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LANDSCAPE, LAW AND JUSTICE

20 YEARS

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Landscape, Law and Justice—20 Years

Michael Jones, Amy Strecker, Gunhild Setten & Don Mitchell (eds)

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ABSTRACT

In this edited volume an international research group addresses the following questions: 1) What influence has the bringing together of the concepts of landscape, law and justice in 2002–2003 had on research in the succeeding 20 years? 2) What is the current status of research on the relationships between landscape, law and justice? 3) What contribution can research with a landscape, law and justice approach make to understanding and solving today's most important challenges? Interlinking themes elucidated in the book include the landscape concept, legal landscapes, informal law and landscape, commons, landscape as heritage, landscape identity, migration and exclusion, justice and injustice, and landscape as a fundamental structure of society.

KEYWORDS

atmospheric commons, blood and soil ethnonationalism, competing moralities, emotional and affectual legal landscapes, international law, landscape heritage, landscape over time, landscape planning, legal geographies, outfield commons, poetics of place, posthumanist land- and lifescapes, sea level change, social justice, spatial injustice, substantive landscape

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Introduction

Landscape, Law and Justice—20 Years

The Royal Swedish Academy of Letters, History and Antiquities (Vitterhetsakademien) in Stockholm hosted the symposium 'Landscape, Law and Justice—20 Years' on 22–23 November 2022 to mark the 20th anniversary of the work of the *Landscape, Law and Justice* international research group at the Centre for Advanced Study in Oslo 2002–2003. The aim of the symposium was to sum up and assess research over the following 20 years on the interrelations of landscape, law and justice and to discuss the contribution that research within this field can make to understanding and solving major challenges facing society at the present time. The symposium combined overviews of recent and ongoing research with a discussion of its contemporary relevance.

The point of departure for the symposium was to discuss and suggest answers to the following questions:

1) What influence has the bringing together of the concepts of landscape, law and justice in 2002–2003 had on research in the succeeding 20 years?
2) What is the current status of research on the relationships between landscape, law and justice?
3) What contribution can research with a landscape, law and justice approach make to understanding and solving today's most important challenges?

Practices related to land ownership and use, physical planning, environmental management and landscape heritage in the past and present are central to answering these questions. An important focus is on the power dimension in the interaction of landscape, law and justice. Also highly important is the theorization of justice and injustice in relation to landscape.

The present publication contains articles based on twelve of the presentations for the November 2022 symposium. The chapters place the authors' recent research in a broader context by focusing on important conceptual ideas and by indicating the contribution that the research can make to understanding and finding solutions to one or more of the challenges presented above.

RESEARCH BACKGROUND

The Landscape, Law and Justice research project in Oslo in 2002–2003 grew out of a network of landscape researchers in the Nordic countries that was active in the 1990s. The Nordic Seminar for Landscape Research, initiated by geography professor Ulf Sporrong (1936–2020), organized seminars at Sigtuna, Sweden, in 1993, at Lund in 1994, and at Sogndal, Norway, in 1996. During the Sogndal seminar, it was proposed to continue with the aim of producing a book of essays on Nordic landscapes. Drafts were discussed at meetings held at Mariehamn in Åland, in 1997 and at Sørvágur in the Faroe Islands in 1999, and the book project was also presented at a workshop held during the 18th session of the Permanent Conference for the Study of the Rural Landscape (PECSRL) in Trondheim in 1998. The end-result was the publication in 2008 of *Nordic Landscapes: Region and Belonging on the Northern Edge of Europe*, edited by Michael Jones and Kenneth Olwig.[1]

Alongside the work of editing *Nordic Landscapes*, a successful application to the Centre for Advanced Study (CAS) at the Norwegian Academy of Science and Letters (Det Norske Videnskaps-Akademi) in Oslo resulted in the Landscape, Law and Justice project during the 2002–2003 academic year under the leadership of Michael Jones.[2] The project proposal was formulated by Michael Jones together with Kenneth Olwig. The project was concerned with the interrelationship between landscape and different types of law—how formal law, customary law, international conventions and legal practice contribute both to the shaping of the physical landscape and to conceptualizations of landscape—and how landscape and law are in turn shaped by conceptions of justice and by contestations over what is considered just and unjust in different societies.

1 Olwig & Jones 2008, xxvii–xxviii; Olwig in this volume.

2 The core group of senior researchers consisted of Professors Michael Jones (geographer, based in Norway), Kenneth Olwig (geographer, based in Sweden), Erling Berge (sociologist, Norway), David Lowenthal (historian and geographer, USA and UK), Ari Lehtinen (geographer, Finland), David Sellar (legal historian, Scotland), Hans Sevatdal (land reorganization historian, Norway) and Mats Widgren (geographer, Sweden). Two postdoctoral researchers attached to the project were Gunhild Setten (geographer, Norway) and Tiina Peil (geographer, Estonia).

While geographers were in the majority among the core group of researchers in the original Landscape, Law and Justice project, there was nonetheless a strong interdisciplinarity in the series of monthly seminars organized by the group.[3] The topics discussed were the following: conceptualizations of landscape; custom, law and landscape (legal history and legal geography); justice, injustice and the environment; language and landscape; commons, old and new; customary rights, including indigenous landscapes; and cultural and natural heritage. In all, 90 papers were presented at these seminars.[4] Three of the seminars resulted in the publication of reports or special journal issues.[5]

The academic year concluded with an international conference, held in Oslo in June 2003. The conference focused on the following themes: conceptualizations and representations of landscape, law and justice; policies, laws and local institutions regulating landscape; local communities and landscape; and land restitution and landscape. The proceedings of the conference consisted of 31 articles published in 2005.[6] In addition, a special issue of *Norsk Geografisk Tidsskrift–Norwegian Journal of Geography*, containing a series of essays by members of the group, appeared in 2006.[7]

The idea of a symposium to mark the 20th anniversary of the original Landscape, Law and Justice project arose out of a workshop, titled 'Rethinking "Nordic" landscape geography', held at Vitterhetsakademien in November 2022. Participating in this workshop were a group of geographers and landscape researchers from Swedish universities as well as two geographers from Trondheim who were on sabbatical in Uppsala. The initiative for the workshop was taken by two members of the original Landscape, Law and Justice group: Gunhild Setten (on sabbatical in Uppsala from Trondheim) and Mats Widgren (member of Vitterhetsakademien). One of the points that came up at the workshop was the significance of the Landscape, Law and Justice project for the development of landscape geography since the turn of the millennium.

A successful application to Vitterhetsakademien for funding an anniversary symposium was subsequently made by Michael Jones and Mats Widgren (respectively for-

3 Eight visiting researchers took part in the group's activities for short periods, while 42 invited speakers presented papers at the seminars, representing 16 different academic disciplines.

4 The concepts and issues discussed at the Landscape, Law and Justice seminars are presented in Jones 2006b.

5 Berge & Carlsson 2003; Jones & Schanche 2004; Olwig & Lowenthal 2005.

6 Peil & Jones 2005.

7 Jones 2006a.

eign member and Swedish member of Vitterhetsakademien). The present proceedings are the result of the anniversary symposium held in Stockholm in November 2022.

LANDSCAPE, LAW AND JUSTICE—20 YEARS ANNIVERSARY SYMPOSIUM

The two-day anniversary symposium allowed for the presentation of up to 16 papers, with ample time for discussion. Six core members of the original Landscape, Law and Justice project participated: Michael Jones, Kenneth Olwig, Erling Berge, Ari Lehtinen, Tiina Peil and Gunhild Setten. Mats Widgren was unable to attend because of illness. Two other participants, Tomas Germundsson and Don Mitchell, had given presentations at Landscape, Law and Justice seminars in 2002–2003. Tom Mels, who had participated in the final conference in June 2003, had prepared a paper and was due to take part in the anniversary symposium, but was hindered from travelling at the last minute. In addition, papers were presented by Jonas Ebbeson, Frode Flemsæter, Päivi Kymäläinen, Hilde Nymoen Rørtveit, Marie Stenseke and Amy Strecker. All the presenters were geographers except for sociologist Erling Berge and legal scholars Jonas Ebbeson and Amy Strecker.

Sadly, three of the core members of the original Landscape, Law and Justice group have died since 2003. The symposium began with a short remembrance of their contributions as demonstrated by their last publications.

Hans Sevatdal (1940–2015) was Professor of Land Reorganization at the Norwegian University of Life Sciences, Ås. His last published work, which came out posthumously in 2017, is a history of Norwegian land tenure from the 17th century to the present. This work was his long-term project, developed over time from a textbook he had written in 1979. After Sevatdal's death, the almost-finished manuscript was edited to completion by Per Kåre Sky and Erling Berge, with some additional chapters written by other colleagues.[8]

David Lowenthal (1923–2018) was an American historian and Professor Emeritus in Geography at University College London. His last book, *Quest for the Unity of Knowledge*, is a synthesis of Western thought and argues that to solve the major challenges facing humankind it is necessary to bridge the gap between natural sciences on the one hand and the humanities and social sciences on the other. The manuscript was completed just before Lowenthal's death and was proofread and brought to publica-

8 Sevatdal *et al*. 2017.

tion by his wife, Mary Alice Lowenthal, in 2018 (although the date of publication is given in the colophon as 2019).[9]

David Sellar (1941–2019) was a Scottish legal historian at the University of Edinburgh and also served from 2008 to 2014 as Lord Lyon King of Arms for Scotland, responsible for regulating heraldry. After Sellar's death, his colleague Hector MacQueen, professor at the University of Edinburgh's Faculty of Law, edited a work containing 15 select essays by David Sellar under the title *Continuity, Influences and Integration in Scottish Legal History*, published in 2022. The essays emphasize the continuity of Scottish legal development in which legal change occurred through a process of external influences becoming integrated with indigenous customary law.[10]

Subsequent to the symposium, eleven of the fourteen presentations were written up and submitted for publication in the symposium proceedings. In addition, Tom Mels' paper, which he was hindered at the last minute from presenting at the symposium, was submitted for publication. These twelve contributions are commented in the next section of this introduction. The three presentations that were not submitted for publication are briefly summarized as follows.

Jonas Ebbesson, Professor of Environmental Law at Stockholm University, presented a paper titled 'The Aarhus Convention: Participatory rights and justice in landscape matters'. The Aarhus Convention is the United Nations Economic Commission for Europe's (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, which was adopted at the Fourth 'Environment for Europe' Ministerial Conference in the Danish city of Aarhus in 1998 and entered into force in 2001. Founded on the principles of participatory democracy, the Aarhus Convention establishes the rights of individuals and civil society organizations to be informed and participate in environmental matters. It provides for the following rights of citizens: (1) to request environmental information held by public authorities; (2) to participate in decision-making regarding permits for specific activities, as well as plans, programmes, policies and legislation that may affect the environment; and (3) to have access to review procedures when their rights regarding access to information and public participation have been violated.[11] The right to public participation makes it possible for members of the public to make their views heard and to be taken into account, but it does not necessarily mean that the final decision is in line with their views (and, of course, members of the public often have diverging views). The justice dimension of the Aarhus Convention relates to

9 Lowenthal 2019.
10 MacQueen 2022.
11 UNECE 1998.

ensuring procedural justice.[12] Reviews of the performance of the parties to the Aarhus Convention are undertaken by a Compliance Committee, elected by the parties to the Convention but functioning independently. Compliance reviews can be triggered by states or by members of the public, both individuals and non-governmental organizations. Ebbesson was a member of the Compliance Committee from 2005 to 2021 and its chair for ten years from 2011. Public participation in environmental matters entered the international agenda at the United Conference on Environment and Development at Rio de Janeiro in 1992, when the Rio Declaration on Environment and Development set out the principle that "environmental issues are best handled with the participation of all citizens, at the relevant level".[13] Participatory rights have been included in almost all international environmental treaties since 1992. The Aarhus Convention drew on the Rio Declaration and, in turn, has provided a model for other regions of the world, for example the Economic Commission for Latin America and the Caribbean (ECLAC).[14] The Aarhus Convention contains only one mention of landscape, which is listed as an element of the environment under the definition of environmental information. Nonetheless, much of the Aarhus Convention relates in practice to landscape. The Aarhus Convention is referred to in the preamble of the European Landscape Convention (ELC)[15] but, unlike the Aarhus Convention, the ELC's provisions for public participation are difficult to enforce in practice. Without the Compliance Committee, the Aarhus Convention, too, would be much less effective. The Compliance Committee of the Aarhus Convention has received more cases for compliance reviews than in any other international convention. This is due to the possibility for members of the public to submit communications on compliance.

Hilde Nymoen Rørtveit's presentation had the title 'The Norwegian housing estate: Home or planning problem? Landscape as a standpoint'. She is Associate Professor of Geography at the Norwegian University of Science and Technology in Trondheim and has made a study of homemaking and public participation in two housing estates established in Trondheim in the 1960s and 1970s. The starting point for her presentation was the translation of a national policy discourse concerning the *drabantbyen*, the Norwegian term for a planned housing estate, into a participatory planning programme. Drawing on a wider European planning discourse concerned with

12 Ebbesson (2018) has discussed the significance of the Aarhus Convention, which was integrated into European Union law in 2003, for legal cases concerning maintenance of the protected natural and cultural values of the National City Park (Nationalstadsparken) in Stockholm, where civil society had played an important part in its establishment in 1995.

13 Rio Declaration, Principle 10 (United Nations 1993).

14 United Nations 2018.

15 Council of Europe 2000.

social exclusion in what are seen as ethnic problem suburbs,[16] Norwegian policy aims to prevent marginalization and segregation in suburban housing estates that have a high proportion of inhabitants with immigrant background and low score in welfare statistics. The policy emphasized public participation in both physical and social upgrading projects, with the intention of building community networks, increasing integration and improving the estates' negative reputation.[17] Rørtveit found that initially there was a degree of local scepticism regarding both the participatory processes and the "problems" they were set to solve. This can in part be explained by strong criticism of the housing estate landscape that had grown among many architects and planners since the 1970s. This dominant negative view led to distrust and a defensive attitude among residents. For the residents, the housing estate was a home landscape, with its own local networks and a degree of community co-ordination and action. While individual apartments in the blocks of flats are privately owned, and for the most part owned by their inhabitants, the surrounding landscapes are common areas administered by housing associations with boards elected by the apartment owners. The decisions of the housing association boards, and the homemaking activities of the inhabitants, result in the shaping of the everyday landscape. The planning discourse took its point of departure in an idea that the housing estate was a problem area, whereas the residents saw it as home, where they could express their needs and expand on their experiences. The distanced framework of the planners met the insider positionality of the residents. On the one hand, the policy initiatives resulted from a wider concern over marginalization, distrust and polarization, which it was considered could be met by upgrading the physical landscape of the housing estate. On the other hand, the residents felt closeness to their landscape, a sense of belonging and ownership, but at the same time a degree of alienation from the policymakers.[18] The same landscape was thus perceived differently when viewed from different standpoints.

Marie Stenseke, Professor of Human Geography at the University of Gothenburg (Göteborg) in Sweden, held a presentation with the title 'The role of law and justice in sustainable landscapes: A challenge for nature conservation'. The presentation was informed by Stenseke's experiences while serving from 2015 to 2022 as co-chair of the Multidisciplinary Expert Panel of IPBES (Intergovernmental Science–Policy Platform on Biodiversity and Ecosystem Services). The United Nations Convention on Biological Diversity, adopted at the Rio Conference and in force from 1993, states that conservation of ecosystems is fundamental for the conservation of biological diversity,

16 Alcock 2004; van Gent *et al*. 2009.

17 E.g. Trondheim kommune 2022.

18 Rørtveit 2015; 2019; Rørtveit & Setten 2015.

that biodiversity provides environmental, economic and social benefits, and that the use of biodiversity should be sustainable and not lead to its long-term decline.[19] Ecosystem services, defined as "the benefits people obtain from ecosystems", became part of the international agenda through the Millennium Ecosystems Assessment in 2005. The assessment took place between 2001 and 2002 and synthesized scientific literature with the aim of assessing the consequences of ecosystem change for human well-being and establishing a scientific basis for enhancing the conservation and sustainable use of ecosystems.[20] The Economics of Ecosystems and Biodiversity (TEEB) was a further series of studies undertaken between 2007 and 2010 to assess the economic costs and benefits of conservation and sustainable use of biodiversity and ecosystems as well as the costs of biodiversity loss. The objective was to show how economic concepts and tools can help society to include the value of nature into decision-making.[21] Then, in 2019, IPBES published *The Global Assessment Report on Biodiversity and Ecosystem Services*, which assessed the status, change over time and trends of biodiversity, nature's contribution to people, and the impact of biodiversity decline on human well-being.[22] Ecosystem services have been incorporated into law in the European Union (EU) and individual countries, for example, Sweden. However, the concept of ecosystem services has met criticism, not least because it fails to take account of the complexity of ecosystems and landscape dynamics as well as of the intangible dimension of landscape values.[23] The logic of ecosystem services is adapted to a natural-scientific and econometrical world view and has difficulties in accommodating the complexity of culture. However, "nature's contribution to people" is a broad conceptual framing, launched by IPBES, that provides for a diversity of perspectives, besides ecosystem services, that influence our understandings of human–nature relations, and ultimately our collective efforts to conserve life and provide a fairer future for people on the planet. A further attempt to recognize the complexity of valuation and different types of value has been made by IPBES in its assessment Diverse Values and Valuation of Nature. Undertaken between 2019 and 2022, this examines diverse conceptualizations of the multiple values of nature, including biodiversity and ecosystem services, and assesses the varied sources and traditions of knowledge regarding natural values, including the strengths and weaknesses of existing valuation methods.[24] Different groups of values that are identified include instrumental value (nature's value for society), intrinsic value (na-

19 Secretariat of the CBD 2011.
20 Millennium Ecosystem Assessment 2005.
21 TEEB 2010.
22 IPBES 2019.
23 E.g. Setten *et al*. 2012.
24 IPBES 2022.

ture's inherent value), and relational values (nature as culture), which can be both collective and individual (e.g. sense of place and place identity, caring for nature and its ecosystems, and caring for the land). A justice dimension is related to how to take into consideration the needs of people, often marginalized, in the 30% of the Earth's land surface that it is aimed should be set aside for nature protection.

PUBLISHED SYMPOSIUM PROCEEDINGS

The symposium proceedings comprise the twelve articles that were written up on the basis of the presentations made at the symposium. Each of the draft manuscripts has undergone peer review by an independent external referee as well as an internal review by one of the other contributors to the anniversary symposium. The reviews have been returned to each author for revision along with comments from one or more of the volume's editors: Michael Jones, Amy Strecker, Gunhild Setten and Don Mitchell. Detailed editing has then been undertaken of the revised manuscripts. As a result of this process, the original presentations have been modified and in some cases the article titles have been adjusted compared with the titles presented at the symposium.

Authors have been at liberty to decide how to address the three questions posed at the start of this introduction. Some have chosen to focus on some of the questions more than others. The majority of the contributions are intentionally personal in tone. A personal approach can give insights into how events and encounters in a person's life and career can give a fuller picture of how research interests develop over time and hence contribute to a nuanced understanding of disciplinary history. In addressing the first question, contributors were asked to demonstrate how bringing together the concepts of landscape, law and justice has informed research during the last 20 years by summarizing examples of the contributor's work and showing how these concepts have been influential. In answer to the second question, contributors were asked to discuss how this conceptualization continues to be relevant in ongoing research. For the third question, contributors were free to exemplify from their own research to show how the landscape, law and justice perspective can be useful for understanding and suggesting solutions to some of today's most important challenges.

Kenneth Olwig has written under the title 'Pursuing David Lowenthal in my critique of the landscape heritage of blood and soil ethnonationalism—a personal account'. He shows how bringing together the concepts of landscape, law and justice through his participation together with David Lowenthal in the Landscape, Law and Justice group has informed his current concern with the populist resurgence of blood and soil ethnonationalism in issues of landscape heritage. He examines the historical meaning of landscape as a polity, which through its links with other places had a

metaphorically "archipelagic" or federative relationship. Such polities were governed by bodies of law rooted in custom and legal precedence rather than by nature and its laws. He argues that the "archipelagic" heterogeneity of legal practice in present-day federative organizations can help counteract the homogenizing blood and soil ethnonationalism based on a naturalized form of national cultural heritage.

Don Mitchell's contribution has the title 'Landscape as basic structure: Towards a "concept of landscape that will assist in the development of the very idea of social justice"'. He argues for reconceptualizing landscape as part of the "basic structure" of society in order to develop a concept of landscape that engages with social justice. He suggests that landscape geographers (himself included) have neglected the concept of "basic structure", as found in the political philosopher John Rawls' *A Theory of Justice*. Mitchell takes as his starting point the historian of technology David Nye's definition of landscapes as the "infrastructure of collective existence" and their opposite, "anti-landscapes", defined as spaces that have ceased to serve as the infrastructure of collective existence and hence become inhabitable. Mitchell argues that landscape as basic structure can provide a justification and foundation for social justice as opposed to the unjust and unjustified anti-landscape.

Päivi Kymäläinen is concerned with 'Emotional and affectual legal landscapes'. She discusses the role of subjective, expressible emotions alongside more indeterminate affects in constituting legal landscapes. She distinguishes between state law, which is the official law of institutions, and the everyday law of customs and norms. A debate over the legality and acceptability of a controversial art installation in a Helsinki public space revealed ambivalence in the practice and determination of legal landscapes. This ambivalence related to the presence of hidden norms determining what is appropriate in an urban landscape, it related to the relationality of the law and the way in which legal interpretations are context-sensitive, and it related to emotionally laden legal reasoning that problematizes the assumption of rational and objective legal actors. She argues that while emotions and affects remain hidden in the legal landscapes of state law, the landscapes of everyday law hide official law while supporting an atmosphere that accords with informal norms. She suggests that an understanding of law as consisting of both official state law and unofficial everyday law can draw attention to the voices of groups that tend to be hidden in legal thinking, such as non-property owners or those whose emotional responses do not fit into the scope of legal rationality.

Tiina Peil, in 'Poetics of place: A Glissantian take on revisited Paldiski', employs the poetics and vocabulary of the Martinican poet and philosopher Édouard Glissant to examine the landscapes in and around the town of Paldiski, on the Pakri peninsula in Estonia. Glissant's approach encourages engagement with the idea of landscape as a palimpsest and acknowledgement of parallel and plural versions of history. In the case

of Paldiski, these histories involve displacement, failure, a fragmented and in part imaginary past, and an uncertain future. The poetics of place involves the double aspect of describing and creating a landscape with words. Peil notes that landscape may serve as a metaphor for cultural history, but at the same time it has a physical presence and is regulated by law and custom. She argues that history may be reborn through ever-changing landscapes and people but may also persist through the stories of a mix of cultures. She exemplifies this by recounting histories of an imagined but non-existent historical Swedish harbour. Processes of rebirth and erasure are illustrated through the erection and removal of monuments and memorials. Glissant does not presuppose in his poetics a harmonious and stable world but opens up for new connections in an "archipelago" of understandings that are both distinct and interconnected. Peil suggests that landownership may strengthen people's connections with the land, but this is counteracted by the open sea adjoining Paldiski and an "archipelagic" outreach across diverse and fluid identities. The landscape as palimpsest may anchor memories and become heritage, but at the same time history can provide awareness of new possibilities and unexpected connections in time and space.

Tomas Germundsson elaborates on 'Coastal dilemmas—landscape, planning and rising sea level in southernmost Sweden'. He discusses lack of preparedness in municipal planning for meeting a future with rising sea level due to climate change, with examples from Scania (Skåne) in southern Sweden. He finds that the dynamics of the coastal landscape have been largely ignored in modern planning. He contrasts two communities, Falsterbo and Jonstorp. Falsterbo lies in a relatively wealthy municipality, which has long planned to meet the risk of flooding from the rising sea level by building protective dikes. As dikes conflicted with cultural heritage and nature conservation areas sanctioned by national laws, the issue went before the Environmental Court of Appeal. The court ruled in favour of the municipality, which was allowed to make a dispensation from the existing nature protection restrictions. The court's verdict did not discuss coastal protection from a landscape sustainability perspective, whereby the landscape could be maintained as a living environment affected by both natural and human-influenced processes. Part of the problem was the representation of the line between land and sea on maps and plans as a fixed boundary instead of focusing on the continuous changeability of the coastal zone. In contrast, Jonstorp lies in a relatively poor municipality that lacks the resources for protection measures to hinder coastal erosion, with the result that houses and properties are swallowed by the sea. This raises issues of social justice in that the two communities have differing possibilities for combating coastal erosion. Germundsson argues that planning for a dynamic coastal landscape would benefit from integrating landscape, law and justice in order to advance a fair climate adaptation policy.

Amy Strecker deals with 'Landscape, property and spatial injustice in international law'. She discusses the ambiguous role of international law in landscape matters. On the one hand, it includes far-reaching provisions concerning landscape, while on the other hand it facilitates the treatment of land as a commodity through trade and investment rules that operate to an abstract logic of property rights. She illustrates her argument with Irish examples and brings in perspectives from the Global South, specifically the Caribbean. Strecker argues that the landscape, law and justice approach offers a way of countering the placelessness of international law and brings an important cultural dimension by inserting agency and humanism into what might otherwise appear as a form of natural determinism. She further argues that using the concept of justice goes beyond the current human rights paradigm, where rights are conceptualized predominantly as individual rather than collective.

Ari Lehtinen writes on 'Posthumanist land- and lifescapes'. He summarizes environmental justice thinking as it has advanced during the last 20 years, particularly regarding interspecies injustice and non-human rights. This development is associated with posthumanist thought in human geography during this period. He presents two case studies: one concerns a reindeer-herding community's strong attachment to a river in north-west Russia that is threatened by oil exploration; the other is from Finland and concerns forest rights and restrictions on human access to forests that increasingly resemble plantations. A legal perspective is implied in discussions of non-human rights. He argues that the success of international agreements on biodiversity and nature restoration require radical rethinking of the existential rights of non-human species.

Erling Berge examines the Earth's atmosphere as unmanaged, open access commons, under the title 'How can "tragedies of the commons" be resolved? Social dilemmas and legislation'. The atmospheric commons are in danger of destruction by countries using them as a sink for gases that are contributing to rapid climate warming. He notes that effective institutions are lacking for monitoring and enforcing international agreements that aim to tackle climate warming. From the study of traditional terrestrial commons, he shows that social traps resulting in tragedies of the commons can be overcome in certain circumstances. He presents examples from traditional Norwegian commons to illustrate the dynamics of collective action. He refers to the political economist Elinor Ostrom's work on commons, which emphasizes the importance of small-scale institutions for developing the knowledge necessary to implement the large-scale institutions that are needed to combat climate change.

Frode Flemsæter discusses 'Landscape, law and justice in the Norwegian outfields'. He argues that contemporary debates over use of the outfield commons can be understood in the light of John Rawls' concept of "basic structures", referring to the fundamental institutions and practices that shape social interaction and influence individual

behaviour. According to Rawls, the basic structures are the "primary subject of justice" in society. Rights and duties in the outfield commons were developed historically over a long period of time by people who knew one another and shared common interests. Rights of grazing, hunting, berry picking and maintaining summer farms were based on local social structures, customary practices and shared responsibilities. The outfields are now undergoing revaluation and restructuring to accommodate new uses, such as recreational cabins, energy production, mining and tourism, by new regional, national and international interests. This involves increased complexity, with more actors, and results in increasing conflicts. The former local relational spaces become impersonal territories, which lack a common local arena. Flemsæter argues that relations between people are becoming replaced by reified territories, which serve as containers of exclusive rights to resources. He suggests that there is a need to address how conceptions of property, rights and social justice can deal with the complexities of coexistence and multiplicity.

Gunhild Setten is concerned with 'Landscape and the making of competing moralities'. On the basis of research that she has undertaken and been engaged in on farming practices, outdoor recreation and nature-based inclusion of refugees in Norway, she argues that landscapes are always infused with competing moralities, understood as competing convictions of what should take place in the landscape, which are produced and conveyed through people's everyday practices. Because people are unequally positioned to claim and shape the material landscape, they are similarly unequally positioned in the resulting "moral order". Morality is restrictive for some, while those who have dominance and control appear to have more agency. Setten suggests, however, that the notion of moral landscapes helps make visible how everyday and often subtle practices have the potential to transform moralities. By implication, there is also agency in everyday practices, which may change the moral order.

Michael Jones writes on 'Legal geographies of landscape—long-term historical structures and short-term historical events: Two contrasting examples'. He examines differing time perspectives in legal geographies of landscape with reference to the historian Fernand Braudel's presentation of long duration history—*longue durée*—as opposed to short-term history of events—*histoire événementielle*. These two time perspectives are illustrated by two contrasting examples. The long-term perspective is exemplified by "udal law" in Orkney and Shetland, the Northern Isles of Scotland, from its origins in medieval Norse law to its present status as vestigial customary rights manifested in the islands' land tenure, landscape and cultural identity. The short-term perspective is exemplified by planning conflicts related to different landscape values in Trondheim, Norway. He further discusses more generally public participation—promoted by the European Landscape Convention—as a possible means of dealing with

such conflicts, leading to the notion of "landscape democracy". The examples demonstrate a dialectic between continuity and change in the relationship between law and landscape. Jones suggests that attachments to landscape may be seen as an example of *longue durée*. He argues that attention to the existence of long-lived deep structures of society can serve as a complement to analysis of the day-to-day workings of legislative and other institutions of democracy in dealing with landscape issues.

Tom Mels' contribution has the title 'The substantive landscape as a framework of interpretation: A personal view'. He examines Kenneth Olwig's notion of the "substantive landscape" as a framework of interpretation that encompasses both a proposition and a polemic. He argues that, as a proposition, the idea of the substantive landscape has helped reinvigorate an awareness that landscape studies are deeply implicated in questions of justice, socio-environmental practice and the place of community. Rather than considering landscape as representing a nostalgic and conservative attempt to venerate a more "authentic", pre-modern world against "morally inferior" landscapes of the modern era, the substantive landscape shows the shifting place of landscape in the architecture of spatial power. Mels continues that, as a polemic, the substantive landscape calls for a landscape politics that extends beyond the limitations of graphic and textual representation. He suggests that the substantive landscape's insistence on customary practice and community justice are particularly important in the current era of extractive capitalism with its propensity to wreak socio-environmental havoc.

Several important linking themes can be identified among the twelve chapters. Olwig and Mels engage with the concept of landscape itself. Kymäläinen and Jones discuss legal landscapes. Law and custom in landscape matters at different geographical levels from international to local are evident in the chapters by Strecker, Lehtinen, Berge and Jones. Informal law includes custom, everyday law, extra-legal regulation and moralities, and is discussed in relation to landscape in a variety of ways by many of the authors—Olwig, Kymäläinen, Peil, Strecker, Lehtinen, Berge, Flemsæter, Setten, Jones and Mels. Commons are the main topic in the chapters by Berge and Flemsæter. The public right of access is touched upon by Olwig, Lehtinen and Flemsæter. Law and landscape in relation to climate warming are central in the chapters by Germundsson and Berge. Olwig and Peil discuss landscape as heritage. Identity and belonging are themes in the chapters by Olwig, Peil, Flemsæter, Setten and Jones. Migration and exclusion or inclusion are taken up in very different geographical contexts by Lehtinen and Setten. Justice and injustice in relation to landscape are taken up in various ways in almost all the chapters. Finally, landscape as a fundamental structure of society is discussed in differing contexts by Mitchell, Flemsæter, Jones and Mels. The chapters affirm the landscape, law and justice approach as combining a multiplicity of concepts

and ideas that are relevant for understanding and suggesting possible solutions to the challenges facing contemporary society.

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KENNETH R. OLWIG

Pursuing David Lowenthal in my critique of the landscape heritage of blood and soil ethnonationalism—a personal account

David Lowenthal (1923–2018), a member of the Landscape, Law and Justice group (LL&J), died aged 95 in 2018. In the following I will pursue his spirit in my critique of the landscape heritage of blood and soil ethnonationalism. Prior to LL&J, Michael Jones and I, together with the late Stockholm University geography professor Ulf Sporrong (1936–2020), had produced the seminal edited volume *Nordic Landscapes: Region and Belonging on the Northern Edge of Europe*,[1] based on a series of field trips and seminars with leading Nordic scholars. Lowenthal, as a leading landscape and heritage scholar with an interest in law,[2] was subsequently invited to be a member of the international LL&J group which followed the earlier project. In this chapter, I first concentrate on Lowenthal's geographical scholarship that introduced me to the blood and soil ethnonationalist landscape theme. Then I examine the preliminary experience of the Nordic book project, which helped set the scene for my LL&J work with Lowenthal. Finally, I focus on the spring 2003 LL&J seminar that Lowenthal and I organized and then published, first as a journal special issue and then as the book *The Nature of Cultural Heritage and the Culture of Natural Heritage: Northern Perspectives on a Contested Patrimony*.[3] This LL&J seminar and publication have subsequently, I argue, helped me better understand, against the background of Lowen-

1 Jones & Olwig 2008.
2 Olwig 2024.
3 Olwig & Lowenthal 2005; 2006.

thal's scholarship, the relationship between landscape and the heritage of blood and soil ethnonationalism.

LOWENTHAL, MARSH AND THE NATURE OF THE LANDSCAPE HERITAGE AND BLOOD AND SOIL ETHNONATIONALISM

To understand Lowenthal's approach to landscape and heritage, it is useful to know that throughout his career he was inspired by the work of George Perkins Marsh (1801–1882), a 19th-century American geographer, jurist, philologist and nature conservationist.[4] Lowenthal drew upon Marsh as a groundbreaking figure in developing the understanding of landscape as a concept expressing differing perceptions of the environment and the relationship between society and its environment. In late career, also drawing on Marsh, Lowenthal pioneered heritage studies as a critical scholarly field in which heritage was seen to reflect differing perceptions of history and landscape.[5]

Lowenthal's doctoral dissertation was published as a biography of Marsh.[6] The biography's core concerned the role of Marsh's book, *Man and Nature: Or, Physical Geography as Modified by Human Action*, in changing the reigning perception that the character of a people was teleologically determined by its natural landscape environment.[7] Marsh argued that the landscape was over time shaped by a polity's laws and governance, not vice versa, and that this was reflected in the health of the polity's environment. Marsh is now considered a progressive founder of the conservation movement as well as an ideational precursor of the Anthropocene.[8] In researching the Marsh biography, however, Lowenthal discovered a Marsh pamphlet, *The Goths in New-England*, written two decades before *Man and Nature*, that exposed a disturbing reactionary ethnonationalistic, blood and soil racist thinking that contradicted Marsh's later opposition to environmental determinism. Marsh wrote:

> The intellectual character of our Puritan forefathers is that derived by inheritance from our remote Gothic ancestry, restored by its own inherent elasticity to its primitive proportions, upon the removal of the shackles and burdens, which the spiritual and intellectual tyranny of Rome had for cen-

4 Olwig 2003a.
5 Lowenthal 1985; 1996; 2015.
6 Lowenthal 1958.
7 Marsh 2003.
8 Lowenthal 2000; Haraway *et al*. 2016.

> turies imposed upon it .... The Goths ... are the noblest branch of the Caucasian race. We are their children. It was the blood of the Goth, that flowed at Bunker's Hill [at the US Revolutionary War's beginning].[9]

Of this statement, Lowenthal wrote:

> Antiquarian pleasure in Icelandic and Old Norse was not enough, he felt a need to claim the inherent superiority of Nordic (or Gothic) languages and people. And in ascribing the same virtues to his fellow New Englanders, Marsh linked them, by descent, in a Nonconformist [Protestant], racialist harangue.[10]

Marsh not only described how the New Englanders were shaped as a "noble" race with, as Lowenthal adds, a bloodline determined by the northern nature of their physical landscape;[11] he also identified language with race much as the speaking of Hebrew, a semitic language, has branded the Jews as racially semitic.

Marsh saw New England's Protestant English settlers as bearers of the cultural and racial heritage of England's "Gothic" Anglo-Saxon and Nordic settler colonists. It was this race, he believed, that first colonized England and then conquered and settled the New England north-eastern frontier of America. Here they revitalized their ethnonational Gothic bloodlines through their revolutionary defeat of Britain, the contemporary expression of Roman imperialism.[12] The Gothicist myth thus provided a malleable heritage narrative that could link ethnicity, landscape, environment, governance, colonialism, race, language, law and justice. Such linking is characteristic of ethnonationalist heritage defined as "advocacy of or support for the political interests of a particular ethnic group, especially its national independence or self-determination", ethnicity defined here as "of or belonging to a population group or subgroup made up of people who share a common cultural background or descent."[13] The link to racism, however, is labile and fluid since the sharing of a common culture and language needs not signify race.

9 Marsh 1843, pp. 10, 14.
10 Lowenthal 2000, p. 57.
11 Lowenthal 1958, p. 60.
12 On the Gothicist myth's origins and nature concept, see: Lowenthal 1958, pp. 60–67; 2000, pp. 48–67; Olwig 2015; 2021, pp. 11–25.
13 NOAD 2005: *ethnonationalism, ethnic*.

Figure 1. 'The Nordic Racial Kernel Area' (De Geer 1926, pp. 162–171). Note that much of the Norwegian coast and all of archipelagic Denmark do not have the highest Nordic racial density, and that the areas populated largely by the Sami are left out of the Nordic racial area. Race is correlated with language in the map and text. Note too that Iceland rates the highest Nordic racial density, though modern DNA studies indicate that it is c. half Celtic.[14] In De Geer's texts and other maps of racial distribution, the relationship between race and landscape topography is clearer than on this map.[15]

14 Olwig 2015.

15 On De Geer's use of landscape topography, see: De Geer 1926; 1928; Olwig 2019, pp. 172–197.

Marsh, a philologist fluent in the Nordic languages, derived his Gothicist narrative particularly from the Nordic nationalists, who cultivated the heritage of the mythicized Nordic chieftains of the Sagas. These slave-owning chieftains conquered and colonized Scandinavia's northern natural landscape, displacing its prior inhabitants.[16] An Old Norse term applied to such clan chieftains was *oðal* (*odal* or *udal*), a word related to the word *adel*, meaning noble.[17] Ernst Sars (1835–1917), a leading 19th-century Norwegian historian, thus claimed that contemporary prominent farm families with a long landed lineage were "bearers of an aristocratic spirit—a reminiscence of the pre-Christian aristocracy of regional clans."[18] For the nationalists, these families were foundational to the nation and deemed worthy of a privileged position in terms of land inheritance and voting rights vis-à-vis the landless and mobile coastal fishing and maritime populations.[19] Since clans involve a blood relation, this glorification could take a racial turn, as can be seen in *Figure 1*. In this map, the prominent early 20th-century Swedish geographer, ethnographer and nobleman, Sten De Geer (1886–1933), categorized inland farming areas as having the "highest density of Nordic race", whereas coastal Norway and the Sami regions of northern Scandinavia were categorized as relatively less Nordic or non-Nordic.

According to Lowenthal, Marsh refuted the Gothicist myths in his subsequent work.[20] Marsh's repudiation of environmental determinism in *Man and Nature* clearly undermined the Gothicist landscape thesis, but how this is connected to his eventual refutation of Gothicist heritage is not entirely clear. However, Marsh did move away from his early sympathy for Gothicist heritage at the same time as he moved from New England Vermont to a Congressional seat, and home, in Washington, D.C. Here he became a founder of Washington's Smithsonian Institution, thereby turning away from heritage as a populist myth to a broader, scholarly approach to heritage that was not bound to the identity politics of a particular region's ethnonationalism. But how does one explain the connection between Marsh's abandonment of ethnonationalism and his critique of environmental determinism? The LL&J seminar and book helped me understand this connection. However, the catalytic role of the seminar and book, edited with Lowenthal, must be understood against the background of the earlier production of *Nordic Landscapes*.

16 Olwig 2015.
17 Duden 2020: *Odal, Adel*.
18 Eilertsen 2011, p. 193.
19 Hálfdánarson 1995; Eilertsen 2011, p. 193.
20 Lowenthal 1958, pp. 66–67.

NORDIC LANDSCAPES, REGION AND BELONGING

Sporrong, Jones and I had a differing but complementary interest in unsettling and rethinking the established national understanding of landscape as a scene. *Nordic Landscapes* focuses on landscape as a region rather than a scene. Jones and I each got to know Sporrong, and each other, separately. I had come to know Sporrong in the early 1990s when I was a lecturer at the Nordic Institute for Urban and Regional Planning (Nordplan) in Stockholm. It was at this time that we first discussed the topic that became one of Sporrong's book chapters: 'The province of Dalecarlia (Dalarna)—heartland or anomaly?'[21] Dalarna was historically a semi-autonomous medieval landscape (*landskap*) polity. It bordered present-day Norway to the west and owed fealty to Swedish kings to the east. It was later incorporated into the centralizing Swedish renaissance state as a province *(län)* and eventually became perceived by national romantics as the Swedish nation's autochthonous indigenous agrarian "heartland". Dalarna was "anomalous", however, because it had a dispersed settlement structure with a land tenure system closer to that of the North Atlantic archipelago extending from Norway to Britain than to Sweden's characteristically more nucleated farm villages.

My interest in Sporrong's topic lay in the way it challenged, in Marsh's spirit, a nationalist environmental determinism that asserts that societies grow from a native national soil. Dalarna also challenged this idea because it was one of the regions where immigrant Walloons had helped revitalize the vital Swedish mining industry in the early 17th century. This challenge was particularly pertinent at a time when Anglo-American geographers were rejecting the landscape approach to geography because of its identification with the idea of landscape as a layered scene with nature as its foundation and culture as its superstructure, particularly as it had developed in German geography, and which in turn was identified with nationalistic, blood and soil environmental determinism. Inspired by my stay in Sweden, where the term *landskap* was still used to refer to regions like Dalarna, I sought to revitalize landscape geography by showing that the concept of landscape, before it was appropriated as a creature of the national territorial terrain, referred to a form of regional polity. This was a polity shaped by the substantive laws and justice of a representative political body, rather than by indigenous blood relations, such as those of clan, ethnicity and race. It was a polity whose customary laws were often concerned with the sustainable use of its natural topography, but it was determined by a polity, not by natural law and blood. The notion of justice born by history of such landscape regions, as Sporrong's

21 Sporrong 2008.

research showed, still had explanatory historical and contemporary relevance, and for me this substantive legal and social history, and the history of its usurpation, needed to be "recovered".[22]

A personal factor affecting my Stockholm work was the contemporaneous resurgence of extremist xenophobic nationalism in Sweden. This was viscerally manifested to me when I was trapped on the island of Skeppsholmen, where Nordplan was located, by a massive extremist demonstration held on Karl XII's Day (30 November) at Kungsträdgården Park where there is a statue of the king, a militaristic hero of the national romantics. Added to this was the so-called "Lasermannen", an ethnonationalist terrorist sniper who shot perceived foreigners, also near my home. Many Swedes then made an effort to counter this xenophobia by pointing out their own non-Swedish ethnic background as evidence that Sweden was a multi-ethnic society with cosmopolitan values. It was in this situation that Sporrong told me of his own Walloon background.

Whereas my concern with landscapes like Dalarna, and thereby Sporrong's research, was largely tied to notions of justice, national ideology and the historically evolving meanings of landscape, Jones' interest was more legal-geographical. Jones shared with Sporrong a common interest in the workings of law in relation to land tenure and its relevance to the cultural landscape, particularly in archipelagic landscapes such as those of Finland and the North Atlantic.[23] Jones, thus, was also interested in exploring the issues similar to those raised by Dalarna's anomalous landscape identity. I also had an ongoing concern with the archipelagic due to my early fieldwork in the Caribbean under the guidance of Lowenthal's studies of the West Indian archipelagic societies.[24] For me, a fascinating aspect of the Caribbean archipelago, along with the Greek archipelago, the Frisian, the Finnish and even the Danish archipelagos, is that they include not only islands and their polities, but also mainland polities bordering or connected to a sea.[25]

22 I review this critical literature and my alternative landscape regional approach in Olwig 2019 [1996], pp. 18–49; 2002. For an early iteration of this critique in relation to Gothicism, see Olwig 1992; 2021 [1984] and more recently Olwig 2002, pp. 148–177. Denis Cosgrove, a prominent critic of the traditional layered approach to landscape geography, eventually accepted my approach, see: Cosgrove 2004. My critique of the traditional approach of landscape was not popular with my more traditionally oriented Scandinavian geography colleagues.

23 Jones 1977; 2013.

24 On Lowenthal's and my evolving interest in the West Indies and the archipelagic, see: Olwig 2002, pp. 10–16; 2018; 2019, pp. 88–103; Sörlin 2024; Thomas-Hope 2024.

25 In ancient Greek the *πέλαγος* (pelago) in *ἀρχιπέλαγος* (archipelago) meant sea, and *ἀρχιπέλαγος* was the name of the primary Greek sea (the Aegean). In this original sense the *pelago* thus was the fluid medium uniting places surrounding and within the seas, not an assemblage of islands.

It was the mixing of Jones', Sporrong's and my own interests in the archipelagic and in landscapes understood as varied historical regional polities, which differed from, but were incorporated into, homogenizing national landscape scenes, that led us to work together on the *Nordic Landscapes* project. After initial fieldwork together, we organized a working group, with financing secured by Sporrong, to research and write the chapters of *Nordic Landscapes*. The book includes important chapters concerning historically constituted landscape regions, many of which have an "archipelagic" character, like that of Dalarna. The book thus encompasses relevant chapters on Dalarna,[26] Finnish inflected Värmland,[27] as well as Skåne, an "(un)Swedish" landscape region historically a part of archipelagic Denmark.[28] There is also a chapter on a similarly anomalous Finnish landscape, the culturally Swedish archipelago called "Landskapet Åland" (which preserves the original meaning of landscape as a polity in its title),[29] while reference is made in several chapters to Finland's Karelia, which is perceived as both a Finnish heartland and as an exotic peripheral inland sea.[30] Norway is represented by relevant chapters on northern Norway's multi-ethnic landscape;[31] Denmark by a chapter on the peripheral landscape region of Jutland, which some also perceived to be a heartland.[32] Several of these chapters were by scholars who later became part of the LL&J group, and/or contributors to the present book. The latter include Jones, Ari Lehtinen, Tomas Germundsson and me.

These chapters in *Nordic Landscapes* show that there is ample reason to believe there was a significant number of landscape regions in Norden, many with roots in historical landscape polities that defied the homogenetic, naturalizing ethnonationalist norms of the states within which they had been spatially incorporated. It was this evidence that provided the basis for asking what, then, is the relationship between "the nature of cultural heritage and the culture of natural heritage" in regard to the role of the differently understood definitions of landscape in fostering ethnonationalist heritage? This was a key question that Lowenthal's and my LL&J seminar publication helped address.

26 Sporrong 2008.
27 Bladh 2008.
28 Germundsson 2008.
29 Storå 2008.
30 Häyrynen 2008; Lehtinen 2008; Mead 2008; Paasi 2008.
31 Jones 2008; Olsen 2008.
32 Olwig 2008.

HERITAGE AND LANDSCAPES—THE SOCIETY/NATURE ISSUE AND BLOOD AND SOIL ETHNONATIONALISM

In his contribution to the LL&J seminar publication, Lowenthal argued that in heritage discourse nature and culture are effectively interchangeable sources of national identity. Yet the arguments for one or the other are often in conflict.[33] These observations were corroborated by Bosse Sundin, who in his contribution, 'Nature as heritage: The Swedish case', showed that ties to nature rather than culture were used as a source of a unified national identity in the building of the modern Swedish nation-state.[34] Tomas Germundsson discussed the consequences of this transition in his text, 'Regional cultural heritage versus national heritage in Scania's disputed national landscape'.[35] Until 1658 Scania (Skåne) was part of Denmark, to which it was linked by the waters of a narrow sound. In Sweden, the national core was perceived to be found in an evergreen wooded landscape with scattered red wooden farms relatively close to the capital. Scania's open treeless fields, beech forests and half-timbered Danish-style buildings fitted poorly into this national Swedish landscape. Tiina Peil's article, 'Estonian heritage connections—people, past and place: The Pakri peninsula'[36] described an even-more glaring example in her analysis of the difficulty of absorbing a Russian-settled area that has been incorporated both cartographically and as landscape scenery within the territory of an emerging ethnonational Estonian state. Indeed, the article should more properly be entitled 'Estonian disconnections' because Peil recounts an unsettling story of attempts to incorporate a peninsula with a people who were not Estonian and who lived in a landscape constructed by the tzars of a state that had sought to suppress the existence of a settled ethnonational Estonian identity.

Werner Krauss' contribution to the seminar, 'The natural and cultural landscape heritage of northern Friesland',[37] focused on the conflict between the Frisian historical *Landschaft* polities and the German nation-state's nature authorities' attempt to rewild the Frisians' socially and economically foundational sharing of the Wadden Sea and its encompassing reclaimed meadows. The Frisians were well aware that their forbearers had summer diked the Wadden Sea forelands when creating rich, regularly flooded meadowlands for grazing animals that were simultaneously vital to migrating birds. Protesting the German state's nature rewilders, the Frisians, who have a re-

33 Lowenthal 2006a.
34 Sundin 2006.
35 Germundsson 2006.
36 Peil 2006.
37 Krauss 2006.

gional autonomy movement, posted signs reading "God created the sea and the Frisian the coast." For centuries, the Frisians had treated the Wadden Sea as a watery commons with shared resources regulated according to laws founded on custom, and the idea of rewilding the area as a nature park received the response "Down with Eco-dictatorship."[38]

The situation Krauss describes regarding Frisian identification with its historical quasi-independent *Landschaften* and their notion of justice resonated with my own experience working with the Danish Conservation Board, *Fredningsstyrelsen*, which in 1975–1987 was responsible for administering natural and cultural heritage conservation and recreational landscape access.[39] Working with the agency's jurists, I learned that the public right of access to the sea coast and uncultivated forest and meadow lands in Denmark was still legally founded upon an ancient Danish "landscape law", the 1241 "Jutland Law", rooted in custom and legal precedent. I also learned that related Scandinavian public rights of access and subsistence use, called *allemannsrett* in Norwegian and *allemansrätt* in Swedish, were inspired by similar ancient customary laws. Today it is particularly the modern labor movement that fights to protect these alienated ancient legal rights in Scandinavia. This is because the enclosure of common lands as private property has taken access and subsistence use rights (usufruct) from propertyless laborers for whom these rights historically gave both sustenance and recreation. This movement has historical roots in what the English historian E.P. Thompson has called the working classes' moral economy, which in turn gave the labor movement the perceived moral right to organize mass protests on lands that had been enclosed by often aristocratic estate owners for sport hunting.[40]

The case of the Byneset golf course was taken up in Gunhild Setten's contribution, 'Farming the heritage: On the production and construction of a personal and practised landscape heritage'. Setten took her point of departure in the question of how differing landscape values were being considered in the planning process as exemplified by the conversion of a farm into a golf course at Byneset on the outskirts of Trondheim. This had been a theme of the 1999 program for the master's degree in "Landscape

38 Krauss 2006, p. 42. On Frisia's historical landscape polities, see: Olwig 2002, pp. 10–16. On Frisian concern for greater autonomy in the Netherlands, see: Renes 2022, p. 8. For an assessment of the environmental conflict's complexity, see: Ahlhorn & Kunz 2002. The Frisians' use of the term "Eco-dictatorship" might be to suggest comparison with the German World War II-era dictatorship's use of pseudo-landscape-ecological arguments to justify the ethnocide of peoples whose blood, as opposed to German blood, was thought to be bad for the soil, see: Gröning & Wolschke-Bulmahn 1987.

39 E.g., Olwig 1990.

40 Olwig 2005.

and Planning" at the Department of Geography, Norwegian University of Science and Technology, where I taught at the time. Given my previous experience, I was particularly interested in how this transformation of grazed and cultivated agricultural fields into seeded golf courses affected *allemannsretten*. The landscape of golf courses is architected, like the post-enclosure English landscape gardens surrounding manorial estates, to superficially resemble that of a commons—in this case the grazing commons where the sport originated in Scotland. However, modern golf courses are not multiple-use commons but properties enclosed for the sport of those who can afford to join a golf club. The commons and both grazed and cultivated farmlands on Trondheim's periphery are core to public recreation, not the least during the winter skiing season, under the protection of the Norwegian *allemannsretten*—but when farmland is converted into a private golf course these rights are abrogated.[41]

Setten's chapter begins by describing her consternation "watching in astonishment as a planner from the city administration, a group of students and two of my colleagues ambled on to a newly sown 'field'." Their walking on this newly seeded golf course gave rise to

> a strong feeling that walking on the field was wrong. As I paced uneasily backwards and forwards, I was getting more and more upset—and, in fact, angry: 'How come they just went on to the field?'; 'Don't they know that walking on a newly sown field is wrong?'; 'How come no one has told them that this is something you just don't do?'.[42]

Setten's anger was clearly provoked by the alienating contrast between her colleagues' alien reflections on landscape and nature as theoretical and legal concepts, and her own native lived, "personal" and "private" practiced landscape heritage as the scion of a farm owned by Setten's family since the 17th century.[43] This feeling, Setten writes "is something you know and to which you have a strong embodied relation—it is 'natural'," [44] and thus ontologically pre-existing the landscape as a political entity "in the theoretical sense."[45] Land, as Setten puts it, "becomes the product and producer of, in many ways, a private landscape heritage"[46] in the process losing its former identity

41 Cultivated farmlands are only accessible outside the growing season (when people ski), whereas grazed outfields are accessible under *allemannsretten* year around.
42 Setten 2006, p. 69.
43 Setten 2006, p. 61.
44 Setten 2006, p. 69.
45 Setten 2006, p. 71.
46 Setten 2006, p. 68.

as a key feature in "the symbolic relationship between national identity and the rural landscape."[47] It is this traditionalized agrarian nationalist heritage that arguably is at the core of Setten's alienation, born of the contrast between nationalist myth and a "natural" lived personal and private identity with the landscape scene of an ancient ancestral family farm—for example, lake "Settenvatnet".

It has been necessary to devote space to Setten's essay because it is so different from the other authors' more abstract approach to the culture of natural heritage and its notion of nature and because it is relevant to the issue of blood and soil ethnonationalism. With its emphasis on the essential authenticity of the immediate, innocent experience of, and identification with, landscape scenery, the essay requires a close reading, like a literary text where attention is paid to wording. Thus, though the scenic structure of the landscape concept used by Setten has parallels, for example, to the structure used by De Geer, Setten's essay does not use it to argue for blood and soil ethnonationalist racial theory. It rather exposes the multiple existential conflicts facing present-day farmers that are easy to overlook in discourses based on theories of social construction. As I wrote in the publication's introduction:

> Setten's essay is particularly interesting [...] because it is situated from the position of the Norwegian Udal [odal] farmer, who was long lionised, and privileged, as the independent natural native of the soil, upon whose labour the nation was seen to be built. More recently, however, the rising tide of globalism and economic liberalism has left the farmer exposed to the whims of global agricultural competition. The farmer, however, is still expected to preserve a national landscape heritage that is increasingly being defined in the alien terminology of ecology and biodiversity, thus leaving the farmer in a difficult practical, economic and ideological position.[48]

INSIGHTS FROM THE LL&J SEMINAR PUBLICATION

Sundin's Swedish example, Peil's Estonian example and Setten's Norwegian case all point to the existence of a national natural cultural heritage embodied in a nationalist heritage. Germundsson's chapter on Skåne and Krauss' on Frisia show the importance of the character of historical landscape polities whose use and shaping of the landscape run counter to national scenic landscape hegemony. This suggests that when forms of governance enable different landscape polities to maintain relative autonomy, as was

47 Setten 2006, p. 67.
48 Olwig 2006, p. 6.

historically the case with the Frisian landscape regions, the identity of the landscape tends to be defined in terms of the differing polities' evolving legal, social and environmental relations.[49] In centralized nation-states, this also suggests, there will be a tendency to cultivate a heritage that is as uniformly homogenous as the Euclidean space of the map within which polities and properties are plotted.[50]

The insights gained from this LL&J seminar and publication have provided a foundation for me to address the question raised above concerning the relationship between the society/nature issue and the heritage of blood and soil ethnonationalism. Of particular importance was the fact that the volume focused on the Nordic context of a core ethnonational myth which has Norden at its root. This thus provides a basis for returning to the Nordic sources of Marsh's thinking.

MARSH'S CONTINUING NORDIC CONNECTION

Even after Marsh abandoned environmental determinism, and thereby a Gothicist foundation, he continued to call upon Nordic sources when writing *Man and Nature*. He was drawn notably to the ideas of the internationally prominent contemporary Danish plant geographer, Joachim Frederik Schouw (1789–1852).[51] Schouw shared Marsh's position on the society/nature issue and his view that environmental deterioration had social and political causes. Schouw, whose plant geography had a focus in the Mediterranean, was opposed to the Gothicism and natural philosophy of the ethnonationalists who saw the nation-state as growing out of the natural, physical landscape of the North. Marsh and Schouw both had legal backgrounds and were politically active. Schouw thus led the Roskilde and Viborg regional legal assemblies that paved the way for the dissolution of absolute monarchy and the introduction of representative democracy in Denmark in 1849. The areas represented by these assemblies had their roots in historical Danish landscape regions similar to those of Frisia and elsewhere in Scandinavia.[52] As a leading pan-Scandinavianist, Schouw favored the establishment of a federative republic uniting Scandinavia along the regional lines he worked to establish in Denmark.[53]

Schouw's combining of an opposition to Gothicist environmental determinism with the need for a representative, federative governance reflecting differing

49 Renes 2022, p. 8.

50 Olwig 2019, pp. 198–222.

51 Olwig 1980; 2002.

52 Olwig 2002; 2019, pp. 18–49.

53 Olwig 1980; 2002; 2003b. Schouw's pan-Scandinavian project failed, but its spirit is preserved somewhat in the modern Nordic Council.

cultural and political heritages, was relevant to Marsh's situation because Marsh lived during an era when sectional differences increasingly threatened to rend the United States into separate nation-states: a South governed by an oppressive slave-based agrarian plantation regime and a North which proudly traced its New England democratic system of regional township and urban governance back to its original English settlement by a free, industrious, rural and urban citizenry. Gothicism with its slave-owning landed warrior chieftains fitted the Southern notion of its heritage better than that of New England and Marsh's Gothicism was not well accepted in New England at the time.[54] It is in this context significant that Marsh moved from his rural Vermont home, the focus of his New England Gothicist panegyric, to Washington, serving first in Congress and then eventually as a diplomat under Abraham Lincoln, who fought to both hold the Union together and emancipate the enslaved. Marsh transitioned from promoting the populist sectionalist heritage of the mythical Goths to becoming a founder of Washington's Smithsonian Institution as a repository of the heritage of the differing nationalities dwelling within the entire federation. When Marsh later was appointed as U.S. ambassador to Italy he experienced the formation of a national confederation of historically founded regional Italian political entities, while also engaging with the archipelagic politics of Greece's independence movement. In Italy this former Nordic populist Gothicist wrote *Man and Nature* and was eventually buried in 1882 at Vallombrosa Abbey in the country he effectively adopted. Lowenthal developed, like Marsh, a transatlantic, archipelagic interest in landscape conservation and heritage.[55] This led him to work with international bodies, such as UNESCO, created in part to counteract the blood and soil ethnonationalist landscape heritage that resulted in World War II. It also made him a critic of the populist heritage identity politics that opposes[56] the work of organizations like UNESCO and the Council of Europe's European Landscape Convention (ELC).[57]

54 The continued appeal of Gothicism in the South is exemplified by a recent case in which an Alabama judge declared that the trial, a libel case against the *New York Times*, "would be ruled by 'white man's justice [...] brought over to this country by the Anglo-Saxon Race'" (quoted in Gersen 2023, p. 70).

55 Sörlin 2024.

56 Lowenthal 1996; 2006b. Lowenthal's opponents castigated him as a politically incorrect "libertarian"—see Olwig 2024, n. 3, p. 50.

57 Jones & Stenseke 2011.

CONCLUSION

In this chapter, I have sought to demonstrate how bringing together the concepts of landscape, law and justice, through my participation together with Lowenthal in the LL&J group, continues to influence my present concern with blood and soil ethnonationalism. LL&J thereby continues to be relevant to my ongoing research into the present day challenge to law and justice presented by the populist resurgence of the heritage of blood and soil ethnonationalism.[58] On the one hand, I have focused on landscape as the physical, natural landscape foundation that determines the character of the hegemonic socio-cultural ethnonational landscape situated above it. Particularly, when the national natural landscape is seen to determine the cultural heritage and becomes linked to blood and soil ethnic and racial identity, it can generate a populism that breeds the injustices of racism and ethnic xenophobia. On the other hand, I have examined the historical meaning and existence of landscape as a polity, and the places it interlinks, and compared this landscape with what I have metaphorically described as being characterized by "archipelagic" and federative relations. These polities are not based upon blood ties of tribe, family or clan relations, but by bodies of law rooted in custom and legal precedence, which can be of environmental importance, but which are not determined by nature and its laws. Even though these historical landscape polities no longer exist as such, their history is found in legal practice and in regional, national and international federative organizations. I have thus argued in my subsequent work that such federative, "archipelagic" heterogeneity counteracts the formation of homogenous blood and soil ethnonational and racial norms rooted in a naturalized national cultural heritage.

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58 Olwig 2019, pp. 140–222.

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DON MITCHELL

Landscape as basic structure

Towards a "concept of landscape that will assist the development of the very idea of social justice"

"Landscapes", the historian of technology David Nye has written, "are the infrastructure of collective existence."[1] This is a quite basic definition, but it is one that is nonetheless helpful for understanding the role landscape plays in processes and relations of social justice, or so I will argue in this chapter. Its value becomes doubly apparent when we pay attention to the context within which Nye deployed it. His particular interest was in understanding not landscape, but its opposite, what he called the "anti-landscape". Anti-landscape is "man-modified space that once served as infrastructure of collective existence but that has ceased to do so, whether temporarily or long-term. Human beings can inhabit landscapes for generations, even millennia, but they cannot inhabit anti-landscapes."[2]

I came across Nye's definitions of landscape and anti-landscape when I was helping to bring to completion a project close to the geographer Neil Smith's heart when he died in 2012: a big, sprawling historical geography of riots and uprisings over the length of New York City's European and American history. Written with a group of then-current and recently finished students at the Graduate Center of the City University of New York and eventually published as *Revolting New York: How 400 Years of Riot, Rebellion, Uprising, and Revolution Shaped a City*,[3] the book was not really about landscape (or anti-landscape), as such. But one chapter was about the famous 1977 blackout and attendant riots; Nye's "history of blackouts in America"[4] was par-

1 Nye 2010, p. 130.
2 Nye 2010, p. 131; Nye & Elkind 2014.
3 Smith & Mitchell 2018.
4 Nye 2010.

ticularly helpful as the chapter's author, Miguelina Rodriguez, and I fine-tuned the analysis of just how and why this technological failure became such a moment of intense social upheaval.[5] What was particularly interesting, to me at least, was Nye's argument that though archaeologists have long "documented that some regions have been abandoned after being stripped of trees, overgrazed, or too intensively irrigated and farmed"—transformed into anti-landscapes, in other words—"these were usually gradual processes." By contrast, "highly technological societies can create anti-landscapes quickly, even suddenly", such as when the lights go out.[6]

What was utterly apparent to me while working on the overall narrative of *Revolting New York*, however, was that the 1977 blackout created something like instantaneous anti-landscapes only because, and only insofar as, a long, slow, relentless process—decades of disinvestment and abandonment, planners' efforts to empty out whole neighborhoods and essentially cordon off others, politicians' willful, rather than benign, neglect of marginalized populations—had *already* created an anti-landscape, a landscape that no longer served as infrastructure of collective existence, that the blackout only intensified.[7]

In fits and starts, I have sought to develop and elaborate the anti-landscape concept in the years since.[8] But mostly both the concept of anti-landscape and Nye's straightforward definition of landscape have served as touchstones, reality checks, as, in the past few years, I have engaged in something of a project of self-re-education, namely a fairly deep dive into the extensive literature arising from the precincts of moral and political philosophy concerning the very idea of justice. My hope has been to finally rise to a challenge the geographer George Henderson set for landscape theorists 20 years ago. Writing in an edited collection dedicated to exploring the life and impact of the idiosyncratic and insightful landscape observer, J.B. Jackson (who was the inspiration for the definition of landscape as collective infrastructure that Nye advances), Henderson argued that it was high time for geographers and others to develop a "concept of landscape that will assist in the development of the very idea of social justice." He suggested that to do so, we really needed to engage with moral and political philosophy; we needed to find ways to show how landscape was vital to—central to—not only the *concept* of social justice, but its achievement.[9]

5 Rodriguez 2018.

6 Nye 2010, p. 131.

7 I discuss and document the *planned* disinvestment and abandonment, the *willful* making of an anti-landscape in Mitchell 2018.

8 Mitchell 2021; 2022.

9 Henderson 2003, p. 195.

What I have come to realize in the wake of this re-education—this extensive reading in moral and political theories of justice—is that a concept of landscape as (deceptively) simple as Nye's, especially when understood in relation to its opposite, the anti-landscape, *already* is a concept sufficient for the "development of the very idea of social justice." This is because Nye's definition is also (if unwittingly) the definition of what the indispensable (if not unreproachable) mid-20th-century liberal philosopher of justice John Rawls called the very "subject of justice": the *basic structure* of society.[10] The concept of "basic structure", I have now come to realize, is Rawls's most important contribution to justice theorizing. But it is a concept that has been ignored within geography discourses on social justice (including those to which I have contributed). This needs to be rectified.

This chapter investigates the concept of "basic structure" in order to understand why it has so far had no place in geographical discussions in general and theories of landscape justice in particular (despite it being a central focus of debate within justice theory more generally); this includes my own oft-announced efforts to ground landscape theory as a theory of (or contribution to the achievement of) justice.[11] The chapter then goes on to make the case for understanding landscape—understood to be "infrastructure of collective existence"—as a central and indispensable part of the basic structure. With this understanding secured, the chapter suggests at least one way in which landscape theory can contribute not just to "the very idea of social justice", but instead to what might be called a "maximally just" society.

GEOGRAPHERS' VEIL OF IGNORANCE

I opened a 2003 progress report on landscape scholarship written for *Progress in Human Geography* by quoting Henderson's challenge and used the report to deepen that challenge, to demand that landscape studies help find ways to make the "landscape the groundwork—and the dreamwork—of justice."[12] I was fired up about justice. I had spent the previous summer finalizing the manuscript that became *The Right to*

10 Rawls 1999. Following Jaggar 2009, I prefer to think of the basic structure as the central *object* of justice theorizing (that which justice pertains to—the "what" of justice), reserving "subject of justice" for the "who" of justice: those who make claims of justice.

11 Frode Flemsæter's chapter in this volume is the only treatment of the basic structure idea within landscape studies that I am aware of. Mitchell 2008 represents my most straightforward effort to tightly bind landscape theory to struggles for social justice. But see Mitchell 2024.

12 Mitchell 2003a, p. 793.

the City: Social Justice and the Fight for Public Space,[13] which represented my first sustained attempt to work out how homelessness, law, protest and public space shaped American urban space (a project that had been sparked by some of my earliest mentors in landscape thinking, Larry Ford and Deryck Holdsworth),[14] and to do so as a question of social justice. In the fall I moved to Norway to spend a term as a Fulbright Fellow at the University of Oslo. By happy coincidence, my time in Oslo overlapped with the start of the Center for Advanced Study's year-long symposium on Landscape, Law and Justice (that this present volume commemorates) and Gunhild Setten, with whom I had been corresponding in my role as an editor of the journal *Cultural Geographies*, invited me to sit in. It was an eye-opening several months for me, exposing me to quite different schools of landscape thought—and different ways of thinking about the law–justice–landscape entanglement—than I had grown accustomed to in my American education and through thorough reading of British "new cultural geographers" such as Denis Cosgrove and Stephen Daniels.[15]

My own contribution to the Oslo Landscape, Law and Justice seminars less concerned questions of justice or law than questions of political economy and through them questions of *injustice*.[16] I sought to show how injustices were built into landscapes—no matter how beautiful and comfortable or how obviously exploitative or dangerous. This was not an unusual endeavor. Ever since David Harvey's discipline-shifting introduction of justice-thinking, *Social Justice and the City*,[17] geographers have frequently declared their allegiance to theorizations of, and struggles for, social justice (as in Henderson's challenge and my progress report), while devoting their analytical energies to exposing and theorizing injustice.

I find this disciplinary predilection, which I have shared, to be quite interesting, and I think it can be traced, at least in part, to how we geographers have engaged with that monument of 20th-century justice theorizing, Rawls's *A Theory of Justice*. The form of this engagement, I now think, led to a missed opportunity to place landscape right at the center of theories of justice. Let me explain. Geographers were not slow to engage with Rawls's ideas. His basic conception of "justice as fairness" was highly attractive as geographers entered their "radical turn" at the end of the 1960s. Already at the Association of American Geographers annual meeting in 1971—the year *A Theory of Justice* was published—David Harvey had presented a "liberal" argument concerning the relationship between "social justice and spatial systems", which was published both as an

13 Mitchell 2003c.

14 For a discussion, see Mitchell 2020, Afterword, pp. 157–162.

15 Cosgrove 1984; 1985; Cosgrove & Daniels 1988; Daniels 1989; 1993.

16 The paper I presented at the seminar was published as Mitchell 2003b.

17 Harvey 2009.

article and (in revised form) as the third chapter of *Social Justice and the City*.[18] Even if his engagement with Rawls was not particularly deep, Harvey's melding of procedural with distributive justice—social justice defined as "a just distribution justly arrived at"[19]—owed much to Rawls's own, similar formulations. As is widely known, Harvey soon turned away from this liberal, distributive, Rawlsian form of justice theory, arguing that it could not account for the structural determinants of injustice; that is, it could not account for how the basic conditions for distribution were *produced*. Indeed, Harvey's turn to "socialist formulations" of justice in the early 1970s[20] led him largely away from justice theorizing itself in order to develop a geographical theory of the structures of capital accumulation rooted in the social relations of production (including, increasingly, the social production of space).[21] When he returned explicitly to questions of justice in the mid-1990s, Rawls only played a cameo role.[22]

That role was defined—as it was in earlier geographic work—by Rawls's famous "thought experiment" that set the foundation for his distributive, contractarian theory of justice. This experiment asked us to imagine ourselves as something like a deliberative parliament that is required, more or less from scratch, to distribute among ourselves the goods and offices (positions of authority) necessary for a good life. As we begin the task, we find we are shrouded by a "veil of ignorance" such that none of us knows our "place in society, [...] class position or class status, [...] fortune in the distribution of natural assets and abilities, [...] intelligence and strength [...]." Even more, we do not yet have "a conception of the good, the particulars of [a] rational plan of life, or even the special features of [our] psychology."[23] Our ignorance goes even deeper: we do not know how developed or underdeveloped our society is, what our positions amongst the generations are, or anything about the political and economic structures that may exist. Under such an assumption of ignorance, Rawls argued, it was possible to "use the notion of pure procedural justice as the basis of [the] theory" of justice.[24] From this "original position" with its veil of ignorance, Rawls derived what he called a fully rational, but also highly "intuitive"[25] distributive theory of justice. By this theory, egalitarian distribution was an iron-clad rule: in the original position and behind the veil of ignorance, people should share out goods equally. But there was one exception.

18 Harvey 1972; 2009.
19 Harvey 2009, p. 98.
20 Harvey 2009, Part Two, pp. 120–284.
21 Harvey 1982.
22 Harvey 1996, pp. 397–398.
23 Rawls 1999, p. 118.
24 Rawls 1999, p. 118.
25 Rawls 1999, p. 7.

Rawls called this exception the "difference principle" and it held that an *unequal* distribution was permissible only if it benefited the least well-off in society. That is to say, once the veil of ignorance was lifted and the realities of an unequal society exposed, then unequal distribution or even redistribution was permissible if, and only if, it benefited the least well-off.[26]

While some geographers, like David M. Smith,[27] were generally positive towards the thought experiment and considered the general rules of distribution it licensed to be valuable for developing spatialized theories of social justice, many were skeptical. Gordon Clark, for example, argued that Rawls's experiment, and thus his theory as a whole, relied on an unrealistic model of the individual. "To make [the original position] work", Clark averred, "Rawls requires a disembodied individual consciousness which is very experienced but, at the same time, fundamentally ignorant." Perhaps worse:

> the formation of the original position remains a mystery. Possible modes of formation serve only to question the integrity of the whole enterprise. For example, if the original position is formed by the "players," this implies the existence of a social as opposed to individual consciousness. Alternatively, if it is formed by the state, then the implication is that Rawls depends on a Hobbesian elite who manipulate the consciousness of others.[28]

To a degree, Clark is here echoing a point made a dozen years earlier by Harvey, who argued that "from Rawls's initial position it is possible to arrive [...] at a Marx [of the dictatorship of the proletariat ilk] or a Milton Friedman, but in no way can we arrive at [...] liberal or socialist solutions" to distributive inequalities.[29] For both Clark and Harvey, Rawls's original position arguments smacked of an impossible utopianism (or, for Harvey, a dystopianism), the very idealism of which disqualified it as a serious foundation for (materialist) geographical enquiry and theoretical development. Later geographical analysts—including landscape geographers (that is, including myself)—have also tended to fixate on Rawls's original position arguments, sometimes finding them valuable for staking out starting points for considering distributive and procedural justice, but mostly dismissing them for reasons akin to those above.[30]

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26 Rawls 1999, pp. 65–68.
27 Smith 1994.
28 Clark 1986, p. 152.
29 Harvey 2009, p. 109.
30 Barnett 2017; Mels & Mitchell 2013.

What is most interesting about this focus on the original position, however, is that it makes visible geographers' own "veil of ignorance", a veil that seems to have prevented us from seeing the wholeness of Rawls's theory, a theory that while idealist at its core, is also shot through with a strong dose of materialist reasoning that should have long been vital grist for our justice theorizing. It has taken me a long time to come to this conclusion. The prompt was being invited to take part in a large EU Horizon 2020 research project examining the role of justice in sustainable development in the Arctic.[31] My job was to lead a small interdisciplinary team of scholars charged with surveying the literatures in moral and political philosophy and to synthesize and translate this literature into a set of precepts for analyzing justice for social scientists across a range of disciplines who themselves have likely spent little time delving into justice literatures. We surveyed what we called the major "schools" of justice philosophy (liberalism, feminism, cosmopolitanism, various strains of radicalism, and so forth) as well as several "realms" of justice theorizing (environmental justice, climate justice, landscape justice, and more). I thus spent 2020–2021 reading and re-reading justice theory, almost none of it written by geographers, and discussing it with scholars trained in moral philosophy and ethics, sociological social theory and legal studies, as well as geography.

I learned to look at justice theory anew—to try to see past my own veil of ignorance—and what I saw was a quite different Rawls to the way he was depicted in geography and as I had learned to understand him. I saw a newly "materialist" Rawls, a Rawls for whom the concept of "basic structure" is as—or even more—important than his "original position" experiment. And what became even more clear was how, in Rawls, this basic structure was in so many ways equivalent to what, for Nye, is the infrastructure of collective existence: the landscape.

FROM BASIC STRUCTURE TO LANDSCAPE AND BACK AGAIN

As Rawls defined it, the basic structure of society was "the way in which major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions, I understand the political constitution and principal economic and social relations."[32] For Rawls, these major institutions included legal protections of basic liberty rights (for example, of thought and consciousness), "private property in the means of production" (I'll come back to

31 JUSTNORTH: Toward Just, Ethical and Sustainable Arctic Economies, Environments and Societies, Horizon 2020 Grant Agreement 869327. This sections condenses arguments in Mitchell 2024.

32 Rawls 1999, p. 6.

this), markets, and (added in a later revision), "the monogamous family".[33] These and similar institutions are a basic structure because "taken together as one scheme [...] [they] define men's rights and duties and influence their prospects, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start."[34]

The basic structure is thus something like the material prism through which Rawls's idealist "original position" derivation of egalitarian distribution is refracted. This is so because:

> the cumulative effect of social and economic legislation is to specify the basic structure. Moreover, the social system shapes the wants and aspirations that its citizens will come to have. It determines in part the sorts of persons they want to be as well as the sorts of persons they are. Thus an economic system is not only an institutional device for satisfying wants and needs but a way of creating and fashioning wants in the future. How men work together now to satisfy their present desires affects the desires they will have later on, the kinds of persons they will be. These matters are, of course, perfectly obvious and have always been recognized. They were stressed by economists as different as Marshall and Marx.[35]

Given this definition, it is curious that Rawls's discussion of the basic structure and its position in his theory of justice has received next to no attention from geographers, geographers who pride themselves on working out how and why it is so important to understand how "major institutions fit together in one system" *spatially*. One would think that the basic structure would have been a key component of Harvey's liberal formulations—concerned as they were with systems and structures of spatial distribution—to say nothing of his socialist formulations which were aimed squarely at the basic institutions of society and how they produce wants and aspirations (while also instantiating exploitation and oppression). But they do not.

Such a critical silence has not been the case in other fields, where Rawls's conceptualization of the basic structure has been subject to sustained critique and development. Some of the earliest and sharpest critiques came from feminists. Prominent among these was Rawls's own student Susan Moller Okin. In a still eye-opening critique of the position of women in western, liberal philosophy, Okin showed that the question

33 Rawls 1999, p. 6.
34 Rawls 1999, pp. 6–7.
35 Rawls 1999, p. 229.

philosophers asked about men were quite different from those asked about women. Thinking about men, philosophers from Plato through Rousseau and Kant to Rawls himself asked: "What are men like?" "What is man's potential?" But in thinking about women, the question they asked was nearly invariably "What is woman *for*?"[36] This frequently unacknowledged ontological shift in Western philosophy from "what are men like" to "what are women for" is consequential for philosophers of justice for two reasons. First, if, as liberal philosophy holds, a primary basis for a just society is the Kantian imperative that individuals must be treated as ends in themselves and never as means for others' profit or enjoyment, then right at its heart liberal Western philosophy violates its most cherished principle.[37] Second, in the Western liberal tradition, including especially the tradition of 20th-century justice philosophizing of which Rawls was a key exemplar (and within which Okin placed herself), what always appears to be about *individuals* in a polity (for example, people in Rawls's original position) is really about the *patriarchal family* in society. Women are always subordinated—actively—and made to exist insofar as they are *for* their husbands, fathers, and sons. The assumption of individuality is always violated.[38] Indeed, Rawls is inadvertently explicit about this in his original formulation: those in the original position are "heads of families", not "individuals" as such.

As Okin later showed, such patriarchal assumptions, which also defined libertarian and communitarian varieties of liberalism, were centrally important for how Rawls (and his followers and many of his critics) understood the basic structure. Western liberal philosophy assumed that the family was either "beyond justice"—simply not part of the basic structure and thus not worthy of justice theorizing—or was always-already just. There were exceptions, of course, perhaps most prominently J.S. Mill who declared the family to be a "school of despotism"[39] (while never really questioning the division of labor within it).[40] But this was a minority position, and, Okin argued, a just society would only be possible if it was rooted in just families (of whatever configuration), families—or households—in which a just division of labor, rather than an exploitative one obtained: "Until there is justice in the family, women will not be able to gain equality in politics, at work, or in any other sphere."[41] Taking gender seriously, Okin made clear, required a thorough reconceptualization of the subject ("who") and the object ("what") of justice and therefore a transformation of the *most basic* struc-

36 Okin 1980, p. 10.
37 What is true for gender is also true for race: Mills 2017.
38 Okin 1980, p. 202.
39 Mill 1869, p. 81.
40 Okin 1989, pp. 20–21.
41 Okin 1989, p. 4.

tures of society, like the family, a position to which she eventually recruited Rawls, at least partially. By the time he revised his *Theory*, Rawls had at least started including "the monogamous family" as part of the basic structure (and only a few years later had revised this again to incorporate "the family in some form").[42]

For some theorists, Rawls's only gradual acknowledgment of gender and the family as part of the basic structure (and at that in a rather idealized and unexamined form) was enough to disqualify the concept of the basic structure as the primary object of justice theorizing.[43] For Iris Marion Young, however, it was a primary reason why the basic structure needed to be subjected to much more thorough critical scrutiny. A full theory of justice had to take the basic structure seriously. "Theorizing justice", Young held, "should focus primarily on the basic structure, because the degree of justice or injustice in the basic structure conditions the way we should evaluate individual interactions or rules and distributions within particular institutions."[44] Noting that this position was central to Rawls's whole theory, Young also argued that it "stands in some tension with Rawls's emphasis on distributions—of rights and liberties, offices and positions, income and wealth, and so on."[45] In common with many Marxists,[46] Young held that a primary focus on distribution tended "to pay too little attention to the processes that produce distributions"—that is, the means and relations of production—as well as obscure the vitally important role in shaping justice played by "the social division of labor, structures of decision-making power, and processes that normalize the behaviors and attributes of persons."[47] For Young, an adequate theory of justice "will require a more developed account of what the basic structure includes and how structural processes produce injustices than Rawls's theory offers."[48]

One way to construct a "more developed account" of the basic structure would be to understand landscape's role in it, and it is rather surprising that such an understanding has heretofore not been attempted, by either landscape scholars or by philosophers of justice. Like Okin's incredulity at Rawls's failure to include the family as part of the basic structure, it is also fairly incredible that a fully worked out theory of justice could pay so little attention to the material substrate—the "infrastructure of collective existence"—upon which life is lived (and neither Rawls nor his advocates and critics have paid this any mind at all). And just as Young is incredulous before those

42 Rawls 1999, p. 6; 2001, p. 10; discussed further in Young 2006.
43 Though never explicitly stated, this was clearly the position of Nancy Fraser 1997.
44 Young 2006, p. 91.
45 Young 2006, p. 91.
46 Geras 1985; 1992; Harvey 2009 [1973]; 1996.
47 Young 2006, p. 91.
48 Young 2006, p. 92.

aspects of Rawls's theory which "assume people who are normal" in the sense of being "normal fully cooperating members of society over a complete life", without considering how that "usual sense" "presupposes contingent physical structures and social expectations that make some people appear less capable than they would appear within altered structures and expectations",[49] it remains remarkable that the built form of the land tends *not* to be a primary focus of justice theorizing within political philosophy. Young is the great exception, and as she makes plain, landscapes can produce "an oppressive normalization of particular life situations" reinforcing structural injustices in innumerable ways.[50]

At the same time, landscapes can open up opportunities for less exploitative or oppressive social relations. As Shelley Egoz emphasizes, landscape "comprises an underpinning component for ensuring the well-being and dignity of communities and individuals."[51] If early geographical work on the morphological landscape rested on an overly simple model in which a rather undifferentiated "culture" went to work on nature to produce a cultural landscape that reflected its needs, interests and sensibilities,[52] later work sought to more specifically determine the forces and relations of production that construct the ordinary landscape, in all their uneven and exploitative guises,[53] as well as to better understand the role that the built landscape plays in shaping and directing social life.[54]

I have argued that the built landscape in capitalism has to be understood as primarily (though never exclusively) produced through the relations of, and struggles over, commodity production.[55] The social relations of production of the landscape are based in the exploitative transformation of living labor (workers' labor power) into "dead labor" (the ossified form of the landscape). These relations of production are shaped at the site of landscape production itself (the roads, fields, housing estates, commercial districts, national parks ...), as well as in the place where the landscape components themselves are produced (the copper, iron, and rare-earth mines, the sawmills, power plants, concrete factories ...), wherever they may be found. But they are also shaped at the borders (and through border policy), and in the migrant camps, jails, housing markets, and parliaments, among so many places that have a role to play in setting wage and

49 Both quotations from Rawls 2005, p. 20 and quoted in Young 2006, p. 95.
50 Young 2006, p. 96.
51 Egoz 2011, p. 530.
52 Sauer 1963 [1925]; Meinig 1979.
53 Breitbach 2009; Mitchell, D. 1994; 1996.
54 Schein 1997; Fields 2017; Wall & Waterman 2018.
55 Mitchell 1996; 2003b; 2008; 2009.

work conditions under which labor is exploited, however relatively just or unjust that exploitation may be. This is a first way in which landscape is basic structure.

If landscape is dead labor, it is also the substrate upon which other production takes place. The *arrangement* of things on the land—factories, forests, farms, mines, refineries, houses, schools, stores, transportation networks, and so forth—is, as has long been discussed by geographers, a fundamental matter of justice. Such arrangement is the traditional focus of spatialized accounts of distributive justice. Here lies also a traditional focus of much environmental justice scholarship, scholarship concerned with environmental "goods" and "bads", which itself has come under increasing critical scrutiny because it focuses more on the effects (unequal distribution of environmental burdens and benefits) rather than causes (the production of pollutants of all manner; the reasons for their production; the relations of their production, etc.).[56] Such critique is echoed and advanced by feminist political theorists like Young, who argue for a keener focus on the "processes that produce distributions."[57] Young's critique "derives in the first place from Marx's criticism of liberal conceptions of justice. Claims of distributive fairness, in his opinion, frequently presuppose institutions of private property, wage labor, and credit, when these might come into question for a more critical conception of justice."[58] Indeed, Marx's *criticism* is exactly Rawls's *definition* of the basic structure, which, as we saw, presupposed "private property in the means of production", markets, and all the rest. By contrast, and following Young, a central matter of justice must be both the specific and the total relations of production that the extant landscape (and its constant restructuring) makes possible. This indicates a second way that landscape is basic structure: not only is it basic structure because it shapes how life can be lived (and wants can be formed), but it is basic structure because it shapes (and is shaped by) how the things that make life livable (and for some not- or less-livable) are themselves produced.

Yet, third, if these aspects of the landscape help make the case for it being a key component of the basic structure, if they turn our attention to how the "infrastructure of collective existence" is *produced*, they hardly exhaust what landscape is or does (much less what it means). Landscape is not only the home of production, of course, but also social reproduction, however attenuated the possibilities for that may be. As feminist geographers have long argued (and feminist political theorists have more recently begun to notice),[59] the crises and contradictions of social reproduction are both a site of

56 Barkan & Pulido 2017.
57 Young 2006, p. 91.
58 Young 2006, p. 91.
59 Katz 2001; 2004; Fraser 2016.

intense social struggle and a driving force of historical transformation. Social reproduction is inextricably entangled with the landscape, from workers seeking to remake landscapes in ways favorable to their own interests, within a political economy where "the maintenance and reproduction of the working class is, and ever must be, a necessary condition for the reproduction of capital",[60] to the way that capital's "orientation to unlimited accumulation tends to destabilize the very processes of social reproduction on which it relies",[61] thus creating not only "crises of care" but fundamental mismatches between the systems and geographical topologies of reproduction and the fundamental needs of capital.[62] "Geography", as Trevor Paglen has written, "sculpts the future."[63] The geographies—the landscapes—we inherit and reproduce (with whatever modifications) "place possibilities and constraints on what is yet to come" and thus to "change the future", including any future possibilities for a just social reproduction, "means changing the material spaces of the present."[64] These spaces of the present are gendered and raced, of course, just as the care work of social reproduction is gendered and raced, and thus the spaces that comprise the landscapes of social reproduction must necessarily be part of the basic structure: they shape and are shaped by the complex relations not only of production but also of social reproduction.

As material substrate, as infrastructure, as that which we "see when we go outside", to appropriate Peirce Lewis's definition of landscape,[65] the fact that landscape is basic structure seems obvious enough. But as nearly 50 years of landscape research has shown, the landscape is never only what we see, no matter how attentive and critical we may be. It is also what we do not or cannot see,[66] what we choose not to see or to obscure,[67] and how we go about seeing it.[68] There is a "landscape way of seeing" that is ineluctably ideological and an exercise of power.[69] As Tom Mels has argued, this turn to questions of power and structured forms of seeing in landscape studies opened up the possibility for a deeper engagement with landscape's "politics of representation": "Representation was indispensable from any understanding of: the maneuvers of dis-

60 Marx 1987, p. 537.
61 Fraser 2016, p. 100.
62 Katz 2001.
63 Paglen 2009, p. 208.
64 Paglen 2009, p. 208.
65 Lewis 1979, p. 11.
66 Williams 1973; Mitchell 2008.
67 Mitchell, W.J.T. 1994.
68 Berger 1972; Cosgrove & Daniels 1988.
69 Cosgrove 1985; Mitchell, W.J.T. 1994; Olwig 2019.

cursive power, hegemonic ways of seeing, identity formation and modernity, etc."[70] For Mels, since representation is a "core concept of justice", any thorough accounting of the landscape/justice nexus has to account for the "logics of representation" that landscape incorporates and by which they are known. "For both Fraser and Young", according to Mels, "modes of representation (interest, opinions, and lived experience) are linked to the sites (spaces) of representation", and are particularly valuable for that reason, but their "theorisations of the spatialities of justice leave in abeyance the concrete geographies and historical forms of oppression, misrecognition, cultural imperialism, or violence."[71] Not just landscape studies, but the landscape itself affords no such abeyance, since landscape actively incorporates these and is thus "part of the very condition of justice."[72] In Mels's theory, struggles over representation, in this case what he calls "political representation", become "entrenched in the material landscape", and thus recursively create the conditions of possibility to represent and be represented, since "representation, whether of oneself or of a group, demands space."[73]

Rawls's difference principle (which states that any inequalities must be to the advantage of the least advantaged) "insists that each person must benefit from permissible inequalities in the basic structure. This means that it must be reasonable for each relevant man defined by this structure, when he views it as a going concern, to prefer his prospects with the inequality to his prospects without it."[74] Note the language: human beings are *defined* by the basic structure; they structure their preferences in relation to it. They engage politically as a consequence of it. How, then, can a theory of representation *not* be vital to theorizing the object of justice, how can it not be vital to theorizing landscape as a central component of the object of justice—the basic structure—especially when one remembers, along with Okin, that substitution of "man" for "human being" in the work of philosophers like Rawls is never innocent.[75] Right from the start, in Rawls's theory, the basic structure is patriarchal, likely nationalistic (whatever his later concerns for a more cosmopolitan or internationalist justice), and *exclusionary*. Landscape is what we fight over, not in any original position, but in the here and now (just as we did there and then), and at no point is that "we" given. Who counts now, and how, necessarily gets entangled in the landscape, breathing life into its dead labor, *making* it the infrastructure of our collective existence. Or not.

70 Mels 2016, p. 417.
71 Mels 2016, p. 419.
72 Mels 2016, p. 419.
73 Mels 2016, p. 420, quoting Mitchell 2003c, p. 33.
74 Rawls 1999, p. 56.
75 Okin 1980.

INJUSTICE, MAXIMAL LANDSCAPE JUSTICE, AND THE VERY IDEA OF SOCIAL JUSTICE

I have written a bit about justice, and a lot about injustice, over my career, but the re-education the EU Horizon project induced has reoriented my thinking. Clive Barnett argued that geographers have never really developed a "positive" conception of injustice, arguing that we just assume that injustice is the absence of justice. This, he averred, would be like medical researchers assuming that ill-health is simply the absence of health, rather than something in and of itself (like a disease).[76] I think he was wrong; geographers have been extraordinarily good at diagnosing injustice—in the forms of powerlessness, exploitation, marginalization, imperialism and violence, to appropriate Young's five faces of oppression.[77] Our bookshelves and journals are full of examples.[78] But that is the less important point. The more important point is that with scant exceptions we have devoted very little energy to developing positive theories of *justice*. Barnett is a case in point: as valuable as his work on the "priority of injustice" is, he mostly assumed that justice was simply the absence of injustice. He walked into his own trap—and he is not alone (with the exception of a quite thin rendering of Young's theory of justice in my *Right to the City: Social Justice and the Fight for Public Space*, which also entailed a defense of rights as essential in any just society, for example, I have done little to theorize the *content* and *concept* of justice itself).[79]

Among those my colleagues in the Horizon project pointed my attention towards was the Frankfurt School heir-apparent (and former student of both Rawls and Jürgen Habermas), Rainer Forst, a theorist who thus far has attracted little attention in geography (and none in landscape studies).[80] This is not the place to go into his work (which is rich) in any depth,[81] but instead, apropos the forgoing discussions, it is enough to point to his main definition of justice. For Forst, *minimal* justice consists in a basic structure of justification, which is to say a set of institutional arrangements

76 Barnett 2018.

77 Young 1990.

78 To take just one example, this is precisely what at least 24 of the 27 articles in the special issue of the *Annals of the American Association of Geographers* on 'Social justice and the city' (Heynen *et al*. 2018)—the very issue in which Barnett published his worries—do: they diagnose the very ills of the society we live in and trace their root causes, even as they also devote considerable energy to understanding how they are contested by sundry social movements. With the partial exceptions of Barnett 2018 and Lake 2018, none positively theorizes justice.

79 Mitchell 2003c.

80 Barnett 2017 cites Forst, but mostly in passing, and without really dwelling on his theories in depth.

81 Much more is said in Mitchell & Ohlsson 2023.

that allow for procedural justice. Maximal justice—substantive justice—consists, on the other hand, in a fully justified basic structure, which is a basic structure—hence a landscape—that fully supports life *and can be shown to do so*.[82]

My re-reading of Rawls, my exposure to Okin, further studies of Young's work, my deeper dive into Marxist debates over the theoretical validity of concepts of justice in any historical-materialist project, and innumerable seminar discussions and conversations, have revealed the absence of a positive, geographical theory of justice. This is particularly a problem for any geographical studies seeking to ground research on *injustice* in the material realities of (past and present) existing societies. The concept of *basic structure* seems to be a valuable foundation for such a positive theory. And understanding landscape—the infrastructure of our collective existence, historically produced and struggled-over, always-already entangled with intense and complex politics of representation—as basic structure goes quite a long way to answering Henderson's challenge to develop "a concept of landscape that will assist the development of the very idea of social justice."

CONCLUSION

A fully justified basic structure—a landscape that fully supports life through substantive justice—is not the world we live in. We live in a world more resembling a series of overlapping anti-landscapes, at least for many, and certainly for many of those living in the neighborhoods most ravaged in the 1977 New York City blackout. Making landscapes, and anti-landscapes, we showed in *Revolting New York*, is a power-laden process, which David Nye must have intuited when he defined landscape as *man-modified* space. The very absence of women from this formulation reminds us of the question that is always asked about women in the mainstreams of philosophy: what are women *for*? One thing they might be *for*, whether they want to be or not, is making it possible for "human beings" to "inhabit" the very landscapes that men have made impossible for life. People live in anti-landscapes all the time (this is another thing *Revolting New York* showed). The anti-landscape is just another name for a fully unjust (and unjustified) basic structure, and its deadliness (and the struggle to live that it necessarily requires) makes plain that the landscape *must* be understood as one of *the* "major social institutions that distribute fundamental rights and duties and determine the division of advantages from social cooperation."[83] Landscape, as basic structure is, and must be, understood to be the very foundation of what justice is

82 Forst 2012; 2014; 2017.

83 Rawls 1999, p. 6.

and, to the degree we constantly rework these "material spaces of the present",[84] what justice in the future can possibly be.

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84 Paglen 2009, p. 208.

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PÄIVI KYMÄLÄINEN

Emotional and affectual legal landscapes

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

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

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

1 Rannila & Pyykkönen 2021.
2 Verhoeven 2014.

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

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

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

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

3 Rannila 2021.

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

LEGAL LANDSCAPES

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

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

4 Mitchell 2003, p. 790.
5 Olwig 2013.
6 Granö 1930; discussed by Paasi 1982.
7 Mitchell 2012.
8 Rose 1993; Blomley 2003; Wylie 2007.
9 Jones 1991; Karjalainen 1996.
10 Jones 1991.
11 Blomley 2004; Setten 2005; Olwig 2008; 2009; von Benda-Beckmann & von Benda-Beckmann 2014.
12 Peil & Jones 2005, unpaginated.
13 Delaney 1998.

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

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

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

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

14 Delaney 1998, p. 14.
15 Blomley 2004, pp. 53–54.
16 Olwig 2008; 2009.
17 Setten 2005, p. 6.
18 Olwig 2009.
19 von Benda-Beckmann & von Benda-Beckmann 2014.
20 Rannila & Repo 2018; Rannila 2019.
21 Howe 2008, pp. 435–437.
22 Mitchell 2012, p. 298.
23 Mitchell 2012, p. 298.
24 Mitchell 2012, p. 299.

EMOTIONS, OFFICIAL LAW AND LEGAL REASONING

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

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

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

25 Delaney 1998; 2013; Mitchell 2003; 2012; Blomley 2004; Jones 2007; Olwig 2008; 2009; 2013; Braverman 2009.
26 Bandes 2000; Conway & Stannard 2016.
27 Simonsen 2007; Simonsen & Koefoed 2020; Pile 2021.
28 Philippopoulos-Mihalopoulos 2015; 2019; Pavoni 2019.
29 Young 1990.
30 Bandes 2000, p. 1.
31 Conway & Stannard 2016; Stannard & Conway 2016.
32 Stannard & Conway 2016, p. 294.
33 Bandes 2000; Conway & Stannard 2016.

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

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

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

EVERYDAY LAW AND AFFECTS

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

34 Davies 2017.
35 Davies 2017, p. 30.
36 Benjamin 1978; Rannila 2019.
37 Rose 1993; Blomley 2003.
38 Rannila 2019.
39 Davies 2017, pp. 21–23.

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

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

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

40 Abrams 2016, p. 185.
41 Nomic settings are discussed by Delaney 2010.
42 Alvesalo-Kuusi & Kumpula 2021; Delaney & Rannila 2021a.
43 Davies 2017, p. 7.
44 Ewick & Silbey 1998, p. 17.
45 Valverde 2012; Delaney & Rannila 2021a.
46 Davies 2017.
47 Cloatre & Cowan 2019.
48 Delaney 1998; Bandes 2000; Abrams 2016; Spain & Ritchie 2016.
49 Discussed by Howe 2008, pp. 437–439.

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

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

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

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

50 Bandes 2000, p. 11.
51 Cloatre & Cowan 2019; on relational spaces, see Massey 1999; Delaney & Rannila 2021a; 2021b.
52 Simonsen & Koefoed 2020.
53 Anderson 2006; Simonsen 2007; Pile 2021.
54 Simonsen & Koefoed 2020, p. 45.
55 Pile 2021.
56 Simonsen & Koefoed 2020.
57 Thrift 2004; Philippopoulos-Mihalopoulos 2015.
58 Philippopoulos-Mihalopoulos 2015, p. 179.
59 Philippopoulos-Mihalopoulos 2015, p. 55.
60 Philippopoulos-Mihalopoulos 2019; Rickards & Jolley 2020; Simonsen & Koefoed 2020.
61 Simonsen & Koefoed 2020.
62 Philippopoulos-Mihalopoulos 2015; Brighenti & Pavoni 2019.

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

HIDDEN ASPECTS OF LANDSCAPE

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

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

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

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

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

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

64 Rannila 2021.

65 Blomley 2023.

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

CONCLUSIONS

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

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

66 Pile 2021.
67 Critchley 2012.
68 Epting 2023.
69 Critchley 2012, p. 94.
70 Epting 2023.

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TIINA PEIL

Poetics of place

A Glissantian take on revisited Paldiski

In my post-doctoral work within the frame of the original Landscape, Law and Justice project, my objective was to recover, or at least rediscover, a coherent past as manifested in the landscape and to find the symbolic in the landscape.[1] Exploring a peninsula in which landscape was simultaneously familiar (coastal) and strange (highly militarized), my aim was to discover how the town of Paldiski with its environs fitted into ideas of Estonianness and to tentatively question such claims. The objective of my revisit to Paldiski now is to examine the choices and connections made throughout history, discuss the "facts" both highlighted and hidden in its past and connect new ideas with the old. I have focused on two questions: Can one place be destined to fail (in everything), including in being representative of something, while at the same time having considerable symbolic power in many histories? What kind of ramifications can failure have for landscape and heritage?

In much of my previous work, I have strongly felt the need for explaining the context and providing the empirical data, hence my writing has been heavy with footnotes and figures. This time I have made a conscious choice of sketching the background in broad strokes only, except in a few cases where more detail is presented to support an alternative interpretation. Generally, my approach aims at leaving space for a more general discussion of an edgeland determined both mentally (academically and theoretically) and physically (the meeting of sea and land, rural and urban, foreign and own, universal and local). The processes of adaptation, persistence and disruption in legitimizing the past in any present, as well as both the individual and the communal dimensions of an edgeland, are here scrutinized with the help of the place poetics and

1 Peil 2005; 2006; Peil & Sooväli 2005.

vocabulary of Martinican poet and philosopher Édouard Glissant (1928–2011). He is acknowledged as one of the most prominent thinkers of the Caribbean; his work is widely adopted in postcolonial research, but is generally unknown to geographers.[2] Yet, his ideas about landscape, roots and connections resonate with the cultural and phenomenological turn in geography of the 1970s and 1980s, as well as with the geopoetics of today.[3] Landscapes have been examined as being in a state of becoming. As such, the landscape includes a limitless number of pasts to be discovered through material traces left in them, as well as the stories told. The metaphor of the palimpsest, combined with Glissant's poetics, encourages us to embrace the processes of change in the landscape and its interpretations.[4] An image of a place thus emerges that can be used in very different contexts to support arguments far-removed from the physical setting of their creation. The poetics may also be used to skim failure of intentions or in doing justice to the place and its people.

The edge, in this case that between the sea and land, imagined and physical, can be examined through the ways of organizing such space and commemorating (creating memorials for) certain events while ignoring others. Legitimacy in the landscape and in presenting the landscape stretches in this perspective to questions of what options may be available for ownership and conservation and what compels taking action to erect or reject monuments. In addition, landscapes (physical and imagined) are increasingly (re)created in cyberspace, presented by writers, artists and cartographers, and competing and contesting for legitimacy and representation. After briefly discussing Glissant's poetics of landscape, I illustrate the claims made to legitimize the creation of landscapes by two cases—first, the imaginary Swedish harbour and, second, various memorials erected and erased on the Pakri peninsula, Estonia. The peninsula also forms an edgeland, which is often interpreted as a border warding off the foreign and the strange, a no-man's-land better not accessed. Nevertheless, it could also be seen as a meeting point. Edward S. Casey talks about "the edge of hospitality" as a liminal phenomenon. He describes edges as a matter of thresholds in human social-

2 For Glissant's work and interpretations on it, see, for instance, the Library of Glissant Studies (n.d.). I was introduced to his thinking through the project 'A New Region of the World? Towards a Poetics of Situatedness' initiated by Charlotte Bydler (Södertörn University, Sweden) and funded by the Foundation for the Baltic and Eastern European Studies (Östersjöstiftelsen n.d.; Peil & Wiedorn 2021).

3 Meinig 1979; Cosgrove 1984; Cosgrove & Jackson 1987; Cosgrove & Daniels 1988; Cresswell 2015; 2019; Edensor 2020; 2022; Magrane *et al*. 2020.

4 Glissant 1989; 1997. The discussion is based on and the quotes are taken from the English translations of his work and excellent commentaries by his translators, especially Betsy Wing and Michael Dash, as well as on my correspondence with Michael Wiedorn (1977–2022), thanks to whom I became fascinated by Glissant's play with words and paradox.

ity over and through which significant exchanges and interchanges, transmissions and trespasses take place.[5]

Being on edge or inhabiting an edge can thus be both physically and mentally destabilizing. Abundant possibilities create new connections but also sever existing ones, which contribute to an environment in persistent change and adaptation, as well as to the existence of parallel stories and abundant physical remains. Hence attempting to find an anchor in the persisting elements of its landscape, or enforcing the legal system to support, for instance, conservation or ownership, seem only reasonable. The anchor, however, may take the form of persistent fabulation. The specific case may be seen as located between the Old and the New World and has experienced a colonial project of its own. For Glissant, geographic terms did not indicate places but projects (processes), hence for him these were metaphorical places. In this spirit, after briefly introducing the concepts and arguments for applying them, I argue for the universal, instead of the specific, in which a perspective from afar can provide a fresh understanding of the local around the Baltic.

GLISSANT'S POETICS

Glissant, who disliked precise definitions, argued for a poetics of place that would not presuppose an immediate or harmonious world, either physical or mental, but that would open up for new connections, or for "Relation". He unfailingly rendered the latter with a capital "R" in his writing to underscore its import as the cornerstone of his thought.[6] His play with words extends to the idea that everything is connected, an archipelago of understandings that are as distinct as they are interconnected.[7] Relation and poetics (in general or in the landscape in particular) do not need to be consciously acknowledged because culture for Glissant is an unconscious creation, a process happening all over the world, what Glissant refers to as a "composite culture".[8] It is a process he called creolization, which he saw as not limited to linguistics but as adaptation to the physical and social conditions connected to the dislocation of people. Transcending boundaries, this process brings people together and replaces separatism with relationality, growing on plurality, instead of springing from a singular root. Creolization is not confined to the Caribbean in Glissant's eyes; it is the composite, non-linear and unpredictable culture generated by lived experience that evokes an aesthetic expressed in land poetics. Carine Mardorossian, for instance, sug-

5 Casey 2011, p. 42.
6 Peil & Wiedorn 2021.
7 Wiedorn 2018.
8 Glissant 1999, p. 114.

gested that Glissant's "poetics of landscape" can function as an alternative creolized environmentalism[9] and may thus be doubly relevant and actual in landscape studies, especially when discussing more-than-human aspects in landscape. She argues that creolization in the ecological sense can result in degradation of the habitat and alienation (of humans from the land), thus becoming a threat to the landscape and the lived environment. Mixing can end in chaos.

In Glissant's writings, times and spaces are superimposed on each other. His approach resonates with the idea of studying landscape as a palimpsest that was seen to provide a possibility for erasure and overwriting but also for the co-existence of several different scripts.[10] The latter implies not just different historical eras but several historical and contemporary actors existing in parallel. In Glissant's first novel, *La Lézarde*,[11] landscape functions fairly conventionally as an allegory for history, according to Mardorossian.[12] Later, the landscape stops being merely decorative or supportive and emerges in his stories as a full character that Glissant described with the help of the most insignificant to the glaringly obvious, such as the physical landmarks, legal documents and artistic images. In his later work, the individual, the community and the land became inextricable in the process of creating history. In *Poétique de la Relation*, Glissant also discussed legitimacy, which he saw through filiation in relation to land but also to violence.[13] He stated that a claim to legitimacy allowed a community to claim its entitlement to land(scape) and settlement. Instead, by addressing notions of wandering, errantry and rootlessness, Glissant theorized about identity by pushing against fixed and unchanging notions of being. He advocated nomadism and recommended errantry as a way of life. Landscape for Glissant was often a land of wanderers (*terre de passage*), a zone in which no one had permanence or roots. This is a very different approach to that of finding legitimacy in land law and proprietorial rights. Hence, his ideas provide an angle for examining a landscape where no people in history have had a chance to settle for longer than a few generations, but rather have been chased away by acts of violence that have also erased the physical traces of their existence.

Glissant saw a history of layers where tensions prevailed between the past and the future, between the existing and what was to be. In scoffing at the traditional linear, one-dimensional view of history and geography's spatial organizing powers, history in his writing is registered in a space whose properties it takes on. In this process, the land is so transformed that it no longer allows for the exploration of past associations

9 Mardorossian 2013.
10 Schein 1997, p. 662.
11 Glissant 1958.
12 Mardorossian 2013, p. 983.
13 Glissant 1997, p. 143.

or encourages fabrication of them. Its history becomes one of missed opportunities, downright failures, or invention. Nevertheless, Glissant described the future as one of abundant possibilities amidst a landscape bearing relational moments. The ways in which people adapt to change become the beginnings of a culture. Attention to transcultural exchanges both inside and across national, linguistic, social and physical boundaries can challenge the conventions through which landscape studies as a discipline has framed its subject. Glissant's approach may seem chaotic and arbitrary, but by carefully picking the landmarks—real and imagined—it allows a fresh approach to be taken to the landscape and its inhabitants—both human and others—along with their connections in time and space.

THE HARBOUR

The Pakri peninsula and the town of Paldiski have a complicated and myth-bound history, in a sense, a colonial past, which fits well with Glissant's Caribbean landscape. Paldiski is a town of displacement and newcomers who have arrived in waves throughout its three-hundred-year existence. It was originally built by prisoners and soldiers. The civilian population has had to share the space with unpredictable neighbours; then to be removed due to the assumed strategic significance of the town. This pattern of extensive colonization, military build-up and then desertion has been repeated regularly. The town has therefore often been described as a place of lost opportunities or, at least, one of untapped potential.

Specific landmarks connect the past with the present and hoped-for future accomplishments. Central in the history of the town is its harbour—supposedly, the town proclaims, an ideal location for one, even though the land and the sea have no real connection with one another. The up-to-28-metre-high Baltic Klint around the peninsula effectively limits easy access to the seashore. Nevertheless, the attempts made with varying energy and results to establish a port define the town's history, which is fragmented and full of failure. Hence turning to the landscape to find permanence and join people's lives, not only to each other but also to the environment, seems logical. The sea and land, history and geography, real and imagined are, nevertheless, in Relation in a Glissantian sense. The mix on the Pakri peninsula is tangled enough without including the virtual, although it should be mentioned that Google provides an easy tour with views of the town and the fort.[14]

14 Co-ordinates 59°20'50.4"N 24°03'34.1"E, https://www.google.com/maps/place/Muula+mäed, accessed 23 March 2023.

A harbour is simultaneously symbolic and real in many ways. In principle, it permits new connections and possibilities, but the area is often highly regulated when it functions as part of a state border for both humans and goods. A curious phenomenon is the so-called free harbour—ships can come and go, transporting cargo in and out by sea, but the movement inland is strictly controlled both for goods and people. The limits of an edge become more tangible, since the sea is cut off from the lives of the locals as access to the beach is restricted; for instance, no swimming or coastal fishing is allowed. The locals face a dilemma—they are dependent on work in the harbour for their livelihood, but a port changes their life environment in a multitude of ways from the practical to the understanding of their home environment. An attempt to establish such a port was made in Paldiski in the 1920s, when a large area of the seashore was fenced off. Although the legal framework was completed, the free port never took off as a commercial hub. The fence was taken down and sold to the locals as building material. Fences and sheds were built using this material in the town and its environs, scattering the remains of a physical edge over a large area.

The first attempt at establishing a fortified military port on the peninsula was made by Russian tsar Peter I (1672–1725, r. 1682–1725) in the 1720s, which failed. Empress Catherine II (1729–1796, r. 1762–1796) named the port (and town) Port Baltique—the Baltic Port. The five-cornered fort (*Figure 1*)[15] was completed in 1768, only to be abandoned soon after. Land on the top of the hill on which the fort stood was given to the town to be used as pasture in 1869; reclaimed for the military in 1911 and abandoned again in the 1920s. The fort has always been a curiosity, never successfully used for its intended purpose. Its history is full of extraordinary events, from the Swedish "conquest" on 18 March 1790 to the British aborted attack on the town during the Crimean War in 1854 to the German bombing of the town on 29 October 1916. All these attacks made little sense from a strategic point of view and actually weakened the attackers' positions in the respective wars. The idea of the port's military significance has thus had more impact in history than its physical existence. The final military attack was in November 1944 when the Germans burnt down the town and blew up the petrol store in the fort.

The town was rebuilt as a Soviet-style military base and step-by-step was closed to the civilian population, culminating in 1968 with the total closure of the peninsula that lasted well into the 1990s. Today Paldiski is part of a large rural municipality in north-west Estonia. These events have enforced the image of an unknown land not really fit for habitation. Although an edgeland, Paldiski's potential to welcome and make

15 The National Archives of Estonia (EAA, ERA): EAA.854.4.49 Профиль местности заштатнаго города Балтийский-Порт, 1872.

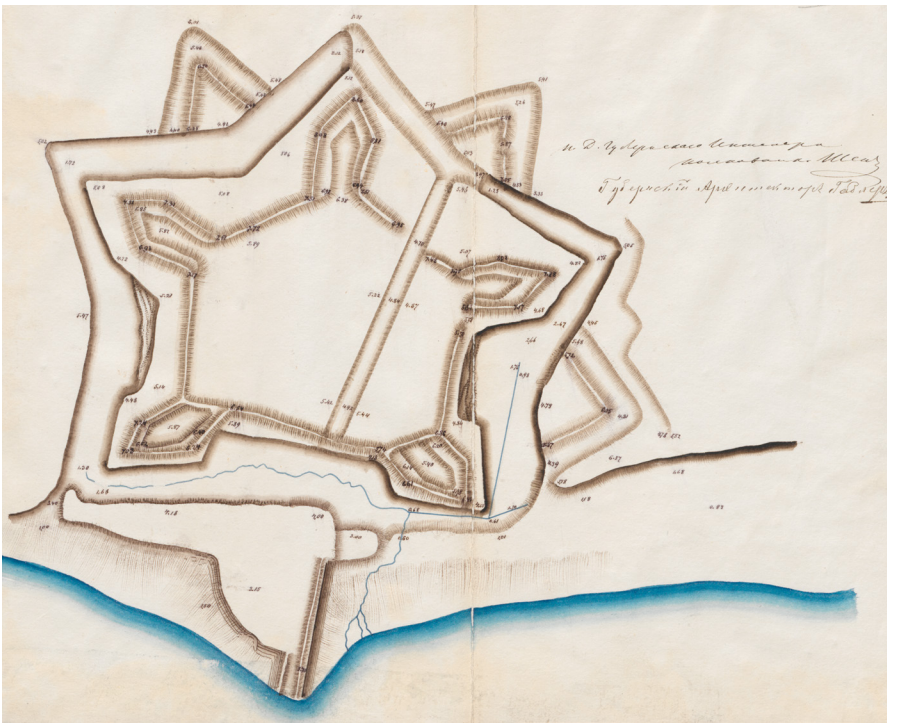

Figure 1. Map (1872) of the Muula Hills, also known as Peter's Fort, on the Pakri peninsula. Source: Natonal Archives of Estonia.

new connections possible has never been unlocked. Instead, an image of a closed, dark and failed place has strengthened—yet it does not lack poetics, if only the poetics of an imagined heroic past.

The impact of the ports (North Port, located in the area of the historic harbour, and South Port, on the location of the Soviet submarine base) on the landscape and local life is considerable. Again, large areas have been fenced off and covered in concrete. Reserved for storage of goods in transit, these areas mostly stand empty today due to recent global and regional crises and sanctions against the Russian Federation. However, access to the sea, as well as including these areas in any other local activity, such as spontaneous attempts at gardening, have been effectively cut off. Here the right to the (cultivation of) land plays a role. Legal ownership gives the privilege of leaving the land unused rather than allowing (just) local gain from it. Ironically, the only route to the seashore on the peninsula's west coast passes through what remains of the 18th-century fort; thus, the locals have claimed part of the military past as their own for

their everyday use. The military port has failed, although the commercial ports keep up the struggle for their existence, but as an archipelagic global enterprise with little local social or cultural impact. The persistence of the idea of an ideal harbour place despite all the failed attempts needs closer scrutiny.

'ALREADY THE SWEDES'

Common histories of Paldiski and its landmarks refer to possible Swedish predecessors.[16] Justification for the choice of location for the harbour, its potential so obvious that "already the Swedes" had supposedly claimed it, and reasons for its failure have been sought in the past; that is, in Glissant's terms, in history registered in space. This reference to the Swedes is taken to summarize the statement that all of the conquerors for the last 800 years have seen the strategic significance of the location. The belief is so deeply rooted and seldom questioned that, as I have argued elsewhere, it has limited the options for the peninsula's future.[17] I use the examples of the Paldiski harbour, first, to examine the evidence from the final years of the Swedish Empire as a Baltic superpower in the 17th century and, second, to dig into the origins of the statement concerning Swedish landmarks on the peninsula.

The Swedish maps of the environs of Paldiski

The Swedish kingdom launched an extensive land survey of its Baltic provinces in the 1680s in an attempt to reorganize taxation. These maps were made for the Swedish state with no reason to omit any landmarks. Although the surveyors were not the most experienced, what they managed to complete was rich in detail. The Pakri peninsula was surveyed in 1697 and several versions of these maps have survived.[18] They depict a rural periphery with about two dozen farms that belonged to estates a considerable distance away. No naval landmarks or fortifications were mapped.

16 Good examples are webpages in various languages on Paldiski and its landmarks, but the fabulations extend to professional and encyclopaedic sources (for instance, exhibitions at the Estonian Maritime Museum and the National Heritage Board; Vedru 2015, p. 3); discussed in Peil forthcoming.

17 Peil 2021.

18 EAA.1.2.C-II-7 Axell Holm (1697) En Del Packers Byar Under godzet Kegel ähro i S.Matthias sochen J.Harrien belegne & EAA.1.2.C-II-31 Axell Holm (1697) Packers Byar höra Under Godzet Kegel; ähro i S.Matthias Sochen belegene i Harrien.

These maps are not the only documents attesting to Swedish ignorance of the peninsula's significance. Half-a-century previous to this mapping, the Swedish navigator and naval cartographer Johan Månsson (d. 1659) had described, only in passing, the bay between the peninsula and an offshore island as a possible anchoring site.[19] He named the peninsula *Stoore Rågön* (Great Rye Island), and the eastern and larger of the two islands (which lie together to the west of the peninsula), *Lilla Rågön* (Little Rye Island; Väike-Pakri/Little Pakri Island today). The latter diminutive name stuck and thus Månsson may be a possible source for the confusion concerning the island names (today the slightly smaller, western island is known as Suur-Pakri, Great Pakri Island). Swedish settlers populated the islands and maintained their language, customs and a Nordic understanding of landscape as a polity[20] representing farmers to manage island matters well into the 20th century. There is no evidence, however, that the Swedes saw the location as a place of strategic significance, or that "the ideal harbour" played any role as a foothold in their colonization of the eastern provinces. Only in the early 1700s, when the territory was slipping away from their empire, was the first serious attempt to map the bay made (*Figure 2*).[21] No harbour or lighthouse was marked on this map either. Some hobby historians have speculated that the Swedes embarked on a construction in the 1710s, but this is considered highly unlikely due to the wide extent of the Great Northern War (1700–1721) from the Baltic to the Black Sea and the peninsula's unfavourable geographical location.[22] In comparison, Russian knowledge of the Baltic Sea relied heavily on the Swedish maps, to the extent of referring to it as "the eastern sea" although the sea is located to the west of Russia (in Estonian today the Baltic Sea is known as Läänemeri, i.e., "western sea").[23]

19 Månsson 1677, p. 34: "[...] ther ifrån i Wästsödwäst ligger en Udd som kallas lilla Rågön/ ther emellan är en stoor Wyk/ ther kan man sättia när man wil Wäster åth [...]."

20 Landscape as polity is discussed in Jones & Olwig 2008.

21 Swedish Military Archives (KrA) Sjökarteverket Äldre hydrografiska kartor. Rysslandskust; KrA: G1 017, Hÿdrographisk Charta öfwer Lilla och Stoora Råger-Wÿk med dess rätta Situation, Sampt bottnens qvalitet och diupleek; efter undfängne Ordres med flÿt affatat och beskrefwen uti Julii Månadh Anno 1705. af Carl Eldbergh.

22 For instance, Treikelder, Ivar (Manuscript 2014), Rootsi militaarehitustest Pakri poolsaarel 17/18, sajandil vanaaegsete maa- ja merekaartide valguses; for the Swedish historiography, see Munthe 1908.

23 Map sheet N7, National Library of Russia (NLR online exhibitions n.d.).

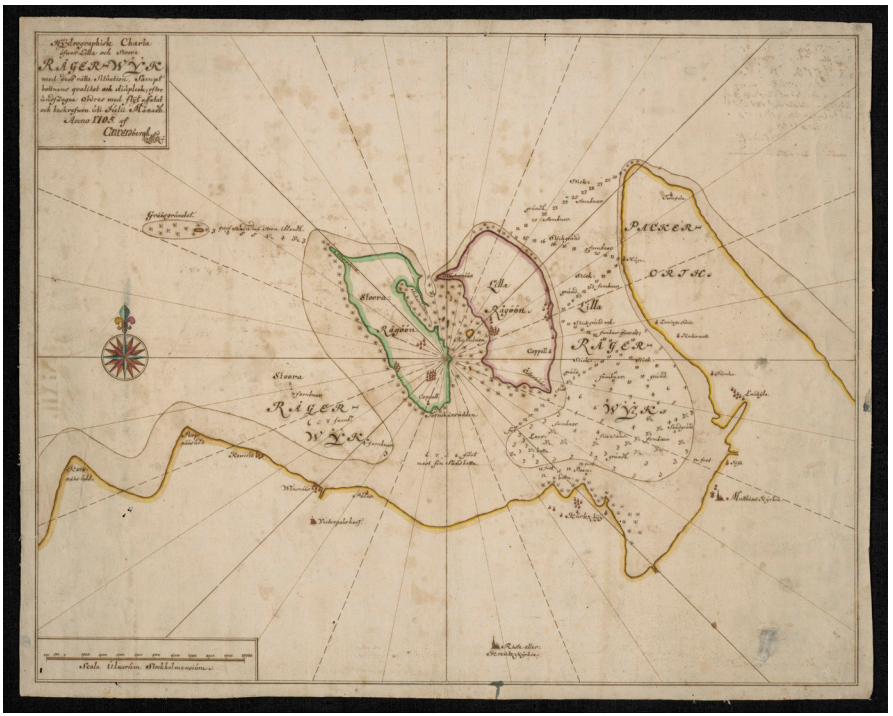

Figure 2. Carl Eldbergh's map (1705) of the Pakri bay (Packerort). Source: Swedish Military Archives.

The Swedish harbour in history writing

The idea of a harbour established by the Swedish kingdom on the Pakri peninsula can be ascribed to Baltic–German chronicles of the second half of the 18th century, generally well known for their precision and academic ambitions. August Wilhelm Hupel (1737–1819) was the first to mention a Swedish harbour on the peninsula, in 1774, but he relied on data collected from others.[24] Ludwig August Mellin (1754–1835), who leant heavily on Hupel as a source, added "a former Swedish harbour" to his map sheet of the province in his atlas of 1798.[25] The authority of these two has been such that later scholars have speculated freely about the reasons why the Swedish sources do not mention the port instead of questioning these chronicles. Other authors from the period do not mention a harbour north of the town at all or point to a differ-

24 Hupel 1774, p. 347.
25 Mellin 1798; for the map, see, for instance, Library of Congress n.d.

ent location. For instance, in 1785 the provincial surveyor August Friedrich Hauff (*c.* 1757–1806), who was based in Paldiski, located a "former Swedish harbour" south of the town where a landing site of the Pakri islanders had been,[26] and in 1802 Johann Christian Petri (1762–1851) mentions a Swedish harbour in general terms only.[27]

Parallel with the scholarly writing and mapping, folklore picked up the theme of the Swedish harbour. Placing more recent events further back in time is relatively common in folk stories. Thus Peter I's failure of the 1720s turned into a Swedish one. These stories were recorded in the 19th century and, in their turn, used to support the "fact" of the existence of a Swedish harbour. Failure to establish a flourishing port was eased by the failure of others. The power of the narrative was such that the military harbour's existence was widely believed in Europe and explains the historical attacks on the town. The physical remains of Peter's and Catherine's breakwater ironically constituted a hazard for the commercial fleet as numerous ships were stranded on it in the 19th century. The harbour had become a memorial to failure.

MEMORIALS AND MEMORIES

Estonians demonstrated little interest in either landmark—neither the port nor the fort—in the early days of the independent state of Estonia. Although also believing in the idea of the ideal harbour, they regarded what remained of the breakwater as a source of building material. In 1922, in an answer to vague protests about the destruction of heritage, "E.K." explained the ongoing quarrying in and around the fort: "Every gravel heap does not need to be left untouched only because it was shovelled up a few hundred years ago." He concluded: "Let's not honour heaps of gravel just because they are old, let's use them as is best for the town. This is the opinion of the councillors of Paldiski."[28]

A decade later, the "heap" had become slightly more appreciated, since it started to attract wider interest. A few times every summer, a special train brought visitors to the town, who picnicked in the grounds of the fort while the islanders of Pakri performed folk dances wearing national costumes to add exotic local colour. In 1934, what remained of the fort was given legal status as a heritage site; the act was repeated in

26 EAA.2072.2.22 Hauff, Friedrich August 1785, Geometrische Plan von der Gegend um der KreisStadt BaltisPort.

27 Petri 1802, p. 277.

28 E.K. 1922 [my translation]; E.K. was probably Eduard Kansmann, head of the local school, member of the town council and at the time the only Estonian born in the town with a university degree, hence a person with high authority; the term he used for councillor translates word-for-word as town father.

1974 and again in 1996.[29] This did not save it from huge alterations made during World War II, extensive quarrying north of the fort in the Soviet years and extension to the historic harbour (now Paldiski North Port) in the 21st century. Today, the top of the hill is used as a leisure area of sorts with a disc golf course and campfire sites. The official management plan has remained on paper only, while the spontaneous use continues.[30]

Officially, in addition to Peter's Fort, the Pakri coastal cliff (Baltic Klint) with its nesting black guillemots is protected as natural heritage. Similarly, it has little symbolic value to the current inhabitants. They walk, play and camp in the area, but the protected status is not of particular significance. Hence the legal status of these areas is not currently experienced as unjust and no conflict is evident in the landscape.

I now turn briefly to other landmarks of various pasts that, although they have physical presence, are hard to trace and connect to any history. The aim is not a comprehensive coverage of their pasts, presents, or futures, but to illustrate the aspects in history that for Glissant lie "dormant in the landscape".[31] Around the peninsula are scattered memorials to persons and events as embodiment of this history. Some have been erected with the aim of commemoration in mind, but in different ideological contexts; others—such as the submarine on dry land, had it survived, or the chimney of the Soviet training centre that has survived—have gained a symbolic significance for some as markers of home but they mark loss, destruction and occupation for others and are thus more problematic.

In contemporary political controversies over the establishment and management of memorials, they tend to be deemed either valuable or worthless, good or bad. Soviet monuments that have remained in the landscape for more than 30 years of Estonian re-independence have now, as a reaction to the war in Ukraine, evoked an urgent need to remove them, as decreed by the Government in Estonia in 2022.[32] Their artistic value has always been questionable. Now being dragged out physically from ruins and dense vegetation and into the debates, they have gained a significance they never had in the past when they were mostly ignored. Markers of graves are especially sensitive. In some cases, where false graves are marked, the removal of the markers is relatively easy. In other cases, human remains have to be moved as well, which is more complicated. But in some cases, a new meaning is attached, as with the monument in the Paldiski Orthodox cemetery to the Soviet submarine crew who perished in a training accident due

29 National Cultural Heritage Register: object N2760 Bastions, breakwater and moats of the fort in Paldiski (Kultuurimälestiste register 2009).

30 ERA.5025.2.11075 Paldiski Peetri kindluse ja sellega piirnevate alade detailplaneering. P–15818, 2010, Paldiski linnavalitsus, koostas Erki Ruben, 2010.

31 Ormerod & Glissant 1974, p. 364.

32 Republic of Estonia, Government Office 2022.

to negligence in 1956. This has become a place to celebrate the victory in World War II and to honour its heroes; the grave is covered in red carnations every 9 May. This memorial day seems to need a physical anchor, but causes the greatest tensions today not only locally, but more widely in Estonia. The Russian-speaking population celebrate the heroic liberation, while Estonians see the war through the loss of independence and the start of the forced ideology of communism. The most visible landmarks from the Soviet era are either envisioned as a tool to preserve a former way of life or seen as a hindrance to achieving something new. Locals often interpret monuments and attempts at conservation or removal as an imposition by outsiders.

Other monuments scattered around the peninsula mark the crimes of totalitarian regimes: the holocaust memorial, the memorial to the deported Ingrians and the memorial to the people deported (through Paldiski to Siberia) from the Estonian islands. There are also statues of an Estonian sculptor, Amandus Adamson, who was born on a farm not far from the town, had a summer residence (which is preserved as a museum) and lived in the town in the early 20th century, and of a Bashkir rebel, Salawat Yulajew, who was deported to here in the 1770s by Catherine II. The Lutheran and Orthodox churches, a couple of partly preserved storehouses in the harbour area, the lighthouse and a few glacial erratics complete the list of protected landmarks that have not (yet) any meaning attached to them other than that they were intended to depict. The Pakri lighthouse has become the main tourist destination on the peninsula and thus has the potential of becoming its unifying landmark around which the plural histories may be woven.[33] Ironically, the edge between the sea and land literally dictates the outcome, since the old lighthouse (from the 1760s) is in the process of tumbling down the cliffside.[34]

A discussion is needed about land use and ownership for a clearer understanding of what memorials bring to their communities. Their visibility and significance is dependent on our ability and willingness to find, interpret, understand and forget, that is, to see plurality and find vitality in the landscape through its poetics. Glissant argued that the past is irrelevant in the Caribbean yet very much present. On the Pakri peninsula, the past is relevant, but the landscapes are fragmented to a degree that the past with its landmarks is ignored. Current inhabitants are not overly concerned about the historic layers in the landscape and several parallel versions of the past exist. Hence reference to the palimpsest is highly relevant with the landscape offering various sites, some of which already have anchored memories, while others have been officially ac-

33 Peil forthcoming.

34 For the views, see the lighthouse webpage at www.pakrituletorn.ee (accessed 14 November 2023).

knowledged as heritage; there are also other traces that may be picked up and connected in the future. Different pasts are highlighted at different times. The geographical setting has forced people to think about the Pakri peninsula and its landmarks in certain ways, which might have limited the future options for people settling here. History can, however, make them aware of possibilities and unexpected connections in time and space. Monuments and memorials are significant and may embody or anchor memories in the landscape, often regulated both by law and custom. Glissant encourages us to look past established customs and rights, which provides for plurality but also for fabulation and anchoring fairly common traits (in heritage) to landmarks at hand.

CONCLUSIONS

Paldiski has failed in everything it had been planned to be. Nevertheless, Paldiski is a home, a curiosity, a mythical harbour, a composite. It has persistence in image creation. In Glissant's vocabulary, Paldiski is an imaginary that refers to a broader human faculty allowing us to conceive of our world. The imaginative force of words is undeniably great and may extend to actually shaping landscapes. Care with words needs to course through disciplinary practices. This double aspect of describing and creating with words—the poetics of place—has informed my discussion. The landscape may be seen as a metaphor for cultural history, but it does have a physical presence and is regulated by law and custom. The land reborn creates new possibilities but erases others. Memorials are erected and removed, a process both specific and universal.

When change is experienced as a series of shocks, it seems necessary for survival to put together the fragmented pieces and find the persisting themes. Landownership may be one legitimate way of being able to define one's future and strengthen connections with the land. It is counteracted by the openness of the sea, the archipelagic outreach across diverse (fluid) identities. The place poetics in Paldiski today is built on Estonian and Swedish connections but cannot deny the assimilation of German and Russian ones. Arguments like "already the Swedes" provide permanence within frequent disruption and failure. The creative imagination has a special role to play in covering a real discontinuity beneath the apparent continuity of history. History may be reborn through the everchanging landscape and its people, but may also persist through the stories in the mix of different cultures. Personal experience and interpretation in connection to the environment is highlighted when Glissant states "my landscape changes in me; it is probable that it changes with me."[35] The sea and the land, the landscape

35 Glissant 1997, p. 145.

of the edge, is ever-changing, therefore so are the individuals living among it—people and the environment are changed by each other both metaphorically and literally.

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TOMAS GERMUNDSSON

Coastal dilemmas—landscape, planning and rising sea level in southernmost Sweden

In a judgement delivered on 17 June 2022, the Land and Environment Court of Appeal (Mark- och miljööverdomstolen vid Svea hovrätt) in Sweden judged that the municipality of Vellinge in southernmost Sweden is allowed to build protective dikes against rising sea level and extreme water levels that the municipality had planned for over two decades.[1] The dikes will be built around the towns of Skanör, Falsterbo, Höllviken and Ljunghusen on the flat Falsterbo peninsula that juts out into the Öresund a few miles south of Malmö (*Figures 1* and *2*). The verdict was preceded by decades of preparation in the form of physical planning paired with political and legal processes. The decision was greeted in different ways by the local population. While some welcomed the construction of protective dikes to preserve the current landscape and buildings in their hometown, others protested because they believe that the dikes would deteriorate the quality of the landscape in which they live. The dikes would obscure the view of the sea, and change and deface the character of the beach.[2] *Figure 3* shows a life-size model of the dike, designed to inform the public about how the coastal defence will be designed.

This depiction of the Falsterbo situation reflects two major issues concerning the present built-up coastal landscape. The first is that much of the modern coastal settlement was built on the premise that the coastline is a fixed line between land and sea. The second is that finding this to be false has led to serious disputes over the consequences.

1 Mark- och miljööverdomstolen 2022.

2 Mark- och miljööverdomstolen 2022, p. 56; Sehlin 2023.

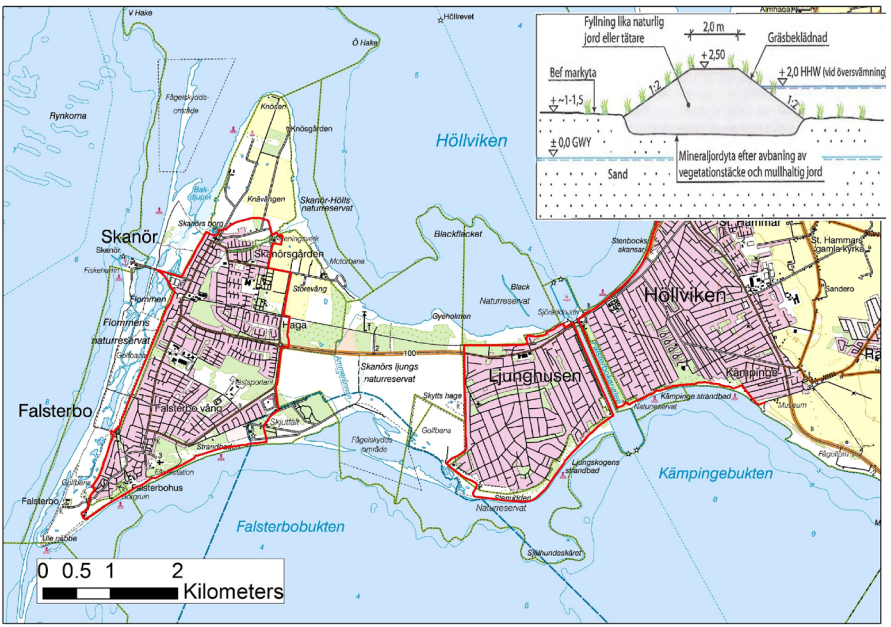

Figure 1. Plans for coastal protection in Skanör-Falsterbo and Höllviken-Ljunghusen, Vellinge municipality, Sweden. The red line shows the currently planned protection with dikes, except for the beach south of Falsterbo, which will be protected by dune restoration and beach nourishment (adding of sand on the existing beach). The inset shows technical details for a 2.5-metre-high dike in cross-section, indicating (right) a flood level 2 metres above the normal high water level. Source: Vellinge municipality. Illustration used by kind permission.

In contrast to the Falsterbo case, a second example comes from Jonstorp, a village in north-western Scania (Skåne) possessing limited resources in a peripheral location. *Figure 4* shows a second home in Jonstorp adjoining Skälderviken Bay. The woman to the left in the picture is witnessing how beach erosion is eating its way towards her house. This process will inevitably continue. It is part of the natural dynamics of a coast like this, now amplified by sea level rise. Along Scania's coast there are several examples of properties that have literally disappeared into the sea and houses that have tumbled over the cliff edge. In Jonstorp, as in many other places, there are no municipal initiatives or opportunities to protect the houses. Settlements are too few, measures of protection are considered too expensive for municipal engagement, and county and government agencies have so far not intervened in cases like this.

It is not difficult to see that the contrast between these two introductory images raises questions about landscape, law and justice: *landscape* as a living environment affected by both natural and human-influenced processes; *law* as a means of regulating

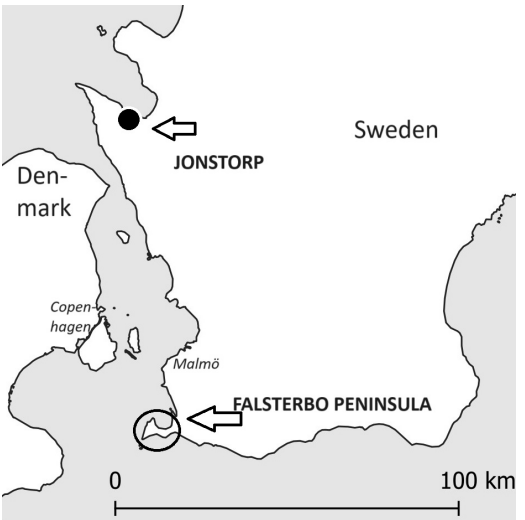

Figure 2. The province of Skåne (Scania) in southernmost Sweden and the location of the Falsterbo peninsula and Jonstorp. Map: Tomas Germundsson.

Figure 3. A full-scale model of the dikes that will be built on the Falsterbo peninsula to protect the settlements, with information board on "Nature-based dikes against flooding". Photograph: Carola Wingren. Used by kind permission.

Figure 4. Beach erosion in Jonstorp, Höganäs municipality, Sweden. Photograph: Tomas Germundsson.

people's interaction with the landscape; and *justice* in the form of different prerequisites for amending the living conditions in people's landscape.

The landscape concept is, however, very sparsely used in the formal language of Swedish planning and legislation, and when so, usually only in general descriptions of the visual landscape. It is both possible and there are good reasons to introduce a holistic understanding of "landscape" in planning and legislation. Since time immemorial, the landscape has been connected to law and justice, expressed for instance in the medieval Nordic landscape laws. The planning of a dynamic coastal landscape would benefit from an explicit integration of landscape, law and justice as a means of bringing to the fore issues of change and the right to the landscape. Such reasoning accords with O'Donnell's concept of "Coastal Lawscape", which, based on examples of coastal planning in Australia, asserts the necessity of understanding the interconnectedness of legal, political and cultural normative systems for advancing coastal climate change adaption policy.[3]

3 O'Donnell 2021.

The present chapter identifies and discusses some of the pressing problems that the planning of the coastal landscape in Scania faces in the light of climate change, as well as discussing measures to increase preparedness for future challenges. I place the phenomenon of "rising sea level" in a relational perspective and introduce a research project that during 2012–2016 examined the preparedness of municipal planning for rising sea level in some of Scania's coastal municipalities. I address the question of how the planning and exploitation of the coastal landscape in the 20th century has conditioned its present management. I discuss why the dynamics of the coastal landscape have been largely ignored by modern planning and what effects this has had. One of the issues is the division of power between planning authorities and nature protection agencies. The chapter ends with a discussion on how awareness of the dynamics of the coastal landscape can be communicated to the public and planners, for example, through alternative forms of representation of the changeability of the coastal landscape.

RISING SEA LEVEL

In the latest report of the IPCC (Intergovernmental Panel on Climate Change), it is projected that sea level rise at the end of the 21st century will be higher than at present in all of the panel's scenarios, including even those achieving the long-term goals set out in the Paris Agreement. According to the "worst case scenario", global mean sea level by the year 2100 will be 0.6–1.1 metres higher than today.[4] The effects in low-lying and densely populated coastal areas all over the world are expected to be enormous. And no coastal landscape will remain unaffected.

"Rising sea level" is commonly understood as an objective description of how the sea level rises and how the shoreline thus will move further inland. Hence a rising sea level is something that can be measured quantitatively, either historically through observations or in forecasts. However, "rising sea level", like "global warming" and "climate change", is not simply an objective expression of rising sea level, rising mean temperatures and a changing climate. Such concepts, used in scientific reports, debates, media, politics and planning are discursive entities. They are mediated and communicated in different ways and in different contexts, resulting in differing understandings, perceptions and commitments to their meaning. Climate change and rising sea level, as well as momentary impacts such as storm floods, are always associated with values and politics.[5]

4 Oppenheimer *et al*. 2019, p. 324.
5 Abbott & Wilson 2014; Hulme 2015.

In Sweden, insight into ongoing and future sea level rise, as well as its discursive dimensions, has had an increasing impact on the planning, exploitation and utilization of the country's coastal areas. However, as *Figures 3* and *4* reflect, the measures taken to meet the effects of rising sea level will be neither equal nor fair. In the affluent community on the Falsterbo peninsula, with enormous values invested in private homes, a resource-rich municipality has been able to launch an extensive project to protect physically some of its coastal communities against floods and rising sea level through the construction of walls and dikes. In the small village of Jonstorp, in Höganäs municipality, individual property owners will not receive the same protection, as the houses are too scattered and the municipality's resources too small.

In 2011, I initiated together with colleagues from landscape architecture and planning a research project on these issues. The purpose of the project was to investigate the preparedness and planning for future sea level rise in municipalities along the coast of Scania. The project was financed by MSB (The Swedish Civil Contingencies Agency) under the title 'Facing Rising Sea levels—the Planning and Design of an Uncertain Landscape'. In applying for money from this national agency, we argued that the ongoing and future sea level rise has differing effects within Sweden on a north–south axis. This is because there is ongoing land rise in most of the country as an effect of the last ice age (isostatic rebound).[6] In the north, land is still rising. Along the coast in northern Sweden the land rise is greater than sea level rise, so there is continuing displacement of the shore "outwards". In Stockholm, land rise and expected sea level rise up to *c*. 2100 are expected to be fairly equal. In the far south of Sweden there is no land rise at all, and therefore sea level rise will have a direct effect on the shoreline. The questions raised by our project therefore appeared urgent. The Scania coast is in parts heavily exploited and there are many examples of conflicts between different interests in the coastal landscape: competition for access to an attractive landscape, both in city waterfronts and as a leisure landscape; nature conservation and cultural environment conservation interests versus resource exploitation, etc.

In the following, I present a short historical overview of Swedish planning and the coastal landscape in Scania, partly illustrated by the Falsterbo peninsula (*Figure 1*).

MODERNITY, LANDSCAPE AND PLANNING

In the modern planned Swedish landscape, the contradictions of modernity are embedded and materialized. The dialectics of the idea and myth of enlightenment and

6 Vestøl *et al*. 2019.

progress[7] can be read in the landscape as a spatial rationality born out of an effort to rationalize, restructure and improve. Depending on the power and ideology of the reformers, this in many cases brought with it the demolition or dissolution of long-established and living customary rights to places and landscapes.[8] An early example is the rationalization of the agrarian landscape during the implementation of the enclosure reforms in the 19th century,[9] but even more significant contradictions appear in later planning during the rise of the welfare state.[10] An example is when "nature" at the end of the 19th century became a focus in the rise of modern society, partly as a means of revitalization and a corrective to the downsides of industrial society and partly as a national symbol. National parks were established, based on a spatial rationality and a scientific perspective, but the eagerness to focus on nature and wilderness meant that landscape's role as a place of residence and human belonging was reduced.[11] From then on, there is a modern tradition of a rational division between nature and culture in a landscape context, which is reflected in the fact that there is a Swedish Environmental Protection Agency (Naturvårdsverket), dealing with the natural dimensions of the landscape, and a Swedish National Heritage Board (Riksantikvarieämbetet), dealing with the cultural and historical dimensions.[12] This division repeats itself at regional and local level in planning.

To such tendencies in modern Swedish planning now comes the question of a changing climate. What significance will facts, measurements, forecasts and the politics taking place in their wake have for future social visions and planning? What happens now that—as Naomi Klein puts it—"this changes everything".[13] Such considerations were the starting point for our research project beginning in 2012.

In preparing for the project, we were able to ascertain that the General Plans (*översiktsplaner*) in most of the coastal municipalities made no mention of rising sea level. Where the phenomenon was mentioned, there were almost no concrete plans to address the threats. Exceptions were the municipality of Vellinge, which includes the Falsterbo peninsula, and some larger coastal municipalities in Scania, for example Malmö and Helsingborg. There the issue of future exploitation of the coast for infrastructure and housing had been raised, with an awareness that reinforced coastal

7 Horkheimer & Adorno 1981.
8 Olwig 2018; Scott (1998) provides examples from other parts of the world.
9 Germundsson & Lewan 2003.
10 Wikman 2019.
11 Mels 1999.
12 Germundsson & Sanglert 2010.
13 Klein 2014.

protection would be necessary.[14] However, the phenomenon of rising sea levels is now becoming more widely recognized in planning and in the public consciousness.

The need to protect Scania's coast against rising sea level reflects the history of modernity. In earlier times, buildings were located at a distance from the beach. Due to lack of natural harbours, fishing boats were pulled up on land for protection against the forces of the sea. Examples of fixed protective infrastructure against the sea are relatively few but exist from older times, for example, on the Falsterbo peninsula, where dikes made of collected seaweed were used both as enclosures and as protection against the sea until the 19th-century land reforms.[15] The coastal landscape was often common land that was used for grazing, collecting seaweed for fertilization, and for coastal fishing.

Industrialization and urbanization changed this in a historically short time. The industrial and port cities grew in size and population. Cement factories, steam mills and other heavy transport industries were located in the coastal cities, and beaches were replaced by deep harbours and shipbuilding docks. As the coast became more attractive, its landscape changed outside the cities, and the rhythm and class structure of industrial society became reflected here as well. It began with the middle class and industrialists going to stay at beautifully situated fishing villages in the summer, to seek relaxation and social interaction at beach hotels and private villas far from the noise of the city. Gradually, more and more urban leisure settlements were established along the coast, which was facilitated by the 19th-century land reform in agriculture, when the former common lands were largely divided among the individual farms of the village. As a lot of beach land was thus privatized, it became open to subdivision and sale. Vacation homes and later also permanent residences were built on the coast by those who had financial resources. The coast's attractiveness increased and during the 20th century took on a new expression, with commuter resorts and leisure facilities in desirable coastal locations where entire stretches of semi-urban development arose, for example, on the Öresund coast.[16]

One of the areas in Scania that is most exposed to the effects of the sea, and thus most strongly affected by sea level rise, is the flat Falsterbo peninsula (*Figure 5*). Settlement on the peninsula in the early 19th century was concentrated in the two small towns of Skanör and Falsterbo, which historically prospered due to the medieval herring fishery. Around 1900, the development that led to the modern landscape rapidly increased. After Skanör's harbour was built, summer guests could come by sea to visit the beaches and the town's urban idyll. With the coming of the railway in 1904, the

14 Germundsson *et al*. 2017.
15 Persson & Reisnert 2008.
16 Germundsson & Wingren 2017.

Figure 5. The low-lying, flat coastal landscape on the Falsterbo peninsula, looking towards the town of Skanör. Photograph: Carola Wingren. Used by kind permission.

summer settlements burgeoned, and many of the peninsula's large summer villas were built by industrialists and other wealthy people from urban Scania.[17] Starting in the 1960s, permanent high- and middle-class housing accelerated, and today Skanör and Falsterbo, together with Ljunghusen and Höllviken a little further east, belong to the more exclusive satellite settlements in the Malmö region.

IGNORING LANDSCAPE DYNAMICS

As indicated, modern settlement has in many places been established without taking the changing dynamics of the coastal landscape in consideration. As demonstrated in *Figure 4*, there are buildings which were at a safe distance from the shore when they were built, but which today threaten to fall into the water—as has already happened in several cases. There has been too little awareness that the beach is constantly changing

17 Lewan 1994.

and that the shoreline is moving further and further inland through natural erosion processes. Along sandy coasts, currents can modulate the erosion effects so that some areas become exporters of sand and the beach shrinks, while others are deposited with sand that is brought with the currents.[18] Superimposed on the historical changes in the coastal landscape is the rising sea level, which has the potential to increase beach erosion and the effects of extreme weather, and which will also continuously move the coastal zone further and further up on the present land.

Modern planning has not only ignored the continuous and changing dynamics of the coastal landscape, but also people's experiences of momentary and extreme conditions. It has been known for a long time that storms, waves and powerful upwelling require protection for harbours and coastal structures. There are examples of extreme events that would cause devastating damage to today's buildings if they were repeated. A very large part of the contemporary settlement on the Falsterbo peninsula would be heavily flooded if a storm of the magnitude that hit the southern Baltic in 1872 should recur.[19] The storm killed over 300 people and the event is still fresh in local memory, but that has obviously not stopped the expansion of modern settlement. This historical flood has only recently been recognized in planning. It is also mentioned as one of the arguments for the 2022 verdict of the Land and Environment Court of Appeal.[20]

I argue that the solutions presented to avert the threat of rising seas and future extreme weather situations are in keeping with the nature of modern era planning, which has shaped many of the communities that have emerged, for example, on the Falsterbo peninsula. There is specialized expert knowledge at play here, which is reflected in the organization of municipal planning. Since nature conservation and cultural environment interests are handled by different bodies, this often means that integration of the complexity found in the real landscape is absent in planning documents and planning practice.

In short, the municipality of Vellinge has chosen to follow a common method to protect an area at risk of flooding by building an embankment, a physical barrier, to protect buildings and the landscape. This action is hardly surprising and can be said to be "natural" in a modern context, based on the premises at hand: first, that the municipal management understood and accepted that the entire community and thus very high values are threatened by future sea level rises; second, that the municipality has the financial and planning possibilities to take measures; and third, that there is sufficient political support to implement the measures (even allowing for protests). It is

18 Malmberg Persson *et al*. 2014.
19 Hallin *et al*. 2021.
20 Mark- och miljööverdomstolen 2022.

difficult to see alternatives to trying to protect the area with a fixed barrier. Raising the ground (which happens with some new establishments along Scania's coast) appears to be impossible. To gradually abandon the area and let the sea take its place instead is hardly a feasible idea in this densely built-up and comparatively wealthy area.

However, the measures are also based on the fact that the existing legal and administrative regulations were created within a specific historical era, but still govern the measures that are being taken during a time when fundamental conditions have changed. In the Falsterbo case, one could simplistically say that the regulations and the planning processes that have been set in motion are hardly based on laws and rules that regulate what must be done when the sea level rises. This aspect has not entered into the legal framework. Rather, the measures are characterized by finding solutions for which there is a regulation, even if the issue was not existent when the regulations were created.

As indicated, the legal processes that have been put into play, for example, in the prelude to the judgement from the Land and Environment Court of Appeal, are based on existing rules and regulations, such as those that make an administrative division between nature and culture. This has the effect that the measures that the municipality wants to take come into conflict with both cultural heritage protection and nature protection based on national laws. In the legal process surrounding the permit for the construction of the protective dikes, it has therefore been the role of the County Administrative Board to defend cultural heritage and nature protection on the Falsterbo peninsula. While the municipalities have responsibility for planning in Sweden, the county administrations, which are a state matter, are responsible for ensuring that certain national laws and regulations are observed. This concerns, for example, various forms of nature protection, but also other interests, termed national interests, which are interests or resources that have been identified as important on a national level and which must therefore be taken into account in, for example, municipal planning. The county board also monitors certain cultural environmental interests. This has, among other things, led to the somewhat paradoxical situation that the county administration wanted to stop the creation of future protective dikes because in some places they would destroy or hide historical remains of seaweed dikes from earlier eras. The County Administrative Board has argued against protective dikes in order to avoid intrusion into nature conservation areas, for example, Natura 2000 areas.[21]

When these issues were considered by the Supreme Court, the judgement followed the municipality's argumentation and plans for the most part. There is acceptance of the municipality's rationale for the dikes: there will be floods, the sea will rise, and thus

21 Mark- och miljööverdomstolen 2022.

the legal issue largely concerns protecting a changing nature by making exceptions to the rules that exist around a supposedly unchanging nature. In order to be able to construct dikes that protect the landscape inside them, several exceptions must be made from rules such as Natura 2000 regulations.

The environmental issues that the judgement focuses on do not question the basic principles for coastal protection. Rather, the restrictions that the judgement imposes on the municipality concern issues such as ensuring that the materials used for the dikes have been cleaned in a satisfactory manner, or that the embankment in some sections must be slightly changed to preserve listed cultural heritage seawalls.[22] In a longer time perspective, this is problematic, because much suggests that this transformation is not sustainable, or even possible in the long run, because protective measures themselves often increase erosion both at the protective dikes and on adjacent coastal stretches.[23]

PROBLEMS AND POTENTIALS OF REPRESENTATIONS

An important background factor of the way that the coastal landscape is perceived and handled by planners, developers and decision-makers relates to the question of how the landscape is represented in maps and plans. The plans in Vellinge, as in several other municipalities, can be said to adhere to a conventional form of mapping and representing the coastal landscape, namely—simply put—by drawing a definitive line between land and sea. Even if this line now is anticipated to move, it is still a problem to represent the dynamic costal landscape in conventional maps and plans, because this leads to a static view and understanding of what is in reality a continuously changing landscape.

As inspiration for a different way of handling a changing coastal landscape, we took note of a number of projects and investigative work that landscape architects Anuradha Mathur and Dilip da Cunha have undertaken for coastal landscapes in different countries.[24] Mathur and da Cunha are critical of marking a dividing line between land and sea, and instead believe that the coastal zone must be described in other ways to capture its changing character, its liminality, and thus its potential for different practices at different times. They regard with particularly critical eyes the moment when the architect or planner puts pen to paper to draw the sharp line between land and sea, because it is precisely at this moment that the understanding of the coastal landscape is

22 Mark- och miljööverdomstolen 2022.
23 Pilkey & Dixon 1996; Boda 2018.
24 Germundsson & Wingren 2017.

created. The drawing of the sharp line leads to the perception that the passing of water over the drawn line always is a problem (flooding) and that the opportunities that exist precisely in the borderland are rarely given enough attention. Mathur and da Cunha have worked with the Mississippi River and on rivers and beaches in India and have also been invited by authorities in the USA to seek alternative strategies to traditional technocratic ones that have not worked.[25]

During the course of the project, we invited Mathur and da Cunha to hold a workshop with planning officials in Höganäs municipality (where Jonstorp is situated). Measuring the effect of such a meeting is of course impossible, but it gave rise to a discussion regarding how the dynamics of the coastal landscape could have a greater influence in planning—is it possible to set aside areas that will be converted from land to sea and see them as a resource of a different kind than fixed nature protection? A strong argument for trying such solutions is that sea level rise is not negotiable. It will happen. Adaptation is necessary, but what are the options? We found it urgent that planners in at least one of the coastal municipalities lacking the same resources as, for example, Vellinge, were able to discuss alternatives to traditional coastal protection and instead take as a point of departure the dynamic and changing nature of the coastal landscape.

Primarily, the issue of the future coastal landscape is about power over the landscape and access to knowledge and resources. In the example of Falsterbo, there has been both political and financial muscle to initiate a two-hundred-million-Swedish-kronor project to protect an existing settlement. In Jonstorp, and in other places in the coastal landscape, such resources are lacking. The challenge, then, is how to deal with the inevitable retreat of the coastal landscape.

Remedying this involves adapting rules and regulations, which in turn requires knowledge of new and changing conditions and also an understanding between both those who administratively and legally work with these issues (planners) and the people who are affected (the public). I see this as a question of justice. Who gets access to the knowledge that exists? What opportunities are there to let people's experiences and needs be heard in the planning? What is required to allow this to be the basis for a justly designed landscape?

Within our project, which was active during a time when the general knowledge about rising sea level did not have the same impact as today, we worked actively to seek ways for how these issues could engage a general audience. One example is an exhibition we designed that had a number of interactive features where visitors could model

25 Mathur & da Cunha 2001; 2009; Mathur *et al*. 2014.

their own new coastal landscape as well as think about and express which values in the landscape they considered threatened by the rising sea.[26]

Another form of engaging people to consider the future effects of sea level rises was to have a group of landscape architecture students choreographically illustrate elevated water levels on site in the streets and squares of the coastal town of Höganäs.[27] The performance was followed by a discussion at the city's library with politicians and the public about these issues. The methods connect to a growing realization that artistic and design-based methods have a great potential to draw attention to and engage people in issues surrounding the effects of climate change.[28]

CONCLUSION: THERE ARE ALTERNATIVES TO PRESENT-DAY LANDSCAPES, LAWS AND (IN)JUSTICES

As an alternative to much of the modern understanding of landscape in a planning context, with its spatial rationality and division, and with its tendency to simplify basic natural conditions, a more open and dynamic understanding is possible. The key to such a reorientation is a historical understanding of the coastal landscape that integrates the natural, social, economic and cultural conditions that shape the landscape. Here, nature's role must never be seen in isolation, as the play of nature in the coastal landscape takes on significance for society only when it is seen from the perspective of people's interactions with land, sea and coast. As demonstrated in the case of Scania's coast, the century-long division of nature conservation and cultural heritage protection must therefore be developed into a much more integrated understanding and management of the coastal landscape if the challenges of a changing climate and rising sea level are to be appropriately met.

Not least in the context of planning, it is central that representations of the landscape in the form of maps and plans and other descriptions actively focus on the changeability of the coastal zone. If the map's line between sea and land is taken for granted as a fixed boundary—which happens in many cases—then mistakes will inevitably be made. It is usually such a simplistic depiction that underlies the modern way of trying to manage and control the sea with hard protective infrastructure, which in turn can lead to increased erosion and other disastrous consequences. Closely intertwined with the landscape as both habitat and representation is the question of the laws and rules that regulate the planning and management of the coastal landscape.

26 Wingren 2016.
27 Wingren 2018.
28 Hawkins & Kanngieser 2017; Rooseen *et al*. 2018.

In the Falsterbo example, it transpired that when the municipal plans came into conflict with a national regulatory framework, as interpreted by the regional authorities, it resulted in a legal process that went all the way to the Supreme Court. The fact that the Supreme Court overwhelmingly ruled in favour of the municipality, that is, it supported the municipality when it wanted to make an exception to existing nature protection restrictions in order to construct a coastal protection, can perhaps be seen as a ruling in favour of a locally rooted decision. It was, however, a judgement that did not discuss the potential problems of coastal protection from a landscape sustainability perspective. This is perhaps not surprising but indicates that alternative laws and regulations could open up new opportunities.

Could an adaptation to the perception and definition of landscape found in the European Landscape Convention—landscape "as perceived by people, whose character is the result of the action and interaction of natural and/or human factors",[29] and its focus on people's everyday landscape—possibly be a starting point for a discussion about what regulations are required to manage future landscapes under the increasing impact of climate change? This indicates a view of the landscape as people's living environment that differs from the sectoral division promoted by modernity's spatial rationalization, which is reflected in current legislation.

The coastal landscape—like all landscapes—is characterized by the prevailing forms of social justice.[30] In whatever way the future coastal landscape develops because of climate change, it is always a question of people's opportunities and right to have access to and be able to use the landscape that determines how the changes will be handled. This opportunity is unevenly distributed. As shown, conditions along the coast of Scania vary depending on the power relations that prevail over landscape and people. Through my examples, I have tried to show how alternative forms of knowledge transfer, planning and participation may bring established truths and starting points into discussion and thus form the basis for a fairer handling of the effects of climate change in a regional coastal landscape.

29 Council of Europe 2000.

30 Mitchell 2008, p. 45.

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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.

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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.

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ARI AUKUSTI LEHTINEN

Posthumanist land- and lifescapes

"I have good relations with the asp", expressed our informant, an elderly ex-professional fisherman by the Kokemäenjoki River in south-west Finland, while describing his deep attachment to his home river. He was referring to the fish known as the asp (*Aspius aspius*), a particular species of the carp family, and the remark helped to advance our study of the potential of endemic renewal in river restoration.[1] As part of the study, we learned much about the time-space knowledges and practices of professional fishing that have evolved over generations. We also learned how focal the entire river and its fish species are in the fishing community's life.

In fishery, especially in its traditional forms, activities of individuals cannot be separated from the operations of the surrounding community. Our informant's community comprised his extended family over several generations, including elderly relatives, and neighbours, including eight professional fishermen who had passed fishing knowledge to him during his youth. Most importantly were his wife and their seven children who had gradually taken, since the 1950s, the core place in the fishing community. The informant's close friend had for decades processed and sold the catch to consumers, and long-time co-operation with partners in the fishery administration and in research had made them too part of the fishery community. Finally, the whole ecosystem, especially the fish species, produced the material basis of the endemic fishing community.[2]

The opening quote, referring to the fisherman's deep awareness of and even a certain alliance with the piscine associates of the community, demonstrates the practical bonding of humans and non-humans in traditional professional fishing. For example,

1 Mustonen & Lehtinen 2021.

2 Mustonen & Lehtinen 2021, p. 813.

the fisherman mentioned in the interview that in order to secure successful spawning of mother fish you need to know how the fish move on their regular routes. This knowledge is crucial when aiming at restoring rivers threatened by extractivist and polluting utilization.

The bonding of humans and non-humans has long been a common theme in geographical studies. In human geography, this bonding has notably widened our understanding of the time-spaces of human/non-human co-being. In some cases, this widening has turned into posthumanist conceptualizations and study formulations. Geographers with posthumanist and environmental emphases have, for example, criticized humanity's anthropocentric looking down on other species and the related indifference to the well-being of non-human subjects, and even the healthiness of the planet Earth in general. In human geography, this type of ontological rethinking (i.e. gradual movement towards hybrid humanity and nature) has evolved, for example, within studies of landscape polities, social natures, politics of nature, animal geographies, rivers as actor-networks, oil and biofuel assemblages, and geopolitical minerals.[3]

However, the posthumanist extension has brought up worries about the displacing of humanity in human geography. Concerns about lessening understanding of lived experience and human responsibility due to distributed agency have, for example, been expressed.[4] These worries derive in my view from regarding humanist and posthumanist ontologies as opposing positions. Unavoidably, there is ample evidence in posthumanist literature that supports this conclusion. However, the approach I lean on and develop in this chapter is not an antagonistic one. My primary motive is to promote comprehension of human/non-human associations as part of an ongoing renewal in human geographical research. Accordingly, my aim is to contribute to human/non-human coping with the planetary emergencies caused by humanity's anthropocentric constraints. An excellent example of this type of complementary attitude and approach is Ilona Hankonen's 2022 Ph.D. thesis, *Ihmisiä metsässä* ('People in the Forest')—a book-length forest excursion inspired by human geography and posthumanist landscape studies.[5]

Hence, the posthumanist extensions in current geographical renewal are in many ways related to the human geographical curricula. In my view, there is no necessary opposition between humanist and posthumanist geographies.

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3 Olwig 1984; 1986; 2002; Vartiainen 1984; Seppänen 1986; Lehtinen 1991; 2003; 2022; Häkli 1996; Wolch & Emel 1998; Kortelainen 1999; Haila & Lähde 2003; Salonen 2004; Humalisto 2014; Haarstad & Wanvik 2017; Kotilainen 2021.

4 Simonsen 2012; Häkli 2018; Rannila 2021.

5 Hankonen 2022.

Thus, I argue, the bonding is central, both in human/non-human practices and in research dealing with them. Due to this "double bonding", or "double aspectivity",[6] I have found early concerns and later specifications of posthumanist ontology refreshing as they have guided us to look critically at the causes and consequences of planetary emergencies and helped us to utilize hybrid conceptualizations such as lived nature, interspecies justice, culture-natures—and land- and lifescapes.

The concept of land- and lifescapes is inspired by Carl Ortwin Sauer who, after having witnessed the destruction of the land in the United States under expansive colonial influence, became worried about the "suicidal qualities of our current commercial economy".[7] He was concerned about the crimes of ethnic reorganization of the land and lives of the indigenous First Nations but he also paid attention to the loss of ecological values under the progression of the settlers' frontier. This led him to conclude that "the interaction of physical and social processes illustrates that the social scientist cannot restrict himself to social data alone".[8] This formulation of double bonding was later republished in a selection of Sauer's writing under the title *Land and Life*.[9] Sauer's critical discussion of plant and animal destruction in economic history, inspired by earlier concerns regarding humans' transformative power over earthly nature[10] and expansion of the *Raubwirtschaft* (plunder economy),[11] prepared for the later posthumanist awareness of biodiversity loss and ecocide risks that are widely shared in the contemporary politics of nature research.[12]

In my reading, posthumanist rethinking warns us not to consider nature as a sole asset, that is a domain exclusively reserved for human exploitation and control. Instead, it guides us to value nature as an existential space, a realm that needs to be freed from the currently predominant bipolar contestations between economic and ecological accounting.[13]

The opening quote of this chapter signifies the central importance of the Kokemäenjoki River for the interviewed fisherman and his community. The river, as a key source of livelihoods, has through generations afforded the means of community income. In addition, it has provided assets for heavy industry, leading to modification and pollution of the river. Consequently, the polluted river then became a restoration

6 Häkli 2018, p. 173.
7 Sauer 1938, p. 773.
8 Sauer 1938.
9 Leighly 1965.
10 Marsh 1864.
11 Friedrich 1904.
12 Lehtinen 2006b.
13 Hankonen 2022.

target. The existential values of the river were to be emphasized, including its fish populations, which had survived through decades of river transformation and pollution. The rights of the river were thus notified and explicated. This emphasis, and turn, follows similar procedures of river rehabilitation elsewhere. Rivers, as many other confined entities of nature, are increasingly viewed as subjects of rights and it has also been suggested that the fish species of these rivers should in some cases have property rights to their habitats. In 2017, for example, three initiatives to create legal personhoods for rivers were launched, namely Whanganui River in New Zealand, the Ganges and Yamuna Rivers in India, and the Atrato River in Colombia.[14] Promoters of these initiatives have argued that human beings should not be seen as having an exclusive right to a subject position in planetary socio-environmental matters.[15]

In accordance with the above framing, the present chapter documents a degree of progress in the study of environmental justice, one of the themes examined by the Landscape, Law and Justice research group in Oslo in 2002–2003.[16] In the following pages, I will explicate how the question of environmental justice has, after the Oslo research phase, been further specified in some of my projects through detailed concerns for interspecies injustice and claims for strengthening non-human rights. The chapter starts with some remarks on the posthumanist approach I have relied on and thereafter continues by summarizing two related case studies that I have been involved in since 2003.

BEYOND ANTHROPOCENTRISM

The posthumanist approach is concerned about the alarming shrinking and extinction of wild nature on Earth due to human-induced climate emergency, biodiversity crisis, extractivism and pollution. Planetary exploitation of soils, minerals, energy, forests, oceans and animals has resulted in irreversible losses of wildlife habitats and species. For example, due to brutal mining of the ecosystems and systematic oppression of wildlife species, wild mammals constitute today only 4% of global mammal biomass whereas humans (34%) with their livestock and pets (62%) cover the rest. Moreover, 70% of all birds alive today are poultry.[17] Hence my posthumanist approach is motivated by humanity's fatal anthropocentrism and hubris, apparently justifying the annihilation of the bio-geosphere by means of technological modernization (*techno-*

14 Knauss 2018; Chapron *et al*. 2019; Cabanes 2023.
15 Meriläinen & Lehtinen 2022.
16 Lehtinen 2005; 2006a.
17 Dasgupta 2021; Sörlin 2023.

cene) and related extractivist economies (*capitalocene*). The apparent success of the historical alliances between people, machines and markets (*Anthropocene*) seems to have freed us from crucial earthly limits.

The brutal annihilation and following planetary emergencies are outcomes of an enormous ontological bias. In modernity, humanity has become accustomed to overlook and ignore the existential rights of non-humans and therefore to lose a sense of the terrestrial and interspecies dependencies critical to planetary constitution and health.[18]

According to posthumanist guidelines, the ontological correction begins by rearticulating the critical dependencies, vulnerabilities and risks behind the drama of deepening socio-environmental crises. This is a decisive moment for the historical alliances of the Anthropocene. Systemic volatility needs to be taken seriously, as well as the necessity of systemic transition. This reorientation can only take place by radically rethinking existential and property rights across the inter-species divides.[19]

However, posthumanist concern is not only alarmed by the ontological bias linked to anthropocentric hubris. It also worries about how the Anthropocene discourse seems to obscure the view of the planetary drama by regarding all of humanity equally responsible for the current state of systemic volatility. This type of guilt-sharing tends to mask the accumulation of wealth and overconsumption in the capitalocene. The ecological shadow of the richest of humanity is regarded in many critical studies as the prime cause of the failed socio-environmental order and, it is argued, no turn to sustainability can take place without the significant reduction of this ecological shadow.[20]

In addition, the Anthropocene discourse seems to underrate and even veil the socio-environmental injustices caused by wealth accumulation. Growth in urban centres, for example, fuels extractivist practices in their resource peripheries. Researchers of planetary urbanization also question the feasibility of urban growth visions grounded on the premises of technological (eco)modernization.[21]

Researchers with posthumanist accents have extensively studied the active role of (human-modified) nature in shaping human/non-human conditions. Nature has been regarded in these studies as an integral and central factor in socio-environmental bonding. Concepts such as more-than-human assemblages, interspecies and multispecies justice, carbonscapes, topologies of biofuels and hydrosocial riverscapes have been

18 Lehtinen 2024.

19 Brown *et al*. 2019; Lehtinen 2022; Meriläinen & Lehtinen 2022.

20 Joutsenvirta *et al*. 2015.

21 Schulz & Bailey 2014; Exner *et al*. 2015; Ala-Mantila *et al*. 2022; Berglund 2022; Sörlin 2023.

introduced and applied. As a consequence, case studies of resource curses, oil addictions and pandemic bursts have been undertaken.[22]

These studies have underlined how actors and processes of nature participate in socio-environmental change by affording prospects and setting constraints on human/non-human co-being. Moreover, nature is seen as fuelling the debate on the feasibility of this co-being by reacting to changes in the form of weakening ecological vitality, which in turn might result in increasing socio-environmental vulnerability and risk production.[23]

Informed by this type of posthumanist thinking, the present chapter discusses human/non-human bonding practices by summarizing the main results from my research projects dealing with socio-environmental causes and consequences of forced displacement and rearticulations of human/non-human rights. The shared question in these projects has been: How to advance politics of nature that are both ecologically and socially just? Specifically, in the present chapter, the question is reformulated as: How to support and amplify "good relations" in multispecies co-being linked to riverscapes and forest land- and lifescapes?

DEFENDING THE RIVER, DEFENDING THE COMMUNITY

Our research project (2008–2013) on the reindeer-herding Iz'vatas people in northwestern Russia concentrated on mapping the historical phases of displacement caused by disruption in their critical socio-environmental conditions.[24] Iz'vatas, or Komi-Izhemtsy, is a community of Komi origin living by their home river, the Izhma, a tributary of the Pechora River, as well as in settlements in a diaspora spread over the western parts of Arctic Russia (*Figure 1*).

During the project, we learned that the initial diasporic reorganization of the community in the late 1800s and early 1900s was due to the overuse of reindeer pastures and an outbreak of epidemic diseases amongst the reindeer. This period of serious setbacks resulted in several waves of migration of Komi-Izhemtsy and their reindeer herds across the White Sea to the Kola peninsula, some 1,000 km to the north-west.[25] Reindeer, as members of the diaspora community, were brought across the sea during winters; the success of re-emplacement in Kola was fully dependent on the success of sea-crossings with the herds.

22 Humalisto 2014; Haarstad & Wanvik 2017; Brown *et al*. 2019; Lehtinen 2019; Tynkkynen 2019; Kotilainen 2021; Rannikko 2022; Siltala 2022; Price & Chao 2023.

23 Blaikie *et al*. 1994; Nygren 1998; Haila & Lähde 2003; Pelling 2003; Lehtinen 2022.

24 Fryer & Lehtinen 2013.

25 Konakov 1993.

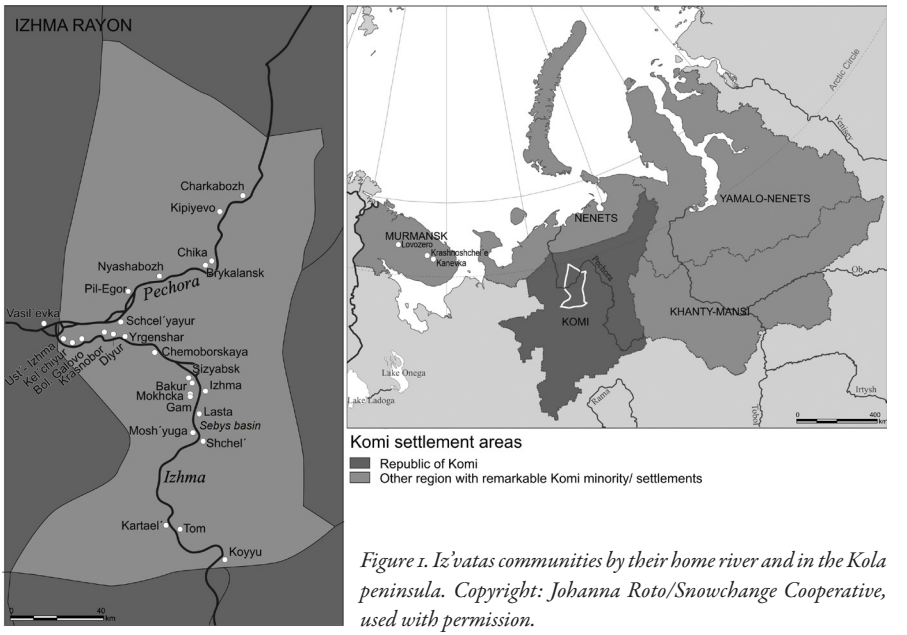

Figure 1. Iz'vatas communities by their home river and in the Kola peninsula. Copyright: Johanna Roto/Snowchange Cooperative, used with permission.

The dramatic Usinsk oil spill in 1994, releasing at least 110,000 metric tons of oil into a tributary of the Pechora River,[26] activated the Izhma community downstream of Usinsk. The oil catastrophe turned into a remobilizing episode for Iz'vatas and other ethnic groups concerned about the health of the Pechora River and its tributaries. This event taught us as researchers that forced displacement can also emerge without any migratory moves, in the form of wide-ranging changes in the daily conditions of living.[27] Moreover, we learned how the experience of oil pollution wounded the foundational bonding between the people and the river. Concretely, the deaths of fish populations, which will only recover slowly, radically limited the local fishery livelihoods.

Six years after the Usinsk oil spill, Pechoraneftegaz, a Russian–British–American company, started exploratory oil drilling in the Sebys nature conservation area close to the village of Izhma. The Sebys River basin, which discharges its waters into the Izhma River, is an important area for reindeer herding, hunting and fishing for the local people. Consequently, the locals became worried about the risks of oil extraction in their homelands and waters. The concern grew into a key issue for the Iz'vatas community and Pechora Rescue Committee. Demonstrations, public briefings and press meet-

26 Habeck 2002; Karjalainen & Habeck 2004.
27 Mustonen & Lehtinen 2020; 2021.

ings were held and petitions gathered. The conflict was finally taken to court, which resulted in cessation of the oil surveying in Sebys in 2003. The victory in the court case was achieved with the support of Memorial, the human rights organization, and Russian Greenpeace.[28]

The effectiveness of the Sebys campaign against oil exploration gathered momentum from earlier experiences of oil pollution of the main river. The victorious campaign highlighted how defending the community was synonymous with defending the home river and its surroundings. This bond functioned as the prime motive and source of action. In addition, we learned, defending the home river valley was synonymous with defending the Iz'vatas identity in general, including those from the Izhma River area living in the diaspora.

Our learning process confirmed the importance of including non-humans in displacement and diaspora studies and paying attention to critical bonds of culture–nature. The Iz'vatas research showed that this type of bonding, in principle grounded on mutual respect and reciprocal dependencies, is not free from crises and is not always characterized by *good relations*. Intense reindeer herding resulted in overgrazing and animal diseases, which together triggered the decision to migrate. In this case, the bonding involved extractivism, distressing both humans and non-humans.

Iz'vatas bonding emerged in the form of a successful civic campaign. The defence of Sebys had the effect of ending the oil exploration in the Sebys River basin, an area that was crucial for local livelihoods. Surprisingly, in the Russian context, the local land- and lifescapes of reindeer herding, hunting and fishing were in this case protected from translocal extractivism.

The diaspora community in Kola is an example of affective bonding. A sense of Iz'vatas identity has remained alongside intermarriages and close family ties with the indigenous Sámi. The Kola villages serve as the lived homeland for the descendants of the immigrants and the symbolic ties to the Izhma River basin keep alive the sense of community in the diaspora. The memories of the original home river basin and the epic migration are commemorated in the villages of Lovozero, Krasnoshchel'e and Kanevka, the main Iz'vatas settlements in the Kola peninsula. The imaginary of the Iz'vatas is constructed and maintained by shared memories and narrations of the river folk's lands and lives alongside the original home river.

The Iz'vatas research illustrates the central practical and symbolic placing of the Izhma River for the local people and their relatives in the diaspora. The river was still commemorated in Kola a century after the epic migration and almost 1,000 km northwest from the original home area. The campaign against oil drilling defended the ex-

28 Fryer & Lehtinen 2013.

istential right of the river and its people. The specific human/non-human alliance was thus viewed as a subject of rights. Iz'vatas is a river community embodying fish and fishermen, reindeer and herding families. Oil drilling threatened the *good relations* with the fish and reindeer, relations that are of utmost importance for the Iz'vatas.

RIGHTS TO FOREST, RIGHTS OF FOREST

Our forest discourses research project (2017–2023) concentrated on forest services, actors and policies in Finland. Most of Finland consists of boreal mixed forest, mainly Scots pine, Norway spruce and birch, but including some 30 other tree species. Private individuals and families own 60% of productive forest and account for 80% of the harvest. There are 344,000 forest holdings over 2 hectares in size. The majority of holdings are small, but there are some large holdings; 26% of the forest area is owned by the state and 14% by companies and other institutions. Approximately 50% of the private owners live on their holdings, while 25% live in towns of over 20,000 inhabitants.[29]

During the project, we learned that slightly over 20% of Finnish forest owners are currently worried about biodiversity loss caused by the predominant forestry methods. They claimed that forest professionals as a rule are inadequately prepared to advise on matters of ecologically sound forestry. In general, they argued, too little attention is paid to the sustenance of threatened species in Finnish forestry.[30]

In plain numbers, the ecologically concerned forest owners comprised only a minor fraction of the whole "discursive landscape" within private family forestry. In comparison, according to our research, about 75% of the forest owners favoured and promoted the predominant forestry methods. They simply denied the existence of any biodiversity problems and considered the prevailing forestry as supporting biodiversity.[31]

However, in our study, the ecologically concerned discourse was seen as a promising sign of systemic transition in Finnish forestry policies, which in any case, sooner or later, will have to adjust due to the pressures of planetary emergencies and related intergovernmental agreements. Twenty per cent of forest owners seemed to have a clear idea about the measures needed to halt the biodiversity loss. More binding regulation regarding cuttings and soil preparation was, for example, seen as necessary. In addition, compensation in the form of tax alleviation was suggested. The forestry methods proposed by them favoured decreasing clearcutting, continuous cover management, mixed forests and deadwood sustenance. Moreover, the pro-biodiversity forest owners

29 Mäntyranta 2019.
30 Takala *et al*. 2023.
31 Takala *et al*. 2021; 2022.

listed a broad array of non-timber practices worth promoting. In forestry planning, they would prioritize the biodiversity problem, instead of logging operations and income. In general, we learned, they associated biodiversity with the well-being of both humans and nature.

We also learned that ecological information reaches those forest owners who already know a lot about biodiversity. Through our earlier studies, it had already become obvious that the predominant forest policy discourse conducted in professional journals is inclined to keep the forest owners ignorant of the biodiversity crisis.[32]

Hence, our forest discourses research project concluded that the rights of those forest owners who are concerned about biodiversity loss are not fully recognized in contemporary forest policies in Finland. In addition, unfamiliarity with the biodiversity crisis was widespread among the rest of the forest owners due to informational restrictions in the main forestry journals. This then is also a matter of forest rights, namely rights to correct and up to date forest information, which in this case was largely lacking. Consequently, the rights of those citizens who utilize non-timber affordances of forests are in practice significantly limited. We also learned that the rights of forest species are not an issue in the predominant forestry planning. We thus summarized that the current silvicultural methods favoured in economic forests (covering *c*. 80% of Finnish forest land)[33] do not provide conditions for the well-being of humans and nature.

Rights to and of forests were further examined in an independent extension to the forest discourses project by exploring how rethinking forest rights can potentially challenge the predominant forestry practices in Finland.[34] This study concluded that, under contemporary forest policy conditions, the public right of access to nature has become seriously constrained. In Finland, the public right of access (Finnish *jokaisenoikeus*, Swedish *allemansrätten*) is not codified in law but is a customary right to roam freely in nature, to pick berries and mushrooms, and to camp away from buildings; it is specifically forbidden to damage trees or to cause other inconvenience for a landowner's land use.[35] However, the economic forest landscape dominated by young and even-aged stands resembles tree plantations[36] and is poor in terms of human/non-human well-being. The rights of nature discourse has as yet appeared ineffective

32 Takala *et al*. 2020.
33 Vadén & Majava 2022.
34 Meriläinen & Lehtinen 2022.
35 Ympäristöministeriö n.d.
36 Hyvärinen 2020.

in addressing the gradual degradation of intrinsic and conservational values of Finnish economic forests.[37]

A broadened forest rights framing holds a potential for challenging the predominant forest policy doctrine in Finland by highlighting the rising costs of eroding human/non-human well-being. For example, the Nordic public right of access to nature could be extended to serve as a means to ensure that people retain access to a forest that does not resemble a tree plantation. Highlighting the rights to forest could in this way also support the rights of forest. On the other hand, the promoters of the rights of nature could much more effectively clarify for the Finnish forest sector the options attached to the biodiversity strategy and nature restoration law of the European Union (EU)[38] and the Convention on Biological Diversity's Kunming–Montréal Global Biodiversity Framework under the United Nations Environment Programme.[39] Both extensions of forest rights could be introduced as potential sources of forest income due to incipient forms of pricing for carbon storage and for upholding biodiversity.[40]

CONCLUSIONS

The research projects summarized above examine various forms of bonding between rivers, forests and humans, including a range of multispecies relations attached to reindeer and herders, fish and fishery communities, forest species and non-timber affordances.

The Iz'vatas study highlights the expressions of community attachment to the home river through local routines and via translocal commemorations. The oil exploration was regarded by the local people as a threat to their livelihoods and identity. The legal status of the river and the people living alongside it appeared unclear. The Izhma River and Iz'vatas had to be defended and, moreover, broader clarification of rights was seen as necessary. The setting is not unique. Rivers and river traditions are increasingly threatened by extractivist projects throughout the world. However, recent moves toward recognizing rivers as subjects of rights can be regarded as signals of change.

These signals tell that the ecologies and traditions of rivers deserve particular attention in the implementation of the biodiversity agreements and nature restoration plans recently launched by the EU and UN. The Kokemäenjoki River project serves as a positive example of the socio-environmental potential of river restoration. We as

37 Meriläinen & Lehtinen 2022.
38 European Union 2024.
39 Convention on Biological Diversity 2022.
40 Vadén & Majava 2022.

researchers became convinced about the importance of documenting and utilizing local communities' historically accumulated knowledge about *good relations* with rivers and their multispecies milieus.

On the other hand, the forestry example indicates that human access to nature is not at all guaranteed in forests that resemble plantations. Therefore, due to this mismatch, the Finnish right of access to nature could be codified in law as a means of limiting industrial forestry practices and prioritizing non-timber values. Hence, the public right of access could be seen as a means to defend both the rights to forest and rights of forest. Biodiversity, for example, could be the foremost concern in forestry, as the ecologically aware forest owners suggested. A significant part of forest income would then be earned from maintaining carbon sinks and a rich variety of forest species.

The posthumanist approach challenges the currently predominant forestry practices. Posthumanist forestry would favour the type of forest land- and lifescapes that enrich interaction between humans and non-humans. Places of co-being and co-learning would thereby be developed and conserved. In other words, the human subject would be displaced, and partially decentred, in relation to other subjects of forests. This type of rethinking would support the updating of Finnish forestry practices according to the guidance of the EU and UN.

In general, the two research projects shared and further developed the conceptual framework of environmental and interspecies justice discussed as part of the Landscape, Law and Justice research project 20 years ago. Linkages to the broader scholarly perspectives advanced then in Oslo have become increasingly apparent and relevant. The land- and lifescapes concept commemorates the Sauerian tradition that has in many ways more or less explicitly influenced the later progression of Nordic landscape studies, especially those critical contributions that have examined both the sustaining and extractivist features of human/non-human co-being on Earth. This linking reminds us of the early roots of the alarm over the contemporary biodiversity crisis and, as I see it, represents a centennial unfolding of research profiles gradually turning toward posthumanist rethinking in human geography and neighbouring research fields.

In addition, a legal perspective is implied in discussing non-human rights and their recognition in research and politics. Forests and rivers are increasingly viewed as subjects of rights and, moreover, some non-human species are in certain cases suggested as having property rights to their habitats. This type of posthumanist rethinking of rights could potentially be highly inspirational in landscape, law and justice projects to come, especially those linked to a renewed legal geography.

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ERLING BERGE

How can "tragedies of the commons" be resolved?

Social dilemmas and legislation

There are two obvious global commons: the atmosphere and the oceans. Both are unmanaged.[1] So far in our history anyone can throw waste into the ocean or into the atmosphere. In the modern study of such unmanaged commons, all agree with Garrett Hardin: "Freedom in a commons brings ruin to all."[2]

For local commons, ordinary people have generally been able to devise institutions for sustainable management.[3] But the road from unmanaged commons at a global scale to managed commons is unknown. The real-world commons have been extensively studied, mostly after Garrett Hardin's 1968 article: 'The tragedy of the commons'. His suggested solution, "Mutual coercion mutually agreed upon",[4] could relate both to traditionally managed commons and to modern democratic states. But no way is in sight from the current international system to a global government.

Meanwhile we are getting closer and closer to ruin. In the Intergovernmental Panel on Climate Change (IPCC)'s summary report, AR6 from 2023, the message[5] can be summarized as we need to do "everything, everywhere, all at once"[6] to have even a small chance of staying below a +2°C temperature rise in accordance with the 2015 Paris Agreement. The path of rising temperatures and the devastating consequences

1 Buck 1998.
2 Hardin 1968, p. 1244.
3 Ostrom 1990.
4 Hardin 1968, p. 1246.
5 IPCC 2023.
6 The quote is not from the AR6 report: it is the title of a film from 2022. But it sums up succinctly AR6's message.

are known in more detail today than they were 30 years ago, but basically they are very similar to the results of studies by the oil company Exxon in the 1970s.[7]

During 5–14 June 1992, the United Nations' Conference on Environment and Development was held in Rio de Janeiro. Here a framework convention was presented for signature.[8] It entered into force on 21 March 1994. Today 198 countries have ratified the convention. The ultimate aim is to prevent "dangerous" human interference with the climate system.[9]

The Rio Conference in 1992 had a predecessor in Stockholm in 1972. Here climate was one topic among many.[10] In 1988, the IPCC was established in collaboration with the World Meteorological Organization.

Meanwhile, during 1979–1989, there had been an active science-driven lobby for an active climate policy in the USA. The story of this almost-successful climate policy lobby is told by Nathaniel Rich in *The New York Times Magazine*.[11] Its failure had international consequences.

One small success during the eighties was the Montreal Protocol of 16 September 1987, which entered into force on 1 January 1989. It was designed to protect the ozone layer and is considered a success.[12] The success of this and the lack of success in reducing the climate-warming gas emissions are noteworthy. One important factor is the availability of effective substitutes for the gases damaging the ozone layer.

By 1992, climate was acknowledged to be of major concern to all nations. Yet in the 2023 report, AR6 from IPCC, it is difficult to see much progress. Stoddard *et al*., for example, report that the global emissions of CO_2 in 2018 were 60% higher than in 1990.[13]

This, and the knowledge that the atmosphere is a type of commons, is the background for the two questions this chapter addresses:

1. Why is it so difficult for the world's states to put sufficient effort into curbing the dangerous rise in climate gas concentrations? The answer suggested is that the problem has the characteristics of a social trap.
2. Are there cases where social traps have been overcome at the level of a state?

7 Supran *et al*. 2023.
8 UN 1992.
9 UN Climate Change 1994, p. 1.
10 Recommendation 70 in UN 1973, p. 20.
11 Rich 2018.
12 UN Environmental Programme 2024.
13 Stoddard *et al*. 2021.

Studies of Norwegian commons and the theory of exploitation of common pool resources suggest that the problem may be overcome in certain contexts. It is an open question if this can be done at the global level. From studies of the problem of free riders[14] in collective action, the best hope may be found in the collaboration of two or three powerful states that conclude they fear more the consequences of climate change than they desire the profits from free riding.

THE STATUS OF THE WORLD'S CLIMATE

The road from scientific findings to political action may be long, but is that a sufficient explanation for the increasing concentration of climate gases in our atmosphere? Supran, Rahmstorf and Oreskes find that Exxon's executives and public communications made efforts to under-communicate and cast doubt on the relation between burning fossil fuels and the greenhouse effect.[15] It seems logical that Exxon would want to postpone action on this issue as long as possible. Their corporate income depended—and depends—on continued production of oil and gas.

Postponing action applies to climate-relevant policies in many states around the world. Those actors postponing action are hoping to become free riders. The tentative efforts made by others to tackle the issue have not amounted to much. Hence, free riding does not seem to succeed.

The incentive problems shaping the actions of coal-, oil- and gas-producing countries can be analysed as a social trap similar to that found in the provision of public goods. How can one avoid the domination of free riders? Milinski *et al*. call this a collective-risk social dilemma and ask: "Will a group of people reach a collective target through individual contributions when everyone suffers individually if the target is missed?"[16] An experiment involving variable risk of loss of the initial capital found that only a very high risk of loss induced more than half of the involved groups to make sufficient efforts to reach their target without loss of capital. Milinski *et al*. conclude that "one possible strategy to relieve the collective-risk dilemma in high-risk situations is to convince people that failure to invest enough is very likely to cause grave finan-

14 A person who takes a bus ride without paying his ticket is a free rider. So is a millionaire who does not pay taxes. Understanding why we find free riders and how to handle them is a common problem in public policy. For extensive discussions, see James S. Coleman 1990, especially chapter 11. Many experimental studies of the problem are reported by Gintis *et al*. eds 2005.

15 Supran *et al*. 2023.

16 Milinski *et al*. 2008, p. 2291.

cial loss".[17] Studying the same kind of problem, Abou Chakra and Traulsen conclude: "It turns out that constant contributors, such as constant fair sharers, quickly lose out against those who initially do not contribute, but compensate these in later stages of the game. In particular for high risks, such late contributors are favoured."[18] This is perhaps promising given the status of climate actions today. But not much in today's literature suggests this will be sufficient. The collective action of the nations that signed the Rio Convention and entered into the Paris Agreement has not produced nearly enough reductions in climate gas emissions.[19]

ON THE PROBLEM OF COLLECTIVE ACTION

Understanding the nature and dynamics of collective action has been on the agenda of philosophers and political scientist at least since Hobbes in 1651[20] concluded that a "Leviathan" was needed to force people to cooperate.

However, the problem of cooperation is not as hard as Hobbes would suggest. A more recent discussion of the logic of collective action starts with Mancur Olson.[21] Earlier discussions mostly assume that humans basically are rational individual actors maximizing expected utility.[22] In a recent study of collective action, Bowles and Gintis[23] find that humans in general are a cooperative species. People can roughly be divided into altruists, who make unconditional efforts to cooperate, conditional cooperators (or strong reciprocators), who cooperate if others cooperate, and egoists, who only cooperate if they see it to be to their advantage. But why are pure egoists so relatively few? Combining biological models, culture,[24] and constraints found in the kind of ecosystems the first human populations had to exploit, Bowles and Gintis find that strong reciprocity and altruism would be expected to dominate.

Given the problems of cooperation, the question of how it came about in the first place is discussed by many researchers. Russel Hardin[25] suggests that it may have started by humans solving co-ordination problems of the type: should we drive on the right

17 Milinski *et al*. 2008, p. 2291.
18 Abou Chakra & Traulsen 2012, p. 1.
19 UN 2023; IPCC 2023, p. 4.
20 Hobbes 1987.
21 Olson 1965.
22 Luce & Raiffa 1957, pp. 49–51; Green & Shapiro 1994, pp. 13–32.
23 Bowles & Gintis 2011.
24 E.g. Boyd & Richerson 1985; 2005; Richerson & Boyd 2005; Maynard Smith & Szathmáry 2009.
25 Hardin 1990.

side or the left side of the road? Or going further back in our history: how to organize the chase of a deer? Once cooperation on easy co-ordination problems was established, this might be extended to solutions of problems such as maintenance of roads and bridges, or agreed measures of length and weight, essential to trade. But such an extension would depend on establishing rules with monitoring and sanctions. Even a co-ordination agreement would need that.

How people act is very much dependent on circumstances: i.e. the culture and institutional structure guiding their decisions. The group of nations that has to cooperate to solve the climate problem is not exactly a group of people. But in searching for a way forward, one might look for how cooperation within nations has developed. How did human societies overcome the social traps? The tragedy of the (unmanaged) commons has been the core of the political economist Elinor Ostrom's work.[26] She finds that if left to themselves, people will usually find ways of managing their commons to their mutual benefit. People can agree on rules, backed by norms and systems of monitoring and sanctioning, which make the exploitation of commons sustainable.

In recent decades, many studies in political science, sociology, economics and psychology have used game theory with experimental approaches to investigate how, for example, problems such as the provision of public goods can be overcome.[27] Here I use another approach and look for evidence of solutions to co-ordination problems in the legal rules of a particular country.

As a member of the Landscape, Law and Justice (LL&J) group in Oslo in 2002–2003, I investigated environmental goods and services in the theory of the commons[28] as well as theoretical differences and similarities in values and institutions when comparing protected areas with traditional commons, exemplified by Norway.[29] The LL&J perspectives continue in the present chapter through my focus on the possibilities and limitations of legislation—international conventions, national legislation and customary regulations—for solving social dilemmas related to commons. The landscape dimension is implicit in my discussion of legal institutions aiming to regulate specific types of landscape, namely Norwegian commons and forests, and their possible relevance for solving problems in the global commons of the atmosphere, while the justice dimension is apparent in the issue of free riders.

26 Ostrom 1998; 2005a; 2005b.

27 Some core works are Axelrod 1984; Ostrom *et al*. 1994; Kollock 1998; Ostrom 1998; Camerer 2003; Gintis *et al*. 2005; Gintis 2009; Bowles & Gintis 2011.

28 Berge 2003; 2005.

29 Berge 2006.

LOOKING FOR IDEAS IN NORWEGIAN HISTORY

The ubiquity of social traps and their possible solutions in norms and rules has prompted me to ask if one may find traces of their solution in Norway's legislation. Notwithstanding the strong experimental results, the traps are most often solved by locally developed rules and local monitoring of performance.

It may be that all collective action in organized society, from tribal society to modern states, starts by solving co-ordination problems. Success in this makes it possible to solve the more complex public goods problems where free riders would be expected to block solutions.

Starting with the oldest known legal code in Norway, the Law of Gulathing, I investigate a co-ordination problem for pasturing animals. I then examine the management of forests in later legislation.

A PROBLEM OF CO-ORDINATION

In 11th-century Norway, there were four known law districts: Gulathing, Frostathing, Eidsivathing and Borgarthing. Most of the law texts of the Eidsivathing and Borgarthing have been lost. Most of Frostathing text has been found, while the Gulathing has the most complete text. It is also assumed to be older than the Frostathing. The oldest records of the exploitation of commons in Norway are thus the rules of the regional law code of Gulathing. The two law codes of Gulathing and Frostathing have been translated into contemporary Norwegian[30] as well as into English.[31] The following observations are derived from my 2019 study, *Learning cooperation from the commons*.[32]

The primary data are texts from the Gulathing Law. The extant texts were written in the 13th century but are believed to have been written for the first time in the middle of the 11th century. The (unwritten) law code is known to have been in existence before 930 since it was used as a model for the construction of the law code of the Icelandic Commonwealth in 930.[33]

The Gulathing law code governed a large area on the west coast of Norway from Agder to Sunnmøre, with a common meeting place in Gulen. The history of its development before 930 is based on educated guesswork. It is assumed to have developed out of local rules governing local communities, here termed *bygd*.

30 Robberstad 1981; Hagland & Sandnes 1994.
31 Larson 1935.
32 Berge 2019a.
33 Dennis 1980, p. 1.

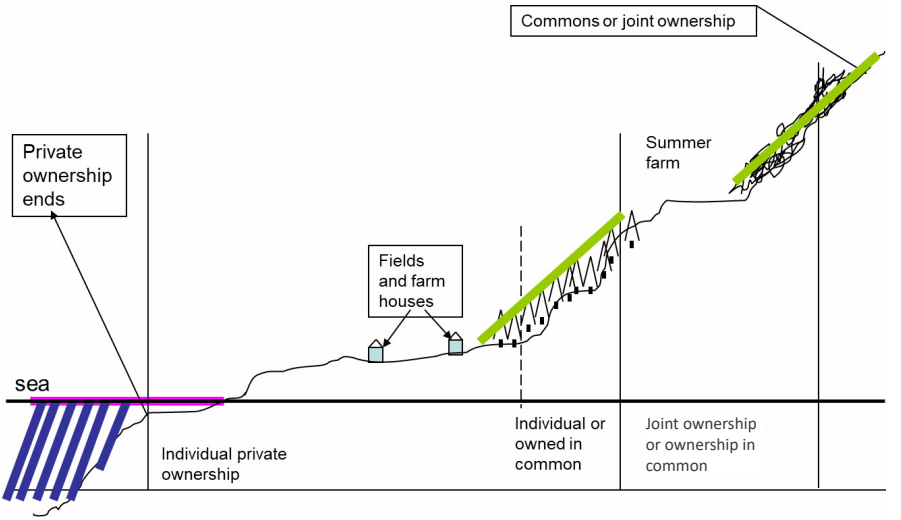

Figure 1. Typical layout of a farming community (bygd) in a fjord or valley, showing individual private ownership of fields close to the water, individual ownership or ownership in common of the lower outfields, and joint ownership of the summer farm areas. The drawing is not to scale. The distance from sea (or river) to forested hills will often be greater and the forested hills not as steep as suggested here. Source: Berge 2019a.

In a discussion of the 1274 law code (Magnus Lagabøte's Law), Imsen[34] comments on the various local units *fylke*, *herred* and *skipreie*. He argues that they probably originated in an earlier social organization for the exercise of public power in local communities. These units must have had an origin in the local community's need for organizing defence (*skipreie* refers to a district with a duty to build and man a warship) and securing social peace. Probably between 600 and 800, the local jurisdictions amalgamated to form the 10th-century Gulen law district.

To reason about the possibilities for co-ordination problems or social dilemmas leaving traces in Norway's early regional legislation, I have constructed a theoretical model of a *bygd*. The basic features of the settlement are outlined in *Figure 1*.

Among the many activities of farming communities before the Viking age, two are thought to have constituted obvious collective action problems. One is a problem of co-ordination between pasturing cattle and tilling of fields. The other is a problem organizing defence against roving bandits. We should add the second-order collective action problem of agreeing upon rules to govern the pasturing of cattle and rules for organizing the defence of the community. The *bygd* we are considering is not large.

34 Imsen 1990, p. 28.

Several times a year the inhabitants are expected to gather for ritual festivities. People talk together and are expected to agree upon solutions for co-ordination problems and to allocate duties for defence problems.

The pasturing problem resembles Dahlman's description of the "open field system" in English agriculture.[35] The fields of the model village could profitably be used as pasture in early spring before the sowing of cereals and in autumn after harvest. In spring, pasturing cattle would break up the soil somewhat and deposit some fertilizer. All cattle had to be moved to the outfields, the commons, before the fields were sown. It would be an advantage if all moved at the same time. Relatively fewer people would be needed to drive the cattle up to the *seter* (shieling). On the other hand, no one should be allowed to move animals to the *seter* before the others, since those arriving early would graze the best grass. In the autumn, animals could not return from the *seter* before harvesting was more or less finished. Then animals were welcome on all the infields.

The problem of collective grazing on individually owned fields is not in itself a collective action problem. The problem lies in avoiding free riders being too late or too early in moving out of the fields in spring and being too early in moving home from the commons. It is a problem of co-ordination. It provides a second-order collective action problem of designing rules to avoid free riders.

Crafting institutions for collective action is not related to the commons in any particular way, but the solution has clear implications for the exploitation of the commons. Commons require systems of rule-making and sanctioning. The establishment of a community assembly with power to enact rules and to design a system for judging the rule breakers is a requirement for successful exploitation of the commons as well as for maintaining the co-ordination of the movement of cattle.

Traces of a solution to the problem of free riding can be found in the Gulathing regional law code, where there are rules that can be interpreted as evidence of collective learning in solving a social dilemma. The required community assembly is called the *bygdeting*.

The correct translation of *ting* in this context would be "thing". In *Encyclopædia Britannica* it is explained: "Thing, in medieval Scandinavia, the local, provincial, and, in Iceland, national assemblies of freemen that formed the fundamental unit of government and law."[36] The particular assembly discussed in this chapter is referred to as *bygdeting*. Little is known on the origin of the *bygdeting*. It seems reasonable to assume that as private property and commons appeared—they necessarily had to appear at the

35 Dahlman 1980.

36 *Encyclopædia Britannica* 2014.

same time—then the *bygdeting* had also to be present to supply the fundamental feature of property rights: security of tenure.

CO-ORDINATION OF PASTURING ON INFIELDS IN THE REGIONAL LAW CODES UNTIL 1274

The four regional law codes were replaced by a unified national law code in 1274, Magnus Lagabøte's Landslov. The 1274 law code was essentially in force until 1687, although with numerous amendments. Christian IV's Norwegian Law of 1604 was intended as a translation of the 1274 Law (including amendments). Christian the V's Norwegian Law of 1687 was a major revision.

The regional law code of Gulathing that was in force before this provided rules for exactly the pasturing situation described above, including the last date for moving the cattle to the *seter* and the earliest date for taking them home, as well as sanctions for those breaking the rules.[37] The same rules are also found in Magnus Lagabøte's Law.[38] The basic rules of the Gulathing Law are reproduced in *Table 1*.

In addition, the Gulathing Law provides more details on how neighbours should behave, particularly with regard to animals straying out of bounds.[39] Magnus Lagabøte's Law of 1274 adds more detailed rules about fences and how to handle cattle that stray onto land not owned by the cattle owner.[40]

Table 1. The Gulathing Law

Norwegian text	*English text*
Source: Robberstad 1981 [1969].	Source: Larson 1935.
V Landleigebolk, Kap. 10: Her vert det utgreidd um grannehøve, pp. 108–109	**'The law of tenancy', section 81: "The legal relations of neighbours on the same farm are defined here"**, p. 94
Um folk bur saman i grend, skal dei flytja or heimehagen når det har gått 2 månader av sumaren, um ikkje alle tykkjer at noko anna er betre.	If men live near together on the same farm, they shall drive [their cattle] out of the farm pasture [to the shieling] when two months of the summer* are spent, unless some other plan seems better to all.

37 Larson 1935, p. 94.
38 Taranger 1979, p. 138.
39 Larson 1935, pp. 93–96.
40 Taranger 1979, pp. 129–133.

Vert ein sitjande nede lenger, skal grannen forbjoda han å sitje der. Sit han i ro likevel, skal han stemna han til tings for ran og ulovlegt tilhelde, då skal tingmennene døma til kongen ein baug, til jordeigaren dubbelt landnåm, og 6 øyrar til grannen for grasran.	If one keeps his livestock longer [on the farm] below, the other shall forbid him to remain there [with them]; if he continues to keep them there none the less, his neighbour shall summon a thing to try him for robbery and unlawful pasturing. And it shall be the duty of the thingmen to award a baug to the king, a double fine for trespass to the landlord, and six oras to his neighbours for stealing grass.
Saksøkjaren skal krevja so mange bønder og bygdemenn som han vil ha, til å føra bufeet åt den andre ut or heimehagen, saka 3 øyrar er kvar som nektar. Det same gjeld um han fer ned (frå sætri) fyre tvimånad.	And he [the complainant] shall call upon the freemen and the men of the herath,** as many as he needs, to drive the offender's cattle out of the home pasture; everyone who refuses to join in this shall owe a fine of three oras. The penalty is the same if one leaves the upper pasture before the end of the fifth summer month.***
Hå har dei rett til um hausten. Då skal ingen beita [til skade] for den andre; den som gjer det, skal bøta grasransbaug.	The aftermath [that grows] in the autumn shall belong to all; but no one shall begin to graze before the rest, and whoever does shall pay the penalty for stealing grass.

* Summer in the North was reckoned from 14 April; the removal to the mountain pasture would begin about 14 June.

** [The Norwegian word is spelled *herred*, which is one of several names that referred to a local public unit, elsewhere in this text *bygd*.]

*** 14 August–14 September.

OBSERVATIONS ON FOREST DESTRUCTION FROM THE PERIOD 1274–1687

Forest destruction has been observed during certain periods of Norwegian history.[41] The problem is often discussed as an example of a tragedy of the commons. Ostrom and Nagendra[42] explore solutions to the dilemma. However, this particular social dilemma does not seem to have had any direct impact on the earliest Norwegian legislation.[43] Why did it not?

Forest destruction could have been a topic for legislation while Magnus Lagabøte's law code was essentially in force between 1274 and 1687. One reason it did not can

41 This section is based on my earlier work: Berge & Tretvik 2004; Berge 2019a; 2019b.

42 Ostrom & Nagendra 2006.

43 Larson 1935.

be found in the bubonic plague. Starting in 1347, Europe, including Norway (during 1349–1350), was devastated by the plague. It is calculated that the Norwegian population regained its 1300 size only by 1650. The Norwegian forests prospered at least until about 1500, when the population size was at its minimum of about 40% of its 1300 size.

New markets for timber developed during the 16th century. New technology in the form of water-driven sawmills, waterway-based timber transportation, a growing work force and foreign markets, particularly in Holland and England, led to forest depletion in some places along the coast. In addition to the timber trade, population growth led to a need for more timber for housebuilding, the cooling climate ("The Little Ice Age")[44] led to a need for more firewood for home heating, and the growing mining industry needed copious supplies of firewood and charcoal. In addition, production of tar was a significant consumer of wood.

From about 1550, the timber trade and sawmilling reached a scale where their impact on the forests became noticeable, particularly those forests that the king identified as his, that is the old Crown lands, the "king's commons", and the church land taken over by the Crown after the reformation in 1537. Logging did not target the commons in particular. Land was logged close to places where ships could fetch the timber.[45]

The king's commercial interests in sawmilling and later in mining are also apparent. In 1568, there was a general prohibition of logging that might damage the forest. In 1587, the king prohibited all commercial logging on Crown lands and ordered the destruction of all sawmills not used by the king.[46] The enforcement of these rules was not sufficient to produce much impact. From the early 17th century, there was increased demand for wood for use in the expanding mining and smelting industries. In 1627, for the first time, a mining company obtained the privilege to forest resources within the "circumference" of its mine (44 km). The timber demands of these new industries competed with the traditional demands for high-quality timber for shipbuilding, particularly military vessels. The period 1550–1660 therefore saw increasing public interventions to protect forest resources. The interventions often took the form of export prohibitions on timber that could be useful in building ships.

Neither forest depletion nor the proposed solution approached the problem as a social dilemma. At first, the problem seen from the king's perspective was financial. The Crown owned forests and sawmills, and earned good money, but needed more. The timber trade became an object for many kinds of taxes. The tax burden worsened in the 17th century. In the 1687 Norwegian Law, a farm's right to timber in the com-

44 Lamb 1995; Fagan 2000.

45 Dyrvik *et al.* 1979, pp. 41–47; Ersland & Sandvik 1999, pp. 182–184.

46 Fryjordet 1968, p. 118.

mons was restricted to the needs of the farm. The reason was probably the king's need for money after losing many wars with Sweden rather than any worry about forest destruction as such. The king sold logging rights to sawmill owners, and later on forestland to merchants and farmers. However, over time, the forests regrew while transport technology improved, thus providing cheap access to inland forests. A less profitable timber trade retarded forest depletion.

Vevstad[47] notes some success in creating an "enduring forestry" around the mining towns. This led to unsuccessful attempts to promote this idea during the late 18th century by the establishment of the Generalforstamt (General Forest Administration).[48] Government commissions in 1848, 1859 and 1874 led to an administration for publicly owned forests and in 1875 to the establishment of the Forest Directorate. But effective legislation was limited in scope. The Forest Law of 1863 concerned only forests in the commons and on publicly owned land. A government commission from 1864 proposed general legislation on forestry in 193 paragraphs. By 1893, the proposal was reduced to legislation on the use of fire in the outfields, and legislation on *verneskog*, that is forest protecting other productive forest, arable land or buildings, for example, against avalanches.[49] In 1932 came the first Law on Forest Protection, replaced in 1965 by the Law on Forestry and Forest Protection.[50]

Today Norwegian legislation is well aware of the problem of sustainable forestry. The forest destruction that a "tragedy of the commons" scenario predicts did not occur on any large scale. A reasonable explanation may be that over time property rights to the forest had been established—a solution suggested also by Garrett Hardin.[51]

SOCIAL DILEMMAS AND CLIMATE CHANGE

Climate is the topic of Recommendation 70 in the Report of the United Nations Conference on the Human Environment, Stockholm 5–16 June 1972.[52] The international community's current focus on climate started in earnest in Rio de Janeiro in 1992 with the adoption of the United Nations Framework Convention on Climate Change.[53] In the general discussion at the latter conference, the concern was to ensure

47 Vevstad 1992, pp. 12–14.
48 Fryjordet 1968.
49 Vevstad 1992, p. 53.
50 Further details can be found in Berge & Tretvik 2004, pp. 11–13. A standard source for the period *c.* 1900–1990 is Vevstad 1992.
51 Hardin 1968.
52 UN 1973.
53 UN 1992.

information on how climate developed (i.e. how temperatures might be expected to rise and the associated consequences) and what the impacts on societies might be. Since 1994, there have been yearly meetings, starting in 1995, called Conferences of the Parties (COP). COP27 took place in November 2022. Little progress since 1992 could be observed.[54]

The atmosphere can be seen as open access commons in the process of tragic destruction by countries using it as a sink for gases contributing to the rapid climate change we observe. Since the international system does not have institutions that can monitor and enforce agreements among states on climate-related issues, promises, such as the Paris Agreement of 2015, to reduce the exploitation of the atmosphere are not more credible than the Kyoto Protocol. The Kyoto Protocol of 1997 was based on the 1992 United Nations Framework Convention on Climate Change. It came into effect in 2005. With an intention on doing justice (those who produced most climate gases should do most to reduce and remove them), it differentiated between industrialized countries and the rest with differentiation of targets for emission reductions. By 2012 it was clear that it did not work. The Paris Agreement was an effort to provide a new start in this. Its approach was voluntary setting of goals for reduction. Its rules about monitoring and enforcement seem to be limited mainly to reporting on goals of reduction and progress in meeting them.[55] One might conjecture that it expected to rely on "naming and shaming" as its method of enforcement. This method works well in small communities. But nothing suggests it works at the international level.

From the study of traditional commons, it is known that the social traps that produce tragedies of the commons can be overcome in certain circumstances. In an article from 2010, Ostrom[56] emphasizes the importance of diverse small-scale institutions in building up knowledge in order to implement the large-scale institutions that are needed to combat climate change. She calls this a polycentric approach. The outlook more than twelve years after Ostrom wrote this article is far from as encouraging as it was in 2010. The 2015 Paris Agreement had a promising start, emphasizing voluntary contributions. But before one could see any progress, Trump announced in 2017 the USA's intention to withdraw.[57] The decision only took formal effect one day after the 2020 US Presidential election, on 4 November 2020.[58] President Biden then signed an executive order on 21 January 2021 to rejoin the agreement, and this took

54 IPCC 2023.
55 UN 1973; UN Climate Change 1997; 2024.
56 Ostrom 2012 [2010].
57 Zhang *et al*. 2017.
58 US Department of State 2019.

effect on 19 February 2021.[59] Even if the withdrawal formally lasted only three and a half months, the signal it sent to other countries represented a significant setback. But it also underlined the importance of Ostrom's recommended polycentric approach.

One may tentatively conclude from the history of Norwegian legislation that if the tragedy (everybody loses more than a free rider gains) is perceived to be near enough, rules will be forthcoming. But the perception of the climate problem is difficult and the development of international law or even property rights (e.g. quotas for emissions) is not coming fast enough. Besides, there are several important differences between a community of people and a community of states. The way states decide on what to do is very different from how voters in a democratic state or the advisors of a dictator reason. In both cases there seems to be a sufficient number of would-be free riders to block significant progress. The fact that avoiding the climate disaster requires that nearly all cooperate in the reduction of climate gases will also be a significant block for small-scale contributors.

What one might hope for is that some wealthy actors and large-scale contributors to the emission of climate gases (say, China, India and the USA) will want to protect the climate more than they want the profits from waiting. This way of producing public goods has happened sufficiently often to be noted in the literature.[60]

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59 Blinken 2021.

60 Olson 1965.

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FRODE FLEMSÆTER

Landscape, law and justice in the Norwegian outfields

SOCIAL PROPERTY RELATIONS

I come from Flemsetra, a small rural hamlet a few kilometres uphill from a fjord on the west coast of Norway. When my great-great-grandfather acquired a plot here in 1870, the only things he brought with him were a goat and his bare hands, it is told. The farm has since been handed down from one generation to the next, gradually developed and cultivated over a span of more than a hundred years. My parents took over the property in the early 1970s, built themselves a new house and became part-time farmers. Consequently, I spent my formative years near my grandmother, Agnes, who resided in the old main house on the farm and who taught me so much about the life in and with these landscapes. Both my brother and I left at a young age to pursue education and work, and we have since established families and homes far removed from Flemsetra. But the labour and activities that I undertook, the stories I was told, and the people that I got to know made me deeply connected to the farm and its landscapes, and made this an integral part of my identity, remaining to this day. My father died recently, and during the time of writing this text, my mother moved to sheltered housing. This means that the houses are now empty, and my brother and I have needed to decide what to do with the property, the rights to the associated resources, and our emotional attachment to the place, the landscape and to times past. During the winter 2024, we made the difficult decision to put the property up for sale.

Facing a situation like this, it becomes very clear what property really is—or maybe better, it becomes clear that property is so much more complex than it may look at first sight. Kenneth R. Minogue described the idea of property as an iceberg, and that prop-

erty "is more complicated than it looks, and much of its significance is submerged".[1] Parts of the submerged property are the immaterial social relations and cultural understandings upon which the material property above the surface is built. In choosing to sell our smallholding at Flemsetra, what we sell is not identical to what the prospective buyers will acquire. The formal transaction may relate to the materialities we see and measure above the surface, but while the new owners must start developing their own experiences and perceptions of what is underneath the surface, my brother and I have far-reaching and intricate, although different and individual, notions of what is submerged. Selling the smallholding will break the link which for us connects the material and immaterial aspects of the property, and this truly unsettles our individual identities. Our smallholding connects generations, it connects people with the surrounding landscape, and thereby it illustrates how both property and landscape is deeply social. I elaborate on this in the present chapter and show how this insight has influenced and continues to influence my research.[2]

I started working on a Ph.D. in 2006 based on some initial ideas I had about investigating influential factors when major decisions over the future of small farm properties in Norway were taken, as several policy initiatives aimed at influencing such decisions seemed to have failed. There is no doubt that attachment to the family farm and the surrounding landscape heavily influenced how I set out on this work. But another major source of inspiration was my supervisor Gunhild Setten, who had just participated in the research group on Landscape, Law and Justice and introduced me to the proceedings from the group's final conference and some of its authors in particular.[3] Since my idea concerned exploring how property and property relations were practised, there were two chapters in the proceedings that especially drew my attention: Katrina Myrvang Brown's 'Actualising common property rights in postproductivist rural spaces—*common* grazings or common *grazings*?'[4] and Nick Blomley's 'Enacting landscape—claiming property'.[5] These two texts in particular, and the whole book in general, strengthened my awareness about how formal and informal laws and notions of rights and wrongs shape and constitute landscapes, but also how landscape produces, maintains and challenges formal as well as informal practices, such as property enactments. This resonated well with my own experiences coming from the smallholding at Flemsetra as well as the ideas I had for the Ph.D. In this work, *Geography,*

1 Minogue 1980, p. 10.
2 Parts of this chapter are presented in Norwegian in Flemsæter 2024.
3 Peil & Jones 2005.
4 Brown 2005.
5 Blomley 2005a.

Law and the Emotions of Property: Property Enactment on Norwegian Smallholdings,[6] I discussed "emotional legal landscapes",[7] where owners' decision-making on smallholdings on the one hand is influenced by a formal legal and regulatory framework and on the other hand by informal norms, moralities and emotional attachments to property and landscape.

After being introduced to the Landscape, Law and Justice network, and its proceedings, I went on to read other articles dealing with property and ownership from the perspective of legal geography. An article that became very influential for the direction of my research was Nick Blomley's 'Flowers in the bathtub: Boundary crossings at the public–private divide'.[8] This very elegantly written article, based on research conducted around a flower-filled bathtub placed on a street in Vancouver, Canada, caught my attention not only because of its original title and empirical setting, but because it made me more conscious about how seemingly fixed spatio-legal categories in reality are more fluid than we often may think and require continuous maintenance and contestation. It is not necessarily through debates around formal concepts and definitions, but through informal social and cultural practices that rights are established, challenged, defended and altered. I realized that even though there is considerable empirical distance from downtown Vancouver to smallholdings in rural Norway, the analytical perspective of investigating how ownership, property and landscape are enacted could be very fruitful to my own work. This perspective has followed me since.

THE OUTFIELDS

For my grandmother, Agnes, and the farm she and her family managed, the *outfields* were crucial. "Outfields" is an established translation of the Norwegian term *utmark*,[9] and is understood to include mainly uncultivated countryside areas such as forest and upland. The outfields make up over 70% of Norway's land area and have traditionally been utilized for important land uses such as grazing, herding, forestry, hunting and fishing, with rights regulated by law at least since *Landsloven* (The Norwegian Code of the Realm)[10] in 1274. Outfields are opposed to the "infields" (*innmark*), which are the cultivated lands close to the farmhouses or close to the summer farms. Every day during the summer, Agnes used to take the 45 minutes' walk from the main farm at

6 Flemsæter 2009.
7 Emotional legal landscapes are also discussed by Kymäläinen in the present volume.
8 Blomley 2005b.
9 Sevatdal 1998; Flemsæter & Flø 2021.
10 Also known as the Magnus Code, after King Magnus Lagabøte ("Lawmender"), who instigated it.

Flemsetra through the woods to the summer farm and the small infields that belonged to the farm there. After having gathered the cattle from the common pasture on the other side of the stone wall and milked them, she carried heavy buckets of milk back home in the evening. I remember she talked a lot about this work, but also about how they utilized other user rights in the common outfields—they cut grass, brought down timber, collected wood, picked berries, fished, grazed sheep and learned to swim in the river. The activities on the summer farm were vital in legitimizing user rights to the outfields, as these rights had been both established and maintained through social, cultural and economic practices.

One of the things that fundamentally separates outfields from infields is the way property, rights and ownership are regarded and practised. While the infields are privately owned and controlled land, the outfields can have various forms of ownership structures, and infields and outfields have traditionally often been separated by a *skigard* (traditional type of wooden fence) or a stone wall to mark this crucial divide. Ownership and rights in the outfields have been, and to a large degree still are, collectively managed whereby rights are shared through a "bundle of rights" principle.[11] That means that different people can have rights to different resources within the same area, and several rightsholders can have rights to the same resource (e.g. grazing or fishing). The summer farming practices came to an end for all farms around Flemsetra in the 1960s, but although the use of the outfields for agricultural purposes has been significantly reduced since then, user rights to hunting, grazing and fishing have remained and are still enacted, originating from local social and cultural practices.

After finishing my Ph.D. in 2009, I have mostly been working with externally funded applied research concerned with, as Michael Jones suggests in the introduction of the present volume, understanding and finding solutions to some of today's important challenges. These projects have repeatedly taken me to the outfields, where colleagues and I among other things have studied wild reindeer management,[12] outdoor recreation,[13] Sámi reindeer herding[14] and social sum effects from nature management.[15] To try and understand and explain challenges in the outfields, across these research projects, I have carried with me landscape, law, justice, property enactment, morality, commons and enclosure—to mention a few of the conceptual tools that the Landscape, Law and Justice research group of 20 years ago filled with meaning for me.[16]

11 Sevatdal 1998.
12 Flemsæter 2014; Flemsæter *et al*. 2019.
13 Flemsæter *et al*. 2015.
14 Brown *et al*. 2019.
15 Flemsæter & Singsaas 2024.
16 Peil & Jones 2005; Jones 2006.

When my grandmother and her fellow neighbour farmers went to and from the summer farm with the cattle, they went along the trail known as *Buråkje*, meaning "the narrow cattle trail". I remember I heard about this trail when I was young, but never saw it since it was overgrown by bushes by then. Recently, the local community has redeveloped the old *Buråkje* trail and set up signs showing where the summer farms used to be, and which farm had which piece of land. Along the trail, people can see many traces from the summer farming practices that took place, such as ruins of stone walls and cowsheds and some open fields where farmers used to cut grass. When I come "home" to the place where I grew up (because it is still my *home*) and want to meet people, there is no point going down to where the shop and school used to be—these are now closed. Instead, I walk the *Buråkje* trail and continue to Flemsetervatnet along the newly established gravel trail around the small lake. I always meet old friends and other locals here in these idyllic landscapes for a chat. This is part of the new valuations and uses of the outfields—recreation practices with designated infrastructure, often connected to a display of cultural historic traces. But the transition that the outfields currently are going through contains so much more than such renewed local outdoor practices.

NEW BATTLES IN OLD LANDSCAPES

As my colleague Katrina Rønningen and I pointed out in a chapter in *The Handbook of Rural Studies* of 2016,[17] we are observing major restructuring processes in terms of commodification and consumption of rural resources, which are rapidly changing the use of the outfields and introducing new interest groups at regional, national and even global scales—from cabin developments, energy production and mining to increased tourism and new local and also extra-local recreational practices. These trends are also recognizable when examining the recent volumes of the scientific journal *Utmark*,[18] where topics related to revaluations of the outfields are discussed, e.g. for commercialized hunting and fishing, tourism, recreation, wildlife management, energy production and forestry.

The revaluations of the outfields have brought with them increased complexity, more actors and interests, more conflicts, and consequently, when the number of actors and interests are increasing, more centralized nature management. The social and cultural bonds between local communities and the surrounding outfields are thus

17 Rønningen & Flemsæter 2016.

18 *Utmark* (Outfields) is an open access scientific journal in Norwegian aiming to convey knowledge of the use and management of the outfields, and to stimulate public debate (https://utmark.org).

challenged, and so are rights and ownership practices. It was these different meetings between the "old" and "new" outfields that my colleague Bjørn Egil Flø and I wanted to highlight by organizing a network of researchers and publishing an edited book on the fundamental changes currently taking place in the outfields. The book, *Utmark i endring* (Outfields in Transformation),[19] contains chapters on major changes of uses and users, causing increased levels of conflict and heated debates about the use of these lands and their resources. It is where second homes, wind power, mining and outdoor recreation are creating certain qualities in many people's lives, but, yet, where these uses are at odds with existing values and practices. The book demonstrates from different empirical settings how some fundamental structural relationships between landscape, law and justice in the outfields are challenged.

In his classic essay 'The beholding eye: Ten versions of the same scene', D.W. Meinig emphasizes how the same material landscape can be viewed and interpreted in many different ways, depending on the perspective of the viewer.[20] He demonstrates how multiple interpretations can coexist, and thus that understanding this multitude of perspectives offers valuable insights into how landscapes can be battlefields for tensions and conflicts over land and resources. In the Norwegian outfields, the number of versions of the same scene have increased in recent decades as more actors with different backgrounds and interests have acquired interest in different resources found there. Taking notes of the chapters in the book *Utmark i endring* and other recent research, as well as numerous media articles, I argue that new ways of seeing or thinking about the outfields manifest themselves in at least three ways. First, *scale*: while the outfields previously were mainly used and managed locally, the outfields are now increasingly valued, used and managed on a regional, national and even global level; second homes are developed and bought by people from outside the local community, German companies invest in green energy production, the Canadian mining industry looks to Norway for new exploration licences, and thus regional and national state agencies are increasingly involved in management of the outfields. Second, *economy*: while the outfields previously were mainly connected to the agrarian economy, the actors now represent a range of different economies, connected to energy production, mining, tourism, recreation and so forth. Third, *time*: while rights previously were established over a long time and local people learned customs, practices and rhythms through growing up with the outfields, there is a totally different tempo and rhythm demanded when cabins are built and sold, while wind turbines should produce green energy for Europe sooner rather than later. Consequently, whereas negotiations and

19 Flemsæter & Flø 2021.

20 Meinig 1979.

justifications of rights previously took place at the same *local arena*, they now take place at many different arenas where a common understanding, customs, norms and rules are certainly more difficult to establish and accept. The changes undermine the way interactions among members of the local communities are working and they modify the local communities' role, including their rights and responsibilities, in the wider society. This is rocking the foundations not only of the outfield landscapes as such, but of fundamental social structures.

The philosopher and political scientist Crawford B. Macpherson stated in his book on property in 1978 that "rights are always related to the purposes people see in resources, and when purposes change, property and rights becomes controversial".[21] This is exactly what has happened in the Norwegian outfields. Not only are people seeing other purposes, but rights holders have also even been encouraged by the authorities to look actively for other uses of the outfields' resources. This can be illustrated by examining a passage from a White Paper on agriculture from 2000.[22] The economy in traditional agriculture in Norway has been under pressure during the recent decades, and farmers have been urged to look for other sources of income based on accessible resources. This was particularly highlighted in the White Paper, which encouraged farmers "to take a larger part of the agricultural properties' resources 'into use' and to gain 'increased economic profit from the outfield resources'".[23] As an employee from the government said in an interview I conducted as part of a research project about changes in the outfields: "this new agricultural policy [...] forced farmers to look beyond '*skigarden*' [fence between infields and outfields] to make their living."

Thus, the government was seeking opportunities for new forms of commodification in rural areas, stimulating a range of initiatives for new economic activities in the outfields. However, by doing this they made visible some fundamentally different views on property and ownership, which can be illuminated more by examining closely three key discursive elements in these quotes from the White paper: "agricultural property", "take" and "into use".[24] These discursive elements, powered by their spatiality, involve more than just "looking beyond" *skigarden* (the fence). The resources in the outfields are written about here as part of a farmer's "agricultural property", and so the outfields slip inside a metaphorical fence into a sphere where land use is based on individual and exclusive rights. Outfields become thus an *extension* of infields rather than a separate area where rights according to the bundle of rights principle are prac-

21 Macpherson 1978, p. 1.

22 Landbruks- og matdepartementet 1999–2000.

23 Landbruks- og matdepartementet 1999–2000, p. 18 (my translation).

24 The discussion of these discursive elements in the White Paper was first presented in Brown *et al*. 2019.

tised. The spatial as well as discursive practices of "owning" become normalized on land that previously was based on "sharing", and thus this can be interpreted as an act of territorialization. The word "take" implies a kind of permission to the farmers that the outfields are theirs to "take" without further notice. With the encouragement to take land "into use", it is implied that the land is currently *not* in use or that it is underused, which means taking for granted that there are no other actors that already use the area. This tactic of first defining something as under-used is a crucial part of what John Locke described as *appropriation*—the act of taking ownership of something through starting to use it.[25] This is also a fundamental aspect of territoriality. Gunhild Setten urges us to be aware of the power of concepts when dealing with issues of landscape, law and justice,[26] and with this in mind, there is reason to argue that instead of *reflecting* on the reality of property enactment in the outfields this White Paper rather contributes to *creating* new realities through altering the discourse and thereby normalizing new ways of thinking and acting. These new realities in the outfields are rocking the *basic structures*.

DESTABILIZING BASIC STRUCTURES THROUGH TERRITORIALITY

Basic structures refer to the fundamental institutions and practices that shape social interactions and influence individual behaviour. The term was introduced and developed over time by political philosopher John Rawls, particularly in his books *A Theory of Justice* and *Justice as Fairness: A Restatement*.[27] The basic structures might be seen as the backbone of society, as they provide the framework for the distribution of resources and opportunities, as well as duties, within a given community.[28] According to Rawls, they are the "primary subject of justice" in society, and decisive for ensuring fairness. Although he has been criticized for focusing too much on the *distribution* of justice and too little on other aspects of justice,[29] I believe Rawls' thinking around the basic structures of a society is a useful theoretical entry to a better understanding of the ongoing battles in the outfield landscapes.

If John Rawls had spent some summer days together with my grandmother, Agnes, in the 1950s, walked to and from the summer farm every day and got to know her family, neighbours and friends, he would first have seen how essential these outfield

25 Locke 2016 [1689], pp. 137–143.
26 Setten 2005.
27 Rawls 1971; 2001.
28 Landscape as basic structure is discussed by Mitchell in the present volume.
29 E.g. by Young 2006.

landscapes were for the local communities. My grandmother would have explained to him how the local communities have utilized the outfields for generations, how norms and customs have developed and been transferred between generations, and how institutions have gradually been established regulating and distributing rights and duties. Rawls would probably have responded by explaining to my grandmother that the outfields illustrated well what he believed is the basic structures of a society where "political and social institutions of a society fit together into one system of social cooperation, and [...] assign basic rights and duties and regulate the division of advantages that arise from social cooperation over time".[30] Although Agnes would have been somewhat unfamiliar with the phrasing, I think she would have understood. She would have introduced Rawls to her children, who often took part in the work of gathering the cattle from the common grazings in the outfields and cutting grass on the infields. Rawls would then have seen in real life how "the legally recognized forms of property, and the structure of the economy [...], as well as the family in some form, all belong to the basic structure".[31] After following in my grandmother's footsteps for a couple of days, Rawls would have learned through practice how the outfields were instrumental in forming the everyday life of members of the local communities. He would see how crucial the outfields were for the social life, the culture and the livelihoods of people and community. The summer retreat at Flemsetra would have provided him an excellent example of how "the basic structure is the background social framework within which the activities of associations and individuals take place".[32]

The Norwegian outfields have in other words been a fundamental part of people's lives. They were critical for my great-great-grandfather when he first started developing the farm, and they were essential for my grandmother. For both my parents and for me growing up, the outfields gradually started to have a slightly changed function where use was less connected to the local agrarian economy. However, I grew up with the local traditions and culture and learned the importance of closing the gate when hiking through a pasture and paying attention in the hunting season. I learned the rhythms, the codes and the way of life in and with the outfields that have formed the basis for the local community as a social system. But now, new "activities of associations and individuals take place" and new "background social frameworks" are formed where the "submerged parts" or the "versions" of the same material outfields appear very differently among the actors. The crux is to make sure that the renewed basic structures are *just*.

30 Rawls 2001, p. 10.
31 Rawls 2001, p. 10.
32 Rawls 2001, p. 10.

To ensure justice within the basic structures, the production and distribution of rights to resources are fundamental. In his chapter in the proceedings from the Landscape, Law and Justice research group's final conference, legal geographer Nick Blomley stressed that:

> [...] both law and society expect me to sustain and communicate my claim [to my property] on a continued basis (by cutting my grass, maintaining my property and so on). Property in that sense, can be thought of as dependent on repeated enactments: it is, in that sense, a "doing".[33]

Since then, Blomley and many others, including myself, have through a number of empirical studies demonstrated exactly how properties are "done" to legitimize rights. As demonstrated and discussed previously in this chapter, "doing" in the Norwegian outfields has previously been focused on *sharing*, whereas this "doing" now increasingly takes the form of processes of demarcation and enclosure—and *owning*.[34] The "doing" of the outfields is furthermore less connected to local agricultural practices and economies, but increasingly connected to wider commodification and consumption processes. Landscapes where rights previously were looked upon from a functional and practically oriented view are now gradually being looked upon more from a substantial view of property, where rights within defined borders are what control *all* use of the resources. There is now a clash between these different views of property, and the basic structures of the Norwegian outfields is thus destabilized through, one might argue, processes of *territoriality*. Territoriality refers to the behaviour of individuals and groups to create and maintain a sense of ownership or control over particular physical spaces: "Territoriality for humans is a powerful geographic strategy to control people and things by controlling an area."[35] Territoriality can manifest itself in various forms, but most forms include in one way or another the marking of boundaries, the establishment of exclusive rights and the defence of territory against outsiders.

Robert D. Sack's *Human Territoriality: Its Theory and History*[36] has long been a "classic" within human geography.[37] With a systematic, analytical approach, Sack draws up a typology of "ten tendencies of territoriality", demonstrating potential workings of territoriality, where the "logically prior" tendencies are *classification*, *communication*

33 Blomley 2005a, s. 26.
34 Flemsæter & Flø 2021.
35 Sack 1986, p. 5.
36 Sack 1986.
37 Agnew *et al*. 2000.

and *enforcement*.[38] These are also the three tendencies Blomley highlights from Sack's typology, which he argues serve as effective means of organizing and materializing relations when we "tend to take the territory of property for granted" in Western liberal societies.[39] When, for example, authorities aim to negotiate and manage conflicts between users and interests in the outfields, they are likely to do this through land use planning processes where maps are the key tool and medium.[40] In such planning processes we see how these three "tendencies" of territoriality are at work. By *classifying* different physical spaces and *communicating* this by drawing up territorial boundaries between them on a map, authorities and other decision-makers can *enforce* control over these areas by taking them into land use plans and legal frameworks.

Perhaps more hidden, but arguably even more important for understanding the consequences of the destabilization of the basic structures of the outfields, partly *because* they are not so easily recognizable or visible, are some of the other tendencies of territoriality in Sack's typology:[41]

Reifying power: Much of the outfields' values are invisible, and in Minogue's[42] terms, submerged parts of the property iceberg, such as farmers' detailed knowledge of different grazings, local people's attachment to the landscape, and traces of cultural heritage that only those with local historical knowledge can see. Invisible values are also the potentialities—yet unknown—that future generations of humans and animals might find valuable. Power itself is also invisible, but instead of finding ways to cope with potentiality and not only actuality, we tend instead to make power visible, tangible, explicit and real by territorializing property. As Sack puts it, "territoriality provides a means of reifying power".[43]

Displacing of attention: When my grandmother utilized resources in the common outfields, and when herders established their grazing rights, attention was focused on the relations between people and the land, between the user and the resources. These relationships have existed in parallel with other relationships between people and land inside the same physical spaces. However, Sack argues that territoriality has displaced "attention from the controller and the controlled to the territory",[44] and thus it is the territory rather than the relationships that becomes the centre of attention when rights and regulations in the outfields are negotiated.

38 Sack 1986, pp. 31–32.
39 Blomley 2016, p. 594.
40 Flemsæter & Brown 2021.
41 Sack 1986, pp. 32–34.
42 Minogue 1980.
43 Sack 1986, p. 32.
44 Sack 1986, p. 33.

Impersonalizing relations: Related to, and a consequence of, displacing of attention is that relations in the outfields become impersonalized in the sense that when managers, actors and politicians talk about the outfields it is not any longer the relations between people, the relations between members of the local community or between herders and their animals that are talked about. Rather, they talk about impersonalized relations between different territories, between here and there.

Place-clearing: Territoriality is according to Sack an effective means by which a place is made and cleared for things to happen, and he argues that "societies make this place-clearing function explicit and permanent in the concept of property rights in land".[45] I referred earlier in the text to John Locke's argument that a fundamental element of appropriation processes is first to deem parcels of land unused, and when actors want new things to happen in the outfields it is taken for granted that these things need space to exist. Thus, before cabins are planned or wind turbines are built, the places must first be "cleared", for example, by drawing up new (property) boundaries. Then it becomes possible to connect new "things" to them and make them happen.

Acting as container or mould: When places are cleared, territory becomes a container or mould to which things, events and other attributes can be assigned. On a digital map rigged with lines and polygons, the land use planner can start adding attributes to the polygons defining which colours and patterns they should be filled with, and thereby assigning attributes such as regulations, permissions and support schemes to the territories.

Emptying space: Very much related to the last two tendencies, Sack argues that "when the things to be contained are not present, the territory is conceptually 'empty'".[46] That means, just as much as the territory can be filled with things and activities, it can also be emptied, not only materially but also socially. Sack claims that "to think of territory as emptiable and fillable is easier when a society possesses [...] a metrical geometry to represent space independently of events".[47] As the users and uses in the outfields are increasing, the scales are widening, economies become more complex, arenas for developing local practices over time evaporate, and the metrical geometry of the map becomes an increasingly powerful instrument boosting territoriality in these landscapes. This is at the expense of spatial configurations resting on customary and traditional patterns developed locally over a long period of time.

The outfields have also in earlier times been territories with defined borders and attached rights. They have been "containers" with certain attributes. But these territories

45 Sack 1986, p. 33.
46 Sack 1986, p. 33.
47 Sack 1986, p. 63.

have been controlled by and shared between members of communities, they have been managed and used in common, relations have been personalized, and their spaces and places have not been possible to clear, nor have they been emptiable even if uses have been invisible. However, uses might have appeared invisible for others than those who have been socialized into the local practices and customs and thus have understood the importance of these shared spaces as part of the local communities' basic structures. These "others" used to be few, now they are many.

OUTFIELDS AS JUST LANDSCAPES

Justice can be described as "who gets what, where, when and how".[48] In terms of basic structures as a primary subject of justice, John Rawls centred his attention on how justice is *distributed* among members in a community. Rawls has been a vital source of inspiration for other thinkers on justice who have both criticized and expanded on Rawls' thoughts. Iris Marion Young[49] argues that there are at least two aspects of justice that Rawls' focus on patterns of distribution fails to detect. First, she claims that focus on distribution pays too little attention to how distributions are produced, and that we should pay more attention to and evaluate the social structures in which distributions occur. Second, Young argues, "focus on distribution of benefits and burdens obscures important aspects of structural processes that do not fit well under a distributive paradigm",[50] and she highlights structures of decision-making power and processes that normalize certain behaviour and attitudes as examples of the latter. To understand the relations between basic structures and justice in the outfields I believe the points Young makes here are crucial. I will again cite Young when she writes that "the subject of social justice is wider than distribution, and that it is precisely a concern with basic structure that reveals this".[51]

To the first of Young's points: the processes that produced the outfields as experienced and practised by my grandmother, Agnes, took time, a long time, and they took place locally among people who knew each other and mostly had common interests. Rights and duties, whether they concerned grazing, hunting, berry picking or other resource uses, were based on local social structures, customary practices and shared responsibilities. Now, the processes that produce the distribution of rights and duties take place within totally different structures, in different circumstances, between ac-

48 Smith 1994, p. 26.
49 Young 2006.
50 Young 2006, p. 91.
51 Young 2006, p. 91.

tors across scales and interests, and in limited time frames. These processes tend also to follow a Cartesian logic where relational spaces become impersonalized and emptiable territories. Second: in my grandmother's outfields there were aspects crucial for justice that were not subject to distribution. These could be the structures in which decisions took place, but not least everyday processes that normalized certain behaviour and attitudes to property, rights and ownership. These were cultural processes, which even I who grew up in the 1970s and 80s had a sense of, but which certainly were much stronger at the time when the summer farms were in operation. But now, without any common local arena where such practices can grow and cultivate, attention tends to be displaced from the invisible and submerged relations between people and land to territories with reified power, which increasingly tend to be containers with exclusive rights to their resources. Normalizing attitudes and behaviour through discursive practices, such as in the previously discussed White Paper on agriculture, is a crucial part of this.

In future management and research concerning the Norwegian outfields, we should look for ways that make us better able to address how conceptions of property, rights and spatial justice cope with coexistence and multiplicity. We must also find ways to plan for and manage the potential, invisible and unpredictable. Legal space must be made, materially and discursively, for such complexity in order to understand and generate just reproduction of landscapes.[52] This means that regulatory frameworks need to a certain extent to let go of their aspirations to bound and control landscapes tightly to gain clarity, and that we maybe instead should look back in time and again aim to incorporate heterogeneous spatialities when we value and manage landscapes. My part of this work will be to continue to invite myself and other scholars into my grandmother Agnes' landscapes. I will also continue to imagine her commenting on the texts I write. We have many lessons to learn.

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52 Brown *et al*. 2019.

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GUNHILD SETTEN

Landscape and the making of competing moralities

For as long as I have identified myself as a human geographer, I have taken a keen interest in dialogues within international human geography, and in some of the conditions under which such dialogues take place.[1] I have in particular been concerned to understand how and why landscape, both as term and as phenomenon, has been given centre stage in some of the most important and critical dialogues within the discipline. These are concerns relating to power politics, and how, through our choices of research topics, theoretical approaches, terms, languages and research outlets, we let the discipline operate.

I believe my interests are not a matter of coincidence. I was supervised by Michael Jones and later also Kenneth Olwig during the 1990s and early 2000s. In different ways, they have made vital contributions to international landscape debates, not least through how they have analysed the complex meanings of (cultural) landscape and subsequently demonstrated how landscape works as a political and ideological phenomenon and materiality. Jones has analysed the complex usages and meanings of the "cultural landscape" concept in Scandinavian, German and English language contexts,[2] while Olwig "recovered the substantive nature of landscape" by showing that historically in the Scandinavian countries landscape was a space of justice and politics.[3] Hence, for several years, I found myself in the midst of some intense conceptual debates, extending well beyond the Department of Geography in Trondheim and the Landscape, Law and Justice group, which had a profound impact on my thinking

1 Setten 2005; 2006; 2008.
2 Jones 2003.
3 Olwig 1996; 2002.

around and understanding of the term landscape. Equally important, both Jones' and Olwig's work made clear to me that choice of terminology, categories and definitions are fundamental for what we research and how we do research in the first place, with whom we communicate, and with what effects.

It was within this briefly outlined context that I started to reflect on the ownership of concepts (if there is such a thing), how terminology is set to "border and order", and ultimately how it works to exclude and alienate as well as include. So when I asked, "who owns the concepts?" 20 years ago,[4] it not only reflected investigations into the complexities of the meaning and usages of the concept of landscape, but also how I developed a deeper understanding of the way different meanings, by default, translate into powerful, yet situated, narratives about social, political and cultural processes driving academia as well as society at large. At the time, much energy was spent on debating the relevance of landscape, and what was already contained in the concept. In his excellent essay from 2003, 'What (else) we talk about when we talk about landscape: For a return to the social imagination', American geographer George Henderson expressed it this way: "I think the promise of the landscape concept is that adjectives such as *cultural*, *social*, *political*, and *economic* ought to be already folded into what we mean by *landscape*, or at least into the best of such meaning."[5] By implication, energy was also spent on debating the limits of landscape. Bluntly phrased, what should, or could, this "package" called landscape be—or not?

Henderson's quest for a "return to the social imagination", which, crucially, is a normative position, provokes careful consideration of what "else" landscapes might consist of: what are the cultural, social, political and economic relations that make up the landscape, and are potentially already folded into it? For Henderson, it was a call for a landscape concept that is much more sensitive to social justice, premised not only on an explicit engagement with moral and political philosophy, but also on the study of people's everyday lives and struggles. If we take Henderson's call from 20 years ago seriously, and I think we should, these two premises produce another premise: the degree to which people's everyday lives and practices are at the heart of the landscape concept tells us something about the degree to which (in)justice is also folded into it. This, in turn, lays the ground for differing and often competing conceptualizations of landscape.

In this chapter, I offer some personal reflections on how my work more broadly continues to be informed by landscape, as both concept and phenomenon, yet maybe in more implicit ways than 20 or even 10 years ago. When reflecting on reasons for

4 Setten 2005.

5 Henderson 2003, p. 336, n. 1, emphasis in original.

this, I continue to draw much inspiration from Henderson. However, his call cannot be confined to a fuller engagement with justice theory alone.[6] If landscapes, by default, are sites of contention and struggle, they are also always regulated by "beliefs, actions, and behaviors that reflect and underpin people's conceptions of what is just and unjust, appropriate and inappropriate, right and good".[7] Hence, "landscapes are always *moral* landscapes".[8] However, and even though we routinely engage in moral and normative evaluation and regulation—moral issues pervade all realms of human life—this is rarely acknowledged, either in everyday life or in research. The crux is that "many of these realms can be all the more powerful for any apparent lack of moral content; a veneer of objectivity and self-evidence tends to make the underlying moral judgements invisible".[9] Thus I argue that the often subtle norms and moralities held by individuals and groups of people, and how competing moralities are (re)produced through their practices, also need to be talked about.

In the following, I examine how and why notions of normativity and morality can give increased understanding of everyday lives and practices, what (in)justice can mean and how it might operate in, and in relation to, landscape. By drawing on examples from my own work, including works with colleagues, I argue that using a moral lens helps us understand that because we are unequally positioned to shape, regulate and dominate, we are also unequally positioned to claim material landscapes. I have on occasions conceptualized this as a "moral order";[10] in other words, I have underlined that morality (re)produces hierarchies because somebody's morality will always trump somebody else's in given situations. Hence, morality is restrictive, yet, and crucially, also provides space for agency in ways that offer clues to current and future socio-environmental challenges. To set the scene for this approach, I begin with an understanding of landscape as a relational and tensive concept.

LANDSCAPE AND THE NORMATIVE TENSIONS BETWEEN RELATIONS

The bottom line is that the landscape can clearly teach us something beyond its morphology; in other words, landscape is always more complex than its material reality

6 Very few have taken up Henderson's call. Tom Mels and Don Mitchell are exceptions (Mels & Mitchell 2013; Mitchell 2023).

7 Setten 2020, p. 193.

8 Mitchell 2023, p. 212, emphasis in original.

9 Setten 2020, p. 193.

10 E.g. Setten 2020.

implies.[11] Things that are often not readily visible are nonetheless fundamental for both the physical and the symbolic landscape—be they for example flows of capital, legal frameworks or ideas. Thus, Henderson, Mitchell, Schein, Germundsson *et al*.,[12] and many others, remind us that landscapes are never self-evident, nor innocent. By implication, to paraphrase Mitchell, landscape is power,[13] materially as well as discursively, which brings some fundamental tensions to the table. John Wylie's book from 2007, *Landscape*, opens with claiming that "Landscape is tension"[14]: landscape is made by a constant wrestling between "Proximity/distance [...] Observation/inhabitation [...] Eye/land [...] Culture/nature".[15] Representation/the represented, positive/normative, exclusion/inclusion, continuity/change, inside/outside, subject/object, material/immaterial, theoretical approach/political strategy, among others, could be added. These are not only various ways through which landscape has been understood and theorized. They are ultimately various relations that go into the making of landscape. In sum, landscape is produced through the tension between such relations, and this is what makes landscape such a powerful concept and phenomenon. This is, no doubt, also a claim, yet, I would argue, an uncontroversial claim within the broad field of landscape research. However, its "operationalization" has taken multiple forms.

There is insufficient space to present a detailed narrative of landscape research over the last 20–30 years. Much has been said already.[16] I want rather to underline that "injecting explicit consideration of justice into landscape studies"[17] has also injected inspiration to keep paying critical attention to landscape as that which can help us to "understand why the cultural, social, political, or economic might matter"[18] in real-world contexts. Yet, like so many other times, the crux of the matter lies in the multiple meanings of the landscape concept.

Seven years prior to Henderson's call, Olwig[19] had presented a take on landscape that stood in contrast to landscape as (hegemonically) conceptualized at the time, mainly by British "cultural turn geographers". The latter, referred to as "new" cultural geography, was "interested in landscape as representation and its ideologi-

11 Henderson 2003; Mitchell 2003.
12 Henderson 2003; Mitchell 2003; 2023; Schein 2003; Germundsson *et al*. 2022.
13 Mitchell 2008.
14 Wylie 2007, p. 1.
15 Wylie 2007, pp. 2–11.
16 E.g. Mitchell 2003; Wylie 2007; Howard *et al*. 2018; Setten *et al*. 2018; Germundsson *et al*. 2022.
17 Mitchell 2023, p. 4.
18 Henderson 2003, p. 336.
19 Olwig 1996.

cal underpinnings",[20] that is, as a "way of seeing" and representing the world as and through text, image and discourse.[21] Weight was placed on the visual and scenic yet abstract power of landscape. In contrast, and with a particular reference to medieval Scandinavia, Olwig's work stressed that "landscape can also be understood as that which connects community, justice, environmental equity and nature".[22] Olwig argued that the physical environment was a reflection of the political landscape, which is to say that landscape is more than "a way of seeing".[23] Central to the work of the Landscape, Law and Justice group was not only to explore landscapes as places of justice, but also to devote time to debate and explore a range of various conceptualizations of landscape, which clearly were important for the very understanding and development of landscape as a field of research.[24] Yet Don Mitchell, who participated in several of the group's seminars, observed that, for us, "landscape was quite something different than what we had come to think of it as in Anglo-American geography. [...] it was the degree to which the seminars took the *substantiveness* of landscape (to use Olwig's, 1996, term) so seriously."[25] The debates during the group's work frequently revolved around material realities, people and places, which, in turn, underpinned how we were able to debate law and justice in the first place; real landscapes struggled over, enabled, indeed preconditioned such debates. By implication, "social justice is [also] folded into the landscape"[26] because, ultimately, landscape is a political task. This was also noted in Lesley Head's review of the proceedings from the final conference marking the formal end of the group's work, where she pointed to how "the book makes a different sort of statement about landscape and justice. [...] It potentially conceptualizes the human rather differently to the visual landscape tradition of Anglo human geography or the North American cultural landscape tradition."[27] There are clear conceptual as well as geographical tensions in this. John Wylie, again in his book *Landscape*, makes on a similar note the following claim:

> In focusing upon issues of memory, justice and law, much recent work by North American and northern European geographers has a substantive feel—it has concentrated, for the most part, upon "grounded" studies, rather

20 Germundsson *et al*. 2022, p. 111.
21 Cosgrove 1984.
22 Germundsson *et al*. 2022, p. 112.
23 Olwig 2002.
24 Jones 2006, p. 2.
25 Mitchell 2003, p. 792, emphasis in original.
26 Setten *et al*. 2018, p. 421.
27 Head 2007, p. 216.

> than elaborating further concepts of landscape, and it is concerned with the affirmation of interpretative and discursive arguments regarding landscape within various tangible and physical contexts.[28]

There are two related points I want to make here: first, a "substantive feel" for landscape is what is needed to say something substantive about (in)justice; second, Wylie appears to be implying that such a "feel" stands in opposition to and is hence not enabling conceptual and theoretical developments. I question Wylie's claim, and what I believe are false tensions, in the next section. Yet I agree with him that there is no doubt that landscape was a prominent feature of the cultural turn, and "with the natural ebbing of that particular disciplinary tide [turn], it may have seemed that landscape was also a concept in partial retreat, albeit from an advanced position".[29] However, landscape scholars within their differing research traditions have since then taken advantage of such a position in several ways.

Although increasingly contested and maybe harder to defend,[30] it is still a trait of much landscape research to point at the Anglo tradition, the North American tradition and the Nordic tradition.[31] These traditions stand for certain conceptual legacies that cannot be ignored[32] in a current attempt to grasp how and why we also talk about the cultural, social, political or economic when we talk about landscape. So, since the cultural turn, and particularly in the UK or Anglo tradition, landscape research has in recent decades been heavily "inspired by phenomenological and non-representational understandings of embodiment, materiality and performance".[33] These sources of inspiration have, no doubt, helped this tradition to remain a space where "creative and reflective research that promotes a stronger acknowledgement of practice [...] and affect"[34] is possible; that is, a space for a world that is *lived in*, and not only looked at or viewed from above. Yet, according to Harvey, it is also a space where the "self" and an "inward" focus rose to such prominence that nothing of consequence could be said about anything, "and where it appears that the self becomes the only element that can be safely talked about".[35] In "opposition" to this crude(!) portrayal, North American and Nordic traditions have been more concerned to take advantage of their "substan-

28 Wylie 2007, p. 198.
29 Wylie 2007, p. 216.
30 Germundsson *et al*. 2022.
31 There are also other traditions, e.g. Widgren 2015.
32 Germundsson *et al*. 2022.
33 Wylie 2007, p. 216.
34 Harvey 2015, p. 913.
35 Harvey 2015, p. 913.

tive feel", and to keep on problematizing and critically developing what Richard Schein termed the normative and normalizing capabilities of landscape.[36] So, if landscape is the site of social struggle between multiple claims, then "social struggles not only shape landscapes but crucially also involve attempts to naturalize them, making them seem inevitable, ordinary and even necessary".[37] Combined with the symbolic qualities of landscape, these are key capabilities that "make the landscape central to the ongoing production and reproduction of place and identity",[38] which have been so important to much Nordic and North American landscape research since the turn of the millennium.

ALL LANDSCAPES ARE MORAL LANDSCAPES

To understand more fully the context of the work of the Landscape, Law and Justice group, recall that, around the turn of the century, landscape research in the Nordic countries was to a large extent driven by interdisciplinary developments, and "came to have an explicit aim to both analyse and inform policy".[39] Landscape was put on the agenda by political and administrative bodies, ranging from the local to the international level, which saw it as a tool for the protection of environmental and cultural values and for countering a lament of (local) values being lost.[40] Landscape was set to serve as a normative corrective to the destruction of places and the alienation of people. Notably, the European Landscape Convention, signed in 2000 and coming into force in 2004, underlined this agenda.[41]

This was the context within which both my M.A. and Ph.D. studies took place. It was also the kind of normativity to which I was exposed. The policy-informed research was highly significant and inspired my research on the greening of Norwegian agricultural policies and farmers' responses to a shift that fundamentally challenged their identities as food producers, a shift "from production to the protection of environmental and cultural values identified with the rural landscape".[42] Even though policy-

36 Schein 2003.
37 Setten *et al*. 2018, p. 419.
38 Schein 2003, p. 203.
39 Germundsson *et al*. 2022, p. 110.
40 Michael Jones' work on the cultural landscape concept (2003) clearly reflected that numerous administrative bodies were claiming the concept in order to meet demands for the protection of cultural and environmental values.
41 Council of Europe 2000. There is a substantial literature on a wide range of aspects relating to the European Landscape Convention, e.g. Jones 2007; Olwig 2007; Jones & Stenseke 2011; Mitchell 2023.
42 Setten 2004, p. 403.

informed research was exposing a need to pay attention to the values, aspirations and needs of people in different empirical contexts, I found it (too) descriptive, too set on loss and lament, and not critical enough of how local agency creates and sustains its own exclusions;[43] it was not saying enough about which exclusions were (re)produced locally, how and on what grounds, by the very same people. This became evident when I was doing fieldwork for my Ph.D. The farmers I walked and talked with conveyed a complex notion of landscape that was embodied, practised and judged against what they saw as appropriate farming or not. In essence, I found the farmers to be measuring their agricultural practices against certain moral standards that were spatially, temporally and socially specific. Hence, I was looking for a sense of the normative that could also explain different tensions between people and between people and the landscape; I wanted to understand "how the production and meaning of a lived landscape becomes a moral landscape".[44]

A key moment for my by now almost 25 years of grappling with "moral landscapes" was when I came across the book *Moralizing the Environment*, published in 1997 by a group of rural and landscape geographers in the UK, among them Susanne Seymour at the School of Geography, University of Nottingham.[45] In spring 2000, I was fortunate to be invited for a 3-month-long research stay at the school, which enabled me to understand in more depth what the moral(izing) dimensions of the environment—or the landscape—was about. I owe a lot of that to David Matless, who also held a position at the school, and his work on moral landscapes.[46] Among other things, Matless has been a key exponent of how "particular landscapes are complicit in shaping national and class identities, as well as in forming allied assumptions about acceptable modes of conduct".[47] When I understood not only that landscapes have moral(izing) effects, but also (and slightly later) that geography more broadly can be seen as "a resolutely moralist discipline",[48] much of my work aimed to convey how people "deal with the variety of potentially conflicting notions of how we ought to be in and engage in the world".[49] In more concrete terms, how and why do we deem what is appropriate or not, good or bad, natural and unnatural, in particular spaces at particular times? If we

43 Setten *et al*. 2018.

44 Setten 2004, p. 389.

45 Lowe *et al*. 1997.

46 Matless 1997; 1998. I am also indebted to David M. Smith, whom I have been fortunate to meet and have conversations with. In particular, his book *Moral Geographies: Ethics in a World of Difference* (2000) has been a continuous source of inspiration.

47 Setten 2020, p. 194.

48 Barnett 2011, p. 112.

49 Setten 2020, p. 193.

identify "moral landscapes" as a research agenda, and landscape as a particular space, then this agenda is always political because of an interest in how "moral boundaries are naturalized in and through landscapes [...]".[50] Landscape, then, becomes a site of contention and struggle that opens up for different normativities; to quote Henderson again, "any concept of landscape is bankrupt when it is not also a participatory concept. In other words, landscape, in our very invocation of it, ought to signify a particular normative state of social relations."[51]

Arriving at this approach means giving landscape practice, or the "doing" of landscape, a central position. It also means giving the social, including meanings and experiences, an equally central position. Competing convictions are what produce moral landscapes and presuppose socially shared convictions or moral assumptions about what should be, which in turn shape or produce the landscape.[52]

In my estimation, a turn to "a normative state of social relations" has become more crucial over the years, both in real-world contexts and within the field of moral landscapes. If we see this field within the broader field of "moral geography", the latter often focused in its early stages on empirically documenting opposing normativities located in space.[53] Over the years, moral geography has more explicitly acknowledged the dynamics of the relational, involving bodily negotiations within these normativities. This suggests that moral geography is far more nuanced than judging whether behaviours are "right" or "wrong", and that negotiations are situated in dynamic social relations within diverse physical spaces. What these nuances tell us is that the significance of the social aspects of moral geographies require more attention; there is a need to understand and acknowledge the normative state and order of social relations. This calls for critical light to be cast over ideas around "right and wrong". In research, we need to give more attention to how moralities transform in social contexts, hence operating on a relative scale of appropriateness. What is appropriate behaviour is not only spatially specific, but also specific to the social. This impacts what is appropriate behaviour, for whom, and how one comes to be judged. Crucially, this also impacts and (re)produces the moral order, in that different people are unequally positioned to claim what is appropriate or not.[54] However positioned, the crux is that people will attempt to normalize and naturalize the order. By implication, morality is always restrictive, unfair and exclusive, at least for some. There is not one morally "right" behaviour in any given context, but a multilinear process where relational status, unequal powers and

50 Setten 2020, p. 193.
51 Henderson 2003, p. 336.
52 Setten 2004; 2020.
53 Smith 2000; Setten 2020.
54 Setten 2020.

expectations are constantly being socially negotiated and hence regulated.[55] Mitchell has pointed out that:

> [...] in this view, "justice" is internally related to a normative order, not something that stands outside and defines it. There is, thus, a certain relativity in moral—or justice—claims, while they are also at the same time grounded within specific ways of knowing and historically developed practices.[56]

I now move on to offer some brief examples to illustrate this.

LANDSCAPE AND THE MAKING OF COMPETING MORALITIES

I have aimed to develop further the notion of moral landscapes, yet, over the years and maybe more appropriately, develop also the somewhat broader field of moral geography. In 'Moral landscapes',[57] I have summarized works that can be identified as versions of "moral landscapes" as a research field and as ways of doing human geography. I place my own work under the heading *moral practice and landscape* because there is much to suggest that "people express their relationship to their physical surroundings through their embodied practice"[58]; landscapes are "done" as well as "doing" something in themselves. Moral judgements, practices and landscapes are hence in a reciprocal relationship where ideas of appropriate and inappropriate practices are moulded into the physical landscape. Landscapes (or the physical environment) and human practices are thus in a tensive and morally charged relationship.

Out of my early grappling emerged a notion of "moral landscapes" where I wanted to convey how people, practices and landscapes are coproduced.[59] As pointed out in the previous section, a trait of much moral landscape (and moral geography) research at the time was to judge conduct against the landscape, rather than seeing practices and landscapes as coproduced in both time and space.[60] I placed weight on how the physical environment worked as an ordering device for farmers and their practices on the south-western coast of Norway. I saw the production and meaning of a lived landscape translating into a moral landscape which offered the farmers justification of choices made as well as views on alternative agricultural practices.

55 Anderson *et al*. 2023.
56 Mitchell 2023, p. 11.
57 Setten 2020.
58 Setten 2020, p. 195.
59 Setten 2004.
60 E.g. Matless 1998.

In later work, together with Frode Flemsæter and Katrina M. Brown, I have examined articulations of the mobile and moralized outdoor citizen produced through the discursive practices of "state actors who play an important part in stabilizing, reinforcing or challenging various normativities of the right to move in particular [outdoor] spaces".[61] In this work, we understood this citizen as coproduced with landscapes rather than merely judged against them. Landscapes are thus a necessary context for practices, whatever these practices are. By drawing on insights from mobilities and citizenship literatures, we were able to convey how "moral landscapes of the outdoors may work to unsettle and reinforce social differences and existing power relations, and thereby influence the legitimacy and inclusion of different mobile citizen subjects".[62] This work, then, clearly speaks to how morality is restrictive—for some—while at the same time providing space for others to regulate, dominate and alienate.

In current work, Sarah Anderson, Hilde Nymoen Rørtveit and I are bringing moral (landscapes and) geography into conversation with another dimension of the Norwegian outdoors: how outdoor activity organizers regulate refugees' behaviour so as to fit into established normativities in a space already ideological and contested.[63] Here, we again demonstrate how restrictions for some, the refugees, allows space for others, the activity organizers, to "order and border". Being outdoors is hence not neutral. In this work we draw on debates around social inclusion, how "regulation" is employed as a mechanism to normalize certain values and behaviours, and the role of ideological landscapes and outdoor practices in this normalizing process. No doubt this work also speaks to how the outdoors—or the landscape—signifies a particular normative state of social relations. Yet, and crucially, those prone to regulation, are also actively responding to and resisting the normalizing efforts.[64] Hence, the moral order is also challenged and has the potential to change. To this I turn in the final section.

LANDSCAPE AND THE CHANGING OF THE MORAL ORDER: WHAT DOES IT TAKE?

First: "If naming places is a means of claiming land, then naming concepts is a means of claiming discourse."[65] Michael Jones makes this statement in his summary article

61 Flemsæter *et al*. 2015, p. 342.
62 Flemsæter *et al*. 2015, p. 344.
63 Anderson *et al*. 2023. This, together with Anderson & Setten 2023, forms part of Anderson's Ph.D. project currently being completed.
64 Anderson & Setten 2023.
65 Jones 2006, p. 7.

of the work of the Landscape, Law and Justice group. There is no doubt that the concepts, categories and languages we use are fundamental for the work we do and for how we understand and interpret the people and the world around us. There is nothing innocent or neutral about the fact that terminology does powerful work. Hence there is epistemic (in)justice too. The things one can do with terminology and concepts—name experiences, claim truths, aim to persuade, create realities and draw borders—continue to deserve critical attention. Landscape, as one such concept and term, is no exception.

Earlier in this chapter, I pointed to how certain "traditions" within landscape research have over time become harder to identify or defend (if necessary).[66] I maintain, however, that landscape serves as a more radical and materially grounded approach among Scandinavian and American scholars than among many British scholars. As argued above, this is key for saying something substantive about the problems of the real world.

So, what are the problems, then, that we should normatively concern ourselves with? I have on other occasions, and together with colleagues, emphasized a need to be much more alert to how movement, process and flow are key for steering landscape in more "just" directions.[67] For landscape (research), a field that has a very long history of being concerned with dwelling and settledness, this takes some radical thinking. Many, including myself, have thus argued for redirecting landscape towards relational thinking.[68] As if landscape has ever been anything but relational! However, the point we are making is that there is a need to be sensitive to how landscapes are produced through entanglements of people and places, across scales. A premise for such an argument is, crudely said, that "everything is somehow related to everything". In theory, I suppose it can be, if we look carefully enough. But, substantively, is it, really? Relations, entanglements and the moral order are also actively resisted. In *What Comes After Entanglement?* Eva Haifa Giraud importantly alerts us to what she terms "the paradox of relationality", meaning "that it struggles to accommodate things that are resistant to being in relation, including forms of politics that actively oppose particular relations".[69]

66 See Germundsson *et al*. 2022 for a further discussion.
67 E.g. Setten *et al*. 2018.
68 E.g. Wylie 2007; Setten *et al*. 2018; Germundsson *et al*. 2022.
69 Giraud 2019, p. 7.

CONCLUSION

For (moral) landscape, it is the *active politics* that should concern us. Furthermore, if landscape is (also) a political task, then the active politics is what equals the normative state of social relations. Finally, to say something about such active politics, I briefly return to the above-mentioned research on the Norwegian outdoors as an arena for the social inclusion of refugees. Friluftsliv, or outdoor recreation, has become pivotal to government-funded programmes to teach migrants Norwegian language and cultural values in order to increase place attachment and acculturation, and to prepare for entry into the workforce and educational system. There is much to suggest that migrants are expected to take possession of and perform particular norms, values and customs, already carried by the majority population and projected onto the material landscape.[70] Through regulating the immigrants' sociability, their behaviour is sought to be normalized so as to fit in. However, and crucially, many migrants also take possession of the outdoors, regulating their own sociability through disrupting the set-up and disturbing the order of interactions and activities. This is an active politics where relations are (con)tested, suppressed and re-made, and where the landscape is mobilized ideologically as well as materially. To move on from here, and to potentially change the moral order, it is thus not sufficient to merely account for (dis)connections between, for example, refugees and a majority population. Identifying *which* (dis)connections and *which* moral order seems to become ever more important. This takes us back to the right to claim landscapes, and, importantly, the analysis of which landscapes are claimable for whom and why, hence the making of competing moralities. I have contended that all landscapes are moral landscapes; hence I also contend that we need to analyse the practices and power of subtle norms and moralities in order to advance our understanding of how the landscape works, for whom, and why order is (re)produced.

70 Anderson & Setten 2023; Anderson *et al*. 2023.

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MICHAEL JONES

Legal geographies of landscape—long-term historical structures and short-term historical events

Two contrasting examples

This chapter examines differing time perspectives in legal geographies of landscape with reference to Fernand Braudel's presentation of long duration history—*longue durée*—as opposed to short-term history of events—*histoire événementielle*. To illustrate these two time perspectives, I recapitulate two contrasting examples from my earlier research. The long-term perspective is exemplified by studies of "udal law" in Orkney and Shetland—the Northern Isles of Scotland—from its origins in medieval Norse law to its present status as vestigial customary rights manifested in the islands' land tenure, landscape and cultural identity. The short-term perspective is exemplified by studies of planning conflicts related to different landscape values in Trondheim, Norway, as well as more generally public participation—promoted by the European Landscape Convention—as a possible means of dealing with such conflicts, leading to the notion of "landscape democracy". The examples demonstrate a dialectic between continuity and change in the relationship between law and landscape. Attention to the existence of long-lived deep structures of society that influence human actions and mentalities can serve as a complement to analysis of the day-to-day workings of legislative and other institutions of democracy in dealing with landscape issues.

In this chapter, I revisit work I have undertaken during the last 20 years, subsequent to the Landscape, Law and Justice project that I led in Oslo in 2002–2003. The aim of the chapter is to shed new light on the significance of the time perspective in legal geographical studies of landscape. Legal geography is a field of research that focuses on the complex interactions between law, society and geographical environment—in my research, specifically between law and landscape.[1] The broad question I address in the

1 Jones 2005, pp. 95–96; Jones 2012c, pp. 389–390; Jones & Rannila 2022.

present chapter is how differing time perspectives may influence our understanding of landscape change. I provide two contrasting examples of studies that demonstrate differing time perspectives. The first is an example of a long-term perspective that helps to reveal long-lived underlying structures in society. This is illustrated by studies I have undertaken of what is known as "udal law" in Orkney and Shetland, the Northern Isles of Scotland, from its origins in medieval Norse law to its present status as vestigial customary rights within Scots law. "Udal law" continues to be manifested in the land tenure, landscape and cultural identity of the islands. The second perspective is a short-term one that focuses on discrete occurrences and events within a limited time period. This is illustrated by a series of studies of planning conflicts involving different values ascribed to the landscape, the role of public participation in attempting to solve such conflicts, and the idea of "landscape democracy" that has come to the fore with the emphasis on public participation in the European Landscape Convention of 2000.

My theoretical point of departure is the continuity–change paradox, or continuity–change dialectic. This is expressed in two linked questions: What continues unchanged when changes take place? What changes when things continue? These questions arise from the realization that when changes in landscape and law occur, some things remain the same. In contrast, when attempts are made to keep things as they are, for example, through conservation of nature, cultural heritage or landscape, changes nonetheless occur. Several examples can illustrate the continuity–change dialectic in legal geography. The first example is customary law, which is based on custom from "time immemorial" yet adapts to changing circumstances.[2] A second example is provided by judicial interpretations, which take into account both legal precedents and legislative changes.[3] A third example is the frequent coexistence of both old and new legal systems upon a change of sovereignty.

The tension between the existence of long-term historical structures and short-term historical events is captured by a pair of concepts inspired by the French Annales school of history, *histoire de la longue durée* and *histoire événementielle*.[4] The first of these concepts, in direct translation "long-duration history", focuses on almost changeless or only slowly altering cultural structures within which long-standing ideas are maintained over extended time periods. Here, attitudes of thought and action appear to extend further back in time than human memory and are independent of and resistant

2 Olwig 2005.

3 Ivamy 1993, p. 205, referring to English law.

4 The French historian Fernand Braudel (1980d, p. 71) contrasts his notion of the *longue durée* with the notion of *histoire événementielle*, coined by the historian Paul Lacombe and followed up by the economic historian and sociologist François Simiand at the turn of the 20th century.

to economic cycles and crises. The second of these concepts is concerned with the history of events and relates to current events or events taking place on a short timescale. These are events that are reported or chronicled as they occur. The events are perceived as they unfold but underlying structures are frequently not apparent or not considered.

In the following, I first discuss the significance of different time spans for interpretations of history, as presented by Fernand Braudel, the French Annales historian, before presenting my two contrasting examples.

THE SIGNIFICANCE OF DIFFERENT TIME SPANS IN HISTORICAL ANALYSIS

Braudel presented and juxtaposed the concepts of *longue durée* and *histoire événementielle* as poles within a triple set of time spans for understanding history. Between these two opposites is the intermediate time span of economic and social conjunctures, or cycles and inter-cycles, as focused on in economic and social history. Braudel's description of the characteristics of the three time spans was developed in several writings during the late 1940s and 1950s[5] and can be summarized as follows:

1) *Longue durée* is "a history that is almost changeless"; it is the history of humans in relation to their surroundings, "a history which unfolds slowly, often repeating itself and working itself out in cycles that are endlessly renewed".[6] It relates to structures describing the relationship between societies and the surrounding realities over long periods of time, sometimes remaining stable over an infinite number of generations. Such structures and groups of structures are persistent and may last over centuries. These deep-seated structures include sets of concepts regulating living, thinking and belonging. Braudel refers to this as "geographical time".[7] This is the history of humans in "intimate relationship to earth which bears and feeds" them.[8] It is repetitive, consisting of ever-recurring cycles. Such long-lived structures provide both support and hindrances. They consist of geographical conditions and con-

5 My summary of the three time spans is based on Braudel 1980a, pp. 3–4; 1980c, pp. 27–34; and 1980d, pp. 74–75.

6 Braudel 1980a, p. 3.

7 Braudel 1980a, p. 4.

8 Braudel 1980b, p. 12.

straints, biological realities, limits of productivity, spiritual constraints, and mental frameworks that Braudel terms "the prisons of the *longue durée*".[9]

2) Conjunctural history is a "history of gentle rhythms, of groups and groupings" influencing the history of "economies and states, societies and civilizations" as well as warfare. Braudel refers to this as "social time".[10] This is economic and social history focusing on cyclical movements and conjunctures over time spans ranging from a decade to half a century. This relates to the expansion and contraction of the material conditions linking economic and social life.[11]

3) *Histoire événementielle* is the history of events on the scale of humans in particular rather than of humans in general. It is the history of surface disturbances, exciting and rich but "perilous", as it "simmers with the passions of the contemporaries who felt it, described it, lived it, to the rhythm of their brief lives". It has "dimensions of their anger, their dreams, and their illusions". Braudel refers to this as "individual time".[12] By implication it is an emotionally charged history. It relates to daily life and day-to-day events, as recorded by a chronicler or journalist. Braudel refers to this as a type of "microhistory".[13]

Braudel argues for the distanced approach of the *longue durée*.[14] Nonetheless, he states that it would be an error to choose one of these historical time spans to the exclusion of all others. The task of the historian is "to distinguish between long-lasting movements and short bursts, the latter detected from the moment they originate, the former over the course of distant time".[15] Economic cycles and structural crises "tend to mask the regularities, the permanence of particular systems [...] the old habits of thinking and acting, the set patterns that do not break down easily and which, however illogical, are a long time dying".[16] There is an "unconscious history" that belongs in part "to the time of conjunctures and wholly to structural time", which can become visible.[17] However, "the length of time is fundamental, for even more significant than the deep-rooted structures of life are their points of rupture, their swift or slow deterioration

9 Braudel 1980c, p. 31.
10 Braudel 1980a, pp. 3–4.
11 Braudel 1980d, p. 75.
12 Braudel 1980a, pp. 3–4.
13 Braudel 1980d, p. 74.
14 Braudel 1980c, pp. 35–38.
15 Braudel 1980c, p. 34.
16 Braudel 1980c, p. 32.
17 Braudel 1980c, p. 39.

under the effect of contradictory pressures".[18] He emphasizes that the different time spans are nonetheless interdependent.[19]

Further, history should not be explained in terms of a single dominant factor.[20] Explanations of one structure may be "sometimes overshadowed, sometimes thrown into relief by the presence of other structures".[21] History is always dependent on concrete social situations. History is "in the landscape, in the heart of life itself".[22] My understanding is that Braudel uses the term "landscape" here as a metaphor for the complexity of the real word that it is the historian's task to explain.

Braudel does not discuss landscape further. However, I would contend that Braudel's different time spans are relevant for landscape history as an approach to understanding landscape change. In the following, I recapitulate and re-examine two contrasting examples of my earlier work in the light of Braudel's two poles, *longue durée* and *histoire événementielle*, and pay less attention to the time span of conjunctural history.

"UDAL LAW" IN ORKNEY AND SHETLAND —AN EXAMPLE OF *LONGUE DURÉE*

I have examined "udal law" from historical–geographical and cultural–historical perspectives since the 1980s. Besides undertaking fieldwork in Orkney and Shetland and conducting qualitative semi-structured interviews with inhabitants of the islands, I have analysed published collections of legal documents going back to 1299, topographical descriptions, geographical and historical accounts, legal interpretations and fiction. This research has addressed the question of how "udal law" has been articulated through time and expressed in interactions between central legislation and legal practice on the one hand and local customs, land tenure and landscape on the other hand.

My research has resulted in a series of publications from 1996 onwards.[23] In the proceedings of the concluding conference of the Landscape, Law and Justice project, held in 2003, my article presents my research on "udal law" as one of several examples of historical–geographical studies of law and landscape.[24] In an article published in

18 Braudel 1980c, p. 45.
19 Braudel 1980c, p. 48.
20 Braudel 1980b, p. 10.
21 Braudel 1980c, p. 51.
22 Braudel 1980b, p. 9.
23 Early articles are Jones 1996 and 2001.
24 Jones 2005.

the proceedings of a conference held in 2010, I discuss how interpretations of law and landscape vary and are contested, depending on whether the Norse influence or the Scots influence on the history of Orkney and Shetland is given most weight.[25] In an article in *GeoJournal* in 2012, I examine arguments by a group in Shetland and Orkney who claim indigenous rights for Norse descendants. Based on the definitions of indigenous peoples applied by the United Nations, International Labour Organization and the World Bank, I conclude that indigenous status was not applicable.[26] In an article published in an anthology on *The Right to Landscape*, I take forward the discussion of contested interpretations of history and claims of indigenous rights. I argue that the right to landscape as a collective asset involves a wider polity than those with property and land rights.[27] In two substantial publications, I present and discuss "udal law" in a long-term historical perspective. The first is a chapter in the volume on *The Law* in the 14-volume work *Scottish Life and History: A Compendium of Scottish Ethnology* in 2012.[28] The other is a chapter in the volume *Legislation and State Formation: Norway and its Neighbours in the Middle Ages*, based on a presentation in 2012 at a conference held as part of a history project on the medieval Norwegian realm.[29] In a recent article, I examine "udal law" as it has appeared in fiction to evoke the island landscapes of Orkney and Shetland.[30] In the following I will present this work in summary[31] and relate it to the idea of *longue durée*.

Udal land is inherited land held by allodial tenure. This is a freehold tenure of Scandinavian origin involving the notion of "absolute" ownership in the sense that landowners were not subject to a feudal superior, as was the case elsewhere in the British Isles and in much of continental Europe. The term "udal" (also spelt "odal") is derived from Old Norse *óðal*, which refers to the right of kin to a landholding. In Orkney and Shetland, "udal law" has often been used for the whole Norse legal system that existed in the islands at the time of the transfer of Orkney and Shetland to the Scottish Crown in respectively 1468 and 1469 as part of a royal marriage settlement between the rulers of Denmark–Norway and Scotland (initially transferred as a mortgage or impignoration). Principal features of "udal law" as it was practised later include: allodial land

25 Jones 2012a.
26 Jones 2012b.
27 Jones 2011.
28 Jones 2012c.
29 Jones 2013a.
30 Jones 2023.
31 The sources used for my historical account of "udal law", presented here in summary, can be found in the reference lists of the seven aforementioned articles. Only references to additional information are included here.

titles (compared with Scotland otherwise, where feudal titles were the norm until they were abolished in 2003); ownership of the foreshore by the adjoining landowner (the foreshore is Crown property in the rest of Scotland); rights to salmon fishing by the adjoining landowner (whereas elsewhere in Scotland they belong to the Crown); the obligation of landowners to pay "scat", a land tax of Norse origin, until this was abolished in 2000; joint ownership of common hill grazings known as "scattalds"; the use of weights and measures of Norse origin as a basis for paying taxes in kind until this was abolished in 1826; and the notion of "udallers", landowners tracing their ancestral land back to Norse origins. Today, "udal law" survives vestigially despite the general application of Scots law; specifically, foreshore and salmon-fishing rights still legally belong to the adjoining landowner.

Table 1. "Udal law" timeline

C. 800 AD or earlier: Norse colonization of Orkney and Shetland.

1160s: Gulating Law of western Norway thought to have applied in Orkney & Shetland.

1195: Shetland placed directly under Norwegian Crown.

1274: Magnus Code (Law Code of King Magnus of Norway) valid in Orkney & Shetland.

1330: Scottish Earls of Orkney, under Norwegian suzerainty.

1468/1469: Pawning of Orkney and Shetland to Scottish Crown.

1472: Act of Scottish Parliament formally annexed Orkney and Shetland to Scottish Crown.

1567: Scottish Parliament recognized laws of Orkney and Shetland.

1581–1610: Stewart Earls exploited confusion between Norse and Scots law. Period of social injustice.

1611: Scottish Privy Council proscribed "foreign laws" in Orkney and Shetland, but Country Acts (by-laws) re-enacted local legal customs. Udal lands and feudal lands.

1707: Union of Scottish and English Parliaments—legal authority passed to Westminster.

1713–1838: Legal disputes over rights to whales driven ashore.

1733–1759: Legal disputes over customary Norse weights and measures.

1780–1859: Sagas translated to English. Victorian interest in "Vikings".

1826: Use of Norse weights and measures abolished.

1860s–1930s: Norse "revival"—scholarly works, document collections. "Udal law" as symbol of Orkney and Shetland identity.

1890–2004: Five legal verdicts on "udal law" in Scottish Court of Session. Legal commentaries.

1998: Scottish devolution and restoration of Scottish Parliament. Land reform. Vestiges of Norse customary law remain within Scots law.

2000: "Scat" abolished.

2003: Feudal land titles abolished.

The main phases in the development of "udal law" in Orkney and Shetland can be summarized in a timeline (*Table 1*). Orkney and Shetland were colonized by the Norse *c*. AD 800 or earlier. It is debated whether the existing Pictish population were subject to genocide or total assimilation by the incoming Norse settlers. The Gulating Law of western Norway is thought to have applied in the islands from the 1160s. This was subsumed in the Law Code of King Magnus Lagabøte of Norway, promulgated in 1274. These law codes stipulated landowners' rights and duties. Shetland was separated from the Norse Earldom of Orkney in 1195 and became subject directly to the Norwegian Crown.[32] From 1330, the Earls of Orkney were Scottish, although under Norwegian suzerainty. In 1468 Orkney and in 1469 Shetland were pawned to the Scottish Crown. An Act of Parliament formally annexed the isles to the Scottish Crown in 1472.[33] Due to uncertainties regarding the status of Norse law after the transfer of sovereignty, the Scottish Parliament specifically recognized in 1567 the validity of the laws of Orkney and Shetland, but at the same time feudal charters were also being granted. Between 1581 and 1610, the islands were enfeoffed first to Earl Robert Stewart and then to his son and successor Patrick Stewart, who became Earls of Orkney and Lords of Shetland. They exploited the confusion between Norse and Scots law for their own ends. This was a period of procedural injustice marked by disregard for correct legal principles. As a consequence, in 1611, an Act of the Scottish Privy Council proscribed what were termed "foreign laws" in Orkney and Shetland. However, in the following years, by-laws, termed Country Acts, re-enacted local legal customs. Udal lands and feudal lands were distinguished from one another in rentals. The Union of the Scottish and English Parliaments in 1707 resulted in legislative authority passing to Westminster. Heavy customs duties imposed by Parliament on salt imported by German traders in return for fish led to the demise of Shetland's trade with Germany.[34] This contributed to a serious economic depression, resulting in the bankruptcy of many estates. A new class of landowners bought up estates and set up as merchants in their own right, resulting in a decline in the number of old udal estates.[35]

Between 1713 and 1838, a long-lasting series of legal disputes arose over rights to pilot whales driven ashore. The disputes were between the whale hunters and the landowners onto whose foreshores the whales were driven. The landowners claimed a share of the value of the yield, which was contested by the hunters. The courts found in favour of the landowners in accordance with legal interpretations of local customary law.

32 Thomson 2001, pp. 121–122; Ballantyne & Smith 1999, pp. xi, 1.
33 Thomson 2001, p. 220; Ballantyne & Smith 1999, pp. xiv, 19.
34 Shaw 1980, p. 181.
35 Simpson 2019.

Between 1733 and 1759, a legal dispute arose over the use of Norse customary weights and measures for the payment of "scat", paid in kind by landowners to the Earl. The landowners claimed that the Earl was unjustly manipulating the weights and measures in his own favour. However, the court found in favour of the Earl. Although clearly socially unjust, these legal verdicts reflected the locus of power of the day.

Beginning in 1780 and continuing until 1873, a series of translations of the Norse sagas were made into English. The first full translation of *Heimskringla, or Chronicle of the Kings of Norway*, was by the Orkney estate owner Samuel Laing in 1844, eight years after his return from a two-year sojourn in Norway. In his published travel journal he idealized Norwegian independent proprietors of small farms and their "udal law" of succession.[36] The saga translations contributed to a growing Victorian interest in what became termed "the Vikings". In Orkney and Shetland there took place a Norse "revival" between the 1860s and the 1930s, with the publication of scholarly works and collections of historical documents. This popular and scholarly interest in the Viking and Norse history was largely driven by middle-class intellectuals, with a tendency to romanticize Norse or Viking cultural heritage. "Udal law" became a symbol of Orkney and Shetland identity and became expressed in the landscape. On the old harbour quay in Lerwick, Shetland, is a sign greeting visitors, displaying Shetland's coat of arms, which depicts a Viking galley with the slogan "Med lögum skal land byggja" ("The land shall be built by law"). Although probably borrowed from Roman law, this slogan is found in several of the medieval regional laws (termed "landscape laws") of Scandinavia, among them the Gulating Law, as well as in Njàl's Saga. The Viking ship first appeared on the borough arms of Lerwick in 1882. Together with the slogan, it was included in the Zetland County arms in 1931 and transferred to Shetland Island Council's arms in 1975.

Between 1890 and 2004, there were five legal verdicts on "udal law" issued in the Court of Session, Scotland's supreme court. Two of the verdicts upheld claims made under "udal law" while three rejected such claims. In 1890, landowners' claims to a share in whales driven onto their shores were now considered unjust and rejected by the court. A verdict in 1903 accepted that the adjoining owner of udal land had the right of ownership of the foreshore, while a verdict in 1907 upheld the adjoining landowner's right to salmon fishing. In 1963, a landowner's claim under "udal law" to a share in treasure trove found on his land was rejected by the court. Finally, in 1990, claims of udal rights to the seabed were rejected. As a result of these verdicts, "udal law" became a recurring topic in legal commentaries.

36 Laing 1837; 1844; Jones 2013b; 2023.

Scottish devolution and the restoration of the Scottish Parliament in 1998 was followed by land reform whereby feudal land ownership as well as "scat" were abolished. The last vestiges of "udal law" regarding foreshore ownership and salmon-fishing rights remain as customary law within the corpus of Scots law.

Through these many dramatic historical events, including a change of sovereignty, the Stewart Earls' oppressions, the introduction of a new legal system, and some of the longest-running legal court cases in Scottish history, the history of "udal law" provides an example of *longue durée*. Underlying legal structures going back to Old Norse times have persisted up to the present and continue to be manifested in land tenure and landscape as well as being reflected as an element in regional culture and identity.

Historical accounts are always partial, depending on the perspective or focus, and what is extant of documentary or other evidence. "Udal law" is one of many strands of Orkney and Shetland history, one of an interlocking set of structures. Other strands include the pivotal role of the sea in the islands' history through fishing, maritime trade, kelp production and, more recently, oil exploration and exploitation on the continental shelf. Another strand is control of the surplus from agricultural production by landed estates through rents from their tenants, not alleviated until the Crofting Acts at the end of the 19th century. The *longue durée* dimension of "udal law" is dependent on the availability, selection and interpretation of documentary evidence from the 12th century until the present. However, a significant factor is which groups in society had an interest in producing and interpreting the documentary evidence at different times.

"Udal law" relates to a form of land tenure that initially concerned kinship rights to land among those who traced their ancestry to the Norse settlers of the islands. The origins of udal tenure lie further back than human memory. As a mental structure, the notion was promoted and kept alive by different social groups who at different times had specific interests in particular aspects of udal tenure. Law texts and records of court cases show that it was the landowning class among the Norse settlers that was concerned with udal tenure, and this continued after the transfer of the islands to the Scottish Crown in the 15th century. However, incoming Scots landowners partly acquired udal titles or replaced them with feudal titles. During the 16th century, Scottish legal practices and feudal terminology became increasingly common. During the 17th and 18th centuries, udal kinship practices became associated with a dwindling group of small landowners, who had retained remnants of the subdivided estates of the earlier Norse landowners. On the other hand, the long-lasting legal dispute in the 18th century over the use of Old Norse weights and measures for the payment of "scat" to the Earl concerned the maintenance of the Earl's privileges against landowners. However, the even longer-lasting series of court cases in the 18th and 19th centuries con-

cerning rights to whales driven ashore was an assertion of landowners' claims against the whale hunters.

The Scottish Enlightenment of the 18th century and early 19th centuries led to topographical descriptions of Orkney and Shetland by local persons of authority as well as visitors, some of whom but not all mentioned udal practices. The Enlightenment literature gave way during the 19th century to a romantic conception of the Norse cultural legacy, including udal tenure, promoted in part by intellectuals and a growing reading public although also by landowners continuing to argue that the payment of scat was unfair. The 20th-century court cases and the associated media interest cemented the concept of "udal law". It became increasingly associated with regionalism and regional autonomy movements. However, by the beginning of the 21st century, the idea of "udal law" has become attenuated and is now mainly associated with political fringe groups.

The deep-rooted structure or *longue durée* of "udal law" is dwindling, or—in Braudel's terms—has become subject to "slow deterioration under the effect of contradictory processes".[37]

PLANNING CONFLICTS, LANDSCAPE VALUES, PUBLIC PARTICIPATION, AND LANDSCAPE DEMOCRACY—AN EXAMPLE OF *HISTOIRE ÉVÉNEMENTIELLE*

My second example is my research on landscape values and local planning conflicts, conducted in Trondheim, Norway, over a 45-year period, and leading on to wider studies of public participation, as it is provided for in the Council of Europe's European Landscape Convention (ELC) of 2000.[38] My research in Trondheim was concerned with how the implementation of planning law through day-to-day decisions is reflected in the physical landscape, showing which forces in society can help explain how the landscape is formed in practice. The ELC requires that landscapes be recognized in law as an essential component of people's surroundings, their shared cultural and natural heritage, and their identity; that procedures for public participation relating to landscape matters be established; and that landscape be integrated into regional and town planning policies as well as other policies. The ELC was ratified by Norway in 2001 and came into force in 2004, leading to changes in Norwegian planning legislation in 2008.

37 Braudel 1980c, p. 45.

38 Council of Europe 2000a.

The research in Trondheim began in 1977 with an action group supporting a local urban community that was threatened by redevelopment.[39] This and other cases indicated that many local planning conflicts arise due to incompatibility between different values attached to the landscape among different interest groups. On the basis of existing literature, I developed a classification of landscape values presenting different types of economic value and non-economic amenity value (*Table 2*).[40] Using a pair of concepts from social anthropology, I suggested that the outcome of planning disputes could be understood as adhering either to a harmony model or to a conflict model. According to the harmony model, disputes were resolved by institutional means, involving negotiation among established interest groups. Under the conflict model, disputes involved active contestation by non-established interests, represented by action groups, and the outcome would be less predictable. These concepts became theoretically nuanced through reference to Habermas' theory of communicative rationality and the ideal conditions of communication as opposed to Foucault's emphasis on the role of power relations and contestation in communicative action.[41]

Table 2. Landscape values

Economic values
– Subsistence value
– Market value
– Long-term economic value (utilitarian ecological value)

Non-economic amenity values
– Ecological value ("intrinsic" ecological value)
– Scientific and educational values
– Aesthetic and recreational values
– Orientational and identity values

Security values
– Defence value
– Demarcation value (boundaries)

"Negative" values
– Derelict land
– Slums

Source: Jones 2009.

39 Jones & Olsen 1977; Jones 2018.
40 Developed over time between 1977 and 2008 (Jones 1979; 2009).
41 Summarized in Jones 2018 with full references.

Between 1983 and 2007, I led 25 case studies in Trondheim in which Master's students undertook studies of planning situations involving landscape values. These were studies of individual events on a short-term timescale. The studies involved analysis of planning documents and qualitative interviews with representatives of different interest groups such as residents, landowners, developers, businesses, planners and conservation authorities. The principal questions addressed were: Whose values shape the landscape? What weight is given to the existing landscape in planning? Who delivers the premises for planning? At issue were the application and interpretation of the Planning and Building Act and which interests in society were favoured through the legal procedures of planning approval. In summary, the studies indicated that residents have in general little real influence over planning; economic values tend to be weighted highest; and, where protests occur, they are strongest against powerful business interests and developers, especially when these are allied with public agencies. Where the outcome could be said to accord with the harmony model, minor adjustments could occur in the plan before adoption. Where the outcome could be said to accord with the conflict model, the planning process could be delayed, yet major changes occurred in only a few cases.[42]

With the advent of the ELC in 2000, I turned in my work to the potential of public participation, as provided for by the ELC, for solving planning conflicts related to landscape. The result was an anthology examining participation theory as well as lessons from eleven European examples.[43] The case studies included positive examples of good practice whereby participation gave increased legitimacy for landscape planning, contributed to awareness-raising, helped solve conflicts through mutual understanding and promoted improved dialogue through new methods of communication. The studies also identified problems of participation. It can be time-consuming and costly. Apathy or social barriers may hinder involvement. Aims of different stakeholders may be incompatible. There is a danger of manipulation by powerful interests (the "tyranny of participation").[44] It was found that participation is often steered top-down. The power relations between experts, stakeholders and citizens are under-communicated. Further, the practice of public participation has an unclear relationship to the institutions of representative democracy. Moreover, minority interests in multicultural societies are not always recognized. Migrant groups such as asylum seekers and "illegal" migrants as well as other deprived groups are in general excluded from participatory processes.

42 The case studies from Trondheim and their theoretical underpinnings are summarized in Jones 2018, where references to my earlier publications are listed.

43 Jones & Stenseke 2011.

44 Cooke & Kathari 2001.

Studies of public participation led to the notion of "landscape democracy", inspired by the work of the Danish environmental and planning philosopher, Finn Arler.[45] In the ELC's *Explanatory Report* of 2000, participation by "local actors" is presented as "creating a true 'landscape democracy'".[46] However, this is a narrow conceptualization of the relationship between democracy and landscape. The difference between bottom-up initiatives by civil society and top-down consultation involving defined stakeholders is not problematized. Furthermore, this formulation of "landscape democracy" does not specifically refer to elections or referendums. It neglects the role of elected bodies and electorally responsible administrations, intended to represent the will of the majority, and the role of the judiciary in upholding the rule of law and safeguarding minority interests. Other dimensions of democratic society not referred to include market forces, reflecting willingness to pay, and recognition of the right to public protest. I argue that each of these different institutions of democracy have both advantages and disadvantages. The complexity of the interplay between these different institutions of democracy, combined with many different types of democracy, can help explain the limitations of public participation. This complexity helps explain the great variety of ways in which democratic processes affect and interact with landscape.[47]

A focus by researchers, reporters and chroniclers on the short-term events that characterize day-to-day democratic processes, such as those presented here, can be characterized as *histoire événementielle*. Explanations of the specific events are valid only for limited time spans and local geographical contexts. How these events play out in relation to long-term underlying structures of society, such as class relations, property ownership and wealth accumulation, requires a certain distancing in time and space to become fully visible.

DISCUSSION

With regard to "udal law", I have argued that, although property ownership and land rights shape landscape to a significant degree, the right to landscape involves a wider public as specified by the obligation under the ELC to establish procedures for public participation by all parties with an interest in the landscape.[48] My example of studies of planning conflicts, public participation and "landscape democracy" illustrates the complexity of democratic planning of landscape issues. These studies relate to law and

45 Arler 2008; 2011.
46 Council of Europe 2000b.
47 Jones 2016; 2018.
48 Jones 2011, p. 82.

legal interpretations at different geographical levels—international conventions such as the ELC, national planning and conservation laws, the administrative apparatus of national and local governments charged with implanting the laws, and community institutions regulating use of landscape at the local level. The vast quantity of planning documents, information websites, minutes of meetings, media reports, and both academic and non-academic articles and chronicles in present-day society pushes analysis in the direction of *histoire événementielle*.

The deep structure associated with landscape is often not immediately visible. Values attributed to landscape relate to its multiple uses and significance for livelihoods, dwelling, ecology, orientation, defence, demarcation, scientific endeavour, education, aesthetic pleasure, identity affirmation, recreation and diverse other amenities. These values can often come in conflict with one another and may result in contestation and conflicts of varying intensity. I suggest that human attachments to particular landscapes and the desire of groups of people to decide on and shape their immediate physical surroundings can be considered to constitute a deep structure of *longue durée*.

This human attachment to landscape is akin to Yi-Fu Tuan's notion of "topophilia", defined as including "all of the human being's affective ties with the material environment".[49] He states that human responses to their environment may be aesthetic, tactile, or express feelings towards a place as home, as a locus of memories, or as a means of gaining a livelihood. Familiarity and attachment, and awareness of the past, are important elements in the "love of place".[50] Topophilia "is not the strongest of human emotions", says Tuan, but may become compelling when "the place or environment has become a carrier of emotionally charged events or perceived as a symbol".[51]

What might appear as micro-histories of attachment and resistance to outside forces in single locations also mirror what is happening in many different locations, with increasing co-ordination through transnational networks. Many contemporary planning conflicts are a reaction to societal problems that have manifested themselves for decades, resulting from the power of market capitalism, transnational corporations and international trade agreements lying beyond democratic control, and leading to destruction of cherished local landscapes. These forces can thus be considered to reflect recent conjunctural history. Opposition to redevelopment and the wish to retain landscape values are symptomatic of a desire to maintain continuity.[52] Landscape is thus a dimension of living and belonging, a relationship to one's environment and the

49 Tuan 1974, p. 93.
50 Tuan 1974, p. 99.
51 Tuan 1974, p. 93.
52 I am indebted to Amy Strecker for helping me express the insights of this paragraph.

people in one's immediate surroundings, which although not conflict-free manifests a *longue durée* structure.

CONCLUSION

"Udal law" as an example of *longue durée* shows how a deep, long-lived structure of ideas and actions related to land tenure manifests itself over time through specific events—and emotions—in interaction with economic and social cycles. While not always socially just, it has maintained a degree of permanence over a long period of time, although it has gradually dwindled in significance in the face of other and newer realities. This illustrates what remains unchanged when changes occur.

Planning conflicts concerning landscape often arise when redevelopment faces those interested in maintaining non-economic amenity values associated with their surroundings. Amenity values are often best conserved where the landscape is subject to little or slow change. Such values frequently come into conflict with market-economic values, which tend to be realized through rapid landscape change in the form of redevelopment. Despite measures to protect natural and cultural heritage from change by means of conservation areas, such areas continue nonetheless to change under the influence of economic and social pressures arising in the surrounding areas. This illustrates that changes occur despite attempts to keep things unchanged.

The "udal law" case indicates how studying landscape in the long term can help identify deep-seated social and mental structures within legal geography. This perspective problematizes sources of law (including customary law) in terms of cultural identity and social justice. Both this and the example of planning conflicts problematize landscape in terms of political power, legal (procedural) justice and broader social justice.

"Landscape democracy" concerns how varying forms of democracy and their legal underpinnings affect our surroundings. Complementary to analysis of the day-to-day workings of legislative and other institutions of democracy in dealing with landscape issues is attentiveness to the existence of long-lived deep structures of society that influence, for good or ill, human actions and mentalities. A broad analysis of the workings and complexity of "landscape democracy" can thus be a step towards understanding how it might be possible to meet in a just and socially acceptable manner the multiple challenges of the 21st century: pandemics, global economic recession, loss of biodiversity, and sustained attacks on democracy by authoritarian regimes and extremist movements.

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TOM MELS

The substantive landscape as a framework of interpretation

A personal view

FRAMEWORK

There is something immediately captivating about experiences of the changing landscape. What are the changes about? Why do they occur? Who authorizes these changes? Who benefits or suffers from what is accomplished? This captivation began for me with experiencing the conversion of wild landscapes into arable and the removal of ancient farmland for urban expansion—material transformations of a concrete environment, unfolding before my eyes. But that was another place and another time. In landscape research, sharper acuity is called for. There is more to the landscape than meets the eye as it comes in your path. While our senses may register the landscape, it exceeds whatever we encounter when we leave our homes or walk around. In my own research, I have found that appearances of simple transformations need to be rephrased as the ideological effacing of cultural history to reify places, for example, as wilderness; as the deeply contested removal of wetlands to make way for accumulative society and modern agriculture; or as the devastating impact of resource exploitation on the use value of communal land.[1]

Central to my fascination for these landscapes—the national parks in Sweden, the mires of Gotland, the forests and mountains in Sápmi—is that they are not just planned and shaped after the requirements of capitalist modernity, but that they also rouse resentment. In this day and age, as in the past, they are contentious landscapes, contested by those engaged in other environmental and social practices and voicing diverse claims to justice. These struggles over landscape and justice tend to be at once material and representational: they encompass fields, forests, buildings and working

1 Mels 1999; 2014; 2023.

the land, but also interpretation, claims to reality, graphical and textual renderings, narrated accounts, and ways of seeing and evaluating the scenery. Some of those representational practices, such as particular claims to belonging in or having rights to a landscape, are ignored, or fated to leave at best only paper traces. Others forcefully and instantaneously accomplish a dramatic reworking of the land and take centre stage in social life. Rather than necessarily implying stasis or permanence (important as these are), this offers testimony that landscape is implicated in the ongoing reconstitution of social life, serving equally as "a disciplinary mechanism and a potentially liberating medium for social change".[2] Time and again this instantiates "everyday concerns of justice, equity, and equality as worked through the land and landscape".[3]

It may be tempting to look for a "*model*, universally transportable and applicable" to capture the ongoing material and representational reconstitution of landscape and social life, with its ramifications of justice.[4] Conversely, as Richard Schein's "framework of interpretation" advises, it is vital to recognize the manifold ways in which landscape unfolds as "discourse materialized" or "materialized discourse".[5] Drawing on that insight, "the task of landscape interpretation is to recognize the interpreter's (often unconscious) ordering of those discourses in terms of their centrality to any interpretation".[6] In my view, such self-reflection may speak to the individual researcher as much as to the field of landscape studies at large, entangled as they typically are in an ongoing conversation. On the level of the field, it would arguably reveal the consolidation of certain discourses at the expense of others, thereby (unwittingly) becoming a *model* of sorts, interrupted yet again by interventions that confront hegemonic orderings.

On both counts—as an individual *oeuvre* and an intervention in the field—I have found the (re)ordering of landscape discourse as proposed in work on the "substantive landscape" compelling.[7] In Kenneth Olwig's framework of interpretation, the distinction between the place-oriented "substantive landscape" and the spatial "scenic landscape" is pivotal and requires different ways of knowing:

> The use of geometry to construct the scenic landscape is relatively easy to explain in abstract theoretical terms, whereas the substantive landscape is difficult to understand in this way because it is a product of a long history,

2 Schein 1997, p. 664.
3 Schein 2009, p. 812.
4 Schein 1997, p. 675.
5 Schein 1997; 2009, p. 819.
6 Schein 1997, p. 675.
7 Olwig 1996; 2002; 2019.

> and it reflects a notion of historically evolved customary law, which is best understood in the context of its development over time.[8]

While I do not regard it a model (allowing for cloning purposes only), it reverberated markedly with what I learnt from studying landscapes in Sweden. These landscapes—mires, national parks, Sápmi—continue to invite an examination of claims to justice concerning community, customary practice, nature, and place attachment. Following a more historical materialist line of interpretation via the French Marxist Henri Lefebvre, I recognize these claims as contested moments in the encroaching abstract spaces of capitalist modernity. The substantive landscape is in that view both representationally and materially remade for accumulation.[9] The 19th-century draining of the Gotland mires, the 20th-century planning of Swedish national parks, and the ongoing corporate pressures on Sámi lands in northern Sweden—all yielded different conditions and notions of (in)justice in capitalist modernity. In terms of capitalist space, these landscapes involved all sorts of normative, interpretive practices, with graphic and textual imagery luring the public into believing that the powers of capitalist modernity concoct the best of possible worlds. On the ground, these forces confront communities with claims to the landscape that fundamentally alter their lifeways, inspiring contradictory claims about entitlement, property and appropriation, indigenous rights, customary practice and uneven power relations.

This is not the place to detail these cases and the theories of justice they elucidate, or to lay out a rapprochement between Olwig's critical humanist take on substantive landscapes and a historical materialist perspective. Instead, the question I want to address is a more fundamental one: What kind of "framework of interpretation" is implied by the substantive landscape? I argue that this concerns more than a particular discursive ordering in empirical work. As a "framework of interpretation", it asks for a revision of the discursive focus itself. A recent intimation to intellectually re-cover (entomb) the framework as a species of conservative nostalgia and naïve realism arguably confirms the need to (again) recover the substantive landscape.[10] I begin by contextualizing the substantive landscape as a proposition and a polemic in scholarly debate. In doing so, I present its central features as a "moral landscape" and roughly outline the framing assumptions this involves. The chapter proceeds with a brief reflection on one of its central and simultaneously also more contentious focal points: that

8 Olwig 2019, p. 20.

9 Lefebvre 1991.

10 Here I condense charges levelled against Olwig's recovering of the substantive landscape by Trevor Barnes (2021), who seems to prefer to re-cover it.

of place-oriented practices of custom and community. At first glance, these may seem antiquated terms, dangerously burdened by questionable moral claims that were dead and buried long ago. As part of the substantive landscape intervention, however, they demand a historicization that defies anachronistic interpretation. They are important assets for critical thought, informing landscape justice, not least in the current age of intensified natural resource exploitation. This is why I conclude that, as a framework of interpretation, "the substantive landscape" is as relevant today as it was when it entered the field of landscape studies in the 1990s.

PROPOSITION

In its original formulation, the substantive landscape intervention was as much a polemic against reductionist notions of landscape as a form of spatial (visual) power, as it was a proposition to recover ideals and practical realities of community justice, customary practice and place attachment.

As a *proposition*, the substantive landscape drew attention to landscape as a place and polity. In its most rudimentary form, the "substantive landscape" has been defined as "a place of human habitation and environmental interaction".[11] This may appear as purely descriptive of a particular ontology, defining what the landscape is, indeed its substance. It may sound quite compatible with changing field structures, land reforms, the diffusion of technological innovations in agriculture or other traditional historical landscape studies. But this is not all. To be more specific about the place of landscape, Olwig adds that it constitutes "a nexus of community, justice, nature and environmental equity".[12] Thus, each of the terms that constitute the substance—notably community, justice, environmental equity—invoke what others have called "moral landscapes":

> The concept of moral landscapes addresses the interrelationship between landscapes and moral values and judgments; it concerns how particular symbolic and material landscapes both shape and reflect notions of "right/wrong," "good/bad," "appropriate/inappropriate," and "natural/unnatural" in relation to particular people, practices, and things. It also concerns the ways in which certain moral boundaries are naturalized in, and through, landscapes, in the interplay of their material and representational forms and related significations.[13]

11 Olwig 1996, pp. 630.
12 Olwig 1996, pp. 630–631.
13 Setten & Brown 2009, p. 191.

More specifically, the substantive landscape asked researchers to shift perspective from discourses of "aesthetics" and "the power of scenic space"—familiar themes in moral landscape work—to discourses of "law and polity". It fitted into a wider programme aiming to "show how closely the discourses of law and polity, on the one hand, and aesthetics, on the other, have been linked throughout history, though they have often run in different channels".[14] Importantly, this centred attention on the often-problematic relation between the existential conditions of communities and the spatial vision of planning and planners preoccupied with various top-down projects of improvement, nature conservation or exploitation of natural resources. While the fundamentals of this problematic relationship were hardly unfamiliar, it did reveal a long and somewhat neglected history of contrasting ontological positions at the heart of what "we" call landscape: universal space versus practised place; centralized power versus community practice; statutory law versus customary law, etc. Translating these "different channels" in more prescriptive terms, the substantive landscape asked planners and architects to contribute in their practical work to the materialization of a different moral order in the landscape, that is, "environments that foster the desire to maintain the continuities that maintain a collective sense of commonwealth, rooted in custom but open to change—a sense of place".[15] For Olwig, this is essential from a justice and moral landscape point of view, because by "ignoring the exigencies of community and place", planners and architects "run the risk of producing landscapes of social inequality".[16]

The proposition contributed to the wider multi-disciplinary field of research on landscape as working through "everyday concerns of justice, equity, and equality".[17] Amongst others, it is not far removed from Schein's intricate, critical humanist project of grounding justice issues of belonging in the landscape, to ultimately inspire "an oppositional politics of belonging in which land and landscape figure as the practical stage upon and through which citizenship and community can be practiced".[18] There were also important overlaps with concerns voiced in the European Landscape Convention, with its areal meaning of landscape and insistence on the importance of human perception, prompting policymakers to reach beyond the notion of landscape as a given piece of earth or land.[19] At least in theory, it encouraged consideration of the

14 Olwig 2002, p. 226.
15 Olwig 2002, pp. 226–227.
16 Olwig 2002, p. 226.
17 Schein 2009, p. 812.
18 Schein 2009, p. 811.
19 Council of Europe 2000.

role of a variety of knowledges and longstanding customary practices in shaping and protecting rural landscapes.

POLEMIC

When we remember Schein's observation that the ordering of discourse is not a neutral affair, the proposition must also be considered in the field of landscape studies at large. Here, the substantive landscape can be seen as a *polemic*, directed at specific scholarly developments (approaching the status of a *model* perhaps), notably in British cultural geography. Lamenting widespread and somewhat one-sided (postmodern) fascination with deconstructing representations of landscape, grasped through vision or textual interpretation, Olwig insisted on landscape as a practised geographical (socio-environmental) reality.

This questioning of postmodernity's more extreme philosophical idealist consequences was arguably not the most groundbreaking message. In geography more broadly, the ontological, epistemological and political fallacies of radical postmodern approaches had already encountered strong opposition from, perhaps most vigorously, Marxian quarters and soon interest in this dispute began to wane.[20] More mildly poststructuralist forms of landscape interpretation, or critical humanist readings, such as suggested by Schein's interpretive framework, were arguably more common.

For most landscape researchers in the Nordic geography context, consideration was given primarily to a more materialist-oriented notion of discourse as acting out underlying historical realities. Postmodern approaches that enjoyed relatively widespread popularity in Anglophone, particularly British, geography have never gained general appeal in Nordic geography. Going against the grain of the landscape tradition in Nordic geography, they were perceived as contributing to the narrowing of landscape studies to an analysis of texts and images generating their own logic with reference to other texts and images, but not to the material realities of fields, forests and the built environment. The substantive version could in that respect more readily accommodate existing landscape studies of changing physical arrangements, property relations, or planning and their attendant ideological subterfuges.[21]

For all of its resourcefulness, Olwig's 1996 article, 'Recovering the substantive nature of landscape', was also a piece with many intricacies that warranted careful reading beyond polemic. The minutiae have given rise to occasional confusion and, no doubt, misreading. The most recent expression of this, and probably also the most confronta-

20 E.g. Mitchell 1996, pp. 4–5, 27.
21 Mels 1999.

tional, was penned by Trevor Barnes, who reads in it a "conservative, anti-modernist, and maybe a bit anti-urban" nostalgia, relying on "black and white" notions of how an authentic landscape—the "*real* real"—was corrupted by modernist space. He claims that the substantive landscape argument furnishes a largely positivist outlook, which takes its object matter as a naïve given, to subsequently assert the authenticity of a prelapsarian place-world. From this "moral architecture of good and evil [...] that earlier ideal landscape from which we have fallen [...] becomes a bench-mark of comparison for other subsequently morally dubious landscapes".[22]

In my view, such a reading is deeply flawed, in particular when detecting a mistaken faith in *authenticity* (the notion of a once real and harmonious, now corrupted landscape that can be uncovered by positivist knowledge), and a *conservative* outlook (the idea that things were better then) in the argument. Textual evidence supporting this accusation is simply lacking. Moreover, there is a failure to recognize the context in which the substantive version appeared originally *and* to see what kind of work the substantive landscape intervention has further inspired.[23]

To recapitulate, the original context was one of worries about a certain type of postmodern work on landscape (including Barnes' own) that seemed to retreat into a world of deconstructing texts, discourse and vision.[24] In the trend to understand everything as discourse, studied with the help of visual and literary theory, with scholars finding themselves in a crisis of representation, much was lost. What was lost was not just a sense of material practice. Returning to landscape as "a blend of land and life, of physical and social morphologies" and not just settling for the ambition to "describe extended, pictorial views" or an "idea" seems, in hindsight, a quite undramatic call.[25] In doing so, the substantive landscape argument did not break new philosophical ground on the crisis of representation (interrogating our ability to really grasp the world as it is). Recovering the substantive landscape was, more innovatively I think, an effort to face the historical and contemporary realities of landscape as polity and place (political representation and the political landscape) rather than limiting the scope of research to aesthetic vision or textuality (the politics of representation).[26]

22 Barnes 2021, p. 407; see Olwig's 2021 response. Barnes targets Olwig's collection of essays in *The Meanings of Landscape*, which opens with a slightly revised version of the original article on the substantive landscape and provides key distinctions that resound thematically throughout the book (Olwig 2019, p. 20).

23 As presented in Jones 2006; Mels 2006; Olwig & Mitchell 2008.

24 E.g. Daniels & Cosgrove 1988; Daniels 1989; Barnes & Duncan 1992a; 1992b.

25 Cosgrove 2006, p. 50.

26 Mels 2016.

HISTORICIZATION

My conclusion is that the central dispatch for which *substantive* was a useful vehicle was to reconstitute scholarly interest for the history and contemporaneity of landscape as deeply implicated in normative (moral, political) questions of law and justice. The substantive landscape questioned postmodern approaches, and particularly the thinned-out interest for landscape beyond texts and imagery, not only on philosophical grounds, but also based on the *historical* existence of landscape as lived and practised place and polity. At any rate, one looks in vain for any dramatic new intervention on a theory of truth or epistemology in the substantive landscape argument, let alone a positivist defence of the *real* real. Instead, I argue that the substantive intervention was largely a historicized reading of the political landscape grounded in discourses and practised experiences of justice and law.

More precisely, it referred to a pedigree of conceptions of lawfulness rooted in place-oriented customary law and social and bodily practices. This substantive landscape provided a counterpoint (with significant contemporary equivalents) to statutory conceptions of lawfulness that came to dominate since Renaissance times (that is, with the rise of capitalism). Attached to both of these conceptions of lawfulness were further moral or "ideological landscapes" of aesthetic and symbolic practices.[27] To study substantive landscapes, such actions of representation cannot be privileged over what the planner, civil engineer or farmer does with the landscape. Certainly, nothing in this effort should be confused with (romanticization of) a long-gone past.[28]

This historicization also redefined the "politics of landscape" as involving more than questioning forms of textual and graphic representation, and rekindled engagement with social and environmental *justice*, co-ordinating evidence and claim-making about landscape exploitation with normativity and moral positioning.[29] Developing critical knowledge of conservative moral agendas that sustain modern capitalism is clearly part of this.[30] In that sense I would contend that the essence of the substantive landscape version is not about unearthing a *real* real, but rather to unveil a *forgotten* real; forgotten, that is, particularly by scholars privileging landscape as a problem of aesthetic and symbolic representation.

27 Olwig 1984.
28 Mels & Setten 2007.
29 Przybylinski 2022.
30 Mels & Mitchell 2012.

CUSTOM

It may be reasonable to say that the substantive landscape's real interest was not so much to solve the old crisis of representation, but to ameliorate conceptual confusion by recovering meanings and realities that had largely been lost to view. This is also why Olwig uses the word substantive, to allude to concrete histories of justice, lawfulness and practice, and not to express some naïve realism as Barnes seems to believe. In a similar misreading, Barnes finds the substantive landscape as denoting an "organic solidity" of sorts, forcing the substantive landscape into a tacit acceptance of the morally conservative conclusion that things were better then.[31] Such organic solidity may certainly afford different interpretations, but as a species of conservative thinking it arguably depends on accepting a flawed understanding of custom and community as *tradition* and, in a further manoeuvre, as *anachronisms*, lost to history.[32]

Contrary to this, Olwig's vantage point on customary practice and law builds on Marxist historians such as Eric Hobsbawm and Edward P. Thompson.[33] It insists on differences between the dynamic, constantly renegotiated, place-oriented practice of custom and the more rigid and spatially universalizing (reifying) tendencies of tradition. Granted, it is not at all easy to draw firm boundaries around the logic and practice of place-based custom on the one hand, and tradition and spatial power on the other hand. This would reify both sides. In Olwig's *Landscape, Nature, and the Body Politic*, the significance of this shifting relationship and their contradictions has been studied with impressive thoroughness.[34] In discussing legal history, however, Olwig seems to accept that these adversative forces mark more than an analytical distinction alone, useful for critical scrutiny. He argues that they inspired a divergence between modern common law, rooted in customary practice, and natural law, which he claims has all the while been deeply suspicious of custom. Hence, Olwig regards custom "as an enormous legal power that made it the foundation of common law and representative government".[35]

I am not entirely sure that "foundation" (not to be confused with Barnes' "organic solidity") is a suitable term in this context, because it suggests a grounding of sorts that may be hard to detect historically. Legal historians submit that the division between common law rooted in custom and natural (statutory) law is historically not

31 Barnes 2021, p. 407.
32 Barnes 2021, p. 406, refers to a "fallen landscape".
33 Hobsbawm 1983; Thompson 1993.
34 Olwig 2002.
35 Olwig 2021, p. 411.

readily tenable.[36] The constant throwing together of custom and tradition/invention, vividly teased out by Olwig, instead haunts the history of both common law and natural law. Certainly, "the theme of custom, along with that of nature, cuts across the *entirety* of the Western legal tradition from the Greeks to the aftermath of the French Revolution".[37] Given the considerable legal gravity of usage as a form of law, it seems more suitable to recognize that "custom as a social practice allowed for a strategic ambiguity", which was also selectively and tactically "fixed in statute or precedent".[38] This recognition has recently drawn scholarly attention to the protean discourse and practice of what David Bederman called "bad custom", revealing an authoritative sifting process sanctioned by royal government and church power.[39] I have in my work drawn attention to developments in the early modern Low Countries, where landscape unfolded in an intimate relationship between places of customary practice and their pictorial representation. The argument was that the pictorial and customary authority of *landschap* was mobilized as a strategic legal-political force to resist Spanish imperialism. But the Low Countries simultaneously, via Hugo Grotius, initiated the development of international law, a spinoff of natural law theory, instrumental to the naturalization of capitalist imperialism.[40] Under such circumstances, the tenuous ideological function of "good custom" seems too important to ignore. Perhaps it is more accurate, therefore, to think of custom as only *partly* living a life of its own in the interstices of a developing litigation (common law) and codification (natural law) supporting uneven spatial power relations. In terms of legal development, they seem historically to be thrown together, with a comprehensive ideological process as its foundation.

This notwithstanding, it may be argued that custom, not as an original, authentic, idealized place-bound practice, but as a social practice allowing for a "strategic ambiguity", can offer normative inspiration for more sustainable resource use and as a source of community justice. On that interpretation, within Olwig's vision of the substantive landscape "as a nexus of community, justice, nature and environmental equity", customary practice has a continuing significance resonating also with place-oriented work on environmental justice, just sustainability, public space, and the commons.[41]

In line with this non-anachronistic understanding of custom, the substantive version also highlighted landscape as a "contested territory": the subject of antiquarian curiosity no doubt, but one that also is as "pertinent today as it was when the term received

36 Perreau-Saussine & Murphy 2007.
37 Perron 2021, p. 1, emphasis added.
38 Perron 2021, p. 2.
39 Bederman 2010, p. 175.
40 Mels 2006.
41 Olwig 1996, pp. 630–631.

its modern scenic meaning at the end of the sixteenth century".[42] It is thus not primarily offering a lost "bench-mark of comparison for other subsequently morally dubious landscapes", as Barnes thinks.[43] It is offering an agenda that reaches beyond narrow debates about the *real* real, or the back-and-forth between territory and scenery, to enable the study of hard politicized struggles over community, environment and justice. It is therefore not accidental that, approaching the end of his article, Olwig warns against persisting "romantic ideas concerning the relation of culture to nature as expressed in the physical landscape", to instead accentuate the importance of class, community, culture, custom and law in developing a more substantive understanding of landscape and environmental justice.[44] Like "bad custom", it will be clear that any of these terms are potentially liable to completely incompatible ideological appropriations.

COMMUNITY

How the substantive version has been accommodated in geographical research offers further contrast to reading it anachronistically. The late Denis Cosgrove, to give but one authoritative example, acknowledged the significance of substantive landscape as an important addition to his own influential interpretation of landscape as a distanced way of seeing. In an intriguing article on 'Modernity, community and the landscape idea', Cosgrove describes landscape as "a characteristically modern way of encountering and representing the external world". This modern idea of landscape—"the original synthesis of the territorial and the pictorial"—played a central role in "the characteristically modern question of 'community' in its spatial expression".[45] Historically, the graphic and pictorial were "layered over the affective, quotidian relationship of land and social life".[46] This did not erase landscape as a (pre-pictorial) place of fellowship and collective relationships with the physical land, although it did play a key part in the (often conservative) ideological assimilation of landscape into the scale of modern nationhood. It is perhaps tempting to immediately associate this with picturesque or sublime landscapes rather than modern urban environments.[47] However, moving to developments in 20th-century California, Cosgrove identifies some "noteworthy parallels" between exurban residential suburbs and the premodern substantive landscapes:

42 Olwig 1996, p. 631.
43 Barnes 2021, p. 407.
44 Olwig 1996, p. 645.
45 Cosgrove 2006, p. 52.
46 Cosgrove 2006, p. 55.
47 Mels 2020; Fälton & Mels 2024.

> These are self-regulating communities, quasi-independent politically from the major cities to which they are functionally attached, raising revenues and purchasing such public services as police, waste disposal, education, health and welfare, and developing customary local laws to regulate land uses and appearance. Land is a dominating concern in their community life, although it produces capital value and amenity rather than subsistence.[48]

For Cosgrove, the duplicity of landscape in places like this is largely in the way they, as community and scenery, obscure "a scale and rapacity of material consumption that threatens the sustainability of physical and bio-geographies and thus of dwelling".[49] While pinpointing and historicizing the substantive landscape in the modern suburb, Cosgrove thus casts a dark environmental shadow over community. One could add to such a fundamental concern, revealing "bad community" if you like, that masking the *production* of these landscapes is no less problematic than existing patterns of consumption.[50] But to say that the task of landscape scholars is "to exploit the ambiguities embedded in landscape, as dwelling and picture, to discover ways of understanding and engaging with its varied and always rich meanings" surely keeps things too equivocal.[51]

From a substantive landscape perspective, taking a closer look at such meanings and understandings is likely to raise questions of justice. After all, to speak of community, custom, and expressing worries about sustainability, as Cosgrove does, is to invoke claims to justice as an ingrained part of how the landscape is owned as property, treated as commodity, worked, planned and contested. Contrary to conservative nostalgia, it more properly unfolds the acute presence of crisis: a characteristic mark of *capitalist* modernity with its extractivist and expropriative exploitation of the landscape.

EXTRACTIVISM

Seen as a landscape of capitalist modernity, Cosgrove's suburb with its duplicitous blend of community and imminent ecological disaster aligns to a pattern of crisis that has deepened over recent decades. In response to multiple crises facing the capitalist world today, attention to justice and the notion of a just transition has been signalled more frequently on the international sustainability agenda. The Council of Europe's European Landscape Convention can be regarded part of this, as more recently the

48 Cosgrove 2006, pp. 63–64.
49 Cogrove 2006, p. 64.
50 Duncan & Duncan 2004.
51 Cosgrove 2006, p. 64.

Global Goals and the European Green Deal.[52] Parts of these schemes seem to constitute a bulwark against exploitation of resources, including ambitions to safeguard landscape protection, develop green infrastructure and promote ecofriendly lifestyles. Meanwhile, other parts push for a rapid remaking of landscapes, also presented as responses to crises, further deepening environmental injustices of capitalist modernity. Thus, one of the ways out of what was narrowly dubbed "the subprime mortgage crisis" of 2007–2008, carrying with it a world food crisis, was by deepening an already ongoing crisis far from the epicentres of financial power: ploughing the landscape with extractivist vigour. This "solution"—promoting mining, monoculture plantations, geo-engineering, carbon offset projects and large-scale bioenergy as measures against the global climate crisis—was to inaugurate intensified commercial land development, often state supported, jeopardizing land rights, food and tenure security for millions in the Global South.[53]

Unsurprisingly, the Earth summit 2012, with 'The future we want' issuing forth from its deliberations, found that extractivism was at the heart of conflicts over indigenous rights and expressed deep concerns about a future unasked for by the many.[54] In terms of community and customary rights, they signal an ongoing development that increasingly leads to "the alienation and loss of common and indigenous rights in the landscape".[55] Meanwhile, in the Global North, the current rush to critical raw materials, energy solutions and forest resources in Sweden continues to accelerate the emergence of what Julian Agyeman has called an "equity deficit".[56] All parts of the green transition, these developments put additional pressure on already deeply compromised Sámi land rights, reindeer herding livelihoods and forest ecologies. It produces a moral landscape in which indigenous rights (including customary tenure) and claims to community justice remain profoundly marginalized. In the environmental production of mainstream sustainability, the landscape again displays duplicity, with the mystifying effects of greenwashing and the continuing intrusion of capitalist relations in everyday life.[57]

52 Council of Europe 2000; United Nations 2015; European Commission 2019.
53 Allan 2012.
54 Bartelmus 2013.
55 Olwig 2021, p. 410.
56 Agyeman 2013, p. 4; Cambou 2020.
57 Mels 2023.

CONCLUSION

In this chapter, I have argued that the substantive landscape, as a framework of interpretation, was proposed neither to defend an uncritical celebration of traditional community values, nor to hark back on a geography that forgets about problems of representation and takes its object matter to be a naïvely given portion of reality. My view is that the notion of substantive landscape can rather be described as a heuristic for capturing the material, politically and socially lived qualities of landscape as implicated in contested expressions of justice, and its myriad ramifications for, inter alia, customary practice, community, nature and polity. Against anachronistic readings, this is always concerned with historicization, offering avenues to explore the many machinations of capitalist modernity, remaking the landscape as commodity, and to interrogate urgent contemporary issues such as the violation of use rights. Finally, against one-dimensional readings, it may be edifying to bear in mind that this allows for multiple versions of the substantive—all of which may continue to add layers to the politics of landscape in extractivist times.

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