Abstracting Method.
Taking Legal Abstractions Seriously

> *Le véritable vécu c'est absolument de l'abstrait. L'abstrait c'est le vécu. Je dirais presque que dès que vous atteignez au vécu, vous atteignez au plus vivant de l'abstrait.*[1]

This chapter sketches the contours of a methodological attitude aimed to explore the spatiality and materiality of law by taking abstraction seriously and using abstraction strategically. The chapter is articulated in five main sections.

First, I account for the most significant ways in which the notion of the social has been reformulated as result of the spatial and the late subsequent (affective, material, post-human) *turns* in social sciences and humanities. Second, I explain what this could entail vis-à-vis law, by introducing the notion of *spatiolegal*. These two sections are necessarily brief, since they are meant to set the stage for the following discussion, rather than providing in-depth accounts of these issues, for which purpose many are the works available to the reader.

Third, I describe the way in which within the legal system, as well as within legal thinking, space has been systematically misunderstood, especially emphasising the case of socio-legal and critical legal approaches. Beginning from a reflection on Immanuel Kant's notion of 'respect', I argue that compliance with a norm does not simply depend on the subjective, threats-and-opportunities evaluation of a subject vis-à-vis the consequences of complying or not complying. Instead, it depends on the *production* by the law of a certain kind of space in which, regardless of his reaction, the subject of law is always-already guilty: what Giorgio Agamben, after Carl Schmitt, famously described as the legal 'space of exception'. The peculiarity of this mechanism is often missed by so-called socio-legal approaches, and at times underestimated by critical ones. The result is an oscillation, within legal thinking, between two complementary fears: what Andreas Philippopoulos-Mihalopoulos has referred to as fear

[1]Gilles Deleuze, 'Cours Vincennes, Deuxième leçon sur Kant - 21/03/1978 ', < http://www.le-terrier.net/deleuze/16kant21-03-78.htm> accessed 28 February 2016.

of space and fear of abstraction.[2] Both attitudes, as I explain below, betray a common incapacity to overcome the separation between law and space, thus reaffirming under another guise the opposition between the abstract and the concrete.

In the fourth section I tackle this question through three sub-sections. Firstly, through Karl Marx's notion of *real abstraction*, I criticise the usual, 'negative' understanding of abstraction, by emphasising its 'positive', i.e. generative role in creating and giving consistency to relations, spaces and worlds. Secondly, taking inspiration from Peter Goodrich, I show how the question with legal abstractions is not that of 'debunking' them in favour of some more concrete reality lying beneath, but rather of exploring the concrete installations which keep them in place. Thirdly, elaborating on a theme by Gilles Deleuze and Felix Guattari, I argue that legal abstractions should not be merely understood as stabilising and conservative forces, as per the understanding of philosophical anthropology. Besides their stabilising role vis-à-vis the social, legal abstractions hold the potential to deterritorialise and reshape our being-together towards alternative normativities.

Along these four sections, the strategic significance of revaluating the notion of abstraction becomes gradually apparent, both in the political and methodological sense, for an approach to the spatiolegal able to overcome the impasses that both socio-legal and critical methods encounter. In the fifth section, I distil the discussion hitherto developed, and operationalise it through an intriguing empirical example. Engaging in a critical dialogue with a short piece by Ghassan Hage and his reflection between the notions of law, libido, immunity and sociality, I am thus able to show the methodological approach developed in this chapter at work, as well as to provide a minimal testing ground for assessing its usefulness.

1. Enter Space

In the last decades, many critical and innovative works have contributed to move decidedly beyond contractualist (or individualistic) and organicistic (or holistic) understandings of the social. The surfacing of relational, affective, material, eventful, non-representational and post-human geographies, has allowed to problematise key dichotomies (human/nonhuman, individual/society, material/immaterial, abstract/concrete, society/nature), and thus to

[2]Andreas Philippopoulos-Mihalopoulos, 'Law's Spatial Turn: Geography, Justice and a Certain Fear of Space' (2011) 7 (2) *Law, Culture and the Humanities.*

recalibrate theory towards the strategic task of "accounting for how society is held together, instead of using society to explain something else".[3] A shift from society to *sociality*, to use Gabriel Tarde's formula. That is, from the presupposition of self-explanatory 'molar' forms (transcendent supra-structures, hidden social forces, atomised individuals), to the exploration of the 'molecular constitution' of the social, understood as the heterogeneous coming-together of bodies into dense ecologies of objects, people, ideas, noises, expectations, affect, traditions, assumptions, agencies, movements etc.[4] Exploring this post-human landscape requires abandoning anthropocentric biases as well as undoing the substantial separation between physical and ideological spaces, abstract structures and concrete everyday life, discourses and buildings.[5] The task becomes to observe how these elements 'get' and 'hold' together, how their different scales overlap and clash, simultaneously contributing to social cristallisations as well as opening the potential for their alteration.

Likewise, this has meant to contest the pacifying image of society postulated by theories of communicative deliberation (e.g. Habermas), and today actualised into neoliberal ideologies of participation. Instead, understanding the social as a multiplicity of heterogeneous bodies and desires, spaces, scales and temporalities, means to explore a "state of thriving differences which do not submit to any categorisation, identification or totalisation", an agonistic field in which ideal distance or peaceful dialectics are mere chimeras.[6] Yet, this is no chaos. Accepting the reality of conflict and rejecting the over-determination by supra-structures does not mean to fall into a chaotic indeterminacy or a postmodern exaltation of incontrollable flows. Likewise, as Barnett soberly observes, something more is needed than "just telling stories about spatially extensive networks of connection and entanglement".[7] In other words, the iconoclastic enthusiasm of the various *post-ism* should not lead us astray. Affirming a relational, material, post-human and conflictual reality may be emotionally thrilling, yet remains conceptually and strategically insufficient. The social is neither simply chaotic, nor innocent and neutral. It is not a "culturally-relative flat ontology but a tilted, power-structured surface".[8] As Manuel DeLanda once observed, to simply criticise 'transcendent' models of thought by postulating supposedly emancipatory immanent ones is not enough. One must

[3]Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (OUP, 2005) 13.
[4]As Accarino puts it, 'What matters in Tarde is the notion of sociality, rather than society, because the latter is to the former what the organisation of vitality, or the molecular constitution, is to the elasticity of ether' (my translation) in Bruno Accarino 'Peter Sloterdijk Filosofo dell'Estasi', introduction to Peter Sloterdijk, *Sfere I, Bolle* (Meltemi, 2009) 19.
[5]See Marcus Doel, *Poststructuralist Geographies: The Diabolical Art of Spatial Science* (Rowman & Littlefield, 1999).
[6]Andrea Mubi Brighenti, 'Tarde, Canetti, and Deleuze on crowds and packs' (2010) 10 (4) *Journal of Classical Sociology* 291, 303.
[7]Clive Barnett, 'Geography and ethics: Justice unbound' (2011) 35 (2) *Progress in Human Geography* 246, 252.
[8]Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Lawscape, Atmosphere* (Routledge 2015) 3.

account for the 'mechanism of immanence', that is, how space is *tuned* and thus how normative orderings emerge immanently out of the common spacing of being-together, without resorting to conceptual binary-traps, cumbersome dichotomies or dialectical promises.[9] It is through such spatial sensibility that law is to be approached.

2. Enter the Spatiolegal

Exploring law through these lenses requires a shift from its traditional understanding as a set of rules we rationally, cognitively and pragmatically decide to follow, or a merely 'social' pressure, as the in classic sociological understanding of the adjective.[10] Law is partially so, but at the same time is a material and affective force, moving and ordering people, producing connections, often independently from, and in any case irreducible to, its supposed 'truth-value'.

Law is simultaneously a *project* aimed at manipulating, governing and channelling reality into precise categories, boundaries and definitions; and a *process* emerging out of the intermingling of human and non-human, tangible and intangible bodies, as such inseparable from this continuum.[11] "Not merely operating 'through normative space'", therefore, law "is normative space and normative body and normative movement",[12] simultaneously a glorious spectacle projecting an idea of order and precision, a capillary apparatus of techniques and technologies that seeks to keep together such a projection, and an immanent ordering inseparable from its own spatiality. Let me qualify.

First, there is law's pretence 'to possess the capacity to realise the harmony' between law and justice, violence and equality, between its always traumatic application to the world and its self-description as neutral, objective and necessary. A self-description which, evidently, is also a self-justification, namely law's attempt to evacuate the political nature of its own operations

[9]Manuel DeLanda, 'Space: Extensive and Intensive, Actual and Virtual' in Ian Buchanan and Gregg Lambert (eds) *Deleuze and Space* (Edinburgh University Press, 2005) 88.
[10]Both positivist and socio-legal models, most famously Hart's notion of 'social pressure', frame law only with reference to social power and/or mutual communication and conformity to pre-agreed rules by subjects – thereby missing the role played by its immanent and material normativity in 'tuning' the social. H. L. A. Hart, *The Concept of Law* (Oxford University Press, 1997) 84.
[11]The distinction between *project* and *project* is inspired by its use by Moore vis-à-vis Capitalism. Jason W. Moore, *Capitalism in the Web of Life: Ecology and the Accumulation of Capital* (Verso, 2015).
[12]Philippopoulos-Mihalopoulos (n *8*) 69.

and instead appear as self-evident, de-politicised, "rational, benign and necessary".[13] *Second*, there is the bureaucratic, securitarian, economical operations and ramifications into which law blurs and through which it produces its subjects. "What generalizes the power to punish – Foucault famously observed – is not the universal consciousness of the law in each juridical subject; it is the regular extension, the infinitely minute web of panoptic technique".[14] *Third*, there is the immanent and diffuse normativity resulting from the frictional coming together between legal abstractions, socio-technical apparatus and the contingency of space. Bodies are never isolated but always imbricated in the materiality of being-together. Hence the *nomotop,* Sloterdijk' intriguing term, i.e. the normative architecture of co-existence, holding together the social as a tensegritous system of immanent tensions in permanent 'action' upon bodies, made of customs, cultures, objects, rights, regulations, affects, relations of production, language games, forms of life, institutions, habituses etc.[15]

Crucially, this is not a merely 'human' framework, a socio-cultural construct superimposed onto an inert, external, 'natural' matter. The spatiolegal refers to a normativity that emerges immanently out of the interpenetration between bodies, structures and spaces. A configuration resulting from socio-natural interpenetration, where the hyphen between social and natural does not indicate an *a posteriori* link but an *a priori* inseparability. Legal theory, especially in the recent direction of critical legal geography, is moving towards understanding the law/space configuration in these terms.[16] Yet, as affective, material and post-human approaches to law keep surfacing, it is important to remind that simply flattening the transcendence of law into the horizontality of post-human networks is not enough. More attention is required if we are to avoid rehashing yet another time the unproductive move from 'vertical' to 'horizontal' transcendentalism that has so far characterised legal thinking.[17]

---

[13]Nicholas Blomley, *Law, Space and the Geographies of Power* (Guilford Press, 1994) 9. Costas Douzinas, Peter Goodrich, and Yifat Hachamovitch, *Politics, Postmodernity and Critical Legal Studies: The Legality of the Contingent* (Routledge, 1994).

[14]Michel Foucault, *Discipline & Punish: The Birth of the Prison* (Vintage, 1995), 224.

[15]Peter Sloterdijk, *Tome 3, Ecumes*, *Sphérologie plurielle (*Hachette Littératures, 2006), 420. Sloterdijk takes the notion of tensegrity from architect and theorists Buckminster Fuller, to refer to a 'social' made by assemblages whose consistency does not depend on transcendent principles, abstract structures or metaphysical framework, but rather on the mutual tension between their components.

[16]e.g. David Delaney, *The Spatial, the Legal and the Pragmatics of World-Making: Nomospheric Investigations* (Routledge Chapman & Hall, 2010); Irus Braverman, 'Governing certain things: the regulation of street trees in four North American cities' (2008) 22 (35) *Tulane Environ. Law J.* 35; Irus Braverman, Nick Blomley, David Delaney, and A. (Sandy) Kedar, 'The Expanding Spaces of Law: A Timely Legal Geography' (2013) *Buffalo Legal Studies Research Paper Series*, Paper No. 2013–032; Tayyab Mahmud, , 'Law of Geography and the Geography of Law: A Postcolonial Mapping' (2010) 3 (1) *Washington University Jurisprudence Review* 64.

[17]Zartaloudis includes in the definition of 'horizontal transcendentalism' "the subject-object dialectic, the social-contract between the sovereign and the constituted subject, the ego-cogito of Descartes, the free-subjected subject of the Enlightenment, Freud's *Totem and Taboo*, the hermeneutic circle of language-meaning, the linguistic circle between *langue* and *parole*, the modern liberal-civil religion, *the humanism* of human rights, *the experience* of socio-legal empiricism and so

To better qualify this observation, and the role that a proper understanding of the notion of abstraction plays in it, it is necessary to step back for a moment and recount the contradictory consequences that the encounter between legal thought and space has produced.

3. Fearing Space, Fearing Abstraction

For a long time, the history of legal thought has been a quest to put order on space, oriented by the taken-for-granted assumption of their separation. An explicit assumption, in the case of 'externalist' models, according to which law is supposed to be stemming from a divine or natural god. An implicit assumption, in the case of 'internalist' models, in which legal 'externalism' is dismissed by locking the separation between law and space into an impenetrable relation. Whilst the former approach belongs to a Cartesian mode of thinking, the latter is resolutely post-Cartesian. The latter, that is, derives from the crucial shift, inaugurated by Kant, from the notion of *substance* (encapsulated in the Cartesian dichotomy between *res cogitans* and *res extensa*) to that of *relation* as the central category of Western thought. In legal terms, this means assuming that "cases do not stand externally or indifferently before a judge but appear as cases (*legal* cases, cases at law) only insofar as they have always already been subsumed by the law".[18]

This means, in other words, that normativity becomes self-referential. The *sense of duty* implied by a norm, that is, the *ought* to which I am required to comply by the norm itself, is in fact disarticulated from any reference to an external power (most notably: God) and instead internalised as a purely abstract *form of law*: the immanent and self-generated 'moral law inside me'. As Kant put it, "duty is the necessity of an action done out of respect for the law".[19] *Respect* (*achtung*) is the 'feeling' that 'the reason produces by itself' and that every subject experiences before the law. Simultaneously objective (an obligation) and subjective (an impulse which affects me), the *achtung* does not refer to mere obedience to a specific norm, but rather to a respect and reverence to the law *qua* law. It is, in other words, the reflexive self-consciousness of knowing oneself as a 'subject', and thus one's always-already being

---

forth)" – Thanos Zartaloudis 'Without Negative Origins and Absolute Ends: A Jurisprudence of the Singular' (2002) 13 *Law and Critique* 197, 199.

[18]Alexandre Lefebvre, *the Image of Law* (Stanford University, 2008) 7.

[19]Immanuel Kant, *Groundwork of the Metaphysics of Morals* (first published 1785, Cambridge University Press, 2012) 55.

'captured' within the legal mechanism.[20] Kant therefore conceives a law simultaneously emancipated from transcendent principles and empirical conditions, a law that is "the representation of a pure form, and is independent of content or object, spheres of activity or circumstances", i.e. a pure 'form of law', fully folded onto itself.[21]

Agamben has noted that what lies hidden at the core of this scheme is that the norm is structurally constituted by the imperative form, i.e. the command: to materially ground my subjection to a norm is the simple fact that it is *commanded*, that is, that it *must* be complied with.[22] The sense of duty, in other words, does not depend on the subjective, threats-and-opportunities evaluation of a subject vis-à-vis the consequences of complying or not complying with the law. Instead, it is a material and affective *seizing* which exceeds any characterisation of the norm according to normative, rational and cognitive schemes. Beneath the glorious spectacle of law lies the 'apparatus of capture' of legal operations: the 'decisive act of power', as Canetti put it, is 'seizure'.[23]

Brighenti, elaborating from Popitz, offers a compelling way to grasp this material and affective quality of law, its simultaneously normative (you ought) and imperative (you must) functioning, by means of looking at the atmosphere of menace that underlines and support the very structure of the norm:

> Although we usually think that menace consists of a clear linkage between a specific behaviour of the menaced and a specific negative sanction, we could in fact be surprised by the fact that very often the negative sanction is widely indeterminate, and that such indeterminacy actually serves the effectiveness of the menace. What really counts in menace, therefore, is not the specific link between behaviour and sanction, but primarily the redefinition of the situation of the menaced, what we might call the 'menace mood'[24]

[20]The concept of 'respect' (*achtung*) is the 'dispositif making operative' this self-capture; it "signifies merely consciousness of the subordination of my will to a law", ibid. 17, quoted in Giorgio Agamben. *Opus Dei: An Archaeology of Duty* (Stanford University Press, 2013) 131.
[21]Gilles Deleuze, *Masochism. Coldness and Cruelty* (Zone Books, 1991) 83.
[22]Agamben (n *20*) 133.
[23]Elias Canetti. *Massa e Potere* (Adelphi edizioni, 1994) 247.
[24]Andrea Brighenti, 'Did We Really Get Rid of Commands? Thoughts on a Theme from Elias Canetti.' (2006) 17 (1) *Law and Critique* 47, 54 (n *18*).

This 'redefinition of the situation', simultaneously rational and affective, abstract and concrete, is the core functioning of law's mechanism of exception or, in other terms, the space of exception on which the legal application to the world rests. Here we may appreciate the material and affective force that the abstract mechanism of law exerts on the social, as a 'virtual' menace that, independently from the 'actual' reaction of bodies, is already affecting (though obviously without determining) them. Deleuze expresses precisely this relation between a 'pure' (abstract) form of law and a concrete, ontologically productive effect on the social, by observing that:

> THE LAW, as defined by its pure form, without substance or object or any determination whatsoever, is such that no one knows nor can know what it is. It operates without making itself known. It defines a realm of transgression where one is already guilty.[25]

As Schmitt precisely wrote, "every general rule demands a regular, everyday frame of life to which it can be factually applied and which is submitted to its regulations … a *homogeneous medium*. There exists no norm applicable to chaos".[26] What this oft-misunderstood passage refers to is the fact that legal categories are never a mere 'partitioning' of the social, but that their very definition rests on an '*a priori* mechanism', a topological machine whereby the "the space in which the juridico-political order can operate" is created and defined: a space of exception.[27] Violence is inscribed in law since its very inception exactly because of this ontological, de-spatialising gesture. The mechanism of exception is the dispositif allowing to 'take in' the chaotic, ever-escaping outside (life, world, space...) and domesticate it, that is, to simultaneously *including* space by *excluding* its conflictual, eventful and contingent materiality.[28] The projection of any politico-legal 'geometry' firstly requires the *erasure* of complexity out of space, that is, the flattening of space into an undifferentiated, homogenous and empty surface or (which is exactly the same) an indeterminate chaos. The legal *project*, in other words, is always premised on a preliminary flattening of the complex heterogeneity of space into a *tabula rasa*.

---

[25]Deleuze, (n *21*) 82-3.
[26]Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (University of Chicago Press, 2006) 13 (my emphasis).
[27]Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press, 1998) 19.
[28]There is no rule – both in the sense of rule and ruling – without a space of exception, as the etymology suggests. The term 'exception' literally means to *take in* the outside (from *ex,* outside, and *capere,* to take) ibid 18.

As we are to see, naive legal critiques often miss this aspect, deconstructing the geometrical projection of legal categories over space, whilst overlooking the preliminary flattening by which they are grounded. Likewise, sociological approaches to law often risk reproducing this very flattening. This is because what alimented the 'social turn' in legal thinking was an urge to bring law 'down to earth' by firmly inscribing it within the domain of the 'social', assumed as a realm that could be thoroughly measured and dissected through socio-empirical means.[29] This however equated to simply repeat the double move just described: namely, the ontological flattening of reality onto a homogenous body (society), over which performing the projection of sociological categories, uncritically assumed by the socio-legal thinker as powerful explanatory and revelatory lenses.

Of course, with the advent of post-colonialism, feminism, post-race, post-structuralism and other critical movements, the sociological faith in the empirical observation and the neutrality of the social scientist has been radically shaken. Yet, critical sociology did not necessarily overcome the founding paradox of sociology itself: applied to law, it provided invaluable tools to contest and debunk the latter's ideological character, yet often ending up being entangled within its own contradictions.[30] The sociological reductionism of socio-legal approaches risks being merely complemented by the critical deconstructions of critical strands of legal geography. Whereas the former privileges the exploration of the socio-empirically *concrete*, the latter favours the revelation of its *abstract* forms. What both attitudes often fail to grasp, however, is the irreducible interpenetration of concrete and abstract, and thus the necessity to overcome their opposition.

The separation between (abstract) law and (concrete) space has not been put to an end by legal thought's late embrace of the spatial turn. As Philippopoulos-Mihalopoulos has shown, the latter has been often only nominally endorsed, betraying a persistent *fear of space* in legal thinking, which led to somewhat depurate the spatial turn from its radical import.[31] Of course, contemporary approaches emerging on the escort of more recent theoretical 'turns' (posthuman, material, affective) are more equipped to avoid falling into such limits, what Delaney terms the 'spatial fetishism of the early 'regionalist' school' and the 'unbalanced

[29]cf. Marianne Constable, *Just Silences: The Limits and Possibilities of Modern Law* (Princeton University Press, 2007).
[30]e.g. Douzinas et al. (n *13*) 21.
[31]This occurred in three main ways, as Philippopoulos-Mihalopoulos explains: reducing (and thus utterly denying) space to representation (i.e. the notion of jurisdiction); idealising space into a processual, pacific and malleable substance where none of the conflictual, violent and dislocating qualities of space were to be found; side-stepping space as just one among other relevant dimensions, thus missing altogether what the notion of *turn* should imply. Philippopoulos-Mihalopoulos (n *2*).

instrumentalism' of ideological critiques.[32] Yet, often their very urge to re-materialise, re-contextualise, re-embed and re-situate law into space is accompanied by the corollary risk of fetishising this newly discovered legal materiality. Delaney himself has suggested to depurate the law from 'other-worldly inflection' so as to reassert its embeddedness within a resolutely 'sociologically and phenomenologically' inflected spatiality.[33] The risk with this attitude, however, is that of overcoming the old fear of space only to cultivate an equally problematic *fear of abstraction*.[34]

A Kafkian situation indeed: on the one side is a law which only nominally functions as a transcendent power, immutable and inflexible, whose glorious aura keeps K. entrapped in his doomed attempt to seek justice; on the other, the capillary bureaucratic, psychological, securitarian, panoptical operations which gradually and inescapably capture him. Likewise, the glorious spectacle of law threatens to divert the efforts of the legal thinker, either by proposing itself as a positive ideal to follow (i.e. fostering the belief in the intrinsic value of law itself as a solution or counter-balance for socio-economical contradictions, political violence etc.), or as a hypnotising illusion to be unmasked through the revelatory work of critique. The idealistic search for legal solutions ironically overlaps with the critical work of legal deconstruction, both blinded by the glorious light of law, both losing sight of its 'reality'. Should we thus ignore the spectacular façade of law and concentrate on the material concatenations in which law unfolds? The answer is affirmative, and yet requires a qualification. We should avoid ignoring (or unmasking, denouncing, deconstructing) the abstraction of law as an illusionary veil, behind which more concrete reality would supposedly reside. The legal abstraction cannot be dealt with from a merely epistemological point of view: it must be addressed directly in its ontological reality.

This, in a nutshell, is the methodological direction this chapter indicates. In order to do so, the concept of abstraction must be rescued from its reduction to a merely intellectualist 'extraction' (from the Latin *abstrahere*) from a concrete reality. That is, the commonly held view of a separation between the abstract and the concrete must be radically put in question. This is what is done in the next section.

---

[32] Delaney (n *16*) 13; Chris Butler. 'Critical legal studies and the politics of space', (2009) 18 (3) *Social and Legal Studies* 313, 315.
[33] Delaney (n *16*) 25, 32.
[34] "By not facing its fear of abstraction, the space of the law allows whoever feels more at ease with it to manipulate its embeddedness, thereby converting it from a radical tool to a hegemonic presence" Philippopoulos-Mihalopoulos (n *8*) 33.

4. Abstraction

a. the reality of abstraction

To address the ontological reality of abstraction we need to reverse the persistent tendency of critical thought to assume it as an illusionary veneer to be stripped away by the work of critique. Alimenting this tendency is what Osborne terms the 'reproach of abstraction', according to which abstraction is charged with *reducing* "the rich heterogeneity of the lived", *withdrawing* from the world, *distancing* from "from bodily and affective influences", *universalising* particular positions, *alienating* from warm and authentic forms of life.[35] Such simplistic critique of abstraction *per se* is doubly problematic. First, because it takes for granted the opposition between the abstract and the concrete. Second, since by assuming abstraction as functioning only in the negative mode, it misses its 'positive' function, i.e. generative role in creating and giving consistency to relations, spaces and worlds.

Marx's notion of real abstraction provides a key insight into understanding abstractions as not merely 'abstract', "a mere mask, fantasy, or diversion, but as a force operative in the world".[36] It does so by challenging simultaneously two main assumptions about abstraction: its opposition to 'lived experience' and its confinement into the 'individual mind'. In this way, Marx opposes Feuerbach's prioritisation of the sensible over thought, without however falling into Hegel's altogether dismissal of the sensible as mere shadow of the all-ingesting self-referentiality of thought.[37] In fact, to Marx abstract concepts are *concrete,* insofar as being "the point of origin of perception and imagination", in the sense that "the sensible and the empirical appear as a final *achievement* rather than a presupposition-less starting point."[38] This radical reformulation of the relation between thought and experience will aliment a line of thinking, going from Whitehead to Deleuze, which marks a significant difference vis-à-vis the phenomenological tradition and its prioritisation of lived experience over abstraction.[39]

---

[35]Derek McCormack 'Geography and Abstraction: Towards an Affirmative Critique' (2012) 36 *Progress in Human Geography* 715, 717-8. Osborne terms "reproach of abstraction: the commonly held view, across a wide variety of theoretical standpoints, more or less explicit, that there is some inadequacy inherent to abstraction per se, which is both cognitive and practical (ethico-political) in character". Peter Osborne 'The reproach of abstraction' (2004) 117 *Radical Philosophy* 21, 21.
[36]Alberto Toscano, 'The Open Secret of Real Abstraction' (2008) 20 (2) *Rethinking Marxism* 273, 274.
[37]Paolo Virno, 'The two masks of materialism' (2001) 12 *Pli* 167, 170.
[38]Toscano (n *36*) 274.
[39]In Deleuze this is encapsulated in two key notions: the *virtual* and the *abstract machine* (or diagram). The first points to an understanding of abstraction that rather than being opposed to experience is assumed as what allows to think "through the necessary *excess* of experience: that which overfills any sense of immediacy" and without which experience "would be so self-contained that change or becoming would not be possible." [McCormack (n *35*) 721]. The second updates Marx's notion of *General Intellect* – developed in the "Fragment on Machines" of the *Grundrisse* –, by radically positioning abstractions outside

Marx develops his second key intuition in the *Grundrisse*, where the notion of *General Intellect* points to the transindividual, socio-historical and collective character of abstraction.[40] This is crucial, for a radically materialist approach to the reality of abstraction must not concede "to idealism that reality possesses *irreducible* conceptual form," and instead needs to explore, as Brassier suggests, the "conceptual form as generated by social practices".[41] With an important caveat, however. Abstraction is not simply to be dissolved into an empirical account of its socio-historical conditions of emergence. We already saw the limits of such a sociological reductionism vis-à-vis law: namely, that of (rightly) criticising the alleged abstraction (i.e. de-spatialisation) performed by the formal, legal text, by (wrongly) counterpoising it the supposedly concrete, real, spatial con-text, in this way neglecting the latter's as much 'artificial' character – and, conversely, the former's as much 'real' consistency.

Virno moves a similar critique to sociologists of knowledge for their incapacity to address the reality of abstraction. Significantly, Virno observes that what they are unable to grasp is that the very distinction between 'theory' and 'life' is not a theoretical illusion, but rather "the *material* result of *material* conditions." As observed above with reference to Kant, also in this case it is exactly insofar as being abstract, that abstract categories have a constitutive effect on the social. It is therefore not by "looking for the dirty laundry that lies behind the categories of theory," that we are able to account for their ontological force, but rather by exploring the "abstract connections … that pervade society and make it cohere."[42] To qualify this point and contextualise it within the field of law it is useful to briefly focus on Peter Goodrich's insightful reflection on the notion of legal *persona*.

b. from the illusion to the installation

---

the individual mind, conceiving them as immanent ordering logics of the social, at the same time an abstract form and its concrete actualisation into socio-historical and transindividual concatenations. See for instance how Deleuze, analysing Foucault's reflection on Bentham's Panopticon, defines the 'abstract diagram' of *panopticism*: simultaneously an 'abstract' form ("the pure function of imposing a particular taste or conduct on a multiplicity of particular individuals, provided that the multiplicity is small in number and the space limited and confined") as well as precise, historically-situated political technology emerging through a series of given techniques, technologies, savoirs and relations through which it gains ontological reality. Gilles Deleuze, *Foucault* (Continuum 2006) 60-1.

[40]Paolo Virno, *A Grammar of the Multitude*, *For an Analysis of Contemporary Forms of Life* (Semiotext(e), 2004) 37-8.

[41]Ray Brassier, 'Wandering Abstractions' (*Mute,* 13 February 2014) < http://www.metamute.org/editorial/articles/wandering-abstraction> accessed 19 February 2016.

[42]Virno (n *37*) 167-69. In fact, it is exactly through a polemical reference to Kant that Virno dismiss the sociology of knowledge, noting that such 'abstract connections' "are accounted for with greater realism, albeit indirectly precisely by that "pure" thought which the sociologist sought to unmask. Kant's transcendental Subject, never reducible to single empirical subjects, captures the impersonal truth of exchange relations better than any on-site inquiry" (168).

Focusing on the legal notion of *persona*, Goodrich argues that the production of subjects by law is not to be understood as a simple 'extraction' of abstract figures (*personae*) from the social, but at the same time as the ontological production of "the spectacular space of the social" in which the "persons [are] catapulted".[43] Taken in its material sense, Guy Debord's notion of *Society of Spectacle* expresses nothing but this, namely a society in which the mediation of the real abstraction of the juridico-economical persona gains full ontological reality.[44] In this respect, it is obviously possible (and indeed rather easy) to charge the notion of *persona* for being an illusionary construct that, insofar as postulating a "methodical abstraction from every situation," neglects the vibrant complexity and heterogeneity of social life.[45] This deconstruction is a necessary but insufficient move. In this vein Goodrich criticises Esposito for his attempt, developed in the end of his otherwise compelling *Terza Persona*, to dismiss the juridico-political mask of the 'person' in the direction of a radical notion of the 'impersonal'.[46] Instead, Goodrich suggests, it is "not so much impersonality that needs to be sought but rather and more aggressively it is the process of emblematization, the inhabitation of the roles, the apparatuses. Regimes and machines that institute and induct that deserve to be revolved".[47]

Taking abstractions seriously, in fact, means to assume them as "social facts and objects of practical struggle",[48] and thus to explore their strategic value vis-à-vis the production of "'concrete' forms of spatial relationality generative of social meaning".[49] In this instance, this implies an ontological engagement with the reality produced by the juridico-economical abstraction of persona, and thus with the machinery and apparatuses which establish and keep it in place (i.e. rituals, practises, techniques, technologies etc.), rather than either remaining hypnotised by its aura or embarking on a quest for some more genuine, authentic or impersonal substratum supposedly lying beneath. A suggestion that, incidentally, could apply to many 'revelatory' critiques of the society of spectacle.

---

[43]Peter Goodrich, 'The Theatre of Emblems: On the Optical Apparatus and the Investiture of Persons' (2012) 8 (1) *Law, Culture and the Humanities* 47, 59.

[44]That is, a 'social relation among people, mediated by images'. Guy Debord, *Society of the Spectacle* (Black & Red, 1983) par. 4. Debord refers to the persona of the capital, whose ties to the legal persona are indissoluble. In fact, the capitalistic abstraction cannot be detached from the legal scaffolding that sustains it, and that indeed provides it with ontological reality.

[45]Tiqqun. *Introduction to Civil War* (Semiotex(e) MIT Press, 2010) 25.

[46]Roberto Esposito, *Terza Persona. Politica della Vita e Filosofia dell'Impersonale* (Biblioteca Einaudi, 2007). *Persona* in Latin means mask.

[47]"The emblematic refers to the manner of placing within the social, the theatrical installation of the person within the order of the visible, the realm of appearances." Goodrich, (n43) 64-7.

[48]Alberto Toscano, 'Against Speculation, or, a Critique of the Critique of Critique: A Remark on Quentin Meillassoux's After Finitude (After Colletti)', in Levi R. Bryant, Nick Srnicek and Graham Harman (eds), *The Speculative Turn: Continental Materialism and Realism* (Re-press, 2011) 91.

[49]David Cunningham, 'Spacing Abstraction: Capitalism, Law and the Metropolis' (2008) 17 (2) *Griffith Law Review* 454, 465.

Sigfried Kracauer expressed this point when famously arguing that capitalism "rationalises not too much, but too little". It is true, he noted, that capitalist abstraction "is incapable of grasping the actual substance of life", yet this objection is absolutely inadequate when "raised in favour of that false mythological concreteness whose aim is organism and form", i.e. in favour of the 'ebb and flow of life' that would supposedly lie beneath: "a return to this sort of concreteness … would sacrifice the already acquired capacity for abstraction, but without overcoming abstractness".[50] Kracauer diagnosed precisely the humanistic mythology which underlines any critique of abstraction that aims to overcome or cure its 'alienation'. As Philippopoulos-Mihalopoulos puts it, following Cunningham, "only on their level of abstraction can despatialising mythologies be fought".[51] Both methodologically and politically, this entails seeking to rescue our capacity for abstraction from its entanglement into given structures of power, rather than obliterate it in the name of a more corporeal, sensuous, libidinal and affective reality. In fact, such obliteration seems to be more akin to the mode of functioning of capitalist experience economy than to a critically emancipatory mode of resistance. Instead of keeping fighting alienation *qua* abstraction, a more promising task seems to be that of "recovering the alienated power of abstraction" itself.[52]

In this chapter I am more interested in exploring the methodological rather than ethico-political import of this observation – although the two can hardly be separated. The methodological approach here proposed intends to address legal abstractions without seeking to unmask their 'illusion' but rather exploring their 'installations', i.e. the socio-material assemblages in and through which they take place. At the same time, we should not reduce the role and effect of legal abstractions on the social as merely conservative and stabilising. Put otherwise,

not only legal abstractions are to be rescued from their metaphysical opposition to the concrete. They are also to be rescued from their conservative positing as merely ordering, stabilising and reactive forces. This means assuming them as simultaneously stabilising and

---

[50]Siegfried Kracauer, *The Mass Ornament. Weimar Essays* (first published 1963, Harvard University Press 1995) 83. Deleuze and Guattari criticised Chomsky's linguistics in a similar fashion: "Our criticism of these linguistic models is not that they are too abstract but, on the contrary, that they are not abstract enough, that they do not reach the abstract machine that connects a language to the semantic and pragmatic contents of statements, to collective assemblages of enunciation, to a whole micropolitics of the social field". Gilles Deleuze and Félix Guattari, *A Thousand Plateaus Capitalism and Schizophrenia* (University of Minnesota Press 2008) 7.

[51]Philippopoulos-Mihalopoulos, (n *8*) 30.

[52]Matteo Pasquinelli, 'The Labour of Abstraction: Seven Transitional Theses on Marxism and Accelerationism' (*matteopasquinelli.com*, 9 June 2014) < http://matteopasquinelli.com/labour-of-abstraction-theses/> accessed 20 February 2016.

destabilising, active and reactive. While the next section accounts for this aspect theoretically, in the subsequent one I will explore it empirically through an example in which all the discussion so far developed will be distilled and more explicitly and methodologically operationalised.

c. nomadic abstractions

Reflecting on the primeval artistic gesture of drawing a line on the bare rock of a cave, Worringer wrote that the "urge to abstraction stands at the beginning of every art", to the point that it is a fundamental mode of being human, coessential with the complementary 'urge to empathy'. Whilst the latter "is a happy pantheistic relationship of confidence between man and the phenomena of the external world, the urge to abstraction is the outcome of a great inner unrest inspired in man by the phenomena of the outside world … We might describe this state as an immense spiritual dread of space".[53] In a similar vein, Goldstein understood abstraction as the human power to create new norms in order to adapt to the environment, the result of an 'urge to diminish anxiety' which is expressed in "the tendency toward order, norms, continuity" that characterises social life.[54] This interpretation is at the same time insightful and incomplete. On the one hand, it allows to approach abstraction – and specifically spatiolegal abstractions – as "a process of ontological transformation within, rather than an act of removal from, the world."[55] On the other hand, it reduces abstraction to a merely negative functioning, a reactive defence against a chaotic outside. Such a reactive/reactionary approach directly follows from a long-lasting predilection of Western thinking for conceiving human beings as 'creatures of lack', *homines pauper,* and thus the 'human condition' as constitutively one of disorder, disequilibrium and poverty. Thus the latent attitude of human life as one of necessary compensation, re-equilibration, re-ordering, re-action. The emergence of the legal apparatus is usually explained accordingly, most notably in the tradition of philosophical anthropology, in which thinkers such as Max Scheler, Helmuth Plessner and Arnold Gehlen described the emergence of institutions as a question of stabilisation against the destructive dynamics of being-together.[56]

---

[53]Wilhelm Worringer, *Abstraction and Empathy: A Contribution to the Psychology of Style* (first published 1907, Ivan R. Dee 2007) 15.
[54]Kurt Goldstein, *The Organism* (First published 1934, Zone Books 1995) 238.
[55] McCormack, (n *35*) 722.
[56]Roberto Esposito, *Immunitas: Protezione e Negazione della Vita* (Einaudi, 2012) 112-3.

The spatiolegal however should not be reduced to that. Deleuze and Guattari offer a key inspiration in this sense. Although appreciating Worringer's sensibility for abstraction, they reject his negative characterisation as reactive defence against space. Instead, they understand it as a positive power, exemplified by the nomadic diverging of the abstract line that "escapes geometry by a fugitive mobility at the same time as life tears itself free from the organic by a permutating, stationary whirlwind. This vital force specific to the Abstraction is what draws smooth space. The abstract line is the affect of smooth space, not a feeling of anxiety that calls forth striation."[57] The inspiration of this nomadic abstraction can by applied as much to law. Indeed, this is what they do. On the one hand, there is the Law of the State, logos and striation, violence and order, *despot* and *legislator*. Yet, this is not all. Behind the concept of *nomos*, the Greek word for law, resides a more (literally) unsettling etymology that refers to a 'scattering' rather than a partitioning, a 'distribution' rather than an allocation.[58] This *nomadic* quality is irreducible to the *logic* partitioning, just as the smooth space is always exceptional, i.e. irreducible, to any striation, never fully colonisable. Yet, there are not 'two' laws in place: *nomic* and *logic* law cannot exist independently from each other: no smooth without emersion of striation, no strata without secretion of smoothness, but rather *degrees* of smoothness and striation, the two 'characters' of the spatiolegal, its logic and nomic qualities, only formally but not ontologically distinguishable.[59]

A positive and generative understanding of legal abstraction thus emerges. The spatiolegal is understood as not only 'territorialising', taming, ordering and entrapping, but as traversed by territorialising and deterritorialising tendencies, however without ascribing the former to a 'rational law' and the latter to an 'intractable space': instead, they are the two inseparable faces of the law/space relation, i.e. the 'double' structure of the spatiolegal itself. In this sense I do not follow radical pragmatism and its suggestion to 'get rid of legal theory' in order to 'liberate' the materialities of a purely pragmatic and immanent 'practice of right' that would supposedly lie beneath the cloak of the cold, cumbersome and myopic legal abstractions.[60] As

[57]Deleuze and Guattari, (n *50*) 499.
[58]The term *nomos* means pasture, grazing, but also land allotted, divided, partitioned. Yet, its more original etymology refers to taking animals to pasture in the sense of roaming, wandering, that is, in the sense of distributing animals in space rather than partitioning them. As they observed following the philological study on the subject by Laroche, "*To take to pasture* (nemo) refers not to a parcelling out but to a scattering, to a repartition of animals. It was only after Solon that Nomos came to designate the principle at the basis of the laws and of right (Thesmo'i and Dike), and then came to be identified with the laws themselves. Prior to that, there was instead an alternative between the city, or polis, ruled by laws, and the outskirts as the place of the nomos". Deleuze and Guattari (n *50*), 557, note 51.
[59]Smooth space and striated space "exist only in mixture". Deleuze and Guattari ibid 474. On the dyad of 'smooth' and 'striated' space (on which the logic/nomic rests) see pp. 474-500.
[60]See for instance Sutter's call for getting rid of legal theory and unfolding a purely effectual and radically relational approach: "there is no ontology in [law's] declarations of imputation. There is no content. There is only the effect of words that allow

observed, abstraction is to be explored by looking *simultaneously* at its formal quality (e.g. the notion of 'private sphere') and the historically-situated socio-spatial relations *in* and *through* which it is actualised (i.e. a given affective, material and semiotic socio-spatial formations).[61] As Cunningham explains, this is what their 'real' character means: a real abstraction is both the socio-spatial relations it presupposes *and* the concrete socio-spatial relations through which it is actualised.[62] At the same time, accounting for the destabilising quality of abstractions means to focus on the turbulent threshold in which this process of actualisation occurs. Investigating the spatiolegal through such a bifocal lens illustrates how the encounter between abstractions and everyday life is a co-constitutive process fraught with frictions, disjunctions and contradictions. The next section explores these considerations through an empirical example.

5. At the Common Table

What follows is a critical dialogue with a short piece by Ghassan Hage who, recounting a personal experience, engages in an intriguing reflection on the relation between law, libido, immunity and sociality.[63] This offers us the chance to test the methodological approach so far developed.

The scene takes place in the 'food floor' of an upmarket department store in Sidney. Sit at a 'common table', Hage is eating and reading, when an old woman arrives. She sits and begins 'to mark a space of her own' by spreading a serviette and orderly placing food and cutlery on the table. To his surprise, soon after Hage finds himself abruptly addressed by the woman: 'Do you mind putting your hand on your mouth when you cough'? He is enraged. He finds the woman's complaint both 'unpleasant' and 'aggressive', disproportionate and even, on a second thought, racist. 'Things happened very fast. Very quickly, instantly, my embarrassment gave way to an aggressive combativeness.' After a quick hesitation Hage resorts to a brisk

---

things and people to stick together" [Laurent de Sutter 'How to Get Rid of Legal Theory. Epistemology and Ontology', in Z.Bankowski (ed) *Proceedings of the XXI° IVR World Congress, Lund, 2003'* (Franz Steiner Verlag, 2005) 42]. It seems to me that this move in this end doubles that of socio-legal studies, losing sight of the fact that this absolutely effectual and immanent reality is the 'material result of material conditions', namely the ontological shape the spatiolegal assumes in the contemporary societies of control [e.g. Gilles Deleuze, 'Postscript on the Societies of Control' (1992) 59 *October* 3].

[61]David Cunningham, 'The Concept of Metropolis: Philosophy and Urban Form' (2005) 133 *Radical Philosophy*.

[62]An abstraction "only attains 'real existence', and thus both specific and variable 'form' and 'content' … by virtue of the spatial production of its open and dispersed totality of specific material assemblages" Cunningham, (n *49*) 458.

[63]Ghassan Hage, 'Coughing Out the Law: Perversity and Sociality around an Eating Table', (*Critical Legal Thinking,* 18 January 2013) <http://criticallegalthinking.com/2013/01/18/coughing-out-the-law-perversity-and-sociality-around-an-eating-table/> accessed 22 February 2016. I am perfectly aware that at times I am perhaps pretending a bit too much theoretical depth from an evidently light and facetious piece. Its use here is exquisitely heuristic. All the following quotes, unless specified, are from this piece.

counter-attack: 'Look, if you are old and lonely, there must be better ways of socializing'. Soon after, he realises the woman is quietly sobbing. The people at the table look at him with reproach. He is uncomfortable and embarrassed, under the suffocating normative atmosphere of the common table: 'I was increasingly finding both the situation I was in, and myself, unbearable'. He gets up and leaves.

Increasingly part of a certain kind of urban aesthetics, the common table is a tool designed to stage a sense of communality that often remains played out simply at a superficial level: people *share* a common space without actually eating *in common*. The common table makes explicit the inherent tension between the urge to be in a community and the danger that such a common entails for the co-immunity of the individuals.[64] Here, 'protection' from this design-generated commonality is sought by means of legal abstractions (e.g. one's right to be left alone) and relative practices of territorialisation (whereas the woman marks her own space, Hage forms 'a closed circle between myself, my ham sandwich, my bottle of water and my Sydney Film Festival program'). In the common table, every human being is an island, projecting a legal subjectivity on an assemblage of objects, postures, protocols and mutual assumptions, through which being in public is performed by maintaining expectations about one's right to be left alone intact.

At the table, the other materialises on our radar, for the most part, only as a potential bringer of polluting atmospherics. 'The law creates a relationality between people', Hage observes, 'a relationality of subjects who have been abstracted from their particularity'. As a result, it 'always seems to stage a tension between the libidinal and the abstract, the particular and the universal, dimensions of people'. In the common table, this tension is played out between one's sensual, bodily enjoyment of food and the protection, 'from one's own libidinality as well as the libidinality of others', granted by the abstract legal self. Yet, are immunity and protection necessarily reactive? Is law necessarily opposed, negatively, to the bodily, the sensorial, the libidinal? Sacher-Masoch would certainly disagree.

The assumption of the domain of the legal as separated and opposed from the bodily and the sensual is the typical off-shot of a well-worn romantic stance lamenting present-day alienation through a nostalgic yearning for more genuine ways of being (usually posited as pre-capitalist, pre-consumerist, pre-legal). The implicit assumption here is that beneath the

[64]cf. Esposito (n *56*).

cold forms of law would reside a warm sociality, where conflict is overcome through the sympathetic force of inter-subjective agreement, reciprocity and exchange. Yet, the question of vulnerability cannot be dismissed that lightly. Immunity is a socio-biological need, not a cumbersome illusion. It has to do with the ontological necessity to find a safe milieu wherein one is preserved and can nurture relations. Incidentally, and *contra* Esposito, I argue that, rather than looking for non-immunitary or non-normative ways of being-together, the key question is that of envisaging and building new norms of being-together, finding alternative and emancipatory ways to guarantee our co-immunity.[65]

Virno observes that in the deterritorialised condition of modernity abstractions play a key role for us to find orientation and refuge in the world. As the erosion of the "ethical-rhetorical topography" of traditional communities make us all strangers, then we "turn to the most essential categories of the abstract intellect in order to protect [our]selves from the blows of random chance, in order to take refuge from contingency and from the unforeseen".[66] In this sense, insofar as responding to concrete socio-biological needs, abstractions are thus not to be understood as illusionary cages screening us from real and genuine relations: they are indeed real, material, socio-historical and transindividual relations. One cannot 'liberate' oneself from abstraction, since there is no separated concreteness where to fall. A precise simultaneously methodological and strategic injunction thus follows: "to both reveal how abstraction works and to generate alternative abstractions as part of a necessarily critical praxis".[67]

As argued above, law is certainly an anaesthetic *project* engaged in protecting from and numbing the sensorial, the bodily, the libidinal, but at the same time it emerges from them, as a bodily, sensorial, libidinal, "living process that feeds on, and depends upon, dynamic human-nonhuman assemblages".[68] In fact, cannot we individuate, also in a seemingly reactive and de-potentiating (to put it in Spinozian terms) abstraction like the *right to be left alone*, an affective, material and even libidinous quality?[69] A being 'at home in abstraction', to (mis)use the famous Hegelian formula, which has simultaneously to do with knowledge and sensing,

---

[65]Esposito proposes to dissolve law into the lived, by developing a non-immunitary understanding of normativity through what he terms norm-of-life: 'differently from law, this norm is not situated at the border of separation, but rather at the point of tangency between life and the living', in the 'middle' where life germinates. Esposito, (n *46*) 171 (my translation).
[66]Virno (n *40*) 38.
[67]McCormack, (n *35*) 722.
[68]Irus Braverman, "Animal Mobilegalities: The Regulation of Animal Movement in the American City," (2013) *Humanimalia* 5 (1) 104, 105.
[69]As ToveMaren Stakkestad observes as regards the Danish notion of quintessential cosiness, "*hygge* was never meant to be translated - it was meant to be felt", in Justin Parkinson, 'Hygge: A heart-warming lesson from Denmark' (*bbc magazine,* 2 October 2015), <http://www.bbc.co.uk/news/magazine-34345791> accessed 28 February 2016.

and is both ecologically dependent on the socio-historical organisation of the urban environment, as well as phenomenologically reliant on the contingent situation in and through which it is actualised?

Let us come back to the common table. Hage sees the woman as 'an unreflexive enactor of an alienated form of seriality: happy with her individuality, happy with her sovereignty that can afford her the space of a serviette on a public table, happy to protect the sanctity of her abstract self in the face of the cough/libidinality of the other'. Happiness here is presented only in the negative form, i.e. as resulting from a protection from a sociality that, it is implied, is somewhat more genuine and real than the one the woman is enjoying within the sanctity of her abstract self. Yet, is not she also happy to libidinously enjoy the cosy comfort that the right to be left alone provides her whilst being-in-common with others? In other words, is not her pleasure simultaneously abstract and concrete, rational and sensual, rather than *a priori* 'alienated' from a more authentic sociality? Let us continue with Hage's argument. According to him, the woman is seeking to reassert her immunity as a legal persona from the libidinal and literally infecting promiscuity of the situation, by claiming her abstract 'right not to be coughed at'. Yet, he continues, there is maybe more that this gesture conceals. Perhaps this is an attempt to breach the atomised sociality of the table: hers would be a sort of 'perverse gift', offering the others the possibility for another form of sociality, that is, an ambivalent 'offering made with the only shareable means of relationality left to her, taken from the space of legality: the assertion of her entitlement to be free of bodily relationality'. In the sterilised alienation of public life, the reassertion of one's entitlement *to be left alone* paradoxically becomes a tool to affect and be affected (i.e. not to be left alone) by others: 'telling you "don't interact with me" is the only thing left for me to offer as a means to interact with you and squeeze a bit of sociality from such a sociality-free situation'. Stuck within this alienated space, in other words, the woman resorted to challenge alienation paradoxically using the very device (the right to be left alone) that was constitutive of it in the first place. As 'an unhappy and desperate strategist', he continues, the woman was trying to express 'a desire for sociality in a space where sociality was at its minimum' and in this sense, she was 'perhaps the radical one on the table, unaccepting of existing forms of un-sociality and still hoping for the possibility for some other form of relationality'.

Hage has a significant intuition, by emphasising the woman's strategic *use* of abstraction: how she is turning her right to be left alone against itself, that is, as a tool to reassert a

contradictory hope *not to be left alone*. Through the approach elaborated so far we may further sophisticate this argument. As suggested, this requires exploring simultaneously the formal quality of abstraction (in this case, the abstract form of 'private and inviolable sphere') as well as the concrete, socio-historical relations through which it is materialised – that is, the socio-spatial regimes shaping the contemporary (Western) urban space. This requires opening a brief parenthesis.

§

We are by now familiar with the post-political diagnosis of the current neoliberal condition, namely, the systematic colonisation and neutralisation of the *political* (assumed as the space of agonistic encounter, contestation and dissensus) by means of technocratic and consensual mechanisms of governance.[70] The 'post-political' city is accordingly a post-conflictual, consensual and uneventful space of socio-economic transactions where conflict, dissensus and risks are (sought to be) neutralised or removed.[71] This is a useful analysis, as long as it is not hypostatised into dystopian totalisations (a temptation post-political theorists are not always able to resist). Abstractions are always actualised in the contingency of a given locale: they take place in the turbulent singularity of everyday life, which always resists being fully translated into them.[72] Exploring the post-political condition requires accounting simultaneously for its abstract form (i.e. as the locus of de-politicised consensus) as well as the concrete socio-spatial relations in and through which this form is concretely actualised in the urban space.

Sloterdijk does so, by introducing the notion of interiorisation, namely the historical process of gradual enclosure of social life into a series of technological, normative, affective and physical bubbles. Enter the society of comfort, in which everyday life is moulded into safe, comforting, commodified and entertaining spaces, relations and practices, from which any risk must be expunged.[73] Within this condition, a peculiar configuration of responsibilisation and de-responsibilisation emerges. On the one hand, what Dean terms a "new prudentialism", that is, "the multiple 'responsibilization' of individuals, families, households, and communities

[70]e.g. Jacques Rancière, "Ten Theses on Politics," *Theory & Event* 5, 3 (2001); Slavoj Žižek, *The Ticklish Subject: the Absent Centre of Political Ontology* (Verso, 2000).
[71]e.g. Eric Swyngedouw, *Designing the Post-Political city and the Insurgent Polis* (Bedford Press, 2011).
[72]Anna Tsing Lowenhaupt, 'On nonscalability. The Living World Is Not Amenable to Precision-Nested Scales' (2012) 18 (3) *Common Knowledge* 505.
[73]Peter Sloterdijk, *In the World Interior of Capital: Towards a Philosophical Theory of Globalization* (Polity Press, 2013) 171.

for their own risks".[74] By now we should be familiar with the neoliberal rhetoric of responsibilisation for one's own security, welfare, career, health, happiness and so on. On the other hand, the contemporary society also seems to provide ever-wider possibilities for delegation. From the looming presence of surveillance technologies to the omnipresent possibility of litigation to the self-referential circularity of health and safety regulations, everyday life is populated by texts, devices, technologies and other legal proxies to which the responsibility to act vis-à-vis the unexpected may be delegated, in this way reducing redundancy and decreasing the 'risk' of conflict. Sloterdijk suggests that this is the key quality of the society of comfort, i.e. the constitution of a generalised system of 'disburdening' from responsibilities. Yet, the sojourn in the comfort ether is punctuated by stress, and not only for those unable to afford to live in the tangible and intangible 'comfort bubbles' of urban life. The latter, in fact, can be also said to produce a contradictory relation with the outside, simultaneously enhancing the potential for anxiety and stress insofar as reducing the capacity to deal with the urban contingency.

To understand this seemingly contradictory configuration of simultaneous responsibilisation and de-responsibilisation, the *Health and Safety Regulations* offer a good example. In these perfectly self-referential regulations, the matter of health and safety is not directly related to the achievement of *actual* health and safety but rather to the performance of 'correct procedures'. The key issue at stake here is the immunisation of anyone from the risk of being 'held responsible'. In this setting, we could argue that one's responsibility concerns the task of entering in relations with various proxies in order to carve spaces of delegation in which one would be safe from the very risk of being held responsible. Unavoidably, habituation to delegation leads to diminished ability to face the unexpected. Stress, as Sloterdijk puts it, would thus surface exactly as the "the disappointment of an expectation of relief".[75] In any case, what is significant to stress here is that the cypher of the contemporary urban condition is not that of a systematic erasure of sociality into un-social modes of (legal, spectacular, economical) relation, but more precisely the emersion of a generalised system of *disburdening* (delegating) and *re-burdening* (responsibilising) strategies, traversed by the contradictory tension between comfort and stress that configures contemporary social life.

---

[74]Anders Fogh Jensen, *The Project Society* (Unipress, 2012). Michael Dean, *Governmentality: Power and Rule in Modern Society* (Thousand Oaks, 1999), 162.
[75]Sloterdijk (n *73*) 213.

Looking at the common table through this angle may suggest a different understanding of the 'radicalism' of the woman's gesture. Accordingly, what the woman shakes with her sudden demand is not simply Hage's personal space, nor the supposed dichotomy between social and unsocial space, but rather the post-conflictual atmosphere of systematic de-responsibilisation of contemporary society. By doing so, the woman exposes her vulnerability, an emotionally demanding effort, as her subsequent burst into sobbing testifies. As Philippopoulos-Mihalopoulos reminds, "a particular kind of courage is needed to leave behind one's bubble of comfort, however defined".[76] This is where her 'perverse' way to deal with the atomism of legal immunisation lies: not in denying the immunitary notion of legal persona for the sake of a non-conflictual opening to a sociality of reciprocity and exchange. The public is not a homogenous and authentic 'social' space lying beneath alienation, but a heterogeneous space always tilted by power relations and normative asymmetries, and as such always conflictual. This is what the woman's gesture suggests then, by *using* the abstraction of legal persona beyond (by deactivating) its mechanism of de-responsibilisation: that is, by *profanating* it.

The concept of profanation, as elaborated by Agamben, perfectly adapts to this instance. Profanation, as he puts it, "deactivates the apparatuses of power and returns to common uses that spaces that power has seized ... profanation does not simply restore something like a natural use that existed before being separated in religious, economic, or juridical sphere ... [these appropriating and separating uses] are not effaced, but ... deactivated and thus opened to a new, possible use".[77] This is what the woman's gesture encapsulates: the deactivation of the separating legal atmosphere of 'vertical' delegation, and the use of the legal abstraction (right not to be left alone) to (responsibly) unfold the conflictual substance of the common being-together. This was not a way to 'snatch a bit of optimism within society's cruelty' by opening the situation to a more idyllic social notion of common exchange,[78] it was rather a 'pessimistic' affirmation of conflict as the inescapable 'reality' of being-together.

Conclusion

I began this chapter with the intention to develop a methodological approach aimed to take abstraction seriously and use abstraction strategically. After setting the stage through a rapid

[76]Andreas Philippopoulos-Mihalopoulos, 'Withdrawing from atmosphere: An ontology of air partitioning and affective engineering' (2016) 34 (1) *Environment and Planning D: Society and Space* 150*,* 162.
[77]Giorgio Agamben, *Profanations* (Zone Books, 2007) 77-86.
[78]'She was still snatching a bit of optimism at the very place where society was at its cruellest as it were', Hage, (n *63*).

recollection of the spatial and related 'turns' in social sciences and humanities, and their effect on legal thinking, I dealt more in depth with the question of the spatiolegal, showing the extent to which certain recurrent shortcomings in both socio-legal and critical legal approaches seem to be dependent on a limited understanding of the concept of abstraction itself. I therefore explored in depth the notion of abstraction, seeking to emphasise its positive, ontological quality as a transindividual, socio-historical and material force, and thus the need for an approach able to take such qualities into account. Subsequently I applied the methodological approach gradually emerged in these pages to an empirical example. I did so through a compelling little text by Hage, a short, light and yet inspiring reflection that offered a useful context to both text and clarify the characteristics of the approach here proposed.

In a nutshell, the latter compels to explore legal abstractions by analysing (rather than taking for granted, dismissing or simply deconstructing) the materiality of their abstract form and the way this is actualised in and through given socio-historical relations. As I showed in the last section, this is to be done by focusing simultaneously on the phenomenological and contingent dimension in which abstractions take place, as well as on the ecological environment in which they emerge and take meaning, through an approach equipped simultaneously with a "phenomenological sensibility to the here-and-now", as well as an "ecological sensibility to the prolongation of the here-and-now" into concatenations of heterogeneous elements.[79] Abstractions always take place in the contingency of space, and actually *going* to these places may be crucial to gain an understanding not only on the functioning of abstractions in everyday life but, more specifically, on the frictions and ruptures that this taking place unavoidably provokes.[80] This requires at the same time conceptual depth and ethnographic awareness, being at the same time sufficiently 'abstract' so as to avoid being entrapped in the 'context', and sufficiently 'concrete' so as to avoid explaining the context and its contingency away.

Finally, this approach explicitly discourages any iconoclastic attempt to simply 'have done with' law and its abstractions, whilst at the same time dismissing any pretence to hypostatise or idealise them. Legal abstractions are forces of the social and our task is not that of opposing them in the name of a more concrete praxis, but rather to understand how they work, a

[79] Andrea Brighenti, *Visibility in Social Theory and Social Research* (Palgrave, 2010) 37, 70.
[80] cf. Federico Rahola, 'Urban at Large. Notes for an ethnography of urbanization and its frictious sites'. (2014) 3 *Etnografia e Ricerca Qualitativa* 379.

necessary step in order to repurpose them strategically as well as inventing new, alternative ones. Our task, in other words, is that of dwelling within abstractions, in the effort to find emancipatory ways of tuning our being together, eschewing anarchic fantasies of anti-normativity, disorder or authenticity, whilst remaining vigilant vis-à-vis the oppressive effects that normative stabilisation may produce. To do so, developing a methodological attitude akin to the one described in this chapter appears necessary.

References

Accarino B. 'Peter Sloterdijk Filosofo dell'Estasi', introduction to Peter Sloterdijk, *Sfere I, Bolle* (Meltemi, 2009).

Agamben G., *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press, 1998).

Agamben G., *Opus Dei: An Archaeology of Duty* (Stanford University Press, 2013).

Agamben G., *Profanations* (Zone Books, 2007).

Barnett C. 'Geography and ethics: Justice unbound' (2011) 35 (2) *Progress in Human Geography* 246.

Blomley N. *Law, Space and the Geographies of Power* (Guilford Press, 1994).

Brassier R., 'Wandering Abstractions' (*Mute,* 13 February 2014) < http://www.metamute.org/editorial/articles/wandering-abstraction> accessed 19 February 2016.

Braverman I., 'Governing certain things: the regulation of street trees in four North American cities' (2008) 22 (35) *Tulane Environ. Law J.* 35.

Braverman I., N. Blomley, D. Delaney, and A. Kedar, 'The Expanding Spaces of Law: A Timely Legal Geography' (2013) *Buffalo Legal Studies Research Paper Series*, Paper No. 2013–032

Braverman, I.,"Animal Mobilegalities: The Regulation of Animal Movement in the American City," (2013) *Humanimalia* 5 (1) 104.

Brighenti A. M. 'Tarde, Canetti, and Deleuze on crowds and packs' (2010) 10 (4) *Journal of Classical Sociology* 291.

Brighenti A. M., 'Did We Really Get Rid of Commands? Thoughts on a Theme from Elias Canetti.' (2006) 17 (1) *Law and Critique* 47, 54 (n. 18).

Brighenti A. M., *Visibility in Social Theory and Social Research* (Palgrave, 2010)

Butler C., 'Critical legal studies and the politics of space', (2009) 18 (3) *Social and Legal Studies* 313, 315.

Canetti E., *Massa e Potere* (Adelphi edizioni, 1994) 247.

Constable M., *Just Silences: The Limits and Possibilities of Modern Law* (Princeton University Press, 2007).

Cunningham D., 'Spacing Abstraction: Capitalism, Law and the Metropolis' (2008) 17 (2) *Griffith Law Review* 454.

Cunningham D., 'The Concept of Metropolis: Philosophy and Urban Form' (2005) 133 *Radical Philosophy*.

Debord G., *Society of the Spectacle* (Black & Red, 1983)

DeLanda M. 'Space: Extensive and Intensive, Actual and Virtual' in Ian Buchanan and Gregg Lambert (eds) *Deleuze and Space* (Edinburgh University Press, 2005).

Delaney D. *The Spatial, the Legal and the Pragmatics of World-Making: Nomospheric Investigations* (Routledge Chapman & Hall, 2010)

Deleuze D., *Masochism. Coldness and Cruelty* (Zone Books, 1991).

Deleuze G. 'Cours Vincennes - 21/03/1978 (Kant)', < http://www.le-terrier.net/deleuze/16kant21-03-78.htm > accessed 28 February 2016.

Deleuze G. and F. Guattari, *A Thousand Plateaus Capitalism and Schizophrenia* (University of Minnesota Press 2008)

Deleuze G., *Foucault* (Continuum 2006) 60-1.

Doel M. *Poststructuralist Geographies: The Diabolical Art of Spatial Science* (Rowman & Littlefield, 1999).

Douzinas C., P. Goodrich and Y. Hachamovitch, *Politics, Postmodernity and Critical Legal Studies: The Legality of the Contingent* (Routledge, 1994).

Esposito R., *Immunitas: Protezione e Negazione della Vita* (Einaudi, 2012)

Esposito R., *Terza Persona. Politica della Vita e Filosofia dell'Impersonale* (Biblioteca Einaudi, 2007).

Fogh Jensen A. F., *The Project Society* (Unipress, 2012). Michael Dean, *Governmentality: Power and Rule in Modern Society* (Thousand Oaks, 1999).

Foucault M. *Discipline & Punish: The Birth of the Prison* (Vintage, 1995).

Gilles Deleuze G., 'Postscript on the Societies of Control' (1992) 59 *October* 3].

Goldstein F., *The Organism* (First published 1934, Zone Books 1995) 238.

Goodrich P., 'The Theatre of Emblems: On the Optical Apparatus and the Investiture of Persons' (2012) 8 (1) *Law, Culture and the Humanities* 47.

Hage G., 'Coughing Out the Law: Perversity and Sociality around an Eating Table', (*Critical Legal Thinking,* 18 January 2013) <http://criticallegalthinking.com/2013/01/18/coughing-out-the-law-perversity-and-sociality-around-an-eating-table/> accessed 22 February 2016.

Hart H. L. A. *The Concept of Law* (Oxford University Press, 1997) 84.

Kant I., *Groundwork of the Metaphysics of Morals* (first published 1785, Cambridge University Press, 2012).

Kracauer S., *The Mass Ornament. Weimar Essays* (first published 1963, Harvard University Press 1995)

Latour B. *Reassembling the Social: An Introduction to Actor-Network-Theory* (OUP, 2005).

Lefebvre A., *The Image of Law* (Stanford University, 2008).

Mahmud T. 'Law of Geography and the Geography of Law: A Postcolonial Mapping' (2010) 3 (1) *Washington University Jurisprudence Review* 64.

McCormack D., 'Geography and Abstraction: Towards an Affirmative Critique' (2012) 36 *Progress in Human Geography* 715

Moore, J. W. *Capitalism in the Web of Life: Ecology and the Accumulation of Capital* (Verso, 2015).

Osborne P., 'The reproach of abstraction' (2004) 117 *Radical Philosophy* 21.

Parkinson J., 'Hygge: A heart-warming lesson from Denmark' (*bbc magazine,* 2 October 2015), <http://www.bbc.co.uk/news/magazine-34345791> accessed 28 February 2016.

Pasquinelli M., 'The Labour of Abstraction: Seven Transitional Theses on Marxism and Accelerationism' (*matteopasquinelli.com*, 9 June 2014) < http://matteopasquinelli.com/labour-of-abstraction-theses/> accessed 20 February 2016

Philippopoulos-Mihalopoulos A. 'Law's Spatial Turn: Geography, Justice and a Certain Fear of Space' (2011) 7 (2) *Law, Culture and the Humanities.*

Philippopoulos-Mihalopoulos A. *Spatial Justice: Body, Lawscape, Atmosphere* (Routledge 2015).

Philippopoulos-Mihalopoulos A., 'Withdrawing from atmosphere: An ontology of air partitioning and affective engineering' (2016) 34 (1) *Environment and Planning D: Society and Space* 150.

Rahola F., 'Urban at Large. Notes for an ethnography of urbanization and its frictious sites'. (2014) 3 *Etnografia e Ricerca Qualitativa* 379.

Rancière J., "Ten Theses on Politics," *Theory & Event* 5, 3 (2001); Slavoj Žižek, *The Ticklish Subject: the Absent Centre of Political Ontology* (Verso, 2000).

Schmitt C., *Political Theology: Four Chapters on the Concept of Sovereignty* (University of Chicago Press, 2006) 13.

Sloterdijk P., *In the World Interior of Capital: Towards a Philosophical Theory of Globalization* (Polity Press, 2013).

Sloterdijk, P., *Tome 3, Ecumes*, *Sphérologie plurielle (*Hachette Littératures, 2006).

Sutter L. de, 'How to Get Rid of Legal Theory. Epistemology and Ontology', in Z.Bankowski (ed) *Proceedings of the XXI° IVR World Congress*, *Lund, 2003'* (Franz Steiner Verlag, 2005)

Swyngedouw E., *Designing the Post-Political city and the Insurgent Polis* (Bedford Press, 2011).

Tiqqun, *Introduction to Civil War* (Semiotex(e) MIT Press, 2010).

Toscano A., 'The Open Secret of Real Abstraction' (2008) 20 (2) *Rethinking Marxism* 273.

Toscano A., 'Against Speculation, or, a Critique of the Critique of Critique: A Remark on Quentin Meillassoux's After Finitude (After Colletti)', in Levi R. Bryant, Nick Srnicek and Graham Harman (eds), *The Speculative Turn: Continental Materialism and Realism* (Re-press, 2011).

Tsing Lowenhaupt A. 'On nonscalability. The Living World Is Not Amenable to Precision-Nested Scales' (2012) 18 (3) *Common Knowledge* 505.

Virno, P., *A Grammar of the Multitude*, *For an Analysis of Contemporary Forms of Life* (Semiotext(e), 2004).

Virno, P., 'The two masks of materialism' (2001) 12 *Pli* 167, 170.

Worringer W., *Abstraction and Empathy: A Contribution to the Psychology of Style* (first published 1907, Ivan R. Dee 2007).

Zartaloudis T., 'Without Negative Origins and Absolute Ends: A Jurisprudence of the Singular' (2002) 13 *Law and Critique* 197.