Repositório ISCTE-IUL

Introduction

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may I disappear in order that those things that I see may become perfect in their beauty from the very fact that they are no longer things that I see[1]

1. Law and the Senses

Philosophy tends to relegate senses to the realm of phenomenology, experience or subjectivity. 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 neuro-physics hardware. At the same time, planetary modifications gesturing towards the seemingly unavoidable extinction of humanity, suggest literally 'post'

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[1] Simone Weil, *Gravity and Grace* (London: Routledge, 2002), 42.

human ways of sensing, with novel technologies that enable us to understand things that escape the human capacity to sense, thus widening 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 within 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 to remain 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, constantly numbing

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[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).

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 depurate 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 polymorphous and sensual spontaneity of life, are the *de rigueur* accusations addressed to law, whose failure the critical thinker is quick to point out: senses are not amenable to legal machinations, they always escape its cumbersome and *sad*, 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 of 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, and the ontological emergence of law from the sensorial continuum of the world itself. Senses, no longer an anarchic *escape* from law, thus become a way to explore the functioning, limits and possibilities of law, questioning how law works and deals with senses, how law senses, how law makes sense. 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, of which law is simultaneously responsible as well as in denial, 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 posthuman 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 to 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 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. By suggesting that, beneath law itself, unruly sensorial freedom would lie, 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 best 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, whilst 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] 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 strategy.

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

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

series rather intends to pursue a constructive endeavour, namely ushering law into a different mode of dealing with 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 non-human 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 post-human 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 their absolutisation or dismissal.

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[5] Derek P. McCormack, 'Geography and Abstraction: Towards an Affirmative Critique', *Progress in Human Geography* 3, no. 6 (2012): 717–18.

2. **Seeing**

In the history of Western thought, the sense of vision occupies the height of the sensorial hierarchy. The sense of clarity and purity, it is the one most explicitly associated with knowledge and truth. Whatever the epistemological considerations about the reality which the seer would be able to perceive within, through or beneath the appearance, seeing is configured as the most objective of senses, the one that most powerfully reasserts the ontological separation between subject and object, seer and seen, the perceiving eye and inert matter. Of course, from Gestalt theory to magicians' tricks, vision has been demonstrated as deceiving in many ways. Yet this has been normally assumed to be a localised impairment, a personal myopia, a temporary hallucination. Sight may often be impaired by physical imperfection or the foggy turbulence of a medium; yet, in *theoria* (meaning to look, to see), once the obstacles are removed, the unimpaired vision will allow the observer to fully see and know the object. This implicit understanding grounds the reliance on technological apparatuses, whose inhuman capacities supposedly allow for overcoming human flaws in order to fabricate ever finer approximations to truth.

Truth is to be found beyond the sensible, Plato argued, 'to be apprehended by reason and intelligence, but not by sight'.[6] *Theoria* is the intellectual vision of ideas. Such rational vision would be able to overcome the fallibility of perception, guarantee that transparency would reign, and

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[6] Plato, *The Dialogues of Plato*, trans. Benjamin Jowett (New York: Random House, 1920), 529.

thus reach the '*adaequatio rei et intellectus,*' the conformity of things and intellect, that the Scholastics equated with truth. Not so dissimilarly, Newtonian mechanics, today updated by neurological reductionism, assumed human vision as a complex machine to be explained independently from the subjective act of seeing, by turning the gaze to its hidden 'levers and screws'.[7] Different were the conclusions to which the late Kant came. Sketching the prototype of a phenomenology to come, Kant turned phenomena from *appearances* of ideas to manifestations (*apparitions*), thus putting them in relation to the conditions of possibility of appearing itself. This transcendental move, dislocating the centripetal pretence of the Cartesian *I think,* constructed the subject in the form of a radical passivity, in which the *me* realises (apperceives) the radical *anteriority* of an external *I* which affects it.

The question of self-awareness of one's own sensing has been a longstanding one in the history of philosophy. Aristotle explored it in some key passages of *On the Soul*, and commenting on it, Alexander of Aphrodisias wrote, 'for to everyone who senses something there comes about, in addition to the apprehension of the thing that he is sensing, also a certain self-awareness of [the fact] that he is sensing'.[8] A synaesthetic apperception, that is, a term coined by

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7 'The dismemberment of nature 'with levers and screws' is a theoretical error because it is an aesthetic error.' George Simmel, quoted in Éric Alliez, *The Brain-Eye: New Histories of Modern Painting*, trans Robin Mackay (London: Rowman & Littlefield, 2015), 3.

8 Alexander of Aphrodisias, quoted in Nicola Masciandaro, 'Synaesthesia: The Mystical Sense of Law', *The Whim* (blog), 01 November 2016, https://thewhim.blogspot.pt/2016/11/synaesthesia-mystical-sense-of-law.html?m=1 (accessed 15 May, 2017).

Alexander himself, to capture the sensing-with (*sunaisthēsis*) which characterises this peculiar instance of sensing the very act of sensing.[9] This in-built *détournement* of sensation, in a spiralling interplay between perception and apperception, made the Kantian apparatus vacillate. What if, similarly to Arthur Rimbaud's *je est un autre* formula, vision comes from an external, alien *I-eye* which digs inside *me* a crack, and on whose denial the scaffolding which support the subject is constructed?[10] The principle of the transcendental subject helped Kant secure his edifice against the seismic threat of the outside. The I-subject remained the centre, subjecting the sensible matter to the unifying form of its representation. Moreover, with the common sense reached through shared agreement, further ground would be provided to universalise the confusing sensing-with of synaesthetic apperception into an uncontroversial con-sensus.

Phenomenology drew the consequences of the Kantian correlation, denying the 'dismemberment of nature' of mechanicism and the unifying representation of the transcendental subject. The consciousness explodes towards the outside: as Jean-Paul Sartre wrote, it throws us 'into the dry dust of the world, on to the plain earth, amidst things … rejected and abandoned by our own nature in an indifferent, hostile, and restive world.'[11] Perception

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9   Masciandaro, 'Synaesthesia'.

10 "I *is* another", Rimbaud's famous formula that Deleuze would use to explain the de-subjectivising role of apperception in Kant, in Gilles Deleuze, *Deuxième leçon sur Kant,* Vincennes, 2 March 1978, http://www.le-terrier.net/deleuze/ (accessed 25 May, 2017).

11 Jean-Paul Sartre, 'Intentionality: a fundamental idea of Husserl's phenomenology', in *The Phenomenology Reader*, eds. Dermot Moran and Timothy Mooney (London: Routledge, 2002), 383.

means 'taking in' (*capere*) reality, 'entirely' (*per*). And yet perception, human perception, is always an exception: it takes in an 'outside' (*ex*), yet never in its entirety. It includes, by excluding. To the phenomenologist, vision is dependent on the exceptional flashlight of consciousness, which illuminates the world, fleetingly rescuing it from darkness, only to throw around more shadows in the process. As Gilles Deleuze writes,

> the whole philosophical tradition … placed light on the side of the spirit and made consciousness a beam of light which drew things out of their native darkness. Phenomenology was still squarely within this ancient tradition: but, instead of making light an internal light, it simply opened it to the exterior, rather as if the intentionality of consciousness was the ray of an electric lamp ('all consciousness is consciousness *of* something'…)[12]

Yet in the same way, perhaps seeing does not come from *my* eye. Perhaps images, before becoming images *of* my consciousness, are images in themselves: a paradoxical oxymoron that could rescue vision from its dependence on a subject, a consciousness, an I-eye. This is how Henri Bergson broke with the common sense: matter is image, image is matter, the world is made of matter-image, beings that are a pure appearing in themselves before being captured into a subjective consciousness.[13] In fact, consciousness itself is an image, a thing of this world. Rather than

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[12] Gilles Deleuze, *Cinema 1: The Movement-Image* (London: Bloomsbury Academic, 2013), 60.

[13] Henri Bergson, *Matter and Memory* (New York: Cosimo Classics, 2007).

being 'exploded' into the dry dust of the world, it *is* the dry dust of the world: not a centre of intentionality but a thing among other things, caught into the continuous flux of self-subsistent matter-images.[14]

> Things are luminous in themselves without anything illuminating them: all consciousness *is* something, it is indistinguishable from the thing, that is from the image of light. But here it is a consciousness by right [*en droit*], which is diffused everywhere and yet does not reveal its source [*ne se révèle pas*]: it is indeed a photo which has already been taken and shot in all things for all points, but which is 'translucent'.[15]

So, even when we remove the spotlight of the Leibnizian God, the floodlight of the transcendental subject, the flashlight of the phenomenological consciousness, we are not left in the dark: the kaleidoscope of a multiplicity of points of view emerges. Not *before us*, however, since we are part of them too. Everything is illuminated. Liberated from its dependence on transcendent sources, the light floods the whole ontological plane. In the interaction between light *and* matter, images are thus produced. Pier Paolo Pasolini once wrote that 'the whole life, in the entirety of its actions, is a natural and living cinema … an infinite single-take [*piano sequenza*]'.[16] 'What is the real before the human eye comes to relativise it?'– asks Rocco Ronchi: 'nothing but cinema, an ensemble of images that exist in themselves, spectacle

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14 Rocco Ronchi, *Gilles Deleuze* (Milano: Feltrinelli, 2015), 108.

15 Deleuze, *Cinema 1*, 66.

16 Quoted in Ronchi, *Gilles Deleuze*, 218.

without spectator.'[17] It is a flux of images in which perception is impersonal, diffuse and anonymous, or the perception of 'an inhuman eye … that belongs to no one', of which the human eyes are simply local and temporary crystallisations.[18]

As Eric Alliez explains in his engagement with Goethe's theory of colour: 'it is light that contemplates us, in an anonymous percept, as if the Eye were already among things and our own eye immersed in it, a retinal contraction in nature's general vision.'[19] The Eye of Nature which the *Naturphilosophers* speculated about, is an impersonal eye to which we ontologically belong, since we do not produce or shed light on things: our eye is made of light, our vision dependent on its *encounter* with matter. This already resonated in Plotinus' famous question: 'If the eye were not sunny/How could we possibly perceive light?'[20] Thus perception is radically reformulated. No longer a *taking in*, let alone *entirely*, an *outside*, it always emerges in the middle: 'perception puts us at once into matter', as a local rarefaction of the flux of images the human eye produces by cutting up a precarious vision from a circumscribed perspective. If the *naturing nature* is an infinite single take, then perception is the editing, the *montage*, performed by and from a body that, as a centre of action, produces *a* world by obscuring the real,

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17 ibid., 110.

18 Robin Mackay, 'Preface' to Alliez, *The Brain-Eye*, ix.

19 Alliez, *The Brain-Eye*, 5.

20 Plotinus, quoted in ibid., 6.

perturbing and deflecting the plane of images, letting a point of view surface. [21]

'Motion and light destroy the materiality of bodies', claimed the Futurists, thus implying as untenable any separation between objects and people, vision and reality, as Riccardo Baldissone reminds us in his contribution to this volume. Vision is an action immanent to the world, Ben Woodard suggests in his chapter; not a reflection, but a diffraction, as Jelena Stojković explains, following Karen Barad, in her contribution. A haptic diving into an open materiality, that leaves no chance to obtain a safe, comfortable and distant point of view from which vision would be measured and assessed according to criteria of brightness, clarity and definition.[22] Picpoet's contribution to this volume diffracts seeing by allowing the textual to open up other simultaneous angles. Thus vision is emancipated from the human in at least two clear senses. First, because it is an emergent property of a post-human assemblage, in which perception surfaces out of the singular point of view that a body *occupies*.[23] Second, because this localised and tentative vision is always an actualisation of a virtual Eye. 'If from the point of view of the human eye – Deleuze clarifies – montage

21   Gilles Deleuze, *Bergsonism* (Cambridge, Massachusetts: MIT Press, 1991), 25; see also Quentin Meillassoux, 'Subtraction and Contraction: Deleuze, Immanence and Matter and Memory', in *Collapse, III: Unknown Deleuze*, ed. Robin Mackay (Falmouth: Urbanomic, 2007).

22   On the haptic quality of vision, see Andrea Mubi Brighenti, *Visibility in Social Theory and Social Research* (Basingstoke: Palgrave, 2010).

23   See Eduardo Viveiros de Castro, *Metafísicas Canibais. Elementos para uma Antropologia Pós-Estrutural* (São Paulo: Cosa Naify, 2015).

is undoubtedly a construction, from the point of view of another eye, it ceases to be one; it is the pure vision of a non-human eye, of an eye which would be in things.'[24] This is not, to be sure, the all-seeing eye of a god, but a virtual, inorganic, inhuman eye by which human perception is not determined but unavoidably exceeded, and thus shaped.

This Eye, in Keith Woodward's words, 'concerns an emerging situation's 'making-available' a multiplicity of viewpoints (potentially) to the bodies (humans, bits of matter, animality, languages and so on) that compose it'.[25] A multiplicity of viewpoints which perception occupies every time. Seeing, in other words, depends simultaneously on the concatenations in which one is taken (a relation), and a virtual multiplicity that always remains excessive to this concatenation (a non-relation). Thus, we move from the external viewpoint of a subjective or objective viewer, to an always-compromised one, immerged within, and co-substantial with, a field of vision, simultaneously exceeded by the virtual viewpoint of an inorganic eye.[26] Seeing is immersed into a post-human and heterogeneous relationality as well as exceeded by the virtual event of its taking place. Thus, Spinoza's maxim resonates in all its might: *we do not know what a body can do*, we do

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24 Deleuze, *Cinema 1,* 81-3.
25 Keith Woodward, 'Events, Spontaneity and Abrupt Conditions', in *Taking-Place: Non-Representational Theories and Geography*, eds. Ben Anderson and Paul Harrison (Farnham: Ashgate, 2010), 331.
26 '[T]he view from the event is the aggregate view, the wordly perspective, of divergent perspectives ... a manifold of changing perspectives, forces and relata. The event is not simply non-representational, it is non-*presentational,*' ibid., 331.

not know what a body can see, since only the event could, the inhuman 'eye of matter, the eye in matter.'[27]

Let us qualify, however, that matter is never flat, 'objective', neutral or homogenous. Quite the contrary, it is heterogeneous, traversed, twisted and tuned by social, historical, affective, geological and cosmic forces. Power structures and asymmetries are inscribed within matter, shaping the way in which its interaction with light occurs. The surfacing of vision is always tuned by normative trajectories. Every apparatus of seeing is entangled with this complex heterogeneity, and emerges out of it as an attempt to order and control it. In other words, every apparatus of seeing is entangled with the process through which it enacts vision, that is, with the process through which it shapes how visions ought to be *in order to be perceived* as such, or how it builds its own specific regime of visibility, that is, its internal normativity.

3. **Law and Seeing**

Typically ocularcentric, the law is a quintessential optical dispositif that visibilises and invisibilises the social through its normative gaze. Legal perception is always an exception, premised on the Olympian viewpoint from which law would supposedly project its light onto the world, leaving the rest in its shadows. Hence law's cartographic faith in its capacity to capture the world into a re-presentation, by unifying the multiplicity of its

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[27] Deleuze, *Cinema 1*, 81.

sensorial perception into an exceptional juridified image. Law's perspectival gaze is, however, bound to be betrayed: perception always puts us at once into matter, and the mismatch is unavoidable between the perception and representation of law. Yet although legal representations may thus be inaccurate, they are productive of real effects on the world, and this aspect is easily missed if we stop at pinpointing the said inaccuracy. As Regis Debray puts it, 'the capacity of an idea to put a mass in movement, to modify the balance of a field of power or to induce this or that behaviour is not dependent on its truth-value.'[28]

In this volume, Woodard transversally engages with this aspect through a passionate defence of idealism against its common misunderstanding as a theory that would place at its centre an all-ingesting mind, swallowing the world and reducing it to its own substance. There is another way to understand the mind-like form of the world that idealism postulates, Woodard observes: rather than a reduction of the world to a mere fabrication of the mind, the assumption of both the mind and the world as sharing the same substance. Understood in this sense, idealism would take a rather different form from the caricature to which post-structuralist and post-modern critique has usually reduced it. Not a naïve philosophy equating representation with the represented, but a perspective that assumes representation, and vision, as actions and things of this world. In this sense, the task would no longer be that of denouncing idealism by unveiling representations and

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[28] Regis Debray, *Critique of Political Reason* (New York: New Left Books, 1983), 116–17.

their supposed mismatch with reality. Whether 'apparently ideal, or purportedly human capacities for regulating, or normalising our experiences, are part of the same world to which nature belongs', Woodard argues, the question is to understand 'how does representation, as a part of the world, function as just another thing.'

The significance of this question cannot be underestimated. Law *is* a thing of this world, and representation is the mechanism through which law frames, senses and sees reality. Whilst aware of the limits and the dangers that any enterprise aimed at absolutising and fetishising representations harbours, we may follow this perspective into developing a strategic investigation of the real. In so doing, we must resist simply pretending that legal representations and their effects on the world would dissolve, once revealed, deconstructed, or forgotten. Thus we may approach representations as veritable *presentations* that *take place* and, as Ben Anderson and Paul Harrison write, 'in their taking-place … have an expressive power as active interventions in the co-fabrication of worlds.'[29] Likewise, we may understand the very process of legal abstraction – the process through which law supposedly extracts (*abstrahere*) itself from a concrete reality in order to gain an Olympian view of the world – not as a simple illusion, but rather the necessary mechanism through which law sees, senses and makes sense of the world. A mechanism which emerges out of the world, rather than

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[29] Ben Anderson and Paul Harrison, 'The Promise of Non-Representational Theories', in *Taking-Place: Non-Representational Theories and Geography*, eds. Ben Anderson and Paul Harrison (Farnham: Ashgate, 2010), 14.

being simply superimposed onto it, in a recursive process of coding, re-coding and over-coding between sensing and knowing, whose 'geological layers', Woodard continues, sustain 'the capacity of judgement higher up the ladder.'

Thus law appears as the ordering and re-ordering of the field of vision, 'a seeing of ideas as rules and the construction of rules for ideas', an apparatus that normalises *through* the world as much as it is normalised *by* the world. Or, paraphrasing Stojković, law as photography: an inscription of normative light and shadows onto materials, which is at the same time *made of* materials, and *makes with* materials. It is exactly the normative quality of photography to be what the art of 'abstract photography' engages with, Stojković argues in her chapter, by allowing to *see* 'the entanglement of the photographic image with the technology and material that produce it, but also with the norms and effects that the same technology and material impose on our daily life.' In other words, it is both the *normalising* force of photography as a *dispositif* aiming to control, isolate, 'tame and discipline light', as well as the coming together of light and material that produces the photographic image out of its immersion in the real. A coming together that is never obvious and smooth. In fact, Stojković places the accent on the frictional quality of the encounter between light and material, assuming vision not as the reflection of an object, but the diffraction and perturbation of a field, a haptic diving into a heterogeneous materiality that produces diffracting waves.

This opens at least two compelling avenues. First, the potential abstract photography plays in questioning the internal normativity of photography itself. What this

branch of photographic art is particularly apt to express, is the role photography plays in *distributing* the sensible, to use Jacques Rancière expression, by reinforcing given (socio-cultural, political, legal) orderings. Abstract photography makes visible this 'internal law' of photography. Whether photography is a quintessential instrument of sense-making (as its widespread and often uncritical use within legal praxis testifies), abstract photography thus harbours the potential to *un-make* this (common) sense. In the compelling photographic experiments of Taisuke Koyama and Nihal Yesil that Stojković explores, we find expressed the potential of an abstract(ing) praxis that in contrast to the 'mechanisms for looking at or looking through … offer[s] a means for *looking with*,' thus short-circuiting representation and its inscribed normativity.

Second, the methodological suggestion of Stojković can be carried all the way into the exploration of the 'photographic' *dispositif* of law itself, exploring legal abstractions, as suggested above, as a tool to understand how law sees the world and to problematise the material basis of law's exceptional perception, rather than simply dismissing it in the name of a more authentic, organic, or human vision. Paraphrasing Paolo Virno, it is not by 'looking for the dirty laundry that lies behind the categories of' the law, that we are able to account for their ontological force, but rather by exploring the 'abstract connections … that pervade society and make it cohere'.[30] Accordingly, a proper exploration of legal vision – in the attempt to both *see* the law and understand how it *sees* – becomes an

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[30] Paolo Virno, 'The two masks of materialism,' *Pli* 12 (2001): 167-69.

attempt 'to both reveal how abstraction works and to generate alternative abstractions as part of a necessarily critical praxis.'[31] This is the potential of abstract photography Stojković is able to unfold: by not presenting us 'with anything recognisable but a pattern generated through the play of light and' a material, in fact, abstract photography makes us see the patterns themselves, the abstract connections that make the image cohere. This 'vision without the eye', as her title goes, makes visible the condition of possibility of its very visibility: a glimpse into the inhuman, virtual eye out of which singular points of view or visions contingently surface.

This is something like a darkness that allows for the visibility of a situation to shine, as in Giorgio Agamben's reflection on the *contemporary*, the one 'whose eyes are struck by the beam of darkness that comes from his own time,' a gaze able to neutralise 'the lights that come from the epoch in order to discover its obscurity, its special darkness.'[32] Seeing through this obscurity is not simply a feat in becoming accustomed to the dark, nor imagining what its ambiguous shadows could represent. It is perhaps the ability to penetrate the limits of vision, and imagination, so as to force it to reorient *sur place.* This is the quality of utopian thinking according to Frederic Jameson: not the positive capacity to envisage a better future, but a negative, suffocating force that, by reaching the limits of imagination, and triggering its failure, propels it further.

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[31] McCormack, *Geography*, 722.
[32] Giorgio Agamben, *What is an Apparatus? And Other Essays*, trans. David Kishik and Stefan Pedatella (Stanford: Stanford University Press, 2009), 45.

It is *through* the blindness of vision and the impotence of imagination that 'the ideological closure of the system in which we are somehow trapped and confined,' becomes visible: a necessary premise for the imaginative production of alternative realities.[33]

Conversely, the contemporary political imagination is mainly oriented towards the task of producing images of a future world to come, in which present plights will be somewhat overcome. This is what Stacy Douglas explores in her chapter, delving into the muddy rhetoric of the contemporary US political debate. On the one hand is the nostalgia for a great America to be restored, loudly championed by Donald Trump's rhetoric. On the other, is the progressive projection of a post-Trump America in which individual freedoms would be restored, as produced by the liberal left imagination. Between them, the same mechanism of symbolic projection that situates a political solution in the future, relying on 'the weird assumption' – to echo Nicola Masciandaro – that 'justice might be satisfied in a world that ought to be otherwise.'[34] Yet, as Masciandaro biblically continues, 'hell is only destroyed by entering it, by staying in it.'[35] That is, following Jameson, by keeping the eyes transfixed on the power-structured rifts and fences and barriers that neutralise the power of imagination itself.

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[33] Fredric Jameson, 'The Politics of Utopia', *New Left Review,* 25 (2004): 46.

[34] Nicola Masciandaro, 'The Sweetness (of the Law),' *Non Liquet: The Westminster Online Working Papers Series, Law and the Senses Series: The Taste Issue,* (2013)*:* 45

[35] ibid., 56

Douglas explores the theoretical base of these converging rhetorics by engaging with Drucilla Cornell's theory of legal transformation, which, following Immanuel Kant, emphasises the positive force of 'moral images of freedom' in producing the condition for changing a given situation, by creating platforms for alternative possibilities of meaning to emerge. Positive projections of a future world to come, however, systematically erase the present and its complexity from the picture, providing cloying futures on which to indulge, while the asymmetries of the present are left untouched. This is evident in the two hats which Douglas employs as visual summaries to the right and left rhetorics involved: the red 'Make America Great Again' hat worn by Trump supporters, and the pink knitted 'pussyhats' worn at the national women's march that took place against Trump, on the day after the inauguration. As Douglas observes,

> Neither symbol forces an estrangement with the existing political-legal institutional reality via an exposure of the class composition of their context, which might allow for the ideological conditions of the present state of things to be exposed; instead, both rely on the Kantian-inspired deployment of the positive image and its role as a catalyst for transformation.

'A politics of emancipation does not seek the happiness of people but rather seeks universal disquiet', writes Quentin Meillassoux.[36] The disquiet that unavoidably stems from

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[36] Quentin Meillassoux, 'The Immanence of the World Beyond', in *The Grandeur of Reason: Religion, Tradition and Universalism*, eds. Peter. M. Candler and Conor Cunningham (London: SCM, 2010), 475.

the piercing acknowledgement of the inability to produce positive images in the here and now. As Doc Emmett Brown explained at the blackboard to a puzzled Martin McFly, we cannot go back to the future from a distorted present. Unless what makes it distorted is made visible, and thus dismantled, we are condemned to reproduce it. An act of creation, Deleuze reminds us, only 'takes place in bottlenecks … a creator who isn't grabbed around the throat by a set of impossibilities is no creator. A creator's someone who creates their own impossibilities, and thereby creates possibilities.'[37] This capacity to mobilise a friction within the present, an engagement with the ontological structures of a given reality, is what seems to be lacking in the strategies of symbolic projection that Douglas investigates, where the present remains comfortably in the dark.

An instance of what such a strategy may entail is explored by Riccardo Baldissone in his contribution to this volume. Baldissone deals with the special darkness of past events that still beams its obscure rays into a forgetful present. These are large-scale traumatic events such as South African Apartheid, the Rwandan and the Indonesian genocides, and specifically the question of reconciliation in the face of these collective traumas. In these instances, reconciliation is normally articulated as a revelatory enterprise aimed at exhuming the Truth, implicitly understood as a static, inert and immutable object lying in the obscurity of the past, and which it is

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[37] Gilles Deleuze, *Negotiations: 1972-1990* (New York: Columbia University Press, 2005), 133.

the Commission's task to illuminate with the light of revelation. Reconciliation is expected to occur out of such a quest, recognising guilt, overcoming resentment, and possibly allowing for forgiveness to surface.

Baldissone proposes a different strategy of reconciliation, one in which the revelatory work of truth-disclosure is substituted by the task of letting memories resurface by re-enacting them *in* the present, that is, putting them at play as agentic matter-images, rather than keeping them confined as inactive postcards of the past. This is what historians do, Baldissone continues: they communicate with, let speak, and thus give back life to, the dead. In the face of appalling injustices endured by some, Meillassoux argues, justice cannot occur through forgiveness or grief, since these practices, let alone their actual possibility, only concern the living. True justice may only occur by assuming that 'it is not the living who need help but the dead,' recognising 'that some lives are entitled to begin again so as to overcome the atrocious end inflicted upon them.'[38] Evidently, in this peculiar reformulation of the theory of eternal return, there is no space for the all-too-human and moralising questions of guilt, resentment or forgiveness, which are the only options the model of reconciliation-as-truth presents.

This is precisely what Adi, the brother of a victim of the Indonesian genocide, expresses in Joshua Oppenheimer's documentary, aptly titled *The Look of Silence*. Here, Baldissone explains, Adi is not looking for an impersonal truth, a reconstruction of the past, or an admission of

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[38] Meillassoux, 'The Immanence', 453.

guilt. Instead, he is 'battling the apparent impossibility to share his present with his brother's unprosecuted murderers, the surviving bystanders, the other victims' relatives, and his brother's memory.' If justice must also be justice for the dead, then reconciliation can only occur by resuscitating the dead, that is, resuscitating dead memories, by making them alive and visible, and putting them at play into a space that does not exist in the present, and therefore must be collectively constructed. This tentative, performative, and conflictual strategy may be useful to assess, Baldissone continues, 'whether the authority of truth is used to silence alternative positions, or to make previously invisible stances come to light.'

Michael Taussig observes that witnessing, differently from seeing, is something akin to vision hallucinating on itself. It requires letting a shock remain, rather than looking away, by refusing to allow the abnormal to pass into normality, the horror into banality, the memory into the past: that is to prevent the normativity of vision from normalising itself.[39] Writing from the field of ethnography, Taussig proposes to use *drawing* as an alternative to taking notes or pictures, as a ritual whereby the spiritual forces and special darkness of contingency is captured, generating a vision that, to paraphrase Deleuze, 'is not surprising that we have to construct [it] since it is given only to the eye which we do not have.'[40] Whether truth-seeking is tied to the questions of forgiveness (or

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[39]   Michael Taussig, *I Swear I Saw This. Drawing in Fieldwork Notebooks, Namely my Own* (Chicago: University of Chicago Press, 2011).

[40]   Deleuze, *Cinema 1*, 81.

the refusal thereof) and resentment, memory resuscita-
tion is a sorcery which relies on fabulation. This is what
the actor or the mime do, Deleuze maintained: they are
able to release the possibility of the event by re-enacting
not 'what occurs', but what is 'within what occurs'.[41] This
happens in Oppenheimer's documentaries, where the
perpetrators themselves are put in the situation of 'mim-
ing' their past actions, and thus forced to 'look' at their
'silence', dealing with the past event by re-enacting and
somehow re-mobilising it into a novel encounter.

Representation in this sense is no longer a means to
reveal or *reflect* on, but rather a way to *perturb* and *diffract*
the past, generating aesthetic effects whose legal potential
may spill beyond the pretence of a given Truth, towards
a tentative and perilous, collective and constructive, pro-
cess of truth-making. Thus, Baldissone argues, we may

> envisage a double task for legal activities: on the one
> hand, legal actors at large may relinquish as untena-
> ble the claim to the monopoly of memory as a single
> legal truth, and they may work instead to produce
> the visibility of the plurality of the past; on the other
> hand, legal experts may then facilitate the negotia-
> tion between the representatives of this plurality in
> the present.

To be sure, the notion of truth is not in this way neces-
sarily abandoned, but perhaps reoriented. Paradoxically,

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[41] Gilles Deleuze, *The Logic of Sense* (London: Continuum, 2004),
134. If properly 'used', Deleuze continues, representation becomes
a vehicle enveloping the event of the past and allowing it to be ex-
pressed, 'averting its sclerosis' by releasing the darkness that the
light of its historical state of affairs occluded, not to reconstruct the
past, but rather to construct it anew. Ibid., 146.

we may argue that it is still concerned with achieving a conformation to reality (*adaequatio*), and yet a reality that is radically different from the stable Order of Being preached by the Scholastics. First, this truth is not beyond, but rather within the sensible, object of a *theoria* that does not erase but is firmly situated within vision itself. Second, reality is not separated from us, but is the radically open materiality of which we are part. In this sense, conformation means to be faithful to this differential, plural and open reality: 'whereas reflection is about mirroring and sameness – Stojković writes – diffraction attends to patterns of difference.' Thus the task of pursuing truth through an open conformity to reality becomes the constructive work of sculpting truth in complicity with the anonymous materials at hand. Seeing, just as carving wood,

> surrendering to the wood, then following where it leads by connecting operations to a materiality, instead of imposing a form upon a matter: what one addresses is less a matter submitted to laws than a materiality possessing a nomos.[42]

As Woodard observes, if we take 'the force of law as a type of vision' then this force may be understood as 'one of collective apparatuses more than a groundless violence'. Whether we reformulate vision from revelation to co-construction, from reflection to diffraction, we are served with another legal praxis, one in which the optical *dispositif* of law is reoriented, and representation is reworked

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[42] Gilles Deleuze and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (London: Continuum, 2004), 408.

away from an exceptional perception of reality, towards a tentative and haptic praxis to 'touch-see' the real.

In this sense, could a blindfold be a tool, rather than an impairment? In his contribution, Marcilío Franca focuses on the iconographic tradition of apposing a blindfold over the eyes of justice. The eye of the law, or the eye of justice, is a 'long-lived cultural constant in the Hellenistic-Roman-Christian world.' It is 'in its eyes' that all citizens are equal, the 1789 *Declaration* spells out. Within these eyes are enshrined the qualities that define the internal normativity of vision: brightness, clarity, definition. A 'crystal-clear, sharp, unblocked sight' is the quintessential prerogative of the all-seeing divine gaze. In the Middle Ages a blindfold began to be applied over the eyes of justice, at first as a mockery, the cunning strategy of a jester aimed at keeping the carnivalistic *bouleversement* of the world out of her judgemental gaze. Yet, from the 16th century the blindfold begins to assume a novel meaning, from a means to disorient, to a tool to *orient* justice, by means of guaranteeing her incorruptibility.

Justice, we may argue, was in this way humanised: understood as a corruptible being, she now requires a prop, a blindfold, to be able to impartially decide. As for Oedipus, the blindfold becomes less a negative impairment than a positive tool to see through: 'it is necessary not to see to be able to see better,' Franca writes. What if we push this interpretation further? Justice is to be opportunely blindfolded, not because that which she may see would prevent her from *seeing the truth*, but rather because her task is a paradoxical one: that of making visible the conditions of possibility for her vision, the special darkness of the spatial

contingency in which she is thrown. Justice would be the vision of a world that is not seen by the moralising gaze of the human and its meaning-making projection, but rather the 'vision without the eye' of a world that remains not amenable to human sense. Perhaps the blindfold then is a call for constructing a novel optical apparatus for law, one able to reorient its all-appropriating gaze towards a world *not for law*, that is, towards the very event of its encounter with a non-juridifiable world. The focal point then would not be for law to *see* better, but to modify its own idea, and praxis, of *seeing* itself.

Law's obsessive *iconophilia* is problematic, both in the sense of positioning vision at the height of the hierarchy of senses vis-à-vis its capacity to reveal truth, and in shaping, within vision itself, a normative hierarchy that prioritises brightness, clarity and definition. Deviancy is defined accordingly, pathologising the subject (myopia, astigmatism, blindness), or discriminating the object, as messy, confused, *impressionist*.[43] This is particularly significant in relation to the current image-obsessed capitalist condition, in which a visual economy tied to a logic of *resolution* and exchange value irremediably de-prioritises

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[43] The term *impressionism* was notably used used derisorily by critics at the first 'Impressionist' exhibition in Paris. Thus, Emile Cardon wrote: "This school does away with two things: line, without which it is impossible to reproduce any form, animate or inanimate, and colour, which gives the form the appearance of reality. Dirty three-quarters of a canvas with black and white, rub the rest with yellow, dot it with red and blue blobs at random, and you will have an *impression* of spring before which the initiates will swoon in ecstasy.' Emile Cardon, 'The exhibition of the Revoltes', *La Presse*, 29 April 1874, http://www.artchive.com/galleries/1874/74critic.htm (accessed 25 May 2017).

those images that are undefined, blurred, literally poor, almost embodying an inherent myopia that makes them immediately aberrant, either to be treated (enhanced, photoshopped), or erased. Yet the relation between high definition and truth is far from being transparent. See the recent research showing how the use in court of high-quality, slow-motion videos tends to distort understanding of criminal responsibility. By allowing for a vision beyond the human threshold of detectability, slow-motion prolongs the temporality of crime footages, inducing the impression of premeditation on the part of the perpetrator: *slow motion increases perceived intent*.[44] We are reminded of Eyal Weizman's compelling exploration of the use of aerial images in court in order to detect whether a building has been hit by an illegal drone strike. Here, the law imposes a threshold of detectability (the legal resolution of aerial images, established at 50cm/pixel) which is meant to protect individual privacy (a pixel roughly corresponds to the size of one person), but at the same time allows for violence to slip beneath such a threshold (the pixel is also the size of the holes produced by drone strikes on civil roofs). The internal normativity of the digital image (its pixelated ontology) thus intersects the external normativity of Law, determining the use of 'poor images' that indirectly become enablers of violence.[45]

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[44] Eugene M. Caruso, Zachary C. Burns, and Benjamin A. Converse, 'Slow Motion Increases Perceived Intent', *PNAS* 113 (2016): 9250-9255.

[45] Eyal Weizman, 'Violence at the Threshold of Detectability', *E-flux Journal* 64 (2015), http://www.e-flux.com/journal/64/60861/violence-at-the-threshold-of-detectability/ (accessed 25 May 2017).

Yet what if it is not a human eye, but the inhuman, digital and rhizomatic eye of the web that contemplates images? In this case, a wholly other normativity to which images must approximate emerges. In her essay *In Defense of the Poor Image*, Hito Steyerl reflects on the power that poor images assume in the Web 2.0, as the sheer materiality of their low resolution disarticulates the neoliberal flow of commodified images, releasing 'another form of value defined by velocity, intensity, and spread'. Fully exploiting the velocity, intensity, and spread of the visual economy of the Web 2.0, in the contribution to this volume picpoet takes pictures with the iPhone, writes the accompanying text on the spot, and then deterritorialises the resulting text-image by uploading it on the author's Instagram account and website. Picpoetry, the author explains, is meant to be a process 'of combining iPhone-ography and instant text writing' so as to produce a pic-poem, a mixture of words and picture that hold a strong spatio-temporal relation with the event of its taking place. A work consistent with an understanding of vision that does no longer depend on human demand for clarity but rather on an inhuman demand for levity and portability, to the point of prompting a re-calibration of the visual economy itself, now ready to appreciate these blurred, shaky and indefinite images and footages as provided of a somewhat higher level of truth.[46] Shakiness and low quality in fact may also carry a truth-value that, unlike

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[46]   Hito Steyerl, 'In Defense of the Poor Image', E-*flux Journal 10* (2009) http://www.e-flux.com/journal/10/61362/in-defense-of-the-poor-image/ (accessed 25 May 2017).

definition, is associated with risk and danger. As Michel Foucault observed in his discussion on *parrhesia,* 'in its extreme form, telling the truth takes place in the 'game' of life or death'.[47] The raw quality of such images may be said to embody truth in its most visceral form, as if, just like the *parrhesiastes*, such images would speak candidly, with open heart and mind, expressing truth in its most direct form.

If the point of *parrhesia* was to eschew any artifice so as to employ 'the most direct words and forms of expression',[48] the use of words by picpoet may be said to perform a curious inversion. Whether there is an undeniable truth that any image carries, and a truth-value that any smart-phoned image conveys, picpoet's texts seem to hinder and problematise the linearity of this assumption. If these images are not shaky, blurred or grainy, the texts paired to them have the task to shake and blur them. 'The connection between the textual and the visual is tight and parallel, yet not descriptive', picpoet writes. Neither accompanying nor overlooking the images, these texts try to pierce them, whilst being flooded and dislocated by them in return. A turbulent back-and-forth that splays out any truthfulness the image normatively holds, refraining from revealing, and rather endeavouring to diffracting the image itself, whilst simultaneously denying to the text any paternalistic pretence to describe it or, worse, explain it away.

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[47] Michel Foucault, *Fearless Speech*, ed. Joseph Pearson (Los Angeles: Semiotext(e), 2001), 15–16.

[48] Ibid.

Discussing the traditional art of textual commentary, Masciandaro argues that this does not lie in going beyond, behind or below the text, so as to find its hidden meanings.[49] A true commentary remains faithful to the text by staying within the text and, while avoiding ending up entrapped into its quicksand, holding it open to the other flows with which a text always entertains 'relations of current, countercurrent, and eddy – to follow Deleuze – flows of shit, sperm, words, action, eroticism, money, politics'.[50] Neither a description, nor an explanation, a commentary is best understood as a praxis of encircling the text, erecting 'more and more perceptual enclosures, spaces within which the unrepresentable is brought into presence'.[51] We may argue this is what the words do here, generating frictions at the encounter between words and images within each picpoem, as the text keeps chasing and encircling the image, without providing any explanation but rather diffracting their sense into multiple points, their two-dimensional staticity into a three-dimensional atmospherics. These diffractions, the author explains, '[allow] questions on the relevance of the law in terms of affective, embodied and spatialised movements to emerge both pictorially and textually, and ultimately left unanswered.' They allow, that is, the discovery of a way law functions within the visual that is of another kind than

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49 Nicola Masciandaro, 'Becoming Spice: Commentary as Geophilosophy', in *Collapse, VI: Geo/Philosophy* , ed. Robin Mackay (Falmouth: Urbanomic, 2010)

50 Gilles Deleuze 'Letter to a Harsh Critic,' in Deleuze, *Negotiations*, 8-9.

51 Masciandaro, 'Becoming Spice', 30.

the abstraction dissected by Stojković, emergent, confused, blurred.

In this sense, picpoet's attempt is close to what Kathleen Stewart describes as a 'writing and theorising that tries to stick with something becoming atmospheric [...] approaching the thing that is happening by attuning to it'.[52] By attuning to the normative tuning of an atmospherics that is present and yet invisibilised by the law, what each picpoem seeks to unfold are the traces of law's own invisibilising work, the unrepresentable pull of the normative tensions holding us together, while ripping us apart. As the words, joining the pictures, let surface to sensoriality the 'summer breeze' of which we are just a 'whiff', or the inhuman scream that the all-too-human vision strives to silence, at times a nostalgic tone transpires, as a murmured mourning the crumbling of humanity, individual agency, the possession and control over one's own senses, releasing a bitter awareness, that 'our happiness was easy, precious and polluted'.

Only that, of course, nothing is lost, because nothing was possessed in the first place. Certainly not seeing. The nostalgia here, rather than the unproductive yearning for a lost authenticity, becomes a productive mood through which the loss is turned into a visible presence, the visible as an ontological surface in which we dive, the text as a matter-image conspiring with the light, sculpting instants of eventful atmospherics in which seeing is infinitely diffracted into post- and inhuman points of views, independent from the possibility of being, at some point, occupied.

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[52] Kathleen Stewart, 'Atmospheric Attunements', *Environment and Planning D: Society and Space* 29, no. 3 (2011): 450.

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