

Introduction

Caterina Nirta

Apart from touch... no other powers of sense-perception can exist: and this organ of touch is composed neither of the earth nor of any other of the elements ... the animal cannot exist without the sense of touch.¹

1. Law and the Senses

Philosophy tends to relegate senses to the realm of phenomenology and experience. By contrast, critical theory has gradually eroded the holy opposition between knowing and sensing to the extent that new speculative trends are now seeking to rebuild it. While the social sciences endeavour to frame sensing within socio-historical genealogies, scientific research draws deterministic connections between our sensing the world and the neurophysics hardware. At the same time, planetary modifications gesturing towards the seemingly unavoidable extinction of humanity suggest ‘post’ human ways

¹ Aristotle, ‘De Anima’ (435b XIII) translated by E. W. (c. 1870), 35.

of sensing, with novel technologies that enable us to understand things that escape human capacity to sense, thus widening up perception to inhuman scales and temporalities. Meanwhile, capitalism relentlessly crafts our sensorial immersion into hyperaesthetic atmospheres, mirrored by art's ongoing fetishisation of site-specific sensoriality.

Law is present in all this, and with a complexity that is yet to be addressed in the current sensorial turn in legal thinking.² In fact, law and the senses have been mostly explored through the usual *law vs. 'what escapes law'* framework, one that characterises many of the '*law and...*' approaches (e.g. law and space, law and materiality etc.). In other words, the tendency in most cases has been that of remaining trapped within a phenomenological understanding of senses, oscillating between two sides (law vs. the senses) of an unquestioned opposition, occupying each of the sides of the partition without fully exploring its promising threshold.³ This has generated a series of compelling but ultimately limited narratives. Namely, law is assumed to be the anaesthetic par excellence,

² We are not the first to deal with this. See Lionel Bently and Leo Flynn, eds., *Law and the Senses: Sensational Jurisprudence* (London: Pluto Press, 1996); Bernard J. Hibbitts, 'Coming to Our Senses: Communication and Legal Expression in Performance Cultures', *Emory Law Journal* 41, no. 4 (1992): 873–955. See also the ongoing project 'Law and the Regulation of the Senses: Explorations in Sensori-Legal Studies', coordinated by David Howes at the Centre for Sensory Studies, <http://www.centreforsensorystudies.org/related-interest/law-and-the-regulation-of-the-senses-explorations-in-sensori-legal-studies>.

³ For a recent attempt in this direction see Sheryl Hamilton et al., eds., *Sensing Law* (Abingdon: Routledge, 2017).

constantly numbing the polymorphous realm of the sensorial in order to assert the rational domain of normativity. According to this narrative, the legal project is a systematic attempt to deurate law from any compromise with the sensible and its contingent imprecision. The *violence*, *coldness* and *alienation* of legal abstraction, and its systematic denial of the sensual spontaneity of life, are the *de rigueur* accusations against law, whose failure the critical thinker is quick to point out: senses are not amenable to legal machinations, they always escape law's cumbersome and joyless – to put it à la Spinoza – apparatus.

Hence the call to re-materialise, re-spatialise, re-sensitise law: to let law come to its senses, that is. Except that law has never been outside the senses. Its way of making sense of the world is always premised on its sensorial immersion in the world itself. This appreciation requires not only thinking law differently, but also thinking senses differently. This could open a path, we argue, towards exploring the sensoriality of law, both in the epistemological way in which law engages with, and indeed senses the world, as well as the ontological emergence of law from the sensorial continuum of the world itself. This series intends to pursue this path through four intersecting conceptual endeavours.

First, to disarticulate the sensorial from its reduction to the phenomenological, the subjective, the personal and the human dimension. This reductionism, which law is simultaneously responsible for and in denial of, underlies the majority of approaches dealing with law and the senses, and constitutes the unspoken fissure around which the two realms are split. Disarticulating the senses

from their direct subjective and phenomenological relevance may enable them to appear as a gateway to a post-human and ecological understanding of the spatio-legal, thus repurposing them as a promising tool with which to investigate the materiality of law's relation to the world. At the same time, gesturing towards the inhuman dimensions of sensing that climatic catastrophes, technological innovations, and philosophical and artistic praxis hint at may allow us to think novel ways, subjects and objects of sensing, whose impact on questions of agency, responsibility and politics is paramount.

Second, to dismantle the law/senses separation by widening the fissure into a complex ontology, and thus revealing the necessary but ultimately insufficient critique of law's 'anaesthetising' enterprise. This entails challenging the taken-for-granted presupposition of the law as a systematic attempt to purify itself from any compromise with the sensible and its contingent frictions. This, in fact, is only a part of the story. Law is certainly an anaesthetising *project* aimed at manipulating, governing, and channelling the senses into precise categories, boundaries and definitions, protecting from and numbing the sensorial, the bodily, the libidinal. Yet law is also an emerging *process*, that is, a diffuse normativity emerging out of the intermingling of bodies and senses that constitutes our being-together, and as such is inseparable from it. The relation between law and the senses is not one of straightforward oppression or control of the latter by the former, but rather a surface on which sensorial law (law folding into senses) and legal senses (senses folding into law) are reciprocally affected, and on which surface each fold pursues its own

mythology of origin, meaning, direction, teleology. The law-senses assemblage should be thus addressed by fully tackling the consequences of the unavoidable discrepancy between the de-sensitising project of legal control and the multi-sensorial process of legal emergence.

Third, and expanding on the foregoing observation: to expose the role of law in keeping this very dichotomy in place. This is effected by suggesting that beneath law itself lies unruly sensorial freedom; the law perpetuates a grand trick, an anarchic illusion apparently offering critique with an easy target (law's supposed denial of senses), which is only a decoy, however, in which critique all too easily ends up ensnared. Law's attempt to manipulate senses should not be underestimated or simplified. In a sense, law is constantly engaged in numbing the senses into common sense by manipulating, channelling and controlling the sensible; inserting properties and forbidding contacts; dissimulating violence, regulating sounds, defining taste. More precisely, law constructs its meaning (its sense, its direction) by orchestrating the senses in three ways. First, the law 'names' the senses, puts them into categories, thereby adding the moral weight of its sensorial judgement. Second, the law controls when senses should be kept apart and when blended, thus encouraging synaesthesia (coalesced sensorial modalities that encourage the attribution of one sensorial stimulation to another sense), or anaesthesia, depending on the way it adjusts its universal teleology to the particularity of the situation. In so doing, the law dissimulates the fact that these senses are blended or anaesthetised by something other than the individual herself. In other words, the law maintains an

illusion of phenomenological perception and evaluation of senses, while on another level, the law works hard to build socio-political and cultural receptacles of sensorial taste construction that dissimulate the fact that the law is behind all this, deftly orchestrating both senses and its very own apparent absence of involvement. Finally, law elevates the phenomenology of senses to the corollary of the liberal individual's sense of personal freedom: what better exemplifies freedom than sensorial taste of food, colouring, odours, materials? The law manages to fool us by allowing us to think that we own our senses in full phenomenological immersion, while all along, the law inverts their 'sense', by constructing their origin and facilitating a fake causality from senses to atmosphere, rather than from the legally constructed, preconscious atmosphere *in which* senses come to be perceived as individually owned.⁴ Understanding this complex interplay of intervention and disappearance obviously requires much more than simply assuming senses as a dynamic excess to law's static numbness. As much as overestimating it, underestimating law is a perilous mistake.

Fourth, to envisage an approach to law beyond these strictures, unfolding alternative strategies and methodologies to which law attuned to *its* senses may open up. We do not simply wish to push legal thinking beyond its comfortable socio-legal and critical methods. This series rather intends to pursue a constructive endeavour, namely ushering law into a different mode of dealing with

⁴ Andreas Philippopoulos-Mihalopoulos. 'Atmospheres of Law: Senses, Affects, Lawscapes'. *Emotion, Space and Society* 7 (2013): 35-44.

the world: one which is tentative, tempting, reflexive and uncertain, a mode of sensing, that is, which sanctions the impossibility for law to avoid its own materiality. This requires emphasising at the same time both the posthuman and the inhuman quality of law, and understanding its relations to senses accordingly. On one level, in fact, law emerges out of the coming together of human and nonhuman bodies, spaces and times. On another level, law pretends to address a purely rational and disembodied, inhuman subject, namely a fully institutionalised subject whose 'humanity' is constructed to the extent that it is useful to the institution. Both dimensions are crucial. The first suggests that law is not a socio-cultural construct that is superimposed over inert matter, but a normativity made of flesh and stones, thought and water streams, cosmic and everyday interaction, human and nonhuman sensing: a way in which the 'world' is organised. The second points to the fact that law is a force of abstraction and, insofar as abstract, plays a generative role in creating and giving consistency to identity, relations, spaces and worlds.⁵ Thinking the posthuman and inhuman dimension of senses thus permits rethinking law's sensorial engagement and entanglement with the world, at the same time gesturing towards different ways to use legal abstraction, beyond the absolutisation or dismissal of the senses.

⁵ Derek P. McCormack. 'Geography and Abstraction: Towards an Affirmative Critique', *Progress in Human Geography* 3, no. 6 (2012): 717-718.

2. Touch

In *The Story of My Life*, Helen Keller writes: ‘I did nothing but explore with my hands and learn the name of every object that I touched; and the more I handled things and learned their names and uses, the more joyous and confident grew my sense of kinship with the rest of the world.’⁶ Deaf and blind, taken by the hand of her teacher, Helen learns to sense the world through touch: ‘as the cool stream gushed over one hand, she spelled into the other the word water, first slowly, then rapidly. I stood still, my whole attention fixed upon the motions of her fingers. Suddenly I felt a misty consciousness as of something forgotten – a thrill of returning thought; and somehow the mystery of language was revealed to me. I knew then that ‘w-a-t-e-r’ meant the wonderful cool something that was flowing over my hand. That living word awakened my soul, gave it light, hope, joy, set it free! There were barriers, still, but barriers that could in time be swept away.’⁷ Touch is for Helen the way in which she experiences and learns about the world; touching becomes seeing, it is visceral, as she builds meaning, creates languages, forms thoughts and learns about herself in relation to her surroundings, what her body is capable of. Helen can only see because she can touch, and it is through touching that she is able to situate herself in the world, find her localised presence and activate her *sensing*.

The intimate connection between seeing and touch comes from afar: this was already suggested by Aristotle

⁶ Helen Keller. *The Story of My Life* (New York: Signet Books, 2010), 37.

⁷ *Ibid* 35.

who located touch within the realm of seeing, an integrated function in the act of perceiving. In *De Anima* he writes that seeing is a kind of touching, the work of the soul that makes itself felt through the body. This ‘localised sensation’, which happens through touch and is oriented towards the localisation of one’s body, generates a double perception in a way that seeing does not: the sensation of touch lingers when the touching object has ceased to touch and activates sensing while it is simultaneously sensed. In doing this, touch is constitutional of the body. Husserl writes, ‘I do not see myself, my body, the way I touch myself’,⁸ and what he means is that the eye can be touched and it can too touch, but its touch can only provide a relational sensation, not the ‘double sensation’⁹ of touch which, while it senses, is intent on constituting the body.

Revisiting the list of five senses compiled by Democritus, Aristotle for the first time attributes psychical functions to *sensing*. He distinguishes between, on the one hand, touch as direct contact and, on the other, touch as perception, that psychic ability of the soul (placed by Aristotle in the centre of being)¹⁰ to establish contact with

⁸ Edmund Husserl. *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy. Studies in the Phenomenology of Constitution*, Book II (Dordrecht: Kluwer Academic Publishers, 1989), 155.

⁹ Jacques Derrida. *On Touching – Jean-Luc Nancy* (Stanford: Stanford University Press, 2000), 172.

¹⁰ Aristotle. *On Sense*, 439a 1: ‘[...] the soul [is] resident in these parts of the body’; Aristotle. *On the Soul*, 420b 28. Cited In Józef Bremer, S. J. ‘Truth, Reality and Religion New Perspectives In Metaphysics.’ *Forum Philosophicum*, 16, no. 1 (2011), 74.

an object. In this sensorial framework made of intangible and transitory relations, touch, more than other senses, carries the material *potentia* of the body and makes itself essential in establishing a body. Keller finds herself and the world around her through it. Touch incarnates both the physical and metaphysical in its ability to express the determination of being as matter and of ‘thought that thinks itself’.¹¹ This sets it apart from the other senses.

For Aristotle, a ‘well developed sense of touch is essential to a humans intelligence’¹² and underscores being as the principle of life, while the other senses exist ‘for the sake of well-being’.¹³ This hierarchy, though mutable, as Aristotle himself also knew, given that his ideas on the senses and sensorial perception continued to change until the end of his life, is determined by the immediacy of touch: sight, smell and hearing happen at a distance from the main organ and do not require contact; touch and taste need contiguity.¹⁴ To manifest itself, touch relies on a precise and active bodily/physical involvement that other senses do not require.

To hear, to smell or to see preserve an involuntariness that touch bypasses altogether: the space where senses, still virtual, can pause before they are activated into sensations – that shift from hear to listen, from see to look – touch does not possess at all. To touch is *already* to

¹¹ Aristotle. *Metaphysics*, in 2 volumes, trans. Tredennick and Armstrong (Loeb Classical Library: Harvard University Press: 1072b), 17.

¹² Aristotle. *De Anima*, Op. cit. 9, modified translation.

¹³ *Ibid.*, 13.

¹⁴ Pascal Massie. ‘Touching, Thinking, Being: The Sense of Touch in Aristotle’s *De Anima* and Its Implications’, *Minerva – An Internet Journal of Philosophy*, 17 (2013), 79.

be active, to make a decision, to move forward, to invite and instigate, and to put oneself in a position of vulnerability. It is action that awaits an unknown counteraction.

Jacques Derrida writes, 'each gesture of the other toward me obligates me to respond by sacrificing the other of the other, his or her (or its) other gesture, or the absence thereof, but also the other other and, finally, all the other others.'¹⁵ This relational understanding of the body – when touching I experience something through the edges of my body – pushes me to surpass my limits and to confront the finite nature of myself as fleshed out by the presence – outside of myself – of the object I reach out to touch. I overcome my own self and take a leap beyond what I know. I get to know my difference through the consciousness of my finite body in relation to what it touches. Similarly, to touch oneself – to direct touch to oneself – poses the same set of challenges: it means to become aware of one's limits, to sense oneself as a limited unity dependent on and restricted by the relationship – the touch – with my hand. Aristotle had already claimed something analogous in *De Anima* when he wrote that 'the distinction between myself and others is fundamentally born right here from the sense of touch!'¹⁶ It is precisely the experience of being *exposed* to something outside oneself and to accept the limitations of one's body through the act of touching that makes touch a sense of the world, namely an outwards sense, one that exists only insofar as it can reach out of itself, to that

¹⁵ Jacques Derrida. *On the Name* (Stanford University Press, 1995), 68.

¹⁶ Aristotle. *De Anima*, 9.

which it does not know. In the movement of touching, extending and differentiating, the body remains closed, impenetrable: when it touches another body, it presents itself to the other, but the encounter remains a moment of acknowledgement of each other's secret: 'the other is secret because he is other'.¹⁷

Tactile sacrifice goes hand in hand with the violence of touch: touch embodies the original violence of being brought to life, a continuous violence that moves the skin of animate beings from enclosures of wraparound protection to the irredeemable violence of the touch of the world, with its other air, its other bodies and its other laws. This gives touch a specific spatiality, a *where*, a 'being in the world' that pre-exists sensing (sensibility) which, just an instant later, is activated by the touched object which in its turn touches back. This shift is crucial: the epistemology of touch presents us with an inevitable negotiation between inner-system and the environment, between touching and being-touched, which are, as Sartre writes, 'two essentially different orders of reality ... two species of phenomena which it is useless to try to reunite ... in the fact that they are radically distinct, and they exist on two incommunicable levels'.¹⁸ For Sartre, the body-as-subject that touches and the body-as-object that is touched belong to two totally separate spheres. Neither negotiation nor tension of any kind ever takes place between the two. Rather, it is a split in bodily perception,

¹⁷ Jacques Derrida. *On Touching – Jean-Luc Nancy*, trans. C. Irizarry. (Stanford: Stanford University Press, 2005), 107.

¹⁸ Jean-Paul Sartre. *Being and Nothingness* (New York: Washington Square Press 1966), 402–403.

for the touched object is not contemplated in the act of touching, 'my body for-me'.¹⁹ Therefore, for Sartre, to touch oneself is equivalent to touching another body. The variable is contingency, the skin, namely the real locus of corporeality, sole testimony of my presence which 'reveals my body to my consciousness'.²⁰

Maurice Merleau-Ponty's view on the other hand rejects Sartre's unidirectional vision and suggests that touch is a *unitary* and *reversible* movement: 'my body touched and my body touching: there is overlapping and encroachment'.²¹ The movements may not coincide, the organ that touches may be clumsy, the touch awkward, de-centred, its touch 'opens my body in two',²² but this discrepancy is essential to perception. In fact, it determines perception. As Martin C. Dillon suggests, the distance given by that non-coincidence is what confirms that perceiving something is not the same as being that thing.²³ This difference, however, is not to be understood as dualism. It is rather unified by the body that both touches and is touched. It is precisely in this difference within identity that Merleau-Ponty's ontology of touch lies: to be oneself whilst being of the world; my body 'takes its place among the things it touches, is in a sense one of them, opens finally upon a tangible being of which it is a part'.²⁴ As

¹⁹ Ibid., 434.

²⁰ Ibid., 338.

²¹ Maurice Merleau-Ponty. *The Visible and the Invisible*. (Evanston: Northwestern University Press, 1969), 123.

²² Ibid.

²³ Martin C. Dillon. *Merleau-Ponty's Ontology* (Bloomington: Indiana University Press, 1988), 159.

²⁴ Merleau-Ponty. *The Visible and the Invisible*, 133.

my hand touches and is touched, it perceives two or more distinct sensations. It is a 'double touch', a 'reversibility' of touch that contains simultaneously the sense of being touched. The distance between I and the object I touch disappears in this moment of unity where, through touch, self and other are joined together in their difference.

This double and reversible sensation which can only originate in the body, makes touch's ontology essential to the very sensibility of the body. It is a form of self-awareness of the body that senses and, at the same time, becomes the guarantee of *the body proper* and its inextricable corporeality. For Merleau-Ponty, tactility is situated within the body and localised through sensing. So, unlike Sartre, as I shake a hand, the break between my body and the body of the other determines two separate bodily experiences, although my body – 'I remain on the side of my body'²⁵ – re-conducts this reversibility back into the only point of view of which I am capable, that is enabled by my flesh.

There is yet another vulnerability that sets touch apart from the other senses. Although it has the privilege of immediacy, the object that it touches and by which it is touched is indefinite, changeable, obscure, always the result of the internal and external movement of perception and of the skin. We could even argue that touch is the most active of the senses because it activates the potentiality of the organ that touches and by which it is touched. Yet it is also the most ambiguous and unpredictable

²⁵ Ibid., 194.

because it relies on the impulse that it receives back from the touched object.

3. Law and Touch

If we take seriously the above suggestion that touch is an act of poking into the unknown – a provocation in its original meaning of *pro vocare*, to call forth, to summon, to challenge – and being open to what touches us back, then it would be safe to assume that the law does not and cannot touch. In fact, the law's primary impulse is precisely the opposite: to pull back, to sedate, to calm down, to normalise, to join extremities, to smooth excesses. The dialectics of the law, which aims at the perfect balance between permission and restriction, create a field of tranquillity, whether real or only perceived, where action is controlled and the real is imagined, planned and often staged. Here, reaction is a threat to the juridical order. To touch is to alter this order by introducing a new element between the various bodies involved and thus voiding their exclusivity. To touch is 'a violent opening'²⁶ 'into the realm of unknowability',²⁷ an act of non-symbolic exposure that endangers rather than preserves.

Can we then say that the law does not touch? Or could it be that touch, just as all the other senses, is an institutionalised affect, fully emerging within the law and contributing to its conative abilities? Is it not more accurate to say

²⁶ Jacques Derrida. *Of Grammatology*. (Baltimore: John Hopkins University Press, 2005), 139.

²⁷ Erin Manning. *Politics of Touch: Sense, Movement, Sovereignty*. (Minneapolis: University of Minnesota Press, 2006), 56.

that the law pretends not to touch? Law's temporality and the representativeness it nurtures are open to constant negotiation, reinterpretation and reformulation: morals, values and traditions change, and the representational quality of the law is called to catch up with those changes or anticipate them. This makes its imprint vacuous, weak and extremely dependent on a necessary sense of collectiveness through which individuals can *feel* represented and protected. This *do ut des* relationship, a pact of trust and duty of care, preserves the game of roles between the law and individuals but it also *depotentialises* its expression. Touch eludes representation; it comes directly from being and goes straight back into being. However, as Pascal Massie suggests, the absence of another body in its activation (for example, the eye and the visible object) does not mean that touch eludes mediation; rather, 'even in the experience of intimate closeness, mediation remains.'²⁸ This is explained by Aristotle through locating the organ of touch within the body: the object we see preserves a distance from the organ of sight, while touch occurs in the depths of our own flesh, making its sensations instant and immediate (but not unmediated). This instantaneity further distinguishes touch from all the other senses in that it prompts it constantly to renew itself, to seek new surfaces, to diversify its intensity and to touch again. This is the temporality of touch. Touch vanishes at the very moment of contact and can only return in different forms: 'at the point where I make contact with

²⁸ Massie. 'Touching, Thinking, Being', 80.

the world, I am already dead.²⁹ The temporality of touch paralyses the law, unequipped to synthetise the dynamism of such movement. If senses are a ‘multiplicity of potential connections,’³⁰ touch is the movement of desire that only exists in a state of perpetual emergence.

Touch’s temporality comes with a spatiality, as mentioned above. Nancy, for example, distinguishes between the spatiality of touch determined by its contiguity which limits it to *mere* contact, and the time of touch, which he understands as the *passibility* to sense, namely a mode of being susceptible to touching.³¹ The distinction between contact and touch, space and time – the former enters the other, reaches beyond its impenetrability, the latter *merely* touches that which does not offer itself to be *entered* – is what Derrida observes in relation to the law. The force of law is built on a fundamental and necessary misunderstanding: when one seeks to touch the law, the law moves further away, makes itself inaccessible and does not allow itself to be touched. Like contact, the law touches and simultaneously forbids touch, making itself inaccessible:

Perhaps the law is always a law of tact. This law’s law finds itself there, before anything. There is this law, and it is this law itself, the law of law. One cannot imagine what a law would be in general without something like tact: one must touch without touching.

²⁹ Mark C. Taylor. *Hiding*. (Chicago: Chicago University Press 1997), 13.

³⁰ Brian Massumi. *Parables for the Virtual–Movement, Affect, Sensation*. (Durham: Duke University Press, 2002), 93.

³¹ ‘The world is passible to sense, it is this passibility because it first comes to be in accordance with this’ Jean-Luc Nancy, *The Sense of the World*, trans. J. Librett. (Minneapolis: Minnesota University Press), 67.

In touching, touching is forbidden: do not touch or tamper with the thing itself, do not touch on what there is to touch. Do not touch what remains to be touched, first of all law itself—which is the untouchable, *before* all the ritual prohibitions that this or that religion or culture may impose on touching.³²

Tact, more than touch, then, best captures what the law does and the capacity of its action. Touch is always a voluntary and active movement, an invitation, an action and reaction. Tact is a self-controlled, self-declared, ‘anticipated-in-advance’³³ declaration of intent. Tact has the quality to mediate, to smooth over the excessiveness, the *differential*, to find the proper, most appropriate forms of dealing with the self and others. In other words: to conform. Tact, like law, preserves *intact* a fundamental formality – *a form* – that touch refuses altogether, a ‘certain politeness’³⁴ that holds us back from being exposed to the surprise of life. Interestingly, in a medical study on physiology of 1835, Fletcher describes the distinction between touch and tact as follows:

The perception of which constitutes Touch ... is in all the superior classes of animals the Dermoid Tissue, and the nerves which convey it are the Sensiferous portions of the Trigemini, and of all the Regular nerves which are distributed upon the surface of the body. The stimulus to this irritation is the contact of palpable material substances in general, and it is necessary, at least in man, for its full perception ... It will now be understood what is meant by the

³² Jacques Derrida, *On Touching – Jean-Luc Nancy*, 66.

³³ Manning. *Politics of Touch*, 135.

³⁴ Derrida. *On Touching*, 68.

distinction between Touch and Tact – the former term being used to signify the sensation which is communicated by the Sensiferous nerves thrown into a state of tension ... - and the latter that sensation which is communicated by the same nerves in state of relaxation. Touch, therefore, ... is voluntary, active and necessary ... while tact, which is quite involuntary and passive, maintains the organs employed ... in the same condition.³⁵

Though rudimentary, this medical tract indicates the privileged role of touch, ‘the only sense where Man excels every other class of animals,’³⁶ in the active reception and manifestation of bodily sensations. Importantly, touch is attributed a primordial position in the biology of the body and all those energies that constitute a body. If touch powers the body, tact is overpowered by the body.

Tact happens the moment before touch storms into the unknown and reaches beyond. It is the ‘touch without touching’³⁷: tact can emerge from the field of touch, but only operates in a condition of security, while touch is always tactless. Tact’s intentions are always declared in advance, ‘attempting to put senses in their place, even as I continue to reach towards the untouchability of the senses as senses, asking of my body that it expand, prosthetically, towards a concept of the senses that signifies not the biological body but the body’s imminent excesses.’³⁸

³⁵ John Fletcher. *Rudiments of Physiology in Three Parts*. (London: Longman, 1835), 66–67.

³⁶ *Ibid.*, 67.

³⁷ Derrida. *On Touching*, 66.

³⁸ Manning. *Politics of Touch*, 135–136.

Paradoxically, in its restless pursuit of conformity, tact too nurtures an out-of-the-body dimension in its necessity to bypass specificity and nurture an artificial fit-all model that inevitably rejects human *being*. Perhaps the most notable difference between tact and touch is that touch, unlike tact, exists in traction with the body, that is, it claims its relevance through an act of belongingness to the body. Here lies the posthuman contingency (from *cum*, 'together with'; and *tangere*, 'to touch') of touch, that is, the materiality of human and nonhuman, of being together in ways that exceed both the 'security' of tact and the intentionality of touch, rather pointing to an ontological contiguity which is promisingly, but also disturbingly, contagious (again, from *cum* and *tangere*). It is this contagion that the tactful apparatus of law seeks to invalidate. This does not happen by way of negation, but rather by neutralising the potential inner conflict of that con-tact. In this sense, tact appears to be pointing to an inhuman, abstract disembodiment, the inhuman projection of reality that law nurtures in its pretence to touch tactfully. Tact, unlike touch, appears to exist despite the body.

The contraposition is evident: the law's primary impulse is to bind together in the name of a widely shared, or at least widely recognised and often imposed, ideal of social existence. This is not to say that the law refuses pluralism or change, but these are always negotiated according to the parameters and tools within its capacity. This capacity can be, perhaps simplistically, understood as normativity, the means by which the law keeps itself alive, the force that touches without touching, that 'abstains from

touching on what it touches³⁹. According to Derrida, this *a priori* notion that characterises tactile experiences determines the law's untouchability. More specifically, the law's function is to create experiential identification and simulate a sense of representation where individuals can find correspondence. Touch, by contrast, as Massumi writes, is a movement that:

strikes the body first, directly and unmediatedly. It passes transformatively through the flesh before being instantiated in subject-positions subsumed by a system of power. Its immediate effect is a differing. It must be made a reproduction. The body, fresh in the throes of expression, incarnates not an already-formed system but a change.⁴⁰

Arguably, the law's interest is precisely the opposite. Namely, to render the individual compliant with the promoted order, and to interject itself between the body and its erring. And yet, at the same time, by always and unavoidably belonging to the contingent materiality of the world, law touches (untactfully) and is exposed in return to the touch, and contagion, of other bodies, spaces and times.

In fact, can we not describe law as a haptic norm which embodies the material weight of law itself, namely its being always already 'rooted in the direct and immediate action and reaction of bodies, long before any normative abstract scheme'?⁴¹ This is what Deleuze suggests when

³⁹ Derrida. *On Touching*, 67.

⁴⁰ Brian Massumi ed. *A Shock to Thought – Expression After Deleuze and Guattari*. (London and New York: Routledge, 2002), xvii.

⁴¹ Andrea Brighenti. 'Did We Really Get Rid of Commands? Thoughts on a Theme from Elias Canetti'. *Law and Critique*, 17, no. 1 (2006), 49.

he writes that ‘law weighs with all its might, even before its object is known, and without ever its object becoming exactly known.’⁴² It is a tangible presence in the here-and-now that is consistent with the peculiar temporality of touch, an eventful and contingent temporality, that is, that law must somehow process and tame. We could suggest this as the material touch of law, that is, the way law always already touches and penetrates the world way before elaborating its own tactful image.

In this vein, this volume of *Law and the Senses* attempts to illuminate and reconsider the complex and interflowing relations and contradictions between the tactful intrusion of the law and the untactful movement of touch. Each contribution unveils a multi-faceted new dimension to the *force of touch*, its ability to form, deform and reform what it touches. In unique ways, each recognises the trans-corporeality touch has to traverse the boundaries on the body and entangle other bodies and spaces, thus challenging the very notion of corporeal integrity and human *being*.

Naomi Segal’s touch is a paradox – touch which does not touch: the most proximate of senses, conditioned by its impossibility to overcome the distance between pleasure and taboos on bodily contact. Her account exposes the risks of bodily contact while at the same time exploring the desire to shorten that distance to embrace touch and its violence. We are faced with a cyclical impossibility which cannot be avoided, yet we are compelled to search for new ways of overcoming it. Segal identifies modes

⁴² Gilles Deleuze. *The Logic of Sense* (London: Continuum, 2004), 59.

of desire and impossibility in a series of European texts from the late nineteenth and early twentieth century and reflects on the inevitable conflict that stems from this negotiation. Hers is an exploration into forms of distanced proximation where desire, in a posthuman era, is mediated between deconstruction as well as creation, touching and not-touching.

Jan Hogan's piece explores the space between urban and natural environments and how the sense of touch becomes the cohesive force through which different landscapes meet and initiate a dialogue. Her ethnographic account of walking a trail, *The Track*, surrounded by wildness on an island in the Southern Ocean, exposes the author to sensorial discoveries where touch is not simply the gesture of the body, but expands *across* the body and becomes memory, breath and the vehicle through which it situates itself within the unpredictability of space, time and matter. Through a series of photographs of the Truganini Track on the edge of Hobart, Tasmania, Hogan reveals the endless possibilities for space to exist, expand and contaminate its ever-changing boundaries outside the representation of normativity. Here, touch challenges the relationship between humans and the environment.

Moritz von Stetten offers an intriguing analysis of the discourse around brain surgery and brain stimulation. He suggests that no other mental health therapies have ever met equal levels of collective criticism and sense of distrust in mental care providers, which have contributed to increasing the sense of stigma attached to these techniques. In spite of this, research in the field of brain stimulation is as strong as ever: from the production of new

and always less invasive antidepressants, to innovation in brain surgery. This contribution uses the neurological framework to argue that brain stimulation practices rely on *regimes of touch*, an articulation of normative experiences and affects that alter the *sensing* of the body. Here von Stetten draws from the phenomenological tradition of Helmuth Plessner, Maurice Merleau-Ponty, Thomas Fuchs and Gesa Lindemann to argue that the corporeality of the body is made of subjectivity and objectivity, and that the *Leib* (living body) has to come to terms with its carnality as well as with its consciousness. From here, this chapter embarks on a fascinating reading of severe depression and how brain stimulation as a medical technique promotes an understanding of the human body, its vulnerability and sense of touch that is counter to the phenomenological concept of *Leib*. Touch is mutilated, as therapeutic practices fail to negotiate with the contingency of the body that suffers and seeks help and the body that receives that request that offers help.

Erin Manning's contribution looks at synaesthesia as a sublime experience where touch becomes the spacetime in which the body abandons itself and is at the same time revealed to itself, surpassing the gravity of its deficiency through the experience of multi-sensing. There is an interesting distinction between interaction and relation: the former is a human-centred type of emotion that responds to social norms and feeds from a normative environment structured on mutual recognition and acceptance. The latter is an overflow of sensations and multi-sensing experiences that cannot be contained within a body-schema. It is best described as *overfeeling*

and is so intensely entwined with the phenomena of the world that its sole mode of expression is relational, beyond the limits and conventions of interaction, towards a 'continuum of perception'. Through a self-reflective analysis of her own artistic practice, Manning suggests that the normative interactions that constitute empathy are unable to account for the complexity of multi-sensing. Similarly, consciousness acts as a watchdog that calibrates the boundaries of normativity, and reduces, when it does not nullify, the unexpressed, yet present, primordial force of our senses. Here, touch becomes a nonhuman, beyond human rather, mode of being in the world.

Remaining in the realm of nonhuman experience, Nicole Nyffenegger's contribution is a fascinating exploration through the ways in which illicit touch can violate the skin and transgress the limits of the body, in the attempt to appropriate and reframe what is usually considered moral, ethical or legal. To Nyffenegger, traces of illicitness are found in the marks of abused and marked skin with which, she says, our culture brims. This contribution conveys the corporeal gravity of marked skin through the use of powerful symbols which, we discover, become literal materiality, artefacts, autobiographical accounts, traces of stratified real life which, today, relived through different people and contexts, document the punitive, macabre at times, and dehumanising *force of touch* which, in appropriating those narratives, histories and bodies, constructs hierarchies, establishes relevance and reproduces norms.

We close this issue of *Law and the Senses* with two artist contributions: the first, by B. A. Zanditon, presents

a self-reflective account of her artistic practice through which she looks at the rigidity of institutional power in relation to the instinctual character of her work. To what extent does normativity manipulate art? In the attempt to answer this question, Zanditon explores the hegemony of the eye over touch in contemporary artistic representation and reflects on the difficulties she encounters making rubbings, an artistic practice that strongly relies on touch and the ability touch has to discern textures, materials, surfaces, so often ignored or dismissed by the eye.

The exploration of textures, nuances and materials is also central in Tolis Totolas' contribution. Here, what we have is the photographic reproduction of the complex stratifications hidden within urban environments. These often provoke conflict, contradictions and trigger sensorial memories that can form a spatio-temporal archive through which we navigate space. In the ever-changing chaos of this sensory arena and the over-stimulation resulting from fast-paced technologies, touch, more than other senses, has had to reform itself to remain relevant. This collection of photographs probes the central role of touch in the process of recognising and establishing new relations conducive to a functional and modern society.

References

- Aristotle. *Metaphysics* in 2 volumes. Cambridge, MA: Harvard University Press, 1072b.
- Bently, Lionel and Leo Flynn, eds. *Law and the Senses: Sensational Jurisprudence*. London: Pluto Press, 1996.

- Bremer, Józef. 'Aristotle on Touch.' *Truth, Reality and Religion New Perspectives In Metaphysics: Forum Philosophicum* 16, no. 1 (2011): 73–87.
- Brighenti, Andrea. 'Did We Really Get Rid of Commands? Thoughts on a Theme from Elias Canetti,' *Law and Critique*, 17, no. 1 (2006): 47–71.
- Deleuze, Gilles. *The Logic of Sense*. London: Continuum, 2004.
- Derrida, Jacques. *On the Name*. Stanford: Stanford University Press, 1995.
- Derrida, Jacques. *On Touching – Jean-Luc Nancy*. Stanford: Stanford University Press, 2000.
- Derrida, Jacques. *Of Grammatology*. Translated by Gayatri Spivak. Baltimore: John Hopkins University Press, 2005.
- Dillon, Martin C. *Merleau-Ponty's Ontology*. Bloomington: Indiana University Press, 1988.
- Everson, Stephen. *Aristotle on Perception*. Oxford: Oxford University Press, 1997.
- Fletcher, John M.D.F. R.C.S.E. *Rudiments of Physiology in Three Parts*. London: Longman, 1835.
- Husserl, Edmund. *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy. Studies in the Phenomenology of Constitution*, Book II. Dordrecht: Kluwer Academic Publishers, 1989.
- Keller, Helen. *The Story of My Life*. New York: Signet Books, 2010.
- Manning, Erin. *Politics of Touch: Sense, Movement, Sovereignty*. Minneapolis: University of Minnesota Press, 2006.
- Massie, Pascal. 'Touching, Thinking, Being: The Sense of Touch in Aristotle's *De anima* and Its Implications' *Minerva – An Internet Journal of Philosophy* 17 (2013): 47–101.
- Massumi, Brian. *Parables for the Virtual: Movement, Affect, Sensation*. Duke University Press, 2002.
- Massumi, Brian, ed. *A Shock to Thought – Expression After Deleuze and Guattari*. London and New York: Routledge, 2002.
- Merleau-Ponty, Maurice. *The Visible and the Invisible*. Evanston: Northwestern University Press, 1969.

Nancy, Jean-Luc. *The Sense of the World*. Translated by J.Librett. Minneapolis: University of Minnesota Press, 67.

McCormack, Dereck P. 'Geography and Abstraction: Towards an Affirmative Critique', *Progress in Human Geography* 3, no. 6 (2012): 777–798.

Philippopoulos-Mihalopoulos, Andreas. 'Atmospheres of Law: Senses, Affects, Lawscapes.' *Emotion, Space and Society* 7 (2013): 35–44.

Sartre, Jean-Paul. *Being and Nothingness*. Translated by Hazel Barnes. New York: Washington Square Press, 1966.

Taylor, Mark C. *Hiding*. Chicago: Chicago University Press, 1997.