

## **Sometimes it looks like a duck, sometimes it looks like a rabbit: Governance structures in graphic design, decorative form in law, and schools in the public sphere**

Jack Balkin: Have graphic designers moved toward producing platforms, instead of producing contained works?

Dan Michaelson: Yes, and that's where the focus of my classes lies in particular.

J: What kind of platforms might you teach your students how to create?

D: One project in my class is to make a content management system. That's a very open-ended project, but the problems are straightforward: you've got to figure out what the content should be, and that's a decision up to each individual designer in this case. But to create a healthy ecosystem around that content, you've got to figure out how are you asking users to enter and structure their content, how are you transforming that content through algorithm, and finally how you're presenting that content.

J: It sounds to me like a lot of what they're doing is they're engaged in software design?

D: To me there's a fuzzy spectrum between graphic design, which might ask: "what does the interface look like?", and software design, which asks: "what's the algorithm beneath the surface that's organizing the data."

J: So we begin the conversation with the transformation of graphic design from an earlier model (things like advertisements or posters). You're saying, "What do I do as a graphic designer, when I'm asked by a client not to create a single unitary object, but to create a platform which others in the business will use. We want it to be functional for the goals that the client wants, but we also want it have aesthetic consistency and appeal." That's what you're trying to do right now?

D: We can think of it a little more broadly. It should have a feeling that isn't just a visual feeling, but a feeling about the way it works and the cultural messages it's transmitting. And it should evolve over time in a healthy way. When you come back to this platform a year from now, it could be worse or it could be better, and we're engineering something that's going to be better.

J: A lot of that depends on two things: first, the amount of leeway put into the original system. And second, the ability of the system to be generative. You can have a system that has a lot of leeway, but you can't build anything with it, because you haven't included the tools to build something new.

It's the placement of these generative tools in the system that allows you to be surprised

when you come back in a year. Do you think there's a natural analogy between this and game design? An interesting game allows participants to do something the game designer had not imagined.

D: That's often our goal.

J: The problem of platform design is like a miniature problem of governance. When you create a platform for other people to use, they're not going to call you at 3:00am every night. Basically you've left it in their hands. Most of what you're doing is giving them the ability to build out the site to whatever they need, and to prevent them from wrecking it, crashing it, or exploiting other people. In a game context you have what are called "exploits," which is where somebody uses the software functionality to gain an advantage which others consider unfair. But in your context I assume this never happens? Somebody might crash the platform you create, but you never get the idea of people within the client creating problems like that.

D: They certainly might. We can talk about the Yale School of Art's own website as an example. When the school asked my company to redesign it, we knew the school was an incredibly vibrant community, where students unceasingly develop new ideas about what art should be. So the website should be as dynamic as that. It should give prospective and current students a window onto what it's like there. To accomplish that the website should be updated daily, but the school has no staff to do that. So we empowered all the students, staff, and faculty of the school to create and edit all the pages of the website. I'm using the word "empowered" somewhat provocatively here.

J: When you say you "empowered" them, what you did precisely was to give them all accounts, and the accounts gave them the right to perform certain operations on the site.

D: We did that, and we did a little bit more. We also designed a system that would be easy enough for everybody to edit those pages without any technical training. In fact it's sort of fun to use. When you make a page, the system ensures that it's always somehow within our overall design for the website. But the process of editing also feels creative. So there's a back and forth between our authorship as designers of the platform, and individual authorship by people who make pages. That's empowering in one sense, which is that it lets you make something bigger than you knew how to make, because of the engineering of this tool.

J: In the context of a platform like that, what empowerment means is precisely the ability to make things given the rules of the game you set up. In your case, the constraints that you're placing on users are that whatever they produce will more or less be aesthetically consistent with the overall plan you had in mind. It might have certain elements that are continuous through what they produce, it might have constraints on what kinds of colors

or shapes, what kind of content they can upload. Those kinds of things are potential rule sets.

D: In fact those encoded rules are what makes it fun to use this system, because if you had to make every design decision all the time or write your own HTML code to make a page, of course that kind of freedom is overwhelming in a number of ways.

To continue the story, the website has lived for six or seven years now and it still feels new in many ways, which is remarkable. Some people say it's the best website they've ever seen. Yet as more and more people have used the site it has evolved in several ways. One is that there are some trends in the kinds of artworks that people make in the school, that can be aggressive. Students at times have been interested in florescent, collaged images for example, or they're interested in political imagery that might be startling. So the website begins to look like their work.

J: Tell me what kind of things went wrong with the site.

D: The site gets hate mail on days when the design of it has become particularly startling. Those can be legitimate complaints. "This whole website is flashing at me. Someone might have a seizure, and I can't find what I'm looking for." On the other hand not everyone is a good critic. It may be easy to find what you're looking for, you just assume it's not because some graphics have a bad association for you.

J: Does the staff take responsibility for the complaints and how people feel about it? In other words, does the buck stop with them ultimately?

D: Maybe, but I'm not sure they'd say that. The language on the website says the individual authors of each piece of content are responsible for it.

The way we've resolved conflicts up to now has been informal. Do you remember the controversy in the art school a couple years ago when an undergraduate artist claimed to have made work using blood from an abortion? At the time I noticed someone had put a dancing baby animated GIF on the art school website. So I simply told that person and said I thought it was unhelpful to the conversation.

J: What you are putting into the ethos of graphic design is actually the creation of a governance structure. There is a particular set of tasks that you want to achieve. You're creating a space in which people can do things, they're trying to create aesthetic effects, to be amusing, witty, profound, emotionally affecting, whatever their goals are, but you've created a place for them to do that. There are certain rules. Some of the rules are built into the code, that is, they just can't do certain things because the code doesn't let them do it, and certain things are enabled by the code, and they could actually do things more powerfully if the code was changed to allow them to do it. But that's just the

part of the governance that's produced by the software. There is also a set of communal norms that develop as the space proceeds through time. These communal norms are not necessarily predictable from the original design.

And to some extent, it's the participants who govern themselves through informal communication with each other, their give-and-take with each other. They are relying on the fact that most of the people who work there understand themselves to be part of a community, and won't demand more than they should. It is possible that someone might behave badly, or they might behave in a way that is insensitive to others. At that point, there will be other varying social norms that will be brought to bear on that person in order to get them to behave. So that is another kind of governance, the governance of social norms.

So we have the governance of the code, which is largely the designer's doing, and which both constrains and enables, on the one hand. And then we have the governance of the community that is using that code, based on social norms and the idea that people want to be well thought of. And finally, the third story is one of charismatic authority, a professional authority, in which you have a student who is not behaving. He doesn't seem to be able to pick up the cues about how to behave in this particular kind of conversation about abortion, for example, so you actually show up, and say, "I am your teacher," or "I am a person you respect," and I'm saying "Don't do this." You are relying on these forms of authority in order to get the student to back down. Which, I take it in this case, he did.

That that is another form of governance, it is the governance of a structure outside of the graphic design teacher-student relationship, which is basically parasitic on your position in the university and the student's position in the university. And possibly based upon the student's sense of respect for you as an artist, or someone who knows more than they do.

You can think about a graphic design project like the one you are describing through the lens of art or creativity, but we have just shown how the project can also be viewed through the lens of governance. What looks like a graphic design project is actually a governance structure, which has multiple overlapping forms of power and authority.

D: Of course we could also look at it the opposite way. In my classes I'm trying to convince students that what looks like a governance structure is actually a graphic design project.

J: Exactly! That is exactly right. We can look at it in two equal ways. It is a duck-or-rabbit situation. Sometimes it looks like a duck, sometimes it looks like a rabbit.

Is there anyone who has thought that what was done on the site was illegal?

D: Yes, I'm sure that at times copyright law has been broken during the use of this website.

J: There is a further background set of power relations: the state. For example, there are questions about who is responsible if copyrighted material is uploaded onto the site. Is it the student who uploaded the material, or the school, or the university? Are the individuals who work in the art department responsible? Or is the original designer responsible, for having created a system that made it so easy for people to violate copyright?

You are always doing all of this stuff—these various intersecting governance structures we call the graphic design project—against the background of the law. So the graphic design project is not only itself a mini-world of governance, with multiple overlapping forms of authority, it's also embedded in a larger system of governance, which is the state.

D: We could go a little bit further. Graphic design interacts with the law not only through code functionality, social norms, and charismatic authority, but also through the formal qualities of the interface design. Does the visual design encourage you to make collages of other people's work, or does the visual design frame images in thumbnails? You actually hinted at this perspective early on.

J: Depending on how you design the tool kit and how you display the result of operations within the system, people will be tempted or driven to do things one way rather than another, because of the aesthetic consequences of what they do.

D: That's right. So that suggests another question about trying to predict and influence consequences. You observed that these systems are so complicated and chaotic that we can't predict what's going to happen a few years down the road. But we can influence it a little bit, or we can influence some qualities of it.

Taking another step back, I wonder whether there is an analogy to the interpretive function of law. When does the role for lawyers or law students extend to trying to shift the cultural landscape, creating a system of governance better than the one that preceded it? Does this only happen in legislatures, which is where we expect it to happen?

J: I think the idea of interpretation is not appropriately posed here yet. Let's talk about the different forms of power and authority that were implicit in your platform. Remember we had the code, we had the community norms, we had the institutional and charismatic authority, and underpinning it was the the power of the state, the regulations of the state as to who would be responsible for what was done on the platform. It's a very complex

picture. It's going to turn out that the issue of interpretation will look different with respect to each of these.

Suppose we think about the question of the code, the basic design. Code-based systems of power are rigid. At the code level, the kind of interpretation we think of with respect to law doesn't apply. It either works or it catastrophically fails.

On the other hand, when we move to the second form of authority, the authority of community norms, we are back in interpretation space. As people act within the space, and they add new art and do things to other people's art, norms emerge. The software may not limit the kind of operations they can do, but as a matter of norms, they might consider it impolite to do something to somebody else's work, for example to change too much of it. And unlike the code, people can have arguments over whether the norms have been breached or not.

D: If what you can do is make thumbnails, what happens when someone creates a mosaic of many thumbnails to create a larger image. You can exploit the possibilities afforded by the code to create outcomes that are—it's not a catastrophic failure, I would say, and may or may not be a failure.

J: That is a creative—

D: It may be a failure, though. You can imagine cases where it is debatable as to whether that kind of creative abuse of the system is healthy or unhealthy.

J: So the world of interpretation arises at the moment when you have norms that can be argued about. The argument is not about whether the code permits it, it's about whether you and I should do it.

D: True. But when something does go wrong, when people agree that the behavior of the system is unhealthy, what can happen is someone calls me to change the code. So there are linkages among these layers of governance.

J: And at that point, you they are asking you to make a normative judgment about whether or not the code is being appropriately used. And if you agree that it is being inappropriately used, what do you do?

D: We alter the design, or we alter the code. Either could be appropriate to adjust the balances within this ecosystem so it works better moving forward.

J: So what you've done is you've readjusted the code substrate—you've readjusted the part of the governance scheme that is in code—

D: And in code, could also be what it looks like, right...?

J: Right. The appearance is emergent from the code.

D: That's right.

J: And then you hope it will have a beneficial effect on the norms.

Similarly, we talked about the authority of the institution in which the space is located. The university, for example. Or the student-teacher relationship. This is a social configuration and also subject to interpretation. With the student who posted the dancing baby, what first looks like "It would be better if you didn't do this," turns into a discussion about how the student is supposed to behave toward you and is the student in fact behaving inappropriately.

D: True. There is a rule against censorship in the art school which predates the website. I didn't delete it for him, or tell him he had to delete it. I told him it would be better for the school if it weren't there. A distinction which is certainly subject to interpretation.

J: You are saying, I'm not in violation of the preexisting norms about censorship of students. You can imagine the student pushing saying, if this is not an attempt to censor me, then what is?

D: Right.

J: That is the sphere in which interpretation occurs. Finally, when we think about the substrate of state power, and the laws about who would be responsible and whether the uploading particular images would violate copyright and all of that, that's also in the realm of interpretation, because it is not like code in the on-off sense, it's like norms. The laws of the state are like the norms of the community, or the professional norms of the institution. They just happen to be in a different location.

D: To finish the story of what happened at the school of art: some years after the launch, we noticed that the website was down and displaying its test pattern error page. The site had been featured on Reddit and the traffic had crashed it. And the reason for that was because it had been nominated as the worst website of 2010, and had won.

J: Why was it nominated as the worst website of 2010?

D: Mainly because it was so graphically aggressive, as far as I can tell.

J: So everything was attributed—the site, its design, the whole thing—to what happened to be on the site at that particular time.

D: That's true, and it's an interesting mistake, but the site is also like that often. So it's not an unfair opinion, either.

J: We have been talking about norms and the locations of the norms, and how they are embedded in other systems of norms. The story about Reddit is interesting because it's a story in which this site, for the community of students within Yale, was also embedded in the public sphere outside of Yale. You could have made it only available to the Yale community.

D: Right. We had said we wanted the site to be well-liked by two groups: people in the School of Art community, and people who want to join that community, that is, prospective students.

J: By inserting it into the public sphere, you made a conscious decision. The site was no longer understood as an exercise, a part of students' education. It was thrown into a conversation about appropriate norms in the public sphere in general. Not about appropriate behavior within the confines of the university.

D: Right. And people may even debate the success of the site as a system of governance. My favorite comment from the Reddit thread was: "Hey, this is a wiki, you can't blame the designers, it's changing all the time." And its reply: "Well, now we know that's not a good idea."

J: They said, in effect, somebody screwed up the code. "They didn't design it the right way in the first place."

D: It was a great conversation.

J: So here is another sphere of interpretation. Because it's contestable. People could dispute what the norms are, their application, and their values.

What's the relationship between aesthetics and governance in the design of a site like Twitter or Google?

D: There is a relationship between form and function, which is famously slippery. The formal choice to limit the size of the input box on Twitter becomes a functional choice that users should adapt to that limitation. Ways of speaking within that limitation then become extremely creative.

J: Do the decorative elements of the design play any role in authority, power, governance?



D: I was wondering whether that was more of what you were getting at, when you used the word "aesthetic."

J: What we are doing is, we are breaking this out into little bits. We talked about form and function, and we now talk about decorative elements and their role.

D: For example, Google's famously minimal visual design, does that result in governing norms that are different than a site that is more visually rich?

J: Is that just a matter of "Oh I like it," or "I didn't like it"? To what extent when you think about graphic design are you thinking about the political effects of design choices?

D: On the one hand, Google's absolute simplicity makes it easier to scan the search results to find what you're looking for from a seemingly unedited list. But at the same time, the feeling that the design is minimal, also telegraphs the idea of that function. So people get the impression that Google values their judgment. The aesthetic design gives the impression of democracy.

J: On one hand we have what we might call the power relations of the design, that comes from its function, and on the other hand, we have the decorative features which either can reinforce or conflict with these functional aspects.

D: Form can also mask a hidden function. That seemingly transparent list of search results has been pre-processed for you in ways that can be pretty opaque.

J: We can think about law in terms of its structure: its penalties and pains, its incentive forms, its subsidizations and refusals to subsidize, the use of channeling functions, framing, effects. All of those features makes law a governance system, like graphic design. Law also has another realm, the realm of social meaning. That is what we are analogizing to the decorative aspect, the blank screen in Google. It has a semiotic feature: What do things mean? What do they seem to be like? What do they symbolize? If you think about law in those terms, the number of associations is just overflowing: what courtrooms look like, what kind of clothing lawyers wear, how police wear their uniforms, how you design a prison, how legislatures meet in these huge buildings.

And it would have the same kind of relationship that you just explained to me in the relationship between the functional aspect of the Google search page, and the decorative aspect of the Google search page. These things can either reinforce each other, they can be in conflict with each other, one of them can disguise or mask the other. The "I'm feeling lucky" button sends a message of personal empowerment, which mystifies or disguises its function.

D: It's a common role for advertising and design: to make us comfortable with

something we were previously uncomfortable with.

J: It makes us acquiesce, it makes us accept, in the same way as the relationship between the social meanings produced by legal institutions, and the functional aspects of the power relations in legal relationships. It might even be inappropriate to divide them. In practice they might just be merged in ways that are very difficult to sort out.

Law has its effects through creation of social meaning. And its social meaning then creates confidence, acquiescence, docility, fear, expectation, patriotism, it has all these effects on populations. Lawyers who like to be tough guys like to say it's all about incentives in the simple sense of whether or not it would cost me or it would cost me less. But it's also about what things mean, how you apprehend what is going on before you. So when you apprehend Google, the page, what you see before you is a clean page that appears to put you in the driver's seat. It creates the image of your empowerment. It's not just a question of incentives. It's a question of what the Google page means to you.