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To Be or Not to Be Heard: An Introduction to Sensori-Legal Studies and Sensory Dimensions of the Courtroom**

*"It is time, therefore, to acknowledge what the world has to do with the law, and the law with the world."*¹

Introduction

The field of sensory legal studies has not yet gained widespread attention among Ukrainian legal scientists. Although it originates in the social sciences and anthropology, it is reasonable that law, as a social science, has become another platform for developing sensory research. Such cross-disciplinary interaction, which David Howes describes as confronting yet simultaneously harmonizing, blending, and cojoining² has the potential to significantly contribute to various legal studies' research

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¹ Andreas Philippopoulos-Mihalopoulos, "Introduction. The *and* of Law and Theory," in *Routledge Handbook of Law and Theory*, ed. Andreas Philippopoulos-Mihalopoulos (Routledge, 2018), 4, <https://doi.org/10.4324/9781315665733>.

² See "Centre for Sensory Studies," The Centre for Sensory Studies, accessed May 14, 2024, <https://centreforsensorystudies.org/>; "Call for Papers: Uncommon Senses V. Sensing the Social, the Environmental, and Across the Arts and Sciences," Concordia University, accessed October 4, 2024,

methodology. This is particularly relevant to issues concerning access to justice as part of the development of the rule of law and democratic social order in Ukraine.

In the context of the crisis and military invasion, fundamental human rights are more fragile than ever. The overload of courts, especially against the background of internal migration, does not contribute to the fair implementation and enforcement of legislation. Therefore, the question of denying the sensual in law is most relevant for contemporary national legal thought. The purpose of this paper is to introduce Ukrainian readers to the trends in the field of sensory legal research and the main approaches to its exploration, to develop a theoretical framework, and to expand the perspective of research on the right to be heard in Ukrainian courts.

I. Origins of Sensory Revolution in Social Sciences

The sensory turn, which began in the 1990s, was partly a reaction to the social sciences and humanities' tendency to reduce culture to words and images. The new "sensory" approach to cultural studies was initially developed primarily within anthropology. The sensory turn in the humanities and social sciences, which has subsequently spread to legal studies, has called into question the separation of law and senses – the strict letter of the law and its sensory embodiment, leading to increased attention to the multiple sensory dimensions of law and legal institutions. It became evident that the standard ethnographic practice of "participant observation," which involves experiencing a culture by living it, could be greatly improved if anthropologists paid attention to the sensory patterns and values of the people in their interaction, and that this would lead to more illuminating and subtle cultural descriptions.

Paul Stoller calls sensuous scholarship "a mixing of head and heart."³ He suggests that embracing sensuousness in science implies rejecting the arrogance of control. It means acknowledging that mind and body, self and others, are not separate entities. It is a truly revelatory experience to realize that we don't devour witchcraft, history, or knowledge; but instead, they devour us. Embracing sensuousness means giving our bodies to the universe and welcoming its depths, flavors, textures, and odors.⁴ In his *Sensuous Scholarship*, he manifests a reawakening of the scholar's body from "analytical nirvana."⁵ Considering the relationship between the body and mind concerning our sensory experiences is curious. The "sensory turn" follows the "corporeal turn," which affirms the unity of mind and body. However, this unity is complicated by the sensory turn, which redirects attention to the combination of the mind and body. As David Howes notes, in Buddhist philosophy, the

<https://www.concordia.ca/cunews/artsci/sensory-studies/2024/09/06/uncommon-senses-v.html?c=/artsci/research/sensory-studies>.

³ Paul Stoller, *Sensuous Scholarship* (Pennsylvania: University of Pennsylvania Press, 1997), xviii.

⁴ Ibid, xvii.

⁵ Ibid, xvi.

mind is considered as the sixth sense, and is therefore equal to the other senses, rather than being in a privileged position above the body and senses.⁶

In one of his last works, “The Sensory Studies Manifesto,” Howes offered some affirmations about sensory research. The main theses insist that the emergence of sensory studies has accelerated the transition from a focus on the organs of perception to the ways of sensing. From this perspective, the senses are endless and numberless. The senses precede language, and fill it with meaning; perception, in turn, goes beyond a mental or individual phenomenon, and is “cultural and political.”⁷ The senses mediate the connection between idea and object, mind and body, individual and society, culture and environment. Howes states that sensory research methodologies are based on a sensory ethnography which is performed by sharing sensory experiences of our interlocutors, a sensory history which is based on “sensing between the lines,” and art-based research, which is creation on the edge of art and science. All of these and other sensory methods challenge our everyday comprehension habits and reveal other ways of existing and understanding.⁸ The first of these methodologies, sensory ethnography, suggests experiencing cultures rather than reading or writing them and uses a wide range of formats other than writing. For Howes, sensory ethnography has turned the tables and anthropology in a more sensuous approach.⁹

II. Something Sensual is Going on in Legal Studies

Although law is often seen as being beyond the realm of the senses,¹⁰ and the traditional association of law with the rational draws attention away from the body, a cursory look reveals how deeply the administration of justice is immersed in a specific order of sensory experience. According to David Howes, “‘Law’ is no longer only what the legislators proclaim, and judges interpret it to be; law is also what we (ordinary citizens) make of it.”¹¹ The rationality of law and the embodiment of one of its functions, namely the ordering and management of interpersonal relations and, as a result, the channeling of senses into distinct categories may appear to be a manipulation of the senses by legal norms. However, senses also have a qualitative impact on the development of law, as we can create, comprehend, and implement law through sensory perception. Philippopoulos-Mihalopoulos argues that the legal field

⁶ David Howes, *The Sensory Studies Manifesto: Tracking the Sensorial Revolution in the Arts and Human Sciences* (Toronto: University of Toronto Press, 2022), 4, <https://doi.org/10.3138/9781487528638>.

⁷ Michael Bull et al., “Introducing Sensory Studies,” *The Senses and Society* 1, no. 1 (2016): 5, <https://doi.org/10.2752/174589206778055655>.

⁸ Howes, *The Sensory Studies Manifesto*, 13.

⁹ Florencia Marchetti and David Howes, “Dialogic Probe on the Atmosphere of Law: A Conversation between Florencia Marchetti and David Howes,” *Law and the Senses: Explorations in Sensori-Legal Studies*, July 15, 2020, <https://lawandthesenses.org/probes/dialogic-probe-on-the-atmosphere-of-law-a-conversation-between-florencia-marchetti-and-david-howes/>.

¹⁰ David Howes and Constance Classen, *Ways of Sensing: Understanding the Senses in Society* (New York: Routledge, 2014), 93.

¹¹ David Howes, “Prologue: Introduction to Sensori-Legal Studies,” *Canadian Journal of Law and Society / Revue Canadienne Droit et Société* 34, no. 2 (2019): 174, <https://doi.org/10.1017/cls.2019.28>.

has not yet established an open interdisciplinary space where other fields can freely evolve and discuss it.¹² As Dragan Milovanovic points out, the sensorial, which has been suppressed as contrary to the principles of logic, rationality, and utilitarianism, finds a new basis in rethinking consciousness, social structures, and development.¹³

Sensori-legal studies is a branch of legal research that approaches law and legal practice as sense-related practices embedded in the body and senses, as well as in legal writing and discourse without separating sensual from intellectual experience. In this context, senses refer to sensation and signification, feeling and meaning.¹⁴ Such field of legal studies is driven by the notion that the senses are social, and sense-making is a matter of public interest, not a private activity, as psychology claims.¹⁵ The relationship between law and senses is not a direct domination or supervision of the former over the latter, but rather a terrain on which sensory law (law that is transformed into senses) and legal senses (senses that are transformed into law) mutually influence each other. Such a stream of legal research aims to explore novel ways of using legal abstraction beyond the rejection or overemphasis of sensory perception and phenomenological comprehension of senses. In this way, we study law from a different angle of law's relationship with the world – a reflective and sensuous mode that sanctions the impossibility of law to escape its materiality.¹⁶ This means that the law created by people to regulate interpersonal and other social relations, which authorizes protection (in the ideal dimension) materializes not only in a set of rules that is used mechanically. Rather, it involves the regulation of senses by senses themselves, using human bodies to enforce the law through sensory experience, creating a unique legal reality.

Meanwhile, some legal scholars recognize the breakdown of the long-established division between critical legal studies, on the one hand, and socio-legal studies, on the other.¹⁷ In his works, Andreas Philippopoulos-Mihalopoulos raises a question of “urgency for a new legal theoretical approach.”¹⁸ Expanding a mention about thesis on the urgency of interdisciplinary approach in contributing to sensori-legal inquiries his claim that the traditional distinction between critical legal studies and the socio-legal method is breaking down is sound. The holistic combination of these approaches with the involvement of other areas of scientific knowledge can lead to new and refreshing dimensions of legal understanding. Where does the law end and anthropology of the senses begin? Is it preponderant to make this distinction

¹² Philippopoulos-Mihalopoulos, “Introduction,” 4.

¹³ Dragan Milovanovic, “Touching You, Touching Me in Law and Justice,” in *Routledge Handbook of Law and Theory*, 203, <https://doi.org/10.4324/10.4324/9781315665733-10>.

¹⁴ David Howes, “Law’s Sensorium: On the Media of Law and the Evidence of the Senses in Historical and Cross-cultural Perspective,” in *Sensing Law*, eds. Sheryl N. Hamilton et al. (New York: Routledge, 2017), 57.

¹⁵ David Howes, *Sensorial Investigations: A History of the Senses in Anthropology, Psychology, and Law* (University Park: The Pennsylvania State University Press, 2023), 2.

¹⁶ Caterina Nirta, “Introduction,” in *Touch*, eds. Caterina Nirta et al. (London: University of Westminster Press, 2020), 2, <https://doi.org/10.16997/book37>.

¹⁷ *Ibid.*, 6.

¹⁸ Philippopoulos-Mihalopoulos, “Introduction,” 3.

to achieve the goals of developing a legal phenomenon at different levels, to achieve the study's objectives? Therefore, contributions to developing such methodologies can bring us closer to the harmonious coexistence of law and other disciplines.

"Issues such as democracy, human rights, popular resistance or revolution, while as important today as earlier, need to be combined with a material, emplaced and embodied, yet equally theorised, understanding of the law, if we want law to be making the difference that it is capable of, especially with regards to other disciplines."¹⁹

III. Establishment of the Sensori-legal Research

The launch of the field is tightly connected to publishing a collection based on seminars held by King's College, London called "Law and the Senses: Sensational Jurisprudence." There Bently introduces the idea of extending the concept of the senses as a social construct to the field of law. The author discusses the questioning of the prevailing notion of reason since the Enlightenment period, the correlation between reason and sensation, and how the different senses were ranked, with a particular focus on the dominance of vision.²⁰ According to Matthew Weait, in pre-Enlightenment times, punishment in criminal cases was carried out brutally with a focus on the sense of touch, namely had been practiced as displaying the body of an accused person in public as a form of entertainment or spectacle.²¹ Piyel Haldar reflects on the concept of the metaphysical meaning of hearsay as a shred of possible evidence before the court. The author argues that hearsay disrupts the way evidence is represented²² and requires a process of connection that transforms an individual's self into something that is shared by everyone. This means that hearsay raises questions about boundaries and divisions, power dynamics, intimacy, knowledge, and how we understand the world.²³ As Howes has aptly foreseen, this collection served as an enlightening debut and has laid a fruitful foundation for further study of the processes by which law "makes sense of the world."²⁴

Constance Classen also points out radical changes in cultural and conceptual paradigms brought up by the Enlightenment, including the diminishing importance of non-visual sensations in modern Western culture.²⁵ Indeed, the Enlightenment gave us concepts such as constitutionalism, fundamental rights, the separation of powers, and the centrality of rationality. At the same time, the growing importance of the written text of the law, as well

¹⁹ Ibid, 5.

²⁰ Lionel Bently, "Introduction," in *Law and the Senses: Sensational Jurisprudence*, eds. Lionel Bently and Leo Flynn (London: Pluto Press, 1996), 4.

²¹ Matthew Weait, "Fleshing It Out," in *Law and the Senses*, 162.

²² Piyel Haldar, "Acoustic Justice," in *Law and the Senses*, 132.

²³ Ibid, 128.

²⁴ David Howes, "Lionel Bently and Leo Flynn (Eds), *Law and the Senses: Sensational Jurisprudence*," *Social & Legal Studies* 7, no. 1 (March 1998): 140.

²⁵ Constance Classen, *Worlds of Sense: Exploring the Senses in History and across Cultures* (New York: Routledge, 1993), 27, <https://doi.org/10.4324/9781003369769>.

as the shift of authority from a person to a text, provoked the devaluation of other senses as forms of epistemology²⁶ and the onset of the era of ocularcentrism, which still sets trends in the way we perceive and interpret research findings.

It is crucial to identify how one's sensory experiences become objectives of the legal framework and are governed by legal reasoning. Some scholars involved in the development of this field argue that more attention should be paid to descriptions of resistance, or in particular, to how legalized feelings and sensing law can both strengthen and undermine legal institutions and relations of domination.²⁷ Thus, questions about how senses are already legal or whether the law is already sensuous are excluded from frames that assume a one-way movement of senses into the courtroom. Another prominent issue "Sensing Law" has drawn a possible direction in exploring the sensoriality of law. Co-editors of the collection offer to gaze at and explore these through the following streams.²⁸

First, how does the law sense? This direction involves analysing legal data, including criminology. Moreover, the researchers exploring this direction argue for a need to move beyond the traditional sensory approach in legal studies. Ocularcentrism became dominating in social sciences, therefore involving other senses and exploring the multisensory implementation of the law, as well as exploring judicial senses would constitute a great contribution in expanding this area.²⁹ Michael Maupas and Amelia Curran argue that in music copyright infringement cases, legal reasoning tends to prioritize the visual representation of a musical work over the actual auditory experience of listening to music in a physical space. They observe that the legal process of expert listening often transforms into a process of expert seeing due to the prevalence of visuals in law. In this case, the expert's goal is to reveal the truth by reinterpreting the proof.³⁰

Second, how is law represented in culture? Our encounter with the law is a reflection of its symbolism. A student looks at "Themis" with her legitimate attributes and is driven to join the judicial corpus. An artist gets inspired by the procedures and attributes of the administration of the law and captures it in paintings or films, preserving such ceremonies for centuries. Authors encourage the expansion of areas for picturing the law by incorporating museums, architecture, and social media into legal discourse. Existing works on the iconography of law are one of the representations of this stream. As for Marcílio Franca³¹

²⁶ Mateus de Oliveira Fornasier, "The Sense of Smell in Brazilian Justice," in *Smell*, eds. Andreas Philippopoulos-Mihalopoulos et al. (London: University of Westminster Press, 2023), 207, <https://doi.org/10.16997/book68>.

²⁷ Sheryl N. Hamilton et al., "Introduction," in *Sensing Law*, eds. Sheryl N. Hamilton et al. (New York: Routledge, 2017), 15.

²⁸ *Ibid.*, 6.

²⁹ Kristina Stern, "Law and the Lack of Sense," in *Law and the Senses: Sensational Jurisprudence*, eds. Lionel Bentley and Leo Flynn (London: Pluto Press, 1996), 46.

³⁰ Michael Mopasand and Amelia Curran, "Seeing the Similarities in Songs: Music Plagiarism, Forensic Musicology and the Translation of Sound in the Courtroom," in *Sensing Law*, 75.

³¹ Marcílio Franca, "The Blindness of Justice," in *See*, eds. Andrea Pavoni et al. (London: University of Westminster Press, 2018), 163, <https://doi.org/10.16997/book12>.

novels, essays, poems, plays, paintings, engravings, sculptures, movies, music sheets, and architecture can provide innovative legal arguments and content, even if they do not explicitly focus on law.

Third, how sensory perceptions are incorporated into legal norms? Our senses are often involved in legal matters, such as holding evidence, protecting copyrighted projects, and more. Existing literature explores how the law changes and adapts in response to our senses. Neal Feigenson highlights that the role of both the law and expert opinion is to create a sensory experience with the law, rather than simply presenting factual evidence in court. Essentially, an expert's job is to reconsider the conclusions that can be drawn based on one's sensory perception of the circumstances of the case.³²

Finally, how are the senses and law co-implicated in shared powerful projects? This stream seeks the answers to the next urgent questions. How do our senses respond to the existing imperialism, racism, and xenophobia in the context of national liberation wars? How does law sense drastic and spontaneous changes at the national and global levels? These can also be named feminism, race critical studies, capitalism, environmental changes, and others. Although each of them has a different impact, some deeply ingrained in society while others still claim their place, they all significantly influence the transformation of law and its perception. For instance, when martial law is instituted, it affects legal research conducted under such circumstances and the way one senses unexpected changes.

The creators of the Sensing Law believe that popular visual culture plays a significant role in legal practice and meaning-making. They argue that the creation and circulation of legal meanings are closely tied to the space of popular visual culture, which is not accidental. Culture is not just a reflection of legal meanings produced in institutions that create, implement, and interpret legal norms. Both reproducing and disturbing social norms, and representational practices serve as triggers for developing sensory-legal epistemology.³³ Hamilton and others argue that the idea of a separation between the mind and the body, between rational and irrational, and between the sensual and the legal is inherently flawed. However, although the legal system is based on imaginary principles, it still operates under the assumption that these divisions are real. As a result, legal actors and deeds tend to overlook the sensory experiences involved and instead prioritize the need to translate the sensual into rational concepts so that they can be understood within the framework of the law.³⁴

Another pivotal addition to the exploration of the sensoriality of law is the "Law and Senses" series. Creators and contributors of this project endeavor to collaborate on law and sense by gazing at each sense beyond phenomenology. As complementation, in the taxonomy mentioned above authors rethink "powerful projects," bring more post-human dimensions,

³² Neal Feigenson, "What It's Like: Demonstrative Evidence of Subjective Experience," in *Sensing Law*, 37.

³³ Hamilton, "Introduction," 10.

³⁴ *Ibid*, 17.

and therefore deviate from the anthropocentric approach. The aim of the project is not just to break traditional perceiving of law via socio-legal and critical methods. It explores the posthuman and inhuman dimensions of senses which therefore leads to gazing at law in new ways, “use legal abstraction beyond the absolutisation or dismissal of the senses.”³⁵ The authors do not perceive the law as a purely rational institution that merely sets rules for human and non-human entities, whose “humanity” is defined only concerning the institution’s needs.³⁶ Their research focuses on viewing law as a socio-cultural construct, using abstraction to reconcile relationships in the spatial, identical dimension of reality.

IV. Atmosphere, Law and Affects

A distinct curious debate has emerged around the notion of the atmosphere of law. For Andreas Philippopoulos-Mihalopoulos it is as invisible as air, which you are affected by even if you cannot see it, while “entering the lawscape” when in fact one never leaves it.³⁷ He also speaks of the law as a phenomenon that occurs only in conflict, when justice is sought, and when society needs to map out the future. During a conversation with Florencia Marchetti, Howes concluded that Philippopoulos-Michalopoulos’s use of the term “atmosphere” is more philosophical than sensory. However, he also recognizes that his and Constance Classen’s approach in *Ways of Sensing* reduces the sensation of the courtroom to tactility (more in the next section). He refers to it as a metanarrative that explains how writing has replaced touch and other sensory manipulations that were once part of the tradition of justice in the pre-modern period.³⁸

In the mentioned work Howes and Classen have also underlined that a courtroom is designed to control the senses.³⁹ Indeed, in many fields of social life legal norms are rather imperative than dispositive. Yet if we treat the law as a machine that primarily aims to control and supervise, what about its creators? How do legislators sense law on its edge? In this perspective, I recall the work of Dragan Milovanovic who uses quantum holography as an example of how the human heart reacts to different kinds of emotions. According to this study, the state of love and positive emotions affects the measured work of the heart, and therefore if the majority of society is in this state, i.e. harmonious, there is no need to use force while implementing law enforcement measures. The opposite, however, requires more social control.⁴⁰ According to him, if brain activity declines, it will limit intuitive thinking and the development of social connections. Without strong social bonds, mutual respect,

³⁵ Andrea Pavoni, “Introduction,” in *See*, 5, <https://doi.org/10.16997/book12>. See other publication of the series: “Law and the Senses,” *University of Westminster Press*, accessed May 14, 2024, <https://www.uwestminsterpress.co.uk/site/books/series/law-and-the-senses/>.

³⁶ *Ibid*, 7.

³⁷ Andreas Philippopoulos-Mihalopoulos, “Atmospheres of Law: Senses, Affects, Lawscapes,” *Emotion, Space and Society* 7 (May 2013): 35, <https://doi.org/10.1016/j.emospa.2012.03.001>.

³⁸ Marchetti and Howes, “Dialogic Probe on the Atmosphere of Law.”

³⁹ Howes and Classen, *Ways of Sensing*, 99.

⁴⁰ Milovanovic, “Touching You,” 206.

and support, there may be a greater need for social control, similar to the concept of Leviathan, with legal processes based on formal logic and abstractions, such as reasonable man in law.⁴¹

In his turn, Philippopoulos-Mihalopoulos also believes that “a city without law is a holy city of justice, perpetually floating in a post-conflict space where everything is light and forgiveness.”⁴² This quote gives the impression that a post-conflict space is a place of harmony and love. However, a new page cannot remain blank forever. There will be new orders and new laws. Some argue that during the conflict, there is no room for democracy,⁴³ but what about justice? Should it sharpen its senses to avoid the noise of missiles and war while protecting its subjects?

Therefore, the author presents a compelling argument in the debate on the mutual influence of senses and emotions (affects), and whether a clear distinction between the two is necessary. He asserts⁴⁴ that the two are intrinsically linked – we engage our senses to receive information, which then elicits an emotional response as part of the overall experience. Based on this viewpoint, I concur that there is no need to separate sensory experiences and emotional reactions when considering the application of legal norms. That is how we sense and therefore *experience* it.

V. Senses and the Court

On the one hand, it is believed that law is separated from the sensuous. On the other hand, the sensuous is characterized as immediate, spontaneous, and belonging to the dimensions of the phenomenological, and subjective. That is, while law and its legal techniques attempt to control and discipline human sensory experience, the sensual escapes these efforts or even plays around them.⁴⁵

The law usually deals with senses by recognizing their uncontrollable nature and tries to draw them into its categories: to legitimize and pacify feelings, that is, to organize them following common sense. However, there remains a dimension of the sensual that cannot be reduced to categories, a dimension that can only be felt. This is not a reality that the law cannot govern, not because it is beyond the reach of the law itself, but because the law is a part of it.⁴⁶

⁴¹ Ibid, 207.

⁴² Philippopoulos-Mihalopoulos, “Atmospheres of Law,” 36.

⁴³ For instance, some people’s deputies in Ukraine plainly express opinions on the irrelevance of respect for human rights and democracy during the war. See: Ihor Berezhansky, “‘Servant of the People’ calls democracy during the war a mistake,” [In Ukrainian] TSN, April 26, 2024, <https://tsn.ua/ukrayina/u-sluzi-narodu-nazvali-demokratiyu-pid-chas-viyni-pomilkoyu-2565618.html>; “This is not the time for democracy and human rights: MP Dunda explains what should be done with the people,” [In Ukrainian] *Ekonomichni Novyny*, March 12, 2024, https://enovosty.com/uk/news-ukr/news_politics-ukr/full/1203-ne-chas-demokratii-ta-prav-lyudini-nardep-conda-poyasniv-shho-treba-robiti-z-narodom.

⁴⁴ Philippopoulos-Mihalopoulos, “Atmospheres of Law,” 39.

⁴⁵ Hamilton, “Introduction,” 14.

⁴⁶ Pavoni, “Introduction,” 5.

Senses of justice are always conditioned by sensory perceptions and responses triggered by the normative, symbolic, and visual frames that attribute meaning to them. How we comprehend justice, make ethical, political, and legal judgments, and recognize institutions as legitimate in the administration of justice depends on such sensory frames that emerge from our interactions with the justice system.⁴⁷

In his chapter on the iconography of law, Marcílio Franca explores the various representations of the blindfold of justice. The blindfold is commonly used to symbolize impartiality and independence, but Franca argues that there is still a lack of a clear and transparent view of legal proceedings. The author raises urgent questions about sensing justice. How can we comprehend it – through sight, intellect, or both? Is it possible to comprehend justice through visual experience or through reflection detached from feelings, which distorts reality?⁴⁸ The mutual influence of law and aesthetics reflects the way iconography represents legal phenomena and institutions. Images that personify power and influence its perception, thus appealing to our senses, demonstrate the power of the aesthetics of law.⁴⁹

The common depiction of a blindfolded figure of justice holding a scale in one hand offers a very tactile representation of justice. The icon suggests that sight introduces prejudice into the practice of justice by assuming a social position based on visual elements, while touch neglects such elements and makes an impartial decision based on the weight of the evidence solely. Notably, in the Middle Ages, blindness was associated with a lack of judgment, and the figure of justice received a blindfold only during the Renaissance.⁵⁰

Justice's other hand is frequently represented with another very tactile instrument, a sword. This indicates that Justice not only judges impartially, but also punishes impartially. The figure of Justice is typically depicted as upright and motionless to emphasize the righteousness and inviolability of the law.⁵¹ The preceding symbols proclaim that justice should be blind, judges should be impartial, and common sense should prevail in court. The rule of law reflects these theses, but at the same time raises questions about who should perform this justice. Is the sense of justice related to the sensual side or only to rationality?⁵²

The emphasis on visual perception in law and the social sciences has its roots in early anthropological research when sight and hearing were considered the primary senses. Sight and hearing were considered the least subjective and most suitable for scientific research.⁵³ In addition, Europeans had a priority in the use of recording and testing instruments

⁴⁷ Mónica López Lerma, *Sensing Justice through Contemporary Spanish Cinema: Aesthetics, Politics, Law* (Edinburgh: Edinburgh University Press, 2021), 13, <https://doi.org/10.1515/9781474442060>.

⁴⁸ Franca, "The Blindness of Justice," 190.

⁴⁹ Hamilton, "Introduction," 10.

⁵⁰ Howes and Classen, *Ways of Sensing*, 95.

⁵¹ *Ibid.*, 94.

⁵² Howes, *Sensorial Investigations*, 3.

⁵³ David Howes, *Sensual Relations: Engaging the Senses in Culture and Social Theory* (Ann Arbor: University of Michigan Press, 2003), 6.

compared to the subjects of their research. At the same time, taste, smell, and touch occupied a significant position in traditional societies, being called “primitive” and lower in the hierarchy of senses. The impact of the so-called social hierarchy of sensations is still felt in contemporary sensory inquiries, both in the social sciences and in legal research.⁵⁴

The courtroom must convey a sense of solemnity and authority to instill a sense of respect. Solid and heavy, with high columns and ascending staircases, the judicial building towers over society, exudes authority, and reflects that justice should not be taken lightly.⁵⁵ The use of stone in the design of courtrooms is meant to convey a sense of social weight. Tall pillars suggest moral rectitude and take inspiration from ancient temples. The wooden ambience in the courtroom reflects dignity and tradition. Benches and boxes convey a sense of order and separation of roles. Courtrooms are designed to control sight, sound, touch, and movement.⁵⁶ The way legal structures are perceived by people is not only influenced by well-known symbols and images from literature, visual media, and popular culture but also by the physical environment. The layout and design of the building, through sensory experiences and associations, unconsciously convey the social significance of legal relations and decisions, leading individuals to interact with certain authorities.

The sensory nature of the actors in a courtroom is essential to who they are and what they do in the legal field. For instance, a witness is called upon to testify because they saw or heard something important. If a person lacks sensory experiences that could be conveyed to the court, they cannot be considered as a witness.⁵⁷ According to Manderson detaching judicial ideas from cultural traditions and everyday routines is an exercise in social exclusion with major implications. After all, if the rule of law is to survive, no matter how we understand its qualities and weaknesses, it will endure due to the way it communicates to us and the feelings it can evoke in us. Without these creative discourses and these affective attachments, no one has any reason to care about it, to comprehend it, or to refine it.⁵⁸

VI. Hear(ing)

For Julia Chryssostalis the hearing is “a key faculty of the juridical sensorium.”⁵⁹ Danilo Mandic describes it as the highest legal act, in which judgment is rendered and the sensory and mental capacities of law – sensation, and sense – are combined. He emphasizes that law remains a field of infinite adaptations, in which hearing “as a sensory modality allows the law to listen, comprehend and reason.”⁶⁰

⁵⁴ Ibid, 7.

⁵⁵ Howes, “Prologue,” 176.

⁵⁶ Howes and Classen, *Ways of Sensing*, 99.

⁵⁷ Hamilton, “Introduction,” 23.

⁵⁸ Desmond Manderson, “The Law of the Image and the Image of the Law: Colonial Representations of the Rule of Law,” *New York Law School Law Review* 57 no. 1 (January 2013): 168.

⁵⁹ Julia Chryssostalis, “Nomos is an Air: Hearing as a Juridical Faculty,” in *Hear*, eds. Danilo Mandic et al. (London: University of Westminster Press, 2023), 47.

⁶⁰ Danilo Mandic, “Introduction,” in *Hear*, 17, <https://doi.org/10.16997/book62>.

According to Gary Watt, there is something different between the word on the page and the spoken word. As opposed to computerized justice, he wonders whether justice that is silenced will not be the lost one, in the sense that people will not have their day in court, their hearing, nor the feeling that their voice has been heard. “There might be something absolutely essential to justice in society to having the sound heard.”⁶¹ Peter Goodrich sees the act of hearing as both a trial, where the cause is presented, and a temporal process for transmitting rules and principles that are first heard and then determined.⁶²

The hearing takes place in an auditorium within the court’s representative space. According to Danilo Mandic, sounds and voices in the courtroom resonate and echo off the walls, but the principles and procedures of the law create a powerful resonance that demands our attention to the acoustics of justice.⁶³ Further, he highlights, that the aim of the proclamation of law is not only to govern the people and things it applies to but also to suppress any kind of disorder that poses a threat to its system of values or anything external to its order. In this way, the law justifies its presence by becoming the very noise that overpowers and confirms the court’s and law’s omnipresence and omnipotence that echoes outside its walls.⁶⁴

As Julia Chryssostalis has explored, the principle that both parties in each case ought to be heard, but specifically if a party is at risk of worsening his or her legal position or suffering any harm, is an ancient principle of justice and wisdom that was commonly embraced in Greek, Roman and Christian antiquity, as much as in the Middle Ages and Renaissance. In ancient Rome, the customary rule that mandated that the accused must be heard was a conventional principle, and as such, one of the most sacrosanct principles of Roman customary law. Consequently, it was wrong to convict a defendant without hearing them out and providing them with the chance to defend themselves.⁶⁵

Therefore, for justice to be accomplished, there must be a hearing. Justice lives in the ear. This is why early modern courtrooms, the earliest spaces of listening in law, were built in the shape of an ear. To enable the parties to be heard, the law creates a special listening space and establishes a set of peculiarly legal soundscapes, with its own physical, substantive, and procurational protocols of audibility to fulfill this purpose. Justice is performed within the sonic framework of legality. A judge must “hear” the case at hand, including the pleadings and evidence of the parties, the litigants themselves, how well their respective contentions “sound” in the law, and an assessment of the law as it reverberates in the legal quotation cycle.⁶⁶

⁶¹ Sean Mulcahy, “Acting Law | Law Acting: A Conversation with Dr Felix Nobis and Professor Gary Watt,” *Exchanges: The Warwick Research Journal* 4, no. 2 (2017): 192.

⁶² Peter Goodrich, “Auriculation,” in *Law and the New Media: West of Everything*, eds. Christian Delage, Peter Goodrich and Marco Wan, (Edinburgh: Edinburgh University Press, 2019), 57.

⁶³ Danilo Mandic, “Introduction,” 16.

⁶⁴ *Ibid.*, 20.

⁶⁵ Julia Chryssostalis, “*Nomos* is an Air,” 53–54.

⁶⁶ *Ibid.*, 56–57.

The same author brings up the Bugg case of 1615, where the court stated that obedience is the foundation of the law. When the law is spoken, it must be heard, understood, and followed by those subjects to it. Obedience in this context refers to the nature of the legal statement. This includes its sound quality, the listener's position and relationship to the statement, and how connected the listener is to the words of the law.⁶⁷

According to Patricia Smith, a family law judge at the Northern Ireland County Court, the key task of any judge is not merely to listen, but to ensure that the person has a sense of being heard. A judge highlighted the following: "[I]f people genuinely feel they have been listened to, that the judge has understood their point, that the judge has given it proper consideration, even if they lose, they can deal with it <...> because they have been listened to."⁶⁸

Didier Fassin in his work on the importance of ethnography, highlights this method as the one that "illuminates the unknown" and "interrogates the obvious."⁶⁹ The author shares his experience of interaction with enforcement structures in Paris. He recounts how he was approached to give testimony in a case involving racial discrimination and physical aggression by a police officer toward an African teenager. Instead of specifically addressing the case, he wrote a statement highlighting the overall law enforcement practices in low-income areas. He intended to provide a broader context that would allow the boy's words to be heard.⁷⁰

James E. K. Parker reflects on the key sounds of a modern courtroom. How does the hum of strip lighting, air conditioning, and computer fans drown out (or combine with) conversations about law, whispers, and gavels? How do they affect litigants who are part of their daily routine?⁷¹ In his "A Lexicon of Law and Listening," he also focuses on the tandem of law and listening and plays with their proximity and mutual constitution. He insists that these phenomena are created together and simultaneously. He continues:

[L]aw and listening as ways of ordering experience, law and listening as techniques for encountering, knowing and making the world, law and listening as practices of judgment, as forms of rationality, as domains of expertise, as servants of capital, as techniques of domination, injustice, and power... Law and listening: sites of opportunity and struggle.⁷²

Persuasive speech is a crucial aspect of effective judicial rhetoric. However, the power of embodied speech is often disregarded in legal writings, which assume that the power

⁶⁷ Ibid, 67–68.

⁶⁸ Sara Ramshaw, "The Song and Silence of the Sirens: Attunement to the 'Other' in Law and Music," in *Hear*, 129. The author brings up the quote from the Just Improvisation Symposium held at Queen's University Belfast (QUB)'s Sonic Arts Research Centre (SARC) on 29–30 May 2015.

⁶⁹ Didier Fassin, "Why Ethnography Matters: On Anthropology and Its Public," *Cultural Anthropology* 28, no. 4 (2013): 642.

⁷⁰ Ibid, 641–42.

⁷¹ James E. K. Parker, "A Lexicon of Law and Listening," in *Hear*, 270.

⁷² Ibid, 270–71.

of speech lies not in the performance of the speaker, but in the authority of the law to which they refer. This suspicion is rooted in Plato's concern that skilled speakers can persuade people to support unethical or unjust positions. As a result, speech-making is often viewed as theatrical and inauthentic, even fraudulent.⁷³ Gary Watt also shares this thought and emphasizes the importance of the defendant mastering speech to make it flow musically, ensuring a sense of pleasant ease of speech.⁷⁴ In the common law system, the power of speech is most inherent, whilst, in the legal systems of continental Europe and Ukraine, preference is given to documents submitted to the court before the hearing. Nevertheless, a lawyer's clients' confident and eloquent presentation can greatly influence the judge's impression of the hearing.

Conclusions and Further Reflections

The role of the senses in scientific research has undergone a shift in recent decades. Howes suggests that each culture should be treated differently in terms of sensory perception.⁷⁵ Remarkably, the expansion of inquiries into the sensory perception's impact on social tendencies has not left behind the realm of law, which traditionally originates from a human-centered perspective.⁷⁶ We are yet to witness the full development of this area of legal studies, e.g. through conjunction with sensory ethnography in the courtroom or well-established participant observation. In this light, it is impossible not to agree with Andrea Pavoni that the inevitable consequences of the sensory turn imply overcoming the division between law and the senses and calling for addressing the complex and contradictory relationship between law and the multisensory process of its production.⁷⁷

In the context of legal understanding, sensory legal studies can be associated with both the phenomenological approach and the socio-legal approach. Some contributors to the development of sensory research methodology recognize the influence of interpretive anthropology. They cite Geertz's description of law as "a distinctive way of imagining the real"⁷⁸ as a significant source of inspiration. This view has shifted the emphasis from rules to meanings in legal studies. It broadens the angle of view, complementing the practical and legal with the moral and expressive.⁷⁹ Additionally, sensory legal studies use interdisciplinary methods such as the ethnographic method found in anthropological research, and consider

⁷³ Miriam L. Wallace, "Legal Sensibilities and the Language of Gesture in Late Eighteenth-century British Satirical Prints," in *Sensing Law*, 134.

⁷⁴ Mulcahy, "Acting Law," 192.

⁷⁵ Howes, *Sensorial Investigations*, 32.

⁷⁶ Philippopoulos-Mihalopoulos, "Introduction," 4.

⁷⁷ Andrea Pavoni, "Law's sensorial turn: edited by Sheryl Hamilton, Diana Majury, Dawn Moore, Neil Sargent and Christiane Wilke, New York, Routledge, 2017," *The Senses and Society* 14, no. 3 (2019): 363. <https://doi.org/10.1080/17458927.2019.1665804>.

⁷⁸ Clifford, Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983), 184.

⁷⁹ *Ibid*, 232.

the law as a cultural and social phenomenon.⁸⁰ Thus, the field of sensory studies, while not proposed as a new approach to legal philosophy, complements legal theory and critical research with sensorial dimensions while gazing at legal reality.

Recalling Howes' words about the Buddhist understanding of the mind as a sense organ and his thesis that there are countless senses, I can conclude that the sense of law and its comprehension from a sensory perspective is not only how we experience it with the senses. When we experience cognition, including legal phenomena, we do not separate mental activity from sensory activity, they work in unison to create a unique experience that we will refer to in the future when faced with relevant triggers. Thus, an inner feeling is developed that is the product of the symbiosis of the above factors. Judges rely on this feeling, in particular, when making difficult decisions when the sense of justice is at odds with the existing legal norms. Given the authors' numerous questions about how law senses, can we consider law as a phenomenon to be an organism that acquires not only intellectual but also sensory and even intuitive capabilities?

Nonetheless, the socio-legal method requires new approaches for us as lawyers to gain a deeper understanding of *why* and *for whom* (emphasis added) we are creating and implementing laws. While the sense of hearing is often considered reasonable,⁸¹ listening and hearing sometimes require more empathetic effort than rationality. A judge overwhelmed with numerous ongoing cases may need to delve into a case immediately and must sharpen their senses to make quick, reasonable, and fair decisions. What does it take for the law to come to its senses? Is it a non-sensical regulation along with legislation collisions that trigger a more sensitive approach to dealing with laws? Or is it a humane approach to responsible interaction within legal institutions? Maybe we could develop a new routine for legal discourse similar to the way how we comprehend the world where for instance hearing means not just a formal familiarising with testimony but careful consideration of what comes from inside and outside and constitutes one's problem.

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⁸⁰ See "Law and the Senses: Explorations in Sensori-Legal Studies," *Law and the Senses*, accessed October 4, 2024, <https://lawandthesenses.org/>.

⁸¹ Howes and Classen, *Ways of Sensing*, 2.

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Alina Hrubá. To Be or Not to Be Heard: An Introduction to Sensori-Legal Studies and Sensory Dimensions of the Courtroom

Abstract. This paper delves into the emergence of sensory dimensions of law and the reasons behind it. This shift in legal studies is known by various names such as sensori-legal studies, sensory, or sensational jurisprudence. Contemporary scholars are exploring how law is perceived and its relationship to embodied experience in society through the senses by posing various research questions. Some focus on a specific sense within legal reality, while others emphasize the unity of their diverse nature. Nevertheless, the common thread among these endeavours is to highlight the overemphasized role of reason in the law and explore how our sensory experiences contribute to and shift legal norms and their implementation.

The following theoretical introduction aims to enlighten readers on key theoretical findings in the emerging field and draw new approaches to conducting legal anthropological research. How many

senses are there? Should legal senses such as judicial sense or sense of justice be included? Where is the borderline between senses and affects? Focusing on the court as an institution where the law is put into action and the place where people encounter the coldness of procedural requirements, I briefly touch on the sense of hearing and its role in the administration of justice. I contemplate how the sensory ambiance of the courtroom contributes to the judicial procedure and whether the formal act of a hearing genuinely ensures that parties to the process feel heard. Finally, this essay invites reflection on how the capacity to listen influences making fair decisions and ensuring that justice is served.

Keywords: sensori-legal studies; sensational jurisprudence; socio-legal studies; hearing; courts; sensory ethnography.

Аліна Груба. Бути чи не бути почутим: вступ до сенсорно-правових досліджень та сенсорних вимірів судової зали

Анотація. У цій статті розглядається становлення сенсорних вимірів права та причини їх виникнення. Цей зсув у правових дослідженнях відомий під різними назвами, такими як сенсорно-правові дослідження, сенсорна або чуттєва юриспруденція. Сучасні науковці досліджують, як сприймається право та його зв'язок із втіленням досвідом у суспільстві через органи чуття за допомогою різних підходів. Одні зосереджуються на конкретному чутті, вивчаючи правову реальність, інші наголошують на єдинстві їх різноманіття. Тим не менш, спільною рисою цих досліджень є підкреслення перебільшеної ролі раціонального в праві та вивчення того, як наш чуттєвий досвід впливає на правові норми та їхню імплементацію, а також змінює їх.

Цей теоретичний вступ має на меті ознайомити читачів із ключовими теоретичними висновками у цій новій галузі та запропонувати нові підходи до проведення правових антропологічних досліджень. Скільки існує відчуттів? Чи слід включати в їх перелік правові відчуття, такі як суддівське чуття або почуття справедливості? Де пролягає межа між відчуттями та афектами? Зосередившись на суді як інституції, де закон втілюється в життя, і місці, де люди стикаються з холодністю процесуальних вимог, я коротко зупиняюся на відчутті слуху та його ролі у відправленні правосуддя. Я розмірковую над тим, як сенсорна атмосфера судової зали сприяє судовій процедурі і чи справді формальний акт слухання гарантує, що сторони процесу відчувають себе почутими. Наостанок, це есе пропонує поміркувати над тим, як спроможність вислухати впливає на прийняття чесних рішень та досягнення справедливості.

Ключові слова: сенсорно-правові дослідження; чуттєва юриспруденція; соціально-правові дослідження; слухання; суди; сенсорна етнографія.

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