
Artefaction

Making Things

The reader will recall that ‘Artefaction’ is my term for thing-making, and specifically for making things which have their own capacity to make things happen. By this definition, the products of Artefaction are not just made things but making things. Included in this class are tangible things with a capacity for rhetorical performance – for example a statue or a flag – as well as intangible things, of which the preeminent example is the word. Where words combine in sentences and in speech, they can attain monumental status and influence. In Chapter 2, we considered the Gettysburg Address as an example of this phenomenon. Inspired by the work of James Boyd White, scholar Richard Dawson has devoted a whole book to the close rhetorical reading of influential statements in law, philosophy, and the arts.¹ Contemplating Edmund Burke’s *Reflections on the Revolution in France*, in which Burke argued that a word like ‘freedom’ is only as good as the use to which it is put, Dawson observes that for Burke, words are ‘evolving cultural artefacts that shape us and are shaped by us as we use them’.² This serves as an excellent definition of the Making Sense I have in mind when I use the term ‘Artefaction’, as does James Boyd White’s idea (as summarized by Dawson) that language is ‘an evolving cultural artefact for making and remaking ourselves and our world – the real world’.³

Human Nature Lying in a Bed

The words ‘Artefaction’, ‘order’, ‘harmony’, ‘art’, ‘articulation’, and ‘arrangement’ all derive from the conjectured Proto-Indo-European root word ‘ar*’, meaning ‘to join together’. An ‘artefact’ is etymologically a thing ‘put together made’ (‘arte’ – put together; ‘fact’ – made). Most anciently, the word ‘order’ might refer to the way in which threads are put together on a loom prior to the act of weaving. That metaphor opens a way to thinking of Artefaction as a process that weaves human nature into the nature of things and vice versa.

¹ Richard Dawson, *Justice as Attunement: Transforming Constitutions in Law, Literature, Economics and the Rest of Life* (Abingdon: Routledge, 2013).

² *Ibid.*, 48. ³ *Ibid.*, 100.

At the start of Book II of his *Physics*, Aristotle settled upon the following distinction between things produced by nature and things put together by human craft:

Animals and their organs, plants, and the elementary substances – earth, fire, air, water – these and their likes we say exist by nature. For all these seem distinguishable from those that are not constituted by nature; and the common feature that characterizes them all seems to be that they have within themselves a principle of movement (or change) and rest – in some cases local only, in others quantitative, as in growth and shrinkage, and in others again qualitative, in the way of modification. But a bedstead or a garment or the like, in the capacity which is signified by its name and in so far as it is craft-work, has within itself no such inherent trend towards change. (192 b 8–19)

And so it is with all manufactured or ‘made’ things: none of them has within itself the principle of its own making. Generally this principle resides in some external agent, as in the case of the house and its builder, and so with all hand-made things. (192b 8–29)⁴

Aristotle acknowledges that a bed has some intrinsic capacity for change – for example, it might rot away over time – but he attributes this change to the material (the wood) from which the bed is made, so that the quality of change cannot be said to reside in the bed *as bed*. Neither do beds have an inherent capacity to regenerate and reproduce themselves. Bury a bed in soil and a tree might sprout up, but a new bed never will (193a 13–14). If a tree sprouts up, this change is an incident of the material qualities of the wood rather than of the quality of the bed as a human-made artefact. A bed might be broken up and turned into a table, but such a change is attributable to the artisan who works with the wood and determines its form rather than to anything inherent in the bed as bed.

It is by attending to the influence of human external agency on made things that we can begin to appreciate the performative and persuasive capacity of artefacts, by which I mean their inherent capacity to make things happen. Let us stay with the example of the bed. We make a bed to perform a standard set of purposes, but human agency can ‘repurpose’ the thing. The bed can change in use from a place of sleeping to a place of sitting and even in these days of laptops and mobile phones to a place of working and socializing. The bed is the site, as it has been since ancient times, of recreation, of lovemaking, of procreation, of birth, of convalescence, of death. When we consider the ways in which human agencies act upon a bed, the artefact starts to acquire a ‘life’, having all of Aristotle’s hallmarks of a thing of nature – change, movement, growth, and rest. The bed as object is made once and for all when the form of the bed is complete, but the bed as artefact is made and remade through processes of recreation so long as humans are drawn to engage with the

⁴ Aristotle, *Physics*, Vol. 1, Books 1–4, P. H. Wicksteed and F. M. Cornford (trans.), Loeb Classical Library (Cambridge, MA: Harvard University Press, 1957) 107, 109.

artefact in making something new of it. Is it truly the case, then, as Aristotle contends, that there is nothing in the nature of a bed that generates new growth from within? While there is nothing closely comparable to the growth generated from within a grain when it becomes a plant or a grub when it becomes a fly, I would suggest that a bed as a made thing (as opposed to the bed as wood) does have a living nature. Its life resides in the human nature that is imparted to the bed by its maker. Elaine Scarry expressed something like this when she wrote that:

The now freestanding made object is a projection of the live body that itself reciprocates the live body . . . it will be found to contain within its interior a material record of the nature of human sentience out of which it in turn derives its power to act on sentience and recreate it.⁵

The nature inherent in a bed *as wood* is merely the nature of the wood, whereas the nature inherent in a bed *as bed* is human nature, for it is human nature to craft things by human art. As Polixenes says in Shakespeare's *The Winter's Tale*: 'over that art, / Which . . . adds to nature, is an art / That nature makes', so that 'The art itself is nature' (4.4.90–92, 97). These lines resist Aristotle's distinction between art and nature, for Polixenes is indicating here that the human art that operates over nature is itself a feature of nature because it is a feature of human nature. Humans' natural inclination to make tools and to use tools to make tools and other things (we can include language in the list of such tools) is not unknown in other animals, but its pre-eminence in humans is almost the definition of what makes humans unique and of that which distinguishes human nature from the rest of the natural world. As a statement attributed to Benjamin Franklin puts it, 'Man is a tool-making animal'.⁶ Henri Bergson developed this thought in his 1911 work *Creative Evolution*, where he writes:

[I]f, to define our species, we kept strictly to what the historic and the prehistoric periods show us to be the constant characteristic of man and of intelligence, we should say not *Homo sapiens*, but *Homo faber*. In short, *intelligence, considered in what seems to be its original feature, is the faculty of manufacturing artificial objects, especially tools to make tools, and of indefinitely varying the manufacture.*⁷

In an apparent gloss on Bergson, a cognitive psychologist has suggested more recently that '[w]e came to have a sapient mind because we are *Homo faber*'.⁸ In summary, Aristotle's distinction between made things and natural things

⁵ Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (Oxford: Oxford University Press, 1985) 280.

⁶ 7 April 1778. James Boswell, *Life of Samuel Johnson* (London: Henry Baldwin for Charles Dilly, 1791).

⁷ Henri Bergson, *Creative Evolution*, Arthur Mitchell (trans.) (New York: Henry Holt and Company, 1911) 139, emphasis in original.

⁸ Lambros Malafouris, *How Things Shape the Mind: A Theory of Material Engagement* (Cambridge, MA: MIT Press, 2013) 153.

cannot be absolute so long as making is an aspect of human nature and that nature is an aspect of artefacts.

The example of the bed demonstrates Artefaction not only in the sense that it is a thing made by human art, but also in the sense that, once made (and in the course of being made), it makes humans do and feel certain things. We might say that human art works human nature into the artefact and that human nature then works its way out of the artefact over time through its ongoing effects upon humans who engage with the thing. Human nature is folded into the making of a bed as a thing and it is this nature, performing through the form of the bed, that causes the artefact, as bed, to carry meaning outwards to human agents. In short, the difference between ‘wood’ and ‘bed’ is human nature, and specifically that aspect of human nature that comprises the capacity ‘to make’ and to recognize a thing as a *made* thing. When a human agent engages in remaking a bed through their own creative agency (by making it into something new or by making it perform in new ways), they are participating in the performative work of the original maker of the bed and participating in the performative work of the bed itself as artefact. On a similar note, Fleur Johns has observed that ‘[t]he prospect of remaking an object often seems loaded with promise that the relations and routines with which it is identified might change also’,⁹ citing Bruno Latour’s hope for ‘an exchange of properties between human and non-human actants’.¹⁰ It matters not that the original maker of the bed has died, for the bed, once made, communicates its internalized human nature to all-comers. It whispers, ‘I am pieces of wood’; but it shouts, ‘I am a bed! A human made me to be a human thing for human doings’. An old riddle asks, ‘what is made only once and made every day?’ The answer is ‘a bed’. We can now add that the bed *makes* every day, because it makes humans feel and behave in a variety of ways, and this is in large part because it has been invested with the Making Sense that it was made for humans and is open to human re-Creational and co-Productive participation.

Going to the Ball

In his poem ‘Anecdote of the Jar’,¹¹ Wallace Stevens shows his appreciation for the potent way in which a commonplace human-made object, when placed in relation to human perception, can generate a strongly persuasive, even compelling, rhetorical performance.¹² The poem explains how the jar ‘took

⁹ Fleur Johns, ‘Things to Make and Do’, in Jessie Hohmann and Daniel Joyce (eds), *International Law’s Objects* (Oxford: Oxford University Press, 2018) 47–56, 53.

¹⁰ Bruno Latour, ‘On Interobjectivity’ (1996) 3(4) *Mind, Culture, and Activity* 228–245, 240.

¹¹ John N. Serio and Chris Beyers, *The Collected Poems of Wallace Stevens* (the corrected edition) (New York: Vintage Books, 2015). Originally published 1954.

¹² This section draws on my chapter ‘Reading Materials: The Stuff that Legal Dreams Are Made On’, in Julen Etxabe and Gary Watt (eds), *Living in a Law Transformed: Encounters with the Works of James Boyd White* (Ann Arbor: Maize/Michigan University Press, 2014) chapter 9.

dominion everywhere' so that the wilderness was 'no longer wild'. As with wood made into a bed, a jar placed on a hill imbues wild nature with human nature. It strikes human observers as being a thing made by human hands and as such compels the question 'what do you make of me?' In the moment of connection between the human observer and the made object, the mere object is transformed into a thing. The genius of Stevens' insight is that he perceives that a *made thing* imbued with human nature and installed by human hands acquires its own nature as a *making thing* – 'It made the slovenly wilderness / Surround that hill' (emphasis added).

Through the cycle of Artefaction – the made thing becoming maker – physical matter can persuade us and compel us. We are obedient, often blithely obedient, to the power of made stuff. In Stevens' word it takes 'dominion'. It does this because the maker who first engaged with the stuff was engaged in 'art' in its etymological sense of 'joining to', and this entails a sort of ordering (recall that 'art' and 'order' are both *ar** words) that compels the human observer to 'join' with the human nature of the made thing. Naturally occurring stuff that has not been made by human craft frequently exerts a strong effect upon us (think how our mood can change when we encounter the natural beauty of flowers, birds, butterflies, streams, shells, and stones), but the persuasive aspect of an encounter is more intensely focused where the material thing is also a human-made thing, or is a found object that strikes us as being a thing of special human interest.¹³ Many of us, upon finding a stone or some other small obstacle in our path, will kick it away rather than step over it. The stone in such a case strikes us as being an object to engage with. If the obstacle is a football – a human-made artefact imbued with a particular purpose (to be kicked) – the urge to kick is even stronger. Suppose that Jack kicks a ball. Leaving aside for one moment the distinction between a thing and an object, we tend to say that the ball in our example is an object that has been kicked by Jack, the subject. We naturally think of Jack as the subject of the story, and so he is. However, we also assume that Jack, because he is the human subject of the scene, is the active and powerful party and that the ball as object is inanimate and powerless. This is only partly true. We can regard Jack as the subject because he throws the object under his dominion ('subject' being derived from *sub-* 'under' and *jactus* 'thrown'), but it also makes sense, and arguably more sense, to say that Jack is subject to the object, because he is thrown under the power of the ball.

When Jack kicks a ball, it is because the ball struck him first. Jack acts against the ball because the ball has already been thrown against his senses and his attention. To put it another way, Jack's subconscious mind recognized the human nature and purpose in the human-made artefact and threw the object against his

¹³ On 'objets trouvés' see Joseph Vining, 'Meaning in the Natural World', in Julen Etxabe and Gary Watt (eds), *Living in a Law Transformed: Encounters with the Works of James Boyd White* (Ann Arbor: Maize/Michigan University Press, 2014) chapter 8.

conscious mind. The ball is under Jack's conscious power but at the same time Jack is subconsciously under the power of the ball and under the compelling 'ballness' that its human maker imparted to the ball's constituent materials. Aristotle said, in a similar vein, that when an animal moves towards food, the active party is the food, for 'many movements within the body are determined by changes in the environment, and some of these movements prompt conceptions or impulses which in their turn stir the whole animal'.¹⁴ If foodstuffs stir us into action, think how much more attractive and persuasive basic foodstuffs become when they are made up into a plate of fine cuisine. Cuisine compels us not only by the assurance of sustenance, but by the sense that another human is holding out the promise of pleasure through the artefact of the dish.

Owen Barfield had this to say about the life of a thing in terms of the human nature invested in it:

[W]hat is it that makes the form of a play or a poem into a real solid *thing*, something to be reckoned with, something that is able, so to say, to send a little shiver down the back? What is it that gives life to a work of art? It is, that the unity which is at the base of its form is itself a real being. At the lowest it must be a part of the author's own finite being, informed with his own life, so that if you prick it it will bleed. At the highest it will be something altogether beyond any one personality. But it will be a being, not an idea.¹⁵

The 'being' of a play does not thrive until it is looked upon. A play-script that remains hidden in a forgotten volume is powerless to perform. Despite this, it remains a living thing because it retains the capacity to perform, like a seed that is viable even as it lies dormant for centuries or frozen for millennia in permafrost. A jar on a hill in Tennessee or treasure buried underground is meaningless matter until a human encounter makes it matter again. Barfield rightly cautions that the life of a made thing should be appreciated as something larger than the residual life of its maker. What makes the thing a thing as opposed to a mere object or commodity is that the maker and the material have a relationship. The artisan works their own life into the material, but at the same time they work out the life of the material. The resulting artefact is genuinely a new thing. It is the progeny of the life of the artisan working in harmony with the life of the material. We might call this the 'Pinocchio effect', after the tale of the wooden puppet that came to life because the artisan who made it poured his art and heart into wood that already had a magical life and voice of its own. Through the relationship intrinsic to their craft, the artisan brings life to their material and brings out the life inherent in their material. The artefact then has a life capable of bringing forth life, just as Pinocchio, in one of his first frolics, ushered forth a living bird from an egg he intended to fry.

¹⁴ Aristotle, *Physics*, Vol. 2, Books 5–8, P. H. Wicksteed and F. M. Cornford (trans.), Loeb Classical Library (Cambridge, MA: Harvard University Press, 1957) 291.

¹⁵ Owen Barfield, *Romanticism Comes of Age: Essays on the Creative Imagination* (1931) (Oxford: Barfield Press, 2012) 125.

At the risk of indulging an autobiographical perspective, the story of Pinocchio supplies a surprising but lively analogy to the Artefaction of an academic opinion by a legal scholar. The analogy begins with the observation that the academic jurist works with the wood of the law. The law's wood is mostly deadwood that serves to give skeletal structure to the outer, living layer of the law. The legal scholar is, or should be, always concerned with that living layer in the hope of bringing out the life of the law with a view to influencing future growth. With this aim in mind, an academic jurist might carve out a law with human shape, but they have no power to give it life or to bring out the life that is inherent within their legal material. It falls to judges to animate the scholar's idea with the life force of the law, which has its source in the almost magical force of the judge's authority. The analogy is enhanced by the old rule of English law which states that a legal textbook could be cited to a court only after the academic author had died, for that rule in effect recognized that the academic opinion was material that could make things happen only in co-Productive partnership with the judicial power to make law. The standard justification for the old rule was that a court applying the words of a dead academic does not risk being embarrassed by that writer changing their mind.¹⁶ A similar old rule in American courts, according to Judge Cardozo's report of John Henry Wigmore's complaint, was that 'courts were unwilling . . . to refer to the masters of juristic thought unless the products of their labor were published in a volume. Anything *bound* might be cited, though wrought through no process more intellectual than the use of paste pot and scissors.'¹⁷ In other words, according to the old rule the scholar must have incontrovertibly completed the carving of their puppet idea before the judge could animate it with the living force of legal authority. The magic of legal authority simply didn't work with an academic work in progress. The old rule no longer applies with its former strictness. Exceptions were discussed in the American context in the second impeachment proceedings brought against Donald Trump, where one of the US House of Representatives managers bringing the prosecution cited the academic opinion of one professor, despite noting he 'changed his long-held views on the subject less than a month ago'.¹⁸ Increasing academic participation in the co-Production of the artefact of law can be appreciated as a rarefied instance of the same social movement towards devolved social authority that we see at work in the user-generated artefacts of Web 2.0 – Wikipedia, the comments sections on online news articles, etc. – and in the 'your opinion matters to us' culture of consumer feedback and review.

¹⁶ Alexandra Braun, 'Burying the Living? The Citation of Legal Writings in English Courts' (2010) 58(1) *The American Journal of Comparative Law* 27–52, 44.

¹⁷ Benjamin Cardozo, *The Growth of the Law* (New Haven, CT: Yale University Press, 1924) 13–14.

¹⁸ *Trial Memorandum of the United States House of Representatives in the Impeachment Trial of President Donald J. Trump* (2-2-2021) 49.

In Praise of Underwater Basket Weaving

Two world wars and the rise of the automotive industry have brought about an irresistible and seemingly irreversible movement towards mass production. Morris & Co – a paragon of the Arts and Crafts movement – was killed off early in World War II, its handsome doors closing for ever in 1940. Manual crafts were thereafter diverted from the serious world of useful and productive industry into the world of the luxury boutique and the sleepy backwaters of recreational pastime. Craft even became a joke, as exemplified in the phrase ‘underwater basket weaving’, which since the mid-twentieth century has been a pejorative catch-all term for any utterly pointless subject studied at university. At a time when engineering was aspiring to supersonic and extraterrestrial travel, the indigenous craft of basket weaving was an easy target. The fact that it really does involve soaking reeds under water suggested, perhaps, that it was the antithesis of contemporary endeavours to rise above the constraints of the earth’s gravity and atmosphere. The ease with which the ‘basket weaving’ insult took hold on the popular imagination, and its endurance ever since, is revealing of the inexorable rise of machine technology and the corresponding decline, both in practice and respect, of older forms of manual *technè*. Today’s university-attending masses are adept in computer technology, but one suspects that few have any notion of how to execute the techniques of a traditional handicraft. The school registers of the Anglophone world might still contain such familial names as Cooper, Glover, Smith, Tanner, Wright, and Webster, but precious few, if any, will still be in the business of making barrels, gloves, nails, leather, wheels, and textiles. The same is doubtless true across the technologically developed world.

Technological development is progress that brings a great many gains, but it is accompanied by a costly regression in human connection to the material world and the dignity of working by making. That so many surnames were once indicative of medieval manual crafts indicates how closely making stuff was once tied to making social identity. We welcome the freedom that has allowed us to break the bonds which used to tie whole families to the fates of guilds and particular trades from generation to generation, but we have found nothing to replace the positive aspects of social place and productivity that such bonds supplied. Nowadays, we rarely encounter the artisan on the modern high street. Instead, outlets are devoted to the retail of mass-produced goods. It is encouraging to see artisans presenting their wares online through sales platforms like Etsy, but such online communities are a poor substitute for the full sensory experience of seeing a maker in their physical workshop. Today we see the shop but not the work. Tourist hot-spots like Florence have been able to sustain the old tradition of presenting specialist artisans at work in boutique studios, where all manner of things – paper, etchings, bindings, stucco, jewellery, handbags, shoes, perfumes – are expertly made by hand, but elsewhere the tradition of artisans and their apprentices is largely dead.

If the Industrial Revolution commenced the decline of artisan life in the so-called developed world, World War I confirmed it. For a poignant study of a craftsman who commenced his working life around the end World War I and whose profession eventually succumbed to the general decline in handicraft, the reader might consult the 1978 documentary *Albert's Last Skep*.¹⁹ It records the complex sequential processes by which seventy-three-year-old Albert Gaff, who had by then worked for sixty years in the Bradford textile industry, hand manufactures a large skep (a type of basket) from woven wands of white and buff willow wood. The purpose of the finished article was to carry bobbins of thread and other accoutrements of the textile trade; a function that is now performed by cardboard boxes and plastic bags. The documentary is riveting, right up to the last step in the structural build – which is the actual riveting of metal bolts to hold two wooden planks or ‘shoes’ to the base of the skep. The first stage in the process is the selection of slender willow rods that are left to soak overnight (making this is a species of ‘underwater basket weaving’). There follows a hypnotic manual dance of strenuous but graceful pulling, pushing, twisting, cutting, stabbing, threading, wrapping, tapping, turning, measuring, spinning, and boring. There is even, at one stage, a mouthing to moisten cut ends. Tools are used, including a bodkin, a knife, an axe, and a device called the ‘director’ which sets the wands right. Mostly, though, Albert uses his bare hands. He even uses the chopping edge of his palm to tamp down gaps in the weave, as if wielding the blunt back of an axe head. His manual craft is one that few other hands could manage, and Albert didn’t learn it from any manual. As filmmaker and narrator Eric Hall says at one point, ‘I doubt if Albert has ever seen any printed instructions on skep making, yet it is quite obvious, when finished, this skep will be perfect in size, shape, and workmanship’ (17’48). The skep is indeed a thing almost as beautiful as it is useful, and its beauty resides as much in the making process and in the relationship between artisan and artefact as in the thing as final product. The product is comfortably large enough and strong enough to carry and enclose its maker within the matrix of its woven walls, and robust enough to have a working life almost as long as Albert’s own. No cardboard box or plastic bag has such beauty or useful longevity. If he were still working today, his craft might almost be considered a form of environmental activism akin to the ‘craftivism’ by which feminist protestors have employed knitting and crochet to perform resistance to perceived patriarchal power.²⁰

Considering the undoubted gains that accompany machine technology and mass production, it can seem Luddite to allude to accompanying losses. The

¹⁹ *Albert's Last Skep* (dir. Eric Hall, 1978). At the time of going to print the film is available free online through the Yorkshire Film Archive and the British Film Institute.

²⁰ See, for example, Helen Warner and Sanna Inthorn, ‘Activism to Make and Do: The (Quiet) Politics of Textile Community Groups’ (2022) 25(1) *International Journal of Cultural Studies* 86–101.

main loss, which goes hand in hand with technological progress, is the loss of immediacy between hand and thing. Where once we manipulated stuff with our hands or by means of handheld tools, our engagement with the world is now increasingly mediated by tools that give us no sense of the satisfying strain of working with stuff. In the twenty-first century, our engagement with technology has even evolved in some respects to become utterly hands-free. With such innovations as voice activation, retinal-recognition, and blink-controlled or brainwave-controlled environments, we have taken our first steps into a post-manual world. This is entirely to be welcomed on behalf of users who lack standard physical capacities, but for the majority there is surely a danger that something valuable in the working connection between hand and mind will be lost. If and when that loss becomes total, we may wonder how sapient *Homo sapiens* can claim to be if, having the skill to put a man on the Moon or a woman on Mars, the species were to let slip from its hands the humble crafts that put a hand-made basket on a hand-made table.

Already the communal memory of many manual crafts is for the most part lost in so-called hi-tech societies and would have to be learned afresh – not, one would imagine, from a paper manual or through long apprenticeship to an expert, but from online instructional videos on YouTube. Video tutorials are actually a hopeful development in all this, for they show that the appetite for handiwork has not left us as a species but has simply been sublimated to electronic substitutes. In our technological world, manual skills of making have not become extinct, but have evolved into new forms, in something like the way that certain dinosaurs survived the demise of the great lizards to live on as birds. Our manual skills and our mental schemes for processing manual making have simply undergone ‘a sea-change / Into something rich and strange’ (*The Tempest* 1.2.401–402). Where we used to work on nets, we now network; where we used to process textiles, we now use word processors and send texts; where once we were ‘websters’ (those who weave), today we have woven a World Wide Web to live and work within. The cultural anthropologist Tim Ingold notes, citing the work of Henry Hodges, that skills of weaving cloth might have originated in weaving baskets, which in turn might have been derived from net-making.²¹ If that is the case, it would be naive to suppose that after millennia of handiwork our brains have ceased to make connections and to handle matters the old-fashioned way. Even our new ways of social networking on the internet might owe more than we think to older forms of net-making. After all, we must still make fine assessments of appropriate spacing, tolerances in the threads by which we are connected, and

²¹ Tim Ingold, ‘Making Culture and Weaving the World’, in Paul Graves-Brown (ed.), *Matter, Materiality and Modern Culture* (Abingdon: Routledge, 2000) 50–71, 63; citing Henry W. M. Hodges, *Artefacts: An Introduction to Early Materials and Technology* (London: John Baker, 1964) 147.

tightness in the knots that bind us together. Online networking still needs to be handled with careful skill.

Weaving Cultural Fabric

It is frequently objected that we are nowadays too ready to judge by feelings rather than logic, but it would be foolish and futile to exclude sensory considerations from our assessment of whether something *feels* right or wrong. Our innate sense of feel is located not only in the limbic zone of our brain (the so-called lizard brain) but in the region where our greatest artefact – the linguistic word – resides. If we were to try to give a rational account of why we ought to exclude feelings from our judgment of the world, we would inevitably find that every good sentence and fine phrase in our account would be formed through sensitivity to shape, form, weight, and balance. The collection of the British Museum contains the teardrop-shaped blade of a 5,000-year-old jade hand axe, roughly equivalent in size to a modern tablet mobile phone. It was the cutting-edge technology of its day. Commenting on this exhibit, Neil MacGregor, a former director of the British Museum, notes that modern brain-scan technology has revealed that when humans hone a stone into a blade, the part of the brain that is stimulated is the part concerned with language and speech.²² Does this mean that honing a stone is like honing a sentence? Yes, but equally that the process of forming a sentence resembles the process of forming a tangible tool. If a sentence has a sound shape and is fit for purpose, we should credit its pleasing form to the same fundamental qualities that make for a pleasing material object. There may be something in the sense that a statement is finely formed, well-balanced, and weighty that still owes a great deal to our primal appreciation of handheld stuff.²³ In short, our ability to make a speech may be indebted to our ability to make a physical artefact.

Owen Barfield notes that ‘all our words for mental processes – “grasp,” “conceive,” “understand,” etc. can be traced back historically to an earlier stage when they also signified a material process’.²⁴ We can therefore expect that the ancient manual work of networking and weaving is even today inextricably linked to the way our brains think about the world. The predominance of textile imagery in our language suggests as much. Take, for example, the following words of American Judge Benjamin Cardozo in his 1924 book *The Growth of the Law*:

²² Neil MacGregor, *A History of the World in 100 Objects* (London: Penguin, Allen Lane, 2010) 17.

²³ Or mouth-held stuff: ‘Early humans may have evolved the ability to speak after using their mouths as a “fifth limb” to hold food and manoeuvre tools in trees’ (Sarah Knapton, ‘Secret of how humans gained the ability to speak’, *The Telegraph*, 20 Dec 2022).

²⁴ Owen Barfield, *Speaker’s Meaning* (1967) (Oxford: Barfield Press, 2011) 32.

We must know what law is, or at any rate what we mean by it, before we can know how it develops. Isolate or try to isolate this little patch upon the web of human thought, and you will be given some hint of the unifying threads that are shot through the fabric of our knowledge.²⁵

Weaving is so fundamental to our deepest notions of working in the world that Tim Ingold suggests we should regard making as a way of weaving rather than regard weaving as a way of making. For Ingold, weaving is the larger concept because:

['Making'] defines an activity purely in terms of its capacity to yield a certain object, whereas weaving focuses on the character of the process by which that object comes into existence. [. . .] Where making (like building) comes to an end with the completion of a work in its final form, weaving (like dwelling) continues for as long as life goes on – punctuated but not terminated by the appearance of the pieces that it successively brings into being.²⁶

It will be clear from my own project to revitalize distinct Etymologies and Modalities of making that I concur with Ingold's opinion that the word 'making' isn't up to the job, but my solution is to enlarge the concept rather than to relegate it. Ingold's concern that making is limited to outcomes evaporates when illuminated by the light of the distinct Etymologies of Making, for they reveal that Production is only one aspect of making; and that Production is certainly not limited to yielding objects, still less marketable commodities. Neither does Production stop at any fixed moment of output. Products are continually remade through cultural practices of co-Production, re-Production, and re-Creation. The horticultural analogy extends beyond the Production of a crop to the planting of seeds from that crop. The theatrical analogy extends beyond the first Production of a play to every new Production arising from the original text.

Still, Ingold's emphasis on process over output is an important one. On this point he has an ally in the educationalist Dorothy Heathcote who, before she became a drama teacher and authority on drama education, had followed her mother into the trade of weaving. She pursued that craft in a West Yorkshire woollen mill throughout her formative years from age fourteen to nineteen.²⁷ Heathcote was deeply impressed by the need for education to give children a part in the making process. As a child born in 1926, she belonged, as she put it, 'to the last generation of those who saw people "forming" or "making" in the streets on my way to school – engaged in shoeing horses, herding beasts to the butchers, baking bread, making useful wooden objects,

²⁵ Benjamin Cardozo, *The Growth of the Law* (New Haven, CT: Yale University Press, 1924) 27–28.

²⁶ Tim Ingold, 'Making Culture and Weaving the World', in Paul Graves-Brown (ed.), *Matter, Materiality and Modern Culture* (Abingdon: Routledge, 2000) 68.

²⁷ Cecily O'Neill (ed.), *Dorothy Heathcote on Education and Drama: Essential Writings* (Abingdon: Routledge, 2014) 150.

blowing glass'.²⁸ She lamented that '[s]o much is hidden now behind factory doors and technology',²⁹ and especially that children have been made 'toys of society when small' and 'exploited . . . shamelessly as consumers when large', while denying them the power to 'produce' or 'assist in the fabric of culture-making'.³⁰ There is no reticence here about the desirability of Production, but she does stress that the product should not be allowed to obscure the making processes that bring it about:

[I]f our purpose is to release the energy then we cannot afford to work only to the finished product. Certainly we must make opportunity for the product to be concluded, probably with an audience, however small, but we must not overlook the fact that it is the making of the drama which is going to contribute most to the growth of the child. Therefore, we are concerned not with rehearsal for the event, but with 'living through'.³¹

Heathcote's related idea of 'productive tension' works by agreeing an outcome in advance and thereby dispensing with the need to press on impatiently towards a final output. The problem is that when 'everyone is trying to reach resolution, they rush towards resolving the dilemma', whereas by 'knowing the outcome they all create the dilemma at a pace they find reasonable'.³² She gives the example of a group of nine-year-olds in Birmingham who play-acted locals seeking a child abducted from a supermarket. By agreeing in advance that the child was still alive, the drama produced tension when the search party discovered where the abductors were holding the missing child. Another example of an outcome revealed in advance with the aim of increasing dramatic tension is the use of plot spoilers early in a film or play. A classic instance is Shakespeare's *Romeo and Juliet*, where the prologue reveals within the first few lines that the title characters will both die by suicide: 'A pair of star-crossed lovers take their life' (line 6). (We can note in passing that part of the dramatic power of that prologue resides in the sense of making and manual touching that is conjured poetically by the triplicate assonance of three verbs all in a row – 'break', 'makes', 'take' – in conjunction with the concluding word of the prologue, which is the making verb 'mend'.) The word 'Tragedie' in the play's title as originally published was itself a spoiler regarding the fates of the title characters, and that's the point of genre and title – it gives the game away, but in doing so allows the audience to join in the game more fully from the start.

²⁸ Ibid., 152. ²⁹ Ibid.

³⁰ Dorothy Heathcote, 'The Authentic Teacher and the Future', in Cecily O'Neill (ed.), *Dorothy Heathcote on Education and Drama: Essential Writings* (Abingdon: Routledge, 2014) 94–107, 105.

³¹ Dorothy Heathcote, 'Drama as Challenge', in Cecily O'Neill (ed.), *Dorothy Heathcote on Education and Drama: Essential Writings* (Abingdon: Routledge, 2014) 80–89, 81.

³² Dorothy Heathcote, 'Productive Tensions', in Cecily O'Neill (ed.), *Dorothy Heathcote on Education and Drama: Essential Writings* (Abingdon: Routledge, 2014) 55–61, 61.

Heathcote had a weaver's appreciation for the material crafts of dramatic making. She appreciated the metaphysical possibilities that always live alongside processes of making:

To dramatize is instinctive. It belongs not to the artificiality of the first night theatrical production, to the so-called 'practices of the night' in a school production, to the painted books on the stage flats and the wine-gum jewels on the ladies costumes; it lies in the nature of a man to at once escape from his own existence and to learn from the events he sees, reads and hears about by sharing the emotions conjured by the author. We are thereby given fresh acquaintance with mankind.³³

Abstract Things

Made things can exist inchoately in pure abstraction. This is so even in the hard-nosed business of the law. In *The Case of Sutton's Hospital* (1612), which helped establish the modern concept of the legal corporation, it was held that a corporation (the hospital) warranted the name of corporation even though it had not yet been built. It was reasoned that a legal corporation never has physical existence at all and therefore exists as much in abstract intendment as it ever does in concrete matter. The hospital was a corporation 'created and instituted by the King's Charter' so that any person might make a grant to its human representatives 'before any foundation laid'.³⁴

Unlike a book, which must appear in physical form if it is to be read, a legal corporation can do a great deal of work as an intangible abstraction. A hospital corporation might be represented in a hospital building or it might not. The physical representation affects the performative capacity of the corporation, but it has no effect upon the essential existence of the corporation one way nor another. Sir Edmund Coke, the judge in *The Case of Sutton's Hospital*, put it this way:

[A]n Hospital in expectancy or intendment, or nomination, shall be sufficient to support the name of an Incorporation, when the Corporation itself is onely *in abstracto*, and resteth onely in intendment and consideration of the Law; for a Corporation aggregate of many is invisible, immortal, & resteth only in intendment and consideration of the Law.³⁵

The point is that a great deal of the performance of which a legal corporation is capable is performance of an intangible sort. Indeed, a corporation can perform nothing tangibly in the physical world except through the agency of human actors. The same possibility of non-physical corporate

³³ Dorothy Heathcote, 'Drama as Challenge', in Cecily O'Neill (ed.), *Dorothy Heathcote on Education and Drama: Essential Writings* (Abingdon: Routledge, 2014) 80–89, 81.

³⁴ (1612) 10 Co Rep 23a. ³⁵ *Ibid.*

existence explains why, when an incumbent king or queen dies, the monarch does not.³⁶

Making Money

The phenomenon of things being made and existing in abstraction is especially acute in the economic context, for this is a context in which the language of Creation (e.g. ‘wealth creation’ and ‘economic growth’) has been used to describe the increase of a thing – money – that has no physical capacity to grow and which exists almost entirely in the absence of physical expression. Most monetary transactions entail the mere passing of electrons from one interface to another. If I ask you in that famous movie line to ‘show me the money’, you simply can’t. You can show me a note, or a coin, or the physical ledger or statement of a bank account, but these are just representations. The money itself is something else – at base nothing more than a notion of credit and confidence. If you doubt it, let me show you a discontinued hundred-year-old banknote and then tell me with a straight face that it is ‘money’. You can’t, because it isn’t. The notes and coins are still there, but the currency has all run out. Money, which has always been a metaphysical mystery, has latterly evolved into a new phase of existence in the form of cryptocurrency. Somewhat counter-intuitively, money has not grown more mysterious through this latest iteration but less so. The express acknowledgement of the cryptic nature of currency has actually made its metaphysical reality more apparent than it ever was in the form of a metal coin. Cryptocurrency is an expression of pure market value in the way that a metal coin – as a sort of alchemical substitute for value – is not.

The unnatural breeding of money from money has been cautioned against since ancient times and is one basis of medieval and renaissance opposition to usury.³⁷ Aristotle expressed his objection in the *Politics* as follows:

The most hated sort [of wealth getting], and with the greatest reason, is usury, which makes a gain out of money itself and not from the natural object of it. For money was intended to be used in exchange but not to increase at interest. And this term interest [*τόκος*], which means the birth of money from money is applied to the breeding of money because the offspring resembles the parent. Wherefore of all modes of getting wealth, this is the most unnatural.³⁸

This quotation takes us full circle to the start of this chapter where we noted that the capacity for self-generation is central to Aristotle’s definition of

³⁶ The crown or monarch is a ‘corporation sole’ – the corporate person being vested at any given time in a single natural being – whereas the hospital corporation is, as Coke says in *The Case of Sutton’s Hospital*, a ‘corporation aggregate’.

³⁷ Gary Watt, ‘Breed of Metal and Pound of Flesh: Faith and Risk in Metaphors of Usury’ (2007) 2 *Pólemos* 95–116.

³⁸ Aristotle, *Politics Book One 1258b*, Benjamin Jowett (trans.) (Oxford: Clarendon Press, 1885).

‘natural’ things, hence Aristotle was opposed to usury of any kind on the ground that money is sterile and cannot naturally breed. And yet, Aristotle’s objection to unnatural breeding sits uneasily with the fact that humans make many things which have no existence at all in a state of nature, and humans cause many things to breed which if they have a natural state at all is a sterile one. We might think of robots that make robots, and of laws that make laws.

The Law unto Itself

Law is made through human Artefaction and the artefact of law, once made, engenders new law. The very nature of law, as a thing made by human craft, is to breed. It breeds spontaneously. It is *autopoietic*, which is to say that it is self-making.³⁹ It proliferates from within on account of the inherent nature of rules, for as soon as a rule is stated it breeds an exception, a subclause, or a qualification. The example of the Old Testament shows how a single law – ‘of the tree of the knowledge of good and evil thou shalt not eat’ (Genesis 2:17) – becomes, when broken, *Ten Commandments*, and how those commandments become, through human interpretation and qualification, a hundred and a thousand laws. In his monograph *The Growth of Law*, Judge Benjamin Cardozo quipped that ‘[t]he fecundity of our case law would make Malthus stand aghast’.⁴⁰ (Thomas Robert Malthus was the economist and demographer who first demonstrated the problem of population growth as a demand on the earth’s limited resources.) I will not indulge the stereotypical complaint that lawyers deliberately exploit the growth and complexity of laws to increase demand for their services, but there is some truth in Tim Murphy’s observation that ‘law makes the law. Decisions create the possibility for further decisions but do not make anything happen in the world.’⁴¹

It is a conundrum to know whether it is more accurate to say that human societies are subject to laws or that laws are subject to human societies. Like the question of the chicken and the egg, the answer is to be found not by asking the question in the abstract but by asking it of a particular moment in time. There is a lag between law-making and law-abiding which means that today’s society is bound to abide by laws made by yesterday’s law-makers. This is precisely what we would expect from the craft of law, for, as Brett G. Scharffs observes in his article ‘Law as Craft’, ‘crafts are defined by their past’.⁴² When Owen Barfield wrestled with the conundrum of law’s relationship to society

³⁹ Discussed in Chapter 4.

⁴⁰ Benjamin Cardozo, *The Growth of the Law* (New Haven, CT: Yale University Press, 1924) 4.

⁴¹ Tim Murphy, ‘Legal Fabrications and the Case of “Cultural Property”’, in A. Pottage & M. Mundy (eds), *Law, Anthropology, and the Constitution of the Social: Making Persons and Things*, Cambridge Studies in Law and Society (Cambridge: Cambridge University Press, 2004) 115–141, 124.

⁴² Brett G. Scharffs, ‘Law as Craft’ (2001) 54 *Vanderbilt Law Review* 2243–2347, 2243 (abstract).

and time, he also found the solution in the craft of fiction, which he parallels to law's function of making society:

Life varies, law is of its nature unvarying. Yet at the same time it is the function of law to serve, to express, and indeed partly to *make* the social life of the community. That is the paradox, the diurnal solution of which constitutes the process called society. One solution is legislation, the other is fiction. Legislation is drastic, *a priori*, and necessary. Fiction is flexible, empirical, and also necessary.⁴³

Artefaction requires us to acknowledge the dimension of time, and attending to Artefaction can therefore assist us with the puzzle of law's present existence as a thing of the past. Artefaction encompasses the process by which humans made the artefact as well as the process by which the artefact – at the time of being made and also subsequently – makes humans behave in certain ways. Artefaction therefore embraces us in an endless cycle of making and re-making and this is why the law – a supreme example of Artefaction – maintains a perennial hold upon societies. As Cardozo wrote, '[e]xisting rules and principles can give us our present location, our bearings, our latitude and longitude', but '[t]he inn that shelters for the night is not the journey's end. The law, like the traveler, must be ready for the morrow.'⁴⁴

⁴³ Owen Barfield, 'Poetic Diction and Legal Fiction' (1947), republished in *The Rediscovery of Meaning and other Essays* (Oxford: Barfield Press, 2013) 63–93, 86.

⁴⁴ Benjamin Cardozo, *The Growth of the Law* (New Haven, CT: Yale University Press, 1924) 19–20.

