

# Courtroom atmospheres

Affective dynamics in court sessions of criminal matter in Vienna



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## **Abstract**

This thesis examines the composition of affective atmospheres, emerging in court sessions of criminal matter in Vienna. The notion of atmosphere is used to explore collective affective qualities, emerging through the interplay between affective bodies and their environment. The focus provides as analytical frame for bringing forward the workings of affect in legal procedures. From a starting point in theories of affect and atmosphere, I cast light at how the affectively charged space is both monitored and beyond control. First, I trace affect through the lens of spatial arrangements of courtrooms. I show how the architectural and interior arrangements and aesthetics of courtrooms are expedient in creating resonance between the bodies and control over the situations, while being visual and material representations of law. Second, I trace affect in the relation between the bodies that produce atmosphere and regard for the bodily capacity to affect and be affected. I consider principles of criminal procedure structuring and disciplining affective bodies in courtrooms and the juridical labour entailing work on emotions. Third, I trace affect in the dynamics and changes of affective atmosphere by showing how atmospheric changes come about and are contested through intensification and ruptures in atmosphere. I discuss the compositions of affective atmosphere in relation to discipline and control converging with bodies entering the legal setting. The ethnographic material is collected through participant observation in one hundred court sessions, as well as through interviews with people involved.

**Keywords:** affect, atmosphere, courtroom, discipline, Vienna

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## **Introduction. One room, multiple moods**

“Is there anyone who has not, at least once, walked into a room and ‘felt the atmosphere’?” (Brennan 2004:1)

A man is seated at the defendant’s chair in the middle of a courtroom. His head is lowered, his shoulders are still and he is resting his arms in his lap seemingly sunk in thought. He is comfortably dressed in grey pants, a grey t-shirt and sneakers, which makes a quite distinct outfit in the solemn setting. A low-voiced conversation is going on in the room but the man does not look concerned about what is being discussed. When a group of people show up in the courtroom door, ready to come in, the judge in front of him speaks to them, but the man does not pay attention to the dialogue. The judge tells the people to wait for a while and sends them back out in the hallway. She walks back and forth behind her desk while fixing her dress and preparing to sit down. Behind the man, in the back of the room, some twenty people are seated. They speak lightheartedly to each other. The judge seems acquainted with them, she comments on something and she directs her gaze to them across the room. Then she takes her seat and addresses the accused. She poses him a line of questions regarding his personal information. He informs that he does not have a profession, education, a job or any relatives and has been living on the streets of Vienna, while residing in Austria. In between, the judge tells him to speak louder and makes him repeat his answers. Suddenly an enigmatic giggle is heard from the rear of the room. It is hard to tell, but it falls off as a response on his negative answer on the question concerning his potential financial fortunes. In light of the previously ascertained information about the man’s living conditions, the giggle comes somewhat patronizing off. The judge gets up from her seat and walks to the window, while continuing by asking the man if he confesses guilty, not guilty or partially guilty. A bang goes off when she closes the window and corrects the curtain.

A long line of witnesses are called in, one on one and a similar conduct is repeated: the witness is allowed to explain his or her relatedness and experiences of the accused. The man has visited their different food services but admitted he cannot pay when they have given him the check for what he has consumed. It only takes a few minutes for everyone to give their version. The judge maintains a steady tone, even though many of the witnesses assure that they do not want to cause the defendant any inconvenience. All of them decline compensation but some of them walk up to her to get her signature on their certificate of attendance. She happily wishes them a good weekend when they leave. Then, the judge hands over the word to a suited up man who stands up to give a short briefing on the man's medical history. The judge and the public prosecutor listen carefully and then it is the public prosecutor turn to plead her case and the accused's counsel presents her side. Finally, the judge addresses the man and asks him to take the seat in the middle again and the whole room stands up to hear her give the verdict that she recites from her papers. When we sit down, she explains: "You will spend two months in jail and then you can go home" — "Out" she corrects herself, "Then you can go out". The man does not respond so the judge turns her attention to his counsel who tells him he should accept the sentence. When the man has left the room, accompanied by his lawyer and the medical expert, the judge smilingly addresses the audience in the back of the room. They start to pose questions to her about the case and the public prosecutor follows the questioning as the judge patiently answers them. She briefly reasons about the verdict and smilingly confides that the security cameras are not turned on when a person in the assembly mentions them. Someone in the crowd asks her about her dress and she becomes subject to a small teasing. She laughs and tells them it helps her gain respect. Then, the questions become critical as the relation between judges and prosecutors and the abandonment of the cross and the bible in courtrooms are handled. Before leaving, a man who seems to be the group's spokesperson, gets up to thank the judge by handing her a gift. The act softens the confrontation between them and the judge seems happily surprised about it.

Above vignette describes a series of moments that take place in a courtroom at the regional court of criminal matter in Vienna. The subject of the session is a charge regarding unpaid restaurant bills and the accused admits the deed without hesitation. The proceeding is implemented

according to the juridical formalities all through until the sentence is proclaimed and accepted. But in parallel, there is something about the situation, beyond what can be articulated as juridical sequencings in a legal conduct. What is significant, is the contrast of what precedes between the man sitting autonomously on the chair in the middle of the room and the judge, the people in the audience, the line of witnesses, the medical expert and the lawyer surrounding him. There is something forgiving about the witnesses contribution while the judge maintains a gravity through the formalities. When the formal part of the session is over, the heavy and crestfallen situation transforms. The people in the audience are visitors from the German Bar Association and a transparency arises between the judge and them in which they share their thoughts on the proceeding and the setting. The collegial teasing of the judge's dress and her apt to reveal secrets about the security cameras can be understood as expressions of a close relationship between people connected to the juridical field. This intimacy, stands in stark contrast to the previous solemnity of the formal legal proceeding. A preparedness to critically question the legal system is revealed. When attuning to these dynamics in the room, we see that both a heavy atmosphere surrounds the setting, but also a commonplace everydayness by which the administering of justice is rendered through.

The study takes interest in atmospheres of court sessions. It is based on participant observation in one hundred court sessions, at the regional court of criminal matter in Vienna, *der Landesgericht für Strafsachen in Wien*, as well as in-depth interviews with people involved in the proceedings. The notion of atmosphere, is used to explore collective affective qualities, that are perceivable as they emerge between bodies and their environment. The atmospheres are understood as what Anderson (2009:77) calls "affective atmospheres", which means that they are the assemblage of affects, that both the material and human give cause to, and reproduce. I use Anderson (2009) to regard affective atmospheres as "spatially discharged affective qualities" (Anderson 2009:80), which means that affective atmospheres come about between affecting and affected bodies related in a space. I use the concept as a theoretical window by which I can identify the affective dynamics of court sessions. The purpose of the study is to bring forward the workings of affect in

legal procedures, as part of the legal entity. The research questions guiding the inquiry to the affective dynamics of court sessions, are posed as follows:

- How does the material of the courtroom, influence the composition of “affective atmospheres” (Anderson 2009)?
- How do affective bodies interplay in the emergence of affective atmosphere?
- What do changes in the compositions of affective atmosphere indicate about workings of affect in courtrooms?

To approach affect, Michels (2015:255) suggests a methodological approach on the compositions of affective atmospheres. I use the take to analyse the affective dynamics in the courtroom, as a composition of affective atmosphere, which provides a frame for understanding affect (Michels 2015:255). This means, that I focus on the components of affective atmosphere, that point at three characteristics of affect: “their spatio-materiality, their sensuality and their (in)stability” (Michels 2015:255). First, I trace affect in the material establishment of affective atmospheres, by looking at the architecture and aesthetics of the setting. Second, I trace affect in the affective atmosphere emerging through interplay between bodies entering the setting. Third, I trace affect in the transformations of affective atmospheres that court sessions compound and go through. By analysing the material arrangement, the coming together of affective bodies and the transformations of affective atmospheres, I explore the working of affect in the court sessions.

More specifically, I explore the courtrooms as places where affective atmospheres are materially crafted (Michels & Steyaert 2017:82) and engineered (Philippopoulos-Mihalopoulos 2015:28) through the material arrangements of the courtroom. This means, that I think along the line of Philippopoulos-Mihalopoulos (2015), who suggests that atmospheres can be deliberately designed for specific purposes. Then, I use Anderson (2009:77) to consider affective atmospheres emerging between the bodies as uncontrollable phenomena reaching those who, with the presence of their affective bodies, participate in its production. I explore the affective dynamics while I consider the juridical roles and the legal conducts. I use Bourdieu (1987) to



understand the professional's terms and ways of being in the setting. This means, that I take interest in the knowledge about how to behave in court sessions. I use Michels (2015:260) to think of the sessions as situations where people's affective capacities are shaped, which helps understand the legal proceedings from the perspective of those who work on the cases. Then, I discuss the work in courtrooms as a share of "emotional labour" (Hochschild 2003). When I further explore the affective turbulence of court sessions I do it through atmospheres, that are "good to think with" (Anderson 2009:80). The disorderly facet of atmosphere, is concludingly explored as subject to workarounds, which means that I get back to Philippopoulos-Mihalopoulos (2015:28) suggestion of atmosphere being engineered through means of securitization.

The location of the court sessions studied, is *Der Landesgericht für Strafsachen in Wien*, which constitutes the largest institution of justice in Austria. It is the first instance for serious criminal offences in the country's legal system (Hausmaninger 2000:124). Austria, is an example of a state under the rule of statutory law, that has a significant role in a democratic republic. The state's monopoly of prosecutions, makes it the official duty of the Austrian state to investigate the public prosecutor's charges of criminal matter (Hausmaninger 2000:185). This constituting principle, suggests a direct connection between the state and the individual subject to law. I take law as a framework and dialogue between the individual and the state (Harris 1996:10) staged through court sessions that are understood as spatio-temporal events "in the making" (Dahlberg 2016:2). Thereby the encounters in courtrooms, tell us about the relation between law and people subject to it.

In this study I add atmosphere to the analysis of the twists and turns of the proceedings in a legal context. The approach is taken in light of two theoretical fields that help analyse affective charges and phenomena in the field of law. The first is the theme of legal anthropology, that has developed by taking law as its focus of research. This study connects to this strand, in that it is an "examination of regular legal culture" (Freeman & Napier 2009:8) because it takes interest in courtroom atmospheres. Anthropological perspectives on law, provide tools for exploring and

examining the field of law as a domain that has palpable impacts on the social in a broader perspective. The second theme used, is theories of affect. These explore collective affective forces by thinking through affect as rooted in the social (Skoggard & Waterston 2015:109). These help attune to what happens between bodies but remains unspoken (Fotaki, Kenny & Vachhani 2017). Affect, is interlinked with power, in that it shapes the contact between people (Athanasiou, Hantzaroula & Yannakopoulos 2008) and therefore tuning to affect, broadens our understanding of how power comes to expression. Here, the workings of power in relation to law are analysed by approaching affective atmospheres in a legal setting.

### *Structure of study*

In this introduction, I give a vignette that serves as an example of how the atmosphere in a courtroom is made up by the different arrangements, the interrelational dynamics and the change in atmosphere. I account for the research questions that are followed up throughout this study's three chapters. In the introduction I also conceptualize my field, the methodological approach and the theoretical context of the study. In the following chapter, I am going to discuss the background of this study by looking closer at an anthropological approach on courtroom conducts through the theoretical fields of law and affect. These are central for the research questions and my fieldwork. In final part of the background section I go through some ethical considerations that I have encountered throughout the work. In chapter one, I explore the material setting of the court rooms. I consider how law takes expression in the aesthetics of the courthouse and the courtrooms and affirm to the sensuous experience of the architecture. This means discussing how the atmosphere emerges in the ordering of spatial dimensions and arrangements. I look closer at the repeated modeling of the interiorities, and introduce the idea of atmosphere as deliberately designed matter (Philippopoulos-Mihalopoulos 2015:176). The take is used in order to critically analyse how the material setup of the room influences the affective atmosphere that emerges.

In chapter two, I discuss how affective bodies come together in the courtroom and by their presence embody the atmosphere (Philippopoulos-Mihalopoulos 2015:122). I discuss how the legal formalities are collectively stage-managed through the roles in the courtroom and explore how these characterize the proceeding. I discuss the distance coming to expression between the professionals and people subject to law. I find it structured by internal workings of the social field of people working with law (Bourdieu 1987). I also contrast some significances of the sessions with the purpose of giving prominence to a few concerns that are of relevance for enabling the proceeding of the court sessions. This means considering the attempts to cope with affective atmospheres and the attempts to craft desirable atmospheres in courtrooms. In chapter three, I discuss changes in the compositions of atmospheres through intensification. I look for patterns in the compositions of atmospheres and discuss affective imitation (Anderson 2009:80). I account for the unpredictability of atmospheres as challenges to the proceeding of court sessions when I explore how the dynamics and the turbulence, can be thought of as managed on behalf of the court. Chapter three is closed by exploring the securitization of a specific court session as a strive for “the perfect atmospherology” (Philippopoulos-Mihalopoulos 2016:161). In the conclusion, I summarize the chapters and reflect on the workings of affect in a legal context. I conclude by connecting the findings and arguments of the study to broader theoretical and societal perspectives.

## **Background. Anthropology of courtrooms**

### *Theories connecting social reality and legal phenomena*

Anthropology of law, takes law as its object of matter and provides perspectives on the activity in courtrooms, where law serves as a point of orientation throughout the conducts. The anthropological approach on law has a long history and can be traced in numerous classical works. Durkheim (1984) treated law as a reproducer of forms of social solidarity in *Durkheim and the law* (1984:37). Malinowski (1932), on the other hand, found earlier social scientific engagement in jurisprudence insufficient due to “a mistaken idea of its imperfection” (Malinowski 1932:5). Malinowski and his successors, took pride in questioning earlier takes on law that had been considered relevant and applicable solely on Western “civilized” societies (Freeman & Napier 2009:2). In *Crime and Custom in Savage Society* (1932), Malinowski found potential in elaborating on ways of keeping law and order among the Trobriands, for understanding the organisational principles for the whole Melanesian society:

“The true problem is not to study how human life submits to rules - it simply does not; the real problem is how the rules become adapted to life.” (Malinowski 1932:127)

This way of connecting the legal and the social, is pinpointed down to considering law an indicator of a harmonization between the law and life. This study connects to anthropology of law in that it takes concern in dispute processes, discipline and authorities (Freeman & Napier 2009:8) by considering law a framework that acts out fixity on the social reality (Harris 1996:5) and as dialogue between the individual and the state (Harris 1996:10). When taking interest for the effects of law and how these are used to create and legitimize truths, identities and enactments of power, we are encouraged to think of *how* law is operated, and by *whom*. Thus, doing anthropology of courtrooms and courts, means providing different ways of understanding how law is used to handle disputes in a society (Freeman & Napier 2009:8).

Foucault's tracings of the systems of punishment in Europe, in *Discipline and Punish* (1979) throws light a transformation of the nature of the penal process that courts and judges of criminal justice, have had a historical role in. Foucault (1979) finds that punishment has targeted the body, but reformatted from physical pain to various disciplining practices. The object of judgement has become the "soul" instead of the crime (Foucault 1979:19). This observation, is relevant when studying court sessions of today and atmospheres in courtrooms, because it suggests that procedures are characterized by the change of scope, to less obvious focus on the body. In the transformation, a line of "subsidiary authorities" (1979:21) such as psychologists, psychiatrists and experts have been connected to the judge's role. The knowledge these provide, has a function in the political technology of the body that permeates various state institutions (Foucault 1979:26). The mechanisms behind the system of control, urge an examination of how the juridical system produces different types of knowledge through a set of well hidden mechanisms, that (Foucault 1979:26) called "micro-physics". Foucault, suggests studying these new tactics of power and how these target the body (1979:28) which suggests a look into the effects of power in the juridical venture and the field of law. This setup, is described as a means to control human bodies, on behalf of a state (Foucault 1979:28) which connects to the focus of this study, in that it takes concern in courtrooms as staging the relation between the individual and the state. In *Society must be defended* (2004) Foucault elaborated on the forms of power at work in society. This means considering the juridical field and law "are permanent vehicles for relations of domination" (Foucault 2004:27). The institutional exercise of power, suggests that courts influence the way we understand misbehaviour which adds up to the anthropological concern in how morals and ethics characterize and come to expression our times (Fassin 2014:2).

Bourdieu's (1987) discussion of the internal workings of the juridical field as field of expertise is helpful in understanding courtroom conducts. In *The Force of Law*, Bourdieu (1987), proceeds by highlighting the struggle of juridical labour and explains the making of expertise in the field of justice. This helps us understand that a preoccupation with the internal struggle, comes in parallel to the events in the courtroom. The mechanisms are played out by the juridical

professionals and are enacted through symbolic power, coming in form of juridical texts (Bourdieu 1987:818), language (Bourdieu 1987:819) and a symbolic struggle, taking place in the division of juridical labour (Bourdieu 1987:822). This means that the hierarchies and the positionalities in the field depend on the usage of a formalised and codified language and constitutes the key factor in the legitimization of their sole right to render the law. This helps understand the distance that often comes to expression between people subject to law and the professionals, because the latter have a head start in being well familiar to the attributes that are considered operable in the juridical field.

When looking closer at the dynamics of legal proceedings, the emotional and rational perspectives on a conflict work as a dialectic within the legal narrative (Dahlberg 2016:45). From there, the the juridical decision takes a step back in dissolving a conflict (Dahlberg 2016:45). Similarly, the idea of emotional implications to rational justice challenges the prevailing emphasis on the notion of objectivity in the field of law (Flower 2014; Bergman Blix & Wettergren 2016). The subtraction of emotions, seems to be a fundamental principle of the legal venture and the effort by which the court transforms the complex social to fit the normative legal, takes particular expressions, that should not be overlooked when studying court sessions (Burns, Constable, Richland & Sullivan 2008). I consider a part of the work on affects and emotions on behalf of the professionals in the courtroom as “emotional labour” (Hochschild 2012:69) both consciously and spontaneously performed in order to manage the affective atmosphere emerging in the setting. This means that I regard for the suppressed notion of emotion in the legal venture, but nevertheless account for the professional’s management of affect and atmosphere having implications for how the proceedings take shape. Emotional management of the judiciary has gained sociological attention which shows that the emotional regime constitutes an integral, yet underestimated part of the legal venture (Wettergren & Bergman Blix 2016). In the following section, I introduce the strand of theories focusing on affective atmosphere, used for understanding the workings of affect in courtrooms.

### *Thinking through atmospheric affect*

In exploring collective affective dynamics of court sessions I use Anderson's (2009) concept of "affective atmospheres", which has been highlighted as a key concept for the critical study of affect (Michels & Steyaert 2017:79). As a guiding definition of affective atmosphere, I use Anderson's definition of atmospheres being "affective qualities that emanate from but exceed the assembling of bodies" (2009:77). I think of atmospheres as affective qualities that exceed the bodies they emerge from and use atmosphere as a lens to identify affect (Anderson 2009:77; Michels 2015:255; and Michels & Steyaert 2017:79). Anderson (2009) helps avoid making distinction between emotion and affect when exploring the collectivity atmospheres, and explains his perspective on the relation:

"Affective atmospheres are a class of experience that occur *before* and *alongside* the formation of subjectivity, *across* human and non-human materialities, and *in-between* subject/object distinctions." (Anderson 2009:78)

Anderson points out that affective atmospheres are experienced prior to and along awareness which means that they can be "felt as intensely personal" (Anderson 2009:80) while bearing source in the collective. Affect is "retrospectively named as emotions" (Anderson 2006:737) and therefore, affect and emotion are interlinked and not separable. This means, that emotion can tell us something about affect but affect can also be in the working without being consciously identified. Affect theories generally refer to affect as the "bodily capacities to affect and be affected" (Clough 2007:2). This dialectic understanding of affective authorization recurs among numerous theorists (e.g. Brennan 2004, Anderson 2009, Gregg & Seigworth 2010, Michels 2015, Philippopoulos-Mihalopoulos 2015).

I take interest in affective causes to behaviour, which means that I embrace the notion of our bodily capacity to affect and be affected through transmission of affect (Brennan 2004). Thereby, affective atmosphere is considered an environment that "literally gets into the individual" (Brennan 2004:1). Anderson (2006) calls the same phenomena "the processual logic of

*transitions* that take place during spatially and temporally distributed encounters” (2006:735) Here, the court sessions are regarded as such an encounter, which means that bodies entering courtrooms transmit affect between each other, through the encounters in the courtroom. Philippopoulos-Mihalopoulos (2015:157) regard for how affects become collective and enable for an atmosphere to emerge in line with Brennan’s (2004) observed principle of transmission of affects. He finds that atmosphere is “the excess of affect that keeps bodies together” (Philippopoulos-Mihalopoulos 2015:122). This means that atmospheres are the common affects that attract bodies to each other and the setting. Philippopoulos-Mihalopoulos gives example of atmosphere that attracts (i.e. shopping malls) and the opposite affects that “emerges in atmospheres of oppression and legal hypervisibilisation, such as kettling police strategies, prisons or courtrooms.” (Philippopoulos-Mihalopoulos 2015:176). The courtroom is used to give example of a setting where an atmosphere of oppression can emerge, which encourages critical analysis of courtroom atmospheres. I use Philippopoulos-Mihalopoulos (2015:173), to explore atmosphere as produced by means of *engineering* through the creation of boundaries (Philippopoulos-Mihalopoulos 2015:142) and by making the law apparent through “hypervisibilisation” which means that “the logic of law is made to be everywhere and visible” (Philippopoulos-Mihalopoulos 2015:176). This suggests, that courtrooms can be analysed as a space of boundaries where law is made visible, in order to incite atmosphere and thereby keep bodies present by affective means. The making of atmospheres has been studied in domestic spheres (Pink & Mackley 2016) in relation to larger organizational behaviour (Borch 2009) and in connection to the art of stage design (Böhme 2013).

Dahlberg (2016:16) finds that the “presentational and theatrical aspect” of affect and emotion are vital parts of the juridical process and law, suggesting the display of affect is controlled and regulated in courtrooms. I explore how the affectively charged space is monitored and subject to disciplinary workarounds, in line with Dahlberg (2016:15) while I am interested in the operative aspects of affect. Attempts to describe similar phenomena can be traced in several classical anthropological works that endeavour to describe collective forces (e.g. Durkheim, 1895). These consider how behaviour is influenced by collective forces that have implications on individual



behaviour. Taking interest in the work of affect in collective situations means considering affect interlinked with power, in that it shapes the contact between people (Athanasidou, Hantzaroula & Yannakopoulos 2008). The endeavour comes with a desire to throw light at and raise questions about matter in the legal setting that is less obviously articulated.

*Methodological approach: participant observation in a loaded place*

“It is tempting to see any trial as a bit of frozen-in-time life that can reveal a time and place and person to us—a bounded snapshot of reality. Indeed it is very seductive from many points of view./.../The more you study it, the more it seems to dissolve before your eyes. The trial is a place of excess.” (Sullivan 2008:317)

I find recognition in Sullivan's description of the seductiveness of trials that nevertheless can be hard to conceptualise. The carefully pronounced arrangements, routines, and the seriousness around the proceedings contrasted the intensity between people and evoked my interest for the affective charges in the setting. What stroke me, was that the atmosphere in the courtrooms varied remarkably from session to session, but also took various form during single trials. I focus on “the thing itself” (Burns 1999:5) which is practical in terms of delimiting a focus for analysis. The study of court sessions, has been problematized as the “taken-for-granted central event” of law (Richland in Burns, Constable, Richland & Sullivan 2008:314). This means, that legal case can not necessarily be used as a lense to broader societal phenomena, because the normative legal does not always reflect the complex social. But the focus on atmosphere, allows me to consider how atmosphere can tell us something about power, which plays a role in a broader interest for relations of domination (Foucault 2004:27). I take focus on atmospheres of court sessions by thinking of these as situations where people come together; where law encounters its subjects, which in critical terms means “putting the trial itself on trial” (Burns, Constable, Richland & Sullivan 2008:318).

The fact that I was not familiar with Austrian German, and even less with Austrian juridical discourse, made me aware of the atmosphere in the courtroom. To fully master the language used

in the setting where fieldwork is conducted can be considered fundamental in terms of gaining access to the field and understanding of the context<sup>1</sup>. When facing the challenge of not having full access to the verbal discourse and the juridical discourse, I found Atkinson's perspective comforting:

“...ethnography of any given setting must take systematic account of processes of interaction. While spoken discourse is a fundamental part of that interaction order, an ethnographic understanding of interaction can be broader than the analyses furnished by conversation analysis or discourse analysis alone.” (Atkinson 2015:74)

Atkinson finds potential in broadening the ethnographic analysis from verbal interaction to other forms of interaction, which opens up for other ways of understanding the setting. Thedvall (2013:113) gives an account of doing fieldwork in meetings and I find recognition in the description of “being in the midst of action”, which requires “knowing how to behave” and ultimately means “developing a feel for the atmosphere in the group and in the room”. The sense for atmosphere, in the location, and between people, came about over time, when I dared to relax from the note taking and let myself get carried away by the situations. As Thedvall (2013) points out; taking notes while observing is challenging and requires a sharpened attention to *how* things are said. It means that some information escapes the fieldworker while “participants’ tone of voice, however, often revealed their state of mind” (Thedvall 2013:112). The setups in the rooms often are informative when analysed through the unspoken and the performative. Despite that the audience is denied to comment on what is happening, it was common to hear sighs and mutters from the back of the room. I began to pay attention to how the courtrooms, without proper air circulation, got filled with different smells as the sessions dragged on and people fought to bring their case through. The sound of the court reporter’s desktop keys turned out to be a repetitive element of the sound and the atmosphere in the room. This way of appealing to forms of knowledge evoked through the senses has been called “modal anthropology” (Laplantine & Furniss 2005:28). I dwelled in the building, attended court sessions, talked to people and soon got recognized by some of them. It is an example of fieldwork being a line of coincidences and

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<sup>1</sup>As part of the CREOLE - master programme the collection of empirical data was conditioned to the exchange part of the programme and I found myself in Vienna doing fieldwork.

affinity in which I happened to be at the right place and time to connect with specific people. It can be understood as me growing into the field as I was “impregnating myself to it”, to use Laplantine & Furniss (2005) words when conceptualising the methodology for a fieldwork in an urban setting, that gradually enveloped for the anthropologist.

Sometimes the judge in a case asks the lawyer or someone in the audience to look for a missing witness in the waiting room. The few times I have been assigned the task are the most apparent participation I have engaged in during the actual sessions. My presence can nevertheless be considered a contribution to the affective atmosphere in the courtrooms. When I have followed the work of lawyers I pass as an assistant or I have been introduced as a student. Some lawyers have asked for a comparative analysis with the Austrian which I have failed in meeting while others have been keen to explain the roles of the courtroom, assuming the legal proceedings must be foreign or at least seem a bit bizarre to an outsider. A judge I interviewed repeated he found it hard to explain things “to someone who has not studied law” perhaps wanting to avoid the potentially complicated and unwieldy discussion the somewhat contradicting juridical and a social perspectives might lead to. Another comment on my questions about the proceedings has been “Yes, that is the way it is - what else can we do?” which points at strong traditional customs in the field of law.

When trying to attune to and describe atmosphere or what is “only felt and sensed” (Skoggard & Waterston 2015:109), I face the challenge of subjectivity, which is a general challenge of anthropology and points at the necessity of reflexivity. How do I know that sense of unease in the court session was not only my personal? Using “affective atmospheres” (Anderson 2009) as theoretical window, requires an account of how atmospheres are empirically accessed. Despite the fact that affects have their “roots in the social” (Skoggard & Waterston 2015:109) and often are “named as emotions” (Anderson 2006:737) in retrospect, atmospheres not easily put into words. This might be by cause of the difficulty in relying on verbal narratives and suggests emphasis on participation rather than verbal accounts (Athanasίου 2008:11). In the context of studying affects, verbal communication has been called “the most impoverished forms of human

communication /.../especially inept at providing information about non-verbal and involuntary aspects of experience.” (Favret Saada 2012:443). This idea somewhat calmed my fears about not having time to gain full access and understanding of the spoken and points at how the anthropological methodology of doing participant observation during long term fieldwork is fruitful in gaining insights about the embodied experience of the emotive. The tradition of producing ethnography has proved to be well equipped to account for representing the relative characters of emotive expressions (Milton & Svašek 2005, Wulff 2007). When turning to affects the challenge seems to be in both creating a framework for talking about the matter and developing a form of presentation. Skoggard & Waterston (2015) suggest presenting the affective “by means of an integration of abstraction and illustration” (2015:111) which means that theorization and description accompany each other, in order to evoke resonance in the reader. Therefore, this study can be understood as an “atmospheric composition” (Michels 2015:262) in that it is a constructed frame developed through a process of empirical and methodological delimitations and decisions.

*Ethical considerations: sensitivity and the role as an anthropologist*

Access to the setting is possible by reason of the public principle (*Grundsatz der Öffentlichkeit*) which is conditioned with the specification: ”all court proceedings are public, unless otherwise provided by the statute” (Hausmaninger 2000:189). The key feature is considered a fundamentality for a transparent and just legal system. Meanwhile, it provides access to a setting where people’s sometimes unfortunate fates are brought up and often handled well into intimate detail. Conducting research in the setting and producing ethnographic accounts on the experience therefore requires accurate positioning in terms of ethical considerations. Names of people appearing in the text have been changed and any details about the cases, that could enable a tracing of people, are left out. Interlocutors confinement to the anthropologist is considered desirable in the ethnographic venture and the discipline takes great pride in referring to obtainment of sensitive information being conditioned to entrustment between the researcher and the interlocutor. More often than not have I passed uncommented when entering the

courtrooms and when leaving, sometimes I have been taken for a law student and on a few occasions judges have asked me who I am, with the pretext making sure I am not one of the witnesses called in for the case<sup>2</sup>. Given that my agenda has never been brought to discussion during actual proceedings might on the other hand testify about how strongly the public principle is in effect.

The information handled in the sessions has indeed been relevant for exploring the dynamics of the courtroom but people's identities and personal backgrounds are beyond the scope of the study because the research takes focus on the affective dynamics and not the stories handled in the sessions<sup>3</sup>. I have considered asking the defendants for consent to attend and take notes during the sessions, but reasoned myself to the conclusion that this might add additional distraction to a stressful and decisive situation. In case of doing so, I would also have to ask for the witnesses' permission, which is a practical challenge due to the tight schedule and the high circulation of people around the sessions. To interfere with the procedure would mean challenging the working environment of the court and, at worst, endangering the possibility of fair trials. In situations where sensitive information has been brought up I have refrained from taking notes in order to avoid creating discomfort in the participants. The ethical responsibility of doing anthropology points at how the discipline itself is a moral practice with reflexive ambitions that require constant and well needed revisits (Fassin 2014:7). I can only hope that my presence has not caused anxiety or feelings of unease in anyone. This dubiousness of the wish points at the relevance of finding out more about the workings of affect in the setting.

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<sup>2</sup> Witnesses should not overhear the first interrogations or attend the trial prior to their questioning (Hausmaninger 2000:202)

<sup>3</sup> Speculations on the outcomes of the proceedings are against the legal principle and the principle for journalists, whose accounts of trials are not to take speculative character (due to the risk of these challenging verdicts) with regards to the future work on the case (Hausmaninger 2000:189)

## **One. Atmospheric environment**

### *Material influences: architecture and interior*

“Sometimes, I think Kafka must have paid the house a visit, before writing *Der Process*”

The comment, is given by a prosecutor and refers to the court building as a potential inspiration to Kafka’s famous novel portraying the hassles of a legal endeavour. When I visit the prosecutor in his office, we discuss a picture from Bergman’s movie *The seventh seal*, illustrating the chess-game between man and death that he has hanging on the wall in front of his desk. I find it easy to talk to him and I figure it could be because he has a background as a social worker and thus is well acquainted to questions about the sociology of law. When he mentions *Der Prozess*, we both laugh at the reference because we seem to have a similar experience of the confusing maze of corridors and stairwells in the court building. The comment captures the prosecutor’s subjective perception of the courthouse and tells something about how the environment in the courthouse *resonates* with him (Michels 2015:260). The court building with its facade in greystone is generally known by the symptomatic name *Das Graue Haus* (The grey house)<sup>4</sup>. It was built during the years 1831-1832, 1839, extended in 1905-1907 and has gradually undergone renovations between 1980-1996 and in 2001. Today, it constitutes an impressive three floored complex that spans a whole block and can be entered from two streets. In this chapter, I follow Anderson’s (2009:78) point on affective atmospheres emerging “across human and non-human materialities” by focusing on the contribution of the latter. This is done in line with Michels (2015:259) suggestion of taking interest in “the processes that modulate the affective capacities of material components” (2015:259). This means accounting for how the material in the courtroom has implications for the emerging atmosphere. I analytically approach the architectural arrangements of the courthouse, and specifically of the courtrooms, considering them as the material source for the emerging atmospheres.

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<sup>4</sup> Historical introduction and outline: [www.justiz.gv](http://www.justiz.gv)

Dahlberg (2012) suggests law is constituted as an aesthetics: “manifested and sedimented in material and visual culture, in legal codes and in juridical praxes” (2012:4). This means that the material can be thought of arranged in the specific purpose of representing law. In addition to being situated in the heart of Vienna; what is startling about *der Landesgericht*, is that the building constitutes an interconnected complex containing a court and a prison section. This arrangement has prevailed since the building was set up at the site and in order to visit the house one has to pass through the common security procedure which then is repeated by the inner entrance if having errands to the jail. When discussing the arrangement with a judge, he points at the window in his office and says: “Sometimes, if it is too loud I say ‘Hey please! Do not be so loud!’” confiding that he sometimes has to silence prisoners chatting between the jail windows. He says it principally disturbs his working environment while he both seems amused and annoyed by being reached by the sound of the prisoners who, like him, have their windows facing the courtyard. When I ask him about the apparent link between the judicial and executive departments he points at some large carton boxes standing stapled behind his desk. He explains that they contain documents regarding one singular case and that the house just as well could be criticized for having the prosecutors offices located in the corridor under the judges offices. He explains that the arrangement is practical when seeing that some case files require plenty of space and are not too easy to transport between the offices.

When I meet with the President of the court he confirms that the merger of the building complex is considered practical in administrative and infrastructural terms. He specifically emphasizes the ensurement of transportation of prisoners from the pre trial detention to the court sessions. During our meeting, I reflect on the fact that he seems prepared and accustomed to discussing the question and I get the feeling that he quite often is confronted by questions of the symbolic interconnectedness that the court building expresses. When remembering the discussion between the judge and the people from the German Bar association depicted in the introductory vignette the arrangement seems to cause discussion in that it raises suspicion. Dahlberg (2012:3), suggests both the modeling and the location of court buildings can be analysed as visualisations of the legal system. The independency principle of the judiciary, has often been carefully

displayed through the separation of the court buildings from other state institutions (Dahlberg 2012:3). When following this line of thinking, the situation of the building and the link between the jail, and the judge's and prosecutor's offices can be seen disturbing from a symbolic perspective. The arrangement suggests that the prosecuting, the sentencing, and executive departments are a unit.

The president of the *Landesgericht* is well-informed about the house's architectural history and takes concern in its darker sides<sup>5</sup> when in person conducting the monthly guided tour of the house directed to the general public. He tells me “the guided tours are a vital element in the courts work on it's public image and necessary for legitimizing the justice system in any liberal democracy”. When we visit the room where prosecutions have taken place he lowers his voice and a devout mood arises in the group as he emphasizes the court's share of a responsibility to confront and handle the history of Austria. The former courtroom with its high stained glass windows makes a poignant contrast to the otherwise bustling service center in the corridor right outside the historically burdened device that the memorial room constitutes. Pallasmaa (2014), suggests our sensuous apprehension of architecture is the primary ability by which we experience our environment. Architecture is graspable through peripheral perception which works as “a multi-sensory fusion of countless factors which are immediately and synthetically grasped as an overall atmosphere, ambience, feeling or mood” (Pallasmaa 2014:230). This is the unconscious and unfocused perceptive mode through which we grasp atmosphere (Pallasmaa 2014:244). By criticizing the hegemony of vision and the privileging of sight in relation to the field of architecture he insists approaching the affective qualities of aesthetics. Atmosphere ultimately reveals the “secret power of architecture and how it can influence entire societies” (Pallasmaa 2014:244). Seen in light of Pallasmaa (2014) reminding of the atmospheric quality of architecture, considering atmosphere as one of the forces behind architecture the “Grey House” has a lot of history, aesthetics and dynamics to convey. This calls for an analysis of the the whole of the courtrooms and the plan through which these are built.

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<sup>5</sup> One of the courtrooms at Der Landesgericht, hosted the murder of political prisoners by the Nazis during World war II. The room is no longer in use but an altar is set up in memory of the victims.



Approaching the courtrooms and their interiorities by taking interest for the affective influences and by considering law manifested in the arrangements, one finds that the spaces have common qualities. When entering a courtroom one faces a bright space always furnished in a functionally similar way. When opening the doors in light wood paneling, one is met by the area for the audience, and from there the judge's table is situated on either side, but further away in the room. The prosecutor's desk is attached to the judge's desk and placed opposite to the defender's desk, thus forming a u-shaped circle facing the audience's position. The defending lawyers, the prosecutor and the judge have space to spread out their files and piles of documents on their desks. The piles weigh much, so the lawyers carry them in large portfolios and the judges and the prosecutors roll them through the corridors in plastic trolleys. A computer with a big screen is installed by the court reporter's seat on the left side of the judge. Right behind the judge's desk is the door leading to the backroom where the lay hold considerations.

The seats for the audience are bolted to the floor, but sometimes, there is limited space for the audience and then moveable chairs are brought in and aligned to the screwed furniture. The seats by the judge's table are rolling and adjustable office chairs, also used by the Justizwache while monitoring the trials. The seats and tables form a half circle behind the accused's table, whereby the furniture in total forms an arena around the empty middle of the room. The empty middle, is noted by Dahlberg (2016:21) as symbolising the judiciary's self-image of taking an undetermined approach to the legal case. The courtrooms in der Landesgericht are exclusively arranged so that the back part of the worn wooden floor is raised and lifts the judge's desk a level from the other's desks, which signals a hierarchy between the judge and the rest. When one enters a courtroom one is immediately in sight of the judge's table. The chair in the middle radiates for someone to fill the seat up and from the one is exposed and supervised during the entire stay in the room. The providing of an empty space around the seat, also suggests that a distance to the judge is established, in order to limit interaction (Moran 2012:205). The height distance and the empty space obstructs physical contact and enables a good overview.



1.1

It is interesting to see the multiple decorative commonalities of the court rooms. The walls are covered in wooden paneling that matches the tables and the audiences' benches. Some light comes in from the barred windows on one side of the room, but the rooms are also lighted by a number of strip lights, placed behind a dimming glass ceiling, forming a square above the middle of the room. In the back of the courtrooms hangs a wall clock and above the judge's seat hangs the Austrian coat of arms. It implies being an artefact of "ideological paraphernalia" (Navaro-Yashin 2012:171), because of its centered location and symbolic analogy to the state. Considering material components of architecture and aesthetics "modulating" atmosphere (Michels 2015:259) means looking into how the the material environment is organised through aesthetic work. The idea is that these have the consequence of invoking atmosphere in resonance with those who experience them. It works as a capability by which we perceive our environment. Michels suggests that "when an architect, a musician or any other human body (co)modulates an atmosphere, the material environment is carefully "tuned" to his or her body and its sensual capacities." (2015:259) which is is a process of "more or less systematic selecting, testing and shaping of material components" (Michels 2015:259). Whoever planned the courtrooms did not necessarily think in terms of atmosphere when selecting the components of the interior. But, the rooms clearly serve the function and purpose of establishing attention towards the middle and thus the case that is being handled. The chairs by the judge's table are adjustable in order to see the person speaking and the rooms do not offer much distraction from the seats and tables and those who take the seats. These repetitions of the model and its interior, can be reflected in

Philippopoulos-Mihalopoulos (2015:176) note on courtrooms as “legal hypervisibilisations” which means that courtrooms are places where law is made visibly present. People who enter the setting are reminded about the law through the architecture, the interior, the paraphernalia, the Austrian coat of arms, the lighting, the designated seats, the documents, the sounds, the smell, and the hard wooden bench they are assigned to during their stay.



.1.2.

Michels (2015:259) methodological approach on the *composition* of atmosphere through a focus on how affective qualities of the material are modulated, suggests that the process also applies for everyday practice:

“These processes comprise the professional work of designers and artists as much as everyday practices such as lighting a candle, applying makeup or rearranging furniture in a room.” (Michels 2015:259)

This suggests that the arrangement of the material condition the affective qualities of the components. The interiorities of the courtrooms, are modulated affective components of the composition of atmosphere, which means that the atmosphere of the courtrooms are conditioned by how the affective components in these are arranged. When making sense of the arrangement as filling a function and structuring the affective atmosphere the model can be understood

designed to support, interplay and cooperate with those who experience them. The courtrooms are, to a degree, all arranged in a strikingly similar way which suggests that the layout is considered a proven arrangement. The arrangements and aesthetics are repeated in each room which indeed also has consequences on how these are used and how people move in them. But what comes first; the establishment of austerity through the arrangements of a scenography for an authoritarian setting or austerity due to the ascetic decor? This quarrel reminds of Pallasmaa (2014) emphasis on us perceiving the environment primarily in unconscious ways:

“the diffuse overall ambience is often much more decisive and powerful in determining our attitude to the setting. Even buildings and details that hardly possess any aesthetic values manage to create a sensorially rich and pleasant atmosphere” (Pallasmaa 2014:241)

Pallasmaa (2014) highlights our perception of atmosphere shapes our relationship to environment. He criticizes the ocularcentric tradition and emphasizes the value of our senses in perceiving a setting.

In Navaro-Yashin’s (2012) study of affectively melancholic space in Northern Cyprus, a fusion of a subject-centered and object-centered approach on environment is drawn. Navaro-Yashin (2012) describes how the affect of melancholia transmits in the interiorities of her field:

“... neither the ruin in my ethnography nor the people who live around it are affective on their own or in their own right; rather, they produce and transmit affect *relationally*. An environment of ruins discharges an affect of melancholy. At the same time, those who inhabit this space of ruins feel melancholic: They put the ruins into discourse, symbolize them, interpret them, politicize them, understand them, project their subjective conflicts onto them, remember them, try to forget them, historicize them, and so on.” (Navaro-Yashin 2012:172)

The subjective experience is in dialectic process with the ruins, which makes the environment discharge affect in relation to those who experience it. The relation between Navaro-Yashin’s material environment and people who engage with them suggests that affect transmit between the material arrangements of courtrooms and those who enter the setting. The material transmits

affect relationally and the discharge is picked up as a feeling. Both Navaro-Yashin (2012), Anderson (2009) and Pallasmaa (2014) find our understanding of environment conditioned in between the subject-object distinction. This suggests that the sensuous experience of the courtrooms are structured by the material arrangement.

In this section, I have explored the material base of the composition of affective atmosphere. I have considered atmosphere bearing source and indications in the material arrangement. What we have is a gigantic house, in the middle of the city, with courtrooms furnished in a model that corresponds to each room. As Dahlberg (2016:43) notes, the arrangements of the courtroom work to discipline bodies. The idea of architecture and interior structuring experience and behaviour can be connected to how Foucault (1979:215) describes discipline as a form of power exercised by institutions through a technology of control. Thinking about the court in line with Foucault, raises the question of what implications the arrangements have for the affective bodies that enter the settings. This suggests that the systems of control and the historical burden, linger and permeates how courts perform domination today. The affective directing, through the material, suggests contributing to this tendency. In the following section, I will think along the line of atmospheric engineering (Philippopoulos-Mihalopoulos 2015:173) as a form of control when further exploring how a courtroom resonates with the bodies that enter it. I will illustrate how the material base of a courtroom shapes the affective atmosphere emerging between bodies.

### *Atmospheric space: an interplay of law and space*

One day, the greatest courthall, *der Grosser Schwurgerichtssaal*, is booked for hosting a court session. When I pass the louvre doors to the anteroom, a civil police shows me his patch and asks for my errand. I present myself as a student and he lets me enter the courtroom that is crowded by the podium but almost empty on the audience side. The dimensions of the room are overwhelming and make the bodies in the front look small. I find the classicist style of the interior a lot more impressive than the interior of the usual courtrooms and entering the space reminds of walking into a sacred space. I recognise two boys from the entrance hall of the court

building, from the same morning. I remember them, because while queuing for the security check, I see how one of them tries to playfully step on the other ones foot. The move makes them wobble into the rest of the people waiting for their turn to make it through the security procedure. The boys glance over their shoulders and when our eyes meet we smile, because the otherwise uptightness in the entrance is markedly disrupted. Now, the boys are seated next to each other on one of the two dark wooden benches for the accused, on which in total eleven boys are seated opposite to each other. Their outfits of jeans and sneakers represent a sharp contrast to the paraphernalia of the courtroom and the suited up lawyers sitting behind them.

Almost five meters stretches between the accused's benches and the judges table. In the smaller courtrooms, you would hear the smatters from the court reporters computer keys, but the acoustic of this room swallows everything but the voices in the microphones. The judge methodically posits questions to one of the accused sitting in the middle of the room and he answers them through an interpreter. The dimensions of the room, the echo from the loudspeakers and the contrast between the defendants and the rest, creates an interesting effect. The courtroom enforces a sense that the boys have ended up in the wrong place, which is an aspect that makes sense when considering that architecture is enforced through our senses and has the ability to "strengthen the experience of the real" through its imaginative dimensions (Pallasmaa 2014:240). If the boys are in trouble and if the courtroom represents law, I argue that the contrast between them illustrates a distance rather than neutrality in their relation.

Philippopoulos-Mihalopoulos (2015) suggests atmosphere, can be thought of as deliberately designed matter in that it conditions the emergence of atmosphere:

"There is no doubt that an atmosphere is a designed thing, product rather than happenstance, a legal, political, economic, architectural and so on script that fixes the presence of various bodies." (Philippopoulos-Mihalopoulos 2015:170)

An engineered atmosphere is deliberately crafted, through architecture, among others. The design of the atmosphere, is suggested to be a means to keep bodies present, which suggests that

the architecture of der *Schwurgerichtssaal*, can be read as an attempt to engineer an atmosphere that draws the bodies to the room and attaches them to the setting. According to Philippopoulos-Mihalopoulos (2015:173) engineered atmospheres have four characteristics: (1.) “the distinction between interior and exterior” (2015:175), (2.) “the exterior is included in the interior”(2015:176), (3.) “an illusion of synthesis is offered inside every atmosphere” (2015:177) and finally: (4.) “an atmosphere must dissimulate the fact that it is an engineered emergence” (2015:178). When thinking of these characteristics and the courtroom depicted above, I will focus on the first characteristic that seems to be the effort to separate the courtroom from the outside - the waiting room. In atmospheric terms, the guarded and closed doors could be seen as “a constant redrawing of the spatio-temporal boundaries” (Philippopoulos-Mihalopoulos 2015:176). The closed doors suggest a material boundary to the outside. The modest interior and the windowless walls are painted in brownish and greenish colours, and therefore, the hallways also make visual and sensuous contrast to the courtrooms. This understanding of architecture and atmosphere is interesting when analysing the situations in the room and the situations outside. When I get to talk to the boys, 17 and 18 years old I get a sense of the interplay between the setting and the atmosphere. We stand by the smoking spot outside the courtroom used by both the witnesses and the accused, waiting for the judge to call the assembly in for the day’s session. The boys seem both overexcited, stressed and somewhat downcast. One of them looks specially despondent and gets the comment “You must have hope” from a friend when he mumbles something about having to go to jail. I get offered half of a chocolate bar, and as we wait the other defendants start gathering around us. Our conversation does not flow very well due to the language barrier but somehow we manage to keep a faltering dialogue about the snow in Sweden, the time staking court session and the police’s armament. The boys are accompanied by a social worker who takes them to the sessions, as customary in cases regarding minors. He tells me the boys live in a home for youngsters and that he has written letters to the judge testifying they are doing well. He uses two fingers to make the sign of throwing up when I ask him how he experiences the proceeding.

Here, we see that the space of the waiting room is “more fluid and flexible” (Dahlberg 2016:37) than in the courtroom, where the conducts are carefully overseen. This contrast, comes to expression quite well here, as we hang out at the smoking spot. It is as if a distinction between the courtroom and the outside comes to expression between us while we wait. A judge I interview, suggests a similar contrast when he critically comments on the arrangement in the house. He contemplates on the waiting rooms laying out stressful situations for the witnesses:

“I want to criticize our building. There is no way that the witnesses can wait separated from the accused person. They sit before the court room and wait together for the tribunal to start. It is not good for witnesses, I think. They should have an own place where they can wait. In a normal atmosphere.”

The judge here, refers to how the arrangement of site leads to the different parties spending time in the same room before entering a session. He uses the word “atmosphere” to describe how the architectural arrangement of the house has consequences on the witnesses experience. He wishes for “a normal atmosphere” which suggests that undesired atmospheres emerge in the waiting rooms and ultimately disturbs the realisation of the legal procedure. He seems to have requirement for smooth proceedings in mind. This points, to the contrast between the courtroom and the outside, as having consequences for the emerging atmosphere. The same contrast between the courtroom and the outside works according to Philippopoulos-Mihalopoulos (2015:173) in the engineering of atmosphere. The idea is that the material controls the atmosphere, that controls the bodies, because they interplay in the emergence by cause of the boundary created to the outside.

The atmosphere is suggested to work by “fixing the presence of various bodies” (Philippopoulos-Mihalopoulos 2015:170) whereas the atmosphere that emanates from the courtroom and the conducts, should work to attract the attendants to the situation. In addition to the concrete requirements for attendance, the atmosphere is suggested to work in favour of the legal institution initiating the trial. When people attend the sessions there are concrete measures



taken in order to condition how. The principle of publicity<sup>6</sup>, meaning that anyone can enter and listen to the sessions without being questioned, entails the proviso for fair trials but also leads to considerations on safety on behalf of the judiciary. Bringing people in conflict together in the locations entails risks that are managed through increased presence of police forces who are equipped with weapons. Anyone can enter a trial and obtain information about for example names, birthdays, addresses, previous verdicts, personal history or names of gang members. Such details become accessible when brought up in the proceedings but might as well end up in wrong hands if listed by someone in the audience. The level of security measures taken during the sessions has various scopes between the sole attendance of the *Justizwache* to masked army police equipped with automatic weapons. If a case handles blackmailing, insurances or gang violence these are likely engaged. Among the people waiting outside the courtroom, is a girl in the boy's age. During the first day of the sessions she has taken a picture of the boys sitting in court. When this information is brought up in the proceeding the civil police start to guard the audience. As soon as someone checks his or her mobile phone, one of the police is there glancing over their shoulders.

Beyond the presence of the usual *Justizwache*, the session is also guarded by two policemen in the hall and two outside and whose presence characterize the situation. The subject of the proceedings is gang violence that the boys are accused of having organised. The subject seems to have added up to the court considering danger of tumult in the courtroom. Later, heavily armed police show up for another "routine check" and it turns out that they are called in to provide security to the proceedings of the boy's case. Evidently they are there to act up the sense of gravity for the issue. When the police control the handling of mobile phones during the sessions, their watchfulness increase the tension in the room. When thinking of how the police guard the sessions their enforced surveillance also provides an increased sense that the atmosphere "includes and pacifies its own risks" (2015:143). First the police guard the defendants but then they add the whole room to the surveillance. They include the audience and start to control how we use our mobile phones. As Philippopoulos-Mihalopoulos (2015:173-175) describes an

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<sup>6</sup>*Der Grundsatz der Öffentlichkeit* means that all criminal trials are open to "all unarmed adults" unless "exceptional circumstances" prevail (Hausmaninger 2000:189)

engineered atmosphere, it is characterized by the process of boundary making, where the outside is kept outside - but partly inside, until the inside is the only thing available and the atmosphere is there - but forgotten. A while into the proceeding the boundary making is evidently increased by the police and thereby attention is drawn to the proceedings.

The second characteristic of an engineered atmosphere, by which something of the outside is integrated in the inside, draws to mind how the subject of the court session is brought from the “real life” outside into the courtroom (Dahlberg 2016). The third characteristic, by which “the exterior is dissimulated, half hidden from view, almost forgotten” (2015:178) is the characteristic of the engineering, by which a synthesis of the outside and the inside comes about. The presence of the attendants should be so strong that the outside is forgotten. The management of what happens in the setting should work out by dissimulating the fact that the atmosphere is engineered (Philippopoulos-Mihalopoulos 2015:144) and instead the atmosphere should appear as if it emerges on its own. Philippopoulos-Mihalopoulos (2015:176) suggests that courtrooms are examples of where an atmosphere of oppression can emerge. Both the material interior and the activity in the courtroom draws full attention to the legal, with the consequence that “the law is made to be everywhere and visible, to the extent that the body cannot use the law anymore as a way of escape” (Philippopoulos-Mihalopoulos 2015:176). In conceptualising an engineered atmosphere, Philippopoulos-Mihalopoulos concludes:

”an atmosphere is successfully engineered when it manages to rupture the affective continuum with the outside, while at the same time reproducing it inside and presenting it as the only atmosphere possible” (Philippopoulos-Mihalopoulos 2016:158)

The engineered atmosphere works through the logic of keeping its own alternatives hidden. The effect of the atmosphere is strong enough to seemingly be the only possible. This suggests that the atmosphere of oppression in a courtroom, works to keep people at place rather than providing ways out of the situation. If the engineering of an atmosphere worked out successfully, in line with Philippopoulos-Mihalopoulos suggestion it would come off as obvious but the participants seem ready to question the circumstances.

Suggesting that the courtroom engineers an atmosphere of oppression (Philippopoulos-Mihalopoulos 2015:176) allows for thinking of affect working in a certain direction on behalf of the court. This does not mean that people become oppressed when entering, it rather points in which direction the boundary making work affective atmosphere. This chapter went into exploring how the material environment of the courthouse and the courtrooms, have implications on the affective atmosphere. I argue that the material influences the composition of atmosphere through the arrangements, the history, the paraphernalia, the dimensions, the boundaries, the experiences and the whole - in relation to those who enter the setting. The courthouse and the courtrooms incite quite pronounced phrases of domination and control. The material arrangement of the courthouse and the courtrooms points at an attempt to steer affect in a particular direction, that works in favour of the court. This means, that the court dominates through the ability of the material arrangement to confuse, surprise, monitor and resonate with affective bodies. Thereby, the material modulations of courtrooms permeate the affective atmosphere, because atmosphere emerges through interplay with affective bodies and their environment (Michels 2015:255). The observation of the material influences on atmosphere, can be understood as subtle means to exercise power, which connects to Foucault's suggestion of studying forms of domination by looking at power "at the point where it becomes capillary" (2004:27). I argue that the arrangement acts power over the affective bodies that enter the setting, through the material's capacity to influence composition of the affective atmosphere. In the following chapter, I will explore how affective bodies interplay with the affective atmospheres emerging in the courtrooms.

## **Two. Affecting and affected bodies**

### *An affective encounter: the collectivity of bodies in a courtroom*

There is a specific order for who can enter the courtrooms and when; the prosecutors, the court reporters and the judges have keys to the rooms and can prepare for the sessions on spot, while the others have to wait outside. When a judge announces through the loudspeaker for a session to start, the lawyers, the defendant and the witnesses can enter. The juridical roles and people subject to law are “present in the flesh” (Dahlberg 2012:1) when gathering in a courtroom, which helps us think of the court sessions as situations where the legal roles are embodied and played out through the conducts. In previous chapter, the material arrangement was approached, considering how the aesthetics are let manifest the constitution of law and conditions the movement in courtrooms. Taking this in consideration, helps us think of the sessions as structured conducts, bearing ground in the juridical affairs (Dahlberg 2012:1). Affects were traced in the material components of the affective atmosphere, as parts of the intentionally crafted (Michels 2015) and even engineered atmosphere (Philippopoulos-Mihalopoulos 2015:137). This chapter, explores the affective atmospheres (Anderson 2009) of court sessions by following up the compositions of atmospheres as an interplay between affective bodies and environment (Michels 2015). Now, atmospheres will be further explored by following up how they emerge “in between their various human and non-human components” (Michels 2015:255). This means tracing affect through the atmospheric interplay discharged between the bodies entering the environment and attuning to the dimension of affect being their “sensuality” (Michels 2015:255). By accounting for how people gather for the following court session, I will explore how each actor contribute with their affective body and how the atmosphere interplays in this process.

One of the lawyers in today’s case, holds up the door for the assembly that walks into the courtroom where the prosecutor, the judge and the secretary are seated and ready. Walking in, some pronounce a formal “Grüss gott!”, which is a common perfunctory greeting with a

religious connotation, while others greet less formally with “Guten tag” or “Hallo”. This ritualised way of greeting is reproduced in the beginning of each session and establishes a sense of good-will, despite that circumstances of and the reasons for the meetings. When entering the courtrooms, confusion quite often comes to characterize the situations. As people walk into the room and literally face the arrangement and the judiciary, they necessarily do not have a clear picture of what is going to happen. This kind of irregularity in the dissemination of knowledge about the setting can for example come to expression if the defendant and the witnesses are confused about where to be seated. The lawyer, or the judge, may refer people to their places, but if the defendant is accompanied by a Justizwache he or she is lead to the right seat where the handcuffs are unlocked. “Are you going to keep your jackets on?” the judge asks the two men who take place at the bench for the accused in today’s case. Both of them eagerly nod for an answer, as if they are convinced it will not take long before the session is rounded off and they can leave the room again. The two lawyers who accompany them smile towards the judge’s desk and instantly pick up the court case documents enveloped in pink carton from their briefcases. Being professionally educated and accustomed to moving in the environment, the lawyers confidently take the determined seats on the left side of the judges table, thus facing the prosecutor diagonally. If other participants are present, they are cited to the benches in the back, facing the judge on the platform in the other end of the room. Today, I am alone in the audience.

Before the session is opened the convocation waits for the judge, *der Richter*, recognizable by the articulated position and the black coat with a purple collar, to open the hearing. The costume, (also a visual manifestation of law<sup>7</sup>) is easy to pull on and off and comes with an associated attribute of a headdress that I have never seen in use. A judge who demonstrated the small hat for me, explained that most of the judges find it “ridiculous” and therefore choose not to use it<sup>8</sup>. Mechanically, the judge in today’s session hands over two sheets of paper containing the

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<sup>7</sup> Dahlberg (2012:2)

<sup>8</sup> The judge who demonstrated *Das Barett* had been working at the Higher court where it is used and assured it causes much joke in the break room. In light of the ongoing debate about judges wearing veils where a ban is suggested to be implemented (with the argument that the veil is a religious symbol incompatible with the neutral judge) the abandonment of the headdress seems like a part of the broader movement to undress judiciary and the setting from its religious and ideological attributes.

defendant's personal information to the interpreter, *der Dolmetscher*, sitting on his right side. She receives them and assuredly starts to pose questions to the accused, *die Angeklagter*<sup>9</sup>, word for word from the manuscript: "What is your name? Where do you live? How old are you? What is your profession?". This is accompanied by the smattering from the desk keys of the court reporters note taking. The prosecutor and the lawyers scroll their documents waiting for their respective cues. Meanwhile the introductory questions are worked over some of the earlier clumsy and stiff tension in the room loosens up, owing to the existence of a framework of introductory questions of such character the answers are easy at hand. The interpreter translates and checks that the men's names, birthdays, addresses and professions, place of birth and names of parents are correct and matches the information given in the documents. In one way, the defendant's life situations are reduced to these few questions, but in another, it is a request for the defendant to conceptualise an identity by outlining a draft that is manageable for the court. However, this introductory sequence of the conducts, has the effect of establishing the defendants as speaking subjects. The formalised arrangement has brought people to their positions and the atmosphere emanates from a group of bodies (Anderson 2009, Michels 2015). This means, that the positions and the turns of speaking are determined according to the formalities, while the atmosphere emerges as an interplay "of spatially discharged affective qualities" (Anderson 2009:80) between the affective bodies positioned in the room.

Earlier, outside the courtroom, before the session is to start, the older man in the case walks up to me and asks me if I am the interpreter. We do not have a common language, but make contact through laughing when a child runs past us where we sit in the waiting room. To my surprise, the man picks up the child, places it in his lap and starts to cuddle! I find the act confusing, but the parents sitting behind us do not take any notice. I reason it is because they are busy keeping up the whispering conversation they are engaged in with two other men. The child seems happy in the old man's knee; they definitely have a connection. When the judge announces for the man's case I realise the child and the parents are there to participate in his trial. Apparently they are related in some way - despite not interacting at all in the waiting room. When we walk into the

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<sup>9</sup> The defendant, *der Beschuldigte* is called "the accused", "*die Angeklagte*" during the trial but enjoys the procedural rights. Among these is the presumption of being innocent (Hausmaninger 2000:192).

courtroom no one gets time to sit down before the judge reminds; no children allowed in the courtroom. The woman in the assembly, possibly the child's mother, takes the children by hand and leaves the room.

After the introductory mapping of the defendant's personal information, the translator hands the documents back to the judge and the hearing starts. The judge asks the accused to account for what has happened and thus offers the opportunity to explain why we are here today. A history rolls up, word by word and the judge adds questions where there are ambiguities or uncertainties. We find ourselves being listeners to a story told by a man and his son-in-law. First, the older man gets to sit on the seat in the middle and then the younger man takes after him. But, despite this expressively symbolic arrangement before the court, they do not seem able to help but filling in each other's story. The judge is quick to correct them about it and constantly emphasises the seriousness about the case by maintaining a quite harsh tone. Despite that the defendants answer his questions in an everyday tone the judge enforces the seriousness of his voice with the following questions. Then, the judge offers the prosecutor, *der Staatsanwalt*, recognizable by a similar black coat and a red collar, to pose questions. The lawyer's, *der Rechtsanwälte*, get their turn to hear the men on aspects that highlights or turns the issue to their advantage. But besides from being prepared to assist in the formalities, I notice they do not seem very dedicated to the case. The men are suspected of having tried to hinder the older man's daughter who is the younger man's wife from taking out a divorce. The judge persistently tries to find out if it is true that they have threatened to kill her. Both explain apologetically, with a tone of not having done anything wrong, and manifest their arguments through the translator. She interprets the men's statements in a factual way but uses less emphasis when she gives their statements in German. The prosecutor follows the dialogue but has no further questions. When the judge is done with the interrogation he hesitates. All eyes are on him because customarily he is to announce the following step. The witness, *der Zeuge*, will be called in and the defendant has to move from the chair to the bench to provide room for the hearing. When the judge tells the men he will call in the witness they nod at him and sit motionless while the judge speaks in the microphone.

The door opens slowly and the woman who walked out with the kids, appears at the threshold. She remains in the door while smiling and keeping her eyes on the ground. The judge addresses her and invites her to take the seat in the middle. She throws fast glances at the room, walks up to the seat, places her handbag on the table and sits down with her jacket on. She exudes a mix of stage fright and confusion which adds to a sense of unease that I notice appeared in me. The situation is indicative of a sensitive and complex relation between the defendants. The judge routinely recites the act of witnesses through the interpreter but now his voice is switched to a much milder and conciliatory one. The woman answers the questions clearly and the defendant's keep looking at her while she pronounces the responses. After she gives her final answer, they switch their gazes back at the judge. While the judge browses his documents I reflect on the silence in the room but find it hard to understand. Both of the lawyers lean back in their chairs. Then the judge looks up asks the prosecutor to express the accusation, which is instantly followed by the lawyers taking turns of standing up and giving their defense. Finally all of the assembly stands up for the judge's words and a minute later the situation is dissolved. I try to talk to the woman outside the courtroom but she makes herself busy with the kids and seems eager to get going. The men in the assembly collect their things and walk down the corridor. Confused and astounded I watch them all leaving together.

The tension between the parties came clearly off, but the situation was hard to conceptualise. As we watched the woman being interrogated regarding her personal information, I apprehended an unease in the room while an unease was woken in me. When considering that nothing was spoken, the phenomena by which our bodies were *resonating* (Michels 2015:260) comes off as a good explanation to how the disheartening situation got perceived. My reflection on the effect of the force between the defendants and the woman is a way to methodologically orientate through my "own conceptual sensitivity" (Michels & Steyaert 2017:88) which builds on the idea of "the body's capacity to affect and be affected" (Brennan 2004, Greigg & Seigworth 2010:2). Right after the session I decide to go back to the courtroom to see if I can better understand the situation. When I knock at the courtroom door and open it ajar I hear the prosecutor, the interpreter, the judge and the court reporter engaged in a discussion. They seem jumpy and the



judge asks the court reporter to help me out. He asks me to wait for him outside, as if he already knows my errand. When we sit down in the waiting room he expresses a despair and explains that the legal system “works against itself” sometimes. He tells me the woman was called in to witness against her father and husband, in the case regarding them possibly having posed a death threat against her, but she was offered not to witness against them according to the right not to witness against relatives<sup>10</sup>. The court reporter explains that the court closed the case as she took the offer to stay silent. He entrusts me that the court had discussed the case in advance and feared that nothing could be done.

This case is illustrative in that the situation worked to stage a tension between affective bodies. This session is as a specific encounter that is setup for solving issues through legal conducts, but the situation can also be seen as a setup for the atmosphere emerging. Since affective atmospheres are “singular affective qualities that emanate from but exceed the assembling of bodies” (Anderson 2009:77), the affective phenomena is made up by multiple affects that exceed the affective bodies in the room. Atmospheres, originate in a set of bodies coming together but as Philippopoulos-Mihalopoulos presents the phenomena, these spread in between an assembly that also embody the phenomena:

“Atmosphere is embodied by each body yet exceeds the body because it can not be isolated, it is always collective and withdrawn. An atmosphere spreads through and in between bodies like a sticky substance” (Philippopoulos-Mihalopoulos 2015:122)

Atmosphere is an embodied collective phenomena that transcends from its constituting cluster. From the perspective of atmospheres, we are set with two slightly different understandings. Both Anderson (2009:77) and Philippopoulos-Mihalopoulos (2015:122) note that affect exceed the bodies and is beyond the control of any individual, while Philippopoulos-Mihalopoulos (2015:122) adds that the affective bodies embody the atmosphere. This means that the atmosphere is kept up and reproduced by the affective bodies and suggests that the affective

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<sup>10</sup> A witness may be excused from answering the court’s questions if the answers cause shame, danger of criminal prosecution or immediate financial loss. Relatives of the defendant may be entirely excused as witnesses (Hausmaninger 2000:195)

capacities of the bodies are deliberately steered to work in favour of the atmosphere. Experiencing how the whole room is pulled in with tension as the witness opened the door, walked into the room and the air got thick, brings to mind that atmospheres are collective (Philippopoulos-Mihalopoulos 2015:122). The stark attendance that we were caught up by, while the witness was heard, suggests that the atmosphere was embodied by each body and resembles to the description of atmosphere as a “sticky substance” that exceeds bodies and is not easy to shake off (Philippopoulos-Mihalopoulos 2015:122). The understanding of bodies working in favour of a designed atmosphere is quite controversial if wanting to account for individual agency, but if keeping in mind that the room is deliberately arranged for controlling and creating a certain resonance between parties<sup>11</sup>, the idea of embodiment makes sense. The case depicted in this section, exposed a tense situation explored as a coming together of affective bodies that composed an atmosphere (Michels 2015). The case exemplifies how the atmosphere bases on and derives from the sum of bodies present. I argue that when entering a courtroom, and a court session, the pronounced formalities can be understood to guide the affective exceeds that are encouraged and enabled through the spatial and legal codifications of fixed positions and conducts. This means that attempts to control the affective atmosphere are made, but the principles also points at the uncontrollable dimension of the atmosphere. The atmospheric interplay is beyond individual control yet dependent on each body. In the following, I will further explore the interrelational dynamics between the formal roles in the courtroom, in order to better understand what conditions the embodiment of the atmospheric phenomena in court sessions.

*Display of affect: proceeding through habitus*

A suited up man next to me in the audience suddenly starts to giggle when the witness gives an answer to the judge’s question. It is the beginning of an early Monday morning trial

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<sup>11</sup> In line with (Philippopoulos-Mihalopoulos 2015:122) idea of engineered atmosphere, as explored in chapter one of this study.

with a mixed court<sup>12</sup> and the man has been seeking my gaze a few times. "What is funny?", I look back at him and whisper. "Well", he leans over and explains, "the witness does not understand the nature of the question!". The man shakes his head and changes glances with the two lawyers sitting at the desk for defenders. They seem to be well familiar from before. He continues telling me about his curiosity for the case has brought him here, to follow the proceeding of the case. He was previously assigned the case but had to refuse to commit to it, due to its complicated nature. "Are you a journalist?" the lawyer asks and glances at my notebook. I explain what I do in a few words and he rhetorically continues: "Are you not allowed to laugh in courts in Finland?" but do not know what to answer. This incident, can be seen through Bourdieu's (1987) analysis of internal workings within the social field of juridical professionals. The lawyer expresses a distance to the defendant while he positions himself closely to the other lawyers with the wink to them. According to Bourdieu (1987), the professionals take a neutral distance in order to legitimize their right to interpret the law. Here we see how the relation is explained through the concept *habitus*:

"...the specialized agents of the law introduce a neutralizing distance without even willing or realizing it. In the case of judges, at least, this is a kind of functional imperative, but one which is inscribed at the deepest level of the habitus." (Bourdieu 1987:830)

*Habitus*, is the appropriated behaviour and attitude of professionals in the juridical field that applies "at least" for the judges and is constituted by a neutrality (Bourdieu 1987). A giggling lawyer is quite remarkable in contrast to the idea of a "neutralizing distance" (Bourdieu 1987:830) and the often quite cool manners of the professionals. Had the lawyer taken the case he probably would have avoided giggling at the defendant's answer, in order not to challenge the legibility. Today, the lawyer had no formal function, and perhaps thereof the relaxed manner.

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<sup>12</sup> The mixed court, *der Schöffengericht*, is constituted by a presiding judge and two lay assessors who have the same rights and responsibilities as the judge. This allows a democratic input: "in order to keep the the process understandable for the public at large " (Hausmaninger 2000:191) but also means that the defendant faces not only one, but three judges.

The case handles suspected fraud, and a couple running a restaurant are accused. The judge poses questions about the clientele of the restaurant through the English<sup>13</sup> speaking interpreter: “What kind of people come to the restaurant?”, she asks, but seems unsatisfied with the answer and continues: “Did you see any black Africans there?”. The witness, answers patiently and says that he has a lot of friends from Africa and adds: “Yes, they come to the restaurant too”. Dahlberg (2016:21), who objects to the understanding of the neutral judiciary, suggests Bourdieu’s description stems with their self-image, rather than the factual conditions, since the judiciary represent the dominating of a society (Dahlberg 2016:21). According to Bourdieu (1987:830) the “neutralizing distance” works to establish the judge’s independence in relation to the conflict, but in this case her questions, that aim at mapping out the case, could just as well be seen as an insistence to divide people into different “kinds”, with the pretext that this has significance for the case. Here, we have both a distance and a position taken and reproduced on behalf of the professionals through the giggle and the questions.

The creating of distance becomes clearer a while into the hearing when the witness asks the interpreter to repeat a question regarding an injury. The interpreter does not seem apt to try with other words and the witness has to ask again: “Excuse me, what is it?”. The answer comes from the back of the room: “Wounded” someone in the audience suddenly speaks “in our country we say wounded”. A man on the second row addresses the interpreter and the witness. The judge looks towards the audience and knocks with her pen on the desk while shouting in German: “You are not allowed to speak, otherwise you will be thrown out of the room!” The outbreak makes the jurymen wake up from what looks like daydreams and both of them change position and sharpen their gaze. The man speaking from the audience looks surprised and apologizes in a low voice. “Did you notice that he was wounded?” the interpreter continues. Bourdieu explains the distance between the professionals and the others, that comes to expression here:

“The judicial situation operates like a neutral space that neutralizes the stakes in any conflict through the de-realization and distancing implicit in the conversion of a direct struggle between parties into a dialogue between mediators.” (Bourdieu 1987:830)

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<sup>13</sup>Whether or not everybody understands English the legal proceedings are conducted in German language. This goes according to the formalities which suggests a symbolic interlink to the concerns of the Austrian state.

Bourdieu finds that conflicts are neutralized through the juridical conversation between the professionals. Dahlberg (2016) reminds that “the judiciary is not a neutral place in an absolute sense but in a functional sense that allows the resolution of conflicts and dispute” (2016:21). When the setup was challenged, by the comment from someone in the audience, the judge gets angry and corrects him. She ensures that the dialogue remains between the professionals in the case. The distance is reproduced when a second witness from the Western Union is called in. He opens a suitcase full of papers and demonstrates some transactions that has been done through the accused restaurant owner’s bank account. He walks up to the jury, with the papers, and the judge and the court reporter read through them carefully while discussing the formulation to be put to the protocol. In these moments the question of the restaurant owners business is relocated to a dialogue between mediators (Bourdieu 1987:830) as the professionals do not make any effort to offer him access to it.

When time is up, the judge browses her red almanack and checks that the date for continuing the case works out for the prosecutor, the jurymen and the lawyers. Again, a distance to the defendant’s is reproduced as their schedules are not taken in consideration. When the interpreter announces the new date, tears start to fall down the woman’s face. The Justizwache walks up to the restaurant owner, ready to take him back to the pre trial detention. Outside the courtroom a heartbreaking scene takes place. The woman frustratedly cries out after her husband and says: “God is with you”. When he is taken out of sight, she raises her arms in the air and begins to chant: “God help me, God help me”. Her acts come dramatically off and creates a contrast to the codified and formal behaviour during the initial proceedings. This points to affects being subject to discipline during court sessions (Dahlberg 2016:16) which the course of events in the waiting room, disclose a difference to. According to Bourdieu (1987:830) the professionals habitus implies an ”internalized manifestation of the requirement of disengagement” towards the case but here the judge expressed frustration over the disrupted order during the session. She seems to be in a position where getting angry is legit, which challenges the idea of the suggested “neutralizing distance” of the professionals (Bourdieu 1987:830). I argue that the requirement to

manage affects does not apply in the same way for the judge and people subject to law. Bodies affect and become affected in the courtroom and the phenomena is actualized spontaneously. But despite that the phenomena is beyond individual control it is allowed coming to expression on different terms. The display of affect seems to be conditioned by the distance that is reproduced between the professionals and the parties. This indicates domination of the court and points at a disparity on the level of affect. In the following section, I will look closer at these circumstances. I am interested in the management of the interplay of affect and atmosphere in courtrooms, specifically on behalf of the professionals.

### *Managing affective atmosphere*

Since affective atmospheres emerge in courtrooms, the situations are conditioned by how people *resonate* (Michels 2015:260) with the atmospheres that emerge. This means, that participants relate to each others affecting and affected bodies. Michels (2015) draws on Bourdieu to understand how the affective capacities of a body are shaped when participating in the emergence of atmosphere:

“While habitus refers to an attitude of the body, a way of resonating unconsciously with its environments, habituation describes a process through which a body’s affective capacity is formed or (re)modulated. Habituation /.../ describes the formation of a human body’s affective capacities. In this sense, habitus does not represent any fixed (social) structure but, rather, addresses how affective capacities are shaped – and to a certain degree stabilised – in human bodies.” (Michels 2015:260).

Habitus means a resonance with environment and habituation the process of forming the body’s affective capacity. According to Michels (2015:260), affective capacities are shaped and stored in a body and “habituation” is the process by which the affective capacity is refined. Michels (2015:260) has studied this process in relation to aesthetic work and how the habituated body of an artist has a capacity to resonate with a “minor modulations of the compositions of atmosphere” in a performance. Since all human activity is subject to habituation, and all our actions are structured according to the very principle of

habitualization (Berger & Luckmann 1991:71) we can establish that bodies are habitualised while attending legal procedures. Considering the proceedings as situations where affective atmospheres emerge, we can think of the sessions as situations where the affective capacities of bodies are shaped and sedimented. This notion will be regarded most apparent for the professionals who spend a lot of time in court sessions.

Proceeding legal cases on almost a daily basis, means that these are normalised in being a part of the professional life. The judge, who has the presidency in the setting, is tasked to manage the conducts in order to bring through the matter. The material position above the assembly in the room and the role as a divider of the word and the sentence, means quite a lot of freedom of action in one sense. But, there is a timetable to take in consideration and judges often complain about drowning in work. In cases of criminal law the verdict is to be decided immediately, on place.<sup>14</sup> This principle makes the situations of criminal proceedings special, in that the open-endedness and the immediateness requires a line of circumstances to succeed. Therefore judges are required to keep the negotiations in progress by ensuring that the parties provide with their parts. One judge summed his mission up like this:

“...the main part of my work is not what is written there [points at the yellow law book] it is *how to deal with people*, i would say. You have to respect these rules but they are not ...they *are* the *Werkzeug*, the machine, the tools.”

The judge draws a metaphor to the law as a tool in the work, while stating that the main part of the work is to “deal with people”. Another judge spoke of a similar challenge by using the term atmosphere:

“You have to make a good atmosphere. You should not be angry or have a prosecutor or a lawyer who is angry and not polite to the witnesses. That is one of the *Aufgabe* - tasks you have to look after as a judge. That there is an atmosphere that everyone is - not everyone has to be happy and laugh or so, but it must be an atmosphere that no one has to fear to come into this courtroom.”

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<sup>14</sup> This is opposite to civil law, where the judge can take time to make the decision and notify the parties about it in retrospect.

He finds that the task is to create favourable conditions for proceeding the cases which seems to be considered a deliberate action and responsibility on behalf of himself. The comment indicates that his task is to ensure everybody's well-being and suggests creating a safe atmosphere is a part of his work. The judge's expression "make a good atmosphere" is interesting in that it opens up for thinking of the atmosphere as a part of the work in the courtroom as a "mode of atmosphere-making" (Michels 2015:261) which also resembles the idea of the possibility to deliberately engineer atmosphere (Philippopoulos-Mihalopoulos 2015:28).

Bodies affective capacities interplay in the emergence of affective atmosphere and if an affective capacity is formed through the sessions, there also seems to be a demand to suppress or ignore the same phenomena. In tracing affect, the judge's comment on "making atmosphere" stems with the idea of "emotional labour" (Hochschild 2012:90) as the effort to manage emotions by either making use or constraining them in public. The judge says his job is to create a good atmosphere by making a safe space, implying the work entails an element of managing the affective atmosphere, that emerges between affecting and affected bodies. As judge says he has to *make* the atmosphere in the courtroom the effort could be considered as a part of managing atmospheres. The judge's reflection regarding undesired anger or impoliteness, suggests that this is done through administering both his own affects and the affects of the prosecutors and lawyers. This suggest that a share of "emotional labour" (Hochschild 2012:90) is done on behalf of him throughout the proceeding.

I come to think of what a lawyer tells me about the judges: "Some of them exaggerate their gruffness when there are schoolkids in the audience", suggesting the judges act ridiculous and pompous just to create the right sense of seriosity in the setting. The lawyer adds that he thinks these are attempts to try make the kids stay out of trouble. When discussing the behaviour of an older male judge, with an interpreter, after a session, she smilingly notes: "Yes, he loves his audience!" and refers to his grumpy and dramatical behaviour. The comments suggest that work



is done in order to create the right sense of the situation. A prosecutor, pondering upon the roles in the room said:

“...the interesting thing is that people also expect it a little bit that we perform. I mean often if we make the “PVG” or the entry statement and the last words it is often some kind of performing. Often I personally find it very necessary. Also the cloth. Because I am not as me there, I am there as the public prosecutor.”

The prosecutor finds that the professionalism is underpinned by the costume and that a possible audience calls for a performance, which is very much like the performance required of flight attendants that Hochschild (2012:90) gives example of in relation to “emotional labour”. Some of the lawyers have also mentioned the pressure of proceeding and acting in a smooth way, but in order to avoid upsetting the judge. This could be understood as the same posture, that Bourdieu (1987:830) suggested comes with the *habitus* and implies maintaining a disengaged attitude towards the case.

When I follow Sarah (40) in her work as a lawyer, she describes how she used to be nervous before attending court sessions. She explains that she suffered from stage fright in the beginning of her career, which came due to not having experience of performing in the room. When commenting on the judge’s behaviour in a previous case Sarah says: “Some of the judges are really nice, but this one was horrible!”. The comment surprises me, because she had not shown a glimpse of resentment or irritation during the actual proceeding. The effort to hide her view on the judge suggests that the work in the courtroom entails a share of “emotional labour” (Hochschild 2012:90). When performing in the room some feelings are suppressed or hidden in order to act professional. In addition to acting professional in the courtroom, some lawyers mention the task of helping their clients being perceived as reliable. The interaction between the lawyers and clients is quite small-scaled during the sessions but I have experienced how some lawyers hush their clients if they speak, give comments or act upset, despite not having been assigned the word. The positions during the hearing of the witnesses is well set for this to be done in a discrete way because the accused sits right in front of his lawyer. Thus, a hush from behind does not interfere with the proceeding too remarkably. In that sense, the lawyers seem to

help their clients to direct and manage their affects. The lawyer's know to act in accordance to the situation and guide people who are *resonating* (Michels 2015:260) with the affective atmosphere and displaying affect, instead of disciplining them. Picking up on the comments, provides insight from the perspective of the professionals who spend a lot of time in the setting. These examples illustrate how the professional's roles are conditioned in relation to their bodies' affective capacities that constantly are shaped in the setting. The process means that the affective capacities of the bodies are shaped; "habitualised" (Michels 2015:260) in relation to the "habitus" (Bourdieu 1987:830) of the professionals.

In this chapter, I have explored how affected and affecting bodies interplay in the emergence of affective atmosphere in court sessions. I have showed how the legal conducts structure how bodies are positioned in the courtroom and how the conducts discipline the display of affect. I showed how the permission for resonating with the atmosphere and displaying affect works differently for a defendant and a judge. The composition of affective atmosphere, can be understood as guided by the affective capacities of bodies. Bourdieu's concept "habitus" (1987), and Michel's (2015:260) concept "habitualisation", allowed to think of the professionals performing "emotional labour" (Hochschild 2012:90) in order to, on the one hand, distance themselves from the conflict by managing their bodily affective capacities, and on the other hand, to utilize them in order to guide the atmosphere in a preferred direction. I argue, the management of affect, on behalf of the professionals, can be understood aiming at proceeding the cases and ultimately carry through the work of the court. Yet, as the atmosphere is collective and beyond individual control it can only be managed to a certain extent and therefore the affective atmosphere seems to be a matter subject to material and bodily influences, but ultimately, an unrestrainable phenomena. In the following chapter, I am going to look closer at how affective atmospheres become turbulent when intensified and contested throughout the sessions. The atmospheric processes will be further explored through interventions on atmosphere (Michels 2015:255) with regards to the unpredictability of these (Michels & Steyaert 2017:82).

### **Three. Atmospheric turbulence**

#### *Atmospheric intensification*

Dressed in costumes with a matching color selection and embroidered patterns on their shirt sleeves, they give a coherent impression when walking through the corridor. The accused greets them when they enter the courtroom. The case handles sexual harassment and the distressing layout is handled in a factual tone between the judge and the accused. Occasionally, the accused directs his gaze towards the audience, from where the group follows the hearing. Being many in number, they seem to provide him with support and their presence dominates the situation in a way that is difficult to ignore. The impact of the audience in a courtroom can be understood as “an insertion - or even intrusion of private space in a public setting” (Dahlberg 2016:36) as the situation becomes dictated by the audience’s presence. In the previous chapter, we saw that the affective atmosphere emerges through an interplay between bodies with affective capacities, in the courtroom. Following this focus of analysis, this chapter explores atmospheres as collective phenomena going through change, which means regarding for the “(in)stability” (Michels 2015:255) of affect. I follow Michels (2015), who suggests that in order to understand this phenomena of changes in atmospheres, one can explore “how new affective capacities of components are explored and actualised.” (Michels 2015:261). This means that a change in atmosphere comes about simultaneously to changes in the bodily capacity to affect and become affected by other affective bodies. In other words, we can think through atmospheric irregularity in order to identify the work of affect.

Michels (2015:261), suggests that the researcher of atmospheres has to “zoom out” in order to trace similarities in how the atmospheres change and then look for a pattern in the changes. In doing this, I first trace the intensification of atmosphere through three examples. The first example is depicted above and illustrates how the audience seems to have the potential to constitute a forceful affective source during the proceedings. This is interesting when trying to

understand how an atmosphere continues to be in effect. In the second example, the specific manner of an interpreter who seems very inclined to exacerbate the tone of the judge is illustrative. From his seat next to the judge, he translates the judge's questions and the defendant's answers. But, he repeats each question with either an equally or more irritated tone in his voice. The interpreter and the judge stare at the defendant while asking him about why he has been caught on a subway camera, in interaction with an *agent provocateur*<sup>15</sup>. Their agitation is unpleasant to listen to and when I get to talk to the interpreter it turns out he is very upset. He says he believes there is an organised spreading of information on what people, getting caught by police, are to say (or not say) in the interrogations. When I later reflect on the session, I come to think of how the interpreter and the judge reflected each other's emotive expressions. They had similar frowns of disapproval while staring at the defendant and the harsh tones in their voices reinforced a sense of their community. The interpreter's role is special<sup>16</sup> in the sense that it is to repeat the statements. This means that there is potential, or risk, for a shift in the nuance of the tone. This phenomena seems to have the same effect of enforcing the affective charge in the room, which simultaneously generates an intensification of the atmosphere.

The following situation serves as the third example of atmospheric intensification. During a court session, a number of persons from the victim's family are present. They possess the place by filling up the seats in the first and the second row for the audience. They have bought bottles of soda from the vending machine, which they sip on and leave standing on the tables in front of them. I sit right behind them and the sounds and smells of them enjoying their soft drinks reminds me more of going to the movies than a court session. The contrast between their contentedness and the crestfallen defendant is obvious. Some of the family members exchange looks with each other and when one of them loudly sighs a while into the proceeding, I wonder whether the accused also senses their contemptuous energy. I don't know if he does, but I sense how his mother, sitting next to me in the back row, impatiently moves in her seat. She follows

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<sup>15</sup>An undercover police placed in a field to bust people on crime.

<sup>16</sup> The role is special in numerous senses, considering the challenge of transferring meaning between languages. For a discussion on the court interpreter's professionalisation in the EU see Bajčić & Dobrić Basanež (2016)

the session from the distance but the defendant does not look her way. As the hours pass, she sinks deeper down in the chair and later she seems to have had enough. She leans over to me and whispers "*Kann ich rausgehen?*", asking me for permission to leave the room.

Michels (2015:261) suggested that the changes can be compared, in order to trace "various patterns that were reproduced and re-composed in the modulation" (2015:261). These indicate the work of affect in the irregularity of the atmosphere. In the first example, the presence of the uniform audience, characterized the session. In the second example, the interpreter amplified the judge's affective expressions by repeating them, which made the situation intense. In the third example, the victim's family similarly enforced a pressure in the room by their similar postures and manners. There are elements of imitation in each case, consisting of similar costumes, similar facial expressions, similar tones in voices and similar attitudes that create a pattern. Atmosphere is generated by bodies (Anderson 2009:80) and these examples of intensified atmosphere, can be understood on an affective level, as what Anderson calls a "pattern of affective imitation" (Anderson 2009:80). As people imitate each other and create a pattern through similar behaviour the atmosphere intensifies. Anderson, gives example of the phenomena, when referring to how atmospheres are intensified in sports events and concerts (Anderson 2009:80). A group can constitute an affectively charged union which suggests that the intensified atmosphere, works through dynamics of affective imitation that incite an affective charge in people that reflect each other.

Philippopoulos-Mihalopoulos (2015:203) also notes imitation as a phenomena that spreads between bodies, but emphasizes the bodily tendency to be caught up by the atmosphere through Brennan's (2004) principle of transmission of affect. The atmosphere, is the "excess of affect that keeps bodies together" (Philippopoulos-Mihalopoulos 2015:155) and the shared affect sets the atmosphere that the bodies work in service of (2015:203). Philippopoulos-Mihalopoulos (2016) reminds that what this implies when having Foucault's ideas of power mechanisms in mind:

“In the era of governmentality, however, a leader is internalised in each body and in the spaces between those bodies that engage in a self-policing, but most importantly, desire-creating frenzy.” (Philippopoulos-Mihalopoulos 2016:157)

This politicized way of warning about the phenomena of imitation, explains the similarity of directed affects, by a principle of an internalised governance and desire. As Foucault points out about power, it circulates between individuals, who always are “in a position to both submit to and exercise this power” (2004:29). This suggests, that affects that transmit between bodies are shared and enable the atmosphere to emerge through an internalised orchestration rather than through individual rulings. The tension in the room is amplified as people reflect each other and the phenomena of a characterizing audience seems to be an apparent element in the intensification of atmosphere in a courtroom. The intensification is suggested to work through imitation and transmission of affect and the affective capacity of the audience, seems to play a part in the power relations between the court and the defendant.

In all three examples, the legitimised role of the court was acknowledged and supported by the audience, who by their affective charge can be understood to submit to the power of the court. This explains the accelerated sense of unease at the exposure of the audience’s sighs and the interpreter’s exaggerations. Meanwhile, both groups seem to provide comfort and thereby a commonplace and private atmosphere competes with the judicial space of the courtroom (Dahlberg 2016:36). I argue, that the imitation of the audience creates a forceful affective source that is both able to pick up on, and contrast, the dominance of the court. This is similar to what Michels & Steyaert (2017) note about the audience, in relation to their research on of an urban art intervention, when they find that the audience can provide a random input on the atmosphere: “the audience itself became an element of chance, making the crafting of affective atmospheres unpredictable“ (Michels & Steyaert 2017:98). In the following, I will pick up on Michels & Steyaert’s (2017:98) note on atmospheres being “unpredictable“ and a challenge for the proceeding of cases. This means that, as the atmosphere intensifies, it both supports and contests the proceeding.

### *Atmospheric challenges and change*

In this section, I will further explore changes in affective atmospheres by taking interest in their unpredictability while still considering them emerging between bodies with affective capacities in courtroom environment. In tracing the workings of affect, taking focus on the invokes on atmospheres can be of help which also means looking for what indicates a change in atmosphere (Michels 2015:255). When I get to know Hannah (45), working as an interpreter, I follow the sessions she works in for a few days. She tells me she likes her work, but also mentions “a bad atmosphere” in the house. She describes some instances where the accused have acted unsuitably and thrown themselves on the floor to beg for forgiveness but the judge has responded by getting angry. I ask Hannah about the judges, her experiences of working for them and she lowers her voice, because we stand in the corridor of their offices. She says, most judges dislike expressive acts and give response on them by getting angry. Acts of desperation and anger can be understood as display of affects and emotions. What is interesting is that one undesired emotive expression seems to be countered with another. While the judge’s outburst is granted, the defendant’s is not (also see chapter 2).

Hannah and I have just walked away from a court session in which the judge was talking about people as “Schwartzter Afrikaner”. The use of this language is not uncommon despite the generalising and racist connotations it implies. Hannah explains, that it is not considered racist in the setting because of the numerous cases concern drugs that refugees from Africa, who are forced sell on the streets in trying to make a living, are charged. The case we just walked away from concerns a man who is accused for having sold two balls of cocaine. When the witness is asked to confirm that he recognizes the defendant from the incident at case, he answers in English, that he is one hundred percent sure that he, the defendant, was there that day. The witness points at the defendant from his place in the middle of the room but the defendant states that the witness confuses him with someone else. The defending lawyer sets a counter question: “How can you be sure it is this man, when there are hundreds of black Africans out there on the street?” After the hearing, when the witness walks up to the judge to get his certificate of

attendance signed, he politely thanks the judge and the rest of the assembly. But, when he walks past the defendant, he uses a low but sharp voice and says: “See you out there on the street” and the second after, he is out of the room. The prosecutor, who is obliged to raise and reformulate any potential new allegations during the sessions does not react on the comment, instead the procedure is carried on as if nothing had happened.

In terms of atmosphere, the outburst indicated an atmospheric “(in)stability” (Michels 2015:255). The comment seemed to come out of nowhere and provided a contrast to the otherwise restrained atmosphere that had emerged in the room. The few steps up to the judge’s desk means that the witness and the accused are positioned only a few meters apart. In this case it was identifiable as an invoke on the atmosphere (Michels 2015:255) as the actualisation of a change in the atmosphere, came about with the comment. The atmosphere changed, and what becomes clear is that atmospheres can go through unpredictable variations (Michels & Steyaert 2017:82). If we allow us to think of the established atmosphere as consciously designed, but subject to unexpected change, the established atmosphere was challenged and by the comment. Philippopoulos-Mihalopoulos (2015:137) states that: “engineering does not necessarily work out in the intended way.” (Philippopoulos-Mihalopoulos 2015:137) and explains the similar phenomena of atmospheric unpredictability by cause of faults in the design of atmosphere. Both me and Hanna perceived the comment, which in fact could be considered a threat against the defendant. When Hanna refers to this incident some weeks later, she says the comment has stayed in her mind and I tell her so has it in mine. Both of us were shaken by it, but none of the people working on the case reacted. Either, the comment came out as a surprise to them, or it came out as an ordinary thing. Because it was let pass, the silence rather worked as a tacit consent. Here we see that changes in the affective atmospheres, indicate the power of affects. What we can point out, so far, is that either atmospheric patterns are reproduced or challenged but since the affective atmosphere is a “fleeting phenomenon” (Michels & Steyaert 2017:85) it can not be controlled. This incident and the interpreters comment on the “bad atmosphere in the



house”, suggests that the atmosphere could be taken responsibility for<sup>17</sup> in order for the atmosphere *not to enforce* unpleasant comments, attitudes and connotations.

“Please play it again” the interpreter asks the judge and refers to a tape from a surveillance camera in the subway used as evidence in a case. We stand behind the judge’s desk and watch how the court reporter monitors the video player on his computer screen. I look at the judge who has gotten up from his seat to make space for everybody. He stands right next to the accused and carefully watches the short recording. The prosecutor and the police comment on the quality of the tape and we watch it once more. “Stop”, says the judge, and asks the court reporter to pause the recording. He looks closer at the screen and points at the still picture. Then, he turns to the accused and uses his hand gesture a movement that looks like a hand receiving a spitted ball of cocaine from the mouth. The accused objects and a discussion between them takes off. The situation could just as well concern a random video-clip on the internet and not evidence in a case of criminal law, because of the intimacy and everydayness of the situation. When video tapes from surveillance cameras are used as evidence material, these are saved on dvd’s and played in sessions. At such times, people are invited to watch them on the court reporter’s computer screen. This means that everybody get up from their seat and walk up behind the judge’s and the court reporter’s desk in the other end of the room. As the computer screen is small for many people to watch, people stand close to each other. If the videotapes are of bad quality, or shot from a fuzzy angle, they with most probability cause discussion. Both the spatial and the hierarchical positions are rearranged from the general scheme of the room. If the moment drags on the change tends to become particularly expressive. In terms of atmosphere, a change comes along with the rearrangement of the positions, again causing a change in the composition of the atmosphere (Michels 2015:255). When people move around, their bodies containing affective capacities remodulate the composition and thus “challenge specific patterns of atmospheric compositions” (Michels 2015:261). To grasp how they are modulated, is to look into how changes are made on the design of the spatial formation (Michels & Steyaert 2017:89).

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<sup>17</sup> As I show in chapter 2, the atmosphere seems to be cared for by some judges.

The change in atmosphere through spatial formation, suggests that the original layout is an arrangement that works to consolidate a specific “mode of atmosphere-making” (Michels 2015:261) by fixing the bodies to specific positions in the room. Here, we are reminded of how the arrangement, through the formalised positions, seems to deliberately strive at establishing a specific layout. The rearrangement of the positions illuminates how efficient the original arrangement is for the creation of tension, hierarchy and distance. As people are expected to sit on the determined seats and speak on the given cues, the arrangement of the session can be thought of as an attempt to direct affect and thus compose, or reproduce, a specific atmosphere. The care, by which the formalities are made through, suggests that a specific atmospheric composition continuously is provisioned for. Thereby the three dimensions of affect: “their spatio-materiality, their sensuality and their (in)stability” (Michels 2015:255), are provisioned for through the maintenance of the formal adjustments. This indicates that the establishments of court sessions are attempts to continuously produce a specific “pattern of atmospheric composition” (Michels 2015:261). I argue that the repeated composition of the room and the conducts, have the consequence of setting up for similar starting points, also in terms of atmosphere. We see that whenever people line up next to each other on the same side of the room a change in atmosphere comes about through a modulation of the spatial formation (Michels & Steyaert 2017:89). In the following section, I will explore how we can think of atmosphere as deliberately designed in order to meet the challenge of unstable atmospheres. I will analyse the atmosphere in a court session as designed through security measures (Philippopoulos-Mihalopoulos 2015) (see also chapter 1.).

### *Atmospheric risk and control*

One day, when I walk down the corridor of the courthouse, I turn around a corner and face three men from the Justizinsats gruppe - FPA (Federal Police of Austria) holding their guns while sitting and staring out in the air. A man from the Justizwache is also there, and I consider walking past them into one of the two courtrooms, but their presence stop me. I ask them which room they are guarding, but the Justizwache answers me “Was?” while the FPA’s continue

staring straight ahead of themselves. I try to ask again but the Justizwache repeats “Was!”. Then I explain my errand, instead addressing the men from the FPA. One of them fixes me with his eyes and another one, who has me in his dead angle, rapidly raises up from his chair. “We are not allowed!” the FPA-man says while his colleague seems prepared for taking action. I explain that I am a student but he repeats: “We are not allowed!”. His threathfull tone makes me answer “Okay, okay”. He points at a door further away in the corridor and says “You can go there” and repeats “We are not allowed”.

This incident, illustrates an interesting mechanism of securitization. The armed men would not reveal any information, yet their presence and hasty actions made me understand that they were monitoring some kind of a risk, which they did not leave out potentially could be me. I will pick up on this phenomena when I explore the making of atmosphere by the means of securitization in the following. Philippopoulos-Mihalopoulos notes that an atmosphere of securitization works through building up an illusion: (2016:161)

”Security is a fragile, fully engineered atmosphere that relies on exclusion and purification, as well as intense conditionings of residents in order to actually desire this sort of non-legal, non-conflictual, seemingly safe atmosphere” (Philippopoulos-Mihalopoulos 2016:161).

The idea is that the atmosphere is staged in order to create an illusion of security. I will account for a particular court session and explore it as a fully engineered atmosphere (Philippopoulos-Mihalopoulos 2016:161) through this principle. This means, considering the work of a designed atmosphere as successful in controlling bodies and affects. In the case depicted in the following section, seven people are accused for fraud. The case provides as an example of how pronounced security measures are taken and come to characterize the dynamics in the courtroom in a specifically strong way. I am interested in the presence of the armed law enforcement, that effectively contribute to the atmosphere that emerges.

The case is being handled in *der Schwurgerichtssaal* during a number of days. One of the police instructs me to display my ID at the courtroom door where the police has set up an extra

entrance. They have arranged it with large tables and a metal detector from where they guard and monitor a security procedure of the visitors. Everybody, except the lawyers, must prove their identity and all bags are searched through. “*Ich kenne sie*” a policeman, dressed in a shirt and a jacket, tells his colleague when he sees me searching my bag for my ID and my university card. I get to enter the quite spacious room crowded with people and I feel confident, so I ask a police, recognizable by a badge around his neck, if I may sit at in the line for press people. This enables me to sit in the first row and take part of the security cavalcade that a minute later leads in the defendants to the benches in the middle. The sight of in total sixteen police officers who march into the room surprises me. One police for each defendant fills up the space in the middle. When the defendants are seated, the police stay put and wait without releasing their handcuffs. Suddenly, one of the police grabs a pen from the lawyer’s desk and tells the owner to eliminate it, loudly scolding it could be used as a weapon. Then the police coherently turn around before walking away from the defendants with restrained faces. Some of them take position before the audience, others by the entrance and the last ones at the door to the back-room. The choreography of security measures, reminds of the patterns of affective imitation (Anderson 2009:80) described in previous section. The police incite an energy that draws attention and the atmosphere that emerges and becomes characterized by them insisting on having control. It is as if the police expect the audience to be equally unsound as the accused possibly might be, because they glover at us and follow every movement. Note how this way of staging security is much alike the description of an atmosphere of oppression, that “includes and pacifies its own risks” (Philippopoulos-Mihalopoulos 2015:143) as the police take the audience for a potential risk.

The police are equipped with headsets stuck in their neck and safety vests with the word *Insatzgruppe* embroidered on the back. In addition to their tall figures and creaking uniforms, three of the FPA’s have face masks and large automatic weapons. Having them stare at us makes me anxious and I get the feeling they have to take action if someone makes hasty movements. Indeed, they are on the ball when the court reporter and a technician rush into the room to prepare the microphones. I notice how the police use their looks to communicate between each other and I hope for myself that no one will do anything rash and create compulsion for them to

take action. When someone walks in the door of the backroom, the police are vigilant and two of them move to reinforce the surveillance of the entrance. The room seems filled with fear of uncontrolled behaviour which creates tension between the audience and the police. They let us understand that the situation entails risks and the defendants, the audience and the outside are considered a potential danger. This connects to how Philippopoulos-Mihalopoulos (2016:161) describes “the perfect atmospherology” in that “security is provided because it is desired, and desired because it is provided” (Philippopoulos-Mihalopoulos 2016:161). By controlling the situation, the police manage the participant’s desire for safety. The police officers’ behaviour lets us understand that there is a potential danger, while they provide us with safety. This means, that they control and discipline our affects.

Because of the surveillance and the tight procedure in the entrance, entering and leaving the room is obstructed. In other words, it is the sense of a situation that not easy to leave (Philippopoulos-Mihalopoulos 2016:158). The way the situation is built up; through the security procedure, the surveillance of the audience and the securitized entrance, can be linked to Anderson’s note on atmospheres emerging in connection to forms of enclosure (Anderson 2009:80). People stay for several hours and many in the audience hang around throughout the whole day. The arrangement seems to have the consequence of keeping the audience present on their own responsibility, despite the uncomfortable circumstances and the slow proceeding of the case. The presence of the police makes people stay put and avoid unnecessary actions. The atmosphere emerging, can therefore be considered perfectly engineered in the sense that “the very bodies police themselves” (Philippopoulos-Mihalopoulos 2016:160). Here, we have an atmosphere emerging between an assembly of affective bodies that govern themselves, which connects to the theoretical contextualisation of this study, namely systems of discipline and control within the juridical system (Foucault 1979;1980). The mechanism at work are found “at the level of individuals, bodies, gestures and behaviour” (Foucault 1979:27) as parts of a strategy to exercise power over the body. In this study, the phenomena is explored on an atmospheric level, as an interplay with the affective bodies and the affective atmosphere that emerges from them. Foucault suggests, studying new tactics of power and how these target the body (1979:28).

I argue that the arrangement around the court sessions target the body on an affective level. The phenomena is enabled through the modulations made on the compositions of atmosphere. This applies, since affect is an bodily capacity interlinked with power and shapes the contact between people (Athanasidou, Hantzaroula & Yannakopoulos 2008). The managing of risks through the presence of law enforcement and the surveillance of both the audience and the defendant's has the consequence that people behave in a particular way. An atmosphere emerges, that seems to make people discipline themselves. The measures are taken in order to manage the affectively charged bodies, meanwhile, the arrangement also seems to generate affective charge. This means that along with people governing themselves, very little measure has to be taken in order to force them to do so because the control of the room works on a level of atmosphere. This points at Foucault's (2004:30) note on how power "pass or migrate through our bodies". Power seems to pass between bodies on an affective level and comes to expression in how the affective atmosphere is composed. This means, that collective affects influence our bodies and are possible to manage on account of the principle of collectivity of affective atmosphere (Anderson 2009:80).

When a witness is called in he is accompanied by more police men. He is wearing a big safety vest and shakes his legs, seemingly nervous about the situation. From his place at the chair in the middle, he faces the accused who sometimes smile and sometimes sigh at what he tells about them. A while into the hearing, the defendants chuckle at the witness' statement. They express a community, and the witness gets upset by a gesture from one of them. The tension increases and the police who stands next to the witness redistributes the weight on his feet and the judge reminds the defendants about the security cameras. The conflict between the defendant's and the witness, comes off as a rupture in the atmosphere (Philippopoulos-Manolopoulos 2015:201). This means that the atmosphere becomes "epistemologically accessible" when a change from one kind of atmosphere to another comes about (Philippopoulos-Manolopoulos 2015:202). It reveals atmospheric unpredictability (Michels & Steyaert 2017:98) which is identifiable when a change in the bodies affective capacities is actualised (Michels 2015:261). The turbulence is met by the judge and the police who remind about the security cameras, which in terms of atmospheric

engineering means "redrawing the spatiotemporal boundaries" (Philippopoulos-Mihalopoulos 2015:28). He reminds about the space and the situation and the law is made visible through the comment (Philippopoulos-Mihalopoulos 2015:176). Meanwhile, the comment could be understood as an effort to make the bodies remain in the service of the engineered atmosphere (Philippopoulos-Mihalopoulos 2015:161) in that it draws attention back to the gravity of the situation. The session is arranged effectually enough for the judge to control the situation by small means, which reminds of the description of atmosphere of security as merely an illusion (Philippopoulos-Mihalopoulos 2016:161). The atmosphere of security comes about through the arrangement of the material and in the affective dynamics between the bodies. It seems to come down to very small workarounds of affective articulations to break the illusion which points at the "(in)stability" (Michels 2015:255) of affect. I argue that the small means, by which the order is drawn attention illustrates the workings of affect in the courtroom. The situation points at the subtle systems of control at work, because the means taken are not distinctly expressed but implicitly understood and materialized by the bodies present. I argue that when the atmosphere becomes turbulent and when it changes, the fragility of the sense of security reveals and breaks the illusion of control.

In this chapter, I have explored changes in the affective atmospheres by tracing the "(in)stability" of affect (Michels 2015:255). I showed how patterns in the compositions of atmosphere come about as people imitate each other. I argue that the affective atmosphere intensifies as affective bodies amplify affects in relation to each other throughout the sessions. I showed how the affective atmosphere in the courtroom is a potential surface of contestation between parties. Then I explored the challenge of atmospheric changes that are activated in connection to modulations in the spatial positions of affective bodies in courtrooms. I argue that modifications in the spatial positions of affective bodies indicate change in atmosphere. The change in atmosphere in turn points at the unsteadiness of affect which challenges a smooth execution of the court session. Thereby the original positions in the courtroom have the effect of establishing an atmospheric setup that stabilizes the composition of affective atmosphere. In the last section I explored the means of securitization as an attempt to design atmosphere. I argue that the security measures

incite an setup and atmosphere that has the effect of making people self-govern the affective capacities of their bodies.



### **Conclusion. Workings of affect in courtrooms**

This study started with a man, seated at the defendant's chair in the middle of a courtroom. I put forward that there was something about the situation unfolding around him, that could not be articulated merely as sequences in a juridical process. From there, I picked up the interest for "affective atmospheres" (Anderson 2009) emerging in court sessions at *der Landesgericht* in Vienna. By exploring compositions of affective atmospheres (Michels 2015:255) in courtrooms, I have traced the work of affect in legal procedures. The research questions guiding the work were posed as follows:

- How does the material of the courtroom, influence the composition of "affective atmospheres" (Anderson 2009)?
- How do affective bodies and affective atmosphere interplay in legal procedures?
- What do changes in the compositions of affective atmosphere indicate about workings of affect in courtrooms?

In the first chapter, I have from a starting point in Anderson's concept "affective atmospheres" (2009), explored the "spatio-material" (Michels 2015:255) dimension of affect. The courthouse and the courtrooms were discussed as the material components in the composition of affective atmosphere. By analysing the architecture, the interior and the spatial arrangements of courtrooms as visual and material representations of law (Dahlberg 2012:4) I explored how the court and the courtrooms influence the emergence of affective atmosphere. This provided a way to think of the arrangements in the courtroom as expedient in managing the affective resonance between the parties. I argued that the materiality of courtrooms, point at attempts to steer and discipline affective atmosphere in a particular direction through separation, distance and boundary making with the outside. This means, that the court enacts power through the ability of the material arrangement to confuse, surprise, monitor and resonate with affective bodies. In chapter two, I have taken interest in how affective bodies come together in courtrooms by accounting for the dimension of affect being their "sensuality" (Michels 2015:255). I have

considered how the procedures structure how bodies are positioned in courtrooms and, from there, analysed affective atmosphere emerging as an interplay between affective bodies and their environment. I showed how the permission for resonating with the atmosphere and displaying affect works differently for a defendant and a judge. The participants bodies resonate with the atmosphere and become affected in what are considered both desirable and problematic ways. I argued, that the management of affect and emotions, on behalf of the professionals, can be understood aiming at proceeding the cases and ultimately carry through the work of the court. This suggests affective capacities are both dismissed and utilized on behalf of the professionals, as a part of their work in the courtroom.

In chapter three, I have taken interest in the dynamics of affect in courtrooms and explored the changes in the compositions of affective atmosphere by tracing the “(in)stability” of affect (Michels 2015:255). I showed how patterns in the compositions of atmosphere come about as people imitate each other. I argued that affective bodies amplify affects in relation to each other throughout the sessions. Then, I showed that the atmosphere changes, simultaneously to when rearrangements in the spatial layout are made. I argued that the original positions have the effect of establishing an atmospheric setup that works to stabilize the composition of affective atmosphere. In the last section I explored the means of securitization as an attempt to design atmosphere by taking control on an affective level. I argue that the security measures incite an setup and atmosphere that has the effect of making people self-govern the affective capacities of their bodies. I argued that when the atmosphere becomes turbulent the illusion of control is broken.

The inquiry to compositions of “affective atmospheres” (Anderson 2009) in courtrooms points in two directions: toward consciously modulated affective atmosphere and toward unconsciously emerging affective atmosphere. In establishing this distinction, the analysis allowed to think of the courtroom as a space and situation, in which affective atmospheres emerge and are subject to interventions. Notable is, that whether or not a control of these is conscious, the arrangement and the conducts have impacts on the atmosphere that emerges. By exploring the compositions of

affective atmospheres, it became evident that bodies are targeted, controlled, disciplined and steered on an affective level throughout the court sessions. This can be understood as a way exercise power on an affective level, because all bodies have the capacity to affect and become affected. The arrangements of court sessions influence how this comes about. I argue that the arrangement of court sessions, through the spatio-architectural arrangements, the management of affective capacities and the securitization of affective bodies coming together, is a deliberate measure of behalf of the court. The arrangements have a direct influence on how the affective atmosphere is composed and emerges. The means taken are not distinctly expressed but implicitly understood and materialized as the bodies enter the setting. But, I also argue that the work of affect in court sessions is a matter beyond control because the affective bodies that the atmosphere emerges between, can both work to orchestrate and oppose the phenomena.

This inquiry established affective atmospheres as a considerable part of court sessions, which provided perspectives on a discussion of the workings of affect in a legal setting. The composition of affective atmospheres were discussed as subtle means to enact power through the discipline and control that the atmosphere of courtroom incites. The way courtrooms and conducts are cared for suggests that there is power in the knowledge of how to behave and move in the setting. This knowledge seems notably in the hands of those already inaugurated; the lawyers, the prosecutor, the judge and the police. As established by Foucault (2004:39), the techniques of discipline, should be regarded bound up with power and with knowledge. Affective atmospheres seem deliberately managed within a legal context and therefore, the affective charges that are directed in favour of the institution, can be regarded as means of domination. As affecting and affected bodies enter the setting there seems to be differences in which bodies that are allowed to give expression to affect. What an inquiry to the atmospheric conditions of court sessions shows is that the affectively charged bodies are managed by security, but also seem to manage themselves through self-policing (Philippopoulos-Mihalopoulos 2016:157). The findings, suggest that the setup of a courtroom and court sessions are arranged with a calculation of the principle of self governance. This phenomenon points in the direction of Foucault's suggestion to examine the "micro-physics of

power” (1979:26) that come to expression in the political investment of the body. This means that the courtroom conducts are orchestrated so that discipline is manifested on a bodily level. I argue that affects have a shared part in enabling this phenomena. Thereby, the state has a chance to exhibit power, which comes to expression on an affective level, through the composition of the affective atmosphere. This is done through the interior, the bodies and the staging of security that have consequences on an atmospheric level. This indicates that affects are managed in ways that make them work in favour of the state, that has the responsibility of carrying through proceedings. Thus, it is possible to situate bodies’ capacity to affect and be affected in the courtroom as a mechanism in one of the institutions “that permit the fabrication of the disciplinary individual” (Foucault 1979:308). This means that the courts can be considered connected to a larger societal project that works by the principles of making subjugated bodies constitute themselves as subjects through self-governing principles (Foucault 2004:28). The courtrooms stage the dialogue between the state and the individual subject to law (Harris 1996:10) and the sessions stage the ongoing process. This means, that the atmosphere surrounding the sessions is a surface through which the power relations between the parties are measured. The surface serves as a point of negotiation operated in connection to the juridical proceedings, as a feature partly separated from the apparent handlings of dispute. This passage urges us to better understand *how* the workings of affect are used, and by *whom*.

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