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### **Abstract: The Ordinary Affects of Law**

The article examines the affective dynamics of law in the everyday. It insists upon the importance of ‘the background’ for thinking about law. In the everyday cut and thrust of daily life, law tends to fade into the background. It becomes unobtrusive, functioning from the background by structuring the capacity to act. In other words, it functions affectively. Key to law’s functioning is its ability to also move out from the background in certain crucial moments. In this it becomes obtrusive, taking centre stage in such a way that its former position in the background becomes imperceptible. The movement from background to foreground and back again are essential to begin to grasp the manner in which law functions with and through affect. Using the work of Kathleen Stewart, Hans Lindahl and Andreas Philippopoulos-Mihalopoulos the article insists upon the importance of the affective dynamics of law. Developing the idea of nested affects which help us to understand the movements from background to foreground.

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## The Ordinary Affects of Law

### *Introduction*

Legal analysis directs our attention to acts and omissions, potential wrongs result in a cascading response as a 'legal system' engages its mechanism. Particular norms, structures, offices, actions and spaces come to the foreground: the police, lawyers and judges, but also police call-handlers and administrators, para-legals, receptionists, clerks, cleaners, warders, bailiffs and prison officers. Legal analysis focuses on different parts of the scene, on the actors who stand out and perform parts of the legal system. At the heart of this is a question of aesthetics. By this, I do not mean the aesthetics of art galleries and cinema screens, it is not the 18<sup>th</sup> century European question of the beautiful. Instead, as we developed in the introduction, this is the question generated by the Greek term *aisthesis*: that of sense perception or the conditions of perceptibility. The conducting of attention to particular parts of a legal scene is a conditioning of legal perception. Legal analysis tends to 'foreground' particular aspects of the legal scene, but in this article, I want to suggest that affective 'background' of the legal order is more important in everyday life than the foreground action. Background is a theatrical term suggesting something that fades from view – a backdrop or setting. It is the basis from which something can come to the middle or foreground. But it is precisely *not* where 'the action' happens (foreground) nor is it a space of reason or synthesis (middle ground). The background is scenic in the sense that it 'sets the scene', but it does so in a way that is always displaced. Without the background the middle and foreground make little sense, but at the same time it is only by fading from attention that we can begin to grasp it as background. Thus, there is something paradoxical about writing an article about the background. By focusing upon it, you 'foreground' it, and in so doing it loses its 'backgroundness'. But at the same time, it is only by our inattention to the background, that it is allowed to do its scenic work.

The article uses this paradox in two entwined ways. Firstly, this paradox of foregrounding the background is a useful way to think about the way law directs our attention. The background

fades from view. But it is not secret, it happens in full view (so to speak). It is not invisible or occluded like the off-scene action. The background is different from the wings or the orchestra's pit (in a traditional western theatre). It is not so much invisible as unobtrusive. Understanding legal analysis is premised on an *aisthesis* – it is premised upon the conditions of sensory perception – which help us to understand that even as it fades from attention, the background remains essential to the constitution of the legal scene. The background implies a different temporality to the foreground. The background is produced in advance, and not simply staged on the night. Sovereign decisions or legal acts tend to draw our attention. The acts of presidents, dictators, judges and bureaucrats 'naturally' come to the foreground as legal scenes. But the danger of these often spectacular events is that we miss the long processes that lead up to them. Examining the background, contextualising, examining the conditions of possibility is therefore an essential critical gesture. Against analytical responses that often decontextualise and abstract moral problems, the critical (legal) approach historicises and explores the nuance of the situation. The claim that we should pay attention to the 'background' is also a demand that we need to become sensitive to our 'attention' as legal theorists. Thus, the first gesture of the article is to accept the paradox, and foreground the background.

The second use of this paradox is more difficult. We might initially say that the question of the background maps out onto that of affect. Like the scenic background, affect does not need conscious perception to change the scene and the bodies within it. The paradoxical thinking of the 'background' *as* background (i.e. not foregrounding it), is a useful way to approach affect. Affective analysis draws out the manner in which concepts become charged, the way in which acts resonate with people in particular ways or the way institutions and their populations bear certain moods and atmospheres. Affect is not emotion, it is not necessarily perceived at all. Affects circulate as atmospheres, collective moods and public sentiments. They condition the capacity of bodies (singularly and collectively) to act. But if Massumi is to be believed, affect has escaped by the time

we perceive emotional or other bodily changes that result from affective communication.<sup>2</sup> Thus, by focusing on affective changes we have a similar problem to that of foregrounding the background. The affects have already resonated (in the background) by the time a body knows it, and in this, the danger is that we reduce the background (affect) to the foreground (emotional and bodily experience). The parallel work on one level, but we do also need to be careful with it. We cannot simply map affect onto 'background' because law has affective dynamics while it is in the foreground directing the scene so to speak, *and* while it is in the background gently structuring the capacity to act.<sup>3</sup>

This article explores the ordinary affects of law, but the simplicity of this position belies a significantly less elegant argument. The article makes the case that law operates with affective forces in the foreground. It also operates with affective force from the background, when it fades from attention. And finally, there are important affects with which law moves from background to foreground (and vice versa). To grasp background, foreground and the movement between them, the article engages two important theorizations of background legality. Hans Lindhal's work (among other things) draws our attention to the manner in which legal ordering unobtrusively structures delineations of space, time, acts and subjects. Andreas Philippopoulos-Mihalopoulos identifies key aspects of law's becoming unobtrusive, but crucially unlike Lindahl, he is attuned to the affective force of a 'background' legality. Unfortunately for our purposes here, there is a yawning chasm between their work – between a Heideggerian-phenomenological sense of transcendence and a Deleuzian pure immanence. This gap leads them to talk past one another on a number of key questions about law. This article neither engages the debate between these

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<sup>2</sup> Brian Massumi, *Parables for the Virtual* (Duke University Press: Durham, 2002). Cf. Ruth Leys 'The Turn to Affect: A Critique' *Critical Inquiry* 37(3): 434-472 (2011); William Mazzarella 'Affect: What is it Good For?' In Suarabh Dube (ed) *Enchantments of Modernity*. (Abingdon: Routledge, 2009). William Mazzarella, *The Mana of Mass Society* (University of Chicago Press, Chicago, 2017)

<sup>3</sup> Spinoza famously explained: 'By affect I understand affections of the body by which the body's power of acting is increased or diminished, aided or restrained, and at the same time, the ideas of these affections.' Benedict Spinoza, *A Spinoza Reader: The Ethics and Other Works*, (Princeton University Press: New Jersey, 1994), 154

clashing ontologies, nor attempts to bridge that chasm. Instead it uses both theorists as irritants. The article uses the affect theorist Kathleen Stewart to abrade the smooth surface of Lindahl's theorization. Scraped of its sheen and polish, Lindahl's analysis becomes *sensitized* to affective dynamics that underlie the dynamics of legality, illegality and alegality. In turn Lindahl is used to irritate Philippopoulos-Mihalopoulos, providing a less radical reading of his insistence that law is an 'extensive institutional affect'. Lindahl's insistence on alegality (as a performance that displaces law's ordering) sensitizes us to a minor reading Philippopoulos-Mihalopoulos, one where the law is not necessarily everywhere and in everything. This minor reading irritates the commitment to pure immanence. But ultimately, what emerges from this reading Lindahl, Stewart and Philippopoulos-Mihalopoulos together, is an identification of the manners in which law can operate from the background.

#### *Ordering Law's Orders*

Hans Lindahl begins *Fault Lines of Globalization* with three vignettes set in a supermarket. In the first a group of well-off friends go into the *Galerie Lafayette* in Rennes after work to buy food for a big party. They select a top-of-the-line brand foie gras and Champagne. It is almost Christmas. They pay and leave. Lindahl tells us they have a memorable party.

He uses these shoppers to underline that the legal order takes shape through spatial, temporal, subject-based and act-centric delineations. The shop is an ought-place, a space wherein certain activities are appropriate. It is differentiated from the street outside or the house where the party will occur. Law constructs ought-places by differentiating them. It is not simply that different laws apply in different spaces. Such a view reduces space to a flat domain which law enlivens by applying its normative determinations. Rather, the point is that *space is an active participant* in shaping the behaviour of those within it.<sup>4</sup> In this way, law is conducted through the place itself. Lindahl

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<sup>4</sup> See Sarah Keenan, *Subversive Property: Law and the Production of Spaces of Belonging*, (Abingdon: Routledge 2015); Irus Braverman, Nick Blomley, David Delaney, and Alexandre Kedar, (Eds) *The expanding spaces of*

hints at the long lineage of critical legal geography to explain that the Galerie ‘Lafayette is only intelligible as the specific ought-place that it is... as part of a broader set of ought-places which includes, say, work-places, street-places, parking-places, and home-places.’<sup>5</sup> The part that law plays in ordering spaces should be conceived as part of a web. Law also regulates the movement between these spaces – you could crash through the barrier to the parking-place, or through the window of the shopping-place, but this would violate the normative conditioning through the space.

Alongside this everyday legal spatiality, law also allows for the differentiation and connection of times. ‘I know what I ought to do in the sense of the appropriate time at which to do something to pull off a legal act.’<sup>6</sup> The point of these temporal and spatial determinations, Lindahl explains is ‘to enable and disable certain courses of action.’<sup>7</sup> The actions themselves are internally differentiated and connected – the person enters the shop, puts the foie gras in a basket, pays and leaves. Law unites this as ‘a sale’ – a singular act. Finally, for Lindahl, law provides a subjective determination – the party in the *Galerie Lafayette* are ‘clients’, the shop is the ‘seller’. They take on these subjectivities by entering the ought-place/time of the shop, by undertaking the ‘act’. Lindahl points out that this works also to determine who can undertake certain acts: a child might buy the foie gras but not the champagne. *Law is a concrete order*. It gathers and integrates these four modes together in one’s everyday life: ‘one finds oneself in Lafayette (place), as a prospective client (subject), in the course of (time) buying a bag of potatoes and other products (content).’<sup>8</sup> Lindahl’s point is simply that within the act of friends buying groceries for a party, is the law’s concrete unity. The supermarket thus helps us to frame the everyday concrete (as in material/tangible/palpable) legal order.

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*law: a timely legal geography* (Redwood City CA: Stanford University Press, 2014); Nick Blomley, *Rights of passage: sidewalks and the regulation of public flow* (Routledge, New York, 2011); Nick Blomley, *Unsettling the city: urban land and the politics of property*. (Routledge, New York, 2004); Nick Blomley, David Delaney, and Richard T Ford, (Eds.) *The Legal Geographies Reader: Law, power, and space* (Blackwell, Oxford, 2001).

<sup>5</sup> Hans Lindahl, *Fault Lines of Globalisation* (Oxford: Oxford University Press, 2013) 19

<sup>6</sup> Hans Lindahl, *Fault Lines of Globalisation*, 21

<sup>7</sup> Hans Lindahl, *Fault Lines of Globalisation*, 21

<sup>8</sup> Hans Lindahl, *Fault Lines of Globalisation*, 24

He sharpens this analysis when he introduces the second vignette. There, the shoppers do exactly the same as the first vignette, with one key difference. They do not have enough money when they get to the check out and so, one of them pockets the *foie gras* and tries to leave the shop. They are caught and arrested. Again, Lindahl turns to his four-fold conception of law to underline the concrete determination of illegality. The normative structuring of the *Galerie Lafayette* as an ought-place is transgressed in the theft – as the shopper passes the till without paying for the *foie gras*. They also transgress the concrete temporal, subjective and content boundaries: the moment when they are supposed to pay, their status as client, etc.. Lindahl writes that ‘illegality has a ‘positive’ significance in that it renders legal order and behaviour *present* in a specific way... legal order and behaviour remain unobtrusive as long as behaviour follows its due (legal) course.... Illegality reveals that legal boundaries govern behaviour and also, conversely, that legal boundaries depend on behaviour.’<sup>9</sup>

The transgression of legal norms makes the law at work in the first vignette suddenly visible. In the first vignette the law is present in a concrete sense, but it operates in the background. In the second vignette, law becomes *obtrusive* in a particular way. Lindahl adds that this transgression of the legal order does not really challenge the legal normativity itself. Any concrete mode of legal normativity presupposes the legality/illegality distinction.

### *Affective Legality*

In Lindahl’s account, the second vignette demonstrates law’s function in the first. By transgressing the concrete normative order, the illegal act allows the legal determination of the space/time/act/subject to come to the foreground. Lindahl contrasts the two as a thought experiment that helps the reader to understand his argument. However, what is missing is the manner in which the two scenes are interwoven. The second scene haunts the first. It is an *affective*

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<sup>9</sup> Hans Lindahl, *Fault Lines of Globalisation*, 27



inter-relation. It is not that there is an (emotion of) fear of arrest is in the minds of the shoppers in the first scene. Affect can work at a distance. Sylvian Tomkins, one of the originators of the current wave of affect theory, draws our attention to the way people pause at the curb before they cross the street:

It is certain that most of us at the curb learn to anticipate not only danger but fear. Few individuals experience fear at the sight of automobiles on the street. One of the reasons for this is the ideo-affective organisation which informs the individual of the relevance of a broad range of contingencies for danger and for fear, and a set of strategies for coping with each of these contingencies. Thus, on the curb of a city street, if automobiles do not exceed 35 or 40 miles an hour and do not deviate from relatively straight paths... and if the individual allows a few hundred feet between himself and the oncoming automobiles, he characteristically crosses the street without the experience of either danger or fear. The affect theory (a fear theory) here operates so silently and effectively that it would surprise everyman if the question of fear about crossing the street were even to be raised. He would say, quite self-persuasively, that he uses his common sense so that he doesn't need to be afraid. This is one of the major functions of any negative affect theory – to guide action so that negative affect is not experienced. It is affect acting at a distance. Just as human beings can learn to avoid danger, to shun or fear the flame before one is burnt, so also they can learn to avoid shame or fear before they are seared by the experience of such negative affect.<sup>10</sup>

The basic dynamics of negative affect are built into road layouts. But so too are they are built into the law-scene of the shop. The difference being that the ~~fear~~ (the fear that doesn't need to be experienced) at the roadside comes from the speeding car, but the ~~fear~~ in the shop comes from the legal act of 'enforcement'. In other words, in the supermarket law relies upon an affective background. The shoppers in Lindahl's first scene do not even need to think about the dangers of

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<sup>10</sup> Eve Sedgwick and Frank, *Shame and Its Sisters: A Silvan Tomkins Reader* (Duke University Press: Durham, 1995) 166

theft. To paraphrase Tomkins, if they were asked, they would say quite persuasively that common sense tells them if they are caught shoplifting they might be arrested. They act ‘as if’ they were afraid or ashamed.<sup>11</sup> The fact that they do not fear arrest tells us that the illegality has left an imprint. ‘It is only when the situation violates the boundaries of the affect theory that the individual is exposed to the affect proper.’<sup>12</sup>

This ‘negative affect’ is important but *not* because it holds any sort of extensive explanatory power for law. In legal theory we are familiar with these accounts of negative affect as the ‘command theory of law’. In Austin for instance, people abide by the law because of a distant fear of the potential punishment. The problems of the command-sanction model of obedience are well established and I introduce negative affect not to return to a subterranean version of this model, but to begin to think about the affective forces at play in Lindahl’s account. The negative affects that interweave Lindahl’s first and second account are not the end-point of my analysis, but rather a familiar starting point. In fact, the affective dynamics of Lindahl’s scenes are far more complex than simply being a matter of fear (or ~~fear~~). To begin to approach them, I want to introduce the work of the anthropologist Kathleen Stewart.

Stewart identifies what she calls ‘ordinary affects’. These are ‘sensations, impulses and ‘habits of relating’ that are integral to everyday life.’<sup>13</sup> Stewart’s analysis of ordinary affects draws out the manner in which public feelings and intimate moods or atmospheres chime together at particular moments. She describes short scenes, drawn from her anthropological observations. ‘These scenes do not work ‘through ‘meanings’ per se,’ she writes, we are not supposed to read them for their message. Rather they work ‘in the way that they pick up density and texture as they

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<sup>11</sup> Silvan Tomkins, *The Silvan Tomkins Reader*, 167

<sup>12</sup> Silvan Tomkins, *The Silvan Tomkins Reader*, 167

<sup>13</sup> Helen Nicholson, ‘Affective Labours of Cultural Participation’ in Anna Harpin, and Helen Nicholson, *Performance and Participation: Practices, Audiences, Politics*, (MacMillan, 2016) 126. Stewart writes: ‘The ordinary throws itself together out of forms, flows, powers, pleasures, encounters, distractions, drudgery, denials, practical pleasures, encounters, distractions, drudgery, denials, practical solutions, shape-shifting forms if violence, daydreams, and opportunities lost or found. Or it falters, fails. But either way we feel its pull.’ (Kathleen Stewart *Ordinary Affects*, (Duke University Press: Durham, 2007) 29)

move through bodies, dreams, dramas and social worldings of all kinds. Their significance lies in the intensities they build and in what thoughts and feelings they make possible.<sup>14</sup> The affects that flow through these scenes are not simply 'local'. They can crystallise the dynamics of national or global constellations. She poses her analyses against the established critical theory of 2007 – the moment when *Ordinary Affects* was published:

This book is set in a United States caught in a present that began some time ago. But it suggests that the terms neoliberalism, advanced capitalism, and globalisation that index this emergent present, and the five or seven or ten characteristics used to summarize and define it in shorthand, do not in themselves begin to describe the situation we find ourselves in.<sup>15</sup>

She does not deny the forces that those systems of thought try to name, but in effect denies the model in which social structures create local effects.<sup>16</sup> She suggests that by thinking about the ordinary affects of the forces (which neoliberalism for instance, tries to name), she is bringing 'them into view as a scene of immanent force', instead of 'dead effects imposed on an innocent world'.<sup>17</sup>

The ordinary is a shifting assemblage of practices and practical knowledges, a scene of both liveness and exhaustion, a dream of escape or of the simple life. Ordinary affects are the varied, surging capacities to affect and to be affected that give everyday life the quality of a continual motion of relations, scenes, contingencies and emergencies.<sup>18</sup>

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<sup>14</sup> Kathleen Stewart, *Ordinary Affects*, 3

<sup>15</sup> Kathleen Stewart, *Ordinary Affects*, 1

<sup>16</sup> This echo of the debate between Tarde and Durkheim has re-emerged recently in social theory: See Matei Candea *The Social after Gabriel Tarde: Debates and Assessments* (Abingdon: Routledge, 2010), particularly Bruno Latour 'Tarde's idea of Quantification' and Nigel Thrift, 'Pass it on: Towards a Political Economy of Propensity, (also published in 1.2 *Emotion, Society, Space* (2008), 83-96). See also Nigel Thrift, *Non-Representational Theory*, (Routledge, 2007) Nigel Thrift and Andrew Barry, 'Gabriel Tarde: Imitation, Invention and Economy,' *Economy and Society* (2007) 509, and Brian Massumi 'The Future Birth of Affective Fact: The Political Ontology of Threat' in Mellisa Gregg and Gregory Seigworth, *The Affect Theory Reader*. For the Durkheim debate, see William Mazzarella *The Mana of Mass Society*.

<sup>17</sup> Kathleen Stewart, *Ordinary Affects*, 1

<sup>18</sup> Kathleen Stewart, *Ordinary Affects*, 1-2

The book then progresses by way of a series of brief scenes where affective intensities congeal and flow.

Stewart is particularly useful for our purposes, because her scenes allow the affective to remain in the background. Each scene stages the ‘question of what counts as an event, a movement, an impact, a reason to react.’<sup>19</sup> Each scene allows the events to unfold, but by sensitizing the reader to watch and listen for the affects that flow (as background) through the scenes, she performs the paradoxical relation of keeping background *as* background. This is not to the exclusion of historicising and contextualising of classical critical (legal) theory. ‘Being moved’ does not simply spring up from nowhere. There is a long process of conditioning – particularly in political and legal spheres where the populace is the object-target.<sup>20</sup> Attachments, investments, resonances and intensities are produced through sensitisation, association and other modes of what we might call ‘sentimental education’. Thus, we might think about Brexit in the UK at least partially as a result of the longstanding antipathy of most of the print media to the EU, and the continual negative tone in which its actions were reported (or made up) for thirty years. This is very clearly a ‘sentimental education’ of large swathes of the populace.

It is unhelpful to simply identify Lindahl’s contrast of legality/illegality with fear and anxiety. It is important to begin to give luminance to different aspects of law’s ordinary affects. To do this, I want to suggest that we might begin by twisting Stewart’s method slightly. She writes that:

*Ordinary Affects* is written as an assemblage of disparate scenes that pull the course of the book into a tangle of trajectories, connections, and disjunctures. Each scene begins anew the approach to the ordinary from an angle set off by the scene’s affects. And

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<sup>19</sup> Kathleen Stewart, *Ordinary Affects*, 15-6

<sup>20</sup> See Ben Anderson, *Encountering Affect* (Routledge: Abingdon, 2016), Lauren Berlant, *The Queen of America Goes to Washington City* (Duke University Press: Durham, 1997)

each scene is a tangent that performs the sensation that something is happening – something that needs attending to.<sup>21</sup>

Her scenes are ethnographic observations, but they draw their energy from the ‘ficto-critical’ work of Stern, Taussig and Lingis.<sup>22</sup> They stage the ordinary, but in a way that allows the affective constellation to remain in the background. The reader is sensitized to the affective background as background. I introduce this method here in order to irritate Lindahl’s account of the concrete order of everyday legality. Lindahl’s vignettes are thought experiments that aim to draw out the background/foreground. But, for the most part, they effectively excise the affective dynamics of the scenes. We can re-tell his ficto-critical stories in a different key. Instead of illuminating the background/foreground, the aim is to give luminance to the complex interplay of affective dynamics that might play out in these scenes.

### *Re-inserting Ordinary Affects*

Lindahl’s vignettes are a curious mix of very specific detail (the city, the Galerie Lafayette, the date, etc.) and terse description of the action. He tells the story of the group quickly. But for all of this, the narratives do signal some of the ordinary affects that might circulate. Indeed, like all thought experiments, there is the need of something beyond thought.<sup>23</sup> The Galerie Lafayette is not just any supermarket. It is an up-market exclusive city-center department store. The store in Rennes is not as fancy as the Paris ‘Housmann’ Galerie Lafayette which looks more like the interior of a 19<sup>th</sup> century opera house, but Lindahl’s choice of this particular site (whether intentional or not) intensifies the affective dynamics which the reader intuitively feels (or perhaps which Lindahl imagines)

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<sup>21</sup> Kathleen Stewart, *Ordinary Affects*, 5

<sup>22</sup> Kathleen Stewart, *Ordinary Affects*, 6-7

<sup>23</sup> It is worth noting here that Lindahl’s accounts are fictional, they are ‘thought experiments’ that ground his theory of law in an everyday setting. But as with all ‘thought experiments’, the aim is to engage something beyond thought. Philippa Foot’s classic ‘trolley experiment’, for instance, remains irresolvable precisely because the rational solutions of whether to allow many to die or to kill one, are confounded with the affective dynamics of killing. What is more, however, the resolvability gives a certain feeling of thought. The trolley problem *resonates as a feeling of thought*, and proves deeply attractive despite the deep decontextualization (and simplification) involved in much of moral theory.

playing to the attachments of his readers). So, trying to bring these elements out, let us examine our first law-scene:

Stacking shelves has a certain rhythm. Each tin is taken from its box, placed on the shelf, facing forward in exactly the same direction. There is a rhythm – a care and attention. I used to work in an *Hypermarche* where these things didn't matter. Nobody paid any attention there.

Today a kid broke a jar of sauce, his mother called me over. Smile: 'of course, Madame'. Smile: 'certainly, not a problem'. Attitude, the right kind of attitude. Careful. Smile. The kid is a brat. He pushed against my back while I crouched to sweep up the splatter of shards and paste. I nearly put my knee into the smudge of Green Thai Curry Paste and broken glass. Smile. Move away. But smile. The mental image of a shard of glass jutting from my knee: cut tights and bloody blouse. It would be another uniform infraction.

I go back to the shelves: tinned peas take fourteen minutes, assorted lentils another eight. Slow time. When I am called to a till it speeds up again. The shop is busier than before. A large group in particular. Nearly thirty by the looks of it. They have collected all of the foie gras and most of the best champagne. More shelves to be stacked. Are they all men? They are laughing and joking loudly, and one of them tries to invite me to their party. Smile. I have been told. Each day. Smile. His friends jibe and banter. I hear them discuss me as they leave.

Lindahl's point is that the party-shoppers belong to the space, and their behavior is shaped by the ought-space of the food department. And it is true that they belong, but not simply because they fulfill the normative determination made by law. We intuit that they 'belong' to the scene in a much deeper sense. They buy the most expensive foie gras in a fancy shop, they have a big party, they burst with the confidence of privilege. It is not just that they act legally because of negative affects, because they ~~fear~~ arrest. There is a whole affective constellation behind their acts. This affective constellation completely exceeds the limited sense in which law is conducted through the

space. However, insofar as law is relevant in the scene, it is inseparable from these affective dynamics.

The woman at the till who has to deal with the entitled presence of the shoppers, belongs to the scene in a different way to the shoppers. She is given subject and forms of action like the group. But these are entangled in a web of anxieties, resentment and other ‘ugly feelings’ of precarious labour.<sup>24</sup> Like the affects exuded by the shoppers, affects flow from and through her. By contrasting *these modes of belonging* to the law-scene, we begin to think differently about law’s ordinary affects. It is not just that law gathers particular acts together, or divides subjects or spaces. But that it surges through actors and spaces, energizing certain relations and exhausting particular ways of being in that space. Lindahl’s scene is full of the relations of late capitalism. But not as abstract forces. They are embodied in the positions and desires of those present. These affects flow through the bodies, and stick differently to them.

The function of affect in the second vignette is more immediately obtrusive. But we can begin to draw out a different luminance as well. The people who put the foie gras in their pockets just can’t afford it. They do it in a moment of fantasy, filled with trepidation and hope (perhaps). They thought that they had enough money, they have not come here to break the law Lindahl hints. Stewart writes:

We shop. Sometimes, or all the time. Too much or not enough. With flare or with shame. For necessities, for therapy, on vacation. At Dollar Store or Neiman Marcus or Sears, depending.... If you have plenty of disposable income, that’s one thing. If you have no money at all, that’s another thing. If money is tight, you’re supposed to shop with mind-numbing, penny-pinching care. All those coupons. All those catalogues, the fantasies, the games of imagining having this thing or that and what you would do with

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<sup>24</sup> Sianne Ngai, *Ugly Emotions* (Harvard University Press: 2005)

it. Then the splurges on a tub of ice-cream or the suicidal squandering of a trip to Las Vegas.<sup>25</sup>

There is a politics of class affects in Lindhal's second vignette. But rather than focusing on the shoppers – a melodrama that is more likely to identify my political and social investments than anything else – let us instead investigate a different site:

The trick of watching is to focus on one person, one screen at a time. And definitely not the full wall of screens. You can't just look at all of the monitors because you wouldn't *see* anything. But you watch the entrances and you pick them out as they come in. And then you can follow their movement. It's rarely their cheap clothes and shaggy hair that give them away. The security guards at the door keeps those types of problems out. I couldn't tell you what it is specifically, but I can pick them out the moment that they come into the shop! It's like a second sight or something.

Our cameras are brilliant, I mean they are fully functional. You can zoom right in, swivel through 360 degrees. But you can also rewind digitally. So you never miss anything. When they slipped the foie gras into their trench coat pockets it was like a neon sign. With this system we have cut shoplifting by 27% year-on-year.

I mean I never get to actually stop them myself, but I watch it. I love panning the camera around to the shocked on-lookers as the security guards swoop in. It's quite satisfying you know. Like you've achieved something. I mean sometimes they are quite discrete about it, and they just bring them back here to wait for the police. But sometimes, when they want to make an example of them they hold them out by the tills where everyone can see. I prefer that.

In Lindahl's account there is a certain inevitability in the fact that the 'shoppers' are caught. In this moment, the affective dynamics of theft disappear. Gone is the thrill of (potentially) getting away

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<sup>25</sup> Kathleen Stewart, *Ordinary Affects*, 61-2



with it, the thrill of transgression, the relief at having something (fancy) to eat. Gone too are the affective dynamics of the employees.

Lindahl's account sees no pleasure, and barely any pain (at a stretch the reader might pause on the pain of the shoppers caught short). But the security guard's account is an attempt to pull out the enjoyments of the scene. He describes the emotional pleasures of panning the camera around to watch the people gathered, there is enjoyment in the spectator's shock. We might imagine that on a normal day when no shoplifters are caught, the job is fairly mundane. The event of catching a shoplifter has the draw of a satisfaction, and this manifests itself as an affective pull. This affective pull becomes emotions of pleasure if they are caught.

### *Alegality*

The third of Lindahl's three vignettes is radically different to the first two. A group of people enter into the same *Galerie Lafayette*. They collect the same produce, also with a view to throwing a sort of party. However, when they get to the check-out they split up. They stand three deep at each cashier, and one by one they all refuse to pay for the produce, politely requesting that the manager give them the food for free so that they can distribute it to the poor. These are the *Mouvement des chômeurs et précaires en lutte* who undertake *autoréduction* actions (literally self-discounts). Following a long period of stalemate, with the queues growing and customers getting frustrated, the manager enters negotiations with the *chômeurs en lutte*. He ultimately allows them to leave with half of the produce that they had sought. Lindahl insists that theirs is not illegality. They do not break any laws. But nor do they accept the normatively structured nature of the place in which they are situated. The *chômeurs en lutte* refuse to recognise the manner in which law is conducted through this space. They challenge the very nature of this ought-place. This challenge leads Lindahl to suggest that theirs' is an act of a-legality.

The absence of illegality from the protestors is a clever strategic move which leads to the success of the action. However, it is not crucial to the conception of alegality. Alegality has two

elements, firstly, it is a turning away from the question of legality/illegality. It is a refusal to be determined by this pairing. As such, that the *autoréduction* did not transgress any laws is not essential to its alegality, for this would simply reassert legality as once again being determinative. The second element which is more important in this context, is that alegality is an act or omission which brings the nature of legality/illegality itself to light. It does this by showing a strange outside-of-law that lies hidden within the fabric of every legal determination. The shop (like every ought-space) could be otherwise. '[A]legal behavior... contests the orderliness of the law itself by revealing the residual groundlessness of what that order calls (il)legality. In other words, struggle is the overt manifestation of the irreducible contingency of legal orders.'<sup>26</sup> Lindahl underlines that law is fabricated. It is full of layers and seams. At each seam the fabric can be torn. The alegal might make the legal fabric visible by rupturing it, by denying its determination. At the moment of rupture we glimpse the flesh beneath the legal fabric. 'Every spatial boundary of a legal order, even the most 'mundane' and apparently insignificant, is also a limit that renders it discontinuous with a strange outside'.<sup>27</sup>

A-legality is at once the limit of law, and essential to it. There is always the possibility of a tear at each legal seam. Thus, we might begin to imagine the *autoréduction* in terms of the pull of the event: We could think of the nervous energy of the *chômeurs en lutte* as they arrive at the supermarket, as they collect the produce into their trolleys; The sudden shock of the workers as they are faced with the extraordinary demands; The tense atmosphere as the queues build; And the release when a settlement is reached. But on an affective level, it is essential to see that the legal order will very quickly patch the tear in its fabric. The suddenly obtrusive legal relations will very quickly fade back into invisibility as the force of the ordinary kicks in once more:

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<sup>26</sup> Hans Lindahl, 'The Opening: Alegality and Political Agonism,' in Schaap, A, *Law and Political Agonism* (Aldershot: Ashgate, 2009), p60.

<sup>27</sup> Hans Lindahl, *Fault lines of Globalization*, 43

Nothing like this had been covered in my induction, or any of our training workshops. I guess I had to improvise on the day. You might think that it was easy to call the police, but here at the *Galerie Lafayette* we pride ourselves on discretion. I am sympathetic, of course. I give regularly to *Medcines Sans Frontiers*. But the *Galerie* is a place of business. You have to be reasonable. I invited them to my office to talk it all through. But they just kept shouting. I wanted to give them a chance to explain themselves. I wanted to enter a dialogue. It was not fair that they were disrupting our proper customers.

We pride ourselves on convenience and quality. Everyone was on edge. I could see after a while that our takings for the day were going to suffer. Clients were leaving without buying anything. And the police. I mean, they are brutes really. Everything sped up when they came bursting in. Suddenly there were so many of them gathered around the tills. They weren't happy when I agreed to give the clowns some of the produce they wanted. But violence would have been a disaster. I mean this is a place of business.

I am sure that some of our clients would have liked to see a few heads knocked together, but you can never be sure how people will react. It might have taken us months to recover from the scandal. I have proposed to head office that I lead a role-play for this type of situation at our next regional away day. It would be good to cascade these experiences going forward.

If Lindahl is correct, this manager has just witnessed the very legal constitution of space, time, subject and act come apart at the seams. If law is like a fabric it changes bodies and shapes them. But it can be changed and it can be torn. The manager is standing beside a tear, but his first reaction is to return to the everyday fabric of legal relations. He desires the return of the ordinary. Precisely in this exceptional moment when the very stakes of lawful relations are made obtrusive, the

ordinary continues to pull everything back. Everyday relations crowd back in, and pull the actors back to the everyday situation. There is a sort of draw of stasis at play, a return to habitual relations.

### *Affective Legality*

For Lindahl's *The Fault Lines of Globalisation* it was essential to make law obtrusive so that we can begin to identify this fourfold determination of law's concrete order. But we have also seen that law can be made obtrusive in a way that confirms (illegality) or which undermines (alegality) the legal determination. Already then it is more complex than the simple obtrusive/unobtrusive dichotomy. Once we add the affective dynamics this duality collapses. It is necessary to begin to think about the affects with which law takes the foreground, and the atmospheres that are generated when law remains in the background. This is more than the texture of the events. The affective dynamics of a legal scene effect the actions of those involved. On this point, it is useful to introduce Andreas Philippopoulos-Mihalopoulos's theory of the lawscape. Like Lindahl, Philippopoulos-Mihalopoulos is also a thinker of the legal background. But if Lindahl's emphasis was on the dynamics of obtrusiveness, here the focus is on invisibilisation – on the becoming-background.

To begin with, Philippopoulos-Mihalopoulos argues that understanding law and space as distinct questions misses the tautological relation between them. One is always already in the other, there is not 'Law' and 'Space' but only a spatialised law and a legalised space. He identifies what he calls the lawscape to convey this sense of the co-immanence of law and space. He argues that law (like space) is immanent in all bodies and things. But it is not enough to say that law is everywhere, he argues that this immanent law 'emanates from every body'.<sup>28</sup> Whether human or non-human, whether animal, vegetable or mineral: 'Every body lawscapes'.<sup>29</sup> For Philippopoulos-Mihalopoulos there is no outside of law. When we walk down an urban street we are surrounded

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<sup>28</sup> Andreas Philippopoulos-Mihalopoulos *Spatial Justice* (Abingdon: Routledge, 2015) 69

<sup>29</sup> Andreas Philippopoulos-Mihalopoulos *Spatial Justice*, 69

with property forms, contracts call out to us, we move with traffic regulation, we smell health and safety regulations, we lean up against building regulations. The contracts say ‘come and buy me, look at these shoes, imagine the taste of this food’; The footpaths demand footsteps, without loitering feet or obstructive rear-ends; The regulations are in that mild smell of new furniture or a new car, the maximum formaldehyde regulations that manage the dyes in fabric. We are a knot of rights and duties. And we extend temporally through past, present and future legal forms. The student’s shoulders weigh their debt, the past its sell-by-date food in our bellies, the contract for our shopping to which we are walking. He argues that whatever we do, we are law-ing. We are constantly performing elements of the legal assemblages.

Crucially, for Philippopoulos-Mihalopoulos the lawscape is an affective legality. Law structures the world from the background (although this is not a term he would use). In the lawscape, law tends to become invisible. ‘[I]n/visibilisation is not just a game on the side, but the lawscape’s only mechanism of ontological continuation’.<sup>30</sup> When law becomes invisible it does not lose its effect. Quite the contrary, invisibility intensifies its effects. For Philippopoulos-Mihalopoulos the way that law fades from the foreground is a essential for its continuation. He theorises this invisibility as law becoming ‘atmospheric’. Law becomes atmospheric when it dissimulates itself, when it disguises or conceals its operation. Atmospheres are the perfect hiding place for legal power, he tells us: ‘We are all inside atmospheres.... Yet we are not aware of the atmosphere. [As such a]n atmosphere is the perfect enclosure’.<sup>31</sup> As law becomes atmospheric we become completely inured to its structuring presence. We acclimatise and once this acclimatisation takes place, the lawscape withdraws. The atmosphere then captures the person by stoking desire. ‘The bodies captured in an atmosphere for just a little longer, as long as possible, or as long as ‘needed’. This means that ‘need’ is constructed within an atmosphere, autopoetically eating its own

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<sup>30</sup> Andreas Philippopoulos-Mihalopoulos *Spatial Justice*, 75

<sup>31</sup> Andreas Philippopoulos-Mihalopoulos *Spatial Justice*, 6

tail. I discover my needs when I am faced with the ‘product’ that meets them.’<sup>32</sup> Law then is an ‘expansive institutional affect’, a diffused set of forces capable of conducting our desires in ways that are invisible to us. Perhaps the most important element of this analysis of invisibility (background), is that the desires conducted in the lawscape manifest themselves also as a desire for the lawscape. In his way, Philippopoulos-Mihalopoulos underlines pull of the ordinary.

As noted at the outset, there is a yawning chasm between Philippopoulos-Mihalopoulos’s pure immanence and Lindahl’s radical outside of law (alegality). My aim here is not to find some sort of agreement between the two theorists. For Philippopoulos-Mihalopoulos (quoting López): ‘Nothing can be... outside the law. Illegality, alegality, extra- or infralegality are forms that, either by opposition or subversion, necessarily take a legal system as a reference and are as such constituted by it’.<sup>33</sup> He insists that because alegality is structured by its relation to legality, it cannot escape the folds of law. In contrast, for Lindahl alegality has a relation to law in the sense that it disarticulates law’s determinations of space, subject, act and/or time. It is the act of bringing law to particular forms of affective obtrusiveness. But he insists that the act of alegality renders law obtrusive from the outside, by turning away from and refusing the legal determination. Law is something to be produced in things, places and people. It must be performed, and we do this habitually and by choice. But just as it may be produced in (and by) bodies, so too may this production be disrupted. This might be in the name of a new legality (as Philippopoulos-Mihalopoulos complains every apparently anomic revolutionary ultimately resorts to), but it might also be a refusal of the current legal terms.

The reason that I have read Lindahl and Philippopoulos-Mihalopoulos together is not for the inevitably foregrounded disagreement about whether law is purely immanent with no outside (lawscape), or whether it is possible to generate a transcendent outside of modern legality

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<sup>32</sup> Andreas Philippopoulos-Mihalopoulos *Spatial Justice*, 108

<sup>33</sup> Andreas Philippopoulos-Mihalopoulos *Spatial Justice*, 86, quoting López, G, ‘Before the Law’ *The Shape of Law: Special Issue*, 4(38), 2014, 7

(alegality). What is exciting about both of them is that despite this fundamental disagreement, they both agree upon the force of unobtrusive legality and the potential of becoming obtrusive. In this sense, they both draw our attention to an ‘affective legality’: forces that are entangled in legal scenes, forces that affect the capacities to act of those involved, and shift the significance of their scenes.

### *The Spheres of Affect*

While I have relied heavily on affect theory throughout to irritate and sensitise Lindahl and Philippopoulos-Mihalopoulos, affect itself has remained somewhat nebulous. So before I conclude, I want to grasp the affective dynamics of the legal scene in a much more nuanced manner. We can think about three different spheres of affect that constitute the affective forces at play in any given legal scene. On the most obvious level there are affects which pass through the people involved in each of the stories. We might imagine the types of trepidation in the managers stomach when the police arrive, the anger in the clenched jaw of the woman on the tills as she is patronized by the shoppers or the pride that bursts from the chest of the security guard as he catches the thief. These are bodily receptions, simmering on the edge of perception. The bodily changes help to determine particular responses. But at the same time, the affects are not simply individual emotional responses. Affects circulate, they flow through bodies. They stick to some bodies and slip off others. The clenched jaw of the woman at the till is there for anyone to see, to sense the tonality and texture of the moment.

Affect draws our attention to resonance, the question of ‘being moved’. What makes a body resonate is itself determined by mood and situation, among a great many other elements.<sup>34</sup> Affect is an ‘intensity corresponding to the passage from one experiential state of the body to

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<sup>34</sup> Sarah Ahmed, ‘Happy Objects’ in Melisa Gregg, and Gregory Seigworth, (eds) *The Affect Theory Reader*. (Durham: Duke University Press 2010).

another and implying an augmentation or diminution in that body's capacity to act.<sup>35</sup> The manager's worry about how his consumers will react, demonstrates precisely this dynamic. His actions are guided not just by the socio-cultural education of his sentiments, but also by his understanding of the affective dimensions of those acts. 'Consumerism has affect as its main operator; it exercises us in insignificant micro-decisions, drilling our readiness to prefer and reject far beyond what is relevant to any needs we might have.'<sup>36</sup> The manager's worry is that these events will change whatever affective propensity the consumers have for his store. He does not know the shopper's views or the strength of their convictions on the *Chômeurs en lutte* and the police, and so he cannot predict any changes in their perception of the store and the intensity of their inclination towards shopping there. But at the same time, the manager is 'being moved' by his customer's inclinations and attachments. In this case he is moved to anxiety, worry and fear. His care for the consumer's desires and his attachment to the role as manager, are all equally part of the circulation of affect within the scene.

A second way to approach the affective situation in the shop is to think of 'atmosphere'. The affective atmosphere in the shop is a shifting affective pattern of intensities. For instance, in the stand-off with the *Chômeurs en lutte*, we might imagine that the shop is generally perturbed and unsettled, but the area around the tills is more intense than that at the furthest corner of the store. Indeed depending on the layout of the shop – the shape of the space, the lighting, the people present – it may be that there are parts of the store that are not affected by this particular site of conflict. Within the affective intensity of the stand-off, the atmosphere is determined by a multitude of different factors. The dimensions of the space, the materials used in construction and layout of the tills and aisles,<sup>37</sup> the height of the ceilings, the light, sounds and smells, the comportment of the people involved. Marketing theory and environmental psychology generate

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<sup>35</sup> Brian Massumi, 'Translators Introduction' in Giles Deleuze and Felix Guatari, *A Thousand Plateaus* (London: Bloomsbury, 2013)

<sup>36</sup> Devika Sharma and Frederik Tygstrup, 'Introduction' in *Structures of Feeling: Affectivity and the Study of Culture* (De Gruyter, 2015) 4

<sup>37</sup> Peter Zumthor, *Atmospheres*. (Basel: Birkhäuser GmbH, 2006)



psychological codes in spaces of consumption like this. Shops are coded as cheap or expensive, lush and stripped back. We are supposed to enjoy the experience and the easy flow through the space, or struggle with the space to experience the joy of the bargain. But the spatial dynamics are only the first part of a cyclical relation, where those within the space (both employees and customers) perform the affective dynamics of the space. The priest and parishioners perform the hushed tones and cautious atmosphere of the cathedral, the fans and players perform the excitement of the stadium. Thus, we might say that it is only the first story that is an everyday atmosphere. In the second and third story the spatial dynamics are disrupted by unusual events. The atmospheres there are not those designed into the space.

Moving to a different sphere again, we might begin to situate the events in collective moods or the *zeitgeist* of the era. These too would have an effect on the scenes, but in a more diffuse manner. Raymond Williams identified what he called the ‘structure of feeling’. This is a particular affective constellation that operates in time and place: ‘a particular quality of social experience and relationship, historically distinct from other particular qualities, which gives the sense of a generation or of a period.’<sup>38</sup> He further specifies two key elements of structures of feeling: ‘first they are *changes of presence*’ in the sense that the structure of feeling affects ‘elements of impulse, restraint, and tone; specifically affective elements of consciousness and relationships: not feeling against thought, but thought as felt and feeling as thought: practical consciousness of a present kind, in a living and interrelating continuity.’<sup>39</sup> And secondly, although structures of feeling ‘are emergent or pre-emergent, they do not have to await definition, classification, or rationalization before they exert palpable pressures and set effective limits on experience and on action.’<sup>40</sup> We might restage the supermarket stories in the ‘long hot summer’ of race riots in 1967 in the USA. Instead of France, the up-market store might be in the functionally segregated Detroit or Newark,

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<sup>38</sup> Raymond Williams, ‘Structures of Feeling’ in Devika Sharma and Frederik Tygstrup, *Structures of Feeling*, 23

<sup>39</sup> Raymond Williams, ‘Structures of Feeling’ 24

<sup>40</sup> Raymond Williams, ‘Structures of Feeling’ 23

where police over-reach lead to massive riots. The Kerner Presidential Commission on the 1967 riots described how disorder emerged from an increasingly ‘disturbed social atmosphere’. In this, ‘tension-heightening incidents... became linked... with a reservoir of underlying grievances. At some point in the mounting tension, a further incident – in itself often routine or trivial – became the breaking point and the tension spilled over into violence’.<sup>41</sup> This period of affective unrest is more than simply an iteration of particular situational atmospheres. The atmospheres articulate with one another to create that experience of tension. In this sense, it is important that Lindahl’s events occur in the 2008. The same actions would carry different affects in Paris in the 1968 or 1898, or indeed in late 2018 among the *gilet jaunes* protests. Would the pull of the ordinary be quite the same in 2018 or 1968? Would the desires for the big ruptural event carry greater valence in a perturbed social atmosphere where tensions around poverty and power marked the public mood?

Crucially, these are nestled affective spheres: The affects which attach to bodies *are* the atmospheric affects, and the atmospheric affects take place in the ‘structure of feeling’. In this sense a scalar analysis is distinctly unhelpful – these are not micro, meso and macro affects. Such an analysis suggests that three distinct levels, each with their own dynamics. I have instead talked about spheres – in a nod to Sloterdijk’s bubbles and foams.<sup>42</sup> Sabrina Lilleby captures this well – writing about the shift during the revolution in Cairo:

A few years ago, despite living with a despot, many dwellers of Cairo considered artefacts such as tanks, machine guns, barbed wire and sandbags as belonging to a war-zone, not to their intimate milieu. Yet, with the events that unravelled in the spring of 2011, dwellers of Cairo were tossed into a perplexing everyday where they have gained immediate experience with the objects and acts one supposed belonged to warfare. However, instead of being brought to a standstill, halted by fear, the city trudges on and the previously mentioned items, together with explosions, check points, brick

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<sup>41</sup> National Advisory Commission on Civil Disorders (the Kerner Report) 1967

<sup>42</sup> Peter Sloterdijk, *Bubbles*, (Cambridge MA: MIT Press, 2005) Sloterdijk, *Globes* (Cambridge MA: MIT Press), Sloterdijk, *Foams* (Cambridge MA: MIT Press, 2016)

walls, balaclava clad soldiers and executions have become part and parcel of the everyday. These items mix with the mundane tasks of cooking, chatting, singing, drinking, eating, fucking and crying. In subsuming these novel objects, the cadence and pulse of the ordinary skips a beat and then returns to its rhythmic beat. What happens when people are not unnerved; when the extraordinary becomes the ordinary, or when panic mixes with anger, happiness or lust? Something happens, but it cannot be properly named. It hits us more like a mood, a pressure in the atmosphere or reverberations in the ambience.<sup>43</sup>

The benefit of thinking about nestled spheres is that we can see that the vague affects of the ‘structure of feeling’ colour the atmosphere of the shop itself and the affects which pass through each of those involved. These spheres are not self-enclosed, they leak into one another. The intensity and pressure in one affects the next, perhaps not in the same way or with the same intensity, but nonetheless they change one another.

Examining legal scenes through the lens of affect helps us to think about the particular attachments, identifications, resonances and sentiments of legal interactions and relations. There are not distinctly legal affects, but rather law mobilises different affective dynamics at different moments. What’s more, because each scene plays out with plural audiences, with different actors and in different affective contexts, the dynamics mobilised are often different from moment to moment. This is not entirely new, we have seen affecto-legal analyses of fishing disputes, immigration and citizenship debates, the racial politics of US constitutionalism, international criminal trials and states of emergency.<sup>44</sup> What emerges from these are the many ways in which the doing of ‘law’, involves the plural mobilisations of constellations of affect.

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<sup>43</sup> Sabrina Lilleby, Extraordinary Happenings, Ordinary Affects, 1.1 *Capacious*, (2017) 20-1

<sup>44</sup> We could compare the affective dynamics of on each of these legal scales: Lauren Berlant, *The Queen of America Goes to Washington City*, (Duke University Press, 1997); Davina Cooper, *Governing Out of Order: Space, Law and the Politics of Belonging* (London: River Oram Press, 1998); Brian Massumi, ‘Fear (The Spectrum Said).’ *Positions* 13.1 (2005) 31; Ben Anderson, ‘Morale and the affective geographies of the ‘War on Terror’ 17.2 *Cultural Geographies* (2010), 219; Jonas Bens, ‘The Courtroom as an affective arrangement: Analysing Atmospheres in Courtroom Ethnography,’ *The Journal of Legal Pluralisms and Unofficial Law*, (2019)

### *Conclusion*

The aim of this article has been to draw out the question of the background, to think about the ways in which law might shape activity in ways that escape our attention. This has required that we displace the spectacular scenes of power (the legal foreground where our attention is drawn to the decisions of police officers, judges and presidents). The aim has been to examine the background *as background*. But to make this work as a journal article, I have placed Lindahl and Philippopoulos-Mihalopoulos into the foreground, and allowed the contrast between a purely immanent law and the question of alegality to be a focal point. While it may have frustrated some readers that I have refused to simply take a position on this, my aim throughout has been to sensitise the reader to the different dynamics of the background that Lindahl and Philippopoulos-Mihalopoulos stage.

Lindahl's account of legal obtrusiveness, and the manner in which he contrasted the obtrusiveness of illegality and alegality, is useful because it allows us to think through the relation between legal obtrusiveness and social or legal change. We might think of other similar acts of legal obtrusiveness – the Whirl-Mart movement for instance:

The Whirl-Mart culture jamming event consists of a group of supposed shoppers who congregate at a large superstore..., slowly push empty shopping carts through store aisles, not purchase anything, and form a lengthy chain of non-shoppers – weaving and ‘whirling’ through a maze of store aisles for hours at a time... culture jamming is a form of disruption that plays on the emotions of viewers to evoke behavioral change and political action.<sup>45</sup>

These movements challenge the social and legal significance of the supermarket, but they do so by grinding upon everyone therein. Their long lines of empty trolleys, meandering down aisles full

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<sup>45</sup> Stella Minahan *The Inscrutable Shopper: Consumer Resistance in Retail* (New York: Business Expert Press, 2012)

of produce, create increasingly fraught atmospheres.<sup>46</sup> Much of the space of the article has been spent pluralizing Lindahl's account of legal unobtrusiveness (underlining the affective dynamics that circulate around the law-workers – at the tills, behind camera or managing from the back rooms). This is important because it allows us to see the everyday labour of managing these ordinary spaces. These law-workers are important as they shepherd unobtrusive legality. They keep the law, allowing it to conduct from the background.

At the same time, these law-workers bring the law to the foreground. They shout at the *chomeurs en lutte* and detain the foie-gras shoplifters. They set the wheels in motion. We could imagine all three of my fictional law-workers saying (in different tones and with different resonances): 'This is now a matter for the law' (or 'for the police' perhaps). But the point here has been that it was always a matter of law, it is just that it was in the background. The affective conditions of this movement from background to foreground are also important: they condition the class or race or gender dimensions of the interactions in the aisles or at the tills. Affective legality is a way to think about the background of the legal scene and the way in which this background can suddenly become *everything* in the scene. With law in the foreground we can become sensitised to the ordinary affects that would otherwise go unacknowledged (but effective). Finally, it is important to insist upon the movement from the foreground to the background. The action that takes place in the foreground today will gradually fade. Soon it will be the background of the next action. The Kerner report underlined this gradual accretion of insults that lead up to the race riots of the summer of 1967 – tension-heightening incidents that become linked together. Each incident is a foreground that fades. But it doesn't disappear. Instead it becomes an ever intensifying 'white noise' in the background. As Philippopoulos-Mihalopoulos insisted, we acclimatise to the lawscape. But what we acclimatise to is not static or unchanging. It is the affective

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<sup>46</sup> Stewart identifies the most extreme of these moments: 'Once some Whirl-Martens alerted the media that they were going to bring a live chicken into a store to barter for an item of clothing made in a third world sweatshop. Police and managers formed a human wall to block the chicken's entrance'. (Kathleen Stewart, *Ordinary Affects*, 102)

and atmospheric dynamics of our time. As legal theorists we need to become more sensitive to these dynamics.