AMY STRECKER

# Landscape, property and spatial injustice in international law

My interest in the role of law in landscape governance came about when I was an M.A. student of cultural policy and arts administration at University College Dublin in 2004. At the time, Ireland was undergoing rapid development due to the "Celtic Tiger", the term used to describe the economic boom of the 1990s and early 2000s, when Ireland went from being one of the least developed countries in Western Europe to one of its wealthiest. It was the year that several controversies concerning road development and heritage sites came to a head, the same year that the main heritage legislation—the National Monuments Act—was amended to dilute safeguards and facilitate road development.[1] I wrote my M.A. thesis on the National Monuments (Amendment) Act 2004, its origins and its implications for the protection of cultural landscapes in Ireland.[2] Thus began a journey of intellectual engagement with the subject of law and landscape that has lasted almost 20 years—crossing Italy, the Netherlands and the Caribbean—during which time my work has become increasingly concerned with the social justice dimensions of landscape and law in general, and landscape and international law in particular. This chapter is told as a personal narrative intertwining my intellectual journey with landscape law and the scholars who have influenced me along the way. As noted by Michael Jones, "personal life stories both reflect and affect development of knowledge" and "scholarly autobiography narrates elements of one's life as part of the research process."[3]

1 Government of Ireland 2004, Section 14A, National Monuments (Amendment) Act 2004.
2 Strecker 2005.
3 Jones 2018, p. 17.

Law plays a fundamental role in shaping landscapes in a physical sense through planning, heritage and environmental laws, but also in shaping who has rights in relation to landscape, its use and access. When Irish heritage law was amended in 2004 to facilitate road development, the government had just approved the M3 motorway through the Tara–Skryne valley, one of Ireland's most mythological places and the locus of nearly 4,000 years of monument-building, ritual and ceremony.[4] This was not just a site of old "pots n pans" as infamously described by one local politician,[5] but "probably the most consecrated spot in Ireland", as a group that included W.B. Yeats wrote in a letter to *The Times* in 1902.[6] This was a landscape with more than usual cultural importance from the standpoint not only of archaeology, but also of history, mythology, folklore, language and place names.[7] Tara was not only an ancient and hallowed place, but also very much a living landscape, a place of solace and ritual, still considered special by the people who visited and used it in the present. It seemed incongruous to me at the time (I was a naïve student!) that there existed several international and European laws pertaining to cultural landscape, including the recently entered-into-force European Landscape Convention of 2000 (hereafter ELC),[8] but these had no bearing on the outcome of the case. An individual did take a legal challenge against the government's decision to route the motorway through Tara, but the case was dismissed because among other things, the judge was of the view that the applicant did not have "sufficient interest" (i.e. not being a landowner in the vicinity and therefore not being viewed as personally affected by the decision) and the judge could not see how an "abstract landscape theory" justified departure from the rule.[9] In dismissing the case, the judge stated: "The legislature has clearly provided that the desirability of preservation must yield to the exigencies of the common good including public interest in socio-economically beneficial development in the context of approved road development."[10] This statement made by the presiding judge in the case displays the belief that the planning process was fair, transparent and based on sound

4 Bhreathnach 1995; 2005; Newman 1997.

5 Former Chairman of Meath County Council, Councillor Tommy Reilly became known as Tommy "Pots n Pans" Reilly, as a result of his comments about what might lie beneath the ground at Tara.

6 W.B. Yeats *et al*., *The Times*, 24 June 1902, cited in Carew 2003.

7 Bhreathnach 1995; 2005; Newman 1997.

8 European Landscape Convention, Florence, 20 October 2000. ETS 176; renamed the 'Council of Europe Landscape Convention' in the Protocol amending the European Landscape Convention, Strasbourg, 1 August 2016, ETS 219 (Council of Europe 2022).

9 IEHC 61 [2006].

10 IEHC 61 [2006], p. 86.

procedure, and that the completion of a motorway was in the public interest. The real reason for the route selection (from four alternatives for public consultation) was that analysis and modelling of traffic indicated that it was likely to draw most traffic from existing roads in the area, which made it the most appealing to the private partner, Eurolink Motorway Operations (M3), in terms of cost-benefit return.[11]

There were several demonstrations and a march through Dublin (in which I took part) to protest against the motorway, reminiscent of the marches against the destruction of the Wood Quay site in the late 1970s, when an extensive Viking settlement—essentially the early city of Dublin—was discovered at Wood Quay along the banks of the River Liffey in Dublin and subsequently destroyed for the building of new municipal offices for Dublin Corporation (now Dublin City Council). Dublin Corporation had acquired lands for the building of its new offices over several years, but excavations at the side revealed vast remains of Dublin's early Viking town (841–1100), along with city walls, wattle paths, and houses, some of which were remarkably intact. The importance of the find led to a public campaign to preserve the site, and a demonstration of over 20,000 people—the largest since independence—marched through Dublin to voice opposition to the building of the offices. As noted by journalist Frank McDonald, the bureaucratic triumph over a clearly expressed democratic consensus was shocking to several commentators.[12]

## LANDSCAPE LAW

I went on to write my Ph.D. in law at the European University Institute in Florence, the city where the European Landscape Convention had been adopted and had recently entered into force. My Ph.D. explored the various avenues—institutional, substantive and procedural—for the protection of landscape in international law. The title of my Ph.D. thesis was 'Landscape as Public Space'.[13] Inspired by the work of Don Mitchell, who used the term "public space" in relation to urban areas and social justice issues,[14] I employed the term to connote the public interest in landscape as understood in international law, as a limiting factor on the unfettered property rights of individuals, the state or non-state actors. It was during my Ph.D. that I first encountered the work of Michael Jones, Kenneth Olwig and other researchers involved in the *Landscape, Law and Justice* group.[15] Seeing the concepts of landscape, law and

11 Newman 2007, p. 75.
12 McDonald 1985, p. 288.
13 Strecker 2012 (updated and published as a book in 2018).
14 Mitchell 2003.
15 Peil & Jones 2005; Jones 2006a.

justice together at the time lent considerable weight to my conviction that landscape was more than the scenic or representational aspects often emphasized in law. The depth of theoretical and empirical engagement from the Nordic school provided a theoretical underpinning to draw on a more human-centred and grounded approach, especially given the absence of any landscape justice literature from legal scholars. Yes, the World Heritage Convention[16] increasingly acknowledged the cultural dimension to landscape with the introduction of the 'Cultural Landscapes' category within the scope of the Convention in 1992,[17] which, as noted by Mechtild Rössler, represented a shift towards people and communities,[18] but this still related to cultural landscapes of "outstanding universal value". The European Landscape Convention on the other hand applied to all landscapes, including everyday or degraded ones.[19] The ELC departed from previous legal instruments in its conception of landscape and was about much more than safeguarding special places with high natural or cultural heritage value, including a more holistic conception of landscape not separated along the lines of natural or cultural heritage. Landscape represents a symbiotic relationship between people and place over time, after all, and the ELC recognized the fact that landscape law should also include an acknowledgement of the rights of communities to participate in the decisions affecting their landscapes, including specific obligations on states to provide for public participation in the formation of landscape plans and policies.[20] In the first decade after the ELC's entry into force, there was a groundswell of activity relating to landscape within academia and civil society, including the establishment of the European Networks for the Implementation of the European Landscape Convention, focusing on civil society, universities and local governments (CIVILSCAPE, UNISCAPE, RECEP-ENELC), two of which I worked with as a Ph.D. student in Florence.[21]

It became gradually evident in my research, however, that while the ELC provides for participatory rights, this presupposes a functioning deliberative democracy where

16 Convention for the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972, 1037 UNTS 151 (UNESCO 1972).

17 Report of the Expert Group on Cultural Landscapes (La Petite Pierre, France 24–26 October 1992) WHC-92/CONF.202/10/Add (UNESCO 1992).

18 Rössler 2006.

19 Article 2 (Council of Europe 2022).

20 Article 6 (Council of Europe 2022).

21 First with RECEP-ENELC and then with UNISCAPE: meeting with local and regional authorities, helping to organize events, presenting on behalf of the networks, editing and translating documents and publications (Italian and French to English). The only network still active of the three is UNISCAPE.

public participation will be meaningful and lead to a just solution in landscape planning. However, for many regions in Europe, especially those on the periphery, this remains an aspirational goal, quite removed from the reality of the planning process. Disputes often arise late in the process and communities can find themselves outside the decision-making process, with little recourse or access to justice. Although the ELC refers to the Aarhus Convention on Access to Information, Public Participation and Access to Justice (1998) in its preamble,[22] it makes no actual reference to access to justice in its text. It can be seen that the emphasis of the Convention is on the proactive planning and development of landscape at local and regional level but does not offer a solution with regard to solving disputes that arise in later stages of the planning process when the participation process has lacked in transparency or equity or has not been adequately provided for.[23]

While legal instruments were increasingly acknowledging the importance of participation, it was the work of geographers, particularly scholars linked to the *Landscape, Law and Justice* research group, who were already conducting empirical studies on participation in practice.[24] Several studies, including by Michael Jones and Marie Stenseke, showed that there exists a prevailing gap between participation rhetoric on paper and participation at the operational level.[25] If we return to Ireland, these findings were borne out in the case of the motorway through Tara, mentioned earlier. The M3 motorway had one of the longest oral hearing stages in Irish planning history and saw unprecedented levels of participation—albeit top down, where the public were invited to give their views on the route selection rather than actually contribute to that selection—and yet the project was approved, nonetheless. The participation was a top-down, new public management style of participation,[26] and raises the question of whether publicly elected officials continue to act in the public interest when market fundamentalism and development at all costs become virtuous public goals. Michael Jones' observation that "law and landscape are in turn both shaped by conceptions of justice, as well as by contestations over what is considered just and unjust in different societies"[27] assumes more resonance in cases like Tara, because landscape becomes a symbol of the social relations it conceals.

I argued in my Ph.D. thesis that the emerging landscape law represented in the European Landscape Convention recovered (in norms) some of the substantive na-

22 Aarhus Convention, 2161 UNTS 447 (UNECE 1998).
23 Strecker 2017b; 2018, pp. 106–110.
24 Jones 2007, pp. 619–620; Jones & Stenseke 2011a.
25 Conrad *et al*. 2011; Jones & Stenseke 2011b, pp. 13–14; Jørgensen *et al*. 2016.
26 Jones 2018, p. 20, refers to Lane 2000 on "new public management".
27 Jones 2006b, p. 1.

ture of landscape defined by Olwig in his seminal article 'Recovering the substantive nature of landscape'[28] (but that it stops short because it relies too heavily on participation without the corresponding pillars of access to information and access to justice). It became clear through my research that, while landscape is recognized as having a strong human rights dimension, legal claims for rights to landscape, while based on real issues of concern—and sometimes on genuine violations of national law—are not a viable means of accessing justice for land rights violations or for preventing destructive development in cultural landscapes.[29] This is because landscape is still within the realm of public policy ("sovereignty over natural resources"); in practice, it is often considered in preservationist terms rather than substantive ones dealing with people's relationships to the places where they live,[30] and while human rights are for the most part considered as individual rights, landscape is collective in character, and is difficult to articulate within the current human rights framework.[31] Aside from charting the acquisition of landscape within the vocabulary of international law and assessing the nature of state responsibility in relation to landscape protection, my Ph.D. also analysed the substantive human rights to culture, property and the environment, including an analysis of international case law involving landscape disputes, comparing the jurisprudence of the European Court of Human Rights with that of the Inter-American Court (and Commission) of Human Rights.[32] It was notable that in all of the cases I analysed as part of my Ph.D. research, including national cases, the European Landscape Convention was rarely ever mentioned, either by counsel or the judiciary, as a binding treaty with concrete obligations for states (unlike other Council of Europe conventions, which had been mentioned).[33] Cases where the ELC has been successfully invoked before a court of law are rare, with one exception being the Blitse Duinen case (Netherlands) which involved a group of local residents who successfully challenged the blocking of access to a forest path by private landowners, relying on the ELC.[34]

28 Olwig 1996, referred to in Strecker 2018, pp. 2, 10, 178, 182.

29 Strecker 2012; 2018, pp. 129–174.

30 Strecker 2017b; 2018, pp. 129–153.

31 Strecker 2011; 2017b; 2018. Some of these premises formed the rationale behind my current ERC project—PROPERTY[IN]JUSTICE.

32 Strecker 2012; 2017b; 2018, pp. 129–174.

33 Strecker 2018, pp. 107–158.

34 For further information, see http://vriendenbiltseduinen.simpsite.nl/natuurmonument.

## LANDSCAPE, PROPERTY AND CULTURE

As a landscape and law scholar, it took me some time to see the limits of landscape as a tool for accessing justice.[35] For all the normative developments made in environmental justice and cultural rights, property still dominated the way in which cases concerning land were being interpreted at national and international levels. An applicant's standing or sufficient interest is often equated with land ownership rather than any other form of relation to land,[36] and access to justice for communities facing destruction of their local landscapes (and consequent dispossession and/or environmental degradation) can be difficult to prove either due to the lack of substantive environmental rights or to the way in which access to cultural heritage is narrowly construed by the judiciary.[37] By contrast, the right to property has been interpreted in the Inter-American context to include communal customary tenure and the collective rights of indigenous peoples, as well as spiritual and cultural links with land, even in the absence of title. In the case of *Maya Indigenous Communities of Toledo District v. Belize*, for example, the Inter-American Commission found that Belize had violated the Mayan communities' right to use and enjoy their property by granting concessions to third parties to exploit natural resources without informed consent.[38] The Commission noted that indigenous peoples' right to property is based on international law, does not depend on domestic recognition of property interests and is grounded in custom and tradition.[39] Likewise, in *Xákmok Kásek Indigenous Community v. Paraguay*, the Inter-American Court repeated that for indigenous communities their relationship with the land is not merely a matter of possession and production, but rather a material and spiritual element that they must fully enjoy.[40] The Court also noted that

35 This is due to a number of factors, including my positionality as a white Irish middle-class person for whom spatial injustice was not a part of my lived personal experience, but also due to my non-legal education prior to conducting a Ph.D. in law, and my avoidance of property because of its doctrinal limitations.

36 This mirrored the finding of Michael Jones in relation to public participation of residents in 25 case studies in Trondheim, where the interests of landowners came to the fore (Jones 2018, p. 20).

37 See for example, Ahunbay and others v. Turkey, 6080/06 before the European Court of Human Rights.

38 Case 12.053, IACtHR Report 40/04: https://cidh.org/annualrep/2004eng/Belize.12053eng.htm.

39 Case 12.053, IACtHR Report 40/04, paras. 153, 194.

40 IACtHR Series C No. 214: https://www.corteidh.or.cr/docs/casos/articulos/seriec_214_ing.pdf.

while this concept of property does not necessarily correspond to the classic concept of property, it nevertheless deserves equal protection under the American Convention of Human Rights, and that "failing to recognize the specific versions of the right to use and enjoyment of property would be equivalent to maintaining that there is only one way of using and enjoying property and this, in turn, would make Article 21 meaningless for millions of individuals".[41]

However, two general problems emerge here. The first is that indigenous peoples still face enormous challenges in the implementation of these decisions due to, among other things, the way in which property—and natural resources—are conceptualized in transnational law. The history of indigenous land dispossession is one of the most egregious and enduring spatial injustices, and the recognition of collective land rights—albeit hard fought—still does not amount to self-determination.[42] Second, issues of land access not only affect indigenous peoples, but also millions of marginalized communities worldwide who depend on land for common survival. It seemed to me that limiting a cultural interpretation of property to an exception was sidestepping the fundamental injustice, as well as the emancipatory potential at the heart of a socially just conceptualization of property as it applies to marginalized communities more generally. In my Ph.D., I concluded that cultural rights offer the most tangible link for expressing landscape protection in (substantive) human rights terms, and "while the right to property may necessitate dwelling, occupation, or traditional ownership (where it is interpreted as custom), culture can connote various relationships between people and place as well as customary links."[43] This need not be restricted to indigenous peoples or minorities.[44] I argued that claims for rights to landscape are one symptom of how other concepts (especially property) are deemed to have failed in their social responsibility.[45]

The incongruity of international norms advocating more localized versions of landscape is one of the paradoxes of our time. As Saskia Sassen notes, global assemblages of

41 IACtHR Series C No. 214, para. 87.

42 May Castillo & Strecker 2017.

43 Strecker 2018, p. 182; also discussed in Strecker 2017b. The right to take part in cultural life, enshrined in international human rights law (most notably Article 15 (1)(a) of the *International Covenant on Economic, Social and Cultural Rights*), includes the right of access to, enjoyment of, and participation in cultural life, as well as a corresponding obligation on the part of states to protect cultural heritage—including "manmade and natural environments" (General Comment No 21. of the UN Committee on Economic, Social and Cultural Rights, E/C.12/GC/21, https://www.refworld.org/docid/4ed35bae2.html), further elaborated on in Strecker 2018, pp. 141–154.

44 Strecker 2012; 2018, p. 182. This was another premise behind PROPERTY[IN]JUSTICE.

45 Strecker 2018, p. 185.

territory, authority and rights cut across the binary of national versus global.[46] Examples of such assemblages inspired by the European Landscape Convention included the 'Right to Landscape', 'Defining Landscape Democracy' and 'Landscape Citizenships' initiatives which gathered together scholars from a variety of disciplines and regions concerned with the social justice dimensions of landscape, transcending interstate boundaries.[47] The original *Landscape, Law and Justice* research group acted as a precursor to these movements, which in turn contributed to my thinking on landscape as a term that was reimagined (or at least captured the imagination) as a result of the social demise of property.

## COLONIAL ENCOUNTERS IN THE CARIBBEAN

In 2014 I took up a postdoctoral research position in Leiden University as part of a larger European Research Council (ERC) research project investigating the impact of colonial encounters on the indigenous peoples of the Caribbean, titled Nexus1492. The starting point for the project was that Caribbean history did not begin in 1492 with the arrival of Columbus but has a rich indigenous history extending back thousands of years. The heritage subproject, of which I was part, was initially viewed as an "add on" (outreach) rather than as an intrinsic part of the project, something that members of the heritage team resisted and eventually transformed. Personally, I felt uncomfortable about a brief that was overtly concerned with the legal protection of archaeological heritage to the detriment of other forms of heritage and lived-experience. So instead of starting from the presumption that archaeological sites must be protected (Eurocentric), I felt that we should be talking to and including the views of self-identifying descendants of indigenous people about what heritage they considered to be important, and what role law plays or could play in the process. As a consequence, I broadened my research scope to focus on the issues that came to the fore after initial field visits: land rights, cultural heritage and access to cultural material (most Caribbean ethnographic collections are based in European and US museums), restitution, and reparations.[48] My research consisted of case law analysis, jurisprudence from the UN human rights bodies, archival research and field visits to understand the views and the work of descendant communities themselves.

It was while researching the history and role of international law in the Caribbean that I started to become more critical about the role of international law in matters

46 Sassen 2008, p. 5.

47 E.g. Egoz *et al*. 2011; 2018; Waterman *et al*. 2021.

48 Strecker 2016; 2017a; Françozo & Strecker 2017.

of landscape. In 2015 I presented a paper on 'Landscape, property and common good: The ambiguous convergences of spatial justice'[49] at the *Defining Landscape Democracy* conference held in Oscarsborg, Norway, organized by the Centre for Landscape Democracy at the Norwegian University of Life Sciences (NBMU), at which I received some helpful comments from Michael Jones and Kenneth Olwig. I began to think of landscape and property together on a pendulum of spatial justice. I learned from Nicole Graham's *Lawscape* that similar to landscape, the early etymology of "property" referred to more than the sum of the economic production value of land and was also a significant component of identity.[50] My paper focused on the convergence and divergence of landscape and property as they relate to notions of common good (the subject of a UNISCAPE seminar I co-organized the previous year) and attempted to illustrate where these concepts pose some of the greatest challenges for spatial justice. I argued that while the philosophical and conceptual development of landscape over the past decades does indeed bring landscape in closer symbiosis with "democracy", this nevertheless presents challenges for law and legal practice, because of the different meanings attached to certain terms and the uneven contexts in which they are employed.[51]

Around the same time, Grenadian legal scholar Amanda Byer joined the project as a Ph.D. researcher. Byer was interested in the concept of eco-imperialism and I introduced her to the work of the *Landscape, Law and Justice* geographers—the influence of Kenneth Olwig in particular is noticeable in her writing.[52] Byer's research considered the relevance of community bonds with land to heritage formation, the consequences of ignoring these relationships in domestic law, and the potential for international law, via procedural environmental rights, to challenge the shortcomings of traditional approaches to heritage protection.[53] Her Ph.D. not only provided the first critical analysis of landscape and law in the Lesser Antilles (through heritage, planning and environmental law), but was also novel for the way in which she approached it, via a legal geographical lens, that centred on the dissonance between the colonial legacies of the laws shaping and governing the landscape, and the conditions and culture of the landscapes themselves.[54] The result, according to Byer, is that land is ascribed fixed spatial definitions that are colonial in character, and the law does not accommodate the range of communal interests that landscape represents, so the multiplicity of uses

49 Strecker 2015.
50 Graham 2011.
51 Strecker 2015, p. 25.
52 Byer 2022, pp. 35–67; 2023a.
53 Byer 2022.
54 Byer 2022.

of public space remain unrecognized.[55] Byer became a self-identifying landscape law scholar, and from that time onwards we have continued a dialogue over landscape, law and justice that has included and built on some of the thinking of the original *Landscape, Law and Justice* group.[56]

## THE JANUS FACE OF INTERNATIONAL LAW

While researching the ambiguous role of international law in indigenous land rights, cultural heritage and restitution in the Caribbean, I became more preoccupied with the colonial origins of some of the basic principles of international law, such as sovereignty (on which I was teaching a regular course at Leiden University). Indeed, international law was central to the colonization and appropriation of land in the Caribbean, even if it was becoming a perceived vehicle of change for indigenous peoples.[57] More generally, I came to realize that focusing on aspirational norms only captures half of the picture.[58] Behind most major landscape disputes lurks another field of international law that often plays a much more influential role in terms of its capacity to affect local environments and facilitate destructive development. Take the Keystone XL (Dakota) Pipeline for example: what was happening behind the scenes was a major investment to the tune of billions of dollars facilitated by international economic law. When the Obama administration refused to approve the project based on environmental concerns, TransCanada sued the US government for US$15 billion compensation under NAFTA's dispute settlement mechanism.[59] The Trump administration subsequently reversed the decision and gave the green light to the pipeline (TransCanada then dropped the case). International trade and investment dispute settlement mechanisms give foreign investors the right to claim for compensation for the expropriation of their "property rights" in investments, even where decisions were made on the basis of environmental, public interest or other human rights concerns. Given that land-based investment in agriculture, resource extraction or infrastructure covers a very significant amount of global investment, this area of law, which is largely placeless, has a major impact on land-use decisions. As noted by Jones, "a complication is the increasing importance of

55 Byer 2022, p. 185.

56 Byer is a senior researcher in PROPERTY [IN]JUSTICE, discussed in more detail below.

57 On the emancipatory potential of international law in the Caribbean, see Bulkan 2011.

58 This was also due to my involvement with a collective in Leiden working on the 'Heritage and Rights of Indigenous Peoples' which included indigenous scholars from several regions facing similar problems in terms of land rights, access to and control over heritage (May Castillo & Strecker 2017).

59 ICSID Case No. ARB/16/21, https://www.italaw.com/cases/3823.

transnational agreements, criticized as being without or only to a limited degree under democratic control".[60] While instruments such as the European Landscape Convention, the Aarhus Convention, the Escazú Agreement (2018),[61] the UN Declaration on the Rights of Indigenous Peoples (2007)[62] and the UN Declaration on the Rights of Peasants (2018)[63] all represent examples of bottom-up or democratic international law-making, they are up against the more powerful international forces of trade and investment norms. The result is that the abstract notion of property rights in international investment law (land is classified as a "commercial asset") frequently collides with the "lived-in" (landscape) rights of people and communities on the ground.[64] This has produced an asymmetry whereby major investors can be compensated for loss of (potential) revenue, but local communities who have been dispossessed or whose landscape has been degraded, receive nothing. The disparity between who gets to have property rights and who does not is still substantial.[65]

There is increasing criticism of international law from TWAIL (Third World Approaches to International Law) scholars and others,[66] not only for the "misery" created by international economic law,[67] but also for the way in which international environmental law establishes new forms of global authority over land in ways that benefit some while marginalizing others.[68] Indeed, the last two decades have marked a dramatic increase of foreign investment in agricultural and other types of land. According to one report, the size of land affected by land acquisition agreements signed between 2008 and 2009 alone was more than ten times what it had been in the previous decade[69] and since then land acquisitions have intensified,[70] including for so-called green investments such as carbon offset schemes.[71] International investment is based on the assumption that protection of investments will stimulate foreign direct

60 Jones 2018, p. 16.

61 *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, Escazú, 4 March 2018 (United Nations 2018a).

62 *UN Declaration on the Rights of Indigenous Peoples*, Geneva, 13 September 2007, A/RES/61/295 (United Nations 2008).

63 *UN Declaration on the Rights of Peasants and Other People Working in Rural Areas*, Geneva, 28 September 2018 (United Nations 2018b).

64 Cotula 2017.

65 Strecker 2019.

66 Anghie 2005; Gathii 2007; Koskenniemi 2012; 2017; Tzouvala 2020; Byer 2023a.

67 Linarelli *et al*. 2018.

68 Dehm 2021.

69 Perez *et al*. 2011.

70 Sassen 2014; Romanin Jacur *et al*. 2016; von Bernstorff 2016.

71 Dehm 2021.

investment (FDI) and that FDI will lead to economic growth and development in the host state. Yet research is showing that large-scale land investments increasingly result in the displacement of local communities, violations of economic, social and cultural rights, and destruction of the natural and cultural landscape.[72] This is corroborated by geospatial analysis demonstrating that, contrary to popular belief, land deals do not target idle or marginalized land, but instead often target populated croplands, remote forests, and grasslands.[73] As noted by Lorenzo Cotula, "far from being relegated to the exclusive domain of national law, property has long been and remains an important issue in international legal ordering".[74] Yet despite its centrality, its impact on people–place relations remains under-scrutinized in the international law scholarship.

## LANDSCAPE, PROPERTY AND SPATIAL JUSTICE IN INTERNATIONAL LAW

While landscape is increasingly recognized as having a human rights dimension, the rights associated with landscape are perceived as non-justiciable and ultimately will never operate on as level a playing field as the more substantive right to property. Yet can property adequately protect the various relationships between people and place, particularly the rights of access, collective customary tenure and other cultural links with the land, even outside the indigenous context? If property can include abstract economic interest such as shares, why can it not also include substantive interest such as community use? These are some of the questions I posed in a research proposal to the European Research Council in 2019 on the subject of *Land, Property and Spatial Justice in International Law*.[75] The resulting project is hosted at the Sutherland School of Law at University College Dublin (UCD), which I joined in 2020 after returning home to Ireland. Soon after, I recruited a team of researchers including my fellow landscape law scholar Amanda Byer, as well as Sonya Cotton, Sinéad Mercier and Raphael Ng'etich. The canon of property already has an extensive scholarship, and the aim of the project is not to rehash critical studies of property, but rather to build on the existing scholarship with a focus on international law and spatial justice.

While legal geography is now a firmly established strand of research,[76] the relationship between *international* law and geography is far more intertwined than is often re-

72 von Braun & Meinzen-Dick 2009; Borras & Franco 2012; Cotula 2013; von Bernstorff 2018.

73 Messerli *et al*. 2014.

74 Cotula 2017, p. 234.

75 Strecker 2019 ERC StG proposal. I used the term "land" in the project's title rather than "landscape" because it is more relatable outside the European context.

76 Blomley 1994; Blomley *et al*. 2001; Braverman *et al*. 2014.

flected in the current scholarship. Property rights have defined global power relations since the period of European expansion, and the institution of property, and how it has changed over time, is itself a reflection of global and local people–place relations. The project argues that it is time to reconsider property in light of the global sustainability crisis, mass migration to cities (in part as a result of land insecurity, rural poverty and climate change), and the unsustainable way in which property has been utilized in large-scale land transactions. Landscape itself, in addition to being what Olwig termed a "nexus of community, justice, nature, and environmental equity",[77] is increasingly also a nexus of different spheres of international law, in both a physical sense and a discursive one. Adopting a landscape, law and justice lens to scrutinize property rights allows for a much broader appraisal of the law, one that incorporates research from geography and other disciplines and which emphasizes pluralistic notions of land as well as access to justice. In some ways, the project is attempting to recover the substantive understanding of landscape in law (after Olwig), or at least attempting to highlight those attachments between people and place that are not given adequate consideration in the law. This is not to romanticize the past or the pre-feudal era or to go back to equating landscape with custom,[78] but rather to critically scrutinize property as inevitable and natural, to highlight the importance of communities as rights holders, and to advocate for more place-based understandings of land in international law. The overarching research question is: How does international law facilitate spatial justice and injustice through its conceptualization of property rights in land?

The project has three main objectives:

1. Analyse the synergies and antagonisms between different spheres of international law affecting access to land and assess the impact of these areas on domestic practice.
2. Assess the use and adaptation of international norms by local communities to access land, claim land or reject development affecting their land.
3. Apply interdisciplinary and cross-cultural perspectives to advocate for more socially-just interpretations of property in land.

It does this through focusing on international (and regional) law, and its role in Ireland, the Caribbean, Kenya and southern Africa. The choice of countries reflects the experience and heritage of the project team, who come from Ireland, Grenada, Kenya and South Africa respectively. There is also an important historical dimension since

77 Olwig 1996, pp. 630–631.
78 Olwig 1996.

land law in our respective jurisdictions was heavily influenced by (British) colonial law. To what extent is international law perpetuating or confronting colonial understandings of land? Aside from dealing with the historical, theoretical and normative aspects of landscape and property in relation to spatial justice,[79] the subprojects deal with some of the fault lines that routinely feature in landscape disputes as well as with the placelessness of international law. Byer's work adds an important Caribbean dimension to the study and understanding of landscape and law, both historically and in the present, because she shifts the focus away from the metropoles and centres the analysis from the "interstices",[80] the historical sites of plantation and extraction which simultaneously bear a disproportionate burden of the climate crisis. Byer reminds us that "climate change was triggered by former European empires during the industrial period, as profits generated from specific land uses (plantation monoculture) funded other land uses such as coal extraction".[81] Cotton's research scrutinizes the normative meaning of "community" in post-Apartheid South African and Namibian land claims with respect to legal standing, as well as how indigenous groups draw on their status as a "community" under international law to affirm collective land rights, and how they are (mis)recognized through national and international law.[82] This has relevance for both scrutinizing the origins—and ascertaining the impact—of the legal meanings of community on the legal standing of claimants, and on spatial justice more broadly.[83] Mercier's research scrutinizes the placelessness of international energy law (energy being the cause of much landscape injustice).[84] She asks "what happens to the law's claim to universalism, timelessness, objectivity, and reason, if the law has created a new epoch which is likely to end in our extinction as a species?"[85] Ng'etich's research focuses on the law and political economy of carbon credit offset schemes in community land in northern Kenya. Ng'etich reminds us that independence did not change the fundamental aspects of land relations, as racial discrimination in the colonial state transitioned to class and ethnic domination in the post-colonial state.[86]

79 Strecker 2019; Byer 2023a; Strecker & Byer 2024. Strecker and Byer are currently working on two joint papers reflecting our conversations and joint research: 'Recovering the substantive nature of landscape in law' and 'Spatial and temporal injustice in international law'.

80 Byer 2022; 2023a; 2023b; 2023c.

81 Byer 2023c.

82 Diala & Cotton 2021; Cotton 2024.

83 Cotton 2024.

84 Mercier 2024.

85 Mercier 2024.

86 Ng'etich 2024.

Like energy, carbon credit schemes have commodified and monetized land use in a global marketplace, with little consideration of the impact on local communities and landscapes. Cumulatively, the subprojects problematize the ways in which questions over the use of and access to land were and continue to be framed within an abstract property paradigm, how property is inextricably linked to empire, and how international law responds to and exacerbates these issues. There are also several affiliated Ph.D. researchers attached to the project working on related topics.[87]

Inspired by the original *Landscape, Law and Justice* geographers, in 2021 the project team started hosting *Landscape, Law and Spatial Justice* research seminars open to postgraduate students and researchers working on related themes. Our intention was to build on the work of the original research group from within a school of law, in order to explore, confront, and reimagine the role of *law* in landscape scholarship (and practice).[88] While much of the focus of geographers has been on spatial justice in urban contexts, scholars from several disciplines are increasingly recognizing the usefulness of a spatial justice framework for analysing social injustice and space in rural contexts as well, not only in relation to indigenous peoples, but also to landscape democracy more broadly.[89] Given that international law has very real consequences for spatial justice through its regulation of property rights, environmental protection and land-based policies resulting from investment, it is logical to examine the role of international law through a spatial justice lens. Spatial justice is also useful for its capacity to highlight the disparities between core and periphery, and not just between the Global North and Global South (and also the fact that spatial and cultural studies from geography can often disprove the claims made by the legal field surrounding the benefits of foreign direct investment and its positive influence on landscape and

87 These include the legal protection of peatlands in Ireland (Alessandra Accogli), resistance to gold mining in Northern Ireland (V'cenza Cirefice) and how indigenous peoples in Canada are challenging and strategically using international heritage law in order to protect their collective land and cultural landscape (Irene Fogarty).

88 Previous topics have included 'Ancestral Land, Ancestral Rights: International Jurisprudence and Collective Property in the Wake of the Plantation' (Anna Kirstine Schirrer); 'Coloniality, Natural World Heritage, and Indigenous Peoples' (Irene Fogarty); 'Seeds of Subversion—The Right to Food Sovereignty and International Law' (Theodora Valkanou); 'Extractive Frontiers in the Sacrifice Zones of Ireland' (V'cenza Cirefice and Patrick Bresnihan); 'Translating Indigenous Rights in Global Contexts' (Emma Nyhan); and 'Corporate colonialism, Dublin's tech companies and the planning of public space' (Kathleen Stokes), among others Project Seminars – Property [in]justice (landlawandjustice.eu).

89 Bruslé 2017; Egoz *et al*. 2018; Strecker 2019.

people). Members of the project team are also engaged in advocacy and supporting various (law and policy) campaigns in our respective countries and internationally.[90]

Ireland is an appropriate location for a study of landscape, property and spatial justice, not only because of its history (as the laboratory of the British Empire[91]), but also because it has a hyper-globalized economy (on top of surprisingly undeveloped institutions and public services, most notably in the areas of housing, healthcare and public infrastructure). A well-known intellectual commentator has described Ireland as being "both overdeveloped and undeveloped at the same time, without ever being quite developed".[92] As a project attempting to counter legal placelessness, it is important to explore what this means in an Irish context. Despite the fact that Ireland is a dualist country and public international law does not play as vital a role as in civil law jurisdictions in Europe, land use decisions are increasingly influenced by international agreements and attendant property rights (i.e. the institutional investments in buy-to-let apartment schemes, data centres, mining for lithium and other minerals—there are currently 47 prospecting licences operating in the small area of County Leitrim alone—and the purchasing of forests and peatlands for carbon credit schemes, to name but a few). In Jones' words, to be legitimate, "land use decisions need to be democratically grounded".[93] And yet the aforementioned types of land use have not been subject to public participation, except by way of third-party submissions.

When I returned home to Ireland in 2020, the same heritage legislation on which I had written my M.A. thesis 15 years previously was once again undergoing changes, which, along with an overhaul of the Planning and Development Act, would further centralize Irish land use planning, making it harder to participate in the planning process. I initially felt uncertain about including things like Ireland's cultural landscape or heritage within the scope of the project, because it seemed superfluous when compared to the gravity of spatial injustice in other contexts, but it was my research team

90 Including, inter alia, engaging with the pre-legislative scrutiny of Irish heritage law (2022-06-20_submission-dr-amy-strecker-and-dr-sinead-mercier-university-college-dublin_en.pdf (oireachtas.ie); Historic and Archaeological Heritage Bill 2023: Report Stage – Seanad Éireann (26th Seanad) – Wednesday, 22 Mar 2023 – Houses of the Oireachtas) supporting the submission to the Universal Periodic Review concerning the UK's record on human rights in relation to gold mining in the Sperrins (NI); submitting to the African Commission's Zero Draft Study on the Impact of Climate Change on Human and Peoples' Rights in Africa; speaking (and submitting written comments) at the UN Intersessional Meeting on Cultural Rights and Cultural Heritage on the question of landscape, cultural rights and justiciability.

91 Ohlmeyer 2023; Mercier 2024.

92 O'Toole 2022.

93 Jones 2018, p. 12.

who helped me see that these issues stem from the same problems in the law[94]—they merely manifest differently in different places and result in different levels of gravity. Aside from international law research,[95] I began to also examine Irish heritage law in the context of ongoing legislative changes, revisiting the case of Tara,[96] compiling a country report on Ireland's cultural heritage law,[97] and advocating with Sinéad Mercier for a landscape approach in the new Historic and Archaeological Heritage Act.[98] It is serendipitous that the issues that initially engendered my interest in landscape are those that I have returned to after many years away from Ireland, issues that have not gone away. The Hill of Allen, for example, legendary training ground of Fionn mac Cumhaill and the Fianna in mythical pre-Christian Ireland, is also the site of a Roadstone quarry (Allen Quarry) which has eroded the entire western face of the hill and significantly altered the integrity and amenity value of this landscape, which also includes an ancient burial chamber, a burial mound and Aylmer's Folly, a tower built in 1859 which was traditionally lit up on St. Brigid's Day (1 February, the festival of Imbolc). An Environmental Impact Analysis (EIA) has never been carried out for Allen Quarry, and the Hill of Allen Action Group had to appeal to the Commissioner for Environmental Information to access court documents revealing why the planning application and EIA were not pursued by Kildare County Council.[99] Not surprisingly, Roadstone considers the Allen quarry among its "property assets",[100] as if property were a magic untouchable cloak, capable of overriding more than a thousand years of myth, legend, history and place-making.

94 Byer had connected heritage and spatial justice together in her Ph.D. thesis, which was a novel juxtaposition. I initially thought this was understandable in the Caribbean context, but not to the same extent in Ireland. Yet Mercier had worked on this issue prior to joining the project and had made similar insightful critiques in relation to Irish heritage law (Mercier 2023) and Cotton (2024) saw the parallels in terms of access to justice and standing, problems emerging out of her research on the South African and Namibian contexts.

95 Strecker 2023; 2024a; 2024b.

96 Strecker & Newman 2023.

97 Strecker 2024c (in press).

98 Strecker & Mercier 2022; 2023. The Historic and Archaeological Heritage Act was signed into law in October 2023 (Houses of the Oireachtas 2023).

99 Hill of Allen Action Group and Kildare Council, Case number: CEI/08/0001, https://www.ocei.ie/decisions/dCEI_08_0001-HoA-Action-Group-Kilda/.

100 Roadstone Ltd. 2022.

## CONCLUSION

In sum, "landscape, law and justice" has become almost a methodology in our project dealing with international law that introduces nuance to some of today's most important challenges, exacerbated and facilitated as they are by a narrow interpretation of property rights in land. At the same time, our project goes beyond previous scholarship by bringing in Global South perspectives on landscape and spatial justice, which have traditionally been dominated by European and North American scholarship.[101] Even in the realm of climate policy, carbon offset schemes would not be possible without an abstract logic of property rights, a logic that believes land (and its use) is a tradeable commodity, which in turn allows us to eschew the responsibilities that we have to the land and the earth, and ultimately to other human beings, and ourselves.[102] The same holds true for energy law and how far it has been commodified in an international market far removed from the places that bear the brunt of the extraction process.[103] Applying a "landscape, law and justice" lens to these issues brings us back to the limits of particular places, to the knowledge about them, and to fostering relationships with them. It also brings with it an important cultural dimension, inserting agency and humanism to what could otherwise be a form of natural determinism.[104] Lastly, using "justice" rather than "rights" as a method of analysis goes beyond the human rights law paradigm, which is limited for its conceptualization of rights as individual, and for its temporal and spatial barriers to accessing justice.

*Acknowledgement: The research presented in this chapter has received funding from the European Research Council (ERC), under the EU's Horizon 2020 research and innovation programme, grant agreement no. 853514.*

101 The project team has a section on 'Landscape, Law, and Spatial Justice in the Former British Empire' in *Legal Transfer and Legal Geography in the British Empire*, edited by Donal Coffey & Stefan Vogenauer (2024, in press).

102 With thanks to Sonya Cotton for sharing Silvia Federici's 'Re-enchanting the world: Technology, the body, and the construction of the commons', which articulates some of these sentiments far better than me (Federici 2015, p. 188).

103 For a discussion of how this is currently playing out in Northern Ireland, see Cirefice *et al.* 2022.

104 Strecker 2017b.

## REFERENCES

Anghie, Antony 2005. *Imperialism, Sovereignty and the Making of International Law*, Cambridge: Cambridge University Press.

Bhreathnach, Edel 1995. *Tara: A Select Bibliography*, Dublin: Royal Irish Academy for the Discovery Programme (reprinted 1998).

Bhreathnach, Edel ed. 2005. *The Kingship and Landscape of Tara*, Dublin: Royal Irish Academy for the Discovery Programme.

Blomley, Nick 1994. *Law, Space, and the Geographies of Power*, New York & London: The Guilford Press.

Blomley, Nick, David Delaney & Richard Ford eds 2001. *The Legal Geographies Reader*, London: Blackwell.

Borras, Saturnino M. & Jennifer C. Franco 2012. 'Global land grabbing and trajectories of agrarian change: A preliminary analysis', *Journal of Agrarian Change* 12:1, pp. 34–59.

Braverman, Irus, Nicholas Blomley & David Delaney 2014. *The Expanding Spaces of Law: A Timely Legal Geography*, Stanford: Stanford University Press.

Bruslé, Laetitia Perrier 2017. 'Land and indigenous territories in the Bolivian Amazon: Full but imperfect spatial justice?', *Justice Spatiale/Spatial Justice* 11, unpaginated, https://www.jssj.org/article/terres-et-territoires-indigenes-en-amazonie-bolivienne-une-justice-spatiale-complete-mais-imparfaite/, accessed 11 January 2024.

Bulkan, Arif 2011. 'From instrument of empire to vehicle for change: The potential of emerging international standards for indigenous peoples of the Commonwealth Caribbean', *Commonwealth Law Bulletin* 37:3, pp. 463–489.

Byer, Amanda 2022. *Landscape, Heritage and Spatial Justice: New Legal Perspectives on Heritage Protection in the Lesser Antilles*, Leiden: Sidestone Press.

Byer, Amanda 2023a. *Placing Property: A Legal Geography of Property Rights in Land*, London: Palgrave Macmillan.

Byer, Amanda 2023b. 'Virtual enclosure, spatial injustice and heritage destruction in the Caribbean. The case of Camerhogne Park, Grenada', in Amy Strecker & Joseph Powderly eds, *Heritage Destruction, Human Rights and International Law*, Leiden: Brill Nijhoff, pp. 376–390.

Byer, Amanda 2023c. 'Climate law from the interstices: Caribbean SIDS and the spatial dimensions of TWAIL', *TWAIL Reflections* 54/2023.

Carew, Mairéad 2003. *Tara and the Ark of the Covenant*, Dublin: Royal Irish Academy.

Cirefice, V'cenza, Sinéad Mercier & Aideen O'Dochartaigh 2022. 'Resistance to mining and pathways to a sustainable rural environment: Rewriting the maps', in Adrienne Attorp, Sean Heron & Ruth McAreavey eds, *Rural Governance in the UK: Towards a Sustainable and Equitable Society*, London: Routledge, pp. 99–119.

Coffey, Donal & Stefan Vogenauer eds 2024 (in press). *Legal Transfer and Legal Geography in the British Empire*, Frankfurt am Main: Max Planck.

Conrad, Elizabeth, Louis F. Cassar, Michael Jones, Sebastian Eiter, Zita Izaovičová, Zuzana Barankova, Mike Christie & Ioan Fazey 2011. 'Rhetoric and reporting of public participation in landscape policy', *Journal of Environmental Policy and Planning* 13:1, pp. 23–47.

Cotton, Sonya 2024 (in press). 'Legislating "community" in southern Africa's plural properties', in Donal Coffey & Stefan Vogenauer eds, *Legal Transfer and Legal Geography in the British Empire*, Frankfurt am Main: Max Planck.

Cotula, Lorenzo 2013. 'The new enclosures? Polanyi, international investment law and the global land rush', *Third World Quarterly* 34:9, pp. 1605–1629.

Cotula, Lorenzo 2017. 'Land, property and sovereignty in international law', *Cardozo Journal of International and Comparative Law* 25:2, pp. 219–286.

Council of Europe 2022. *Council of Europe Landscape Convention: Reference Texts*, https://www.coe.int/en/web/landscape/reference-texts, accessed 11 January 2024.

Dehm, Julie 2021. *Reconsidering RED++: Authority, Power and Law in the Green Economy*, Cambridge: Cambridge University Press.

Diala, Anthony C. & Sonya Cotton 2021. 'Chained communities: A critique of South Africa's approach to land restitution', *African Studies Quarterly* 20: 3, pp. 73–86.

Egoz, Shelley, Jala Makhzoumi & Gloria Pungetti eds 2011. *The Right to Landscape: Contesting Landscape and Human Rights*, Farnham & Burlington, Vermont: Ashgate.

Egoz, Shelley, Karsten Jorgensen & Deni Ruggeri eds 2018. *Defining Landscape Democracy: A Path to Spatial Justice*, Cheltenham: Edward Elgar.

Federici, Silvia 2015. 'Re-enchanting the world: Technology, the body, and the construction of the commons', in Frederico Luisetti, John Pickles & Wilson Kaiser eds, *The Anomie of the Earth: Philosophy, Politics, and Autonomy in Europe and the Americas*, Durham, North Carolina: Duke University Press, pp. 202–214.

Françozo, Mariana & Amy Strecker 2017. 'Caribbean collections in European museums and the question of returns', *International Journal of Cultural Property* 24:4, pp. 451–477.

Gathii, James T. 2007. 'Imperialism, colonialism and international law', *Buffalo Law Review* 54:4, pp. 1031–1066.

Government of Ireland 2004. *National Monuments (Amendment) Act 2004*, electronic Irish Statute Book (eISNB), https://www.irishstatutebook.ie/eli/2004/act/22/enacted/en/pdf, accessed 11 January 2024.

Graham, Nicole 2011. *Lawscape: Property, Environment and Law*, London: Routledge.

Houses of the Oireachtas 2023. *Historic and Archaeological Heritage Miscellaneous Provisions Act 2023*, https://www.oireachtas.ie/en/bills/bill/2023/2/, accessed 11 January 2024.

IEHC 61 [2006]. *Salafia v. Minister for Environment, Heritage & Local Government, Meath County Council, Ireland and the Attorney General* (Judgment), https://justis.vlex.com/#vid/792787533 (registration required).

Jones, Michael ed. 2006a. 'Special Issue: Essays on Landscape, Law and Justice', *Norsk Geografisk Tidsskrift–Norwegian Journal of Geography* 60:1, pp. 1–127.

Jones, Michael 2006b. 'Landscape, law and justice—concepts and issues', in Michael Jones ed., 'Special Issue: Essays on Landscape, Law and Justice', *Norsk Geografisk Tidsskrift–Norwegian Journal of Geography* 60:1, pp. 1–14.

Jones, Michael 2007. 'The European Landscape Convention and the question of public participation', *Landscape Research* 32:5, pp. 613–633.

Jones, Michael 2018. 'Landscape democracy: More than public participation?' in Shelley Egoz, Karsten Jørgensen & Deni Ruggeri eds, *Defining Landscape Democracy: A Path to Spatial Justice*, Cheltenham: Edward Elgar, pp. 16–28.

Jones, Michael & Marie Stenseke eds 2011a. *The European Landscape Convention: Challenges of Participation*, Dordrecht: Springer.

Jones, Michael & Marie Stenseke 2011b. 'The issue of public participation in the European Landscape Convention', in *The European Landscape Convention: Challenges of Participation*, Dordrecht: Springer, pp. 1–23.

Jørgensen, Karsten, Morten Clemetsen, Kine Halvorsen Thorén & Tim Richardson eds 2016. *Mainstreaming Landscape through the European Landscape Convention*, London: Routledge.

Koskenniemi, Martti 2012. 'The subjective dangers of projects of world community', in Antonio Cassesse ed., *Realizing Utopia: The Future of International Law*, Oxford University Press, pp. 4–13.

Koskenniemi, Martti 2017. 'Sovereignty, property and empire: Early modern English contexts', *Theoretical Inquiries in Law* 18:2, pp. 355–389.

Lane, Jan-Erik 2000. *New Public Management*, London: Routledge.

Linarelli, John, Margot Salomon & Sornarajah Muthucumaraswamy 2018. *The Misery of International Law: Confrontations with Injustice in the Global Economy*, London & New York: Oxford University Press.

May Castillo, Manuel & Amy Strecker eds 2017. *Heritage and Rights of Indigenous Peoples: Patrimonio y derechos de los pueblos indígenas*, Leiden: Leiden University Press.

McDonald, Frank 1985. *The Destruction of Dublin*, Dublin: Gill and MacMillan.

Mercier, Sinéad 2023 [2020]. *Men Who Eat Ringforts: Understanding Environmental and Heritage Destruction in the Modernist Lawscape* (updated from the original published with Askeaton Contemporary Arts in 2020), UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper 09/2023, https://ssrn.com/abstract=4487415, accessed 11 January 2004.

Mercier, Sinéad 2024 (in press). 'A haunting absence: Tracing the origins of international energy law from the laboratory of Ireland', in Donal Coffey and Stefan Vogenauer eds, *Legal Transfer and Legal Geography in the British Empire*, Frankfurt am Main: Max Planck.

Messerli, Peter, Markus Giger, Michael B. Dwyer, Thomas Breu & Sandra Eckert 2014. 'The geography of large-scale land acquisitions: Analysing socio-ecological patterns of target contexts in the Global South', *Applied Geography* 53, pp. 449–459.

Mitchell, Don 2003. *The Right to the City: Social Justice and the Fight for Public Space*, London & New York: The Guilford Press.

Newman, Conor 1997. *Tara: An Archaeological Survey*, Dublin: Royal Irish Academy for the Discovery Programme.

Newman, Conor 2007. 'Misinformation, disinformation and downright distortion: The battle to save Tara 1999–2005', in Conor Newman & Ulf Strohmayer eds, *Uninhabited Ireland: Tara, the M3 and Public Spaces in Galway*, Dublin: Arlen House, p. 59–102.

Ng'etich, Raphael 2024 (in press). 'Competing notions of land in colonial Kenya and the impact on present-day land governance', in Donal Coffey & Stefan Vogenauer eds, *Legal Transfer and Legal Geography in the British Empire*, Frankfurt am Main: Max Planck.

O'Toole, Fintan 2022. 'Is Ireland a developed country at all?', *The Irish Times*, 16 July, https://www.irishtimes.com/opinion/2022/07/09/fintan-otoole-ireland-has-managed-to-become-both-overdeveloped-and-undeveloped-without-ever-being-quite-developed/, accessed 11 January 2024.

Ohlmeyer, Jane 2023. *Making Empire. Ireland, Imperialism and the Early Modern World*, Oxford & New York: Oxford University Press.

Olwig, Kenneth 1996. 'Recovering the substantive nature of landscape', *Annals of the Association of American Geographers* 86:4, pp. 630–653.

Peil, Tiina & Michael Jones eds 2005. *Landscape, Law and Justice: Proceedings of a Conference Organised by the Centre for Advanced Study at the Norwegian Academy of Science and Letters, Oslo 15–19 June 2003*, Instituttet for sammenlignende kulturforskning, Serie B: Skrifter 118, Oslo: Novus forlag.

Perez, Javier, Myriam Gistelinck & Dima Karbala 2011. *Sleeping Lions: International Investment Treaties, State-Investor Disputes and Access to Food, Land and Water*, Oxfam Discussion Papers, https://www.rrojasdatabank.info/oxfamsleeping2011.pdf, accessed 11 January 2024.

Roadstone Ltd. 2022. *Draft Kildare County Development Plan 2023–2029—Submission*, https://consult.kildarecoco.ie/ga/node/4715, accessed 22 May 2024.

Romanin Jacur, Francesca, Angelica Bonfanti & Francesco Seatzu eds 2016. *Natural Resources Grabbing: An International Law Perspective*, Leiden: Brill Nijhoff.

Rössler, Mechtild 2006. 'World Heritage Cultural Landscapes: A UNESCO flagship programme 1992–2006', *Landscape Research* 31:4, pp. 333–353.

Sassen, Saskia 2008. *Territory, Authority, Rights: From Medieval to Global Assemblages*, New Jersey: Princeton University Press.

Sassen, Saskia 2014. *Expulsions: Brutality and Complexity in the Global Economy*, Cambridge, Massachusetts: Harvard University Press.

Strecker, Amy 2005. 'The National Monuments (Amendment) Act 2004: Origins and Implications for the Protection of Cultural Landscapes in Ireland', M.A. thesis, University College Dublin.

Strecker, Amy 2011. 'The "right to landscape" in international law', in Shelley Egoz, Jala Makhzoumi & Gloria Pungetti eds, *The Right to Landscape: Contesting Landscape and Human Rights*, Farnham & Burlington, Vermont: Ashgate, pp. 57–67.

Strecker, Amy 2012. 'Landscape as Public Space: The Role of International and EU Law in the Protection of Landscape', Ph.D. thesis, European University Institute, Florence.

Strecker, Amy 2015. 'Landscape, property and common good: The ambiguous convergences of spatial justice', extended abstract of a paper presented at Defining Landscape Democracy, Centre for Landscape Democracy, NMBU, pp. 25–26.

Strecker, Amy 2016. 'Revival, recognition, restitution: Indigenous rights in the Eastern Caribbean', *International Journal of Cultural Property* 23, pp. 167–190.

Strecker, Amy 2017a. 'Indigenous land rights and Caribbean reparations discourse', *Leiden Journal of International Law* 30:3, pp. 629–646.

Strecker, Amy 2017b. 'The law is at fault? Landscape rights and agency in international law', in Ed Wall & Tim Waterman eds, *Landscape and Agency*, London: Ashgate, pp. 52–65.

Strecker, Amy 2018. *Landscape Protection in International Law*, London & New York: Oxford University Press.

Strecker, Amy 2019. 'Land, property and spatial justice in international law', European Research Council Starting Grant proposal.

Strecker, Amy 2023. 'Article 1: Cultural landscapes', in Francesco Francioni & Federico Lenzerini eds, *The World Heritage Convention: A Commentary*, London & New York: Oxford University Press, pp. 50–63.

Strecker, Amy 2024a. 'Cultural heritage impact assessment for development projects', in Lucas Lixinski & Lucie K. Morisset eds, *The Routledge Handbook of Heritage and the Law*, London: Routledge, pp. 249–262.

Strecker, Amy 2024b. 'Global landscape governance on the 20th anniversary of the European Landscape Convention', in Mauro Agnoletti, Saša Dobričič, Tessa Matteini & Juan Manuel Palerm eds, *Cultivating Continuity of the European Landscape: New Challenges, Innovative Perspectives*, Cham: Springer, pp. 17–26.

Strecker, Amy 2024c (in press). 'Cultural heritage law in Ireland', in Irina Stamatoudi, Antonia Zervaki & Maria Shehade eds, *Elgar Encyclopaedia of Art and Cultural Heritage Law*, Cheltenham: Edward Elgar.

Strecker, Amy & Amanda Byer 2024 (in press). 'Landscape, law and spatial justice in the former British Empire', in Donal Coffey & Stefan Vogenauer eds, *Legal Transfer and Legal Geography in the British Empire*, Frankfurt am Main: Max Planck.

Strecker, Amy & Sinéad Mercier 2022. *Submission on the Revised Scheme for Monuments and Archaeological Heritage Bill, Joint Committee on Housing, Local Government and Heritage*, https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/submissions/2022/2022-06-20_submission-dr-amy-strecker-and-dr-sinead-mercier-university-college-dublin_en.pdf, accessed 11 January 2024.

Strecker, Amy & Sinéad Mercier 2023. 'Let's not repeat the mistakes of the past by failing to protect our heritage', *Irish Examiner*, 28 April, https://www.irishexaminer.com/opinion/commentanalysis/arid-41125882.html, accessed 11 January 2024.

Strecker, Amy & Conor Newman 2023. 'Beyond sovereignty: Tara, the M3 and access to justice for cultural landscape destruction in Ireland', in Amy Strecker &

Joseph Powderly eds, *Heritage Destruction, Human Rights and International Law*, Leiden: Brill Nijhoff, pp. 348–376.

Tzouvala, Nina 2020. *Capitalism as Civilisation: A History of International Law*, Cambridge: Cambridge University Press.

UNECE 1998. *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters Done at Aarhus, Denmark, on 25 June 1998*, https://unece.org/DAM/env/pp/documents/cep43e.pdf, accessed 24 January 2024.

UNESCO 1972. *Convention for the Protection of the World Cultural and Natural Heritage: Adopted by the General Council of the United Nations Educational, Scientific and Cultural Organization at its Seventeenth Session, Paris, 16 November 1972*, https://treaties.un.org/doc/publication/unts/volume%201037/volume-1037-i-15511-english.pdf, accessed 11 January 2024.

UNESCO 1992. *Report of the Expert Group on Cultural Landscapes, La Petite Pierre (France), 24–26 October 1992*, https://whc.unesco.org/archive/pierre92.htm, accessed 30 January 2024.

United Nations 2008. *United Nations Declaration on the Rights of Indigenous Peoples, Geneva, 13 September 2007*, https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, accessed 11 January 2024.

United Nations 2018a. *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Escazú, 4 March 2018*, https://treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf, accessed 11 January 2018.

United Nations 2018b. *United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas: Resolution/Adopted by the Human Rights Council on 28 September 2018*, https://digitallibrary.un.org/record/1650694?ln=en, accessed 11 January 2024.

von Bernstorff, Jochen 2016. 'Who is entitled to cultivate the land? Sovereignty, land resources and foreign investment in agriculture in international law', in Francesca Romanin Jacur, Angelica Bonfanti & Francesco Seatzu eds, *Natural Resources Grabbing: An International Law Perspective*, Leiden: Brill, pp. 55–74.

von Bernstorff, Jochen 2018. 'Community interests and the role of international law in the creation of a global market for agricultural land', in Eyal Benvenesti & Georg Nolte eds, *Community Interests Across International Law*, London & New York: Oxford University Press, pp. 278–296.

von Braun, Joachim & Ruth Suseela Meinzen-Dick 2009. *Land Grabbing by Foreign Investors in Developing Countries: Risks and Opportunities*, IFPRI Policy Brief 13, International Food Policy Research Institute, https://www.ifpri.org/

publication/land-grabbing-foreign-investors-developing-countries, accessed 8 January 2024.
Waterman, Tim, Jane Wolff & Ed Wall eds 2021. *Landscape Citizenships*, London: Routledge.