors fail, however, to adequately represent the anti-spatial nature of a communication network that is nowhere in particular

¹ Madeleine Schachter, *Law of Internet Speech* 7 (Carolina Academic Press 2001).

and everywhere at once.²

According to Mancini, a powerful medium of global communication and commerce like the Internet defies modern legal positivism³ precisely because it is so "virtual."⁴ Mancini takes as her point of departure the position that modern law is the power of a sovereign to exercise physical coercion over a geographic area. The fundamental territoriality of modern law is evident, she asserts, in the heritage of law and real property. Furthermore, modern legal principles are derived from what Mancini regards as a traditional preference for material rather than personal rights. Our society's reliance on matter and geography for the rule of law, she says, prevents our legal framework from being efficiently adapted to the demands of a virtual realm.⁵

Although other cyberlaw⁶ advocates share this skepticism, Mancini's proposal that the Internet be governed by ancient, myth-informed legal models is entirely unique.⁷ At the base of her argument is the notion that modern society's discovery of a "virtual" realm simply brings mankind full-circle, back to pre-axial⁸ sensibilities that acknowledge a

² American Civil Liberties Union v. Reno, 217 F.3d 162, 169 (3d Cir. 2000).

³ Legal positivism stands for the premise that law is produced by a territorial sovereign. Allan R. Stein, The Unexceptional Problem of Jurisdiction in Cyberspace, 32 Int'l Law. 1167 (1998).

⁴ The concept that the Internet is indeed "virtual" is not embraced by everyone. Bruce P. Keller, The Game's the Same: Why Gambling in Cyberspace Violates Federal Law, 108 Yale L.J. 1569, 1572 (1999). Some analysts argue that the Internet is merely a network of telephone lines, no more "virtual" than long distance phone calls. Id.

⁵ Mancini's distrust of geographically-defined jurisdiction for the Internet is supported by many scholars. David R. Johnson & David Post, Law and Borders - The Rise of Law in Cyberspace, 48 Stan. L. Rev. 1367, 1402 (1996). When citizens' property is immaterial and portable and where those concerned may easily escape a "jurisdiction they do not find empowering, the relationship between the 'citizen' and the 'state' changes radically." Id. The Internet should not be governed, they say, by the same law as that applicable to geographically-defined territories. Id.

⁶ Generally, cyberlaw is the name given to a proposed uniform, non-territorial code of law that its proponents envision for efficiently governing the global Internet. Id.

⁷ Some cyberlaw advocates suggest that the Internet will develop its own self-rule and network administrators will eventually assume the role of "sovereign" in the virtual world. Id. at 1388. Others foresee real space regulation that will govern how the Internet affects real space life (software, for example, like Internet filters). Lawrence Lessig, The Zones of Cyberspace, 48 Stan. L. Rev. 1403, 1405-07 (1996).

⁸ "Pre-axial" was the name coined by Karl Jaspers to describe less rational civilizations that regarded myth and magic as actual elements of the human experience.

"virtual" dimension. Just as Egyptians and Romans prospered by balancing the duality of their physical and virtual dimensions, modern society must adapt its laws to bring cyberspace into harmony with our physical world. More ethereal than practical, Mancini's engaging work examines the impact of the virtual cyber-realm on physical regulatory regimes.

The author's analysis curls redundantly around ancient Roman and Egyptian legal doctrines, winding its way toward an application to the Internet. Encouraged by a parallel in ancient and modern motives for seeking justice, Mancini asserts that persons in both Roman and modern legal models occupy the same position in relation to the law. As Roman law regarded people as "bridges" between material and immaterial dimensions, the advent of cyberspace now compels modern law to acknowledge the person as the central actor linking real and virtual spaces. While modern law has traditionally focused on the physical economy of matter and land, the Internet requires a Roman-like policy of freeing information and thoughts. Rather than espousing an American, First Amendment doctrine of free speech, Mancini promotes the free flow of Internet expression by advocating an approach that treats information like the "virtual" counterpart to material wealth.

Without completing her analysis of old Roman law, Mancini moves prematurely into an opaque application of the ancient law. Mancini seems to say that, as Roman law allows, modern law should regard the Internet as a dimension in which people can act physically to influence an intangible space. Responding to critics who contend that the Internet is not "virtual," she invokes the Roman conception of human interaction with the nonphysical to "prove" that the materiality of the computer network does not invalidate

its "virtual" nature. Mancini appears to conclude that her exploration of Roman law reinforces the argument of scholars like Lawrence Lessig who insist that the Internet, while composed of telephone lines and computers, is at least partially virtual.⁹ While her approach is unique, the conclusion she arrives at seems so common as to be undeserving of the elaborate study she undertakes.

All the promise and momentum of the Roman analysis comes to an unsatisfying pause as Mancini makes a rough transition to an investigation of Egyptian law. Mancini places Maat, a goddess of truth and justice, at the heart of her study of ancient Egyptian justice. Egyptian pharaohs symbolically offered Maat to the sun to preserve the harmonious energy transfer between man and the sun. Mancini theorizes that ancient Egyptian justice on the cosmic level paralleled the social transfer of energy. Rather than administer written codes or rational rules, Egyptians relied on a myth-informed cultural sensitivity to govern the immaterial exchange of solar and social energy. Egyptians were aware, says Mancini, of cosmic and social balances of energy and could judge the "fairness" of an immaterial transaction as instinctively as modern people know the fairness of economic and material transactions.

Mancini compares the ancient Egyptian exchange and flow of solar energy to the present flow of information online. While modern law is based on the sharing of limited, physical resources, Egyptian justice regulated the flow of infinite social energy. As the author notes, the free flow of solar energy in Egypt was connected to the civilization's prosperity. As the *Book of the Dead* illustrates, Egyptians also believed that their

⁹ Lessig believes that the Internet, as an interface of physical and virtual dimensions, can be regulated by mechanisms that transcend both dimensions. *Id.* Such devices, like hardware and software, could "enforce" legal regulations aimed at defining how cyberspace is permitted to affect real space. *Id.* It appears that Mancini agrees with Lessig, but her problematic application of the ancient to the modern obscures her position on this point.

individual role in the flow of such energy would be evaluated at the entrance to the afterlife. There, Maat, with her funerary scales, would “weigh” a person’s heart in what Mancini interprets as justice concerned with the heart’s capacity to circulate life-giving energy. Mancini asserts that computers and telephone lines circulate information just as the Egyptian heart circulated cosmic energy. And just as the flow of solar energy blessed the ancient Egyptians, the free flow of information today creates an affluence of psychic energy in modern society.¹⁰

Armed with her observations of ancient justice in relation to the immaterial, Mancini conducts a brief and superficial analysis of the Communications Decency Act (CDA). The CDA, passed by Congress in 1996, was deemed unconstitutional in its attempt to criminalize adult-oriented, online material accessible by children.¹¹ Mancini only partially acknowledges the First Amendment’s role in the Supreme Court’s decision. She claims that the ruling reveals an emerging jurisprudential sense that territorially-defined entities cannot constrict the Internet’s information flow. The Court, she says, recognized the limits of America’s ability to regulate Internet content. To Mancini the decision signaled the surrender of traditional Western law to the virtual properties of the Internet.

Mancini’s approach is unique, but she is not alone in her desire to apply socially diverse conceptions of justice to an allegedly inadequate legal regime. For example, recent legal scholarship analyzes the integration of Navajo legal traditions into American common law.¹² Religiously-affiliated law schools have called on the legal profession to

¹⁰ Mancini draws on the work of psychologist Karl Gustav Jung to profess the reality of a psychic energy component to social exchange and interaction.

¹¹ *ACLU v. Reno*, 521 U.S. 844 (1997).

incorporate into its ethical code a “holistic,” Judeo-Christian concept of “therapeutic jurisprudence.”¹³ In fact, the evolution of the Western legal concept of equity is a history of the addition of religious justice to the secular common law.¹⁴ Mancini may have simply uncovered another way to introduce increased morality into the positivistic legal establishment.

Perhaps her book seems under-inflated because its criticism of modern law ignores the concept of equity. After all, her argument in favor of applying ancient law to the Internet boils down to advocacy of equity in regulating electronic speech. While Mancini manages to extract relevant principles of ancient jurisprudence from Roman and Egyptian dogma, her application of the archaic laws to the Internet fails to meaningfully enlighten the debate over cyberlaw. The book's premise, however, is convincing enough that even though the author fails to demonstrate how ancient legal traditions might guide cyberlaw, the reader believes that antiquity may nonetheless hold some universal legal wisdom.

¹² J. R. Mueller, Restoring Harmony through Nalyeeh: Can the Navajo Common Law of Torts be Applied in State and Federal Forums?, 3 *Tribal L.J.* 1 (2002-2003). In Cheromiah v. United States, a federal court held that tribal customary law would control in a tort action against the federal government. Id.

¹³ Kenneth A. Sprang, Holistic Jurisprudence: Law Shaped by People of Faith, 74 *St. John's L. Rev.* 753, 754-55 (2000).

¹⁴ See Jack Moser, The Secularization of Equity: Ancient Religious Origins, Feudal Christian Influences, and Medieval Authoritarian Impacts on the Evolution of Legal Equitable Remedies, 26 *Cap. U.L. Rev.* 483, 484-85 (1997).