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To cite this article: Päivi Rannila & Siiri Pyykkönen (2020) Public obscenity and the formation of emotional legal landscapes in Dries Verhoeven's *Ceci n'est pas ...*, *Geografiska Annaler: Series B, Human Geography*, 102:4, 384-399, DOI: [10.1080/04353684.2020.1854617](https://doi.org/10.1080/04353684.2020.1854617)

To link to this article: <https://doi.org/10.1080/04353684.2020.1854617>



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Published online: 04 Dec 2020.



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Public obscenity and the formation of emotional legal landscapes in Dries Verhoeven's *Ceci n'est pas ...*

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ABSTRACT

This article addresses the relationships between emotions and the law, and how they define public order and constitute emotional legal landscapes. Using the example of the litigation process of the censorship of Dries Verhoeven's art installation *Ceci n'est pas ...* we explore the power of individual and collective emotions in acting as a stimulus to the evaluation of the acceptability and legality of artworks in urban public spaces. Verhoeven's installation was interrupted in Helsinki, Finland, because of public obscenity after a passer-by who was offended by the artwork reported it to the police. This led to a three-year court process, the legal archaeological analysis of which reveals the complex moral geographies in the formation of legal landscapes: the arbitrariness of the interpretation of the law, the significance of time and place in legal evaluation, and the hidden morals included in the understanding of public order. The results show the potential of the concept of emotional legal landscapes in exploring the spatial effects of legal processes, and in revealing how legal reasoning is complex and emotionally laden instead of being carried out by rational legal actors.

ARTICLE HISTORY

Received 26 May 2020
Revised 16 November 2020
Accepted 19 November 2020



KEYWORDS

Legal landscape; emotions; public obscenity; public space; censorship; legal archaeology

Introduction

A small glass booth in the middle of the city displays a different scene each day; images we usually do not encounter in the public domain. As rare relics, people are installed behind soundproof glass. With the series of (...) disconcerting images, Verhoeven hopes to expose our collective unease. (...) Unsuspecting passers-by are encouraged (...) to determine their position in relation to these controversial images. Why are some images considered tainted when they were tolerated just twenty years ago? (...) Is it good that our children do not see certain things, or have we gone to the extremes in our drive to protect? (Verhoeven 2013)

A Dutch theater director Dries Verhoeven's art installation *Ceci n'est pas ...* took place at Kampi Square in Helsinki, Finland, in November 2014. The square is one of the most central in Helsinki, with a crowd of daily passers-by. The installation was a part of the annual Baltic Circle Theatre Festival, and consisted of eight daily changing performances that showed 'images we do not generally encounter in public spaces' (Verhoeven 2014). Verhoeven's installation had earlier been performed in several European countries, including Austria, Germany, France, Switzerland, and the Netherlands. It had faced some controversies in Strasbourg and Hamburg, meaning basically public response and discussion. In Helsinki, the performance led to a three-year court process to consider whether the performance had been an act of public obscenity and whether its interruption by the police had been justified.

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On the second day of the *Ceci n'est pas ...* (later: *Ceci*) in Helsinki, there was a scene *Ceci n'est pas de l'amour* (later: *Amour*) consisting of a man reading to a child in a glass booth while they both wore underwear (Figure 1). The police interrupted the performance after receiving a notification from an anonymous off duty social worker who had passed by and considered the scene harmful for a child. The notification motivated the police to look through *Ceci's* detailed programme, which led to noticing that one of the forthcoming performances, *Ceci n'est pas mon corps* (later: *Mon corps*), would include a naked old woman sitting in the glass booth while wearing a mask of a young woman (Figure 2). The police concluded that *Mon corps* would most likely break the Criminal Code of Finland with regard to public obscenity (1998, chapter 17: 21 §) which rules that an obscene public act is punishable if someone is offended by it. The police declared that the performance would be allowed only if the woman wore underwear. The performance was changed according to the requirement, but afterwards, the organizers of the Baltic Circle Festival made an official complaint about the police's decision to the Administrative Court (AC), and later to the Supreme Administrative Court (SAC), whose decisions could be used in future as precedents in other cases.



Figure 1. *Ceci n'est pas d'amour* in Helsinki November 11, 2014 before the performance was interrupted by the police. Photo: Christopher Hewitt / Baltic Circle.



Figure 2. The censored *Ceci n'est pas mon corps* in Helsinki November 16, 2014 after the police had prohibited the performance in its original form with the model being naked. Photo: Christopher Hewitt / Baltic Circle.

Through the case of *Ceci*, we explore how the relations between emotions and the law determine public order and constitute emotional legal landscapes. We acknowledge the relationality of law (see also Rannila 2018): how the interpretations of the law and the legal significance of emotions may vary in different contexts, and how the law may, thus, turn out to be unstable and cause inequality. The mutually constitutive relations of emotions and legal reasoning are worth addressing as they serve to question the assumption of objective legal actors whose reasoning is rational and unaffected by emotions. At the same time, though, special attention should be paid to the workings of emotions in legal processes: what significance is given to personal and collective emotions, and whose morals these emotions represent.

As is the case in many other countries, artistic work has a wide freedom of expression in Finnish law, and it is valued in questioning and revealing power relations (The Constitution of Finland 1999, 12 §, 16 §). Through the case of *Ceci*, we focus attention on the role of emotions in the interpretation of public obscenity, and how a subject's feelings and their reporting to authorities can transform an action or artistic expression into something unacceptable, morally suspicious, and illegal. As we will argue, the law's reliance on an emotional disturbance is problematic as it makes art's properness arbitrary and subjective, depending on who might encounter the art,

how they interpret it, or how eager they are to complain about it. Within the same law, but with a different place, time, and audience, the same piece of art might be considered either legal or illegal.

Although the relations between emotions and law (e.g. Bandes 2000; Conway and Stannard 2016), and landscapes and law (e.g. Blomley 2004; Delaney 1998, 2013; Olwig 2008, 2009; Braverman 2009; Mitchell 2012) have been debated, there is more to be done in combining these discussions (however, about law, space and affects: see, e.g. Pavoni 2019; Philippopoulos-Mihalopoulos 2015, 2019a, 2019b). With the case of *Ceci* we demonstrate how the formation of legal landscapes may depend on citizens' or communities' emotional responses to what they encounter in public spaces. *Ceci* happened in a certain location, yet what happened and what it meant legally had wider pathways before and after the installation. Emotions and legal responses to them develop in complex social relations that are 'shaped by the experience of living under the law' (Abrams 2016, 209). Emotions and law are, thus, mutually constitutive, and their relations and consequences are inherent (Abrams 2016, 185) in settings such as public spaces. As emotions have spatial elements and their causes are encountered in certain locations, it is essential to develop the spatial understanding of the law/emotion – relations, as we will do here by elaborating the conception of emotional legal landscapes. We will address how the law acknowledges feelings, and how the conceptions of the appropriate order of public spaces are at the same time formulated. Our special interest is in urban public spaces that are perfect contexts for exploring how the interplay of law and emotions are spatially manifested and circulated, and how people's responses, moralities, and customs may end up controlling urban sights.

We understand emotions, firstly, through their performative, expressive elements that the individuals or communities practice and show in everyday life. Secondly, we recognize emotions as affects, referring to the more passive, felt sense of being moved (Simonsen 2007, 176–177). We question the need for dualism where a scholar is expected to adopt one approach to emotions; for instance, either the phenomenological or non-representational reading of affects. Thrift (2004, 60), for instance, writes that he sets aside 'approaches that tend to work with a notion of individualized emotions'. Although setting aside certain views may advance theoretical immersion, such exclusion is unnecessary in our analysis where individual and collective emotions, affective atmospheres, and the social, political and legal relations are undeniable parts of the case. Emotions or affects are not necessarily acknowledged, but they may be formed in subtle processes. We share Liz Bondi's (2005, 443) view that 'emotions arise and flow between people, producing as much as manifesting what may be felt', as well as Thrift's (2004, 62) note how 'affects occur in an encounter between manifold beings'.

The first section of the article discusses legal landscapes as emotional landscapes by asking how emotions are involved in the conceptions of legality; in what ways legal landscapes have been discussed; and what roles the conceptions of public obscenity and public order have in emotional legal landscapes. The second part analyses the *Ceci* case with the critical analytical tool of legal archaeology, paying attention to the definitions of 'condemnation' and 'offense'; the special position of art; the question of censorship; the temporal aspects of condemnation; and the place of public art. The third section draws together the findings and the conceptual discussion, drawing conclusions about the future potential of the conception of emotional legal landscapes.

Legal landscapes as emotional landscapes

In philosophical tradition, emotions are often considered either external to reason, or controlled by reason. This is also conventionally reflected in the work of legal actors (e.g. judges and lawyers) whose rational working and deliberations may be rendered illegitimate if emotions are involved. The legal processes encountered by the average citizen (e.g. custody or divorce cases, inheritance disputes, crimes), however, show how emotions have everything to do with law, and the ways of rationalizing legal actions (e.g. Bandes 2000; Conway and Stannard 2016). Along with the

expansion of the debates on the law/emotion – relations in the 2000s, the separation of law and emotions has been questioned (Conway and Stannard 2016, 1–6). Many studies have followed Susan Bandes's (2000, 1) views on how 'emotion pervades the law,' doubting the fixed role of emotions and, instead, acknowledging the variety of emotions in legal processes. Emotions are no longer interpreted as usual, for example, by linking them to certain types of crimes (e.g. 'hate' and 'passion' crimes) (Bandes 2000, 2); by combining the feeling of 'disgust' to the debates on obscenity (Nussbaum 2000, 20); or by acknowledging emotions only when they create problems (Conway and Stannard 2016, 1–6). The expanding understanding of the law/emotion – relations has meant, for example, targeting attention to: emotions' propriety and belonging to certain legal contexts (Bandes 2000, 13); the role of emotions in moral judgment; or asking which emotions are appropriate in different situations, or how emotions should or should not be expressed publicly (Spain and Ritchie 2016, 245–247).

These questions are relevant in the *Ceci* case and in how it relates to the question of obscenity. Nussbaum (2000, 20, 38) notes that obscenity is usually connected to the feeling of disgust (see also Jyränki 2007, 97) that arises from contemporary community standards, and the standards of a hypothetical average man. Nussbaum (2000, 20–29) notes that legal arguments and what is considered illegal already reflect what is considered disgusting in society, even though illegality would be justified by other reasons. The feelings of 'disgust' are often packaged in a moralized form; they can be used as a weapon to exclude certain groups or persons, or they can lead to shady social practice – such as misogyny, anti-semitism, or homophobia. Thus, although human beings respond with disgust to many things, such responses may be 'morally questionable and unworthy of guiding public action,' or declaring something illegal (Nussbaum 2000, 55).

The same concern is expressed by Jyränki (2007, 97–98) who notes that although the question of obscenity is, in Finnish law, these days linked rather to 'public order' than 'moral order,' it still has a hidden moral tone that is problematic in defining whether some action is legal or illegal. The conception of public order includes the idea of common space where obscene behaviour is not accepted. People, including children, are in public spaces 'forced' to encounter obscene material or behaviour without warning (75–76), which increases the state's interest to protect people by criminalizing the violations of public order (83). There is, still, an ideological continuum from the earlier protections of moral order (namely, restrictions of sexuality) to the current definitions of public order. At the beginning of the 1900s, decency meant obeying the norms and customs of the community (80). Currently, the conception of order is more clearly linked with public spaces, and disapproval is more collective (97), yet legally relevant condemnation can also occur with individuals.

The changes in morals have been debated by geographers, for instance in relation to the visibility of commercial sex and sexual consumption in urban spaces (e.g. Crofts et al. 2013; Hubbard, Sanders, and Scoular 2016; Hubbard et al. 2017; Prior and Hubbard 2017). The studies have noted the ambiguity in what, when and where is considered legal or acceptable. The obscenity laws and the conceptions of the 'offensive' have shifted over time, and the moral control by the police has partly been replaced by other forms of governance such as urban planning (Crofts et al. 2013; Hubbard et al. 2017; Prior and Hubbard 2017). These changes illustrate the importance of the critical reading of the temporal and spatial aspects of moral policy (e.g. Hubbard, Sanders, and Scoular 2016).

Landscapes and their relation to law have previously been discussed in debates concerning, for example, the formation of landscapes through customs and conventions (e.g. Jones 2006; Olwig 2008, 2009); the mundane uses of landscape in war (Braverman 2009); the struggle over agricultural landscape (Mitchell 2012); the formation of urban landscapes of property (Blomley 2004); and in the conceptual discussions on legal landscapes (Delaney 1998, 2013). Our reason for using the concept of legal landscape is first, that legal landscapes have not been overtly discussed although they have much potential for new conceptual openings in analysing legal conflicts in urban contexts. Second, already the understanding of landscape as a way of looking or seeing (Rose 1993, 87; Blomley 2003, 87) provides interesting insights into the interpretation of the *Ceci*'s litigation process

where much depended on what had been seen and felt, or expected to be seen in public space. The analytical potential of the concept of legal landscape still depends on how landscape is understood (Olwig 2013). For instance, the legal matter of interest may be under the control of laws over material landscape, or the law's role may be regarded as more significant if it is seen as 'foundational to landscape' covering, for example, national constitutions and international treaties and the philosophies behind them (Olwig 2013, 253).

David Delaney (1998, 13), on his part, characterizes legal landscapes as 'the complex ensemble of lines and spaces' that gives legal meaning to physical spaces. Delaney states:

... the landscape within which you are situated is composed of innumerable 'legal spaces' which (...) constitute systems of sociospatial differentiation. They effect a spatial distribution of power conceived in terms of 'rights.'

Institutions, neighbourhoods, walls, fences, gates, doors, properties, leases, contracts, licenses, deeds, jurisdictional spaces, or public and private spaces – among others – give legal meanings that 'saturate lived-in landscapes.' Legal landscapes are thus multiple, as 'every point of land is "owned" in some sense, every "where" is within multiple, overlapping legal jurisdictions' (13). To put this another way, Delaney (1998, 24–25) divides legal landscape into two aspects: first, there is the physical and visible legal landscape that is the 'lived-in, on-the-ground geography of power,' which consists of different kinds of territorial units such as public/private spaces, property lots, and borders that might have been made more visible with, for example, doors, gates, fences, and signs (24). Second, there is more abstract spatiality inherent in the legal discourse, consisting of metaphorical limits, lines, and spaces that create conceptions of similarity and difference, or inclusion and exclusion that are used in legal argumentation and reasoning (25).

Legal signification is mostly about the social relations of power. Law is inscribed on the physical world that is experienced and felt, often 'in terms of rights or obligations, or what kinds of actions, under what conditions, are permitted, prohibited, or mandatory in relation to whom' (Delaney 1998, 14). Experiences depend on what kinds of rights we feel that we have, or should have. While being socialized in culture, legal meanings and the feelings associated with them are largely taken for granted, although this taken-for-granted order is also challenged (14). As Bandes (2000, 11) formulates: 'Emotion tends to seem like part of the landscape when it's familiar, and to become more visible when it's unexpected.' In *Ceci's* context, the installation was planned to create unexpected sights, and to make visible the assumed public order. This is well connected to Blomley's (2004) reading of landscape in its many forms: as 'a social embodiment of the relations and struggles', as 'a localized realm of customary law' (53–54), or as a site of contestation that has a moral dimension (77). Or *Ceci* can be seen to be there to define 'legal rights and shape the moral and aesthetic sensibilities of its audiences' (Howe 2008, 435).

Laws' effects on landscapes vary significantly in different legal systems. In addition to the formal law of the state and the city, customs, conventions, norms and morals are also significant in the formation of legal landscapes (cf. Jones 2006; Olwig 2008, 2009). Legal landscapes – or what Olwig (2009, 211) refers to as 'just landscapes' – are formed in the interplay of the state's ideals, local particularities, customs, and conventions that are not necessarily written, but become visible in customary community practice or in the habitus of landscape (see also the early meanings of landscape as a land or polity that is shaped by praxis and customs: Olwig 2008, 31; Olwig 2009, 211). The aspects of formal law and the law of customs and morals can be contradictory. The spatial results of their interactions are here understood as legal landscapes, and they are by no means separate from emotions. Instead, emotions interact with legal landscapes in various ways, and the emotional responses to landscapes have spatial consequences (see also Howe 2008). Analysing these relations is, however, complex, as one has to deal with questions such as: What kind of moral footing does the law provide, and what kind of feelings does it acknowledge if one is shocked by what they encounter in public spaces? How should they act on these feelings? And if they report the sight, how should the police and courts deal with these responses? This last question is related to

the more meaningful question: Does an audience's feelings have any political or social significance? The emotions and the responses to them may rewrite legal landscapes, but they also reveal much about the place, democracy, or people's hopes, fears, and rights (Howe 2008, 435–437).

Landscapes do not passively reflect legal meanings or dominant values and beliefs; they also allow a certain kind of agency. The agency differs depending on if you are, for instance, an artist expressing yourself in a public space, or a citizen who is 'forced' to observe that expression. On some occasions, the observer may end up dramatizing the act of observation and the power of landscape to produce meanings. The insiders know 'by nature' how to feel or act, which may lead to the embodied unity of moral and political judgment, feeling, or acting. This may, furthermore, lead to creating boundaries by endorsing, acknowledging, insulting, or excluding those who act or feel the wrong way. The question is, thus, not only about appropriate expressions in public spaces but rather about the whole situation where something becomes seen (Howe 2008, 437–439) and possibly condemned.

Although not concerning landscapes *per se*, a significant legal geographical contribution to the questions of affects has been carried out by Andreas Philippopoulos-Mihalopoulos (2015, 2019a, 2019b; see also e.g. Pavoni 2019) whose thinking of lawscapes and atmospheres draws on the understanding of law as bodily and sensorial happening where 'bodies embody the law, carry the law with them in their moves and pauses, take the law with them when they withdraw' (Philippopoulos-Mihalopoulos 2015, 55). Bodies, however, do not refer merely to human bodies, but they form assemblages with nonhuman, technological, natural, immaterial and material bodies (5). Bodies can also refer to a collectivity such as 'a flock of sheep, a fleeting community clustered in a lift [...], or a boat of illegal immigrants' (Philippopoulos-Mihalopoulos 2015, 176).

Lawscapes and atmospheres are parts of the same spatiolegal continuum where the processes of visibilization and invisibilization are at work. Spaces are 'obviously regulated' if they, for instance, include signs prohibiting actions such as loitering, smoking, camping or parking. The presence of the law is, however, invisibilized in atmospheres such as the cosy atmosphere of home, which 'is about the materiality of bodies coming together, dissimulating the fact that the private remains a lawscape' (Philippopoulos-Mihalopoulos 2015, 4; see also Brighenti and Pavoni 2019). Philippopoulos-Mihalopoulos (2015) suggests using the concept of atmosphere 'as an attempt at understanding affective occurrences'. Affects themselves he defines as 'the sensorial, emotional and symbolic flow circulating among bodies' (109). Likewise Thrift (2004), Philippopoulos-Mihalopoulos distances his thinking from the phenomenological reading of individual emotions and rather employs a post-human reading where emotions are 'collective emergences' that do not originate from the body or the world, but are 'materialized as a perspective of a body' that 'connects the body to the world, usually through other bodies' (118).

Our legal archaeological analysis tries to make sense of the connection of various aspects of emotions, but in a way best suitable for our material from the litigation process. The analysis acknowledges the specificities of emotions in the Finnish law. The Criminal Code's section on public obscenity guides appropriate behaviour in public spaces, and includes a section about disorderly conduct and peoples' possible reactions to them. Performances like *Ceci* have a special status because art's freedom of expression is protected in the Constitution, which states that 'the freedom of science, the arts and higher education is guaranteed' (The Constitution of Finland 1999, 16 §). There might, for instance, be justification for nudity in public spaces if an artistic performance is considered to comment on social or political life in significant ways, whereas an individual's nudity does not have such legally acceptable justifications. When considering the permits for artistic performances in public spaces, the police find themselves in the dubious position of having to foresee the public's (complex and unexpected) feelings. Even if a performance had a permit to take place in public space, the artwork might become unacceptable if someone is shocked by it. Much thus depends on emotional responses: whether someone is disturbed about what they see, and whether they are upset, active, or aware enough to act on the basis of that, namely, to report it to the police. If

someone has reported it, the police then have to consider whether the performance can continue or not, and later on, Administrative Courts may have to decide if the police made the right decision.

Legal archaeological reading of *Ceci n'est pas mon corps*

Legal archaeology

Our primary research material consists of the court case materials of the *Ceci n'est pas ...* case from the Helsinki AC and the SAC of Finland. In addition to the court rulings, the material includes, for example, the prohibition statement of the Helsinki Police Department, and the statements and counter statements of the event organizers (Q-teatteri) and the police. Our analysis connects the *Ceci* case to a wider context by reflecting it to the decisions of the European Court of Human Rights (ECHR) considered meaningful in the court rulings. We follow the method of legal archaeology that 'focuses on creating a thick, contextual case study' where the trial record is investigated in its 'broader social and economic milieu' (Threedy 2008, 171). Legal archaeology does not focus merely on the outcome of the court case, but on the whole legal process, ways of thinking, and legal reasoning (Gorman 2019, 1052). Legal archaeology is inspired by Foucault's (1972, 139–140) archaeological method that aims at the systematic description of the formation of discourses, and at showing the rules governing the discourses.

Gorman (2019, 1050–1054) argues that the importance of legal archaeology is in its ability to pay attention to the micro-geographies and discursive tactics in legal reasoning. The litigation process is not a stable battle of sides as legal discourses, tactics, or reasoning may shift or evolve during the process and be exposed to the influence of the surrounding society. The textual record helps researchers to study the evolution of the case and how social realities are presented to achieve particular outcomes (see also Delaney 1998, 24). Just as artistic expressions can question the current social order, legal arguments can also challenge or maintain the conceptions of the acceptable and non-acceptable. Legal archaeology thus serves as a critical analytical tool for exploring legal processes and reasoning, and how they create 'relationships between bodies and territories' (Gorman 2019, 1054).

While analysing the *Ceci* case, we followed the steps of a legal archaeological study, according to which a researcher recreates the litigation process as carefully as possible and adds it to a more thorough context by using, for example, newspaper articles, archival materials, or other non-legal sources that are included in the processing, describing, and narrating of the data (Threedy 2006). After describing the whole narrative of the case, one moves into examining explanations and causal connections that arise from its outcome. The length of our narrative is adjusted here to the possibilities of narrating the case in an article. We investigated the arguments and rulings by organizing a large body of data instead of focusing on a single disputed fact. The research material and method provide possibilities for examining the legal process, its wider societal context, parties' legal reasoning, conclusions, and what the process meant in terms of our research questions. As will be explicated next, the five main findings of the legal archaeological analysis are related, firstly, to the obscurity of the definitions of 'condemnation' and 'offense'; secondly, to the special position of art; thirdly, to the question of censorship; fourthly, to the significance of time; and finally, to the signification of place.

Definitions of 'condemnation' and 'offense'

'Condemnation' and 'offense' are not defined in Finnish law, which makes it rather obscure what kind of actions actually are against the Criminal Code's section on public obscenity (1998, chapter 17: 21 §). The organizers of the Baltic Circle Theatre Festival had followed the requirements of the Assembly Act (1999, 14 §) and made a notification of *Ceci* to the police. The established practice is

that the notification can be considered accepted if the police do not react to it by the opening day of the event (Q-teatteri 2016). Still, the police interrupted the on-going scene *Amour* considering it dangerous to the growth of a child (Helsinki Police Department 2016). The police note that, according to the Assembly Act (1999, 15 §),

... [t]he police may prohibit the arrangement of a public event, if other measures are not enough and if it is evident that [...] the event is illegal or [...] the arrangement of the event will endanger health.

The forthcoming scene *Mon corps* was declined as well as it was considered to likely break the Criminal Code's section on public obscenity (1998, chapter 17: 21 §) which rules that 'a person who publicly performs an obscene act which causes offense shall be sentenced.' The police (Helsinki Police Department 2015) suspected that the nudity in *Mon corps* would cause offense among passers-by including families with children. The police gave the organizers two options: The first option was to perform the scene as planned, taking the risk that the police might interrupt the scene (Q-teatteri 2016). The second option was to carry out the performance with the model wearing underwear, which was recommended as it would avoid the scene being interpreted as an act of public obscenity, and would also 'save the likely-to-be-called police patrol from a difficult decision' (Helsinki Police Department 2015). The organizers chose the latter option, but later on they made an official appeal to Helsinki AC, and later to the SAC, claiming that the prohibition of the original version had been an act of censorship (SAC 2017).

The Criminal Code's section on public obscenity (1998, chapter 17: 21 §) is intended to protect spectators who might come across the act suddenly (AC 2015). The criminalization of an artistic performance is not dependent on a wide audience but will suffice if one person is offended (AC 2015; Government bill 6/1997). The SAC (2017) found it problematic that the police had predetermined the public obscenity of *Mon corps* and had condemned it beforehand. The police have the right to stop a performance after it has started, but the illegality must be carefully considered and there cannot be any reasonable doubt (SAC 2017).

Since there were no Finnish precedents dealing with both freedom of speech and condemnation, some case examples from the ECHR were used in *Ceci's* litigation (Q-teatteri 2015; AC 2015; SAC 2017). One of these cases was *Müller and others v. Switzerland* (1988) that dealt with artist Josef Felix Müller who had produced three paintings for the exhibition 'Fri-Art 81' that was open to the public, free of charge, and had no age limit. On the opening day, the paintings were reported, and found to be against the Criminal Code's section prohibiting obscene publications. The appellant argued that there was no clarity of what is meant by the word 'obscene,' and thus it was not possible to foresee if an act would be offensive. The ECHR disagreed and found that the conviction of the artist had not broken the European Convention of Human Rights Article 10 with regard to the freedom of expression. The ruling was made in respect to the rights of others and the protection of public morals, considering not only art's freedom of expression, but also the responsibilities of the artist as a participant in public discussion.

'Offense' was also an important factor in the case of *Wingrove v. The United Kingdom* (1996), which dealt with the question of whether one could sell or distribute a video showing a nun in violent and sexual scenes. The legal evaluation of the case was about the criminal law of blasphemy, offense against someone's religious beliefs, and freedom of speech. The British Board of Film Classification had banned the film, arguing that it would likely offend the feelings of Christians, and would be sentenced at court if it were supplied publicly. The prohibition was made to 'protect the right of citizens not to be offended in their religious feelings' (*Wingrove v. The United Kingdom* 1996, 15), yet the appellant felt it had violated his freedom of expression. The ECHR (18) notes:

What is likely to cause substantial offense to persons of a particular religious persuasion will vary significantly from time to time and from place to place, especially in an era characterized by an ever growing array of faiths and denominations.

The final ruling was that the decline of the video had not violated Article 10 regarding freedom of speech, although the evaluation of the likeliness of offense was based on the pre-evaluation of the audience's feelings, just as it was in *Mon corps*. In the *Wingrove* case it was interpreted that it would be worse to cause offense than to delimit the artist's freedom of expression, whereas in the SAC's ruling of *Mon corps* the decision was the opposite and the freedom of art was prioritized.

Not only that the censorship was based on the estimation of the *likeliness* of condemnation, the fact that *Mon Corps* was prohibited only after *Amour* was interrupted puts the condemnation in *Ceci* to a different perspective. As the organizers note, there was a noticeable disparity between the reasoning to interrupt *Amour* and to censor *Mon Corps* (Q-teatteri 2016). The condemnation became the crucial factor for the case, after a passer-by had reacted to the performance. However, since the reasoning for *Amour* was not connected with the feeling of offence, but the health of a child, the emotion of the police becomes the meaningful factor, which emphasizes that the goal was to avert the message of the performance (Q-teatteri 2016).

The special position of art

One of the main questions in the *Ceci*'s litigation was how art and its societal discussions are viewed in relation to freedom of speech. According to the appeal of the organizers (Q-teatteri 2014), the artistic nature of the scene ensured that the performance did not break the Criminal Code of Finland. They also noted how art's freedom of speech is extended to ensure that art has methods to provoke societal conversation, and therefore an artwork should be considered as a whole, and attention not just paid to nudity, for instance (Q-teatteri 2014). In their counter-argument, the police (Helsinki Police Department 2015) presented four Finnish examples of cases where an artistic act had been sentenced illegal: stealing a Ronald McDonald statue, and videotaping its destruction (Leinonen 2011); the painting *Virgin-Whore Church* that was accused of including child porn (Karttunen 2008); a video *Sex and Death* where an artist kills a cat and masturbates afterwards (Mäki 1988); and a theater performance *The Theatre of God* (Halonen et al. 1987) where the audience had to flee after the actors threw bangers, used a fire extinguisher, and threw excrement at the audience. The police used these as examples of cases where art had not succeeded in being upheld as an alibi for a criminal act.

According to SAC's ruling, art is an important part of freedom of speech doctrine when it has a clear political message (SAC 2017). The freedom of art secures the right to exchange and distribute ideas, but in the preliminary cases of the ECHR, it has not always been preferred, especially if the political message has not been clear. It has been evaluated in relation to the efforts to protect order, other people's rights, and public morals. The freedom of art is not, however, easily restricted as its role in enhancing discussion in a democratic society is protected (AC 2015).

One of the cases that the AC (2015) referred to was the ECHR case *Vereinigung Bildender Künstler v. Austria* (2007), where the message of art was considered. The association *Vereinigung Bildender Künstler* held an exhibition in Vienna, Austria, in 1998. One painting showed painted bodies in sexual positions, united to celebrities' faces. Some celebrities' eyes were hidden with black bars, but the persons were still recognizable. After the exhibition had been open for a while, a visitor damaged a painting with red paint, which led to coverage in media with pictures of the painting. One of the persons pictured in the painting requested compensation from the association, arguing that he was recognizable and that the painting made statements about his life. The Austrian court ruled for the claimant, but the association appealed to the ECHR, complaining that the court had not respected their right to freedom of expression. They also noted that the painting did not suggest anything about the claimant since it was clear that the artwork did not reflect real behaviour, but rather commented on power and sexuality by portraying persons who had criticized the painter's earlier works. The ECHR considered both the freedom of expression and the personal rights of the claimant, and eventually ruled that banning the painting would be a violation of freedom of expression.

Question of censorship

Ceci's legal process was based on the disagreement between the organizers and the police about the censorship decision. The organizers wanted the decision to be examined in court in order to receive the SAC's stance on the interpretation of the Criminal Code of Finland in relation to the Constitution of Finland and the Assembly Act, especially as regards freedom of art, preventive censorship, and the responsibility to inform audiences about art (Q-teatteri 2016). Based on the Assembly Act (1999, 15 §), the police can prohibit a public event if it breaks the law, or in order to protect public order, or the rights of others. However, a prohibition is an exception since strong reasons are required for limiting freedom of speech. The primary action of the police is, thus, to give instructions and orders to ensure that an event can be organized (SAC 2017; Government bill 145/1998 vp.). Regarding *Ceci*, the SAC's (2017) interpretation was that when the police prohibited the original form of *Ceci's* performance, they prohibited the event rather than gave instructions.

AC (2015) refers to the ECHR's case *Akdaş v. Turkey* (2010) that concerned morality and freedom of speech regarding the translation of an erotic novel that was prohibited in Turkey. The publisher of the novel appealed that the confiscation had violated his freedom of speech. The court had to evaluate if the confiscation was necessary to protect morals and to secure the important values of democratic society. The understanding of morals varies widely in countries within the European Convention on Human Rights, due to which national courts may rule morality questions differently to the ECHR. The book in the *Akdaş* case had been published over 100 years ago, translated into many languages, and was available on the internet. These facts led ECHR to the interpretation that the prohibition of the Turkish version prevented the public from obtaining a book that was a part of European cultural heritage. They thus ruled that the confiscation of the book had contravened Article 10 regarding freedom of speech.

The interference in *Ceci* was mostly carried out to protect public morals, although individual feelings were also involved. Individual emotions are not, however, considered relevant for the protection of society (SAC 2017) in the same way as freedom of speech, which is seen as *sine qua non* in a democratic society. Even though an artwork would not clearly participate in political discussion, art's freedom of speech is still strong compared to that of advertising or pornography, for instance (SAC 2017).

Temporal aspects of condemnation

In their appeal to the SAC, the organizers (Q-teatteri 2016) referred to the art performance *Encounter with flies* (Linne 2015) where a naked woman had stood in a glass booth with flies. The performance was similar to *Mon corps* in respect of nakedness, the location in public space, and the license application process. In *Encounter*, the naked woman was young and not censored, whereas in *Mon corps* the woman was old and silenced, which the organizers interpreted as an indication of ageism (Q-teatteri 2016). In their counter-statement, the police denied ageism and noted that a reason for not censoring *Encounter* was that the police had not been informed or reported about nudity involved in the performance (Helsinki Police Department 2016).

Another significant difference was duration: while *Encounter* lasted for one day, the series of scenes of *Ceci* lasted for eight days (Q-teatteri 2016). The longer duration meant there was more time to react to the scenes of *Ceci*. The interruption of *Amour* happened on the second day, and the censorship of *Mon corps* on the seventh day, which exemplifies the significance of time and temporality in determining the acceptability of the artwork. An act that causes offense does not end up being illegal if no one has time to react to it; and an act that does not first cause offense may become illegal when people have more time to consider and analyse the emotions it has created.

The place of public art

One important consideration in the decisions of the SAC (2017) and AC (2015) was whether the public had been sufficiently informed about *Mon corps*. The AC (2015) first evaluated that Kamppi

Square is not commonly used for art, and that the nature of the performance was not clearly enough conveyed to the public because there was no fare, and passers-by could randomly stumble by. It was, thus, possible to interpret the installation as an indecent act, such as flashing. The AC (2015), hence, ruled that the police's act of censoring *Mon corps* had not been excessive considering their effort to protect public order, the rights of other people, and the dominant moral standards.

According to the organizers, the glass booth's information text clarified that *Mon corps* was art, and could not, therefore, be considered as indecent exposure. There is no juridical custom for art performances in public spaces in Finland, which makes the interpretation of the law difficult (Q-teatteri 2014). The organizers also noted – in contrast with the AC's claims – that Kamppi Square is a common location for art installations, and hence, accepting the censoring of *Ceci* could, in the future, prevent suchlike urban culture in public spaces. To support their views, they used the comments of the Deputy City Manager of Helsinki who had criticized the acts of censorship and noted that the city wanted to welcome provocative art (Q-teatteri 2016).

Ceci was meant to be provocative and it was possible that the scene with a naked woman would have caused offense (SAC 2017). The police (Helsinki Police Department 2015) mentioned examples where public obscenity had been interpreted as offensive. One example was a case where a man received a sentence for jumping on a trampoline in his own backyard and walking around his apartment naked so that his genitals could be seen from a public street. The police also noted they need to intervene if a woman walks topless in a public place (Helsinki Police Department 2015). The organizers, on their part, questioned the comparisons as contrary to *Mon corps*; the persons in the aforementioned cases had not taken part in public conversation and, in respect of the trampoline case, nakedness had occurred in a private space (Q-teatteri 2015).

The location was eventually one of the core reasons for the SAC (2017) to change the AC's earlier decision and rule that the police's decision to censor *Mon corps* had infringed upon the freedom of speech. The SAC stated that passers-by are expected to understand *Mon corps* as art because of the information plate attached to the booth, and since the location was common for urban art. Thus, performing *Mon corps* in its original form would have not been a serious act against the Criminal Code. The SAC regarded preventive censorship as worse than the risk that the Criminal Code would be violated.

Discussion

The complexity of legal relations is well illustrated in the *Ceci* litigation process where the participants aimed at legal closure that would support the social order appropriate for them (see also Blomley 1994). The process is not merely the contestation of power, but more like complex moral geographies (see also Howe 2008, 441) where landscape can be understood as a dramatization of the mutually constitutive relationship between place and the self. The discourse of the litigation process, thus, constructs a 'citizen observer' who is 'shocked, hurt, inspired, terrified, overjoyed, or bored by the sight,' revealing at the same time the specificities of place and its democratic conditions (Howe 2008, 452). *Ceci*'s legal process had already begun before the installation was public, in the social formation of the artwork and the event, and in the processing of laws that define the appropriateness of the artwork in public spaces. The site of the installation (Kamppi Square) became imbued with legal meanings, and revealed the hopes and fears (see also Howe 2008, 453) of the people encountering the installation. Despite the laws, permissions, and artistic endeavour defining the situation, the question of *how seeing feels* became perhaps the most essential in defining who has a right to do what in a landscape, and what kinds of landscapes are formed on that basis (on feelings, landscapes, and rights: see Delaney 2013).

Given this, we argue for the importance of recognizing the various roles of emotions in the legal processes that determine legal landscapes. *Ceci*'s litigation process showed that emotions do matter in law, yet in very restricted ways. In cases like *Ceci*, subjective condemnation of a person can act as a catalyst for the evaluation of the artwork, and lead to censorship. Yet, emotions are often

palatalized in a litigation process that concentrates on showing the rational working of legal actors (e.g. Bandes 2000; Conway and Stannard 2016). Although condemnation of an artwork can start with individuals, its linkage to the conception of public order makes disapproval more collective. The hidden moral tone can lead to questionable and shady social practice if an individual's condemnation is used to guide public action or define whether a particular action is legal or illegal (see also Nussbaum 2000, 55; Jyränki 2007, 97–98).

Emotions that develop in everyday actions and environments motivate people to struggle over their rights. Referring to Delaney (1998, 14), experiences often depend on what kinds of rights we feel that we have. These may not, however, be in line with the rights that others feel that they have. In the case of *Ceci*, the installation disturbed, and was planned to disturb, the legal order of public space. The artists felt that they had a right to express themselves in ways that might upset some passers-by, yet some of the audience felt that their rights – or children's rights – to avoid such views in public space had been violated. One did not, thus, only condemn on behalf of themselves, but while externalizing the feeling to the children they expressed collective morals that they wished to protect in the name of public order.

Public space is a perfect setting for discussing the complex relationship between law and emotions, and the legal landscapes that are constituted in their interplay. Public spaces are sites of everyday encounters where there is always potential for seeing or experiencing something unexpected that leads to controversies over the rights to be, act, or express oneself publicly. Still, it is worth noting that one's emotional reasoning seldom becomes visible as it is rarely shared with others apart from close friends or relatives. Or if one wants to share their emotions more widely or struggle over their rights on the matter, they may act locally: contact some authorities and settle for their decisions, write to the local newspaper, or – most probably – complain on social media. Seldom are these emotions dealt with in the courts, which makes the singular court cases important as they inform about the legal reasoning that determines legal landscapes.

Public space is not always the same, as indicated by the discussion on the earlier functions of Kamppi Square in the litigation process. One main effort of the litigation process was to discover if this particular square had earlier served as an arena for art, and if passers-by could thus be aware that they might encounter (provocative) art there. Nonetheless, not only did space matter but also time. The case of *Ceci* showed that emotional responses are also temporal processes: a longer duration provides more time for the audience to analyse their feelings and possibly to complain about the piece of art.

The conception of legal landscapes does not refer merely to the views and seeing, or how the rights are defined in the law, but to the complex set of customs, morals (see also e.g. Jones 2006; Olwig 2008, 2009) and emotions that are linked to the determining of the public order of things. Emotions are an important part of these relations while often being a prerequisite for resistance or for the struggle over one's rights to occur. By linking the legality of actions to the possibility of condemnation, the Finnish law gives legal significance to citizens' distressed feelings. The artistic performance's relation to law may thus be complex: the art's freedom of expression may at first be endorsed and a performance be considered legal. Yet, the performance may transform into unacceptable and be subject to exclusion when seen publicly. Although the Constitution ensures the freedom of art, interpretation and policing take place in complex and changing relations.

The future development of the conception of emotional legal landscapes could focus more on the affective and atmospheric elements of legal landscapes. *Ceci's* litigation process showed that emotions matter in the face of the law *if* they are conscious and made political (see Olson 2016) by reporting them to the authorities. Our legal archaeological analysis of the litigation process thus concentrated on emotions as individual or collective experiences and morals. A more theoretical viewpoint, however, brings out a more diverse understanding of emotions where the atmosphere of a public space is interrupted by the provocative art that makes the law more visible, and advances withdrawing or becoming-other of the atmosphere (see Philippopoulos-Mihalopoulos 2015, 164; 2019b, 485). The affects circulate between the human, non-human, technological,

material, and immaterial bodies in their encounters, making them relational and subject to alterations. Thinking *Ceci* in these terms would be both challenging and theoretically rewarding, yet it requires another article to be realized thoroughly. This article has acknowledged the diversity of the spatiolegal understanding of emotions only partly, without being able to utilize its whole potential.

Conclusions

Many previous studies have shown how actions in public spaces are determined by laws, norms, and customs, yet less attention has been paid to more temporary determinants – such as the emotions related to a temporary piece of art. In the case of such accidental encounters, the question is not only about how the audience feels but also about how aware they are of rights, norms or customs, and how eager they are to report to authorities if they consider the sights or messages to be inappropriate. Instead of thinking of legal landscapes as fairly permanent material landscapes that are restricted and defined in relatively stable laws, our analysis focused attention on more temporary aspects of landscapes, suggesting that the factors contesting and confirming the landscape may come and go.

With the concept of emotional legal landscapes, we targeted the discussion to one of such temporary factors: emotions. Individual subjects can become legal actors accidentally if they encounter sights that upset them and if these are interpreted as counter to public order or morals. Only a minor part of the actions interrupted by the police due to public obscenity result in being processed in court. Existing court cases are, however, valuable since as precedents they guide authorities' evaluation on situations. In *Ceci's* case, the opposite rulings of the AC and in the SAC illustrate well how the interpretation of the state law may vary in cases where, for example, worries on public obscenity and the right to art's freedom are combined.

The mutually constitutive relation of emotions and legal reasoning is not only the matter of legal scholars but should also be developed further in geography. This article has been an opening toward that direction, although much remains to be done in order to better understand the formation of emotional legal landscapes and the legal significance of emotions in creating difference and exclusion in everyday environments.

Acknowledgements

The authors would like to thank Nicholas Blomley, Juha Lavapuro, Pauli Rautiainen and Hanna Nyman / Baltic Circle for their help during the research process. The authors would also like to thank Richard Ek and the anonymous referees for their helpful comments.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This work was supported by Academy of Finland: [Grant Number SA279425,SA313414].

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