

Surface Patterns – Surface Law

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Introduction and abstract²

On my almost daily bicycle rides in the mornings of the spring and early summer 2013 I began noticing the presence of several women wearing trousers with large printed patterns. I wondered whether this might indicate a certain shift from the dominant modern mono-chromatic norm regarding Nordic / Danish women's urban (summer) dress. To what extent are fashion norms influencing and interacting with other social and societal norms including, what has in the Western world long been called legal norms – most often understood as state produced norms.

Over the last decades the presence of the hijab in the public urban sphere has given rise to concern about (in practice) *women's* dress norms in much of Europe. Workplace, local and national regulations have been competing with religious and market norms influencing female dress and dress codes. Could fashion (and technology) driven (dress) practices indicate an emergence of surface patterns of urban conviviality and diversity? Patterns express repetition, variation, ornament and order, and have a long history. Modernity degraded ornament and handicraft (Bille, 1984, p.15). Ornament was associated with “Eastern decadence and feminine weakness” (Yelavich 2011). Design and designer education is bringing pattern and ornament back using new technologies, maybe supported by an increasing importance of (globalized?) market norms and market economy around the end of the 20th century. Chiba's concept of ‘legal postulates’ is a similar pattern, indicating the co-existence of formal (and also informal) norms and rules, and their underlying (sub-surface) patterns of meaning and ‘spirit’/values/ethics (Chiba 1989).

Twining writes about ‘surface law’ that there is a suggestion ‘that the surface is opaque and what lies beneath it may be different from what is observable on top’ (Twining 2008, p.179). Could surface patterns and surface norms and ‘laws’ be ways of temporarily ordering globalized urban communities experiencing rapid changes?

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2 This is a very modified version of the abstract for my presentation at a workshop on *Artistic and cultural praxes in the transitional and contested territory of urban public space* at the CLS conference on Reconciliation & Reconstruction, Belfast (2013)

Modernity, ornament and (pure/realistic) law

Around the beginning of the 20th century the Austrian architect, Adolf Loos (1870-1933) published an article called “Ornament and Crime”, where he made a strong statement denouncing the value of ornament, underlining his message in italics:

“I have made the following discovery and I pass it on to the world: *The evolution of culture is synonymous with the removal of ornament from utilitarian objects...* We have outgrown ornament; we have fought our way through to freedom from ornament” (Loos 1908).

I was (again) reminded of this article, when seeking inspiration for my presentation leading to this article, I went to see an exhibition in Copenhagen called *Flora Islamica. Plant motives in Islamic Art*. In the catalogue for the exhibition the author mentions the influence from Loos’s polemical writing “Ornament und Verbrechen”, which have influenced Westerners and perhaps not least Danes in the introduction (von Folsach 2013, p.9).

It is probably not unfair to claim that Danish (and Nordic) architecture, art, fashion – and *jurisprudence* – in the 20th century have been influenced strongly by modernism, minimalism and functionalism, as well as by Protestantism’s suspicion of images and (floral) rituals. Scandinavian realism was strongly influenced by the developments in Austria after the collapse of the Austro-Hungarian Empire in the wake of World War I. The dominant Danish legal philosopher and proponent of legal realism, Alf Ross (1899-1979) who became increasingly influential in the Nordic countries and beyond, had spent 2½ years studying in Austria, France and England from 1923-1926. He dedicated his (rejected) dissertation *Theorie der Rechtsquellen* from 1926 to Hans Kelsen (1881-1973), whom he had met in Vienna, and by whom he was originally strongly influenced.³ Both the *Reine Rechtslehre* and Scandinavian legal realism can be described as legal theories developed for social democracies and governments, where law was to be created by majority rule through parliaments, which had replaced emperors and kings. All forms of art and crafts were addressing new audiences and new markets and installing new yardsticks of quality and validity.

3 See the biographical article on Alf Ross http://www.denstoredanske.dk/index.php?title=Dansk_Biografisk_Leksikon/Samfund%2C_jura_og_politik/Jura/Jurist/Alf_Ross [Accessed May 24, 2014]

The monism of these *modernist* normative forms of expression – including architecture, law and not least legislation – reflect needs for escaping the influences of former regimes and their societal structures. Absolutist and monistic religious, status based regimes, had been based upon feudal and often pretentious and costly forms of ordering and representation. Loos (1870-1933), who was born in Brno in the Austro-Hungarian Empire, had spent three years from 1893-96 in the United States. He was influenced by the democratic politics and concomitant style, and is quite outspoken about this in his small article:

“Ornament generally increases the cost of an article... Omission of ornament results in a reduction in the manufacturing time and an increase in wages. The Chinese carver works for sixteen hours, the American worker for eight... Ornament is wasted labour power and hence wasted health. It has always been so...”

If all objects would last aesthetically as long as they do physically, the consumer could pay a price for them that would enable the worker to earn more money and shorter hours” (Loos 1908).

The links between modernist architecture and modern law – as well as to modern fashion – are in fact pertinent. The myth of feminine fashion, Coco Chanel (1883-1971) began producing her iconic models in Paris in the beginning of the 20th Century, when women were gradually gaining the vote, political rights, and access and obligations to work. Her ideals were freedom for women to be able to move (in the same stylish *and* almost rational dress) during all of the day⁴ – instead of having to change complicated dresses several times as were the customs of upper-class women of the European empires of the 19th century or having to wear trousers as rural women might do.⁵ Chanel dresses were comparatively simple, but elegant and with worked out details, meant for the ‘new women’ now populating the streets and public space of Europe’s urban centres. Rural and upper class dress traditions were in practice overruled by fashion for the ‘new’

4 The Museum für Kunst und Gewerbe, Hamburg, showed an exhibition on Coco Chanel from February-May 2014, *Mythos Chanel*. I managed to participate in the last and very large guided tour of the exhibition. The catalogue was completely sold out.

5 Edmund de Waal describes the life of a very wealthy Jewish banker family in Vienna around the turn of the 19th Century, describing the costly and time consuming dress codes and practices of his great grandmother in *The Hare with the Amber Eyes. A Hidden Inheritance*, 2010, especially Part II, Vienna 1899-1938.

urban women.⁶ An increasing number were working women in need of new and more functionalist clothes reflecting changing gender and living conditions.

Art historian Sir E.H. Gombrich, born in 1909 in Vienna during the Austro-Hungarian empire in an assimilated and highly cultured Jewish family, grew up in the Austrian Republic and came to the UK in 1936 where he ended up spending the rest of his life writing his influential works on art and history in English. In the preface to the second edition of his book *The Sense of Order. A study in the psychology of decorative art*, originally published in 1979, he wrote:

“It would be missing the point of this book... if it were taken as propaganda for a revival of ornament in contemporary architecture and design. On the whole I even happen to share the prejudice of my generation in favour of functional form, but I still regret that this prejudice has led to the elimination of decoration from the art historical curriculum. This undeserved neglect is of fairly recent date. As this book shows, the rights and wrongs of ornamentation were much debated in the 18th century at the time of the Neo-classical revival, while in the 19th century the problems of the machine age raised profound issues and produced a spate of important writings” (Gombrich, 1984, p.xi)

He also writes that the art of ornament rose to “a number of awe-inspiring summits in the Far East, in the Islamic world, in Anglo-Irish illumination and in late Gothic” (1984, p.x). Order and meaning interact and “it is our search after meaning, our effort after order, which determines the appearance of patterns, rather than the structure described by mathematicians” (1984, p.147).

Gombrich addresses and quotes Loos’ article on “Ornament and Crime” at length also commenting critically on the references to female beauty appearing in his article:

“It must interest the psychologist that here, as so often, the rights and wrongs of ornament are discussed in terms of feminine adornment – here too we may remember Cicero’s remarks about the superior beauty of unadorned women. When Loos came to develop and expound his identification of ornament with barbarism and with crime he drew even more heavily on the erotic associations of decoration. In fact, he identifies ornament with

6 The guide at the *Mythos Chanel* exhibition underlined Coco Chanel’s distaste towards trousers for women, which Chanel also voiced in a filmed interview at the exhibition, describing trousers as something rural women would wear! However given the demand for trousers especially after WWII, Chanel would also design and produce this piece of garment. Fashion was not art but business, she said.

primitive eroticism and, at least by implication, the absence of ornament with purity and chastity. Written in the era of evolutionism, and the aura of Freud, the article [by Loos – HP] presents the development of mankind as the story of moral evolution: “The Child is amoral. The Papuans are equally so for us. The Papuans slaughter their enemies and eat them. They are not criminals. If, however, a man of this century slaughters and eats someone he is a criminal or a degenerate. The Papuans tattoo their skin, their boats, their oars, in short everything within reach. They are not criminals. But the man of this century who tattoos himself is a criminal or a degenerate... The urge to ornament one’s face and everything within reach is the very origin of the visual arts. It is the babbling of painting. All art is erotic.” (Gombrich, 1984, p.61).⁷

In the following section, Gombrich discusses ‘*Ornament versus Abstraction*’ and concludes that there are “signs today that the estrangement between the two camps has subsided and that the new interest in problems of the painting surface has prompted abstract artists to look across the fence into the compound of the decorators.” – This is an interaction which “makes the very distinction between fine art and applied art increasingly problematic” (Gombrich 1984, p.62).

His second preface from 1984 is written at a time, when the European Economic Community had reached ten member states. The UK and Ireland had joined in the EEC in 1973 together with Denmark, and in 1981 Greece joined after the junta had been dismantled and democracy reintroduced. EEC was beginning to become a legally and culturally more diversified community. The distinction between ‘fine law and applied law’ to paraphrase Gombrich, or as it began to be called between ‘hard law and soft law’ was gradually becoming more difficult to draw. The increasing importance of international relations meant that legal theories created to explain and understand primarily *intra*-national relations and regulations were no longer fully adequate or sufficiently convincing. Theories seeking to make sense of changing realities began to (re)emerge, especially theories giving room for more diverse and less state-centric understandings of law such as living law, legal pluralism and legal polycentricity (Ehrlich 1913, Moore 1978, Geertz 1983, Griffiths 1986, Petersen 1991 and 1995; Petersen & Zahle 1995).

7 Gombrich indicates that he is quoting and translating after the German edition *Sämtliche Schriften*, ed. Franz Glück, Vienna 1962, (1984, p.310). I have not had access to the German version. Indications about the publication date vary, but most references point to 1908 as the year of publication of Loos’s polemical article.

'New' normative fashions?

A few years ago I came across a big banner at the entrance to a well-known former royal garden in Copenhagen, Frederiksberg Have, which said "*Moderne kunst er gammeldags*" – "Modern art is old-fashioned". Modern law has been in the process of becoming old-fashioned for several decades by now, even if the fragmented and diversified legal and other fashions that have succeeded it may have led to both rejection, anxiety and confusion. Modernity is becoming a description of an era rather than of a (highly valued) quality or characteristic. With this development goes perhaps a certain dismissal of modernist forms of expression – whether in urban dress practices of women, or in normative practices of inhabitants and users of urban space. Sionaidh Douglas-Scott in her recent book concludes that "both law and the ways in which we understand law have changed, and a former legal paradigm has been supplanted" (Douglas-Scott, 2013, p.383). Hers is an ambiguous but accepting attitude to this change and a reluctant recognition of legal pluralism as the new paradigm, where she underlines the need and the importance of concern with the injustices appearing in this new landscape. For her the emerging paradigm of legal pluralism seems to raise issues of (in)justices which were perhaps less distressing under a monocentric paradigm.

We do not yet know what *meaning* we may find in the patterns and multiple forms of law, representation and dress surrounding us. The law is *leaking* claims Merima Bruncevic in her ph.d. thesis *Fixing the Shadows. Access to Art and the Legal Concept of Cultural Comments* (2014), which is inspired by Deleuze and Guattari and their writings on the thousand plateaus – leading her to argue in favour of a 'rhizomatic jurisprudence' – one that moves beyond borders, exclusive identities and excluding concepts and understandings of property.

In their presentation of the stream on *Artistic and cultural praxes in the transitional and contested territory of urban public space* at the 2013 CLS-conference on Reconciliation & Reconstruction, the organisers, Peter Bengtson and Matilda Arvidsson from Lund University wrote:

"Where people meet, so do conflicting interests and ideas: in cities, which are characterized by – among other things – a high population density, this invariably leads to incompatible spatial claims and on-going clashes between diverging agendas of a political, commercial, legal, moral, social, cultural and artistic nature. This is reflected in, for instance, people's everyday praxes on city streets, where legislation, social norms, and notions of spatial justice help regulate interaction in – and with – urban public space. While in this sense

constricting, these elements of social control also constitute a nexus of creativity as they continuously incite individual agency, as people seek to circumvent them.

While laws, regulations and norms play an important role in maintaining the relative openness of urban public space (by limiting what any one agent – an individual, organization, a company or other legal entities – can legitimately do there and lay claim to), this space is arguably also constituted by the individual and collective agency which takes place within this cross-field of diverging interests. The collaborative or conflicting acts, resulting from the multiple agendas and visions of the nature and purpose of urban public space, leave it in a state of constant transition and contestation.”⁸

What I am claiming – perhaps even more now in 2014 than a year ago – is that ornament and surface patterned dress seem to form one of several streams in a highly diversified landscape of dress, body and other normative fashions, which are currently undergoing considerable change. We have witnessed the emergence of use of almost dramatic body tattoos especially but not only for men. I will not develop an analysis of the strong presence of male tattoos in (Nordic/European?) cities here. So far I have (to my surprise) not come across any serious social or cultural investigation of this phenomenon. It is surely no longer strongly related to criminality, as when Loos wrote about this link more than hundred years ago. But it still reflects a certain transgressive expression – also dependent upon the amount and character of tattoos. This development may be related to performances of (perceived) unique identities and claims for recognition of these identities, which however, seem to be gradually developing into patterns of interconnection and perhaps even conformity in spite of or along with their origin in dissent.

Barthes claims that dress is a balance of normative forms and has meaning as a social model of collective behavior, as expressed in the following quotes:

“An item of clothing is indeed, at every moment of history, this balance of normative forms, all of which are constantly changing” (Barthes 2006, p.4)

“Dress is, in the fullest sense, a ‘social model’, a more or less standardized picture of expected collective behaviour; and it is essentially at this level that it has meaning.” (Barthes 2006, p.14)

8 E-mail by Matilda Arvidsson (Lund University, Sweden), May 8, 2013: Call for Papers, CLC 2013: “Artistic and cultural praxes in the transitional and contested territory of urban public space.

The ‘individual’ ‘choices’ and expressions (may) gradually become part of emerging patterns and thus of ‘new’ ‘social models’.

Printed patterns and body tattoos are cheap, accessible and attractive for (perhaps especially white Northern European?) women and men. They may be an outgrowth of (imitations of) feline patterns (and fake materials), which have been in fashion for several years now. During a trip to Paris after the economic crisis in 2009, I noticed two things about art: the trend was now (after the economic crisis) to be “new modesty” and a fashion described as ‘felin’ was mentioned together with a ‘camouflage fashion’ (Petersen 2011).

What model of social behaviour are “wild” patterns and theatrical tattoos presenting to us? Are they a challenge to ‘civilized’ and ‘uniform’ modernity as we thought we knew it?

Are they – in a post-modern era – a return to a fascination with decoration and ornament, characteristic of pre-modern ‘primitive’ eras and societies as they were often called also by Loos? Can these ‘social models’ be interpreted as expressions of the complexity and tensions of normative patterns present in contemporary pluralist societies? Are they indicators of a revitalized ‘art of ornament’ which have been admired for long in the Far East and the Islamic world, as Gombrich wrote? Or do they reflect regressive developments and discontent palpable, when Freud at the beginning of the Great Depression in 1929 wrote his reflections on *Das Unbehagen in der Kultur* or as the English title ran *Civilization and its Discontent* (1929/1962)?

Can these social models incarnated in this fashion be seen as constituting ‘a nexus of creativity’ by visualizing a presence of repeated patterns – diversity in human decoration and (gender) display? Display can be perceived as frightening but also as fascinating, which is often the case with male tattoos and sometimes with the female scarfs, which have been outright banned in different fields in several European countries. It seems that the disapproval of tattoos is executed by (some) private bars and discotheques, who (in Denmark at least) disallow persons with tattoos, which are visible on hands and neck.

Erving Goffman wrote about gender display in his publication called *Gender Advertisements*, and he claims that there is no gender identity, “only a schedule for the portrayal of gender” (Goffman 1976, p.8):

“Displays thus provide evidence of the actor’s *alignment* in a gathering, the position he seems prepared to take up in what is about to happen in the social situation. Alignments

tentatively or indicatively establish the terms of contact, the mode or style or formula for the dealings that are to ensue among the individuals in the situation” (Goffman 1976, p.1).

I have discussed Goffman’s concept in an article on dealing with gendered perspectives on religions and the public/private divide, where I write:

“Modern European women are by now expected to enter the public sphere, and to participate in public life. However, their entrance is, in practice, only approved if they submit themselves to the dominant though (somewhat) diverse surface-secular norms governing life in the particular sphere they enter. This includes adhering to existing but mostly tacit dress codes” (Petersen 2012, p.133).

Women are globally experiencing changing living conditions and expectations, which influence their behavior, attitudes and dress. What has been called the ‘Indian rape crisis’ could indicate some of the difficulties and brutal consequences following along with these changes. – But not all consequences are luckily as brutal. The banal – and sometimes not so banal – issue of women’s dress points to both changes and to patterns of individual reactions to some of these changes.

By displaying gender through pattern printed trousers, women (and some men) *may* perhaps indicate a taste for diversity and a distance from modernist monochromatic monism in dress fashion, which are perceived as out-dated, and a support of a more diverse display of gender, which may go hand in hand with a support for a more diverse landscape of law.⁹ Western middle and upper class men are also experiencing very strict normative dress codes, as can be observed in any business journal or magazine. But the acceptance of gender diversity, including homo- and transsexuality, may also lead to a certain acceptance of less disciplined (male) dress, and perhaps a return of the fascination of the dandy – also among conservative men (Petersen 2011).

9 This may be considered an overstretched interpretation, but I think it goes in line with some of the findings and data, which formed the basis for my article from 2012, which was based on my participation in a EU research project RELIGARE: *Religious diversity and secular models. Innovative Approaches to Law and Policy* (2010-2013)

Urban life and surface orders

Control of female attire in modern societies mostly takes place through market norms and fashion trends, and less through explicit religious or legal norms, but that female clothing may cause outrage and transition in urban landscapes is probably a worldwide phenomenon, and fashion is in several (most?) cultures a way to mark political, cultural, religious, sexual and other affiliations and attachments.¹⁰

The famous ‘woman in the blue bra’ who was attacked and beaten up by a gang of men during demonstrations in Cairo in December 2011 in front of rolling cameras has become the subject of many artist’s interpretations of the Arab Spring, and the woman became a symbol of the Egyptian revolution as an icon. A recent exhibition *Arab Contemporary, architecture & identity* at the Danish Museum, Louisiana, showed several images of this symbol of both (female) resistance to conservative ideologies and of hybridity in/under traditional/conservative female dress.

The globalized world we live in seems increasingly governed by surface normativity and surface law, as Twining claims. This goes for architecture, contracts and dress, and “what lies beneath may be different from what is observable from the top” (Twining 2008, p.179).

The Arab world today flaunts the most ostentatious and modern architecture of the world which is perhaps at odds with the underlying conservatism, although historian and critic of architecture, William Curtis claims that “(i)n times of rapid and sometimes violent change it is valuable to stand back from contemporary events and recall that societies and their architectures respond to long range wave motions beneath the surface of history” (Curtis 2014, p.149). Curtis also reminds us that one of the roles of monumental architecture is to idealize state power, and Jensen writes that “Architecture is a bound, relatively conservative art form and although it may be an unreliable sign, ‘free’ art often functions as a forewarning of the changes that architecture will later undergo.” (Jensen 2014, p.225)

Perhaps the woman wearing the colorful bra under her black traditional dress may represent as much of a forewarning of global societal changes than the ultramodern surface of contemporary Arab cities, where

10 See for instance Tania Branigan (2014) North Korea’s Fashion Police. *The Guardian* April 22, 2014

“a traumatic search for identity is creating an Arab architecture and shaping an Arab space characterized by dislocation and anachronisms, where the most advanced forms and technologies are pressed into the service of the most conservative ideals and lifestyles... The official Arab discourse especially in the conservative Arabian Gulf, constantly claims that modernity and modern architecture must respect old “traditions and customs” and the Islamic “cultural values”. On the surface they apply the so-called ‘co-existence model which takes into account the forces of modernization and change (globalization), while at the same time responding to the preservation of traditional elements in the society’” (Ziadeh 2014, pp.55-56).

Market conditions and market norms increasingly govern architecture, law and fashion. Fashion is probably the easiest to change and both on surfaces and under surfaces it may be a forewarning of changes to come even if it is business and not ‘free art’ by giving expression to social models and expected and tolerated collective behavior.

Ala Al Harmaneh in his article “What did the people want. Re-thinking the (Post-) Arab Spring” writes about the ‘lessons’ of this movement amongst others under the headline “It’s the Women, Stupid”:

“Several days ago, in a discussion on Facebook addressing the harassment of women not only in some Arab cities, but in India and elsewhere, I wrote “it must be a combination of poverty, social alienation, identity confusion, machismo, religion and troubled masculinity that lead men to harass women”. Later on, I discovered that I was describing the main problem in the society in general.” (Al Harmaneh 2014, p.209)

Surfaces may be modern, conservative, wild, confused, hard, softer, rough or more polished, as well as other things – and these surface layers and plateaus are increasingly linked in emerging globalized normative spaces and law-scapes. The diversity of fashion/dress may reflect market prompted reactions to diverse segments of consumers/costumers – who are becoming *accustomed* to rapidly changing living conditions and may be demanding images and representations of themselves, which reflect those changes – at affordable prices. Prices, which are again possible, because Chinese workers also in the beginning of the 21st Century work for low wages, not least in the textile industries, turning out high profit but low cost products geared towards different globalized markets and audiences, who no longer demand state uniformity but rather market conformity reflecting changing customs. Will we also be seeing market produced models of (gendered) norm- and law-making reflecting tensions between and co-existence of local traditions and globalized conditions? Will diverse, decorative and post-modern, post-sovereign,

post-positivist ideological norms and legal organisms take over the role of monist and uniform models governing the 20th century? Will that lead to increased concerns about justices, sustainabilities, harmonies, obligations and other values involved in and related to the crafting of these normative creations?

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