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# Emotional and affectual legal landscapes

This chapter discusses the relations between emotions, affects and law, and how they constitute emotional or affectual legal landscapes. The aim is to develop further the thoughts of a previous co-authored article in which Siiri Pyykkönen and I sketched the conception of emotional legal landscapes.<sup>1</sup> While writing the aforesigned article, it became clear that the concept of emotional legal landscapes is under-studied and includes more potential than could be included in one article.

A significant initial source of inspiration for addressing emotional legal landscapes was related to the litigation around the censoring of Dries Verhoeven's art installation *Ceci n'est pas...*.<sup>2</sup> When this was presented at an art festival in Helsinki, the legality and acceptability of the artwork was questioned after an off-duty social worker had passed by the installation in the public square, became concerned about it, and called the police in order to question the appropriateness of the artwork. The police first interrupted the installation where a child and a man were reading a book in a glass booth, wearing only underwear. Second, the police required modifications to a forthcoming installation where an old woman was to sit in the glass booth naked, wearing a mask.

We started to wonder about the significance of personal feelings and emotional responses when something is evaluated as "legal" in the landscape. We were not alone, as the censoring was contested by the organizers of the festival, which led to a three-year litigation in the administrative courts. The organizers finally won and the censoring was found groundless. Verhoeven's installation had appropriate permits, was encountered by hundreds of people, and was officially accepted before two re-

<sup>1</sup> Rannila & Pyykkönen 2021.

<sup>2</sup> Verhoeven 2014.

quirements were fulfilled: someone had to be upset about the installation *and* to act on the basis of that. Acting in this case meant informing the police of their concern about the contents of the installation. Hence, the artwork became scrutinized as a result of the passer-by's response to it, meaning that the process was highly incidental: it required encountering the artwork, responding emotionally to it, and being active enough to report to the police. Much, thus, depended on an articulated emotion and the activeness of a citizen who was aware of their rights to report their concerns and hopes of censoring.

Our analysis of the Verhoeven case revealed some ambivalences in the practices and resulting determinations of legal landscapes. It confirmed: (1) the presence of hidden norms in the determination of appropriate urban landscapes; (2) the relationality of the law<sup>3</sup> and how interpretations of law are highly context-sensitive; (3) the emotionally laden legal reasoning that problematizes the assumption of rational and objective legal actors.

These aspects—the critique of rational legal actors, relationality of law, and hidden norms—are the starting points of my elaboration of emotional or affectual legal landscapes. At the same time, these views are diversified by acknowledging and trying to overcome the limitations of our previous article in two ways. First, in our examination of the litigation in the previous article, we restricted law mostly to state-based law whereas in the current text a more hybrid understanding of everyday law with its customs and norms is considered equally important. Second, the conception of emotions is diversified: previously we concentrated on subjective emotions that could be shown and expressed, and which were presented as collective since the reporting of the artwork was justified by the protection of public morals. In the present article, more attention is paid to affects, which are unreflective yet often intense feelings that influence behaviour. I ask what is hidden or rendered invisible in emotional and affectual legal landscapes, and how can landscapes be understood from that perspective.

A wide array of conceptualizations as well as different philosophical and methodological perspectives to each of the main terms—landscape, law, emotions, and affects—offer various possibilities for interpretation. To sum up the conceptual starting points: first, *state law*, or the *official law of institutions*, is understood as only one possibility and aspect of law, acknowledging also the importance of *everyday law* of customs and norms; second, subjective and expressive *emotions* are accompanied by the more indeterminate *affects*; third, the diversity of the conceptualization of *landscape* is acknowledged, although the focus is on the conception of *legal landscapes*. As the

concept of legal landscape is at the fore of this text, I begin by elaborating on its interpretations. I proceed to the questions of emotions, official law and legal reasoning, and finally, to affects and everyday law. The discussion sums up the debate from the viewpoint of *hiding* involved in different understandings of legal landscapes.

### LEGAL LANDSCAPES

As Don Mitchell has written: “Landscape research must be all manner of *other things* than just the landscape itself.”<sup>4</sup> Various conceptions of landscape offer interesting possibilities for understanding emotional or affectual legal landscape. As Kenneth Olwig argues, the potential of the concept of legal landscape is inseparable from the way in which landscape is understood.<sup>5</sup> Landscape’s relations to law and emotions vary according to different understandings of landscape: whether as (1) sights, either close and multi-sensorial, remote and visual,<sup>6</sup> or “the totality of the view—its constituents as well as their order”;<sup>7</sup> or as (2) a way of looking or seeing;<sup>8</sup> or as (3) subjective, meaningful lived worlds.<sup>9</sup> In a short article, the exploration of different possibilities is limited, and hence I will focus on the idea of (4) legal landscapes, where law is regarded as foundational for landscape. I consider such landscapes to be: (5) constituted in relation to cultural and social contexts;<sup>10</sup> (6) reflecting power relations; and (7) being constituted in the spatial interplay of customary law and other forms of law.<sup>11</sup> This understanding of landscape is close to what Tiina Peil and Michael Jones describe as a Nordic tradition, “in which landscape is not so much seen as territory or scenery, but as an expression of law, justice and culture.”<sup>12</sup>

David Delaney divides legal landscapes into two dimensions.<sup>13</sup> First, there is the physical legal landscape that is made visible through fences, gates, signs, doors and other material elements. Second, there are legal discourses that produce differences and similarities, and are used in legal reasoning. In these manners, law—in its many

<sup>4</sup> Mitchell 2003, p. 790.

<sup>5</sup> Olwig 2013.

<sup>6</sup> Granö 1930; discussed by Paasi 1982.

<sup>7</sup> Mitchell 2012.

<sup>8</sup> Rose 1993; Blomley 2003; Wylie 2007.

<sup>9</sup> Jones 1991; Karjalainen 1996.

<sup>10</sup> Jones 1991.

<sup>11</sup> Blomley 2004; Setten 2005; Olwig 2008; 2009; von Benda-Beckmann & von Benda-Beckmann 2014.

<sup>12</sup> Peil & Jones 2005, unpaginated.

<sup>13</sup> Delaney 1998.

forms—is inscribed both in physical spaces and in lived realities “in terms of rights or obligations, or what kinds of actions, under what conditions, are permitted.”<sup>14</sup> This view comes close to the ideas of landscapes as “a localized realm of customary law”<sup>15</sup> or as landscapes shaped by praxis and customs.<sup>16</sup> In Gunhild Setten’s words: “landscape is best seen as people’s customary engagement with the land constituted through temporal and spatial practices. Such a landscape is materially manifested through these ever ongoing practices.”<sup>17</sup>

Landscapes are, thus, formed in between the state law, conventions, local particularities, norms and customs, many of which are not written but rather practised.<sup>18</sup> Different forms of law and their jurisdictions can be overlapping<sup>19</sup> but also contradictory,<sup>20</sup> thus adding to the emotional experiences or struggles over legal landscapes. Emotions and the debates over them not only have spatial consequences, but they also reveal what people fear or hope, or how democracy and rights function and become materialized in landscapes.<sup>21</sup>

Mitchell emphasizes how decisions related to landscapes are products of “struggles and practices, of ways of doing things.”<sup>22</sup> These struggles may happen, for instance, with nature, within a state, between capital and labour, and by people with differing levels of power and differing abilities. Important, thus, is “who is *able* to structure the landscape to meet their own needs and desires, to protect their own interests, and to sculpt what for them might be a good future.”<sup>23</sup> Mitchell, furthermore, suggests paying attention “to what does *not* appear in the landscape, what is *not* apparent” as the traces and struggles of “less-powerful groups” might be erased and do not become “materialized” in the landscape.<sup>24</sup> However, power in landscape does not manifest itself only in what can be seen, but also in what is missing.

With these characterizations of legal landscapes, I next discuss emotional and affectual legal landscapes, and how they relate to different conceptions of law, most notably state law and everyday law.

<sup>14</sup> Delaney 1998, p. 14.

<sup>15</sup> Blomley 2004, pp. 53–54.

<sup>16</sup> Olwig 2008; 2009.

<sup>17</sup> Setten 2005, p. 6.

<sup>18</sup> Olwig 2009.

<sup>19</sup> von Benda-Beckmann & von Benda-Beckmann 2014.

<sup>20</sup> Rannila & Repo 2018; Rannila 2019.

<sup>21</sup> Howe 2008, pp. 435–437.

<sup>22</sup> Mitchell 2012, p. 298.

<sup>23</sup> Mitchell 2012, p. 298.

<sup>24</sup> Mitchell 2012, p. 299.

## EMOTIONS, OFFICIAL LAW AND LEGAL REASONING

Discussions on the emotions and legal reasoning are paradoxical from the outset. It is problematic if one person's emotional disturbance can transform or censor legal landscapes but it is equally doubtful if emotions or affects can be excluded from the law, which would mean excluding a significant part of urban life-worlds and what it means to be a human being. Scholarly debates have widely addressed the relations of landscapes and law,<sup>25</sup> emotions and law,<sup>26</sup> or space and affects.<sup>27</sup> Although it is rarer to find studies exploring affects or emotions as a question of legal landscapes, there is an increasing amount of research tackling the interrelations of bodies, affects, spaces, and law.<sup>28</sup>

The law's focus on rational argumentation follows the wider tendency to distinguish reason from emotions and affects, and thus to detach rational human beings from their bodies and desires.<sup>29</sup> Emotions have commonly been regarded as external to reason and law, and as something that needs to be controlled. Susan Bandes's thoughts on how emotion is present in legal processes and "pervades the law"<sup>30</sup> have been influential for the critique of the dichotomy between reason and emotions. This dichotomy has been accompanied by the effort to understand the relations and interactions of law and emotions; how, for instance, law creates emotional responses or how emotions are present in the practices of law.<sup>31</sup> While the interaction of law and emotions is nowadays more often acknowledged, focus has shifted towards "the ways in which these emotional dynamics can be used and misused."<sup>32</sup>

In state law, legal actors—such as lawyers and judges—are expected to base their work on rational argumentation and objective evaluation, where emotions are excluded. This is despite the fact that many legal processes encountered by citizens (e.g. inheritance disputes, housebreakings, hate crimes, "passion" crimes, divorce and custody conflicts) and emotions are tied together. Actions related to the conflicts are also rationalized or justified in ways that involve emotions,<sup>33</sup> thus illustrating how legal

<sup>25</sup> Delaney 1998; 2013; Mitchell 2003; 2012; Blomley 2004; Jones 2007; Olwig 2008; 2009; 2013; Braverman 2009.

<sup>26</sup> Bandes 2000; Conway & Stannard 2016.

<sup>27</sup> Simonsen 2007; Simonsen & Koefoed 2020; Pile 2021.

<sup>28</sup> Philippopoulos-Mihalopoulos 2015; 2019; Pavoni 2019.

<sup>29</sup> Young 1990.

<sup>30</sup> Bandes 2000, p. 1.

<sup>31</sup> Conway & Stannard 2016; Stannard & Conway 2016.

<sup>32</sup> Stannard & Conway 2016, p. 294.

<sup>33</sup> Bandes 2000; Conway & Stannard 2016.

processes and the life around them are burdened by emotions. Yet, the state's legal actors who deal with these cases are regarded as untouchable by the human aspects of the cases.

Spatial perspectives diversify these views. Margaret Davies argues that legal geographical approaches have the ability to contest the dematerialized master narrative of law.<sup>34</sup> Law is transformed when scholars not only ask *what*, but also *where* of law, placing law not only in courts, but also in homes, streets, or other everyday places. Thus interest shifts towards asking about the contexts, locations, and performances of law: "Law becomes *what* it is, *where* it is."<sup>35</sup>

In this chapter, I conceptualize emotional legal landscapes as landscapes that are constituted in relation to the definitions and policing of the state law, and through emotional responses that can be expressed and thus used in redefining the legal order of landscape. I suggest paying special attention to the events of law that have law-transforming capacity.<sup>36</sup> In Verhoeven's case, a random encounter developed into an event of law where the legal order of landscape became contested. According to a particular way of looking at or seeing the landscape,<sup>37</sup> the artwork did not seem to be in its "proper place" in public space, where it raised questions of public obscenity. Not only did the litigation process and its result matter, but equally important was the encounter that initiated the process and became an event of law that aimed at reformulating legal landscape. The results of one kind of event of law were also explored in an earlier study of mine in the alternative community of Christiania in Copenhagen, where a shooting incident became a lawmaking moment that transformed legal interactions and hardened the regulations and the attitude of the authorities towards the community.<sup>38</sup>

### EVERYDAY LAW AND AFFECTS

Davies emphasizes a diverse understanding of law and regards the law of the state as only one among many.<sup>39</sup> I next address the conception of everyday law, which I find illustrative in describing law that differs from the state law in at least four ways. First, in everyday law, legal actors are more diverse and numerous as each individual (as well as many other non-human actors) is a legal actor in some sense. Second, legal processes are neither as formal nor as prescribed as in state law. Third, the workings of everyday

<sup>34</sup> Davies 2017.

<sup>35</sup> Davies 2017, p. 30.

<sup>36</sup> Benjamin 1978; Rannila 2019.

<sup>37</sup> Rose 1993; Blomley 2003.

<sup>38</sup> Rannila 2019.

<sup>39</sup> Davies 2017, pp. 21–23.

law mostly remain unnoticed and taken for granted until the legal order breaks down for one reason or another. Fourth, affects in everyday law spread more widely and uncontrollably than they do in the highly controlled or engineered settings of the state law. These aspects make everyday law highly interesting in relation to affectual landscapes.

Despite these differences, state law and everyday law are not separate. Customs and norms are intertwined with the state law, and together their practices and orders formulate everyday legal landscapes. As Kathryn Abrams describes, the everyday is “shaped by the experience of living under the law”,<sup>40</sup> and thus everyday nomic settings (such as public spaces, institutions, homes, workplaces)<sup>41</sup> are excellent contexts for exploring how norms and customs control the sights or the ways of seeing and practising the city. In this kind of unofficial law,<sup>42</sup> law and justice are produced in social contexts by various actors and institutions—such as authorities, citizens, representative organizations or the media—as they perform and practise the laws. In Davies’s words: “Any pluralized understanding of law cannot ignore the diversity of subjects in their multiple, embodied, overlapping, and contested social spheres because the subject is both creator and transmitter of law.”<sup>43</sup> Similarly, Patricia Ewick and Susan S. Silbey note how “legality is an emergent feature of social relations rather than an external apparatus acting upon social life.”<sup>44</sup> This does not mean ignoring the role of the state law, but rather acknowledging other possibilities that require exploring microlegal contexts and interactions,<sup>45</sup> alternative legal scales,<sup>46</sup> micro-moments, or law “outside its own explicit spaces.”<sup>47</sup>

The insiders—or people socialized in a culture—know automatically how to feel or act in a given situation, or what kinds of legal meanings are involved.<sup>48</sup> They also assume unity as regards these feelings and actions.<sup>49</sup> Differences become visible if this assumed unity is broken and contested. According to Bandes, “Emotion tends to seem like part of the landscape when it’s familiar, and to become more visible when

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40 Abrams 2016, p. 185.

41 Nomic settings are discussed by Delaney 2010.

42 Alvesalo-Kuusi & Kumpula 2021; Delaney & Rannila 2021a.

43 Davies 2017, p. 7.

44 Ewick & Silbey 1998, p. 17.

45 Valverde 2012; Delaney & Rannila 2021a.

46 Davies 2017.

47 Cloatre & Cowan 2019.

48 Delaney 1998; Bandes 2000; Abrams 2016; Spain & Ritchie 2016.

49 Discussed by Howe 2008, pp. 437–439.

it's unexpected.”<sup>50</sup> The processes and practices of everyday law are best understood as relational,<sup>51</sup> which means that instead of being fixed, they are in the making. Relationality makes everyday law well connected to the question of affectual legal landscapes.

Kirsten Simonsen and Lasse Koefoed write about two sides of emotional spatiality: emotions and affects.<sup>52</sup> Emotions are practised, experienced and shown. Furthermore, they are public and connected to the expressive and communicative body. Affect, instead, refers to the more passive, felt sense of being moved<sup>53</sup> and is related to how we are “open to the world and its ‘effect’ on us.”<sup>54</sup>

Affects are important in the formation of legal landscapes as they move between bodies, emerge in encounters, and have to do with the capacity to affect or be affected.<sup>55</sup> Simonsen and Koefoed argue that while being two sides of emotional spatiality, neither emotions nor affects are intelligible without the other.<sup>56</sup> This view differs from other interpretations that separate emotions and affects more clearly from one another, and which prefer one over the other.<sup>57</sup> A spatial approach, thus, brings emotions and affects together, and the conception of legal landscapes—as understood in this text—requires acknowledging both of them.

The collective and common character of affects has been emphasized by many scholars. Andreas Philippopoulos-Mihalopoulos defines affects as “the sensorial, emotional and symbolic flow circulating among collectivities”<sup>58</sup> and among human and non-human bodies that “carry the law with them.”<sup>59</sup> Although affects originate from bodies, they move outwards from the bodies and become collective in atmospheres.<sup>60</sup> Experiences of atmospheres can be engineered by organizing objects, bodies and places, or by simply being present. This might happen for aesthetic, commercial or political reasons,<sup>61</sup> for instance, or in order to hide the presence of law in places like home or school.<sup>62</sup> Different types of engineered atmospheres are most visibly encountered

<sup>50</sup> Bandes 2000, p. 11.

<sup>51</sup> Cloatre & Cowan 2019; on relational spaces, see Massey 1999; Delaney & Rannila 2021a; 2021b.

<sup>52</sup> Simonsen & Koefoed 2020.

<sup>53</sup> Anderson 2006; Simonsen 2007; Pile 2021.

<sup>54</sup> Simonsen & Koefoed 2020, p. 45.

<sup>55</sup> Pile 2021.

<sup>56</sup> Simonsen & Koefoed 2020.

<sup>57</sup> Thrift 2004; Philippopoulos-Mihalopoulos 2015.

<sup>58</sup> Philippopoulos-Mihalopoulos 2015, p. 179.

<sup>59</sup> Philippopoulos-Mihalopoulos 2015, p. 55.

<sup>60</sup> Philippopoulos-Mihalopoulos 2019; Rickards & Jolley 2020; Simonsen & Koefoed 2020.

<sup>61</sup> Simonsen & Koefoed 2020.

<sup>62</sup> Philippopoulos-Mihalopoulos 2015; Brightenti & Pavoni 2019.

in institutions, such as prisons or hospitals, where efforts are made to create the feeling of home (e.g. in elderly care institutions) or to emphasize the presence of law and its control (e.g. in prisons).<sup>63</sup>

### HIDDEN ASPECTS OF LANDSCAPE

I have discussed the possibilities for understanding and conceptualizing emotional and affectual legal landscapes by dividing the question into its parts: the concepts of landscapes, state law, everyday law, emotions and affects. In the following, I reunite these views by examining the hidden or invisible dimensions of emotional and affectual legal landscapes, and how this can influence understanding of landscapes.

Emotions can be expressed and, thus, transmitted from an individual to public awareness. Many practices of law are burdened by emotions, yet there is an effort to neutralize and hide emotions in official state law and in landscapes produced by it. Emotions are hidden, for instance, by engineering atmospheres, by emphasizing rational argumentation and by carrying out practices that maintain legal order. However, certain events of law can break this order and make emotions more visible.

An emotionless landscape is still the dominant imagination in certain walks of life. For instance, the illustrations in urban planning and architecture seldom—or never—represent emotions, inequalities or imperfections. My previous research on the relationality of law in Finnish planning and land-use legislation offers some examples of “legal” hiding. Both written and practised law emphasize property owners’ right to participate. Furthermore, arguments against transformation are expected to be neutral and hide emotions in order to have an influence.<sup>64</sup>

Everyday law is different from official law as emotions and affects are strongly present in people’s everyday lives. Moreover, everyday contexts rather hide the law itself: the role of customs, norms, and state law remains unnoticed as people are used to certain practices and limits in day-to-day life. Furthermore, law is often hidden in everyday settings such as parks, homes, schools or workplaces in order to create pleasant atmospheres.

The increased emphasis on participation opens up new possibilities for showing emotions and affects in planning projects. If allowed, it could also advance acknowledging various relations to property—not only relations based on owning, but also relations developed as tenants or urbanites, for instance.<sup>65</sup> Hardly ever are people’s in-

63 Ross 2017; Repo *et al.* 2022; Repo & Kymäläinen 2023.

64 Rannila 2021.

65 Blomley 2023.

terests in participation solely based on rationality but, instead, emotions often initiate political or legal agency. Conflicts over urban planning, construction and transformation show the difficulty of separating emotions and affects from urban change. Both emotions and affects have the ability to motivate people to struggle over their rights, and this motivation may also become contagious<sup>66</sup> as it can be transmitted between bodies. This political aspect of emotions is highly interesting in the context of legal landscapes. Emotions—especially anger<sup>67</sup> and love<sup>68</sup>—have political significance. For Simon Critchley, at the core of politics is an ethical demand that arises from injustice and anger, which he sees “as the first political emotion.”<sup>69</sup> Similarly, love for a city and its people<sup>70</sup> can be channelled into action. Seeing these connections could open new paths for emotional or affectual legal landscapes as a combination of legal and political matters.

## CONCLUSIONS

A diverse understanding of both emotions and law opens up new insights into emotional and affectual legal landscapes. Legal landscapes can be understood as fairly permanent material landscapes where emotions and official law are at work. However, a more relational understanding is created if official law is accompanied by everyday law, and emotions by affects. Acknowledging affects in legal interpretations helps in understanding the role of those feelings that do not transform into arguments or evidence but are still present in everyday legal spaces and encounters.

Recent scholarship includes promising openings for including emotions and affects more closely in our understanding of legal landscapes. Legal thinking still tends to hide the voices of those who are not, for instance, property owners, or those whose emotions do not fit in the scope of legal rationality. Understanding law both as official and unofficial, or as state law and everyday law, diversifies the views regarding significant voices in the determination of legal landscapes. Landscape can, thus, be understood as a hybrid that brings different forms of law together and allows emotions and affects to coexist in its formation.

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<sup>66</sup> Pile 2021.

<sup>67</sup> Critchley 2012.

<sup>68</sup> Epting 2023.

<sup>69</sup> Critchley 2012, p. 94.

<sup>70</sup> Epting 2023.

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