

Introduction: Law and Taste

The Editors

1.

What is Law's relationship to senses?¹ In a sense, law is constantly engaged in numbing the senses into commonsense by manipulating, channelling and controlling the sensible; inserting properties and forbidding contacts; dissimulating violence, regulating sounds, defining taste. Law constructs its meaning (its sense, its direction) by orchestrating the senses in three ways: by categorising them; by controlling when they should be kept apart and when blended; and by inverting their 'sense', their direction, thereby constructing the sociocultural parameters of 'good taste', commonsense and sensibility from which law's dealing with senses supposedly emerges. This three-way sensorial orchestration means that the law operates, at least in part, as an anaesthetic: first, the law 'names' the senses, puts them into categories, thereby adding to their moral weight of the sensorial judgement; second, the law encourages synaesthesia (namely coalesced sensorial modalities that encourage the attribution of one sensorial stimulation to another sense), or anaesthesia, depending on the way the law 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, third, the 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. While, all along, the law inverts the direction of senses 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.

This is occasionally complicated by the fact that senses are not static. Rather, they are shifting and elusive qualities, constantly reshuffled by socio-cultural and technological changes, always dislocating law's normativity towards new potentialities. In this other sense, law emerges from the senses, and whereas senses are a constant arena of legal machinations, they are also law's constant blind spot

¹ 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', 41 *Emory Law Journal* 41 (4), 873-955, 1992; Emily Grabham, 'Shaking Mr Jones: Law and Touch', *International Journal of Law in Context*, 5 (4), 343-353, 2009; Davina Cooper, 'Reading the State as a Multi-Identity Formation: The Touch and Feel of Equality Governance', *Feminist Legal Studies*, 19 (1), 3-25, 2011.

and inescapable excess. In this capacity, the law allows the proliferation of the sensorial, encourages playfulness and creativity and protects sensorial intangibility from becoming unattached from its original creative source. The law also exhibits a sensorial flexibility, especially when erecting legally constructed boundaries to the affective transmission of senses, especially at times and places when one wants to be protected from it. Intellectual property law provides plenty of examples for the former, whereas planning and property law for the latter. This means that the connection between law and the senses is not one of straight-forward oppression or control of the latter by the former. Rather, the connection ought to be conceptualised as 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. This is what we are trying to do with the Law and the Senses issues of online papers.

2.

This first issue of the Law and the Senses series deals with the relation between law and perhaps one of its least obvious companions: taste. Indeed, their affinity is evident: law and taste primarily share the same core mechanism: judgement. Perhaps differently from other senses, taste is *always* an act of judgement. Those who have a 'good taste', they say, are those able to discern and appreciate the good and the beautiful in a painting, a city, a *bourguignon*. To taste is always to embark into a discrimination over what is good and what is not. As a consequence – again, betraying its affinity with law – the act of tasting always carries a 'moral aftertaste'.²

Law's relentless juridification of the world, i.e. the reduction of the world into legal categories, could indeed be understood as a digestive process according to which law ingests its 'outside' (that is, what law *presupposes* as its outside) by *tasting* it, and emitting moral judgements accordingly. The 'aftertaste' can only be savoured in particular conditions, when the hyperaesthetic attack of the nouvelle cuisine has passed, and one is left with one's own judgement. Awareness of aftertaste is rare and quickly dismissed. This is law's dissimulation at work: once the sensorial is put into categories and its sense directed, the law only needs to deal with the after-effects which often appear as light post-moral sedimentation. The fact that law *appropriates* the world through senses is at the same time necessary and absolutely problematic for the law itself. If law, as argued above, emerges from the materiality of senses, at the same time law constantly seeks to immunise itself from the elemental, affective and unhuman materiality to which the sensorial exposes it.³ Law's ingestion of the world must not betray any pleasure, compromise or indulgence. Distance, immunity, sterility: law's experience of taste must be anaesthetised and abstracted from its materiality. This is how law deals with the world: it *includes* it *de jure* as re-presentation, by *excluding* it *de facto*, as sensorial materiality. It is by reducing the world to speech, text and language that law

²Gilles Deleuze, *Spinoza: Practical Philosophy*, City Lights Publishers, 2001; p. 24: "one must be wary of the word law, which has a moral aftertaste".

³The violation of one of the intimate corporeal cavities, the mouth, points to an undesired reduction of distance between the body and the world" Andreas Philippopoulos-Mihalopoulos, "Atmospheres of Law: Senses, Affects, Lawscapes", *Emotion, Space and Society*, 2/6, 2013

manages to ingest the world whilst 'anaesthetising its mouth'.⁴ Law's jurisprudential dissimulation includes defecation: in the positivist law tradition, morality remains outside the judgement; in natural law, morality is at its core. In both cases, morality dissimulates the sensorial, just as the sensorial dissimulates law's not-always-tasteful moral underpinnings.

In the history of philosophy, taste has always been posited as inferior with respect to the aural and the visual – i.e. the senses of intellect and reason –, since deemed much too close to the animal, the elemental, the corporeal. For this reason, taste has to be controlled, disciplined and moderated, to avoid it turning into a capital vice (gluttony). Most desirable is then the reduction of taste to an intellectual, i.e. abstract representation, an "aesthetic taste [which] transcends the sensory pleasures of eating and is communicated in language",⁵ 'detached from any material urgency and corporal need'.⁶ Yet taste stubbornly refuses to be abstracted, numbed and disciplined. Taste is *testing*: i.e. tentative and tactile exploration.⁷ Taste is *temptāre*, i.e. trying, guessing, but also tempting and being tempted, corrupting and being corrupted. Taste has to do with the blurring of distinction, the crumbling of certainly, the collapse of distance, the erosion of immunity. It signals the entering into an uncertain zone of synaesthetic immersion where the boundary-making machine begins to tilt.

It is no surprise then that the only law which weighted over Adam and Eve in the Garden of Eden was the one concerning the prohibition to eat the forbidden fruit. Again, taste was apparently concealed from the equation: the prohibition concerned the 'truth' which eating the fruits of the 'tree of knowledge' would have disclosed.⁸ In other words, the sensory experience of taste was transcended and anesthetised into a metaphor of intellectual hubris. Yet, could not we argue that what was at stake was indeed a prohibition of tasting *as such*? If this is the case, beneath its representational reduction into a mere *means* towards a higher, transcendent truth, would lie concealed the fact that taste itself *is* the material 'truth' from which Adam and Eve were sought to be kept away. Taste, i.e. *sapor*, is itself knowledge, *sapere*, and thus wisdom, *sapientia*. By eating the fruit Eve and then Adam were to know/taste the immanent truth of their own materiality. For this reason, this was the one and absolute prohibition, as well as inescapable source of temptation: *not to taste was their test*. Through taste we experience ourselves as matter, bodies among other bodies, unavoidably 'complicit with anonymous materials' in a 'continuity of material transformations of decomposition and regeneration' whose immanence radically denies any transcendent God or Law.⁹ The

⁴ Michel Serres: *The Five Senses: A Philosophy of Mingled Bodies*, Bloomsbury Academic, 2009: p. 153

⁵ Christopher Turner, "Leftovers / Dinner with Kant. The taste of disgust" *Cabinet Magazine*, Issue 33 Deception, 2009, available at <http://cabinetmagazine.org/issues/33/turner.php>

⁶ Nicola Perullo, *Il Gusto come Esperienza*, Slow Food Editore, 2012: p. 31 (my translation)

⁷ The etymological kinship with the term coming from the Latin *tastāre* or *taxitāre* – i.e. touching tentatively something to guess its shape, as when blindfolded – testifies for the close relation between taste and touch, evident in the fact that in order to taste something, a contact must unavoidably occur.

⁸ The Genesis does not mention what kind of fruit was the forbidden one. Successive iconography, probably influenced by other mythological sources (e.g. the Garden of the Hesperides), popularised it as an apple.

⁹ See Reza Negarestani, *Cyclophopedia, Complicity with Anonymous Materials*, re.press, 2008. Eating, like dying, means to enter a continuum where there is no place for a transcendent God (see Eugene Thacker, "Spiritual Meat: Resurrection and Religious Horror in Bataille", in *COLLAPSE VOL. VII: CULINARY MATERIALISM*, ed. Reza Negarestani and Robin Mackay, Urbanomic,

first bite established the “materiality continuum”¹⁰ between the non-human and the human, and allowed the collapse of the boundary between the unmirrored inside and the unexplorable outside, facilitating the move from an Edenic humanism to an earthly posthumanism. This is the paradoxicality of the senses: that, although steeped in humanism, they move us away from the empty effigies of humanism and closer to the continuous surface of a vibrant posthumanism, by allowing the former to ally with an apple-zealous divinity, while liberating from the latter to start sensing its own geology.

Guha and Thacker suggest that our relation to food is a threat to ‘somatic integrity’, insofar as it challenges and indeed dismantles the integrity of the subject of law, by dissolving once and for all the legal illusions on which it rests: distance and immunity.¹¹ Therefore, rather than God banishing the Human from the Garden of Eden, it was the very act of tasting the fruit that immediately engendered the collapse of the Garden itself, projecting humankind into the materiality of a world devoid of the hopes and fears of a transcendent beyond. This is our sapid knowledge:

We were too quick to forget that homo sapiens refers to those who react to sapidity, appreciate it and seek it out, those for whom the sense of taste matters – savouring animals - before referring to judgement, intelligence or wisdom, before referring to talking man ... Sensation, it used to be said, inaugurates intelligence. Here, more locally, taste institutes sapience.¹²

The significance of this point cannot be overestimated, since it radically problematises the image of the world disseminated by ‘digestive philosophies’ resting on the ruminations of the cogito, the subsumption of judgement, the assimilation of dialectics and other mechanisms of consumption.¹³ By tasting we enter a world of other objects which can never be fully assimilated, subsumed, digested. The awareness of this question is already present in Kant’s reflections on disgust and the power of the ‘disgusting object’ in annihilating “the distancing power of representation ... [insisting] on being enjoyed in its crude materiality”.¹⁴ Something is never fully assimilated. Something is never fully digested. This is something to which its ‘all-ingesting’ hubris always exposes law: the fact that each ingestion carries an irreducible remainder, that is, that each ingestion *is* indigestion. Yet it is not only through the traumatic experience of disgust or distaste, but also through the potential pleasure of taste that, by penetrating and being penetrated by other

2011). This is perhaps the reason of the forbiddance: tasting the fruit was to taste the absence of God, through the tasted evidence of an immanent material continuum. Is not the holy communion seeking to reassert a transcendence within this continuum, to make clear that the only and holy unity is that between human and god, sanctioned by the holy theophagy?

¹⁰ “...the establishment and maintenance of system boundaries – including those of living beings- presuppose a continuum of materiality that neither knows nor respects those boundaries” Niklas Luhmann, *Theory of Society, Vol 1*, Stanford, California: Stanford University Press, 2012 p. 54

¹¹ See Eugene Thacker, *op. cit.* and Manabrata Guha, “Vague Weaponizations, or The Chemistry of Para-Tactical Engagements”, in *COLLAPSE VOL. VII: CULINARY MATERIALISM*, ed. Reza Negarestani and Robin Mackay, Urbanomic, 2011

¹² Michel Serres, *op. cit.*, p. 154

¹³ Jean Paul Sartre defined that of Descartes a ‘digestive philosophy’, according to which “Spidery Mind trapped things in its web, covered them with a white spit, and slowly swallowed them, reducing them to its own substance”, J.P. Sartre, “Intentionality: A Fundamental Idea of Husserl’s Phenomenology”, trans. Joseph P. Fell, *Journal of the British Society for Phenomenology*, 1970, Vol 1, no. 2, pp. 4-5

¹⁴ “the disgusting object annihilates the distancing power of representation and, in Kant’s words, “insists on being enjoyed” in its crude materiality”, Christopher Turner, *op. cit.*

bodies, the immunitary illusions of separation, isolation and abstraction are dismantled.

Today, taste is reduced to a merely personal and subjective matter, “nothing more than sensations, without considering social material consequences”,¹⁵ a bourgeois vice which is not worth elaborating too much. Yet, understanding taste beyond these reductionisms – i.e. disengaging taste from its direct phenomenological relevance and enabling it to appear as a gateway to an immanent, ecological understanding of the world in which we are – opens up to its *use* as a promising tool to investigate the materiality of law’s relation to the world, as well as to force law into a different mode of dealing with the world: one which is tentative, tempting, reflexive and uncertain, a mode of *tasting*, that is, which sanctions the impossibility for law to avoid the inescapable fact of its own materiality.

The three essays which constitute this contribution are as much attempts to *taste* law¹⁶ as well as to force law into *tasting*, opening up its sensorial materiality through sociological, geographical and philosophical means. In their extremely different forms, styles and approaches, the three essays converge in a common attempt to deal with taste beyond its reduction onto a merely personal and individual matter, rather approaching it as what connects us to a material continuum of spaces, ideas, objects and practices. Taste thus appears as a tool whereby pushing law beyond the narrow confines into which it perceives itself; to rethink the fundamental question of our relation to objects and space; to reformulate the question of judgement as tentative, processual and contextual tasting; to open up law from inside, disclosing the geo-philosophical fact of its openness to justice in the here and now.

3.

In their contribution, Merima Bruncevic and Philip Linné seek ‘to awaken law to coffee and its taste’ with an insightful exploration of cultural, geographical, commercial and legal aspects of one of the most widely drunk liquid in the world. To do so, they investigate norms, trends and rituals of its making and consumption, mapping the multiple relations, spaces and tastes which coffee can disclose to legal thought, beyond the reductive compartments into which ‘legal studies’ have usually dealt with the issue: i.e. trade regulations. Coffee, they argue, is not to be seen ‘just merely as a packaged, commercial, private, experience, a commodity ... it is also possible to open up law to other aspects of it as well, to see the experience of coffee and its taste and be able to incorporate it within its own sphere.’ Elaborating on the notion of ‘intangible cultural heritage’, the authors argue for an understanding of coffee (as a set of practices, knowledge, rituals, places) as taking place within, and

¹⁵ John Cochran, “Object-Oriented Cookery”, in *COLLAPSE VOL. VII: CULINARY MATERIALISM*, ed. Reza Negarestani and Robin Mackay, Urbanomic, 2011

¹⁶ Incidentally, Perullo notes how in Italian the word *saggio* (i.e. *essay*) is directly linked to *assaggio* (the noun *tasting*) and thus *assaggiare* (the verb *to taste*), *op. cit.*

co-constituting, different cultural milieus, geographical locations and social atmospheres. The taste of coffee itself could be understood in this sense, beyond its mere reduction to a subjective experience, and rather in its immanent relations with traditional practices, legal protections, climate change issues, associative spaces and so on. Coffee is thus explored in its 'material' potentialities, as a fuel propelling thousand and one discussions, as a stigmatised and widely (ab)used drug, a drink inseparable from its spatiality – the multisensorial, 'intangible experience of *being-in-a-coffee-house*' – which played enormous significance through history in providing both shelter and 'brewing ground' for political and artistic development. The evolution of coffee-houses, on the one hand into the hyper-commodified deterritorialisation of 'Starbuck' and on the other into the reterritorialisation into 'smaller, niched, local, 'authentic' alternatives', exemplified by the ever-growing phenomenon of independent cafés, is the way through which the authors set up to explore the current wave of coffee-consciousness. For instance, by observing the ever-growing normativity which this entails in terms of the precise rules and savoirs which discipline the way in which coffee is to be prepared and tasted, or the geographical awareness of the places in which coffee is produced, both fostering interest into various and remote coffee varieties, as well as a form of 'coffee ethics' in which questions of fair trade, environment and social responsibility begin to emerge. Is this phenomenon to be hailed as a positive insertion of ethical concern within a commodified system or, as Žizek seems to contend, is secretly complicit with the "new spirit of capitalism" and its systematic incorporation and thus neutralisation of 'radical' tendencies into its smooth logic?¹⁷ The paper does not pretend to give definite answers to these multiple questions, and also aware that any attempt to 'awaken law' runs the risk to aliment the ever-lasting myth of an 'omniscient' law, widening its scope and thus suffocating other potentialities, it rather seeks to unfold lines of flight through which coffee and taste could open up 'further dimensions' of legal sensibility.

In his contribution, Andrea Brighenti deals with another drink which shares with coffee the characteristics of being globally consumed, having a relevant socio-cultural and geographical value, and being a 'drug': wine. His exploration moves from the highly normative role played by the professional wine-taster, i.e. the sommelier, analysing the written and unwritten rules and savoirs constituting the profession, and the implicit definition of taste as an 'encounter between a subject and an object that should be resolved in favour of the latter': its inherent quest for objectivity, and the capacity to surgically split the realm of subjective impressions from that of scientific objectivity, is what characterises the professional approach to wine-tasting, and its relation to the market. Yet, beyond subjectivity and objectivity, taste is indeed what puts these very notions into question. Developing his argument from the thought of Tarde, Simondon and Deleuze, Brighenti warns against reducing wine to an inert object, proposing to understand it as an 'expressive material that fundamentally exists in the dimension of becoming'. A moving, vibrant and alive substance which destabilises the controlled, calculated and reductionist approach which professional wine-tasting produces. Taste is an encounter that occurs, as Hennion observes, in 'a zone of contact in which the objects and its effects the

¹⁷ Slavoj Žižek, *First as Tragedy, Then as Farce*, London: Verso, (2009), pp. 53-54.

amateur and its pleasure, are simultaneously realised'.¹⁸ Building on his extensive studies on 'territorology',¹⁹ Brighenti thus argues for understanding taste as a territory, that is, as a multiplicity in which multiple elements come-together. The well-known and often misunderstood connection between wine and *terroir* allows him to push this argument further: as he puts it, 'the importance of territory with respect to wine should be doubled: not only is wine a territorial product, the product of a given territory or *terroir*, the unique ensemble of terrain and climate (pedo-climatic conditions); it is also a territory in itself, better, it contains the affordances that might enter into a range of territorial compositions with the taster. If we look at wine as the product of a territory, we are led to describe it as an *object*; but if we look at it as a territory in itself, we might begin to appreciate it as an *environment*.' Tasting emerges as a dimension of proximity and intermingling, which simultaneously implies a reflexive attempt to 'make sense' of this proximity by drawing boundaries and expressing judgements, and a 'capacity to articulate a territory' which simultaneously territorialises the wine with respect to its *terroir*, and de-territorialises it by putting the singular tasting encounter 'into a series of virtual encounters with all wines'. Brighenti's modestly titled 'remarks' are indeed an extremely insightful reflection of the relevance that a 'spatial' approach to tasting can play in simultaneously debunking the sterilising weight of professional normativity, as well as in opening up taste, beyond its subjective experience, to its socio-material dimensions.

Perhaps more ambitious is the aim of Nicola Masciandaro, whose essay leads us into a vertiginous journey through mystical, visionary and biblical sources, complemented with extensive footnotes which offer the possibility of a parallel reading of the text, digging through its numerous references and following the line of flight opened by them. *Law as such is inseparable from the world*, this is the crucial point which Masciandaro reformulates, expands and deepens in order to offer a way to think anew the crucial 'relation' that law entertains with justice. A sentence by the Indian mystic Meher Baba, 'the perennial spring of imperishable sweetness is within everyone', is the pretext to launch, as Masciandaro puts it, 'an intellectual attack upon everything in us that rises in revolt against this statement, against all that would dismiss out of hand the reality of its truth and confine its meaning to the realm of sentimental metaphysics'. One of the five categories in which taste is canonically split, i.e. sweetness, is for him the gateway to unfold the dimension of law's immanence to life. As he contends, 'to know this real sweetness of a life in direct and practical terms, to taste and see its reality rather than fall into theoretical imagination of it, it is necessary to sense the sweetness (of law) in the most literal terms, to find the actual point of contact between sweetness and the law.' Opposing this logic is the tendency to perceive law as fundamentally 'bitter' (a tendency which he explores in particular through a close reading and exegesis of the biblical episode of the 'waters of Marah'), *separated from* and *imposed on* the world, on life, as a necessary sacrifice to be undergone in the metaphysical hope that things 'will be otherwise', in some other transcendental 'beyond' where justice will finally occur.

¹⁸ Antoine Hennion and Geneviève Tiel, "L'attività riflessiva dell'amatore. Un approccio pragmatico al gusto", RASSEGNA ITALIANA DI SOCIOLOGIA / a. XLV, n. 4, ottobre-dicembre 2004: p. 17 (my translation)

¹⁹ See Andrea Mubi Brighenti, "On Territorology: Towards a General Science of Territory", *Theory, Culture & Society* 2010, Vol. 27(1): 1-21

This is what he frames as the bitter and indeed 'illegal' logic of worry, i.e. of 'negatively project thinking away from the present by means of concern for the inexistent past or future', as an unwillingness to deal with the world and its materiality. The search for a 'higher law' thus culminates in the unfolding of an ordinary, immanent law, a law which is not separated from life but rather immanent to it, a sweet law which carries 'the impossible yet inevitable taste of eternal justice.' Masciandaro's 'intellectual assault' could be read as an attempt to refuse any dichotomical, dialectical or pseudo-dialectical juxtaposition of the notions of law and justice, as well as any yearning for a justice 'beyond' law, instead opening law itself to the absolute fact of a justice which is here and now. From this point of view, the Garden of Eden is not as a transcendent place out of this world, but rather is this very world, "just a little different."²⁰

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The Law and the Senses series encourages the trans-disciplinary convergences which these three essays unfold. We think that this is the only sensitive way to deal with senses, so as to release the potential they encapsulate to rethink law and its relation to its pre-supposed outside, and to problematise this very presupposition as well. We hope this issue will constitute a valid starting point for this journey.

²⁰ Giorgio Agamben, *The Coming Community*, University Of Minnesota Press, 1993: p. 52.