

The Practice of Landscape ‘Conventions’ and the Just Landscape: The Case of the European Landscape Convention

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ABSTRACT *The role of conventional practice in generating the idea of a just landscape, it is argued, became manifest in the process by which the European Landscape Convention was generated, and in the way it is being implemented. The concept of convention thus not only provides a way of understanding the relationship between ideas of justice and the constitution of landscape, it also provides a key to navigating the complexities of interpreting the European Landscape Convention in practice. Rather than focusing on the meaning of fixed definitions of landscape and related concepts, this article thus focuses on the process by which meaning is generated through convention in general, and through the European Landscape Convention in particular.*

KEY WORDS: Convention, European Landscape Convention, justice, practice, custom

Introduction

This article examines the practice of landscape ‘conventions’ as a means to understanding the perception and meaning of landscape in relation to law and justice. It is concerned with the concept of convention in relation to the concept of landscape in general and the European Landscape Convention in particular. The European Landscape Convention was signed in 2000 in Florence, Italy, and is now being implemented, under the auspices of the Council of Europe, throughout most of Europe. With its focus on the way older ideas of landscape coexist and conflict in modern contexts, the article should be regarded as a follow up to my foregoing article in *Landscape Research*, ‘The Landscape of “Customary” Law versus that of “Natural” Law’ (Olwig, 2005).

In the first part of this analysis I will examine the meaning of landscape in ‘conventional’ practice and then counterpoise this understanding of landscape to the meaning of landscape as perceived by many (though not all) scientists, technicians and planners. In this first part I will argue that the ‘conventional’ meaning of landscape does not lie in the establishment of a fixed, theoretically founded, definition from which planning is to proceed (as in classic top down planning).

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Rather this meaning must be found in the process that sets in motion a plethora of gatherings involving members of various interest groups, politics and communities, in which the common perception of landscape that emerges provides a basis for subsequent practice. This perception of landscape is therefore largely the outcome of public discursive practice, rather than scientific reasoning. The European Landscape Convention therefore provides a useful entry to understanding the idea of convention itself in relation to the practices that shape landscape.¹

The ‘Conventional’ Practice of Landscape

‘Convention’ derives from a Latin word meaning ‘to come together, be suitable, agree,’ and it is related to the word ‘convene’, meaning ‘to come together, meet, or assemble in a group or body.’ A ‘convention’ is thus, as a dictionary puts it, a “body or assembly of persons met for some common purpose.” The European Landscape Convention was the outcome of such a form of social practice, the coming together of people and their agreeing on something of ‘common purpose’ through assembling and meeting. There is a twist, however, to the notion of ‘common purpose’ because it suggests that the group assembling is in prior tacit agreement with regard to the existence of something in common between them. This ‘common purpose’ can be understood in terms of ‘convention’ when defined as “usage, custom, or practice generally agreed on and followed especially in social usage or moral matters” (Merriam-Webster, 2000, convention, convene).

A convention (in the sense of a meeting), as anyone who has ever attended a convention can attest, is riddled with convention (in the sense of custom and practice) concerning social usage and moral matters—that is, the rules of order, the etiquette of debate, etc. But such conventions (meetings) can also be seen as ways of uncovering the conventions (customs and practices) the participants already share in common, and as ways of agreeing upon what is to become established convention in the future. What is agreed upon can then be formalized as a ‘convention,’ as in the case of the European Landscape Convention. It is not, however, a fixed law, but rather a framework for a continuous process of legal change, or, as the explanatory report puts it:

An international Convention is a dynamic legal instrument, which evolves together with the subject matter of its provisions. An international legal instrument intended to deal with landscape values and interests should be able to keep pace with changes in those values and interests. (Europe, 2000b, II, §32)

Reading the concept of *convention* as a form of social practice by which decisions are made and actions initiated, thus suggests that the European Landscape Convention can actually tell us a great deal about how Europeans perceive landscape in practice. Or, to put it another way, it can tell us about the practice of landscape.

The Practice of Landscape

Landscape, according to the Convention, is not an objective thing, but: “an area, as perceived by people, whose character is the result of the action and interaction

of natural and/or human factors” (Europe, 2000a, chap. 1, art. 1). In this way, landscape is more than an area, it also expresses the perceptions of an area that people share, value and use. The Convention therefore requires signatory states to: “recognize landscapes in law as an essential component of people’s surroundings, an expression of the diversity of their shared cultural and natural heritage, and a foundation of their identity” (Europe, 2000a, chap. 2, art. 5). Landscape, for this reason, is not so much the objective scenic spatial framework of a location, but a place constituted through the tangible and intangible social and cultural practices that shape the land. The Convention’s approach to landscape as a field of practice and perception is thereby quite congruent with Lionella Scazzosi’s finding that:

The meaning of the term ‘landscape’ has become broader than that of a view or panorama of natural scenery, which characterized many national protection laws and policies until the middle of the 20th century, and that of *environment* or *nature*, to which it has often been limited during the recent years of environmentalist battles. (Scazzosi, 2004, p. 337)

The Convention’s approach to landscape creates something of a challenge to much traditional landscape research into landscape as a form of layered scene with ‘nature’ understood as the geomorphologic foundation for the natural flora and fauna, and ‘culture’ perceived primarily in terms of visible material objects superimposed by human beings in accordance with, or in resistance to, the demands of the natural environment. This approach can emphasize the character or esthetic appeal of scenery, but it can also emphasize ecological relations. The Convention’s landscape, however, is not a given assemblage of physical objects, which can be objectively analyzed by the natural or social scientist. It is rather a creature of changeable cultural perceptions and identities. How, the frustrated landscape scientist, technician or planner might ask, are we then to analyze and plan such a landscape? How are we to meet the “landscape quality objective” of the Convention, which for a specific landscape involves “the formulation by the competent public authorities of the aspirations of the public with regard to the landscape features of their surroundings” (Europe, 2000a, chap. 1, art. 1 § c).

It is one thing to study landscape as an assemblage of material objects, quite another to study people’s “aspirations” with regard to a landscape that the Convention claims “is a basic component of the European natural and cultural heritage, contributing to human well-being and consolidation of the European identity” (Europe, 2000a, preamble). The answer given in the Convention is that it is not primarily the experts who are to plan and develop this landscape, but rather, the people whose daily practices and perceptions shape the social and physical landscape. The Convention, hence, explicitly states that it has been conceived as a response “to the public’s wish to enjoy high quality landscapes and to play an active part in the development of landscape” (Europe, 2000a, preamble). For this reason, as the explanatory report notes: “Official landscape activities can no longer be allowed to be an exclusive field of study or action monopolized by specialist scientific and technical bodies” (Europe, 2000b, II, §32, p. 22). “Landscape,” therefore, “must become a mainstream political concern, since it plays an important role in the well-being of Europeans who are no longer prepared to tolerate the alteration of their

surroundings by technical and economic developments in which they have had no say” (Europe, 2000b, II, §23).

The Conventional Practice of Law and Justice

The European Landscape Convention not only provides a potential challenge to traditional ways of perceiving landscape by some scientists, technicians and planners as a form of scenery, it also challenges such perceptions with regard to the administration of law. The Convention, it should be noted, came about under the auspices of the Council of Europe—not the European Council or the Council of the European Union, and the distinction between these councils provides a useful key to understanding the Convention’s challenge. The *European Council* is made up of the heads of state and government of the European Union (EU) member states that provides guidance and high-level policy to The Council of the European Union, which is a governing body that forms, along with The European Parliament, the legislative arm of the EU. These EU councils thus have the function of a state in that they participate in the making and enforcing of legislation. The Council of Europe, on the other hand, works in a way that might be described as being the obverse of the EU councils. It represents not the power of a state, but the moral authority of Europe, and, as such, it doesn’t make and enforce laws, it facilitates conventions—200 to date.

The most well known Council of Europe convention is probably the 1950 European Convention on Human Rights, which serves as the basis for the European Court of Human Rights. This convention well illustrates the special legal status of the Council of Europe because it is not concerned with statutory law in the normal sense, but with a kind of meta-law, which sets itself above the laws of the differing states. A convention is essentially an agreement, and it only becomes legally binding because the parties to the agreement agree to make it binding within their jurisdictions upon ratification. Conventions thus, according to the Council of Europe, “are not statutory acts of the Organization; they owe their legal existence simply to the expression of the will of those States that may become Parties thereto, as manifested *inter alia* by the signature and ratification of the treaty” (Europe, n.d.). The parties to the agreement thus essentially agree to self-enforce its provisions, rather than subject themselves to the enforcement of an outside authority such as the EU.² As the European Landscape Convention states:

Each Party shall implement this Convention . . . according to its own division of powers, in conformity with its constitutional principles and administrative arrangements, and respecting the principle of subsidiarity, taking into account the European Charter of Local Self-government. Without derogating from the provisions of this Convention, each Party shall harmonize the implementation of this Convention with its own policies. (Europe, 2000a, chap. 2, art. 4)

This process of ‘harmonization’ is not intended to create a fixed body of law, but rather to facilitate an ongoing practice by which law is kept up to date. To understand this practice, however, it is necessary to take a closer look at the organizations

behind the Convention, as well as the way the Convention is promulgated in relation to legal practice and ideas of justice.

A European 'Res Publica'

The Council of Europe might be said to represent Europe's '*res publica*' as defined by the philosopher Martin Heidegger in an essay called 'The Thing':

The Romans called a matter for discourse *res*. The Greek *eiro* (*rehetos, rhetra, rhema*) means to speak about something, to deliberate on it. *Res publica* means, not the state, but that which, known to everyone, concerns everybody and is therefore deliberated in public. (Heidegger, 1971, p. 175; see also Olwig, 2005, p. 308)

The power of the *res publica* stems from public discourse, that is, from a multi-vocal process of communication that ultimately generates a consensus concerning the *things* (*res* means *thing*) that are agreed upon. The *res publica* is a political community shaped through discourse and the core of its power is thus essentially invisible because it depends upon a process of agreement about *things* that comes about through deliberation—the kind of deliberation that takes place through a convention, for example. It does not, therefore, represent the authority of a state with the power to enforce its statutes by force. *Res publica* is not the province of the state, but “that which, known to everyone, concerns everybody.” This is also true of landscape as defined by the Convention, where it is stated that: “landscape is a key element of individual and social well-being and that its protection, management and planning entail rights and responsibilities for everyone” (Europe, 2000a, preamble). Landscape is therefore, according to the Convention's explanatory text, “the concern of all and lends itself to democratic treatment, particularly at local and regional level” (Europe, 2000b, II, §23).³

The special character of the Council of Europe is best understood against the background of its founding in 1949 in the wake of the continent's political and social disintegration under the impact of world war driven by nationalism. The signatories to the 1949 Treaty of London, which founded the Council, describe the treaty as a “reaffirmation” of “their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy” (Europe, 1949, preface). The signatories were thus, in effect, affirming their participation in a *res publica* and this is reflected in the aim of the Council, which is “to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress” (Europe, 1949 chap. I, art. 1 §a). This aim is also reflected in the idea of a *res publica* with its emphasis upon public deliberation because the aim is to “be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realization of human rights and fundamental freedoms” (Europe, 1949, chap. I, art. 1 §b).

The Council of Europe represents a polity defined by a membership sharing the values of the *res publica*. The power of this polity lays, in great measure, in its power to admit and exclude members. Punishment therefore is not of the direct sort used by states—fines, imprisonment, etc.—but the indirect threat of exclusion. This is a basic principle by which customary law operates, and it is particularly effective in situations in which there is no effective state apparatus to execute punishment. It was thus a basic principle of justice for the legal gatherings, known as ‘things’ or ‘moots,’ which governed the ancient landscape regions of Europe, and which inspired Heidegger’s observations concerning the *res publica* (Heidegger, 1971; Olwig, 2002, 2005). In the case of the Council of Europe, exclusion means exclusion not just from the Council, but by implication exclusion from Europe as a legal and cultural community. The treaty establishing the Council thereby states in article three that: “Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council” (Europe, 1949, chap. II, art. 3).

The original signatories to this treaty included only Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom, but the idea was that the Council should expand to include members willing and able to abide by the conventions concerning law and democracy, which were seen to define Europe as a polity. “Any European State which is deemed to be able and willing to fulfill the provisions of Article 3,” as the treaty put it, “may be invited to become a member of the Council of Europe by the Committee of Ministers” (Europe, 1949, chap. II, art. 4). But just as importantly: “Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine” (Europe, 1949, chap. II, art. 8).⁴

The Council now groups together 46 countries, including 21 countries from Central and Eastern Europe. The main component parts of the Council of Europe are: the Committee of Ministers, composed of the 46 Foreign ministers or their Strasbourg-based deputies (ambassadors/permanent representatives), which is the organization’s decision-making body; the Parliamentary Assembly, grouping 630 members (315 representatives and 315 substitutes) from the 46 national parliaments; the Congress of Local and Regional Authorities, composed of a Chamber of Local Authorities and a Chamber of Regions and finally a secretariat numbering 1 800 (Europe, 2006).

Landscape as a Regional ‘*Res Publica*’

Of particular interest with regard to the practices shaping the Landscape Convention is the Congress of Local and Regional Authorities (CLRA). This is because the Convention is largely the outcome of the CLRA and this is significant because the CLRA represents distinctly local and regional interests and practices, which are not necessarily those of the nation-states—in fact, they can even be opposed to those of the nation-states. The purpose of the CLRA is to: “be a consultative body the aims

of which shall be: a. to ensure the participation of local and regional authorities in the implementation of the ideal of European unity” (Ministers, 2000, art. 2, § 1a). It is “composed of Representatives holding a local or regional authority electoral mandate,” and they shall be appointed so that each state ensures “in particular an equitable representation of its various types of local and regional authorities” (Ministers, 2000, art. 3, § 1).

The story of the Landscape Convention begins in March 1994 when the Standing Conference of Local and Regional Authorities of Europe, the predecessor of the CLRAE, adopted Resolution 256 (1994) on the 3rd Conference of Mediterranean Regions. In this text, the Standing Conference called on its succeeding body, the CLRAE, “to draw up, on the basis of the Mediterranean Landscape Charter—adopted in Seville by the regions of Andalusia (Spain), Languedoc-Roussillon (France) and Tuscany (Italy)—a framework convention on the management and protection of the natural and cultural landscape of Europe as a whole” (Europe, 2000b, I. 1.). The subsequent emphasis upon landscape as an ‘area’ illustrates, as will be seen, the importance, when studying the practice of conventions, to take cognizance of historical precedents, in this case the Landscape Convention’s genesis in a convening of local and regional authorities.

English language dictionaries often emphasize the scenic sense of landscape, as in “1 a : a picture representing a view of natural scenery” (Merriam-Webster, 1996, landscape). Scenic space is typically unbounded, fading into infinity. The Convention on the other hand, defines landscape in terms of ‘an area,’ which is an enclosed and bounded shape. The explanation for this difference would appear to lie in the fact that the word for landscape in the Romance languages is some variant of *paysage*, as it is spelled in French, in which the ‘*pays*’ means ‘land’ in the sense of the bounded area of a region or country. ‘Land,’ thus, does not mean soil, but refers rather to an historically constituted place. “Andalusia (Spain), Languedoc-Roussillon (France) and Tuscany (Italy),” which took the initiative in formulating the Mediterranean Landscape Charter are all ancient *pays*, working within the framework of a representative body made up of representatives of regions and local authorities. The meaning of landscape, in practice, is thus very much a regional affair, with roots going deep into the identities of the historical regions from which the Mediterranean Landscape Charter and the Landscape Convention emerged. This is the landscape of place to which people become attached through history. Scenic space, by contrast, is the infinite space of the map and the drawn plan. It is the abstract space typically used to represent the plans of architects and the models of ecologists because it lends itself to esthetic judgment and scientific representation.

The regional dimension of the practice of landscape, as mandated by the Landscape Charter, is clear from the explanatory report published with the Convention. Here, we are thus told as noted earlier, that: “Landscape is the concern of all and lends itself to democratic treatment, particularly at local and regional level” (Europe, 2000b, II, § 23). It is also at this level that the role of landscape practice comes into play:

If people are given an active role in decision-making on landscape, they are more likely to identify with the areas and towns where they spend their working and leisure time. If they have more influence on their surroundings, they will be

able to reinforce local and regional identity and distinctiveness and this will bring rewards in terms of individual, social and cultural fulfillment. (Europe, 2000b, II, § 24)

The idea is thus to develop what might be termed a regional landscape ‘*res publica*.’

The Landscape Scene of Activity versus the Landscape Scenic Background

Because the European Landscape Convention is the product of a long series of gatherings including not only representatives of the public, but also the representatives of nature conservation bodies, landscape architects, geographers and various interest groups, it is very much the end result of a ‘coming together’ and mutual ‘agreement.’ It does not, thus, reflect a philosophically or semantically consistent definition of landscape, but rather a compromise between concepts and perceptions of landscape that are currently in practice. Therefore, even if a regional perception of landscape predominates in the Convention’s definition of landscape, the perception of landscape as scenery is also ever present. It is therefore important to disentangle the various meanings of landscape in play in the Convention and relate them to the different forms of landscape practice that it represents. The idealistic framework of the Convention thus covers what, in effect, is a field of struggle in which varying interests vie. The character of the promulgation of the Convention will depend upon the recognition of these differing players in this struggle.

In disentangling the meaning of landscape it can be useful to take account of Yi-Fu Tuan’s observation that landscape is a ‘diaphor,’ because it combines at least ‘two dissimilar appearances or ideas,’ thereby generating a ‘tensive meaning’ in which different meanings of landscape are in tension with each other. This tension derives from the fact that landscape means both ‘domain’ and ‘scenery.’ A domain, in this context, can be understood as a place, region, country or *land* inhabited by people and it thus belongs to the discourses of politics, economics, culture and society. Scenery, on the other hand, belongs to the discourse of esthetics and space. “The diaphoric meaning of landscape,” according to Tuan, “lies not in one image (concretely known) pointing to another, but rather in both—equally important—imaginatively synthesized” (Wheelwright, 1962, p. 72; Tuan, 1978, pp. 366, 370).

Under the singular dictionary heading of ‘landscape,’ following Tuan, lurks what might be regarded as almost two different words, which have nevertheless become intertwined in a tensive relationship that seems to generate many of the different uses found in the Convention. The two meanings inherent in the diaphor of landscape are well expressed in the definition of *landscape* in Dr Johnson’s classic 1755 dictionary (Johnson, 1755 [1968], landscape):

1. A region; the prospect of a country
2. A picture, representing an extent of space, with the various objects in it.⁵

The first definition in Johnson’s definition refers to a region, country, or land in the sense that Andalusia, Languedoc-Roussillon and Tuscany are regions, countries or

lands. This is thus also a landscape in the sense of “2 c: a particular area of activity: SCENE {political landscape}” (Merriam-Webster, 1996, landscape). Landscape, in this sense, is thus not a visual scenic background, but an active scene of practice (in the dictionary example, ‘political’ practice). Landscape as an area, place or region of activity, lies not only at the core of the meaning of the *pays* in the *paysage* of the Romance languages, but also at the core of the meaning of *land* (as country) in the etymologically primary sense of *landscape* in the Germanic languages (including English) (Olwig, 2002).⁶ It can be used in this sense to refer to both the region itself and the countryside (or *paysage*) of the region as seen from a distance, in prospect. It is, of course, from a distance that one is best able to perceive a region in something approaching its entirety, and thus gain an impression of its visual character, and this leads to an identification of landscape with a visual prospect.

It is easy to equate a place perceived in prospect with a picture representing an extent of scenic space, with the various objects in it, and thus assume that Johnson’s definition 1 and 2 are essentially the same. There is, however, a significant difference. In the second definition, what is represented pictorially, or graphically, is not primarily a region or a country, or even a prospect, but first and foremost ‘space,’ the ‘objects’ being secondary to the space. A landscape, in this sense, needs not represent a *pays*, a *region* or a *country*, but simply an assemblage of objects, as can be the case in some landscape architecture. It may seem counterintuitive that an artist, architect, scientist, or surveyor, making a pictorial representation might be more interested in space than the objects in that space, but the fact is that space itself, as an aspect of nature, is an important object of esthetic and scientific interest. The phenomena located within space (a form of nature) are treated as natural objects when framed spatially, thus facilitating their treatment in terms of measurable spatial relationships governed by natural laws, such as those of physics. This spatial framing thus facilitates a shift in meaning in the *land* in *landscape* from a cultural phenomenon, a *land* in the sense of *country* or *pays*, to a natural object, *land* understood as something physical, like soil. It thus makes landscape an object of scientific interest, as in landscape ecology, or of aesthetic manipulation, as in landscape architecture. This shift does not happen so readily, however, in the Romance languages because *pays* (and its counterparts in the various Romance languages) does not, unlike *land*, carry the meaning of soil. It might be because of this ambiguity in the meaning of the *land* in *landscape*, that it is common for the English to use ‘countryside’ to cover areas that in the European Landscape Convention come under the heading of ‘landscape.’ The history of the English use of the concepts of *country* and *countryside* is, in fact, quite parallel to the use of *land* and *landscape* in other Germanic languages, where the regional sense of *land* and *landscape* has persisted longer (Olwig, 2002).

The pictorial expression of landscape in central point perspective as an extent of scenic space with the objects in it grew out of the same sort of techniques and impulses that produced surveying and mapping (Cosgrove, 1984, 1993). The flowering of such techniques at the dawn of the modern central state in the Renaissance was not coincidental. Surveys, maps, and scenic images, framed within a measurable space, provided a way of gaining a top down grasp of the territory under a state’s governance. It provided a rational way of framing territory that was useful not only for governance, but also for the development of a natural science that could

contribute, as Francis Bacon argued, to social and economic development (Olwig, 2002).

The growth of the central state was simultaneously tied to the suppression of the autonomy of the various regions or *pays* under it. This required the suppression of the power of their differing historically evolved customs and conventions, because it was in the state's interest to have a body of uniform law, like the uniform laws of nature. The administration of a central state will thus have a tendency to favor approaches to rule that favor uniform laws, like those of science, and hence, an idea of landscape that can provide a rational framework for governance, whether this be in the area of esthetics, economy or natural science (Olwig, 2002). It is thus interesting to note the influence of a regional perspective in the Landscape Convention that emphasizes the importance of diversity. As the explanatory report puts it, "extending the scope of local authorities' official landscape action to cover the whole of national territory does not imply that the same measures and policies must be applied to all landscapes" (Europe, 2000b, II, §32, p. 27). There is thus a built in potential tension in the Convention, between the central state's tendency to impose fixed and uniform forms of law and regulation, and the call for regional diversity embedded in the Convention, just as there is a potential tension between the notions of law and justice identified with the statutory law instituted, and its enforcement, by states (including the EU), and the appeal to custom, convention, culture and morality, that is characteristic of the Council of Europe's approach to convention building.

Discursive Tension and Landscape Convention

Evidence of a tension in the European Landscape Convention between region and state, law and convention is detectable, in particular, in the contrast between the Convention proper and some passages in its explanatory report. Thus, whereas the general statements of the Convention take a broadly cultural approach to landscape, emphasizing regional identity and moral responsibility, the 'specific measures' called for in the Convention's explanatory report are often quite technical and instrumental. 'Explanatory reports' are prepared by a 'committee of experts,' under the authorization of the Council's Committee of Ministers (see below). These experts are instructed to elaborate on a given convention in the hope that this "might facilitate the application of the provisions of the respective treaties." Explanatory reports, however, "do not constitute instruments providing an authoritative interpretation" of a treaty's provisions" (Europe, n.d.). This caveat is important because a tension between two very different ideas and perceptions of landscape exists between the Landscape Convention and its 'explanatory report,' and it is therefore useful to know that the perception of landscape favored by the explanatory report is not authoritative, and the Landscape Convention is therefore open to other interpretations.

Under 'specific measures' the Convention proper specifies that: "Each Party undertakes to increase awareness among the civil society, private organizations, and public authorities of the value of landscapes, their role and changes to them" (Europe, 2000b, art VI, §A). Reading the Convention's characterization of landscape Peter Howard has commented that:

The definition puts landscape almost into the category of intangible heritage... but the ways in which we might conserve intangible heritage are fundamentally different and include the use of the media, evening classes, appellation contrôlée, farmers markets, county shows etc. The French use *animations* for this purpose.⁷

In the explanatory report it is also recognized that awareness is a “crucial question” and that: “Every citizen has a share in the landscape and in the duty of looking after it, and the well-being of landscapes is closely linked to the level of public awareness.” But when it comes to specificity the ‘committee of experts’ simply takes the traditional top down approach of: “Campaigns for informing and educating the public, elected representatives and associations about the value of present and future landscapes” (Europe, 2000b, art VI, §A, p. 52).

The call for increased awareness under ‘specific measures’ is followed by a section on ‘training and education’ where the Convention proper calls for: “multi-disciplinary training programmes in landscape policy, protection, management and planning, for professionals in the private and public sectors and for associations concerned” (Europe, 2000a, art. 6, § B). “Landscape management,” according to the convention must be “dynamic” and “seek to improve landscape quality on the basis of the population’s expectations” (Europe, 2000a, chap. 1, art. 1 § c). The Convention’s “landscape quality objective” likewise requires “the formulation by the competent public authorities of the aspirations of the public” (Europe, 2000a, art. I, § E & C). One might therefore assume that these “multidisciplinary training programmes” would be intended to provide a dynamic means by which the relevant authorities could learn to tackle issues involving landscape quality and the public’s landscape values, and, not least, the “crucial question” of awareness. It is therefore somewhat surprising that the “committee of experts,” with regard to these “multidisciplinary programmes,” simply concludes that:

The aim here is to improve the technical expertise of bodies with landscape responsibilities. Examples of such bodies are professional organizations concerned with regional planning, the management of the environment or heritage, agricultural land use, tourism, industry, construction work or infrastructure. (Europe, 2000b, art. VI, §B, p. 53)

It is hard to see where the “multidisciplinarity” or the public participation lies here.

The answer to the question of how the public’s “expectations” and “aspirations” can be reduced to a question of technique is found elsewhere in the explanatory report. Here, it becomes clear that when it comes to planning and management, members of the “committee of experts” have returned the concept of landscape to the “view or panorama of natural scenery” that Scazzosi referred to as having played a strong role until the middle of the 20th century, and to “that of *environment* or *nature*, to which it has often been limited during the recent years of environmentalist battles” (Scazzosi, 2004, p. 337). The explanatory report by the “committee of experts” thus calls for technical management using “geographical information systems and modern techniques of computerized mapping” in order to study such “landscape characteristics” as “the physical relief, the settlement pattern, the main

land uses, economic activities, residential areas, the presence or absence of features such as hedgerows and terraces, important wildlife habitats and the heritage of past human activity” (Europe, 2000b, chap. II, art. 6 § 52). This sounds pretty technical and instrumental, and it is difficult to see how it relates to cultural values, but the need for the “democratic” involvement of the public has not been forgotten. “It is vital,” we are told by the “committee of experts,” that this work “involves the local community, the general public and the various other stakeholders by means of surveys and information meetings” (Europe, 2000b, chap. II, art. 6 § 52). One wonders what has become of the idea that “landscape is the concern of all and lends itself to democratic treatment, particularly at local and regional level.” It is difficult to imagine that the general public will experience “individual, social and cultural fulfillment” and become deeply engaged in landscape issues through such “surveys and information meetings.” It is hard to reconcile such approaches, furthermore, with the demand that: “Official landscape activities can no longer be allowed to be an exclusive field of study or action monopolized by specialist scientific and technical bodies.”

The members of the “committee of experts” that have authored the section of the “explanatory” report on specific measures, is quite aware, in fact, of the gulf between the orientation towards perceptions and values that is found in the Convention proper, and the instrumental technical solutions that they have proposed. The Convention proper, under the heading of identification and assessment, states that: “With the active participation of the interested parties...and with a view to improving knowledge of its landscapes, each Party undertakes: to identify its own landscapes throughout its territory” and “to assess the landscapes thus identified, taking into account the particular values assigned to them by the interested parties and the population concerned” (Europe, 2000a, chap. II, art. 6, § C 1a i – iii, b). According to the “committee of experts” this process “must take account of the concerned people’s opinion and the interests linked to sectoral policies.” The problem for the committee of experts here though is that these “views may well be highly subjective and differ considerably.” To solve this problem the “committee of experts” concludes that it might be an idea to distinguish between the objective knowledge of the expert and the subjective opinions of the people, whose cultural values and aspirations are embodied in the landscape. The report therefore suggests that: “It may well be worth performing the evaluation according to objective criteria first, then comparing the findings with the various assessments of the landscape by people concerned and other interest groups.” Such a process of comparison could “if necessary,” as they put it, “be carried out by public inquiry, with the interested parties having the right to express their opinion.” Such an approach, of course, requires that the public, in exercising the right to express their subjective opinion, is properly informed of the experts’ objective findings. The committee of experts therefore concludes: “Public participation in this type of procedure could be fostered by providing the public with information, consulting all representative bodies, using the media and conducting awareness-raising campaigns at all levels” (Europe, 2000b, chap. II, art. 6 § 57).

The meeting between scientific and technocratic expertise and the subjective opinions of the public, as envisioned by the “committee of experts” is, of course, very different from a notion of the *res publica* as meaning “not the state, but that

which, known to everyone, concerns everybody and is therefore deliberated in public.” The kind of “public enquiry” envisioned in the explanatory report treats landscape as something that is known to the experts and inculcated into the populace through information campaigns before that population is then allowed to exercise the right bestowed upon them to express an opinion. If, however, one takes the position that the landscape is the expression of a polity’s values, conventions, customs and practices, then that polity constitutes the experts, even if its members may not have reflected about their role in shaping this landscape. They are the “experts” who, if seriously engaged, might be able to enlighten administrators and planners concerning how they practice landscape. In the end, after all, it is things like the production of the regional wines people drink, the regional cheeses that they eat with local sausages and cured meats that make for the particular regional landscapes that give each part of Europe its perceived uniqueness—also in terms of their biodiversity. These practices are, in turn, a reflection of the particular seasonal and religious customs that determine how and when what is hunted, what is gathered, what is harvested or slaughtered, and what is consumed. This does not mean that experts should not play a role, but what might really be needed is not so much technical expertise (though it certainly can be useful) as the cultural expertise necessary to interpret and make conscious the daily landscape practices that are often taken for granted, and which can only be sustained if their value is recognized and their continuation encouraged.

The tension between differing conceptions of landscape between the European Landscape Convention and its explanatory report, might lead both those who favor instrumentalist scientific and technical approaches, and those who prefer more practice, perceptual and cultural oriented approaches, to conclude that the Convention does not give a clear enough mandate to be effective. This conclusion, however, misjudges the power of the practice of convention. As each country that signs and ratifies the Convention seeks to implement it “according to its own division of powers, in conformity with its constitutional principles and administrative arrangements, and respecting the principle of subsidiarity,” it will re-interpret the provisions of the Convention in light of its own conventions, customs and values. The Convention thus acts as a catalyst whereby these countries will be stimulated to rethink—through a process of coming together, gathering and meeting between differing interest groups, administrators and experts—what it is that is meant by landscape in their *res publica*, and how this landscape can provide an overarching framework for both cultural and scientific policy. It is thus the practice of implementing the Convention that is important, not the letter of the Convention understood as if it were statutory law.

At first sight, the practice of (a) convention—which must wind its way, voluntarily through a myriad of countries—may seem to be much less effective than, for example, a statute or directive promulgated by the EU centrally. But this view is difficult to substantiate. If an EU ordinance lacks the moral authority of general acceptance by a *res publica* it can easily become the object of active or passive resistance. Scandals involving the large-scale obstruction, or misuse, of EU measures occasionally become public knowledge, but such subverting is by nature often kept hidden. The social control that comes about through community agreement concerning custom and convention can, likewise, be of considerable effect, but here

again this effect can be difficult to measure. Law, in the end, must win acceptance from a *res publica* if it is to be effective, and in this respect one might hope that the European Council and the Council of Europe, might complement one another, but this can only occur if their differences are respected, also in the case of landscape.

The Just Landscape

Kings, princes and bishops have long built castles, palaces and cathedrals, and as regents and rulers they have literally 'ruled' their territories, regulating land with lines and graticules imposing the spatial structure of governance. This has provided not just a geometry of planned space, but a space of 'justice,' in which there is an abundance of 'geometric' words like 'straight' (as opposed to 'crooked'), 'right' (as in the angle) and, of course, the notion of 'rule' itself. But throughout history there has also existed a parallel, bottom-up, form of social and legal organization, based on custom and convention, that has shaped the social and political landscape, and with it the areal environments and regions within which people live. This is the etymologically primary sense of landscape as an historically constituted polity, place or region, and it has played its own role in shaping the environments of Europe (Olwig, 2005). But even though regions like Andalusia, Languedoc-Roussillon and Tuscany have long since lost their independence as countries, and have been subsumed within the states of Spain, France and Italy, they nevertheless, as have been seen with regard to the European Landscape Convention, continue as polities, with particular customs and conventions, to play a role in shaping the *res publica* of the European cultural and physical landscape. For every rule, regulation and statute there are at least as many customs and conventions governing the behavior of people, not least in Britain, where custom still provides the foundation of common law and the rule of Parliament (Olwig, 2002).

The tensive relationship between regional identities, developing on the basis of a flexible and changing *res publica* rooted in custom and convention evolving through history, and the tendency for states to base their rule on fixed laws based upon timeless 'scientific' principles is a particularly important issue in the contemporary context, where the concept of Europe is very much under debate due to continuing expansion of the European Union, which might be regarded as a state *in utero*. It is interesting to note, in this context, that one of the earlier members of the Council of Europe was Turkey, and that it is the question of the admittance of Turkey into the European Union that is currently stimulating controversy. The Council thus has a more expansive and open approach to Europe than the EU, and this is also apparent in the Mediterranean Landscape Charter, which provided the start for the European Landscape Convention. This charter implicitly expands 'Europe' to not only include Turkey, but the lands bordering on the Mediterranean basin in general.

Given the extensive and longstanding contemporary emigration of a large number of emigrants and their children from particularly Turkey and other areas of the Mediterranean basin, a major challenge to the European Landscape Convention will be to incorporate them into the socially and culturally just landscape that it envisions. Europe cannot be *just* if it is *just* for the long established peoples of a narrowly defined Europe. Though the Landscape Convention calls for the public's right of participation in determining the future of the landscape, it is actually itself

vague concerning the definition of the 'public.' In a supplementary publication on the Landscape Convention, however, it is pointed out that insofar as most signatories to the Landscape Convention are also signatories to the 1998 United Nations Economic Commission for Europe initiated Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, it can be argued that "all the provisions of the Convention concern the public as a whole, without discrimination as to citizenship, nationality or domicile and in the case of a non-governmental organization, without discrimination as to where it has its registered seat or an effective centre of its activities" (Priour & Dourousseau, 2006, p. 172).

The ideal of the just landscape varies depending upon one's landscape practice. Expert knowledge, based upon preconceived theories of science and space, will generate regulatory practices of governance, and concepts of landscape, that suit the uniform ideals of law, justice and society of a central state. The practice of dwelling within a region with a *res publica* characterized by a long heritage rooted in custom and convention, will, on the other hand, tend to generate an ideal of a just landscape that emphasizes local particularity, diversity, and cultural precedence. As the geographer Michael Jones reminds us, the challenge of defining and safeguarding local community interests while recognizing those of people from outside the community is complex. Local communities are not homogeneous, but reflect local constellations of power and influence. Local communities define themselves in local and particular terms, whereas popular democracy can discriminate against minorities (Jones, forthcoming). The practice of the European Landscape Convention, as it is promulgated in each European country, will hopefully help to reduce these tensions through discourse, so that the practical need to administer the landscape according to transparent legal principles is supported by the moral authority of custom and convention.

Notes

- 1 Michael Jones has pioneered the study of administrative practice as a tool for understanding the meaning of landscape (see Jones, 1991; Jones & Daugstad, 1997).
- 2 In international law, all conventions are binding according to the Vienna Convention on law of treaties. The ELC is therefore ostensibly obligatory for states that have signed and ratified it. However, the intent of the Convention is more to launch a working policy program for the signatory states.
- 3 The Convention's approach to landscape as a matter of the perceptions of a *res publica* fits well with the focus on landscape perception and discourse characteristic of the work of many cultural geographers such as Yi-Fu Tuan and David Lowenthal (Olwig, 2003).
- 4 The Council has expanded, according to these stipulations, in spates. There were countries, like Greece, which joined shortly after the initial members formed the Council, and others, like Germany and Turkey, which joined a year later. Portugal was not allowed to join before 1976 and Spain in 1977. A burst of new memberships occurred after the disintegration of the Soviet Union, with Poland, for example, joining in 1991 and Russia in 1996—a period during which the Council played (and is playing) an active role in facilitating the transition to the democratic values and practices deemed European by the countries by the Council. One country, Belarus, is in the process of application, but has so far been denied membership because it is not seen to live up to European democratic values as defined by the Council's various conventions, and another country, Greece, temporarily excluded itself from the Council during a period of dictatorship.
- 5 Both of these definitions appear in most, but not all, dictionaries. Johnson's dictionary is notable because it differentiates between them so clearly and this may be because he was not just a pioneering

- lexicographer, but a scholar who was deeply concerned with landscape (Mayhew, 2004). For a review of differing dictionary definitions and their value (see Olwig, 2002).
- 6 In *paysage*, the suffix *-age* is appended to *pays* in much the way as *-schaft* is appended to *Land* in German, or *-ship* to *town* in English. *Pays* carried essentially the same connotations of areal community and people as *country* and *land*. The equivalent Italian terms, *paése* and *paesaggio*, carry the same meaning. John Florio thus gave the following definition of *paése* in his famed 1611 Italian-English dictionary, *Queen Anna's New World of Words*: "the countrie. Also a countrie, a Land, a region, a province" (Olwig, 2002, Introduction, fn. 5).
- 7 Personal communication with Peter Howard, founding editor of the *International Journal of Heritage Research* and an expert on the European Landscape Convention.

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