

Spring 1995

Legal Imagery in the "Garden of England"

Eve Darian-Smith
University of Chicago

Follow this and additional works at: <https://www.repository.law.indiana.edu/ijgls>



Part of the [Environmental Law Commons](#), [European Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Darian-Smith, Eve (1995) "Legal Imagery in the "Garden of England"," *Indiana Journal of Global Legal Studies*: Vol. 2 : Iss. 2 , Article 4.

Available at: <https://www.repository.law.indiana.edu/ijgls/vol2/iss2/4>

This Symposium is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Journal of Global Legal Studies* by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

Legal Imagery in the “Garden of England”

EVE DARIAN-SMITH*

Ms. Darian-Smith explores the relationship between law and the concept of “landscapes,” which she describes as the spatial imagery through which law is conceived and from which it draws meaning. She first defines the complex and historically rich concept of the “garden image,” both in general and as it is seen in (and by) England, its people, and its surrounding political, cultural, and spatial contexts. In general terms, the garden image is injected into issues of environmental law. Further, she notes that the garden has been a fluid, ever-changing concept for England’s society and its developing legal system. Specifically, Darian-Smith focuses on a recent development regarding the interaction between the law, the garden, and spatial imagery in England: she argues that the new Channel Tunnel between England and France undermines England’s identity as an island nation, in effect physically and symbolically severing its claim as the bounded “Garden of England.” Such a development, Darian-Smith argues, is a symbol of the eroding of an English identity traditionally thought to be distinct and separate from Europe and its influences, a notion analogous to the way European Community law and English law have been meshed together in environmental issues.

I. INTRODUCTION

This paper is a preliminary exploration of the relationship between law and people’s spatial landscapes through which law is conceived and from which it draws meaning.¹ In the western hierarchy of legal texts,² this

* Ph.D. Candidate in the Department of Anthropology, University of Chicago. Research for this paper was supported by doctoral dissertation grants from the National Science Foundation (No. SES-9308604) and the Wenner-Gren Foundation for Anthropological Research. Special thanks to Peter Fitzpatrick, as well as thanks to Mathieu Deflem and John Comaroff for reading earlier drafts.

1. The meaning of landscape is extremely complicated and involves a long, intellectual genealogy. I treat landscape as a form of “cultural practice,” and adopt Mitchell’s aim to “think of landscape, not as an object to be seen or a text to be read, but as a process by which social and subjective identities are formed.” W.J.T. Mitchell, *Introduction to LANDSCAPE AND POWER I* (W.J.T. Mitchell ed., 1994). I question, therefore, the proposition that in contemporary western societies the landscape involves only the surface or topography of the land. See Barbara Bender, *Introduction to*

iconographic connection between law and its symbolic representations is often overlooked. Yet a pertinent instance of how law and spatial imagery are overtly interconnected is the increasingly important sphere of environmental politics. A concern with environmentalism highlights how specific places may become emblematic of certain forms of power and identity, and emerge as sites of legal struggles that involve, among other things, the right to control particular ideas and representations of land, landscape, and nature.

Interaction between law and spatial imagery is emerging as an important theme in my current research on the county of Kent, where the Channel Tunnel between France and Britain emerges on the coast of England. The Channel Tunnel literally undermines England's identity as an island nation. More specifically, in the recent media promotion of Kent as the "Gateway to Europe," the Channel Tunnel's presence physically and symbolically destabilizes the region's historical claim as the bounded "Garden of England." The fecundity of Kent county is not an issue in my discussion.³

Rather, my focus is upon the imagery of the garden as a particularly relevant form of political, cultural, and, most importantly, spatial organization.⁴ Garden iconography, I believe, is a method of exploring the complex links and resistant boundaries between texts and imagery.⁵ This exploration is important both in locating and interrogating landscapes that have been used in the "naturalizing" of legal authority, and in the representation of law as a credible narrative of impartiality.

LANDSCAPE: POLITICS AND PERSPECTIVES 1 (Barbara Bender ed., 1993).

2. See B.J. Hibbitts, *Making Sense of Metaphors: Visuality, Aurality and the Reconfiguration of American Legal Discourse*, 16 CARDOZO L. REV. (forthcoming 1995).

3. For an analysis of this as a popular misconception, see ALAN EVERITT, *LANDSCAPE AND COMMUNITY IN ENGLAND* (1985).

4. Noting the analytically elusive nature of the garden, Simon Pugh explained:

The garden seems to be problematic when it comes to analysis: hovering between pastoral painting and poetry, architecture and theatre, environmental planning and conservation, the garden eludes analysis except as an appendage of a more serious subject, yet its discourse affects all these subjects equally, its mode of operation and production often more transparent, often so deceptively obvious as to elicit no comment. The garden's frivolity, its lack of seriousness, seems to hint at its significance.

SIMON PUGH, *GARDEN, NATURE, LANGUAGE* (1988). See also Michael Foucault, *Of Other Spaces, DIACRITICS*, Spring 1986, at 22. "The garden has been a sort of happy, universalizing heterotopia since the beginnings of antiquity (our modern zoological gardens spring from that source)." *Id.* at 26.

5. See W.J.T. MITCHELL, *ICONOLOGY, IMAGE, TEXT, IDEOLOGY* (1986).

II. SPATIAL AND LEGAL DIMENSIONS

The garden is a complex concept with a constantly changing meaning. Gardens have historically been used to evoke pastoralism, romanticism, naturalism, and anti-barbarism, amongst other ideologies and philosophies. As its referential applications shift over time, the garden as a stable figural representation continues to defy specificity by highlighting its constructed quality and “unnatural” origins.⁶ That being said, gardens as statements of fashion and embodiments of ideology and symbolism do represent a certain coherence of design and format at particular historical moments. In the late eighteenth century, the garden’s allusion to recurring themes and motifs complemented the emergence of Britain as a modern nation-state and imperial power. Spatially representing a new way of seeing that transcended class and political hierarchies in England,⁷ the garden became the epitomizing feature of civilization. It also highlighted a collective difference and distance from others existing beyond its borders.⁸ It is primarily through this spatial dimension, which aided the framing of social and political organization both within and without the nation, that the garden symbol has long been recognized as significant in the constitution of eighteenth and nineteenth-century notions of “Englishness” and English identity.⁹ Drawing on traces of this history, I ask why garden imagery remains so relevant in today’s cultural politics as a feature of English identity. Why are the symbols and ideologies elicited through garden imagery so evocative and potent in the public imagination and, as a consequence, why are they being revitalized and redefined? Given the

6. See W.J.T. MITCHELL, *Imperial Landscape*, in *LANDSCAPE AND POWER*, *supra* note 1, at 5, 14.

7. Cray has argued that in the first two decades of the 19th century, “a new kind of observer took shape in Europe radically different from the type of observer dominant in the seventeenth and eighteenth centuries.” JONATHON CRARY, *TECHNIQUES OF THE OBSERVER: ON VISION AND MODERNITY IN THE NINETEENTH CENTURY* 6 (1990). The result was the standardization and normalization of what constituted proper sight, devoid of historical and political implications. This, Cray argues, was the necessary precondition for mass consumption of objectified visual images embodied within modern advertising and communications. *Id.*

8. See David Bunn, “*Our Wattled Cot*”: *Mercantile and Domestic Space in Thomas Pringle’s African Landscapes*, in *LANDSCAPE AND POWER*, *supra* note 1, at 127.

9. See generally MARGARET DRABBLE, *A WRITER’S BRITAIN* (1979); PUGH, *supra* note 4; MICHAEL WATERS, *THE GARDEN IN VICTORIAN LITERATURE* (1988); NICHOLAS ALFREY ET AL., *TOWARDS A NEW LANDSCAPE* (1993); David Lowenthal, *British National Identity and the English Landscape*, 2 *RURAL HIST.* 205 (1991).

Channel Tunnel's emphasis on the competing and overlapping imagery of Kent as both England's garden and Europe's gateway, my concern is to locate this spatial tension within current conflicts over the redefinition and defense of what is mythologized as the garden.

Law, I argue, is critical in these processes of redefinition. For example, protection of the garden becomes an environmental issue. Accordingly, the garden has become inscribed within the language and developing principles of environmental law. It is striking how law intervenes in the garden's (mis)management and, through rules and texts, attempts to bound garden symbolism and ideologies. For instance, planning restrictions on types of fencing, obtaining the authorization for the transportation of nuclear waste, and enacting wildlife legislation all influence, to varying degrees, the topography and the activities imagined within the garden landscape, as well as its representation as a site of fantasized sanctuary.¹⁰ Notable also are the ways the garden's pastoral imagery helps shape the wording and application of developing legal principles.¹¹ One example of this influence is the British Agriculture Act (1986), which ensures that agricultural development does not destroy "environmentally sensitive areas"—classified as such on the basis of their contribution to the natural beauty of the countryside.¹²

A great deal more could be said about the constitutive interactions between legal environmental management and garden imagery. What is important to stress is that they are not bound by the limits of English law, which is itself now subject to the directives of the European Community (EC). In this way, discussion of the garden brings into focus extended spheres of legal activity and the juxtaposition between British and EC legal systems. What I hope to show is that events, metaphors, symbols, and discourses surrounding Kent's garden landscape are integrally connected to wider political and social transformations occurring between England and Europe.

As a critical corollary to this extended legal and political sphere transcending the boundaries of the State, a study of garden iconography immediately raises the issue of local contexts. The demand by some Kent

10. For law specifically relating to the protection of the countryside, see H. CLAMP, *LANDSCAPE PROFESSIONAL PRACTICE* 48-55 (1988).

11. D.R. KLINCK, "THIS OTHER EDEN": LORD DENNING'S PASTORAL VISION 25-55 (1994).

12. British Agriculture Act, 1986, ch. 49, § 18 (Eng.).

residents for legal intervention in the governance of their garden environment raises important issues in the analysis of law and its everyday relevance. Primarily, the existence of conflict subverts the illusion of the landscape's singularity of meaning and context. This is important because it highlights the fact that any discussion of law should take into account people's different and shifting perceptions of the significance of their local surroundings. In this paper, then, I raise local action to a higher level of consequence than normally acknowledged. This is necessary if one concedes that spatial distinctions are critical in people's everyday understandings of their own subjectivity, and in the constant renegotiation of their coexisting local, regional, national, and perhaps even transnational, identities.¹³ I also return to my central aim, which is to suggest a more integrative approach to understanding different scales and modes of legal action not confined to text and discourse analyses.¹⁴ In examining law in the context of the garden landscape, I propose a closer scrutiny of social and legal relations by examining links between word and image—between State-bound, textual legal systems and the spatially fluid, iconographic contours that sustain and reshape localized legal meanings.¹⁵

III. ICONOGRAPHIC REPRESENTATIONS

Iconography refers to the textualizing of symbolic imagery or "the way we talk about the *idea* of imagery."¹⁶ Erwin Panofsky's pioneering work in the 1920s and 1930s established interpretative iconography as an indispensable component of twentieth-century cultural studies. In his

13. Elspeth Probyn, *Travels in the Postmodern: Making Sense of the Local*, in *FEMINISM/POSTMODERNISM* 176 (L.J. Nicholson ed., 1990); see also DOREEN B. MASSEY, *SPATIAL DIVISIONS OF LABOUR: SOCIAL STRUCTURES AND THE GEOGRAPHY OF PRODUCTION* (1984).

14. For an exploratory discussion of this project, see Eve Darian-Smith, *Law in Place: Legal Mediations of National Identity and State Territory in Europe*, in *NATIONALISM, RACISM AND THE RULE OF LAW* 27 (Peter Fitzpatrick ed., forthcoming 1995).

15. As Goodrich has noted:

"[T]he text circulates as an image and the power of its effect is largely resident in that aesthetic quality rather than in its supposed rational content, for few ever read the law, none ever read all of it. . . . A reading of the legal text which ignores the power of its imagery or the aesthetic of its reception is a reading which is in many senses beside the point in that it ignores precisely that dimension of the text and its context which performs the labour of signification and so gives the text its effect."

Peter Goodrich, *Specula Laws: Image, Aesthetic and Common Law*, 2 L. & CRITIQUE 233, 236-38 (1991).

16. MITCHELL, *supra* note 5, at 1.

analysis of narrow and deep senses of iconography, Panofsky located the latter in the intrinsic visual meanings embedded in “those underlying principles which reveal the basic attitude of a nation, a period, a class, a religious or philosophical persuasion.”¹⁷ Panofsky’s theory of deep iconography, or iconology, became influential in the works of visual theorists such as John Berger, whose *Ways of Seeing*¹⁸ emphasized a Marxist reading of iconography’s multiple layers of meaning. Amongst others, Raymond Williams was also receptive to the notion of ideologies of power embodied in landscapes.¹⁹ Yet, perhaps, more significantly in terms of its subsequent influence, Panofsky’s likening of iconography to ethnography reemerged in the works of Clifford Geertz, and is evident in Geertz’s reading of cultural events as texts of “thick description” and “diagnosis.”²⁰ Directly and indirectly, iconographic analysis informs a vast body of theoretical perspectives that encompass a wide range of academic disciplines.²¹

Yet a postmodern self-consciousness brings into question iconography as reflective of some form of deeply embedded holistic knowledge, while at the same time increasing the appeal of its possibility. It is this tension, this sense of “duplicity,” where totalizing objective narratives are debunked and the inherent instability of subjective meanings and symbols acknowledged, that grants iconographic interpretation new dynamism and force.²² As unsettling as it may be, out of possible ambiguity and fragmentation emerges the recognition of a plurality of perspectives, positionings, and logics of visualizing.²³ That some interpretations will continue to go unseen remains inevitable, just as those recognized cannot be heard equally. What is of immediate import in a discussion of the garden landscape, however, is that a growing number of interpretations goes some

17. ERWIN PANOFSKY, *STUDIES IN ICONOLOGY: HUMANISTIC THEMES IN THE ART OF THE RENAISSANCE* 7 (1939).

18. See JOHN BERGER, *WAYS OF SEEING* (1977).

19. RAYMOND WILLIAMS, *THE COUNTRY AND THE CITY* (1973); see also ANN BIRMINGHAM, *LANDSCAPE AND IDEOLOGY: THE ENGLISH RUSTIC TRADITION, 1740-1860* (1986).

20. ERWIN PANOFSKY, *MEANING IN THE VISUAL ARTS* 51-52 (1970); CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES: SELECTED ESSAYS* 3-30 (1973).

21. See generally MITCHELL, *supra* note 5.

22. See Denis Cosgrove & Stephen Daniels, *Introduction: Iconography and Landscape*, in *THE ICONOGRAPHY OF LANDSCAPE: ESSAYS ON SYMBOLIC REPRESENTATION, DESIGN AND USE OF PAST ENVIRONMENTS* 1, 7 (Denis Cosgrove & Stephen Daniels eds., 1988).

23. See M. Jay, *Scopic Regimes of Modernity*, in *VISION AND VISUALITY* 3, 3-28 (H. Foster ed., 1988); see also N. Bryson, *The Gaze in the Expanded Field*, in *VISION AND VISUALITY*, *supra*, at 87-114.

way toward revealing the garden's illusory claims for order, control, ethnic homogeneity, and a singular mode of experiencing.²⁴

Clearly the iconography of the garden cannot itself contain coherent narratives, fixed meanings, or have universal application. As a "metaphysical site," a space yet not a place, the garden landscape as a metaphor of cultural production defies specificity. This is not to suggest, as others have done, that the landscape should be treated as a passive or empty platform on which to "stage" cultural drama or from which to "read" cultural meanings.²⁵ Care must be taken not to represent the garden landscape as simply reflective of social action, and so neglect the actual physical changes and non-human participation occurring within it.²⁶ At the same time, garden imagery evokes what has become recognized as "naturalized" national ideologies and representations. In England, there are particular archetypal myths that subtly change yet persist within garden iconography, which I will come to shortly. What I want to stress here is that the very fragmentary nature of garden iconography highlights its capacity to be manipulated across a range of political and social contexts.

Actual physical change to the Kentish landscape as a result of the Channel Tunnel should not be ignored, particularly since it has kept environmental issues at the forefront of public concern and modified people's garden experiences. However, my interest here lies in exploring why protection of the garden has become a "dominant" political issue, and the implications when garden images unite various groups and "in turn become short-hand referents, icons, or even allegorical representations of the

24. For instance, Raymond Williams identified as imperialistic the distinctions between country and city landscapes, which the garden curiously straddles. The city is represented as the center of progress and the surrounding countryside as backward and primitive. RAYMOND WILLIAMS, *THE COUNTRY AND THE CITY* 279 (1973). However, it has been recently argued that in universalizing this opposition between town and country, Williams inadvertently appointed to peripheral nations a history of dependence upon and emulation of "civilized" European States. See Julie Skurski & Fernando Coronil, *Country and City in a Postcolonial Landscape: Double Discourse and the Geo-Politics of Truth in Latin America*, in *VIEWS BEYOND THE BORDER COUNTRY: RAYMOND WILLIAMS AND CULTURAL POLITICS* 231, 244-46 (Dennis L. Dworkin & Leslie G. Roman eds., 1993).

25. See Denis Cosgrove & Mona Domosh, *Author and Authority: Writing the New Cultural Geography*, in *PLACE/CULTURE/REPRESENTATION* 25, 31 (James Duncan & David Ley eds., 1993); see also Stephen Daniels & Denis Cosgrove, *Spectacle and Text: Landscape Metaphors in Cultural Geography*, in *PLACE/CULTURE/REPRESENTATION*, *supra*, at 57-77.

26. For a fascinating discussion on the different perspectives and theoretical concerns with non-human agency existing between cultural geographers and environmental historians, see David Demeritt, *The Nature of Metaphors in Cultural Geography and Environmental History*, 18 *PROGRESS HUM. GEOGRAPHY* 163 (1994).

environment.”²⁷ While I can only make suggestions at this stage, I think it is critical to follow how both English and EC law enter the Kentish scene and textualize people’s needs and expectations. For it is the wider battles between Britain and the EC over sovereignty and control of jurisdictional territory that expose the continuing importance of garden iconography and the ways it is being both transformed and sustained.

IV. GARDEN BOUNDARIES

It is impossible to do justice to the complex historical development of English garden iconography. As mentioned above, there is an abundance of material available on the peculiarities of the English garden, and the range of experiences gardens have at various times been able to express.²⁸ My particular focus is upon the garden as a symbol of boundary marking, because this feature highlights the garden’s continuing pertinence in England and Kent’s cultural and legal politics.

Originating from the same Old English root as *geard*, meaning fence, the notion of a garden encapsulates the meaning of a confined, cultivated space.²⁹ As a narrative, the garden can operate as a metaphor for progress, control, order, and surveillance, masking with an aesthetic overlay power relations as well as class, race, and gender differentiations. At the same time, the garden may function as a journey as well as a utopian site of innocence, pleasure, and leisure.³⁰ Whatever its foremost expression, the garden, at once imitating and espousing what is to be construed as “natural,” necessarily remains distanced from any straightforward resemblance to reality. As a mode of spatial organization, the garden boundary is illusive and contradictory. The garden, above all, is a fantasy. At one and the same time it defines the limits of a perceived place, and yet occupies an unfixed and ephemeral conceptual space. In its very articulation it marks, as Pugh argues, a loss or absence. The garden “is a model for everything that reality

27. Anders Hansen, *Introduction to THE MASS MEDIA AND ENVIRONMENTAL ISSUES* at xvi (Anders Hansen ed., 1993).

28. See generally JOHN DIXON HUNT, *GARDENS AND THE PICTURESQUE: STUDIES IN THE HISTORY OF LANDSCAPE ARCHITECTURE* (1992); M. FRANCIS & R.T. HESTER, JR., *THE MEANING OF GARDENS: IDEA, PLACE AND ACTION* (1990); C.W. MOORE ET AL., *THE POETICS OF GARDENS* (1989).

29. Anne van Erp-Houtepan, *The Etymological Origin of the Garden*, 6 J. GARDEN HIST. 227, 227 (1986).

30. For the garden’s utopian imagery see HUNT, *supra* note 28, at 305-36.

is not."³¹ This ambiguity, this fluidity of meaning, challenges and mediates a tangible and metaphorical manifestation of what is accepted as the garden landscape. It opens up its symbolism to various interpretations, possibilities, and manipulations. And this is precisely why conflict over the constitution and defense of the garden has become a dominant issue in Kent.

It is one thing to identify the pre-conditions for the garden's renewed relevance and another to suggest why it has become so. As mentioned above, the history of the garden should not be ignored, holding as it does a particular role in the creation of the English and notions of Englishness. What I want to stress is that this form of national identity is integrally related to the historical development of the State's legal system. And this connection between cultural identity and English law can, in part, be monitored through the shifting visual aesthetics of land as represented through the garden metaphor.

Sight, writes Classen, "is the particular domain of the male explorer who goes out to confront and conquer the world, while smell, taste and touch belong to the female homemaker who, her vision bounded by the walls of the house, remains behind to take care of the children and dinner."³² While sight did not completely overwhelm the other senses such as smell and sound, throughout the sixteenth century vision increasingly became the dominant sensory experience.³³ The extent to which changing garden forms represent sight's imperial characteristic is fascinating. By the 1720s, the English garden style quickly dropped its internal formalism as expressed in geometric paths and terraces trimmed by hedgerows, mazes, and clipped trees. And with the dropping of garden segmentation and borders, a new expansive vision emerged that favored the garden landscapes of Capability Brown, whose sweeping lawns merged the garden with the countryside and

31. PUGH, *supra* note 4, at 130-32.

32. CONSTANCE CLASSEN, *WORLDS OF SENSE: EXPLORING THE SENSES IN HISTORY AND ACROSS CULTURES* 31 (1993). Some feminist writers have put a critical twist on this interpretation of sight by arguing that sight is characteristically masculine and represents possessive voyeurism in seeing the world as separate and distanced from oneself. See, e.g., GILLIAN ROSE, *FEMINISM AND GEOGRAPHY: THE LIMITS OF GEOGRAPHICAL KNOWLEDGE* (1993).

33. See CLASSEN, *supra* note 32, at 33-36. See generally Hibbitts, *supra* note 2; DONALD LOWE, *HISTORY OF BOURGEOIS PERCEPTION* 13 (1982); WALTER ONG, *THE PRESENCE OF THE WORLD: SOME PROLEGOMENA FOR CULTURAL AND RELIGIOUS HISTORY* 8 (1967). For an interesting argument that the separation of the senses resulting in the prevalence of sight did not occur until the first two decades of the 19th century, corresponding to the new visual techniques that sought to standardize sight and by which "vision itself became a kind of discipline," see CRARY, *supra* note 7, at 18-19, 67-96.

embodied what Alexander Pope coined the romantic “picturesque.”³⁴ No longer requiring walls to demarcate proprietorial possession, garden romanticism above all displayed a supreme confidence that was, in part, due to the hardening of law into general written principles that freed individuals from hands-on control and immediate responsibility for their land.³⁵ In the words of William Cowper, a poet of the late eighteenth century who was highly critical of wealthy landowners who sought to improve their properties, “Estates are landscapes, gaz’d upon awhile, then advertiz’d and auctioneered away.”³⁶ This newfound detached confidence was also connected to the conquering, objectifying power of the gaze that sustained the expansion of empire and the universalizing mythology embodied within English law.³⁷

The fashion for romantic garden estates replete with ruined temples and ha-has that granted an unfettered horizon did not last long into the nineteenth century. As industrialization took hold, there was a shift in garden style to more intimate “wild” urban gardens. This represented the changing fabric of the power elite, from an hereditary aristocracy to an entrepreneurial middle class of lesser gentry. The garden was an expression of status and, emanating from London, a mode of fashionability. But it was also much more than that. The garden was, and remains, the prerogative of those fortunate enough to own land. As an aesthetic embodiment of property, the garden exemplified, particularly after the acts of enclosure in the eighteenth century, a dynamic, highly individualized, and hierarchical social structure. Through the carving up of land on the basis of property rights to freehold estates, the garden landscape naturalized, and in a sense disguised, England’s intrinsically anti-democratic system of common law. Notions of the garden ideal shifted in the course of industrialization toward that of a smaller and more manageable private retreat.³⁸ Nonetheless, the garden, as a particular feature of the landed estate, continued to operate as an aesthetic metaphor for a social elite’s legal capacity to civilize, cultivate,

34. See MORRIS BROWNELL, *ALEXANDER POPE AND THE ARTS OF GEORGIAN ENGLAND* 103 (1978); see also PETER MARTIN, *PURSUING INNOCENT PLEASURES: THE GARDENING WORLD OF ALEXANDER POPE* (1984); PAUL SHEPARD, *MAN IN THE LANDSCAPE: A HISTORIC VIEW OF THE ESTHETICS OF NATURE* 86-88 (1967).

35. SHEPARD, *supra* note 34, at 89-90.

36. S. Daniels & S. Seymour, *Landscape and the Idea of Improvement*, in *A NEW HISTORICAL GEOGRAPHY OF ENGLAND AND WALES* 487, 501 (R. Dodgson & R.A. Butlin eds., 2nd ed. 1990).

37. See PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW* 111-18 (1992).

38. Daniels & Seymour, *supra* note 36, at 504.

beautify, order, universalize, and ultimately make inequalities appear more plausible and acceptable.³⁹

As many commentators have argued, these idealized connections between land and law were critical.⁴⁰ Having no single founding constitution upon which legal authority could draw, English law derived its legitimacy from the unique doctrine of parliamentary sovereignty that declared a limited monarchy and the population's voluntary acquiescence in a representative system of governance. Despite the artifice of this conformity, Montesquieu in 1729, and De Tocqueville a century later, were both enchanted by England's legal system. Montesquieu wrote that, unlike other countries, "this nation is passionately fond of liberty," and mused that "the inhabitants of islands have a higher relish for liberty than those of the continent."⁴¹ This sense of liberty was believed better suited to Protestantism than Catholicism, and manifested itself, De Tocqueville noted, in England's prosperous trade and precocious form of modernization.⁴²

England's legal imagination is sustained by the image of a naturalized "old England," in which tradition, common sense, and legal precedent play a significant role. Evoking a past when the nation's economic and political stability flourished, the garden today provides an organic metaphor for a particular temporal and spatial landscape that mythically represents the glory of England, the identity of Englishness, and the superior authority of English law. Beyond this, the garden symbolizes the encompassing stretch of English legal authority that once covered an enormous empire, but is now more modestly contained within its island boundaries.⁴³ This shift in spatial reference points to the transformation of the garden's symbolism; for

39. See generally PUGH, *supra* note 4, at 11-13.

40. Peter Goodrich, *Poor Illiterate Reason: History, Nationalism and Common Law*, in 1 SOC. & LEGAL STUD. 7-28 (1992); Peter Goodrich & Yifat Hachamovitch, *Time Out of Mind: An Introduction to the Semiotics of Common Law*, in DANGEROUS SUPPLEMENTS 159-81 (Peter Fitzpatrick ed., 1991); David Sugarman & Ronnie Warrington, *Land Law, Citizenship and the Invention of "Englishness"*, in EARLY MODERN CONCEPTIONS OF PROPERTY (John Brewer & Susan Staves eds., 1994); William Vaughan, *The British Landscape Tradition*, in TOWARDS A NEW LANDSCAPE, *supra* note 9, at 84-101; John Whyman, *A Sketch of Economic Development in Kent, 1600-1900* (unpublished manuscript, on file with the *Indiana Journal of Global Legal Studies*).

41. Alan Macfarlane, *THE ORIGINS OF ENGLISH INDIVIDUALISM: THE FAMILY, PROPERTY AND SOCIAL TRANSITION* 165-69 (Cambridge U. Press 1979) (1978).

42. *Id.*; see also Anthony Carty, *England's Constitutional Law from a Postmodernist Perspective*, in DANGEROUS SUPPLEMENTS, *supra* note 40, at 182-206 (discussing the peculiar form of English modernization).

43. See MITCHELL, *supra* note 6, at 20.

now, above all else, the garden demarcates a confined and cultivated space—a place of security, a guarantee of repose, a buffer zone against intrusion. The garden walls have been rebuilt, but their structural foundations remain embedded deep within a collective national tradition and memory. Further, I suggest, it is a nostalgia for the garden as an enduring (innocent) representation of England’s legal and cultural stability that today makes it such a powerful and emotive mythology.⁴⁴

V. KENT IN THE ENGLISH IMAGINATION

Denis Cosgrove writes, “the mythical English landscape is drawn from a highly localized region.”⁴⁵ Perhaps nowhere is the heritage industry, and the recalling of a bygone history, more overt than in the county of Kent, the so-called “Garden of England.” As the capital’s estate, Kent has long enjoyed a special place in English history.⁴⁶ With its rolling downlands, hop fields, oasthouses, and church spires, Kent is conceived as both a mysterious secret garden and an accessible scene of pastoral tranquility. Through aggressive tourism and marketing, the county evokes a past golden age of local community spirit and rural idealism. Critical to this representation is Kent’s spatial confinement between London and the sea, which, in its very boundedness, frames the landscaped imagery with a naturalized order and calculability.

Kent, of course, is not all green rolling hills, just as its residents are neither uniformly conservative in their politics, nor live in manor houses, nor participate in fox hunting and bird shooting. Such caricatures may contain a measure of truth, but also mask how the majority of people live and encourage the forgetting of the seedier, less attractive aspects of the county. For instance, the Isle of Thanet in northeast Kent has some of the highest levels of unemployment and crime in Britain; the level of pollution at Pegwell Bay makes it dangerous for swimming; and power stations, housing estates, and most conspicuously the Channel Tunnel, do not fit the visual logic of the countryside. There is an obvious mismatch between

44. PUGH, *supra* note 4, at 13.

45. Denis Cosgrove, *Landscapes and Myths, Gods and Humans*, in *LANDSCAPE: POLITICS AND PERSPECTIVES*, *supra* note 1, at 299.

46. Whyman, *supra* note 40.

Kent's garden landscape as it exists in the popular Kentish and English imaginations, and the realities this imagery elides.

These contradictions allow for multiple interpretations both of what the garden is, and what it means. It is surprising the extent to which the garden mythology still resonates with a vast number of Kent residents who are only too well aware of its illusory qualities. Garden imagery appears to speak to a wide cross section of the community, and unite what in many other ways is opposed. Hence, people of conservative and more progressive political persuasions, various age generations, the unemployed, farmers, green activists, and London commuters fleeing the city are, at particular moments, coming together as a relatively united front. Many people, for different reasons and motivations, have vested interests in defending the remnants, or if not the remnants then the return, of a naturalized garden landscape.

One explanation for this apparent consensus is that the garden is a strong cultural metaphor for law and order, perpetuity, security, and intrinsically ethnic purity.⁴⁷ It is a symbol of cultivation and, by association, deems its protectors cultivated. There is a perceptible need to maintain the illusion that "[o]n every side, and as far as the eye can reach, you behold the finest country in the universe, the most populous, the most animated, the most cultivated, the most varied in all kinds of products" ⁴⁸ As a vision of a golden past, the garden's embodiment of intimacy in the small and well-cultivated fields and orchards of Kent operates as a defense against perceptions of an encroaching and barbaric world.⁴⁹

This sense of an untouched past articulated through Kent's garden identity is heightened by the current political and economic turbulence of Britain as a Member State of the EC. The garden's widespread resonance amongst Kentish residents may well represent a popular sense of alienation and dislocation in a country very conscious of its imperial demise, revitalized Scot, Welsh, and Irish nationalisms, dismantled local government powers, and increasing north-south socioeconomic divides. The dim

47. See HARRY ROBERTS, *ENGLISH GARDENS* 17 (1994) ("I have said the beauty of a successful garden is due largely to the feeling of repose and settled-downness which it yields. Every plant should look, I feel, as though it 'belongs' where it is, as though it always has been there . . .").

48. P.F. BRANDON, *The Diffusion of Designed Landscapes in South-East England*, in *CHANGE IN THE COUNTRYSIDE: ESSAYS ON RURAL ENGLAND, 1500-1900*, at 165, 167 (H.S.A. Fox & R.A. Butlin eds., 1979) (quoting UN PETIT-NEVEU DE MAZARIN 494-95 (L. Perey ed., 1891 ed.)).

49. Interestingly, Max Oelschlaeger in his work on wilderness posits the possibilities of "getting back to the garden" and "land ethics" as tenable options for a postmodern relationship between people and the natural world. M. OELSCHLAEGER, *THE IDEA OF WILDERNESS* 344-346 (1991).

realization of the nation's internal disintegration helps intensify the need for stability and control perceived accessible through a localized perspective. People whose expectations and dreams have been lessened as a consequence of the economic recession are more readily adopting a reflex rhetoric that speaks of a community spirit embodied in the local village, town, and region. Arguably, an internalizing and inward-looking movement of local retreat is emerging. Grassroots politics and a deepening commitment to green issues are fueling a rise of alternative forms of citizen participation. In Kent, what is important is that the garden metaphor help mark what are deemed "natural" boundaries of the county's subnational identities. The garden offers a sense of belonging and frames a locality of resistance. These sentiments are encapsulated in a few verses written by a local rector in Rochester, Kent.

So much of our county has disappeared,
Under tarmac and concrete and brick.
Developers and planners have all agreed, that this is the place for
sacrifice.
They called it the garden of England, but now,
It's a wide open field, for all who can profit by rape.

There's much of our county still lovely,
They haven't spoiled all of it yet.
The fields and the words and the orchards remain.
We'll fight for the County of Kent.⁵⁰

At the same time, the garden seems to justify talk about symbols dear to a nationalist sentiment. Activities involving a need to protect the environment and to reinstate what is imagined to have existed in the past are also prone to assimilate reactionary tendencies, jingoism, right-wing conservatism, and blatant parochialism. Nature's presumed neutral universality imbues those who fight for its defense with a sense of righteous purity, which can claim not to be colored by any nationalist impulse. This becomes important in the wider context of England's relationship with the European Community; for none of this discussion can be divorced from the supranational political scene and the English government's fear of forfeiting its traditional legal sovereignty. The very notion of a larger European

50. Personal correspondence (Mar. 16, 1994) (on file with author).

identity strikes at the very heart of the national identity—of Englishness. As Peter Goodrich has noted, “To question the law is to question ourselves.”⁵¹

It is within this extended European context that the garden, as a symbolic metaphor for English law, assumes heightened meaning. Analogous to the way the garden historically served the English nobility by masking disparities of legal and economic power, London’s regional garden bolsters the pretense that the nation’s central institutions are maintaining control over a democratic island nation. Moreover, the association of the garden with English identity sustains the illusion of England’s ethnic homogeneity. There can be no garden without a home, which the garden suggests is smoothly run and well-ordered. The idea of home has many meanings, but above all it functions as a territorial core, supplying both unity and security.⁵² Kent’s garden imagery essentially provides a comforting reassurance that the English remain culturally identifiable, and that London remains the controlling center of a significant world power.

VI. EUROPE IN ENGLAND

The current political climate between Britain and the European Community helps explain why the Channel Tunnel has caused such enduring English bitterness. As a symbol of European intervention, the Channel Tunnel, and subsequent plans for a fast rail link to London, have dramatically polarized public opinion. Despite enthusiasm amongst many Londoners, the majority of the English population remains firmly against the Channel Tunnel, relying heavily on the notion of the debasement of the countryside as its justification.

Of course, there has been irrevocable damage to Kent’s environment. But this does not necessarily account for that widespread and seemingly irrational unease that links the Channel Tunnel with terrorism, apocalyptic fires, and rabies.⁵³ My argument is that this anxiety is primarily linked to

51. Goodrich, *Poor Illiterate Reason*, *supra* note 40, at 16.

52. J.D. Porteous, *Home: The Territorial Core*, 66 *GEOGRAPHICAL REV.* 383-90 (1976).

53. The Tunnel’s inauguration on 6 May 1994 triggered an outpouring of media attention. The apparent delight in declaring “Kent Makes History” (which left me wondering where exactly the French featured) was countered by a rather negative assessment of England’s position within Europe. In a national poll two months before the inauguration, the British population declared their unease, with nearly 70% claiming that they would never travel in a car under the sea. For a discussion on the metaphor of

the Channel Tunnel's disruption of secure spatial borders, of which one consequence is a threat to a national garden mythology of poetic mystery and pastoral tranquility. In effect, the Channel Tunnel defiles a bounded space dear to the national imagination. By cutting across Kentish properties, orchards, hedgerows, and a dense network of public footpaths and bridle paths deemed to have existed for centuries,⁵⁴ the Channel Tunnel and the fast rail link to London metaphorically and literally undermine an established aesthetic of order that is the indispensable basis for imagining the natural authority of English law and the notion of Englishness. The much used military rhetoric of "penetration," "invasion," and "rape" emphasizes the Channel Tunnel's violent destabilization of a stable history.

Yet garden symbolism is also a means of controlling the future. Pugh writes, "The walls around the garden are the rules, the frame, which define the possible, the permissible."⁵⁵ The Kentish garden, framed by the sea and symbolic of the nation's legal jurisdiction, highlights the spatial limits of what is perceived to be physically and legally permissible. In short, the boundaries of the garden metaphor strive to contain the overlapping naturalness of the sea and rule of law. Conversely, the Channel Tunnel circumvents the physical limits of the Channel, and the EC continues to increase its legal superiority. In this context, the public's clinging to the symbol of Kent as the garden of England inadvertently and somewhat ironically draws attention to the vulnerability of the garden's perceived boundaries. No longer can the sea stand as the emblem of the nation's isolationist status. No longer can the naturalness of English law withstand the expanding presence of Europe. With the breaking down of its landscaped boundaries, the garden landscape, I suggest, is being pulled apart to reveal the nation's absence of sovereignty. And without its garden, the grandeur of the English home is being dismantled, suggesting that England is becoming a sub-lot of the European mainland.

rabies, see Eve Darian-Smith, *Rabies Rides the Fast Train: Transnational Interactions in Post-colonial Times*, 6 L. & CRITIQUE (forthcoming 1995).

54. A.D. WALLACE, WALKING, LITERATURE AND ENGLISH CULTURE (1993).

55. PUGH, *supra* note 4, at 10.

VII. CONCLUSION

Discussion has focused on the significance of designating Kent the "Garden of England" in an attempt to draw links between the formal texts and discourses of English and EC law, and how these in turn relate to the garden landscape as a potent instance of legal and cultural imagery. Kent's historically developed regional identity as the garden of England has played a mythical role in the local and national imagination. Now under threat by the "invasion" of the Channel Tunnel and fast rail link to London, some local community responses have promoted environmental awareness in an attempt to protect what is perceived as a peculiarly English landscape and heritage. Significantly, I have argued, the garden reinforces the illusion of the stability of England's legal institutions and the irrefutable quality of English identity. This drive to defend particular images of the garden, however, inadvertently stirs up the very legal conflict the garden imagery seeks to evade. For in turning to environmental control, which is governed by both English and EC law, disparities and conflicts between these two legal systems are raised. One result of this legal confrontation is that England's garden landscape must be reimagined through the wider context of EC law. What remains a critical question is the extent to which this spatial decentering of English legal authority may affect local, regional, and national perceptions of what constitutes England and Englishness.

