



THE ONATI INTERNATIONAL INSTITUTE FOR THE SOCIOLOGY OF LAW

# THE GEOGRAPHY OF LAW

LANDSCAPE, IDENTITY  
AND REGULATION

Edited by  
William Taylor

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# The Geography of Law

## Landscape, Identity and Regulation

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William Taylor

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# *Introduction: Landscape, Identity and Regulation*

WILLIAM TAYLOR

## BACKGROUND

THE ESSAYS IN this collection relate notions of space and representations of landscape to concerns for individual identity and autonomy as these are framed by practices of governance or codified by law. They examine the manner in which abstract spatial concepts, landscape and environment are objectified through practices aimed at governing relations between people, or, conversely, the way in which legal codes and statutes rely upon there being a relationship between individuals and their surroundings. Taken together, the essays outline relationships between so-called 'natural' landscapes, townscape and architectural interiors or concerns for pleasing views, orderly streets, and comfortable spaces, on the one hand, and efforts to govern the health, moral welfare and economic productivity of urbanised populations, on the other.

References to the geography, landscape or space of one thing or another are common in book titles published in the humanities in recent years. Encompassing a broad range of issues, they bring to mind bold claims for the 'reassertion of space' itself as a category of critical social analysis. Edward Soja may have exaggerated his claim to that effect in his polemical text *Postmodern Geographies* (1989). However, it is clear that many theorists have turned to disciplines deemed by some as either staid (geography) or esoteric (visual arts) for tools to speculate on a number of things, particularly the conditions of late modernity, multi-national capitalism and globalisation (Werlen, 1993, c1988). In light of this spatial context for research it is not surprising that interest in maps and cartography has grown and novel methods of analysis have been informed by them. Similarly, as the essays in this collection illustrate, paintings, texts and other media have been studied to 'map' relations between figures of authority, forms of enunciation and the legal narratives they represent. Across a number of disciplines, language commonly applied to the earth's surface or views of it, such as 'territory', 'limit', 'periphery', 'border' and 'frame', have become common means for contemplating humankind's place *upon* the earth in abstract, spatial and philosophical terms.

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One obvious stimulus for this move can be found in the work of Fernand Braudel and his followers in the *Annales* School, who formed geography into an important dimension of historical inquiry. Such efforts acquired a philosophical gloss through reference to continental philosophers like Henri Lefebvre and now classic works such as *The Production of Space* (1974). Michel Foucault (1967), who, like Braudel, showed an interest in structuralism and sought to identify underlying frameworks or constants that made historical actions possible, famously proclaimed the modern era to be one of 'the simultaneous, of juxtaposition, the near and the far, the side by side and the scattered'. In recent years, thoughts on space have never been distant from pressing issues of modernity and time (Kern, 1983).

These concerns have been popular with theorists in design-oriented fields like architecture and landscape architecture. Along with like-minded colleagues in the humanities, they typically portray buildings, parks and gardens as not simply bounded by professional or technical concerns, but as subdivisions of broader, socially-relevant domains. Concerns for space can inform socio-legal studies. They can be means of countering the illusion of law as a self-sufficient discipline and draw attention to an equally broad context forming the limits of and possibilities for jurisprudence, power and authority (Hunt and Wickham, 1994).

References to landscape are particularly prevalent in scholarly discourse. In addition to the common, though hardly congruent use of the term in the visual arts, architecture and landscape architecture, we now have studies of the landscapes of emotion and alienation, of desire, power and fear, and even of time, history and memory (Mitchell, 1994; Gaddis, 2002; Schama, 1995). Frequently these varied studies, explicitly or otherwise, try to re-conceptualise one or the other field of inquiry or re-position one society or culture in relation to another. They are as much about, in other words, the potential for and limitations of inter-disciplinary research as any particular topic like emotion, alienation, desire *per se*. In many of these studies landscape is more than a convenient label. It forms a nexus where awareness of the forces impinging upon or forming human character and autonomy sharpen thoughts of the uniqueness of humankind. While the awareness of such forces may reinforce a longstanding view that we exist upon the earth along with other living creatures, the idea that humans are unique suggests that we alone have transformed the earth according to the form of our understanding, needs and desires.

Landscape features prominently in the history of art and painting, though the meaning of the term had been much enlarged by the late nineteenth century when it came to denote the ensemble of natural features, living species and sensible characteristics typifying any given place. This understanding has since been extended to include urban as well as rural environs. It was given an immense fillip with the rise of evolutionary biology and environmental sciences that stress the link between living beings—including urbanised humankind—and their surroundings. It has been further

appropriated as a term in discourse analysis where it organises the multiple dimensions of a given sociolinguistic context. Accordingly, studies of the representation of landscape in art and literature have come to nestle alongside more adventurous forays into fields like human ecology and ethnopsychology (Fumagalli, 2002; Heider, 1991).

If references to geography and landscape have anything in common it is not simply that both have something to do with space or that their appearance heralds a radically new development in the history of human consciousness. Such claims rarely hold up to sustained scrutiny. Rather, both are worth highlighting because they elucidate the fluidity of human identity—what is commonly called its ‘construction’ through various means. These means include, among other things, our understanding of space and the language we use to describe it, techniques for surveying and for governing territories and populations, means for representing landscapes in order to possess them, and, more generally, philosophical assumptions about knowledge and reality. Each of these means situate, locate or position individuals, to cite further geographic terms, as subjects that use space in some way, perhaps as a spectator or citizen or even as a ‘reasonable’ person aware of their surroundings and others in them, along with the consequences of actions upon one or the other.

Following on from this view of the mutability of identity is the suggestion that human morality and values are somehow caught between the forces determining our physical and social condition on the one hand, and an agency or vitality arising from a unique core or interiority, on the other—an ‘inner’ world of desires, motivational or ethical cues. Often enlisted to police the boundaries between these two domains of being, practices of regulation appear as important a category of critical analysis as space. It is also equally as broad. Variously cast as a manifestation of agency, power and authority, though often narrowly construed merely as the passive reflection of social, economic and political forces, much remains to be done to elaborate the origins and operation of law, governmental and regulatory practices within human society as well as a social history of juridical ones (Hunt, 1993). Just as we now have a litany of postmodern geographies and landscapes to ponder, the concept of governmentality (Foucault, 1991) has been appropriated by scholars outside the field of legal studies to this end. Perhaps, like appeals to geography and landscape, interests in governmental or regulatory practices and their relation to forms of power are most telling for the assumptions about human existence that lie behind them.

#### ISSUES OF SOCIAL CONSTRUCTION AND REPRESENTATION

Having enlarged upon the key terms in the title of this collection, two methodological issues arise. They are no less relevant than the reference

points of geography and landscape, identity and regulation in organising the essays that follow, though they are largely indirectly addressed in the essays themselves. The first, the notion of social construction raised by the preceding comments, is a popular one among theorists, though, as Ian Hacking (2000) points out, its advocates hardly agree just what is being constructed when they use the phrase. One can ask, for instance, whether or not there is a 'real' person called upon to inhabit the landscape formed by regulatory agency, or an object, or merely an idea? Likewise, is identity so mutable that one can only inhabit or move across one landscape or the other, but never find a home—that is, become part of an autochthonous community, fixed or defined by one given place as opposed to another? In forming a response to such queries, there are differing notions of social construction to be had. One can call upon different spatial or topographical terms. One can rely on differing views of the representational value of landscape or invoke a different sense of governance or law. One can expect different responses to these questions from an architect, say, as opposed to a sociologist, legal theorist or philosopher. If called upon to do so, each would most likely summon a different kind of history to support their response.

Social constructivism is both appealing and challenging to theorists, particularly those writing on architecture and landscape architecture. These disciplines stand out for being obviously concerned with building things or else involved with the transformation of nature into something recognisable or useful. For some, this can mean that design is a particularly appropriate medium for thinking about what Peter Berger and Thomas Luckmann (1967) called, long before postmodernism appeared, the 'social construction of reality'. Being concerned with building things, there is a sense of time involved in studies of architecture and landscape. Even the most robust buildings eventually perish, while the uses and meanings that accrue to them and the natural landscapes they complement will most likely have a short life. There is in the built environment, one might conclude, nothing that is changeless, only change itself. This is why we should study the social contexts for buildings, cities, parks and gardens and the like for what they reveal about changing values. This is what makes design-oriented fields conceptually rich. Alternatively, social constructivism can present a challenge to long-cherished views of the heritage and inherent meaningfulness of buildings and human-made landscapes. Provoked by the apparent nihilism of much postmodern or poststructuralist theory, social constructivism can be the *bête noire* of theorists of architecture and landscape architecture. However, others might claim that there is nothing changeless in the built environment but the desire to impede or commemorate in stone the passage of time and sense of our own finality. This response is often informed by phenomenology, hermeneutics or, more crucially, an underlying stance of essentialism. When employed by design theorists, these positions generally impart a certain timeless character to human identity,

character and values—finding in human nature a need to represent the world and a timeless effort to make a home there.

One motive behind bringing together the essayists assembled in this collection—writers from a range of disciplines, both adjacent to and removed from socio-legal studies—was to see how concerns for space, works of architecture and landscape, representations in texts and paintings, engage with the construction of identity, character and values, both historically and presently. The idea was to bring different fields together to see what boundaries might arise between their differing sets of terms and concerns. Familiarity with the history of governmental or juridical practices shared by some participants and their relative novelty for others was brought to bear on questions of the usefulness of space and regulation as categories of critical analysis, to scrutinise familiar uses of these categories and to invent new ones. This motivation behind the essays is based on an assumption that space and law carry moral worth and elicit moral considerations, however variable their value might be.

The contributors to this collection were not asked to don the mantle of social constructionist or essentialist. They were not asked to wear the label architect, landscape architect, sociologist, legal theorist or philosopher in any obvious way, though clearly differences of perspective emerged. Rather, each contributor was asked to respond to one key assertion: that the design of the built environment is crucially linked to issues of identity and autonomy insofar as they are means by which desires and needs are recognised as such—a way in which our ‘inner’ lives are reconciled with our ‘outer’ world. So conceived, design entails not only the planning of private estates and public parks, the creation of towns or configuring of buildings and their surroundings, but is also called upon in the negotiation of spaces and the enactment of contemporary, urban lifestyles and the fulfilment of a desire for a home, sense of comfort and well-being. For some contributors working primarily with literary or figurative material, it is not so much particular building designs or landscapes that are studied, but modes of representation that position subjects in relation to their surroundings in certain ways.

The second methodological issue worth noting is related to the first. It is a question about the utility of the category of representation as a focus of critical analysis. Now, this may seem like an unnecessarily burdensome bugbear or a spectre exorcised long ago. Nonetheless, it is fair to say that a concern for the epistemological value of images, certainly building details and the more obviously visual or iconic aspects of the built environment remain a concern for many design theorists today. Among those whose interests are allied with social constructivism, there is little social reality outside the representation of a building or landscape or the *re-presentation* of representations. Among essentialists, on the other hand, one finds, for instance, the loss of architectural meaning today bemoaned. One finds regret expressed at the uneasy relation between building or urban form and aesthetics or

between issues of aesthetics and technology. One is guided by appeals to the 'lost' art of architecture or landscape design in the face of (and because of) one or the other crisis of rationality, modern science or modernity—in short in the face of a *crisis of representation* (Perez-Gomez, 1983; Vesely, 1985). Amongst other things, this lament perhaps explains why many design theorists who might otherwise profess an interest in broad spatial issues rarely write about law in anything other than typically narrow or specialist terms of the history of building regulations or the requirements of professional practice. The law, being cast as allied with agency, power and authority, is seen to be beyond meaning-making or, rather, a constraint that stops designers doing what they want to do.

#### LANDSCAPE, IDENTITY AND REGULATION AS A FIELD OF HISTORICAL RESEARCH

Historical inquiry can reveal broad patterns of change and moments of rupture marking relations between landscape, identity and the powers that regulate our lives. These patterns frame many of the essays that follow. History gives us pause to consider—to regard as suspicious—the more nihilistic claims of social constructivists and the inherent reductivism and implicit conservatism of heritage enthusiasts and essentialists. History makes us mindful of Ian Hacking's (1983) warning that representations, whatever they may be, 'get chosen by social pressures'.

Wishing to avoid protracted discussions of methodology and given an effort, not to resolve, but to sidestep the thornier aspects of social constructivism and representation, contributors were asked at the outset to illustrate their essays with case studies. They were asked to describe the historical circumstances behind notions of landscape, to discern conceptual frameworks entailing the value or meaning of the land at times in the past so that concerns for landscape and identity today might become more obvious. They were given license to frame their work according to governance, regulation and law, though were encouraged to be mindful of the spatial dimensions of these terms. Accordingly, some contributors begin their essays citing a key legislative act or treaty. Others approach the request more obliquely, choosing to explore relations between the landscape and identity by questioning how they articulate abstract notions like authority, the impartiality of evidence, acts of accusation or narratives of exclusion.

The contributors to this collection were asked to illustrate the themes of landscape, identity and regulation in case studies drawn primarily from the late eighteenth century onwards, a period framed by the industrial, urban, economic and colonial expansion of European states, most notably Great Britain, its then current and former colonies. Certain general features of this period stand out. These were laid out for contributors to get them thinking about the possibilities for the field of research proposed here.

By the middle of the nineteenth century, concerns to define the bases for identity and autonomy coalesce around a paradoxical view of nature, particularly within the context of Anglo-Saxon societies. Nature entailed both a realm of natural resources available for man's use or cities brimming with untapped human potential, and an environment that ultimately determined human character. In this instance, one finds confirmed the tendency both to alter the landscape through its economic exploitation and to re-design the countryside or townscape along more aesthetically pleasing lines or as evidence of a more civilised state of affairs. Here the concept of landscape itself becomes an important mediating factor between a people's sense of themselves and the broader social and cultural environment. Its representation, derived from a number of aesthetic sources and media, was central to an understanding of the terms 'nature' and 'environment' as complex, self-regulating entities, albeit ones amenable to improvement.

By the end of the nineteenth century, in such places as the United States, Canada, Australia and New Zealand, the creation of a worldwide system of trade and finance and developments in agriculture and related technologies facilitated the extension of pastoralism and large-scale cultivation far inland. A number of homestead acts encouraged settlers in more densely populated areas and more recently-arrived migrants to take up federal or Crown lands for farming. These acts were based on such underlying concepts as manifest destiny, imminent domain and *terra nullius*. These served to consolidate government's role in furthering nationhood through the release of lands and natural resources. The idea that the undeveloped landscape was a *tabula rasa* served to legitimate the popular belief that it was every citizen's natural right to access those resources for the purpose of individual betterment. The consequences of these developments on native landscapes, particularly in America and Australia—the effects of imported technologies on local townscapes, the refashioning of river courses, the design of public parks and importation of alien plant species—cannot be overstated. Awareness, in the past and present, of the imposed or artificial character of these developments has informed recent interests in writing the history of so-called 'settler societies' from the viewpoint of environmental science and imperialism (Crosby, 1986; Griffith and Robin, 1997; Grove, 1995).

Coincident with a period of migration to many parts of the world, Ian Hacking (1995) has argued that a politics of memory arose in the final decades of the nineteenth century as a means for defining individual identity. Today, memory not only fixes who we are, but who we are responsible to or for, be it society or family. A politics of memory encompasses not only the necessity to record the past as a register or monument of culturally-significant places and events, but also the desire for solitude as means of restoring one's productive powers through the contemplation of nature. Historically, one sees this politics being played out in many European nations, their then present and former colonies, given repeated calls for the

establishment of public and national parks to ameliorate the alienating effects of urbanisation and industrialisation—reserves against vanquished landscapes and ways of life associated with an agrarian existence. These spaces were highly regulated, with codes defining the distribution of public amenities and regulations outlining conditions of use. Today, they are subject to preservationist codes and heritage bylaws as they have become, as their proponents originally intended, important resources for individual well-being and reserves of cultural and national identity.

Underlying the various considerations of landscapes emerging from this period is an imperative which might best be described as ‘environmentality’—along the lines of Michel Foucault’s model of governance—with its implied link between forms of knowledge and the control of environs, surroundings or enclosures (Burchell *et al*, 1991). In its more quantified form, imperative is best evinced by the development of psychometrics in the mid-twentieth century. The study of the complex relationships between diverse environmental factors such as heat, humidity and wind and their impact upon the body posits the inhabitant as a self-regulating entity, albeit one subject to distinctive modes of measure and regimes of sensory control. Today, the link that is presumed between comfort and well-being forms the basis of numerous laws and statutory regulations governing the ambient qualities of living spaces.

#### THE COLLECTED ESSAYS

The contributors to this collection were asked to reflect upon the theoretical and methodological issues raised by the prospect of the geography of law as well as historical circumstances such as the preceding ones that might be brought to bear on their research. They were invited to consider the ‘landscape’ broadly as it might invoke, say, a particular place or ideal place, as the term might entail aesthetic values derived from painterly techniques or modes of observation. They were asked to relate the historical formation of landscape to contemporary anxieties over the environment, our place in it or amongst its other, more indigenous inhabitants. The essayists were invited to survey landscapes as they impinge upon different spheres of human activity: as they form part of nature or the city, as they support such aesthetic/governmental constructs as townscape, environmental management and public and private domains. What connects these various interpretations of landscape is an underlying concern for space—the perceived effect of space on the individual, and the various social and legal discourses and regulatory practices which depend upon these being a link between one and the other.

The essays are grouped into two sections. The first two address the mutual engagement of all three aspects of landscape, identity and regulation. Mohr’s essay provides both readers familiar with issues in socio-legal

studies and others less so an entry to the collection. Levine sets out a philosophical framework for considering the remaining five essays. By and large, each of these addresses two of the three aspects identified in the subtitle to the collection.

It is appropriate in a collection that started from workshop papers delivered at the IISL in Oñati, Spain that Richard Mohr's essay questions relations between the land, people and their governance in view of three images of the Basque landscape. Citing the work of theorist Michel de Certeau, Mohr states that we define ourselves by the ways we use space or 'practice place'. We are also defined by various legal identities, as, say, citizens or proprietors. These legal identities also have their basis in land, whether as territory (jurisdiction) or property (land tenure). The essay explores the relationship between law and order in order to better understand the limits of formal law and regulatory acts and the possibilities of legal pluralism and resistance through informal law and alternative spatial representations and practices.

Michael Levine examines the philosophical bases of discourse on landscape in relation to identity and regulation. What relevant philosophical positions—aesthetic and ethical views in particular—feature in this wide-ranging, interdisciplinary, and at times disparate area of study framed by the following essays? Beginning with a recently revived debate on aesthetic formalism versus moralism, it is argued that such discourse, whatever else it may be, involves philosophical questions regarding (i) the relation of aesthetic judgment to moral judgment, value, and objectivity; (ii) standards of taste; and (iii) significant normative ethical issues. At the core of many theses examining landscape in relation to identity and regulation lies an Aristotelian conception of virtue; an essentialist conception of a human being; and a related essentialist notion of well-being and happiness. The 'geography of law' is a fundamentally moral terrain.

Clearly, the law engages with and articulates spatial concerns where governments establish, reinforce or impose conditions on the ownership of land. The limits or borders of territory become important in defining tenure, but also assist in defining rights of access to and provision for private and public domains. In the years mostly between 1760 and 1830, for instance, a series of Enclosure Acts introduced by Britain's Parliament removed rights of common passage and usage over pieces of land and were a key feature of that nation's agrarian and industrial revolutions. Along with such historical circumstances as the country's burgeoning urban population, the temporary loss of overseas sources of food due to the American Revolution and then Napoleonic blockades, the Acts hastened the commodification and wholesale transformation of landscapes formerly associated with traditional patterns of rural life as the value of sustenance derived from those ways of life rose. Scholars have shown that aesthetic interests were intertwined with practical and economic concerns raised by the so-called 'improvement' or fencing of common fields and pastures. Not

surprisingly, these measures coincided with the moral condemnation of vagrancy and mendicancy as these were identified with a way of living at odds with a supposedly natural desire for individual, physical and financial security.

John Macarthur's interests in the picturesque, a manner of gardening much discussed in the late eighteenth and early nineteenth centuries, prompts his essay. It aims to show how period interests in landscapes designed along pictorial or painterly lines which emphasised the composition of scenery and the position of the spectator or landowner reveal a complex and uneasy relation between two forms of appropriation. The first, visual appropriation, implies the 'taking' to oneself of a view; the second accompanies the appropriation or acquisition of property. Analysing the writings and designs of a key figure in the history of landscape design, Humphrey Repton, Macarthur revisits one source of picturesque theory and casts doubt on the belief that it was simply a style of landscape gardening. He identifies an important socio-legal and political context behind period interests in the picturesque and frames an ongoing issue of concern for designers and lawmakers alike, namely the relations between views and property, aesthetics and ownership. A means of designing that was once the subject of aristocratic interests and tastes, the composition of scenery for visual effect and the sense of enjoyment thought to follow have become generalised today as the right of anyone to fully experience their property as their own by having a view of it for themselves.

The notion of landscape reinforced by Repton's writings on the picturesque is multivalent. Land is both a commodity and a medium for self-expression and visual delight. Seemingly 'natural'—that is, defended through appeal to physical laws of exchange or optics thought to govern human society and perception respectively, this understanding was hardly straightforward and value free. Likewise, as a means of representing nature, the interpretation of picturesque scenery was equally complex and inconclusive. Repton's landscape was one that positioned the landowner as a subject within a visual field—as a spectator driven to ascertain where they stood in terms of the integrity or completeness, desirability and value of their estates.

This emphasis on the sensory, particularly visual, experience of private space and the uncertainties accompanying its appropriation underscores my own essay. It begins with careful consideration of a popular book of house and garden design from the Victorian period, Robert Kerr's *The Gentleman's House* of 1864. Normally, such a text would be interpreted by architectural historians in light of the interests and concerns for style motivating more celebrated designers, moralists and social reformers in the nineteenth century Britain such as Augustus Pugin, William Morris or Ebenezer Howard. The essay resists such a reading, illustrating rather how Kerr invoked the figure of the occupant or inhabitant of space to articulate principles of good planning and design. To design well was to exercise one's

imagination so that this figure served to focus thoughts on the proper relations between rooms and corridors, house and garden. The appearance of this figure corresponds to the sense of increasing domestic individuation apparent in a range of 19th century literary works. It remains to be argued here that this form of characterisation was itself novel and served to frame contemporary design practices, underscoring the professional status of the designer. This essay seeks to relate the figure of the inhabitant to discourses aimed at promoting human well-being and comfort through the design of domestic space in the home.

George Pavlich forgoes focused study of a particular historical moment, landscape or building *per se*, choosing instead to survey broad ‘landscapes of accusation’ in Western thought and art. He begins his essay by asserting that the creation of legal status, specifically by means that impart criminal status of the kind, say, leading to the criminalisation of vagrancy in nineteenth century Britain or the transportation of the criminal poor to colonies in the antipodes, involve the creation of otherness and precipitate moments of accusation. The word ‘accuse’ is derived from the Latin verb *accusare*, which evokes notions of ‘cause’ in the sense of requiring subjects to account for (the causes of) their actions. This evocation calls subjects to present narratives of a past, and these often form the basis on which identities of exclusion are either put in place or forestalled. As such, accusation arrests the ordinary flows of everyday life, and stands as gatekeeper to diverse governmental arenas designed to affirm or deny the socio-legal posting of excluded subjects. This essay theorises accusation through its etymology and emergence in narrative and figurative form, addressing Thomas Aquinas’s *Summa Theologica*, Gerard David’s painting *The judgment of Cambyses*, and Plato’s *Apology*. It focuses on conceptual landscapes of accusation in which subjects are called to identify themselves in particular ways, with the express purpose of being subjected to evaluations of exclusion. It will reflect on the manner in which such accusatorial landscapes play host to forestalled identities, where accusers pledge responsibility to a given collective without claiming an equal responsibility to those accused.

Acts of enclosure in Great Britain implied the view that unbounded lands were under-utilised and therefore largely unoccupied. When applied to newly discovered territory, this assumption easily dovetailed with another, entailing a view of wilderness as *tabula rasa*. Wilderness formed a space largely bereft of all but natural resources. It was a space *becoming* something, awaiting transformation under the improving hand of humankind into the material forms of an imported civilised society. Notwithstanding the variety of circumstances accompany the rise of particular settler societies in Australia versus New Zealand, these territories were generally considered abstract landscapes prior to the arrival of law and order. However, the progress of settlement and the establishment of authority was rarely, if ever, a rationally coherent process. Different kinds of appropriation—philosophical, aesthetic, cultural—led to different valuations of the