



## Atmospheres of law: Senses, affects, lawscapes<sup>☆</sup>



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### ABSTRACT

In this article, I deal with airs and sounds and scents, while keeping an eye on the law. My field of enquiry is the interstitial area between sensory and affective occurrences, namely sensory experiences that are traditionally thought to be a causal result of external stimuli, and affective experiences that are mostly associated with emotional changes and generally allude to something internal. I am arguing that there is no constructive difference between internal and external origin of occurrences. In its stead, I suggest the concept of atmosphere, namely an attempt at understanding affective occurrences as excessive, collective, spatial and elemental. However, it quickly becomes apparent that an atmosphere is legally determined. The law controls affective occurrences by regulating property of sensory stimulation. At the same time, the law guides bodies into corridors of sensory compulsion – an aspect of which is consumerism in capitalist societies. The law achieves this by allowing certain sensory options to come forth while suppressing others, something which is particularly obvious in cases of intellectual property protection that capture the sensorial. I deal with the law in its material, spatial manifestation and in particular through what I have called the ‘lawscape’, namely the fusion of space and normativity. I employ a broadly Deleuzian methodology with insights from radical geography, affective studies, and urban and critical legal theory in order to develop and link the various parts of the text.

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### 1. Please, come in

You walk into a room that smells of roses. The walls are painted a stimulating combination of red and yellow. The first notes of Beethoven’s *Für Elise* are piped in the air. You touch the smooth surface of the table, you sit on a comfortable chair, you switch on your iPad and get ready to browse the internet. There is even a darts board, should you feel like playing. You feel well, at ease, energetic. You perceive the surrounding atmosphere as pleasant, familiar, protective. You take a sip from your Coke and settle in.

You have entered the lawscape. Or rather, you never quite left it. Even as you took the lift to this floor, or earlier as you walked down the street, or even earlier as you came out of the underground: it is all lawscape. An infinite plane where the city is interlaced with the law. In the lawscape, every surface, smell, colour, taste is regulated by some form of law, be this intellectual property, planning law, environmental law, health and safety regulations, and so on. Law regulates traffic, allows you to cross the road or not, allows you to

drive your car, to go to the cinema, to enter the zoo, to stay at your own home. It allows you to switch on your TV, to access the internet or read a newspaper. Even the simplest acts are controlled to a greater or lesser extent by some legal agreement, limitation or prescribed direction, whether this is in the public or private space. The fact for example that one goes to the bathroom, this sacrosanct of private spaces, is regulated by legal provisions of water procurement, building regulations with regards to the material and placement of pipes, legal ownership of sewers and regulations on waste disposal, planning relation of the bathroom space to the rest of the home in the sense of where it is and what provisions have been made for emergencies, the kind of wall paint and other materials used, and so on. Perhaps less metaphorically than it might sound, the law is spread on pavements, covers the walls of buildings, opens and closes windows, lets you dress in a certain way (and not other), eat in a certain way, smell, touch or listen to certain things, touch other people in a certain way (and not other), sleep in a certain space, move in a certain way, stay still in a certain way.

The “where?” of the law can only be answered with an ambiguous “all over” (Sarat, 1990). Such ambiguity, however, just about manages to veil a decisive fact that affects the lawscape. If, as I show below, the lawscape is the interfolding of law and the city in both a material and an immaterial sense (Philippopoulos-Mihalopoulos, 2007a), the hysteric ubiquity of the law in it has as a result the law’s

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very imperceptibility. The fact that one goes to the bathroom without thinking about all these regulations does not mean that the law is not there. Rather, it means that the city is so thick with law that, just like air, the law is not perceived. It becomes 'invisible' (Philippopoulos-Mihalopoulos and FitzGerald, 2008), white noise, thin air. It becomes an *atmosphere* – there but not there, imperceptible yet all-determining. But, just like air that smells foul when something has gone wrong, the law can easily re-emerge from between the shiny tiles and screeching pipes and claim its space in the lawscape. A series of regulations, contractual agreements, statutes and cases visit you in your bathroom, and the whole thing quickly becomes overcrowded if you have also called insurance.

The mention of air is not just for the metaphor effect. In this contribution, I am dealing with sounds, scents and sweet airs, while keeping an eye on the law. My field of enquiry is the interstitial area between sensory and affective occurrences, namely sensory experiences that are traditionally thought to be a causal result of external stimuli, and affective experiences that are mostly associated with emotional changes and generally allude to something internal. Instead, I am arguing that there is no constructive difference between internal and external origin, namely senses and emotions, or indeed experiences and occurrences. The distinction between a self-contained individual and an environment has collapsed, and this is not only because of the forced mendacity of either side of the distinction. In its stead, I suggest the concept of atmosphere, namely an attempt at understanding affective occurrences as collective, spatial and elemental. Even immersed into atmospheres however, one cannot fail to notice that they are also legally determined. Thus, your earlier entrance to the rose-smelling room was a piece of engineered atmosphere, namely an atmosphere that embodied the lawscape along with its receding visibilities. The law determines an atmosphere by allowing certain sensory options to come forth while suppressing others. This might well be used positively in an attempt to reduce crime (Borch, 2008), but it might also be used as a tool for political or economic strategies that guarantee specific sensory responses and anticipate affective responses. I employ a broadly Deleuzian methodology with insights from radical geography, affective studies, and urban and critical legal theory in order to develop and link the various parts of the text. Thus, in the following part I explain briefly the concept of the lawscape and prepare it for its contextualisation, which takes place in the third section that deals with senses and affects. In section four, I engage with current notions of atmospheres and then present my version that departs from most of them and aims at a post-phenomenological, non-anthropocentric description. This is finally linked to a brief discussion on current intellectual property law developments with regards to atmospheric engineering.

Let us, then, go a little deeper in the lawscape.

## 2. Lawscape

Simply put, the lawscape is the epistemological and ontological tautology of law and the city (Philippopoulos-Mihalopoulos, 2007b, 2008). The neologism risks making the use of individual terms redundant. A city without law is a holy city of justice, perpetually floating in a post-conflict space where everything is light and forgiveness. Likewise, a law without a city is a law without materiality, an abstract, universal, immutable law that trammels the globe. Both the above are fantastic beasts that operate at best as horizon and at worst as cheap rhetoric. Think of the horizon of justice as a justice always-to-come, a messianic justice that demands present calculation (Derrida, 1992). Law is needed in the calculation part. After that, and once justice has been achieved (if ever), the law recedes for a well-deserved rest, since it becomes

superfluous when the city is just. The law only emerges in conflict, in quest (for justice), and in need to capture the future. A just city, however, has captured time itself, engraved it right *here*, onto the surface of its urban sprawl. A just city is a theological concept and cannot accommodate anything that falls short of divinity (*contra* Fainstein, 2010). Likewise, law as an abstract universal that is free from the constraints of matter and space is one of the illusions law (and some existing legal theory) insists on maintaining. Law as control is by definition material and more specifically spatial, for it is only through its very own emplaced body that the law can exert its power. Law comes from within the controlled, their bodies of appearance and their corridors of movement, as post-colonial theory has taught us (Bhabha, 2005). This is more than just biopolitical control, since it addresses the material nature of the law itself. To posit a law without a city is tantamount to positing, say, a universal human right that applies to everyone, without the need for contextualisation, namely that supreme need for closing in and eavesdropping on this particular body's specific circumstances.

For clarification's sake, I should mention that by *law* I understand both standard law and regulation, as well as the generalised diffused normativity that characterises life – what Spinoza (2007) has called "rules for living". This includes human and other bodies as well as objects. Just as a body, an object is already functionalised, normalised, never independent of its normative position in the world. The law is an expansive *institutional affect* that permeates the formal and the informal. What is remarkable, however, is that the latter diffused form of normativity exhibits the paradox of appearing both as a corporeally embedded preference for individual self-preservation, and a feature compliant with the current surveillance and control culture. This sense of normativity takes few risks and delegates conflict resolution to what it considers to be higher levels of judgement-making – indeed, to go back to Spinoza, a sort of guardian authority that pursues efficiently the individual interests of its subjects. The phenomenon of the "nanny state" is both an anathema and a desire, a direct result of which is the perceived political apathy. It is not all bleak though. This is a comfortable sense of normativity that covers specific needs, such as issues of belonging, constructions of home and community, as well as emplacement. It is, properly speaking, a product of its own spatiotemporal conditions, and as such it manages to make itself invisible and neutral, to recede from the surface and conceal its force. This works both ways: legal subjects recede from actively questioning the law (complacency or reassurance), and the law recedes from claiming a role in the construction of the everyday. This does not mean that the law is not there – simply that it is not perceived as being constantly there. This is a strategic move that aims at diffusing and dissimulating the force of law, offering instead a smooth, anomic atmosphere. Even so, things can on occasion overflow, exceed themselves and embark upon a flight of radical self-redefinition. In such cases, the already 'contagious' (in the sense of epidemic imitating, see Tarde, 1903) nature of the normative doubles up and becomes rapid, horizontal and fiery, engendering such eruptions as demonstrations, revolts, revolutions, coups. In all these cases, the law does not leave the stage. It is merely supplemented by a different normative direction and sometimes a higher velocity.

With *city* I understand the thick spatiality of bodies (humans, non-humans, linguistic, spatial, disciplinary), buildings, objects, animals, vegetables, minerals, money, communication, silence, open spaces, air, water, and so on. This spatiality is a fractal manifestation of what I have elsewhere called 'open ecology' (Philippopoulos-Mihalopoulos, 2011), namely the assemblage of the natural, the human, the artificial, the scientific, the political, the economic and so on, on a plane of contingency and fluid boundaries, or as Andrea Brighenti puts it, "a series of territories, which

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