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Shaking Mr Jones: law and touch[1]

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Abstract

This article is about how law constructs its own truths through touch. Whilst there has been an impressive body of work on how the visual paradigm permeates law, less has been written about the other senses and their connected clusters of knowledge, specifically the haptic – or touch-related – paradigm. One of the aims of the article, therefore, is to bring touch to sociolegal theory. Another aim, however, is to trace some ways in which encounters, dispositions, feelings and contact – all forms of touch in themselves – shape law's objects and parameters. The case-studies in this article all raise the question of how touch constitutes the proper function of criminal regulation in relation to embodied encounters – the nude body in public, the alternative sexual space.

'I have been extremely shaken by this. It has been very upsetting and worrying. I don't want to bring up my children in such an environment.' (Mr Morien Jones, quoted by the BBC, 25 May 2008, talking about the experience of seeing his neighbour Lynett Burgess walk naked along a shared driveway.)

Introduction

This article is about how law constructs its own truths through touch. Whilst there has been an impressive body of work on how the visual paradigm permeates law, less has been written about the other senses and their connected clusters of knowledge, specifically the haptic – or touch-related – paradigm. One of the aims of the article, therefore, is to bring touch to sociolegal theory. Another aim, however, is to trace some ways in which encounters, dispositions, feelings and contact – all forms of touch in themselves – shape law's objects and parameters. The case-studies in this article all raise the question of how touch constitutes the proper function of criminal regulation in relation to embodied encounters – the nude body in public, the alternative sexual space.

Mariana Valverde argues that the forensic *gaze* aims to 'make legal truths physically visible' (Valverde, 2003, p. 58). In one chapter of her 2003 book *Law's Dream of a Common Knowledge*, she focuses on the variegated meanings and effects of semen in Canadian criminal trials. She argues that law's forensic gaze relies not on 'the body' as the archetypal clue, but on body parts or bodily substances (p. 57). And she shows how semen becomes the visible sign for legal abstractions such as 'indecency' and 'lewdness' (p. 57). In the following account, I investigate how embodied dispositions – feeling 'shaken', feeling shocked, feeling someone else's pain – are mobilised in the same criminal law trials that Valverde cites, as well as in a prosecution for indecent exposure in the UK, to construct, and circulate within law, normative concepts of indecency and impropriety. As such, the article takes on board, but attempts to re-orient through touch, Valverde's insights into the knowledge-value of body parts. Just as the forensic gaze gathers visible clues and presents them to legal processes, we could work with a concept of the 'forensic *touch*' to *feel* how dispositions and physical impacts create the 'real', haptic legal world.

1 Earlier versions of this article were presented at 'Gender Futures: Law, Critique and the Struggle for Something More', 3–4 April 2009, University of Westminster, organised by the AHRC Research Centre for Law, Gender and Sexuality, and at 'Refiguring Sex: Somatechnic (Re)visions', 20–21 November 2009, organised by the Somatechnics Research Centre, Macquarie University. Thank you to co-participants for their useful feedback. Many thanks also to Davina Cooper, Didi Herman, Rosemary Hunter and Sarah Keenan for comments on earlier drafts. Any errors are my own.

Haptic norms – felt as impacts, caresses, being shaken, or as feelings of assault – contribute to the intersensorial ways in which law encounters its objects. So, for example, physical feelings and contact, moving between vision and touch, carry evidential weight in bawdy house trials in Ontario (as we will see), even if this weight is not often acknowledged. But touch also has its own effects *on law*. In two of the case-studies below, instances of touch link sexual encounters with norms around public/private or around the concept of propriety or decency, and these haptic rationalities in turn open up space for criminal regulation, or the contestation of mainstream norms, or both.

This mobilisation of touch draws on, but departs in significant ways from, existing sociolegal literatures on law and the senses – the work of Bernard Hibbitts on law's reliance on vision, or ocularcentrism (Hibbitts, 1994), and Lionel Bently and Leo Flynn's edited collection *Sensational Jurisprudence* (Bently and Flynn, 1996). Law's privileging of the visual has been the subject of regular commentary over the last two decades, but the emphasis has largely been on law's excision or use of certain types of sensory experience, not on what touch, as a set of rationalities in itself, brings to legal processes. And at this stage, I have three arguments to make. The first relates to what law does. When arguments are made about law's privileging of the scopic, or the aural, they often (although not always) operate with the implication that law takes up these paradigms and uses them for its own purposes. In this article, I use a diagnostic stance in relation to law and the sensorium. Instead of arguing that the effects of touch on law are overlooked and should be reinstated, or that touch is a more fruitful paradigm, better suited to questions of social justice, I trace what touch does to legal knowledges, specifically what touch does to the way these knowledges produce and imagine 'improper' corporeal encounters.

Second, no sensory paradigm operates on its own in law. The sensorium has differing effects, at different times, and in different contexts. For this reason, while it is very easy to find instances of prohibited touch in law – assault, sexual abuse, grievous bodily harm – I have chosen case-studies that emphasis the irreducibility of touch in relation to other senses, mainly vision. Mr Jones, for example, cited above, is shaken by what he sees. This is an intersensorial feeling, and it connects a normative paradigm of clothed propriety with embodied reactions. And my third argument relates to how the body is conceptualised in intersensorial legal encounters. Working through the impact of touch on law means working without a coherent, autonomous sense of the legal subject and of his/her coherent, whole body. Furthermore, it requires understanding senses not to be individuated or divided between themselves, between sight, touch, hearing and so on. In this way, sensual experiences are available for circulation as knowledges, whether normative or not, without being attached to particular areas of the body or to particular phenomenological experiences.

In the following sections, I analyse impressions, sensations and contact – different ways of understanding touch – for their differing effects on the law. The three case-studies below – Ms Burgess's nakedness and its shaking of Mr Jones, and the re-reading, or re-orientation, of two of Valverde's case-studies concerning criminal prosecutions for indecent behaviour in Ontario, Canada – are intended to push our understandings of law's haptic effects away from questions of who touched whom and how, to broader questions of how touch is constructed and how this relates to social and legal norms. I begin with an analysis, then, of social constructions of touch, as well as of more recent work on impressions. The following two sections introduce the case-studies and then work through different ways in which touch operates to align propriety with the normative basis of criminal regulation. I then consider what it means for this analysis that all three case-studies engage overtly anti-normative behaviour. My conclusion is that touch is one of the main routes through which propriety is organised, and mobilised, in law, and that paying attention to broader constructions of legal touch helps us to understand how mainstream norms are reiterated through criminal regulation.

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Touching law

Touch can be understood as an autonomous sense or as a constituent part of a 'sensorium', human or otherwise (see Gabrys, 2007). It can be palliative (Candlin, 2008), attractive, magical, destructive, a means of manipulation and control, or a means of contamination (see generally Howes, 2005; Classen, 2005).[2] It can mobilise allure, or aversion, or both. Theories of touch both afford rational subjectivity to those-who-touch, and/or they figure touch as a medium through which subjects and technologies interrelate (Candlin, 2008; Parisi, 2008). And technological innovations, whilst they transform techniques of the body in apparently new ways, might *support* just as much as they *subvert* long-standing perceptual paradigms (Parisi, 2008).

If touch acts forensically in law, then it can be taken as part of a wider cluster of techniques (including visual techniques) through which those involved in criminal and other forms of regulation discern which laws and moral values have been broken, and how (Valverde, 2003, p. 53). As such, it can be understood as a tool, or technique, which produces certain encounters, stances, desires and behaviours as morally deficient. This covers a wide range of acts or habits, from nudism and other forms of public undress (see further Cooper, forthcoming) to anti-normative sexual practices, such as s/m eroticism or public masturbation and stripping, to the more conventionally understood objects of criminal law: assault and sexual abuse.

However, the means by which touch exerts discursive force in all these scenarios is still at issue. Touch is never merely a mediator for social norms and moral values; instead, it mobilises rationalities of its own. Acting in its regulatory capacity, touch does not always stick to processes of gathering evidence and authenticating 'facts' in service of the law. That is to say, it is not merely a legal tool. Not only does touch create new legal knowledges, it also brings impressions into the workings of criminal regulation. If legal truths are rendered physically visible, then they are also felt as impressions on the body. And making this point – that touch and 'feeling' are central to the operation of law – is not merely re-stating the well-established view that emotions permeate legal regulation (see, for example, Maroney 2006; Bandes, 2000). In this sense, I am not using 'feeling' solely to refer to emotions. Instead, my argument draws on recent work in critical theory that focuses on the intermingling of touch, affect and the social (for example, Ahmed, 2004).[3]

According to Sara Ahmed, for example, emotions do not exist within the subject or the object. Instead, it is through having contact with another or with an object that feelings (including emotions) are created (p. 6). Feelings are mediated between the emotional and the corporeal, through impressions. Making an impression, as Ahmed points out, has these meanings all at once: it means making a mark, having an effect on someone's feelings, having a belief, or imitating someone (p. 6). Specifically for the purposes of this article, it combines an impact on the body, or touch – the 'press' – with emotional and political knowledges. As Ahmed puts it 'the surfaces of bodies "surface" as an

2 Thanks to Didi Herman for this last point.

3 In a previous article, I argued that Ahmed's work on impressions, tracing physical encounters, movements toward and away from other people, and their effect in constituting and re-circulating power relations, brings new perspectives to how we understand the 'intersectional' subject in equality law (Grabham, 2009). In particular, I argued that one way of moving beyond the disciplinary identity formations that equality law produces is to pay attention to the impressions that subjects make on each other, in a shift from identity to encounter. Whilst the project of gaining or asserting rights is contested within critical and feminist circles, I also did not (and do not) agree with arguments that using discrimination law is always a 'quick fix' (cf. Cvetkovich, 2003, p. 16) or that rights claims necessarily invoke what Wendy Brown has argued is the 'wounded' liberal subject (Brown, 1995) (Grabham 2009, p. 199). Instead, I traced a way through these positions to argue that if law is understood not as an institutional project, but as a means of engaging 'public culture' (cf. Cvetkovich, 2003, p. 17) through narrative and other forms, then it is possible to look at how subjects make impressions on the law through rights arguments. Impressing on the law, in this way, might mean leaving traces of hurt and trauma, and other emotional dispositions, within the law itself.

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effect of the impressions left by others' (p. 6). But impressions also re-circulate histories of charged touch – instances of violence, aversion, and their connectedness to social injustice.

My concern is therefore with how encounters shape law; how impressions shape law's boundaries. What Ahmed's work on impressions brings to contemporary theories of touch is an understanding of the mutual imbrication of the social and the corporeal within specific encounters. This has useful applications in working through how law and touch interrelate. Understanding touch through impressions brings with it a focus on fleeting, sometimes mediated encounters, which occur within the fabric of socialised physical dispositions. These encounters both *re-embed* social histories *in the present*, and also provide opportunities for *re-shaping* the social. Focusing on impressions, in this way, requires conceptualising dispositions, encounters and instances of touch not only as the *effects* of regimes of governance, but as deploying, in themselves, sets of knowledge and strategies that shape and infiltrate law's various governing, and knowledge-forming, processes.

The question following on from this, however, is what forms of touch mobilise which feelings. There is a conceptual difference, for example, between types of touch (caressing, nudging, prodding, beating) and the feelings that they bring with them (aversion, affection). It is possible to have both a palliative caress, which, following the work of Fiona Candlin, would mean a form of touch expressly mobilised to head off further interactions (see Candlin, 2008), and an alluring caress, aiming to invite more intimate forms of touch. This is a different way of asserting that touch and impressions, whilst irreducible in the moments in which they occur (Why would it matter, for example, that a caress is a caress when it is meant to ameliorate hurt feelings instead of invite an intimate encounter?), can usefully be distinguished. And the reason for such a distinction is not further to classify corporeal encounters, as if such classification were needed, but instead to work through the connections of touch to wider social preoccupations.

Applying Ahmed's work on impressions to the legal mobilisation of touch therefore requires a small-scale analysis of what each type of touch might be doing. If, for example, in the following account of Mr Jones being shaken, the argument is that Ms Burgess made an impression on Mr Jones by walking down her driveway naked, then the type of impression, according to Ahmed, would be the type that has an effect on someone's feelings. Mr Jones's feelings were hurt or upset by seeing Ms Burgess naked. But if the argument is more specifically that Mr Jones had an aversive impression, then we need to trace the alignments, however fractured or indistinct, of this aversion with normative constructions of propriety. Not only that, but the question that hovers around any argument of indecency is when, and on what terms, formal law becomes involved.

There is a further point to be made, in the following case-studies, about the direction from which one approaches touch and law. As will become apparent, the case-study involving Morien Jones and Lynett Burgess engages an intercorporeal effect on Mr Jones's feelings: an impression. It does not involve direct physical contact. On the other hand, Mariana Valverde's analysis of the 'Monday night sperm attacks' – criminal prosecution of gay stripping – involves symbolic contact: the contact of flying semen with members of the audience. Again, as we will see, Valverde's example of a prosecution of s/m activity engages not physical contact but the uncomfortable sensation that one officer, Constable Baird, experiences when a client is consensually beaten.

Mobilisations of touch: nudism, alternative sexual practices

Touch can therefore be constructed in a number of different, and contradictory, ways. And in the following case-studies, three specific forms of touch are at work: impressions, sensations and contact. They are interchangeable to a certain extent. The term 'impressions', for example, is a useful way of analysing how sensations and contact are linked to histories of social injustice; sensations are never only physical but also affective; contact, whilst more obviously physical, is always shaped through other dynamics (whether through encounters or by the organisation of space, through architecture

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and town planning, for example). However, they also provide different routes into investigating law and touch, based on differing constructions of temporal and spatial alignment, corporeal boundaries and proximity, and social mediation. Using a lens of spatial proximity, for example, contact may appear 'stronger' and more direct than an impression. Or, focusing on temporality, impressions and sensations carry more extensive, and disjunctive, possibilities than contact, which apparently requires temporal alignment 'in the moment'. Social mediation, on the other hand, is central to many forms of contact and impressions, whilst it is not as central to sensations (which can be produced or experienced individually, in relation to rides at the funfair, for example, and other technologies, although no technology is socially unmediated).

The first case-study, then, raises the question of how touch, sensations and impressions interrelate. On 25 May 2006, the BBC news website reported that a woman had been cleared of indecent exposure after she was filmed walking naked outside her house (BBC News, 2006). No formal transcripts are kept of magistrates' court proceedings, so media reports of the case are significant for their role in conveying what happened. Cardigan Magistrates' Court accepted that Ms Burgess had not intended to cause harm or distress and found her not guilty. During the hearing, prosecutor Maggie Hughes apparently argued that nude sunbathing, which Ms Burgess had been doing for some time, 'could be grossly offensive to normal decent persons in society' (BBC News, 2006), and she asked Ms Burgess, 'What kind of kick do you get from this behaviour?'. Ms Burgess responded by saying 'I take exception to the word kick and find you prudish'. Ms Burgess is reported to have said that the case had caused her great anxiety and had left her living 'like a hermit' (BBC News, 2006).

What makes this case particularly interesting is that Lynett Burgess was not, strictly speaking, walking about naked in public. According to the BBC, she had been 'strolling' naked along a driveway that she shared with her neighbour Morien Jones when his builder caught her on film. That is to say, Ms Burgess was prosecuted for being nude on property that was partly her own, and therefore, at least on one analysis, she was prosecuted (if unsuccessfully) for being nude in a semi-private space. Recent scholarship investigates nudism's connections with other social inequalities or alternative practices. Davina Cooper, in particular, argues that nudism provides a useful lens for analysing the role of norms and values, the role of place, and the role of sensory encounters in constituting relations of inequality (Cooper, forthcoming). Mr Jones certainly operated with a sense of 'out-of-placedness', which allowed norms about dress and propriety to circulate beyond the encounter. He is reported to have said: 'I have been extremely shaken by this. It has been very upsetting and worrying. I don't want to bring up my children in such an environment' (BBC News, 2006). As prosecutions for indecent exposure under the Sexual Offences Act 2003 require someone to have been distressed at seeing public or semi-public nudity, Mr Jones was presumably at least partially responsible for the case going to court. His distress was seeing a neighbour naked in a space that he did not associate with nakedness – the front driveway, even though the driveway was also partly her property. But it is how he expresses the harm that is interesting for the purposes of this article: he states that he was shaken. A criminal offence that appears to be wholly reliant on sight was expressed through an experience more akin to touch. Ms Burgess's impropriety physically agitated him. Or, more specifically, Mr Jones was speaking of an inter-sensorial encounter – what he saw touched him.

Two further examples of the relationship between touch, impropriety and law can be found in Mariana Valverde's (2003) book *Law's Dream of a Common Knowledge*. The first concerns the Toronto gay strip bar Remington's, which was prosecuted in 1997 for indecent acts and prostitution. Remington's had put on a series of shows called the 'Monday night sperm attack', in which male strippers masturbated on stage. The local vice squad sent officers to view proceedings, and they eventually laid charges. Valverde is interested in how the law's forensic gaze disaggregates body parts and bodily functions in an attempt to make legal truths 'physically visible' (p. 58). In her analysis of the trial transcripts, Valverde shows how semen became an indicator of 'real' masturbation in the Remington's case. Rather than arguing that masturbation for pay was not 'real' sex, defence counsel

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Edward Greenspan attempted to undermine prosecution evidence about the presence of semen on the strippers during the show by highlighting the strippers' use of Vaseline (p. 67). In a line of questioning intended to show homophobic bias on the part of the vice squad officers, one officer was also asked why the sight of a female stripper masturbating on stage did not concern him. His answer, that female strippers only pretend to masturbate, underlines the conclusion that the presence of semen is the legally significant 'clue' or marker of sex (p. 67).

However, I am interested in another aspect of the evidence: the attention paid to what the semen did – whether and when strippers ejaculated, and how far the substance went across the room. What seems to have been just as significant to the court's overall understanding of the legal situation was not just whether the substance was semen, Vaseline, or something else, but crucially who got hit by the semen or, more specifically, whether the semen *touched* anyone. Valverde states that police officers 'generated images of semen flying over the stage and landing on customers' heads', images which did not, in the end, hold up to scrutiny (p. 72). She cites one officer's detailed notes:

> '[A dancer] sat on the box [on the stage] and began masturbating himself . . . While he was doing this, he suddenly arched his back, and he ejaculated a very small amount while lying on his back on the stage.' (Officer Newman, 24 June 1997, cited in Valverde, 2003, p. 71).

The amount of the semen was important to the officer at this point, but also the stripper's position on his back on the stage, from where presumably it would be very difficult for any amount of semen to travel and hit the audience. Valverde also indicates the prosecutor's concern with the semen's line of flight:

> 'The prosecutor, dissatisfied by the smallness of the semen production, attempted to evoke the classically orgasmic male body of porn by prompting the officer, "How far – where the ejaculate went, how far is that back from the stage?" The obvious assumption prompting this question is that the illegality of the situation was directly proportional to the amount of semen and to the distance it traveled.' (Valverde, 2003, p. 71).

I want to take a less visual angle on this evidence and argue that the question of *touch* also underpinned much of the questioning to which Valverde alludes – whose bodily substance touched what or whom. Just as the presence of semen was a forensically significant fact, the contact between bodies or between bodies and bodily substances also constituted what Valverde terms a 'clue'. Whether or not the semen hit the customers on the head is not necessarily relevant: the importance of the impact in the police officer's account is, however. The centrality of physical contact, however indirect or distanced, to the prosecution of the 'Monday night sperm attack' is another example of law's epistemological reliance on touch.

The second example I have drawn from Valverde's work is the prosecution of Ms Tracy Jean Bedford in Newmarket (north of Toronto) for running a sado-masochistic dominatrix business out of her home (p. 74). Again, the prosecution had to prove that sex had occurred, and again, police officers presented a set of physical clues to the court. In the course of the trial, however, it became apparent that one police officer had posed as a client to gather evidence, and it is his experiences that are useful for the purposes of this article. Constable Baird posed as a voyeur (as Valverde points out, he did not see the irony in this positioning), pulled down his pants and lay on the floor in response to Ms Bedford's command. The officer also witnessed the consensual beating of another client and explains its impact on him with a sports analogy: 'As if we were playing sports and someone got really – got kicked between the legs, and although it didn't happen to you, you kind of tend to go, oooohh" (p. 76). Valverde highlights the officer's identification with the other man's pain and this identification with another person's physical encounter becomes part of the evidence for a criminal prosecution. The touching here is like Mr Jones's feeling of being shaken, but Constable Baird, unlike Mr Jones, admits to a level of identification. This identification performs at least two

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functions: it makes Constable Baird's testimony more believable because it roots him and his experience in the same space as Ms Bedford and her client, and it also, as Valverde points out, highlights the apparent 'weirdness' of the s/m activity. Un*feeling* voyeurism would not have conveyed either of these two elements to the court.

Rationalities of touch

In all three examples, then, feelings and touch are central to the criminal law's approach to different forms of impropriety, whether unwanted nakedness, public masturbation or paid s/m activity. Mr Jones, for example, is hurt and shaken by Ms Burgess's nakedness. This could be described as an intercorporeal feeling, as it is certainly not the result of physical contact. But it is also a feeling of upset. The felt-ness of Ms Burgess's nakedness is experienced by Mr Jones as shock and anxiety ('It has been very upsetting and worrying') and through the sensation of being shaken. Touch therefore operates in this encounter without contact between bodies or bodily parts and without temporal alignment or spatial proximity, for whilst Ms Burgess was filmed walking down the shared driveway between hers and Mr Jones's houses, Mr Jones was not present at the time of the filming. The sensation of being shaken, this time very obviously socially mediated, brings touch into Mr Jones's experience of Ms Burgess's nakedness. It is an aversive impression, mobilising disgust, and implicitly linking Ms Burgess's naked body with Mr Jones's children ('I don't want to bring up my children in such an environment'), thereby operating with the rationales of child abuse and impropriety. There is also the spectre of contamination: Ms Burgess has contaminated the shared property with her unclothed body, and even though he was not present when it happened, it has changed Mr Jones's lived experience of 'home'. Mr Jones felt all of these things through a physical disposition: he felt disgust, fear and impropriety, and the purchase of this feeling travelled into an attempted prosecution for indecent exposure under UK law.

The 'Monday night sperm attacks', on the other hand, operate through a rationality of contact: what contact means, what it does, where it leads. It provides an example of how contact, or the threat of contact, produces effects in the criminal law by mobilising distaste and fear, and by rendering spaces and dispositions improper. And the threat of contact would not have these effects without an extension of the apparent capabilities of the flying semen. The semen, as Valverde points out, is endowed with sexual potency, the kind of potency that can pervert other bodies, substances and fluids upon contact. But it also carries with it social histories (impressions) relating to contamination. The conceptual latticework of HIV, sexual deviancy and contamination is a familiar structure in understanding criminal and public policy constructions of queer sex, and here it is routed through impact and contact to produce legal effects: a sense of sexual outrage and excess. Impact/contact here means not only infiltration and disease, it also brings with it a sense of forward motion.

Where Ms Burgess's nakedness radiates outwards, belatedly shaking its witnesses, the flying semen travels forward with the threat of disease, and augers proliferation. In both of these cases, the movement/impression emanates outward from the improper subject. That is to say, the improper subject is seen to touch other subjects, and it is this movement that provides the crucial friction for criminal regulation. But this is not always the case. In the final example, Constable Baird invites movement toward himself in order to de-legitimise and render outrageous the consensual beating of Ms Bedford's (other) client. Whilst his sense of unease at witnessing the beating is, in some ways, very like Mr Jones's sensation of being shaken, nevertheless the analogy of being kicked between the legs (more or less haptically distressing depending on one's physicality), rhetorically brings the impact onto his own body through empathetic wincing. Constable Baird is simultaneously being kicked between the legs and is expressing sympathy for someone else's pain. The implication of this is both that Constable Baird is a 'good guy' – he is able to put himself in other people's positions – but also that being such a 'good guy' and finding that form of touch harmful, the (other) client must not have been in their right

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mind. This reinterpretation, through empathy, of an impact felt by someone else has the normative effect of rendering the 'other' touch bizarre.

With these preliminary suggestions in mind, two further, more general, points can be made about the connection of touch with criminal regulation. First, criminal regulation reinterprets common forms of touch and renders them more significant or potent. One way of describing this is through the metaphor of distortion: legal rationalities distort touch so that rituals of alternative contact appear not only to be oppositional, playful or subversive, but also magical, destructive or infantile. For example, the erotic whipping of Ms Bedford's client, presumably understood by the client as a form of pleasurable and illicit touch or force, is taken up and re-formulated by the criminal law as an unwanted and humiliating impact (being kicked between the legs). This resonates with the work of Matthew Weait, who, exploring English law's long-standing attachment to bloodied, excruciating pain as punishment for a range of offences, argues that echoes of this attachment result in consensual s/m practices being successfully prosecuted as assault (Weait, 1996).

Again, Lynett Burgess undresses and walks along a pathway outside her house. In the prosecution's case, her actions are so haptically potent, they get at Mr Jones through the lens of a video camera, and they shake him from a distance. There is something about Mr Jones's shaking in particular that brings us to witches. Feminist scholars have drawn attention to the social understandings of harm that contributed to women being accused of witchcraft in the seventeenth century. For a start, little or no temporal alignment was believed to be needed to prove the effects of witchcraft (Noonan, 2002). Sheila Noonan, for example, has pointed out that a lag of up to ten years could exist between offending a witch and failing ill as a result, with the illness being admissible as evidence of witchcraft (Noonan, 2002, p. 104). Furthermore, witches did not have to be present in order to commit harmful acts; they could touch from a distance (Classen, 2005). Here, the roles are reversed, because it is Mr Jones, and not Lynett Burgess, who is absent from the scene. Nevertheless, a form of intercorporeal touch (the shake) takes its place at the centre of the accusation, displaces the fact of Mr Jones's absence from the scene, and allows the prosecution to go ahead. This intercorporeal touch is what Ahmed would term an 'impression', for whilst the impact is not direct, it has affected Mr Jones's feelings, and it brings into the encounter other histories and other, gendered, interpretations of touch.

Second, however, touch works its own way *into* legal regulation. Signifying and mobilising embodied dispositions such as outrage, shock, dislike, affection and pain, touch embeds itself into the normative fabric of the law, creating and maintaining expectations around what is proper, decent and safe. In the examples cited here, normative paradigms of touch constitute specific spaces and interactions as the proper function of law and re-circulate ideas of propriety within criminal law on decency and sexuality. Touch becomes disattached from individual legal subjects and encounters and gets taken up within the institutional structures of the law, creating its own meanings en route.

Whilst touch should be conceptualised as felt experience, as instances of impact, identification and being shaken, for example, the visual and the haptic circulate as knowledge-creating processes despite, alongside or without phenomenological experiences of sight and touch. This is not to downplay the significance to legal regulation of felt experience, rather it is to argue that felt experiences are detached from specific moments and mobilised within legal processes, creating a constellation of knowledge effects. Not only does Ms Burgess not have to walk up to Mr Jones, take him by the shoulders and rattle him before he feels shaken by her nudity – he can feel her nudity intercorporeally – but also this feeling of being shaken does not stick with Mr Jones. It signifies shock and outrage, and it lubricates a legal understanding of Ms Burgess's apparent indecency, out-of-placeness. It travels from the moment Mr Jones sees the film into a criminal prosecution for indecent exposure, but in doing so, it continues to create and re-create impressions (felt and metaphorical) of outrage that produce Ms Burgess's nudity as the proper subject of law. Constable Baird's avowed discomfort at another customer's pain constructs s/m sexual activity as 'weird', unnatural and 'improper' for the purposes of a bawdy house

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prosecution. Finally, the semen does not have to actually hit the customers of the strip bar on the head in order for it to have haptic effects. By mythically flying through the air it enhances the apparent impropriety of the scene, drawing the strip bar further into the realms of sexual marginality and further within the purview of criminal regulation.

'A most extraordinary jumble': re-shaping touch

> 'The experience of going to the beach at Coney Island was multisensory: feeling the crashing waves against your body and the hot sand in your fingers; smelling clam chowder and the salty ocean; hearing music and shrieks of pleasure-terror from the shock of cool water and patrons on mechanical rides; tasting cold beer and roasted peanuts; seeing unimaginable displays of electric illumination.' (Sally, 2006, p. 305).

In all three case-studies in this article, however, touch becomes important as an epistemological basis for criminal regulation at the moment when law encounters alternative practices. Nudism, gay erotic performance and s/m eroticism are, in some ways, like sixteenth- and seventeenth-century ideas about witchcraft, all forms of activity which are associated with oppositional approaches to mainstream social norms, but which also maintain their own strong internal regulations. To the extent that they 'aspire to accomplish some routine aspect of social life in a more democratic, equal, or freer fashion' (Cooper, 2008, p. 300), they could be viewed as 'everyday utopias', freeing people respectively from their usual clothed, proper, heteronormative or 'vanilla' practices (see further Cooper, 2007). All three forms of conduct are constituted by their social and economic environment at any given time, as well as by attitudes to health, propriety, nature and self-discipline. In this way, they could be described as externally oriented. However, it is their norm-creating capacities that create durable alternative social spaces and ways of living.

Alternative social spaces create alternative routines of touching. These norms relate variously to the spatial or bodily location of touching, the type of touching, differing codes about who can touch who, and differing expectations around exposure and dress. Nudist spaces, for example, feature the normalisation of unclothed bodies as well as specific codes of looking, physical contact, relating between adults and children and between women and men, approaching other nudists or textiles, as well as relating to the environment (Valverde and Cirak, 2003, p. 115; Boura, 2007). Alternative sexual spaces or venues bring about sexual touching in 'new' or apparently 'public' spaces, spectacles of self-touching (masturbation) or touching others, new forms of mediated contact, and reconfigured expectations around desire and pain.

An argument could be made, along these lines, that propriety emerges as the proper focus of law in situations where touch is being reinterpreted and refigured through alternative practices. Yet it is not necessarily merely the *alternative* nature of touch, in itself, which juggles with norms around propriety and decency. In Lynn Sally's work on the Coney Island amusement rides – funfairs – in turn-of-the-twentieth-century New York, for example, kinaesthetic thrills are associated with the re-shaping of moralities. Sensorial overload, the dazzling speed of the new pleasure machines and their effects on bodies (rattling, shaking, jolting), as well as the way these machines forced strangers into close proximity whilst clothing was blown about, all contributed to a reassessment of leisure time, public cultures and decency (Sally, 2006, p. 297). It was hardly possible for Coney Island *not* to re-shape norms of touch through new forms of technologically mediated encounter. And whilst new technologies were not the only driving force for shifting formations of decency, nevertheless moralities were challenged at the funfairs through less intentional activities than the nudism, stripping and s/m of the case-studies. In this way, whilst intentional alternative forms of touch usefully illuminate how normative paradigms are worked through corporeal encounters, they do not provide the only

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explanation for fresh touch-related norms. Riding on the merry-go-round is very different from walking outside one's house unclothed, yet both activities shift social norms through embodied dispositions.

Sally argues that the amusement rides were a way of challenging the sensorial deprivation of factory work, reconnecting pleasure seekers with forgotten sensations, and allowing them to enjoy machines in new ways (p. 302). Returning to the non-normative practices considered in this article, it is maybe worth asking whether a similar rationale of re-sensitisation applies in the context of neighbourly nudism and alternative erotic practices. In other words, does it reveal anything useful to think about these practices as ways of challenging apparently mundane or de-sensitised haptic economies, finding new ways of enjoying the social through refiguring touch? Possibly they could be interpreted as oppositional ways of mobilising impressions in the furtherance of fresh paradigms of experience, and new social norms, although I doubt that mainstream norms should themselves be interpreted as 'unfeeling'. In any case, there appears to be something more than oppositional practice going on. Just as the pleasure seekers used similar mechanical technologies for fun as they would have used to get to work, or even to pursue work-related tasks, so do nudists and non-normative sexual constituencies shape for pleasure the same norms that underpin mainstream behaviours, dispositions and corporeal encounters.

Concluding remarks

Law mobilises touch within constructions of ideas of propriety. It takes instances of contact, coming together, feeling, pleasure, impact or caress, and it not only endows them with evidential force, but it brings haptic shadows to bear on the encounter: the witch's potent or contaminating touch, punishment through pain, the kick between the legs. This re-constitutes not only normative structures of sexuality and propriety, but it also strengthens and re-circulates dominant haptic paradigms (assault, magic, for example), which have connections to other histories. It has these effects, through impressions, on the body. Mr Jones feels the criminal law on indecent exposure when he is shaken: the law interprets and mediates his embodied reaction. Constable Baird feels the whipping through his empathetic wincing, not as fun but as assault.

Working through the force of touch on legal regulation leads to an understanding of the productive possibilities of impressions. When law uses touch, it calls up witches, or colonised others, or kicks between the legs, but the inter-sensorial capacities of impressions to re-shape social norms remains potent. Therefore, whilst it would be easy to stick with the analytic task of tracing the dominance, within law, of vision, or touch, or any other sense, the more appealing project is to look at how impressions exert themselves on legal rationalities. If there is a metaphor to be used for what I have tried to achieve with this article, it is the metaphor of the funfair. Taking my cue from Lynn Sally, I want to funfair-ise our understandings of law and touch. The kinaesthetic, erotic and sensory experiences of nudism and alternative sexual practices require us to pay attention to how haptic paradigms mobilise feelings, and to how these feelings encounter legal knowledges and shape social norms. Whilst normatively 'improper' mobilisations of touch attract criminal regulation, the next task then might be to trace how law feels its way into more routinised forms of contact, directing us back to a re-sensitized account of the everyday.

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