




## On the potential of place and place of potential

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### Abstract

This contribution to the symposium on Legal Geography and EU Law reflects on Floris de Witte's paper. It makes two points: one about the potential of thinking about place in (and for) EU law and a second about the idea that potentiality itself – a notion which alludes to what could be – could be thought of in spatial terms. The overarching suggestion is that these ways of thinking offer insights into the meaning of meaning in EU law.

**Keywords:** place; potentiality; meaning; space; EU law

It's 'a shame', Floris says, that 'very little attention has been paid to the ways in which the nature, structure, and lived experience of the EU can be explained from a spatial and temporal perspective';<sup>1</sup> and it's a shame, he says, for all the reasons that he goes on to set out in his paper. But in studying that paper, I kept coming back to that early line, because it got me thinking about something else: what does it mean, for something to be a shame? We know, from Floris's paper, *why* the lack of attention to the spatial and temporal dimensions of EU law is – or can be understood as being – a shame, but what is it, *to be* a shame?

When we say that something is a shame, we seem to be saying something that at once points to a present reality and alludes to what could have been. There is a sense of something missed – a possibility unrealised, a truth unseen, a path untaken, a thought unthought; and this sense, moreover, is one that is essentially *watermarked* by disappointment, sadness, or regret, like a text is watermarked by its author.<sup>2</sup> Put differently, there is a sense of an *other*, a different world, in which but for . . . this, things could have been different. To feel this, or to think it, involves the admission and inhabitation of a space between what is and what could have been. This is a space that is at once factual and counterfactual, a space in which actuality and possibility jostle and the aura (and maybe allure) of an alternative life is felt. It is this that is forefronted in analyses of the ways in which absences and nothings and things that were non-things shape our self-identities.<sup>3</sup> It is this that is examined in accounts of our 'possible selves' and reflections on the notion of our 'unled lives'.<sup>4</sup> And it is this too, I think, that is known in moments of seeing or feeling the forks in a life.

<sup>1</sup>Floris de Witte, 'Here be Dragons: Legal Geography and EU Law', 1(1) (2022) *European Law Open* 113.

<sup>2</sup>Seamus Heaney, 'Feeling into Words' in *Preoccupations: Selected Prose, 1968–1970* (Faber & Faber 1980) 47.

<sup>3</sup>See Susie Scott, *The Social Life of Nothing: Silence, Invisibility and Emptiness in Tales of Lost Experience* (Routledge 2019); Eva Illouz, *The End of Love: A Sociology of Negative Relations* (Polity Press 2021 [2018]); Sarah Trotter, 'Narratives of Absence: On the Construction and Limits of the Category of Personal Identity in European Human Rights Law' in Jill Marshall (ed), *Personal Identity and the European Court of Human Rights* (Routledge forthcoming 2022).

<sup>4</sup>Hazel Markus and Paula Nurius, 'Possible Selves' 41 (1986) *American Psychologist* 954–69; Andrew H. Miller, *On Not Being Someone Else: Tales of Our Unled Lives* (Harvard University Press 2020); Susie Scott, 'The Unlived Life is Worth Examining: Nothings and Nobodies behind the Scenes' 43 (2019) *Symbolic Interaction* 156–80.

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Here, by which I mean in relation to the discipline of European Union (EU) law, the shame in question also involves the missing of something. But the point is more than that, too. It is that what has been missed must have necessarily, and *despite its being missed*, still been a fundamental part of the experience of EU law, such that it has always been there, but simultaneously not – an absent, or latent, presence; a way of knowing not known. The implication is that there has been a lack in the construction of the discipline, such that EU law could have been thought about differently all along. Of course, and as with anything that's a shame, the reality is that we don't really know that what could have been would have been; and we don't really know either what, if anything, was enabled or averted by its not being. But the idea that EU law could have been thought about differently is nevertheless interesting in its issuing forth of the question of thinking. It calls for 'thinking about thinking',<sup>5</sup> for thinking about how we think about what it is that we think about; for thinking about *how we think about EU law*.<sup>6</sup> In that sense, the conceptualisation of the lack of attention to the spatial and temporal dimensions of EU law as 'a shame' also sharpens attention to the question of meaning, because thinking about how to think about EU law involves the attribution of meaning. Answers to the questions of thinking are, in that way – like the construction of the questions themselves – 'acts of meaning'.<sup>7</sup> And maybe that's what feeling something to be a shame involves too: reflection on the meaning of meaning.

Reading Floris's paper about legal geography and EU law felt, quite literally, like being taken on an exciting tour of a vast and ever-expanding space. It is a hugely thought-provoking piece; and once I was capable of looking past my favourite line in it – the line that kept calling me back and coloured my reading; the line that raised, for me, and in the most intriguing way, the question of the meaning of 'a shame' – there were two things that struck me in particular. The first is the profound *potential of place* – or, more specifically, the profound potential of thinking about place in (and for) EU law. This is related to the central insight that is woven throughout Floris's exposition of the field: that thinking about how EU law and space interact – which means thinking about 'how law constructs space, and, conversely, how space affects law'<sup>8</sup> – could fundamentally enrich the discipline of EU law and 'offer very valuable insights into the nature and "lived experience" of European integration'.<sup>9</sup> The points are related because 'thinking spatially', Floris says, 'requires attention to how space is given meaning through law'.<sup>10</sup> It is the latter, the literature suggests – the *giving of meaning to space* – that is involved in the designation, imagination, or construction of place.<sup>11</sup> As Yi-Fu Tuan puts it: "Space" is more abstract than 'place'. What begins as undifferentiated space becomes place as we get to know it better and endow it with value'.<sup>12</sup>

How does this knowing and valuing, this giving of meaning, this *constructing of place*, occur in EU law? Well, that is the future question; but the implication is that it is a process inseparable from EU law's broader framework of meaning, without which it wouldn't make sense. The potential of thinking about place in EU law is, in this way, the potential of thinking about the 'conceptual life' of EU law:<sup>13</sup> about the concepts that structure the meaning of being in (and according to) EU

<sup>5</sup>Thomas H. Ogden, 'On Three Forms of Thinking: Magical Thinking, Dream Thinking, and Transformative Thinking' 79 (2010) *The Psychoanalytic Quarterly* 317–47, 317.

<sup>6</sup>See further, on this point in relation to the teaching of law, Olive M. Stone, 'University Teaching of Family Law' 5 (1960) *Society of Public Teachers of Law* 130–9, 132.

<sup>7</sup>The phrase is Jerome Bruner's: *Acts of Meaning* (Harvard University Press 1990).

<sup>8</sup>De Witte, 'Here be Dragons' (n1).

<sup>9</sup>*Ibid.*, 116.

<sup>10</sup>*Ibid.*, 114–115.

<sup>11</sup>See, e.g., Yi-Fu Tuan, *Space and Place: The Perspective of Experience* (The University of Minnesota Press 1977); Edward Relph, *Place and Placelessness* (Pion 1976); Anne Buttimer, 'Home, Reach, and the Sense of Place' in Anne Buttimer and David Seamon (eds), *The Human Experience of Space and Place* (Croom Helm 1980) 166–87; Lineu Castello, *Rethinking the Meaning of Place: Conceiving Place in Architecture-Urbanism* (transl. Nick Rands) (Ashgate 2010) esp. chs. 1 and 2.

<sup>12</sup>Tuan (1977), *Space and Place*, 6.

<sup>13</sup>Jonathan Lear, *The Idea of a Philosophical Anthropology (Spinoza Lectures)* (Koninklijke Van Gorcum 2017) 15.

law;<sup>14</sup> about the construction and rendering intelligible of a form of life in and through EU law;<sup>15</sup> and, fundamentally, about the vision of the human condition that is articulated in EU law.<sup>16</sup> The promise of EU legal geography is the promise of more than the telling of ‘something about what it means to live in the EU and what it means to live under EU law’, then,<sup>17</sup> it is also the promise of the telling of something about the meaning of meaning itself in this context.<sup>18</sup>

That makes it, simultaneously, a promise of insight into our imagination of EU law; and that, in turn, brings me to the second point that I wanted to make about Floris’s piece. This is about the *place of potential*, by which I mean the idea that potentiality itself – a notion that alludes to what could be – *could itself* be productively thought of in spatial terms. It has been elsewhere: to the extent that Donald Winnicott’s concept of ‘potential space’ constituted a theorisation of potentiality as well as a new concept entirely, this would be the most famous example.<sup>19</sup> Winnicott conceived of ‘potential space’ as an area of experiencing between ‘the inner world’ and ‘actual, or external reality’<sup>20</sup> – ‘between the individual and the environment (originally the object)’.<sup>21</sup> This is the space, he theorised, where playing, creativity, and ‘cultural experience’ occur;<sup>22</sup> this is the place, on his analysis, ‘where we most of the time are when we are *experiencing life*’.<sup>23</sup>

This could, I think, be an interesting concept to think about in relation to law. In the context of EU law in particular I am reminded, for instance, of Floris’s analysis of the way in which EU law can (or rather ‘could traditionally’<sup>24</sup>) be understood as enabling the individual to conceive of themselves as apart from their ‘home’ state: something which enables a form of self-realisation (the realisation of ‘innermost and private aspirations and desires’<sup>25</sup>) and a form of self-articulation (the articulation of ‘this is who I am’). On this account, EU law, and free movement in particular, presupposes that the individual may not find and realise herself within her state, and creates a space that enables her to look elsewhere.<sup>26</sup> In so doing, it ‘aims to allow the individual to live

<sup>14</sup>(The idea of ‘conceptual life’, according to Jonthan Lear, is about ‘the concepts with which we understand ourselves and the world we inhabit’: *ibid.*, 13.) In relation to EU law see, e.g., Floris de Witte, ‘The Liminal European: Subject to the EU Legal Order’ 40 (2021) *Yearbook of European Law* 56–81; Loïc Azoulay, ‘The Madness of Europe, Being Attached to It’ 21 (2020) *German Law Journal* 100–3; Päivi Neuvonen, ‘Retrieving the ‘Subject’ of European Integration’ 25 (2019) *European Law Journal* 6–20.

<sup>15</sup>As Jonathan Lear further puts it: in a ‘loss of intelligibility . . . the concepts and categories by which the inhabitants of a form of life have understood themselves . . . cease to make sense as ways to live’: ‘What Is a Crisis of Intelligibility?’ in *Wisdom Won from Illness: Essays in Philosophy and Psychoanalysis* (Harvard University Press 2017) 50–62, 50–1. See further, beginning to explore these questions, the research project led by Loïc Azoulay at Sciences Po into *Forms of Life and Legal Integration in Europe* (<https://www.sciencespo.fr/fole/index.html>); Loïc Azoulay, ‘Editorial Comments: EU law as a way of life’ 54 (2017) *Common Market Law Review* 357–68.

<sup>16</sup>See, relatedly, Loïc Azoulay, Ségolène Barbou des Places, and Etienne Pataut (eds), *Constructing the Person in EU Law: Rights, Roles, Identities* (Hart Publishing 2016). In the context of European human rights law, examining how place and space are constructed emerge as profoundly revealing of European human rights law’s vision of the human condition, see Sarah Trotter, ‘On Coming to Terms: How European Human Rights Law Imagines the Human Condition’ (PhD thesis, London School of Economics and Political Science 2018) (available at: <http://etheses.lse.ac.uk/3946/>).

<sup>17</sup>De Witte, ‘Here be Dragons’ 116.

<sup>18</sup>For a comparable analysis in the context of European human rights law, see Trotter ‘On Coming to Terms’.

<sup>19</sup>Donald Winnicott, *Playing and Reality* (Routledge 2005 [1971]) 55.

<sup>20</sup>*Ibid.* 55.

<sup>21</sup>*Ibid.* 135.

<sup>22</sup>*Ibid.* 135.

<sup>23</sup>*Ibid.* 140, emphasis added. See further Thomas H. Ogden, ‘On Potential Space 66 (1985) *The International Journal of Psychoanalysis* 129–41; Anthony D. Bram and Glen O. Gabbard, ‘Potential Space and Reflective Functioning: Towards Conceptual Clarification and Preliminary Clinical Implications’ 82 (2001) *The International Journal of Psychoanalysis* 685–99.

<sup>24</sup>De Witte ‘The Liminal European’ (n14) 56.

<sup>25</sup>Floris de Witte, ‘Emancipation through Law?’ in Azoulay, Barbou des Places, and Pataut (eds), *Constructing the Person in EU Law* 15–33, 22.

<sup>26</sup>De Witte ‘The Liminal European’ (n14) 62.

a life that most closely realises his or her idea of “self”.<sup>27</sup> The question that we might want to consider in this context is the form that this space takes – Floris’s suggestion being that it is one of ‘potential space’, ‘transitory – liminal – space’<sup>28</sup> – and it is notable, too, that a notion of self-realisation that is worthy of further examination in similar vein is to be found also in European human rights law.<sup>29</sup> But to go down that path right now would be to take us away from what I really have in mind with the idea of the place of potential, which is a notion of potentiality itself as a place: *of a place that derives its meaning as such from the potential ascribed to it.*

In some respects, this is an intuitive and therefore familiar idea: a place may evidently be thought of (and constructed) as such on account of the expectations held of it, the anticipation felt in relation to it, or the potential ascribed to it.<sup>30</sup> (And the question of our capacity to experience ourselves as transformed by places – and, relatedly, to imbue places with transformative potential – is a separate, but nevertheless related and interesting one.) But the point is also more concretely one about the way in which potentiality can feature in, and shape, the law’s construction of places. An example would be Public Spaces Protection Orders in England and Wales, which can involve the prohibition, in delineated public spaces, of certain activities that are deemed to have a ‘detrimental effect’ on the local ‘quality of life’ in part on the basis that those activities are likely to occur and to have such an effect.<sup>31</sup> Another example, in the context of EU law, would be the conceptualisation of the protected ‘resting places’ of European hamsters (and indeed of protected animal species listed in the Habitats Directive more generally) to include ‘resting places which are no longer occupied . . . where there is a sufficiently high probability that the species will return to such places’.<sup>32</sup> These two examples are evidently very different, but the questions that they raise about how potentiality is being constructed and the work that it is doing – including in relation to the construction of law itself – are, in each case, the same.

Thinking about potentiality in spatial terms in this way opens up two levels of thinking. One is about how potentiality can be woven into the conceptualisation of a place – and, relatedly, of how a place can be constructed as such on the basis of the potential ascribed to it. The second is about how potentiality itself can be thought of as a place, and therefore as a site of meaning: as an area of

<sup>27</sup>Floris de Witte, ‘Integrating the Subject: Narratives of Emancipation in Regionalism’ 30 (2019) *The European Journal of International Law* 257–78, 267.

<sup>28</sup>De Witte, ‘The Liminal European’ 62: ‘The right (or even mere possibility) of free movement sits, in a way, on the faultline of “being” and “becoming”, creating a “potential space” that, according to psychoanalytical work, is central to the development and realization of the self. This transitory – liminal – space is crucial in the argument advanced in this paper that suggests that the authority of the EU’s legal order is fundamentally predicated on allowing its citizens to *become* themselves rather than *be* nationals.’

<sup>29</sup>Sarah Trotter, ‘Hope’s Relations: A Theory of the ‘Right to Hope’ in European Human Rights Law’ (*Human Rights Law Review* forthcoming 2022); Sarah Trotter, ‘The Child in European Human Rights Law’ 81 (2018) *Modern Law Review* 452–79.

<sup>30</sup>As David Canter puts it in *The Psychology of Place* (The Architectural Press 1977): ‘What do we do when we look at a house, or some description of it? Surely we relate what we see to some formulation we have of what it would be like to inhabit. We then question the correspondence of that to some other formulation, however loose, of how we would like to live’ (6). See further on expectation, imagination, anticipation, and potential in relation to place, e.g., Michael Ian Borer, ‘From Collective Memory to Collective Imagination: Time, Place, and Urban Redevelopment’ 33 (2010) *Symbolic Interaction* 96–114; Dana Prince, ‘What about Place? Considering the Role of Physical Environment on Youth Imagining of Future Possible Selves’ 17 (2014) *Journal of Youth Studies* 697–716.

<sup>31</sup>Under Section 59 of the Anti-social Behaviour, Crime and Policing Act 2014, local authorities can make a Public Spaces Protection Order (PSPO) if satisfied on ‘reasonable grounds’ that, firstly, ‘(a) activities carried on in a public place within the authority’s area have had a detrimental effect on the quality of life of those in the locality, or (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect’ and secondly, that the effect or likely effect of the activities ‘(a) is, or is likely to be, of a persistent or continuing nature, (b) is, or is likely to be, such as to make the activities unreasonable, and (c) justifies the restrictions imposed by the notice.’ A PSPO identifies a public space and stipulates requirements or prohibitions as to what can be done in that space. See further, and specifically on the use of PSPOs to regulate bird-feeding, Sarah Trotter, ‘Birds Behaving Badly: The Regulation of Seagulls and the Construction of Public Space’ 46 (2019) *Journal of Law and Society* 1–28.

<sup>32</sup>C-477/19, *IE v Magistrat der Stadt Wien* (Court of Justice of the EU 2 July 2020).

experiencing, that has a form of meaning. Insofar as it emerges around and against actuality it is, in this way, *a place between*. The question that we might want to think about, then, is that of the making of such a place, the creating of this space, the *meaning* of this space.

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There is a poem by Mererid Hopwood called ‘Darnau Tawelwch’.<sup>33</sup> This translates from Welsh as ‘Pieces of Silence’, and the poem is about pieces that are ‘between’: ‘[t]he black piece between | the moment and the little minute | that lasts a lifetime longer’, ‘the grey piece between | the end of the sea and the horizon’, ‘the white piece between | a word and a word that’s resting’, ‘the silver piece between | two souls and two breaths’, and ‘the gold piece between | two smiles and both tender’.<sup>34</sup> These, she says, are ‘pieces of silence’, the counting of which is ‘the secret of silence’.<sup>35</sup> And that is, in the end, the point, I think: that the matter is not only one of where we look for and find space and place, but that the looking and the finding will always be matters of meaning.

<sup>33</sup>Mererid Hopwood, ‘Darnau Tawelwch’ in *Nes Draw* (Wasg Gomer 2015) 59.

<sup>34</sup>*Ibid.* The translation here is mine. The original passages are: ‘Y darn du rhwng | yr ennyd a’r funud fach | sy’n aros oes yn hirach’, ‘y darn llwyd rhwng | diwedd y môr a’r gorwel’, ‘y darn gwyn rhwng | gair a gair yn gorwedd’, ‘y darn arian rhwng | dau enaid a dwy anadl’, and ‘y darn aur rhwng | dwy wên a’r ddwy yn dyner’.

<sup>35</sup>*Ibid.* (‘cyfri’r rhain yw cyfrinach tawelwch’).